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FOR

European Commission

ENTERPRISE AND INDUSTRY DG

OBJ***STUDY ON POSSIBLE NATIONAL LEGAL OBSTACLES TO FULL RECOGNITION OF ELECTRONIC PROCESSING OF PERFORMANCE INFORMATION ON CONSTRUCTION PRODUCTS (UNDER THE CONSTRUCTION PRODUCTS REGULATION), NOTABLY WITHIN THE REGIMES OF CIVIL LIABILITY AND EVIDENTIARY VALUE***

OBJ

FINAL GENERAL REPORT

Submitted by
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Preliminary notes

The terms beginning with capital letters that are not defined in this report (the "Report") are defined by reference to the offer and the contract as approved by the European Commission ("Offer" or "Contract").

Some of the documents were too large to include in this Report. The Annexes to this Report which include thousands of pages of relevant information are available online through a secure website accessible by the Beneficiary[1].

This Report may contain repetitions. This is a feature of such reports. Ensuring clarity and that all the work that has been performed and properly consigned often leads to repeats.

Acknowledgements

The contractor (hereafter the "Contractor") is DBB (Demolin - Brulard - Barthelemy), a law firm with offices in Brussels, Mons, and Soignies, Belgium and Paris, France[2].

This Report is based on contributions made in the form of specific reports from all members of the team described below (the "Team")[3].

As Team Leader, I wish to thank the members of the Team, researchers, contact points and other contributors for their dedication to this project and the quality of their input.

Members of the Team are listed below.

[1] The information contained in the Annexes to this Final Report may be retrieved from http://www.declarationofperformance.eu. Once on the website the Beneficiary will need to Login and then click on the menu "Documents_Commission". This will enable access to the Report and its Annexes.

[2] DBB, 46 avenue des Arts, 1000 Brussels, Tel +32 (0)2 213.14.50, Fax +32 (0)2 213.14.60, Email info@dbblaw.eu

[3] The contents of this Report are the sole responsibility of the Team Leader and can in no way be taken to reflect the views of the European Commission or of those who collaborated or participated in this Report since their participation, limited to specific portions of the Report, was reviewed and re-written to form the Report. The European Commission does not guarantee the accuracy of the data included in this report, nor does it accept responsibility for any use made thereof.

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Executive summary

The new regulation on construction products, Regulation (EU° No. 305/2011 laying down harmonised conditions for the marketing of construction products ("Construction Products Regulation" or "CPR") fully came into force on July 1, 2013.

The CPR makes an obligation on manufacturers that a declaration of performance ("DoP"), containing important information, is prepared for construction products that are made available on the market.

The DoP enhances transparency and traceability for construction products along the supply chain and in the market in general.

This is made possible thanks to the availability and use of new technologies.

However, despite the existence of new technologies to facilitate access to DOPS, some practical and legal obstacles may continue to exist at the national levels impeding their use.

This study aims at identifying, in the 28 European Union countries plus Norway, Liechtenstein, and Iceland (hereafter "Member States") the legal contexts in which the DoP may be required or provided so as to determine whether in any such situations obstacles, both legal and practical, exist to the electronic provision of the DoP.

The main legal contexts in which the DoP may be required were identified as the following:

- **Activities of market surveillance authorities,**
- **Authorizations and/or approval for construction works, and**

- **Disputes related to construction products per se or as used in construction works.**

Within these contexts, the main stakeholders were identified as follows:

- **Market surveillance authorities,**
- **Administrative authorities in charge of delivering authorizations and/or approvals for construction works,**
- **Insurance companies covering construction risks, and**
- **Judicial bodies that review administrative bodies' decisions or adjudicate disputes in relation to the sale and use of construction products.**

Among these those that would most likely require documents such as the DoP are market surveillance authorities and judicial bodies in cases of disputes involving construction products. Administrative authorities in charge of delivering approvals for construction works may in rare cases request DoPs but would most likely only require plans related to the building structure. However, the DoP could in the future play a more important role in building permits since currently in Hungary, building permits are not required for temporary structures provided the DoPs are available.

Insurance companies are not likely to require DoPs to provide initial coverage, but may do so if an occurrence called-on the insurance company to compensate.

In general the study found few obstacles to the provisions of electronic materials in the identified contexts to the different stakeholders. And the existing obstacles should progressively disappear as many Member States have adopted, and continue to adopt, and put in place systems that allow for the transmission and provision of electronic documents to administrative bodies and for judicial bodies. Nevertheless, for some countries the submission of the DoP in electronic form may currently:

- **Still not be allowed,**
- **Be submitted to specific requirements, and/or**
- **Not be possible for practical reasons**

Those countries where the submission of the DoP in an electronic form may not be allowed by administrative bodies are Belgium and France. In practice, it is noted that many administrative bodies may require hard-copies of documents even if theoretically the provision of the DoP in electronic format should be possible from a legal standpoint.

In general, parties may use electronic means to provide DoPs before judicial bodies in the different Member States. In Denmark however, courts would require that the DoP be submitted in paper form. In Hungary, the possibility to provide the DoP in electronic format is limited to certain procedures.
Unless the law imposes a positive obligation, courts are generally free to set rules relating to the admission of electronic documents into evidence. In Belgium, each court has a margin of discretion as to whether it will accept electronic documents or whether it will request that all documents be submitted in paper format. Similarly, in Iceland no regulation makes it mandatory on courts to admit or reject electronic documents into evidence. In Malta, the situation is unclear as the E-Commerce Act states that rules relating to the equivalence of electronic and paper-based transactions do not apply to "the rules, practices or procedures of a court or tribunal" or to "any law relating to the giving of evidence in criminal proceedings". However, since there is no prohibition as such on the provision of electronic documents, the courts would most likely admit them provided they meet specific requirements.
In some countries the application of the best evidence rule, where the electronic version of the DoP is but a copy of a paper document, may lead the court to request the paper original. Alternatively it may admit the electronic document but grant it less evidentiary weight.

Even where the principle of the submission of the DoP in electronic format is possible, technical, practical and other legal hurdles may limit this possibility in practice.

Indeed, a number of requirements may apply for the submission of electronic documents to administrative bodies and courts. First, such bodies may require

that the electronic documents submitted to them are done so in a specific format. Second, they may require that the documents be presented using a particular medium. In particular the submission of a USB-stick or CD/DVD containing the documents may be preferred to that of an email transmission where size limitations may also apply. Third, and depending on the nature of the documents, requirements as to authentication may apply before documents are admitted for review.

Finally, in some countries, even though laws have been adopted, not all administrative or judicial bodies have the necessary equipment in place to accept electronic documents. This is especially true in rural areas.

1. CHAPTER 1: Introduction

- **General context of this Study**

European regulations are taking into account new technologies to reshape the manner in which actors on the market can communicate and to enable unburdened transparency. More and more regulations allow for the digital or electronic transmission of or access to documents. The new regulation on construction products, Regulation (EU° No. 305/2011 laying down harmonised conditions for the marketing of construction products ("Construction Products Regulation" or "CPR") is no exception to this trend. Using new technologies the CPR introduces obligations that would otherwise have been virtually impossible to implement. The CPR seeks to enable any stakeholder, to know what the essential characteristics attached to each construction product are. Requiring that each product be accompanied by a paper document outlining their essential characteristics is indeed impossible or prohibitively costly for many construction materials, at least individually. However, it is possible using new technologies. The CPR makes an obligation on manufacturers that a declaration of performance ("DoP"), containing important product information, is prepared for construction products that are made available on the market. This information, the CPR states, can be supplied by electronic means. It can also, following the adoption of a Delegated Act setting out the appropriate modus operandi, be provided via a web site. Thus, transparency with minimal burden on economic actors can be enhanced by using new technologies.

However, the impact of the use of new technologies as instruments promoting transparency and facilitating the provision of and access to data at the EU level may be hindered at national levels if traditional means of providing information remain compulsory in areas that, whilst falling outside of the scope of the regulation, nevertheless play a key role in its effective deployment.

To clarify the issue, the CPR allows for the DoP to be supplied electronically for construction products. However, its scope does not extend beyond the area of

construction products. In particular, it does not seek to harmonize judicial or administrative procedural rules or the rules on the taking of evidence.

As a result, in order to ensure that no unforeseen obstacles will limit the effectiveness of the new instruments, it is essential to review the situation at the national levels. This is the objective of this study ("Study").

- **The Construction Products Regulation and the Declaration of Performance**

The CPR became fully applicable on July 1, 2013. The CPR repeals the Construction Products Directive 89/106/CEE[4] ("CPD"). From that date, all construction products covered by harmonised European standards have to be tested against those standards and CE marked before they can be placed on the market in any Member State of the European Union. The CPR incorporates the main instruments of the CPD carrying forward its general objectives of overcoming the technical barriers to trade that result from different national approaches on standards, testing and labelling for the same construction products. Whilst sharing these goals the CPR seeks to simplify, improve and add transparency to the system. It also provides for a stricter system for placing construction on the market.

In particular, the CPR makes CE marking compulsory and introduces a new concept called the declaration of performance ("DoP"). As of July 1, 2013, manufacturers of most construction products, are required, when placing a product on the market, to create a DoP for relevant Construction Products, and affix the CE mark.

The DoP is a document prepared by the construction product manufacturer. It contains information about the essential characteristics of the Construction Product that the manufacturer intends to "make available" on the market. All DoPs must be drawn-up using the model provide under Annex III of the CPR and contain the information listed under Article 6(2) of the CPR.

[4] Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, OJ L 40, 11.2.1989, p. 12–2; amended by Directive 93/68/EEC with respect to the format of CE marking to be used on construction products.

Not all construction products need a DoP. Only construction products covered by a harmonised standard[5] ("hEN") or a European Technical Assessment[6] ("ETA") that are placed on the market (hereafter referred to as "Construction Products") require the establishment of a DoP[7]. All the information supplied with the DoP should be obtained by strictly applying the methods and criteria provided by the relevant hEN[8].

It is through the DoP that the manufacturer assumes the responsibility for the conformity of the construction product with the declared performance[9] since buyers of construction products for specific uses will rely on the information contained in a DoP when deciding to buy a particular product. The responsibility is not limited to the manufacturer. The CPR creates a chain of responsibility that follows the supply chain. Manufacturers, importers and distributors must, inter alia, ensure that the DoP has been drawn up and take any measures to ensure that the DoP is and remains reliable and accurate.

The DoP constitutes a key element in the functioning of the Internal Market for construction products. It ensures the necessary transparency and establishes a clear system of allocation of responsibilities between actors.

Indeed, by drawing up the DoP, the manufacturer assumes the responsibility for the conformity of the construction product with the declared performance. The application of the CE mark follows the DoP and effectively certifies that the manufacturer has strictly followed all the applicable procedures in drawing up the DoP making it accurate and reliable. Article 11 of the CPR lists the obligations of manufacturers concerning construction products. In particular, in relation to the DoP, manufacturers must:

- draw up the DoP and affix the CE marking,

[5] See at: http://ec.europa.eu/enterprise/policies/european-standards/harmonised-standards/construction-products/index_en.htm. For products covered see: http://www.cen.eu/cen/Sectors/Sectors/Construction/Pages/Workprogramme.aspx

[6] See http://ec.europa.eu/enterprise/sectors/construction/declaration-of-performance/assessment-documents/index_en.htm

[7] Recital 24 and Article 4(1) of the CPR.

[8] For products not covered by a harmonised standard, a manufacturer can voluntarily request a ETA in order to draw up a DoP and affix the CE Mark.

[9] Article 4(3) of the CPR.

- keep relevant construction products documentation for 10 years at least after the product has been placed on the market,
- ensure consistency in series production,
- ensure product identification.

To a certain extent the DoP echoes the *declaration of conformity* ("DoC") that existed under the CPD. However, there are important differences between these two instruments. First, the DoC followed a voluntary process whereas the DoP is compulsory. Second, under the DoP the manufacturer has to declare both the intended use(s) of the product and at least one of the relevant essential characteristics for each of the declared intended use(s). Third, the DoP clearly expresses the product performance in relation to the essential characteristics defined in the relevant hEN or ETA.

The minimum amount of information that the manufacturer must provide in the DoP is thus innovative by comparison to the situation under the CPD.

- **The format of the Declaration of Performance**

The CPR prescribes the manner in which the DoP may be supplied.

Article 7 of the CPR is titled: "Supply of the Declaration of Performance".

The Article goes on to state that:

> "*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.*
>
> *2. A paper copy of the declaration of performance shall be supplied if the recipient requests it.*
>
> *3. By way of derogation from paragraphs 1 and 2, the copy of the declaration of performance may be made available on a web site in accordance with conditions to be established by the Commission by means of delegated acts in accordance*

with Article 60. Such conditions shall, inter alia, guarantee that the declaration of performance remains available at least for the period referred to in Article 11(2)."[…]

Thus, paragraphs 1 and 2 enable a combination of traditional and modern format for the supply of the copy of the DoP whereas paragraph 3 enables the European Commission, by way of a Delegated Act, to facilitate further the supply by focusing on new technologies.

A Delegated Act is a new category of legal act created by the Treaty of Lisbon[10]. Essentially, it reflect the empowerment, originating within a legislative act, of the European Commission, to amend non-essential elements of such legislative act. Delegated Acts involve informal consultation with national experts. Once the European Commission has drafted a Delegated Act it presents it directly to both the European Parliament and the Council at the same time. The European Parliament and the Council then both have a set time, determined by the basic act, to object[11] to the proposed Delegated Act on any ground or to revoke the delegation altogether[12].

It is foreseen that a Delegated Act will be adopted by the European Commission, by the end of 2013, to enable the content of the Declaration of Performance ("DoP") to be electronically processed; In order to make it thus more readily available for users of construction products. This will be the first Delegated Act adopted under the CPR.

As a result, given that the possibility for the copy of the DoP to be supplied by electronic means is granted generally and that it may even be that, following the adoption a Delegated Act, there will be no more need for paper copies, it is important to determine whether the CPR will be effective in its goal or whether national regulations and procedures will hinder its effectiveness by forcing, in practice, the supply of the DoP in paper format.

[10] Article 290 of the TFUE.
[11] Absolute majority of the European Parliament and qualified majority of the Council.
[12] The European Parliament and the Council can also decide to communicate their non-objection to a Delegated Act so that it can be officially adopted it much faster.

- **Objective of this Study**

This study aims at clarifying and analysing the current situation in a number of countries as regards to their legal provisions and judicial and administrative practices on the use of digital means for the transmission and the preservation of information so as to determine whether any obstacles exist to the electronic provision of the DoP under the CPR.

In particular, this Study aims at identifying the administrative and judicial (both civil and administrative) bodies (in civil liability or evidentiary contexts) that may require that the information contained in the DoPs be made available to them and under which conditions electronic evidence of the DoPs would be admitted by these bodies.

Thus, it is important to firstly try and identify the situations in which information such as that contained in the DoP might be required to be presented and secondly to determine whether in such situations the electronic or digital[13] production of information is permitted both legally and in practice.

- **Geographic scope**

This Study pertains to the Member States of the EU plus Croatia and a number of countries that are part of the European Economic Area ("EEA"), such as Iceland, Liechtenstein and Norway. The reason why EEA countries are relevant to this Study is because they participate in the Single market of the EU according to the provisions of the agreement in the EEA. The EEA agreement came into force on January 1, 1994.
Not all EEA countries however were included in this Study because of time and budgetary constraints. The countries that come within the scope of the Study shall be referred to hereafter as Countries.

EEA countries, Iceland, Liechtenstein and Norway were included also because the contractor implementing this Study, Demolin Brulard Barthélémy ("DBB"), had local correspondents therein.

[13] No distinction is made in this Study on the words electronic and digital. The authors of this report understand that subtle differences exist between these words and will generally refer to electronic documents or electronic evidence as encompassing both analogue and digital formats.

1.1. Summary of the regulations implementing Directive 89/106/EEC

The CPR fully replaces the CPD as of July 1, 2013.

The CPD aimed at ensuring the free movement of all construction products within the EU. To achieve this aim it introduced a common technical language. This common technical language, which consists of harmonised standards and EU technical approvals, was and is still seen as an essential element in building trust between Countries so as to eliminate barriers to free movement.

The CPD did not harmonise building regulations. It harmonised testing methods, the methods of declaration of product performance values, and the method of conformity assessment. Countries set their own value requirements on the performance of building works and construction products.

The table below provides the basic implementing regulations in each Country for the CPD.

Country	Implementing Regulations
AT	Federal Act on Construction Products (*Bauproduktegesetz*, BGBl. I Nr. 55/1997) and nine Provincial Acts: •Burgenländisches Bauprodukte- und Akkreditierungsgesetz, LGBl. Nr. 32/2007 in Burgenland; •Kärntner Akkreditierungs- und Baustoffzulassungsgesetz LGBl. Nr. 24/1994 idF LGBl. Nr. 78/1998 (DFB), LGBl. Nr. 31/2001 und LGBl. Nr. 101/2011 in Kärnten; •NÖ Bauordnung 1996, LGBl. Nr. 8200-0 (11.09.1996) idF LGBl. Nr. 8200-5, LGBl. Nr. 8200-15 und LGBl. Nr. 8200-20 in Niederösterreich; •O.ö. Bautechnikgesetz, LGBl. Nr. 67/1994 idF LGBl. 5/1995 (DFB), LGBl. Nr. 103/1998, LGBl. Nr. 102/1999 (DFB), LGBl. Nr. 60/2001, LGBl. Nr. 114/2002, LGBl. Nr. 97/2006, LGBl. Nr. 34/2008, LGBl. Nr. 30/2010, LGBl 34/2011 un LGBl. Nr. 68/2011 in Oberösterreich; •Salzburger Bauproduktegesetz, LGBl. Nr. 11/1995 idf LGBl. Nr. 47/1995 (DFB), LGBl. Nr. 63/1995 (DFB), LGBl. Nr. 123/1995 (DFB), LGBl. Nr. 46/2001, LGBl. Nr. 73/2001, LGBl. Nr. 99/2001

	(DFB) und LGBl. Nr. 20/2010 in Salzburg; •Steiermärkisches Bauproduktegesetz, LGBl. Nr. 61/1995. Steiermärkisches Akkreditierungsgesetz, LGBl. Nr. 62/1995. Steiermärkisches Bauproduktegesetz 2000, LGBl. Nr. 50/2001 idF LGBl. Nr. 85/2005, LGBl. Nr. 13/2010 in Steiermark; •Tiroler Bauprodukte- und Akkreditierungsgesetz, LGBl. Nr. 16/1998 idF LGBl. Nr. 42/2001, LGBl. Nr. 95/2001 in Tirol; •Bauproduktegesetz, LGBl. Nr. 33/1994 idF LGBl. Nr. 65/2000, LGBl. Nr. 12/2010 und LGBl. Nr. 6/2011 in Vorarlberg and •LGBl. Nr. 30/1996 idF LGBl. Nr. 71/2001, LGBl. Nr. 36/2007, Wiener Bauprodukten- und Akkreditierungsgesetz - WBAG, LGBl. Nr. 24/2008 und LGBl. Nr. 8/2012 in Wien
BE	Law of 25 March 1996 amended by Arrêté Royal of 19 August 1998 relating to construction products and the Ministerial Decree of September, 6th, 1991, the Royal Decree of the 25th of February 2002 organising the competences on construction quality as well as the Ministerial Decree of the 5th of February 2003.
BG	Ordinance on the Essential Requirements of Construction Works and Conformity Assessment of Construction Products (adopted by a Decree of the Council of Ministers of the Republic of Bulgaria No. 325 of 6 December 2006 and effective as of 1 January 2007, promulgated in State Gazette, Issue No. 106 of 27 December 2006, as subsequently amended) (hereinafter the "Ordinance on the Essential Requirements") (Bulgarian: "Наредба за съществените изисквания към строежите и оценяване съответствието на строителните продукти").
HR	Construction Products Act 2008 complemented by the Ordinance on technical approval for construction products and the Ordinance on conformity assessment, documents of conformity and marking of construction products.
CY	Essential Requirements to be fulfilled by Special Product Categories Law N. 30(I)/2002, amended by Laws N. 29(I)/2003, N. 258(I)/2004, N. 89(I)/2005, N. 71(I)/2009, N. 7(I)/2011 and N. 90(I)/2011 (the "Framework Law"), and later adopting the Essential Requirements (Construction Products) Regulations P.I. 832/2003
CZ	Act No. 22/1007 Coll., on Technical Requirements for Products; Decree No. 163/2012 Coll. And Decree No. 190/2012 Coll Zákon č. 22/1997 Sb., o technických požadavcích na výrobky – weblink http://www.unmz.cz/urad/pracovni-uplne-zneni-zakona-c-22-1997-sb-o-technickych-pozadavcich-na-vyrobky-ucinne-od-1-7-2013 Nařízení vlády č. 163/2002 Sb., Nařízení vlády č. 190/2002 Sb.
DE	Building Products Act (*Bauproduktengesetz*) from 10.08.1992 and also the Equipment and Product Safety Act (GPSG) from 06.01.2004
DK	Construction Act (*Byggeloven*) 278/1977 of 8 June 1977 modified several times, notably in 2010 by the Restatement Act 1185/2010 of 14 October (*Bekendtgørelse af byggeloven*) and 2012 (Act 389/2012 of 2nd May and Act 577/2012 of 18th June)

EE	Building Act (*Ehitusseadus*); Product Conformity Act (*Toote Nõuetele Vastavuse Seadus*) and government regulations, such as: •Procedures for verification of building material and product requirements and the conformity assessment procedures necessary to demonstrate compliance of various types of construction products with the requirements (*Ehitusmaterjali ja -toote nõuetele vastavuse tõendamise kord ja eri liiki ehitustoodete nõuetele vastavuse tõendamiseks vajalikud vastavushindamise protseduurid*) •Health protection requirements for construction materials and products (*Terviseohutuse nõuded ehitusmaterjalidede ja -toodetele*) •Requirements on technical documentation of construction of different types of constructions (*Eri liiki ehitiste ehitamise tehnilistele dokumentidele esitatavad nõuded*)
EL	334/11.10.1994 Presidential Decree (PD)
ES	Royal Decree 1630/1992 of 29th December for the free movement of construction products *(Real Decreto por el que se dictan disposiciones para la libre circulación de productos de construcción*) amended by Royal Decree (*Real Decreto*) 1328/1995 of 28th July; Order of 1st August 1995, laying done the Regulation and internal rules of the inter-ministerial committee for construction products (*Orden de 1 de agosto de 1995 por la que se establecen el Reglamento y las normas de régimen interior de la Comisión Interministerial para los Productos de la Construcción*) and Royal Decree 312/2005 of 18th March, approving the ranked list of construction products and elements based on its properties of reaction and resistance in front of the fire (*Real Decreto, de 18 de marzo, por el que se aprueba la clasificación de los productos de construcción y de los elementos constructivos en función de sus propiedades de reacción y de resistencia frente al fuego*) amended by Royal Decree (*Real Decreto*) 110/2008 of 1st February
FI	The Land Use and Building Act 132/1999; the Land Use and Building Decree 895/1999; A2 Building Code of Finland; the Act on Approval of Building Products 230/2003 and the Rescue Equipment Act 10/2007
FR	Decree on ability to use the construction products, adopted on July 12th 1992 (*Décret nº 92-647 concernant l'aptitude à l'usage des produits de construction*) modified by the Decree nº 95-1051, adopted on December 20th 1995 (*Décret nº 95-1051 de 20 septembre 1995 portant modification du décret nº 92-647 du 8 juillet 1992*) and the Decree nº 2003-947 adopted on October 3rd 2003 (*Décret nº 2003-947 du 3 octobre 2003 modifiant le Décret nº 92-647*) and several more orders
HR	Repeated
HU	Building Act 1997 (*Az épített környezet alakításáról és védelméről szóló 1997. évi LXXVIII. törvény*) and Technical requirements for construction products, compliance certification, 3/2003 laying down detailed rules for the marketing and use. (I.25). Joint Decree BM-GKM-MEW (*Az építési termékek műszaki követelményeinek,*

	megfelelőség igazolásának, valamint forgalomba hozatalának és felhasználásának részletes szabályairól szóló 3/2003. (I.25.) BM-GKM-KvVM együttes rendelet)
IE	European Communities (Construction Products) Regulation 1992 (SI No. 198 of 1992)[14] And European Communities (Construction Products) Regulation 1994 (SI No. 210 of 1994) implementing Directive 93/68/EEC
IS	Act No. 100/1992 complemented by Regulation 431/1994 amended by Act No. 102/1994 and Act No. 160/2010 complemented by Regulation 112/2012
IT	DPR n. 246 of 21st April 1993 'Implementing Regulation of the Directive 89/106/EEC on construction products'
LI	*Verordnung über den Verkehr mit Bauprodukten im Europäischen Wirtschaftsraum* from 9th May 1995
LT	Order No. 187 of the Technical Construction Regulation STR 1.01.04:2002 on construction products, conformity assessment and CE marking of approval (*Aplinkos Ministro įsakymas Nr. 187 ''dėl statybos techninio reglamento STR 1.01.04:2002'' Statybos produktai. Atitikties įvertinimas ir CE ''ženklinimas patvirtinimo''*) and Order No. D1-217 of the Technical Construction Regulation STR 1.03.02:2008 "Declaration of conformity of construction products'' (*Aplinkos Ministro įsakymas Nr. D1-217 dėl Lietuvos Respublikos Aplinkos Ministro 2002 m. balandžio 18 d. įsakymo Nr. 189 ''dėl statybos techninio reglamento STR 1.03.02:2002'' statybos produktų atitikties deklaravimas ''patvirtinimo pakeitimo''*)
LU	Grandducal regulation of 10 August 1992 on construction products ("*Règlement grand-ducal du 10 août 1992 concernant les produits de construction*") amended by Grandducal regulation of 28 March 1995 ("*Règlement grand-ducal du 28 mars 1995 modifiant le règlement grand-ducal du 10 août 1992 concernant les produits de construction*") And Law of 20 May 2008 on the creation of the ILNAS (*Loi du 20 mai 2008 - relative à la création de l'ILNAS*)
LV	Regulation No 181 on ''Procedures for the Conformity Assessment of Construction Products in the Regulated Sphere''(Ministru kabineta noteikumi Nr. 181 "Būvizstrādājumu atbilstības novērtēšanas kārtība reglamentētajā sfērā").
MT	Construction Products Regulations (''SL 427.12'') and Product Contract Point (Designation) Regulations ("SL 419.08")
NL	Building Decree (hereinafter: BB) 1992 (*Dutch: Bouwbesluit 1992*) which has its legal basis in the Housing Act (*Dutch: Woningwet*). Followed by BB 2003. When Regulation 305/2011[15] (hereinafter: "CPR") partly came into force BB 2012 was drafted. The basic principles of BB 2012 apply to BB 2003 as well.
NO	The Planning and Building Act section 29-7 and the Regulation on requirements for construction works and products for construction (TEK10)
PL	Act of 16th April 2004 on construction products (*Ustawa z dnia 16*

	kwietnia 2004 r.o wyrobach budowlanych); Act of 7th July 1994 Building Law (*Ustawa z dnia 7 lipca 1994 r. - Prawo budowlane*) and Act of 30th August 2002 on the conformity assessment system (*Ustawa z dnia 30 sierpnia 2002 r. o systemie oceny zgodności*) complemented by Minister of Infrastructure Regulation of 11th August 2004 on conformity assessment systems, the requirements to be met by notified bodies involved in the conformity assessment procedures, and on methods of determining the CE marking for construction products (*Rozporządzenie Ministra Infrastruktury z dnia 11 sierpnia 2004 r. w sprawie systemów oceny zgodności, wymagań, jakie powinny spełniać notyfikowane jednostki uczestniczące w ocenie zgodności, oraz sposobu oznaczania wyrobów budowlanych oznakowaniem CE*) and Council of Ministers Regulation of 10th December 2008 on the flow of information regarding the product assessment system (*Rozporządzenie Rady Ministrów z dnia 10 grudnia 2008 r. w sprawie sposobu przepływu informacji dotyczących systemu kontroli wyrobów*)
PT	Law-decree n.º 113/93 (*Decreto-Lei n.º 113/93 de 10 de Abril*) modified by Law-decree n.º 139/95 (*Decreto-Lei n.º 139/95 de 14 de Junho*) and Law-decree n.º 374/1998 and partially repealed by Law-decree n.º 4/2007 (Decreto-Lei n.º 4/2007 de 8 de Janeiro)
RO	Government Decision No 622 of 21 April 2004, for the establishment of the condition for introduction construction products on the market (*HG 622/21.04.2004 privind stabilirea condiţiilor de introducere pe piaţă a produselor pentru construcţii*) given in application of the Law No 608/2001, modified by Government Decision No 796 of 14th July 2005, for the modification and completion of the GD 622/2004; Government Decision No 1708 of 21st December 2005, for the completion of article 39 of GD 622/2004; Government Decision No 1031 of 13th October 2010, for the modification and completion of GD 622/2004 and Government Decision No 167 of 13th March 2012, for the modification and completion of GD 622/2004
SE	Planning and Building Act (*Plan- och bygglagen (2010:900)*); the Conformity Assessment Act (*Lag om ackreditering och teknisk kontroll (2011:791)*) and the Planning and Building Regulation (*Plan- och byggförordningen (2011:338)*)
SK	Act No 133/2013 Coll. on construction products; Regulation No 162/2013 Coll. Establishing a list of groups of construction products and systems for assessing the parameters thereof.
SI	Construction Product Act (*Zakon o gradbenih proizvodih, OJ, RS, 52/2000*); Rules on essential requirements for the construction works to be taken into consideration in determining the characteristics of construction products (*Pravilnik o bistvenih zahtevah za gradbene elemente, ki jih je treba upoštevati pri določitvi lastnosti gradbenih elementov, OJ RS, no. 9/2001*) and Rules on the attestation of conformity and marking of construction products

	(*Pravilnik o potrjevanju skladnosti in označevanju gradbenih proizvodov; OJ RS, 54/2001*)
UK	Construction Products Regulations 1991 no. 1620[316] amended by, Construction Products Regulations 1994 no. 3051. In Scotland the Building (Scotland) Regulations 2004 implemented the CPD.

1.2. Summary of the changes that are taking place in the Member States following the adoption of the CPR

1.2.1. Current systems

As a Regulation, the CPR enters directly into Member States' law and does not require transposition.

However, because the CPD, as a Directive, needed transposing legislation and has now being repealed, current national legislation may need to be revoked to avoid conflicting regulations. Some countries may choose to maintain existing regulations considering that where a contradiction exists between previous national legislation and the CPR provisions, the latter would prevail.

Further, as the CPR lays down general rules, new regulations dealing with market surveillance and enforcement of the CPR, including sanctions, may have to be adopted.

1.2.2. Changes proposed or implemented (including repealing of Directive 89/106/EEC transposing legislation

In light of the fact that the CPR is directly applicable no changes are necessary as such in the Member States. However, as stated before some regulatory changes may prove necessary first to revoke previous legislation adopted on the basis of the CPD and second to provide a framework for market surveillance and enforcement in the new regulatory context. In order to determine the extent of changes, regulators have in some instances resorted to regulatory impact assessments. This was the case in particular in Ireland[17].

As shown in the table below a number of countries have chosen to repeal previous regulations or amend them whilst others have considered that the provisions of the CPR could co-exist.

1.2.2.1. Main changes

In general the changes relate to:

- The accepted language in which the DoP, instructions and safety information must be provided,
- The new functions and powers of market surveillance authorities, and
- The definition of sanctions for violation of the CPR provisions.

In Ireland for example a new regulation[18] was adopted with principal changes as follows:

- Requirement on manufacturers, importers and distributors to provide instructions and safety information in English,
- Appointment of market surveillance authorities (which is in fact a re-appointment of building control authorities. The Minister, and persons whom he/she has delegated authority to, also has a direct role where products may need to be prohibited, withdrawn or recalled),
- Increased powers for authorised officers including obtaining DoP copies and seizure and confiscation of construction material that may infringe the regulations,
- Provision of new offences and in particular for not providing the DoP, and
- The creation of criminal sanctions that can lead up to an imprisonment term of 12 months.

This new regulation has an impact of DoP obligations as the new offences provided under Article 15 of the proposed Irish regulations state that:

> "15. […] It shall be an offence for a person – […] *to contravene in any way any provision or requirement of, or under, Articles 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 36, 37, 38, 56, 58 and 59 of the Construction Products Regulation* […]"

Indeed, DoP obligations are mainly included under Articles 4, 5, 6 and 7 of the CPR.

The new regulation then goes on to state under its Article 17 that:

> "*17. (1) A person guilty of an offence under Regulation 15 is liable:*
>
> *(a) on summary conviction to a class A fine or imprisonment for a term not exceeding 3 months or both; or*
>
> *(b) on conviction on indictment to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 12 months or both*."

With such a regulation coming into force on July 1, 2013, many manufacturers of construction products and other economic operators could be in violation of the new Irish regulations unless they ensure that the DoP is provided in the format that is provided for in the current CPR. The new Irish regulation does not provide any information on whether administrative and judicial authorities might accept the DoP in electronic format. The Sections below shed light on whether solutions already exist.

1.2.2.2. Information campaigns

Most countries that were interviewed stated that they would organize information campaigns to ensure that the change were well understood by the actors in the market.

Many associations of manufacturers have also organized information campaigns.

The table below provides information on existing or planned changes based on the CPR.

Country	Regulations
AT	The legislation implementing Directive 89/106/EEC remains in force until July 1st 2013 and is going to be modified in order to comply with Regulation (EC) 305/2011 after July 1st 2013 pursuant to the provinces' agreement on construction products ("Vereinbarung gemäß Art. 15a B-VG über die Zusammenarbeit im Bauwesen sowie die Bereitstellung von Bauprodukten auf dem Markt und deren Verwendung").
BE	The Royal Decree of the 19th of August 1998 regarding construction products enforces the 25th of March 1996 law. The agreement

	between the Directive and the Decree is mentioned in the Appendixes of said Decree.
BG	There is currently no official legislative proposal to amend existing regulation (that is, CPD). A draft regulation had been submitted by the previous government but this has not been taken up as yet by the new government.
CY	The Ministry of Interior plans to organize an information campaign in the last quarter for next year, based on the risk analysis and the existing results of market surveillance performed. Other than this, there are no proposed legal or other changes.
CZ	Act No. 100/2013 Coll. (the "Amending Act") serves to amend the Act on Technical Requirements, with the main objective being the proper implementation of the CPR. This Act removes provisions of Czech law which are incompatible with the CPR, incorporates some issues to the Czech law which are not currently regulated and makes changes to accreditation as well as to accreditation bodies. It also establishes Czech as the language in which all documents must be provided and penalties for offences related to the non-respect of the CPR.
DE	Accreditation of inspection bodies, monitoring bodies and certification bodies by German Accreditation Body is now necessary under the implementing Building Products Assimilation Act "Bauprodukteanpassungsgesetz" of 2012-12-05. The German Institute of Construction Technology is now labelled as notification body. Also, a system of fines applicable when breaching the CPR is implemented and e-services are made friendlier.
DK	Mainly linguistic changes, as the CPR will have direct effect. So, some provision will make reference to the regulation in order to apply it directly. Also, the fact some companies may be appointed for issuing European Technical Assessments will be implemented. Some fees for works as identifying, assessing, notifying and monitoring the companies may also be applied.
EE	An amendment on the Building Act is coming soon which will make procedures for verifying construction products and procedures for assessing conformity to be repealed and directly reference these requirements from the CPR. Anyhow, a new codification process is taking place, so a new codex will be implemented.
EL	No major changes, apart from a change in terminology and some simplification in the standardisation process. When the CPR becomes applicable, all the precedent legislation will be automatically repealed.
ES	The declaration of conformity of the CPD is replaced by a DoP to be delivered to the recipient by paper or electronic means. Some products are exempt of this DoP and some classification of products just disappeared. The EC marking is not mandatory for products not covering the harmonized standards. On the other hand, when it is, it has to go with certain more requirements. Some special procedures and technical documentation are intended for special cases, as well as type tests may be replaced by methods different to those referred

	in harmonized standards, if certain requirements are fulfilled.
FI	Act 954/2012 on Product Approval (repealing Act 230/2003); Amendment Act 956/2012 has amended the Rescue Equipment law 10/2007 and repealed the CPD; CE-marking and type-approval mark (when necessary), as well as little things related to this issues.
FR	Decree of December 2012, modifying sanctions attached to the non-respect of the rules provided by the Regulation, establishing the State as the notifying authority and changing some of the conditions for the nomination, control and evaluation of the notified entity and technical evaluation entities. Also, some definitions, mechanisms, conditions and requirements are directly referred to the Regulation.
HR	Not possible to highlight the proposed or implemented changes because the new construction products act will be fully implementing the CPR and will be drafted and approved later this year.
HU	Construction products can be used in building only if they meet the basic works requirement for buildings and if the content of the DoP meet the criteria of the required technical aspects. Also an act about the assessment and control of the steadiness of performance of construction products shall be applied. The Government has been authorized to pass detailed laws regarding the proof of performance as well as assuring the filing of the DoP is the burden of the main contractor. Even, some buildings may not need a building permit when having a DoP.
IE	New legislation has been enacted to repeal the transposition of the CPD, defined accepted language for information, confirm and enhance powers of market surveillance authorities, create new categories of offenses and provide for sanctions[19].
IS	Changes planned to clarify the roles, responsibilities and duties of all parties involved and to strengthen the provision of information to market agents. A new law transposing the CPR is in the Icelandic Parliament.
IT	DoP to be issued by the manufacturers for all products covered by a hEN containing information on the expected use as well as the essential characteristics and, at least, the performance of one of them. Change also of the systems of attestation of conformity which have become systems of monitoring and evaluation of the consistency of the declared performance. Simplifying procedures to avoid testing and unnecessary expenses. More care for the environment and the works affecting it, by adding a new requirement 'sustainable use of natural resources'. More detailed requirements for the DoP and permits its electronic supply. Characteristics of the CE marking. Establishment of Product Contact Points by Member States for information provision and advise to economic operators and competent authorities.
LI	Repeal of the Ordinance as of May 9, 1995, because the CPR will be directly applicable.
LT	As the CPR will be of direct application, there will not be any need for national law to regulate requirements of construction products

	that belong to the field of harmonised specifications. Law on Supplementations of Articles 9^1, 9^2 and Amendments of Articles 24, 43^1, 51 as well as Annex 2 of Law on Construction already established product contact point authorization procedure in Lithuania as with Resolution of Government No. 82 (29-01-2013) „Enterprise Lithuania“ VŠĮ „Versli Lietuva“ was authorized to operate as product contact point for construction.
LU	There are no specific changes regarding the CPD and the Grandducal regulation of 10 August 1992 has not been repealed yet, but a bill aiming to amend the Law of 20 May 2008 reorganizing all the administrative structure in charge of the accreditation and market surveillance relating to the marketing products was introduced into Parliament on 10 August 2011 by the Minister of the Economy and Foreign Trade.
LV	Regulations No 181 will be replaced with regulations 701 “Procedure of Building Product Market Surveillance”. These regulations will introduce the DoP and contain more detailed rules on market surveillance. A supervising engineer is responsible to ensure that all the building products on the construction site and used in the building have the necessary documentation as regards their compliance with the relevant standards.
MT	The Construction Products (Implementation) Regulations which implement the provisions of Regulation (EU) No. 305/2011 have already been enacted and came into force in November 2011. They revoke the Construction Products Regulations (SL 427.12) with effect from the 1st July 2013. In practice, the administrative structures currently in place will not be greatly impacted by the as a declaration of conformity is already mandatory under Maltese law.
NL	In the system before the adaptation of the CPR (i.e. BB 2003), the CE-marking was obligatory for all construction products for which a h’EN norm exists. BB 2012 currently obligates the use of the CE-marking with reference to Directive 89/106/EEC. On 1st July 2013, this legislation will be repealed with reference to the CPR, as the provisions are the same as those of the CPR.
NO	The CPR will be implemented in the Planning and Building Act 29-7 through a regulation. Chapter 3 of the regulation on requirements for construction works and products for construction (TEK 10) will be revoked and TEK 10 will be adjusted to the CPR where necessary. These adjustment will be done step-by-step.
PL	Legislation is not repealed, but modified with the 'Act amending the Building Law and certain other acts'. Repealing all the provisions of the act implementing the CPD concerning the commercialisation and CE marking and replacing them directly for those at the CPR; establishing the authorities to carry out the administrative duties laid down in the CPR; adapting provisions on commercialisation to the extent not covered by the CPR and approximating them to these CPR provisions; adapting quality control rules and the construction supervision authorities to the CPR rules; adapting basic

	requirements for construction products, wording to the changes introduced and statutory tasks of construction control authorities to the modified rules of commercialisation of construction products; repealing the provisions concerning the construction products as most of these issues will be covered by the CPR,s o the Act will only apply to those cases not covered by the CPR. Also, some transitional provisions until the act shall apply in its entirety.
PT	A draft proposal for a new ministerial order has been presented, but not yet approved nor published. It foresees pecuniary sanctions in cases of infraction of the CPR provisions.
RO	Government Decision No 167/2012 for the modification and completion of the GD 622/2004. It names the Ministry of Regional Development and Tourism the notification authority, as well as assigns to it the responsibility for ensuring the legal and procedural framework for the application of the CPR, the control over institutions having competences in the European technical evaluation process and the verification of performance and the spread of information related to products' performance. This decision also establishes the national authorities for market surveillance and sets Romanian as the language for the DoPs and instructions in products placed in the Romanian market.
SE	On 7 March 2013 the government submitted a Government bill with a proposal for legislative amendments (prop. 2012/13:93). This entered into force on July 1, 2013. The requirements on suitability for construction products are extended; provisions for market placement and CE marking will also be contained in the CPR, so a reference to this should be included in the Planning and Building Act; Type-approval abolished in favor of CE-marking; the supervisory authority and the evaluation body must have access to products, information and documentation and take action according to the CPR if needed; fees may be applied for costs of supervision and evaluation as well as reimbursements either from producers, importers or marketers and the supervision and evaluation bodies and language requirements may also be regulated.
SK	The main difference under CPR is in its ensuring the uniformity of its application, rather than in new procedures. Current conformity attestation is being changed into DoP and, because of being directly applicable, all existing differences with the provisions done to adapt the CPD will be removed. New rules will implement systems for assessment and review of building products' parameters prior to their introduction to the local market as well as the procedure for manufacturers issuing declarations, certificates and technical attestations.
SI	No changes needed in the Slovenian Construct Act as it was done regarding the EU laws. A special body for technical evaluation was established thanks to the Regulation on 12.10.2012 to implement the Regulation 305/2011.
UK	The government issued The Construction Products Regulations

	2013 (S.I. 2013, No. 1387) which took effect across the UK on 1 July[20]. This legislation deals mainly with non-compliance and enforcement. Approved Document 7 in England In December 2012, a new Approved Document 7 to Schedule 1 to BR 2010 was published. It is due to come into effect on 1 July 2013 and provides updated guidance on adequate materials and workmanship for building work to take into account the Construction Products Regulation 2011. Approved Document 7 in Wales On 29 April 2013, the Welsh Government (WG) published a consultation on a number of proposals, including changing Approved Document 7 to provide for the Construction Products Regulation 2011. The consultation closes on 21 June 2013. In Scotland changes to Sections 0, 2, 3 and 4 of the Building (Scotland) Regulations 2004, due to come into force in autumn 2013 and aim at primarily accommodating the CPR.

2. CHAPTER 2: Legal context in which the DoP may be relevant

2.1. Presentation of the type of legal contexts in which the DoP may be relevant (i.e. authorizations, liability, procedure and evidentiary rules)

In many countries the DoP may be particularly relevant in two administrative contexts (excluding standardization). First, in the context of the building permit or approval process, the DoP may contain data that would be useful to administrations in order to make appropriate decisions on building permits or post building approval processes. Second, market surveillance authorities will require, as part of their functions, that the marketing of construction products be organized in a manner that complies with the CPR.

However, the main relevance of the DoP will most likely be in relation to liability for defects in construction projects and for damage caused by a defective product. Liability can be civil or even criminal. Falsifying DoP data to obtain a building permit or pass market surveillance scrutiny would lead to sanctions in the form of fines and/or imprisonment. Additionally, the DoP may have relevance in, for example, contracts disputes or misleading marketing practices.

The importance given to the DoP by Member States may lead to an increase in the legal contexts in which the document would be used. As an example, it appears that in Hungary certain types of temporary constructions do not need a building permit provided that the DoPs are drawn and provided, making the DoP an essential element at all stages of any temporary construction project[21].

2.1.1. Summary of administrative contexts within which the DoP is relevant in the different Member States

2.1.1.1. Building permits

Most countries have building permit processes. Where there is no building permit process, it does not mean that there is no control over buildings and construction products but merely that there is no need to obtain prior approval before building. Even in the case of a building permit process, it is unlikely that the DoPs would be systematically required or it required reviewed especially because of the important numbers of materials involved in any construction project.

As stated, many countries have a system of building permits. In Sweden for example, the Swedish Planning and Building Act governs the building permit process and the conditions for execution of a construction project. The Planning and Building Act make it an obligation to provide information in a *control plan* on the building's technical properties that are essential in terms of, for example, load capacity, stability and other characteristics. This control plan must approved by the local Building Committee (*Swedish: byggnadsnämnden*)[22]. The DoP facilitates this process since it contains the technical characteristics of specific products. At the start of the construction process, an independent control manager is appointed to validate the control plan.

Similarly in Finland, a building permit must be approved by a local government entity, the local building supervision authority[23]. This is the case also for example for Belgium, Bulgaria, France, Austria, Croatia, Liechtenstein[24] and Luxembourg[25],

In general, local ministries, local or regional administrations one competent for construction matters and, as the case may be, are the authorised bodies for issuing final building permits. However, for some major construction projects central government authorities may intervene.

Building permits often involve an application for a permit and a post-building inspection. In Greece, when someone is planning to build a house an application is submitted to the planning council in order to obtain issuance of a building permit. This

application is supported by civil and mechanical engineering, architecture and environmental impact reports. These reports includes the characteristics of the construction products that will be used in the construction. When it receives the application, the planning council reviews the application, reports and relevant documentation and decides on the permit. Once the building has been constructed the owner asks for the inspector to check the quality of the construction. The inspector checks through the invoices and other documentation to determine whether the construction products were appropriate according the law. Thus the DoPs may be useful both as part of the documentation furnished with the application for a permit and as part of the documentation that is controlled by the building inspector once the construction work is finished.

2.1.1.2. Market surveillance

The DoP is necessary for market surveillances activities since inspections by market surveillance authorities may include both the review of documents and that of samples.

In Sweden, for example, the National Board of Housing, Building and Planning is responsible for carrying out market surveillance of construction products covered by the CPR[26].

In its market surveillance role, the National Board of Housing, Building and Planning performs inspections on the characteristics of construction products by means of documentary review and, where appropriate, physical and laboratory checks on the basis of adequate samples. The National Board of Housing performs audits of various products in continuous planned monitoring programs and in response to information received from the public or from another EU/EEA country. The aim is to remedy incorrect CE marking and false information about product characteristics.

2.1.2. Summary of construction products liability in different Member States

Liability issues for construction works and products have been around for a very long time. The code of Hammurabi which dates back to circa 1772 BC and aims at regulating

all legal issues within the Babylonian society dedicates six articles out of 282 to building issues. These articles are as follow:

> "*228. If a builder build a house for some one and complete it, he shall give him a fee of two shekels in money for each sar of surface.*
> *229. If a builder build a house for some one, and does not construct it properly, and the house which he built fall in and kill its owner, than that builder shall be put to death.*
> *230. If is kill the son of the owner the son of that builder shall be put to death.*
> *231. If it kill a slave of the owner, then he shall pay slave for slave to the owner of the house.*
> *232. If it ruin goods, he shall make compensation for all that has been ruined, and inasmuch as he did not construct properly this house which he built and it fell, he shall re-erect the house from his own means.*
> *233. If a builder build a house for some one, even though he has not yet completed it; if then the walls seem toppling, the builder must make the walls solid from his own means*."

Things have evolved since then and the sanctions are milder. However, the importance of building works remain.

The DoP contains important data on a product. It also constitutes an undertaking by operators in the supply chain that the product meets certain predefined standards. As a results the DoP is relevant in a case that involves a dispute regarding the product or the building into which such product is incorporated.

There are a number of liability theories that may apply in the field of construction products. The basis for liability may generally be found in contract law or tort. Consumer protection and market regulation may also result in increased liability for economic operators.

All Member States have liability regulations for defective products and for misleading commercial practices.

With respect to misleading commercial practices, Member States sanction market participants that provide false or untrue information or information that is likely to deceive the consumer, especially where the information relates to:

- the existence or nature of the product; and
- the main characteristics of the product (such as such as its availability, benefits, composition, date of manufacture, geographical origin, the results to be expected from its use, etc.).

Product liability refers to the liability of any or all parties along the supply chain of a product for damage caused by that product. This includes the manufacturer, distributor, the builder and even the architect who recommends the use of products.

Product liability may be joint and several liability meaning that each of those in the supply chain are liable up to the full amount of the damages causes. This is the case in some countries although in most the builder will be liable towards the end user.

In some cases strict liability applies and the manufacturer and/or builder is legally responsible for the damage and loss caused by his or her acts and omissions regardless of guilt or the finding of a fault. This is the case in Bulgaria for example where liability resulting from a defective product is strict. In some cases criminal strict liability may apply. In most cases of strict product liability the defendant can raise a defence of absence of fault and argue that the defect was the result of the user's actions and not of the product. Strict liability will also apply when the DoP is not prepared when it should have been.

Liabilities may also stem from a breach of warranties whether in contract or by statute. General contractual liability is also possible especially as the users of the products or actors of the supply chain rely of the information such as that provided in the DoP to choose to purchase a specific product.

- **Austria:** in the event a product injures a person's body or health, causes their death or damages any his/her tangible properties the Federal Act on Liability for Defective Products applies. Either, the producer, the importer or the distributor may be liable to compensate the damage. They are jointly and severally liable.

  In any other cases, the general rules on warranty apply pursuant to Section 922 ff of the General Civil Code of Austria (*Allgemeines Bürgerliches Gesetzbuch, ABGB*).

According to these rules, the supplier warrants that the goods provided are free from defects and comply with the contract. To determine the expectations on the quality of the product under warranty, the state-of-the-art level is the standard used, unless otherwise agreed by the parties to the contract. The state-of-the-art level of warranty may be based on documents such as the DoP.

Other parties involved in construction projects (such as architects, designers, etc.) may also be liable *in solidum*.[27]

- **Belgium:** under the decennial liability guarantee (10 years), builders (contractors, subcontractors, architects, consulting engineers and engineering departments) are liable for any structural defect that may compromise the stability of said structure or one of its main parts.
  Architects are accountable for any defect caused by design errors or that a thorough control could have prevented or fixed.
  Contractors are liable for any defect resulting from a default in execution, although they can avoid this where the defect results from a default in the construction plans or specifications or from a particular work method ordered by the contracting authority and the said contractor was not the one who produced these plans and/or specifications.

  Sellers do not have to issue a guarantee regarding obvious defects that buyers could have noticed.

  Concerning the consumer goods' guarantee, sellers are responsible for any non-conformity of goods to their specifications at the time of their delivery. Any non-conformity becoming manifest within six months of delivery is presumed to have existed at the time of delivery.

  In the field of liability for defective products, manufacturers are responsible for damages due to defects.[28]

- **Bulgaria:** the DoP may be relevant in construction projects in relation to liability for defective construction products and to liability for damage caused by the defectiveness of the products. Liability for damages caused by a defective product is based on strict liability principles. The manufacturer may have a defence in very specific circumstances.
  The manufacturer is liable for defects in the product and, when She/he cannot be identified, liability will fall on either the distributor or the merchant, who, in turn may be released from this liability if they provide contact details for the manufacturer on condition that the latter is located within the territory of Bulgaria.

  If several persons are liable, they are considered jointly liable.

  Construction products designed to be part of a construction work may be placed on the market provided that they are fit to be used for their intended usage and comply with the essential requirement on construction works for a reasonable period of exploitation and they conform to the technical specifications.

  Moreover, the seller in a sale-purchase agreement may be liable during a certain period of time, depending if the defects were hidden or obvious.
  Finally, builders and construction supervisors are liable *in solidum* for damages caused by non-compliance with technical regulations and the construction plans as approved.[29]

- **Cyprus:** several laws allow the subjects who have suffered damages caused by defective products either to their person or to their property to bring claims for construction product liability.

  In negligence, liability rests with the party whose negligence has caused the damage, whether this is the seller and/or the manufacturer and/or any other third person in the supply chain.

In cases of defective products, liability rests with the 'producer'. If two or more persons are responsible for the damage, they shall be jointly and severally liable.

Under the General Safety Law, liability may be imposed on the 'producer' of the product, as well as, on the distributor.
There is an obligation to recall a product in case no other measures are deemed sufficient to prevent the risk of damage from the defect, the producer deems such recall necessary or a recall is ordered by the competent Authority, namely the Competition and Consumer Protection Department of the Ministry of Commerce, Industry and Tourism.
Failure by a producer to recall an unsafe product is considered a criminal offence, punishable by a prison sentence of up to two years and/or a fine not exceeding EUR 8.543.94.
A manufacturer's omission to recall a product could also give rise to a claim in negligence.

Criminal sanctions for the supply of defective products apply only with regard to products falling within the scope of the General Safety Law.
A producer or a distributor/supplier who is found guilty for breach of his statutory obligations under the said Law is liable to imprisonment for a period of up to two years or a fine not exceeding EUR 8,543.94, or both.

A defendant's liability may be limited or extinguished where the damage suffered was due to a combination of the effect of the defective product and the claimant's fault or negligence.
Under the General Safety Law, it shall be a defence if the defendant can prove that he took all necessary steps and exercised all reasonable care so as to avoid committing any of the offences provided for in the said Law.

In a claim for negligence, the common law defences apply.
There are no specific defences in cases where a breach of contract is established.[30]

- **Czech Republic:** if the DoP forms part of the written contract or if this was made orally, the DoP may be relevant in order to determine the agreed performance of the goods or work. If goods differ from this, this shall constitute a defect, for which the seller or the contractor may be liable.

  Depending on the circumstances, rectification, replacement, price reduction or even rescision of the contract may be used as a remedy by the buyer or customer.[31]

- **Germany:** according to the German Product Liability Act ("Produkthaftungsgesetzt"), manufacturers are strictly liable for death or bodily injuries of a person caused by the product. Only material damages can be compensated under this theory of liability.

  There are however several defences for manufacturers against allegations of strict liability where they can demonstrate that: a) they have not placed the product on the market, b) the defect did not exist when the product was placed on the market, c) they did not create the product for commercial purposes nor did they sell it, d) the liability is based on a regulation that did not exist at the time of placing the product on the market or e) the defect could not be identified based on existing science and technology at the time of its placement on the market.

  The other main source of liability regulation can be found in the German Civil Code. The German Civil Code, and in particular its Section 823, requires that a fault be proven. The user of a product is liable where such user has granted access to the product to others, and where such product causes a damage because of a defect that the user knew of or should have known of.[32]

- **Denmark:** professional consultants are liable for defects caused by their errors or negligence.
  The contractors' liability is based on strict liability which make them to be responsible with regard to defects in the materials used.

In case of designers and consultants, the contract may specify a maximum amount to which they can be held liable.[33]

- **Estonia:** the vendor and contractor are responsible for the sale of goods and performance of work that confirms the contract, and they must use their expertise to determine the intended use of the product sold. The contractor is also responsible for non-conformity of the work resulting from the instructions provided to the customer, defects in material supplied or preliminary works performed by third parties.

  For these reasons, the DoP may be used to assess whether the goods sold or the work conform to the intended use.

  The remedies available for the buyer and customer are rectification and replacement of the defective good or work. They can also ask for a reduction of the price and/or to terminate the contract.[34]

- **Greece:** if the contractor fulfil the basic requirements stated in regulation 334/1994 PD, (s)he can be fined between EUR 15.000 and EUR 75.000.

  The violation of contractual stipulations pertaining to the construction materials has specific repercussions, such as the restoration of the work defects, curtailment of the contractor's payment or their dismissal in the case of systematic inadequate workmanship.

  Following the completion and delivery of the work by the contractor, the Greek State is liable for any harm inflicted on a third party.

  Manufacturers are liable to any damage or harm owed to their products defects.

  Misleading practices in commercial transactions can be asserted and may result in compensation for damages suffered.[35]

- **Spain:** the builder is directly liable for material damages caused in the building irrespective of the rights that the builder may also have against the manufacturer or distributor of the products.
  Manufacturers and importers are liable for defective products.[36]

- **Finland:** the DoP may be relevant in two administrative contexts: building permit processes and market surveillance. All manufacturers, exporters and importers have the responsibility to ensure that the products they place on the market are safe, as well as those used in construction, which have to be appropriately CE-marked. The DoP will facilitate this process since it contains the technical characteristics of specific products.

  Sellers are responsible for defects relating to characteristics of the products as contractors are for defects relating to performed services.
  Producers are liable for damages caused by defects in their products.

  If damage or injury are sustained from a particular construction product, the user may hold them responsible, because European product liability legislation provides remedies for those who want to claim damages.[37]

- **France:** the builder is strictly liable in tort towards the user for any damage if there's a risk which compromises the solidity or stability of the construction or which affects any of its constitutive elements and make it inappropriate to its destination. The action is time-barred after ten years, starting from the day of the delivery of the construction work.

  The manufacturer can be held responsible *'in solidum'* with the builder for the defects of the construction work if a) the constructor proves he has used the product in conformity with the specifications provided by the manufacturer or b) the element of equipment concerned was specifically designed and produced to meet precise and predetermined requirements.

The manufacturer can also be responsible on in solo on the basis of a) the guaranty for hidden defects guarantee, b) the default of conformity liability, c) a breach of the obligation of counsel of the supplier regarding the choice of the products and/or d) guarantee for defective products.

Also, criminal liability may be sought, such as in cases of: physical injuries resulting from the violation of safety regulations or from misleading commercial practices.[38]

- **Croatia:** The DoP may be used as evidence in the civil liability context in claims for repairs and/or damages against the builder due to deficiency of the construction and as a consequence of defects of the construction products used in construction works against the manufacturer or the designer. By labelling a construction product, manufacturers, authorised representatives and importers of those products assume liability for its compliance with all the technical characteristics and prescribed requirements.

  Civil liability is another type of liability regulated. In the absence of specific contractual undertakings, builders and manufacturers must provide average-quality materials and are responsible for them.[39]

- **Hungary:** Up to 1st July 2013, construction products must comply with specific standards while the certificate of conformity should be checked upon completion of the construction project.

  The architects' responsibility is increased inasmuch as the minimal product requirements should be set on the plan.

  Under the Product Liability Act, Producers' and importers' are liable for damage caused by defective products. If the producer or importer cannot be identified, the seller will be regarded as the producer until the identity of the producer or importer can be established.

The injured party may choose to claim damages on the basis of the Product Liability Act or on the basis of the general warranty rules and the rules on compensation for damages under the Hungarian Civil Code. Under the Civil Code, any person who causes damage to another person in violation of the law is liable for such damage unless he is able to prove that he has acted in a manner that can generally be expected in the given situation[40].

Lack of conformity of delivered/supplied/provided products with the agreed terms of a contract may also result on liability.

Distributors may be responsible if they knowingly place defective products on the market.[41]

- **Ireland:** there are several rules on liability: a) breach of contract, which will let plaintiffs assert a claim against parties with whom they are in probity of contract when 4 elements are met: contract, breach (of contract), causation (between 'contract' and 'breach') and damages, b) breach of express warranties, c) breach of implied warranties, d) negligence claims, to recover damages for economic loss and to be asserted against the general contractor, the responsible subcontractor and/or the manufacturer of the defective building component and e) claims for negligent misrepresentation, when a plaintiff can prove that one of the parties involved with the defective product knew, or should have known, of its defective nature and failed to inform the plaintiffs.

  Contracts in Ireland contain general conditions which include provisions in relation to the contractor's responsibility for liability.

  Construction material suppliers are committed to supply materials which are fit for their purpose and which will not cause any damage.[42]

- **Iceland:** an item is defective if the seller has neglected to provide the buyer with information pertaining to the item or its use that the seller was bound to know

and the consumer could have expected to be informed of, as the information would be likely to have affected the transaction, or if the information provided was incorrect.

When buyers are not consumers, an item offered for sale shall be suitable for the purposes that the seller knew or should have known at the time of the transaction.

An item is also defective when it does not correspond to the information that the seller has, through marketing or other means, provided about it, its properties or uses as well as when it doesn't correspond with the information a party other than the seller has provided on its packaging, advertisements or any other marketing.

A property is considered defective if it is not in line with the requirements made in current laws regarding quality.

A product is considered defective if it was not as safe as could be expected based on how it was offered and presented and the use that could reasonably have been expected to be made of it. The liability of manufacturers for injuries and/or loss of life occurred due to defective products is limited to a maximum of 70 million EUROS.[43]

- **Italy:** the DoP provides information on the performance of the products.

The DoP is compulsory and thus not preparing the DoP may lead to the liability.

The building contractor is obliged to perform the construction works within professional standards, that is, without building defects. The general contractor, if any, will assume the responsibility for all his/her sub-contractors.

In case of defects causing destruction or affecting the stability of the building, and for all properties who are expected to be built to last for specific period of time,

the responsibility of the building contractor lapses after ten years provided that any claim made during that time frame is made one year at most after the discovery of the defect.

The building contractor is the only person to assume a civil liability towards the client, while the rest of the parties may have a penal one.

Architects are not commonly subject to civil liability.[44]

- **Liechtenstein:** there is a liability for all manufacturers in cases where a defective construction product results in the death or injury of a person or provokes any other damage. Liability involves not only the supplier but everyone who attaches his/her name, trademark or any other identifiable sign to the defective product.

  Any person providing a construction product to a third party in exchange for remuneration will contract an obligation towards this party in order to assure the goods meet all agreed or commonly expected characteristics, match their description, and they may be used according to their declared purpose.[45]

- **Lithuania:** the seller is bound to deliver to the buyer products, the quality whereof meets the conditions of the contract of purchase-sale and the requirements of the documents determining the quality of products. The seller shall be liable for the defects of the products provided. If there is a lack of agreement, the products provided must be fit for the use for which they are intended.

  Buyers who bought products of unsatisfactory quality have the right to ask for rectification of the defective product, replacement or price reduction, as well as terminating the contract and claim damages.

  The liability of a party may arise either from a non-performance of a duty established by law or by a contract, from actions that are prohibited by law or by a contract or from violation of the general duty to behave with care.

Independent work contractors shall be liable for any deviations from the requirements of the technical construction regulations and also for the failure to achieve the indicators of the objects of construction specified in these documents or the contract. This contractor shall also be liable for any reduction or loss of reliability, durability and resistance of the construction works or installation when talking about reconstruction of structures and installations. However, (s)he shall not be liable for minor deviations from the technical construction regulations made with consent of the costumer and proving these deviations have not influenced the quality of the construction object.

Independent work contractors, architects and technical supervisors shall be respectively liable for the collapse of a construction work and resulting damage if the object collapsed due to defects in the design, structures or construction work, or the performance of construction work. Architects and technical supervisors shall be relieved from liability if it is proven that the collapse was not caused by defects in the design or structures or by inadequate supervision or control of construction work. In the same way, independent work contracts shall be relieved if it is proven that the collapse of the object occurred through the fault of either architects or technical supervisors.[46]

- **Luxembourg:** the main relevance of the DoP will most likely be in relation to liability for damage caused by the defective products and for the defects in construction projects.

  Sellers have two main obligations: to deliver and to warrant the goods they sell, which have to be provided according to the agreed quality and quantity characteristics. Failure to meet these obligations means that purchasers can claim for compensation. Sellers can also be liable if buyers claim to have suffered a damage and can prove this damage was effectively caused by a fault of the sellers. They are also bound to a warranty on account of the latent defects of the goods sold which render them unfit for the use for which they were intended, or which so impair that use that purchasers would either not have acquired them as such, or would only have paid a lesser price for them. However, they are not

liable for defects which are patent and which purchasers could ascertain by themselves.

As a remedy, purchasers can apply for annulment of the sale, exchange, repair or reduction of the prize. In any case, they can also claim for compensation where damages can be ascertained as a result of the defect.

Some special rules of liability exist in case of contracts concluded between professional sellers and consumers: when these goods are not in conformity with the contract, the warranty applies, but latent defects may not be covered. In this case, sellers are liable for any existing lack of conformity.

On the subject of extra-contractual liability, anyone who causes damage to another, either by intentional or negligent acts and even by imprudence, is obliged to compensate it.[47]

- **Latvia:** civil liability may arise under contract in case of failure to fulfil contractual obligations or in tort for injury or losses are caused as a result of a wrongful act.

  Builders can avoid liability if the relevant non-compliance with the contract arises due to inferior quality materials provided by the client or due to execution of client's instructions if the builder could not reasonably foresee the possibility of damage.

  Therefore, the main responsibility regarding construction products is placed on the manufacturer, the constructor and the seller. The constructor may be held responsible for any faults of the construction. For example if those faults are caused due to use of the wrong construction products.

  Under consumer protection laws, the manufacturer or the trader is obliged to reduce the price of the product, repair it at their own expense, exchange it or return the price paid in case of non-conformity and may be subjected to administrative proceedings before the Consumer Rights Protection Centre if they fail to do so. The DoP may serve as proof in this case.[48]

- **Malta:** architects and contractors are jointly and severally liable for building or constructions, owing to a defect in the construction.
  The builder is liable for the whole loss if (s)he also supplied the materials or just partially if (s)he just bestowed his/her labour or skill.[49]

- **The Netherlands:** regarding contractual liability claims, a breach of contract in case of construction products is determined by whether the product is fit for a specific purpose. Any legal action on the basis of the civil code with regards to breach of contract can only be successful in a contractual relationship, in this case between the buyer of the construction product and the seller (the manufacturer). As such, if the buyer is liable for damages caused, the buyer may be in turn indemnified by the seller/manufacturer. This chain of responsibilities may be extended where the buyer is not himself the builder of a building and/or another construction work.
  Regarding non-contractual liability claims, where a third party has incurred damages without there being a contractual relationship with the manufacturer, liability may be determined through section 6:162 (torts / unlawful acts) of the civil code.

  As such, if a construction product is defective and damages are suffered, the builder may be liable if he has failed to perform his duties and in particular with respect to the construction product's fitness for its defined purpose. If the construction products were selected by an architect or a designer, they may be liable. If the manufacturer has provided construction products which were not fit for purpose, or if the manufacturer has falsified information which regards to the performance of a certain product, the manufacturer may be liable for the damages suffered.

  The civil code provisions on liability for products are based on the general product safety directive (2001/95/EC) and the product liability directive (85/374/EEC). The provisions on liability for products only cover damages caused by defective products. Liability for products is based on the non-

contractual liability provisions, with an advantage for a tort victim with regards to evidence. On the basis of these provisions the tort victim only has to prove damages, defectiveness of the products and that the damages were caused by the defective product. [50]

- **Norway:** manufacturers are liable for and have to compensate any damage caused by their products if the product has a safety deficiency compared with what could be reasonably expected.

  Liability for negligence or based on tort presupposes that manufacturers had an alternative course of action. Manufacturers could only be found liable if they neglect to conduct investigations or failed to take measures to make sure the product was safe.[51]

- **Poland:** producers/importers are liable towards direct purchasers of construction products for the non-performance, improper performance, statutory warranty liability and the non-conformity of the products to the contract. The seller will be the directly liable person while the producer's liability will only be engaged alternatively.

  Producers/importers are liable towards final users on the basis of guarantee of quality and tort liability, including liability for defective or unsafe products.

  Commercialising construction products not suitable for use in construction, affixing the CE marking on construction products that do not meet legal requirements, affixing a marking similar to the CE marking which could mislead the user, can be sanctioned by a fine and can also constitute a violation of the prohibition of practices harmful to the collective interests of consumers.

  Not providing reliable, correct and complete information to consumers may also end in imposing a financial penalty by the Competition and Consumer Protection Office up to 10 per cent of the revenue generated in the preceding financial year.

Also, criminal penalties of deprivation of liberty from one to ten years can arise from imperilling human life, health or properties due to the collapse of a structure or from six months to eight years by causing danger to the life or health of persons or property by producing or marketing toxic substances.[52]

- **Portugal:** liability may result either from statutory provisions or from the terms and conditions of the contract. A defective product is defined as one that cannot objectively be relied on for the safety level attested or required, taking into account all the circumstances, particularly its presentation, how it is used and the moment in which it enters the market.

  Death and personal injuries must be compensated as long as the product has been used privately and appropriately. [53]

- **Romania:** goods shall be considered defective if they do not conform with information relating to their characteristics or their use.

  If this happens, buyers can ask for rectification of the defective products, replacement, price reduction or even termination of the contract and damages.[54]

- **Sweden:** goods shall be considered defective if they do not conform with information relating to their characteristics or their use.

  The remedies available for the buyer: the repair of the defective product, its replacement, a price reduction, termination of the contract, damages.

  Consumer services are deemed to be defective if the result deviates from what the consumer reasonably expects from the services or from any representations made in conjunction with entering into the contract.

  According to relevant standard agreements, the seller is liable for defects that appear and are reported during the period of liability. However, (s)he is not liable for defects due to incorrect assembly or installation, inadequate maintenance,

incorrect operation, neglect, abnormal use or other circumstances attributable to the buyer.

The remedies available are primarily repair or replacement of the defective product. If the seller fails to remedy the situation in a timely manner, the buyer is entitled to compensation for reasonable costs of having defect connected or to a price reduction. Cancellation of even the purchase is also possible if the defect is of substantial importance.

Building contractors have strict liability during the execution of the project but only for defects once the works have been completed.[55]

- **Slovakia:** persons who can be found liable in case of construction products defects are manufacturers, handlers (including transporters), architects, builders and users.

  The liability start date is determined as the date on which a party suffers a loss and when the loss is due to a breach of a legal or contractual duty.
  In commercial relationships, liability is to be agreed by the parties while, in consumer contracts, the minimum warranty and defects liability period is two years.[56]

- **Slovenia:** manufacturers who market a product which is defective, and as such causes damage to a particular person or object, are liable to this person who has suffered the damage or to the owner of such. Liability is also possible where the product does not perform properly or where warnings are not included on non-authorised uses.

  Manufacturers are also responsible for ensuring that the DoP fulfils the technical specifications requirements.

  With respect to civil liability, in case of damage to a person or object, a manufacturer will be responsible if a) there's a breach of law, b) the

manufacturer is responsible, c) there's an existence of damage and d) there's a causal link between breach of law and the damage.

In the case of a defective product, strict liability applies.

Fines can be applied (from 10.000 EUR to 250.000 EUR) if the provisions of the Construction Product Act are not respected.

In relation to consumer protection, as the DoP contains information about the product's characteristics which can be labelled as advertising, the manufacturer can be liable damages due to the product and in particular that result from a discrepancy between the DoP undertakings and real life. These damages must be compensated when they are over 400 EUR.[57]

- **The United Kingdom:** when sellers sell goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality. For being 'satisfactory', good have to meet some requirements, among them, being fit for the intended use.
  With respect to professionals, the law requires that professionals such as surveyors or architects meet the standards of competence prevailing in their profession. The implied term would be that they use "reasonable skill and care" in performing their duties.

For Scotland, in tort, the test of negligence is set out in one of the leading cases. In Hunter v Hanley 1955 SC 200, the Pursuer claimed that the doctor treating him was negligent in using an unsuitable needle. The Lord President (Clyde) stated this:-

"*Even a substantial deviation from normal practice may be warranted by the particular circumstances. To establish liability by a doctor where deviation from normal practice is alleged, three facts require to be established. First of all it must be proved that there is a normal practice; secondly it must be proved that the*

defender has not adopted that practice; and thirdly (and this is of crucial importance) it must be established that the course which the doctor adopted is one which no professional man of ordinary skill would have taken had he been acting with ordinary care".

58

2.1.3. Statute of limitations in the area of construction products liability in different Member States

The applicable statute of limitation refers to the timeframe within which a person may formulate a claim. Claims would not be receivable after the expiry of the statute of limitation unless it has been suspended or interrupted by operation of the law. Limitation periods may also exist in contracts between actors in the construction business and in insurance contracts. However, contracts may not shorten statutes of limitation set by operation of the law unless the law itself allows it. Statutes of limitations are usually different in criminal, civil and procedural matters.

There are basically as many statutes of limitations as there are causes for action. Since the number of causes for action in the area of construction products is important, many different statutes of limitations will apply.

In most countries the statute of limitation works through the combination of two parameters. First, there is a primary limitation period which can be anywhere from 10 to 30 years. Second, within that primary limitation period, there is a secondary limitation period within which a claimant must act after becoming aware of the damages or the products' defect. This second period can run, depending on the country, from one to three years.

One notes that the statute of limitation does not preclude the right of action. In most countries, the defendant to the action will have to raise the statute of limitation argument during trial and move to have the case dismissed on such grounds.

In some countries filing a claim with the courts will suspend the statute of limitation. In others the statute of limitation continues to run even where a claim has been filed.

In some countries such as Bulgaria, limitation periods exist with respect to certain presumptions. These are not as such statutes of limitation but time-frames during which a presumption exists to favour a party after the expiry of which the burden of proving a fact shifts. This is the case in Bulgaria and Luxembourg for example where the

non-compliance of a product with its specifications is presumed to have existed if the default is identified within six months of the product's delivery. After the six months period the presumption will be that the product is compliant and the burden of proving that it is not shifts to the buyer of the product.

- **Austria:** Pursuant to Section 1489 of the Austrian Civil Code, all actions for damages are barred after 3 years starting from the moment the party claiming a damage became aware of the damage and the identity of the person who caused it, and within a maximum global limitation period of 30 years.
  Claims for damages under the Federal Act on Liability for Defective Products shall lapse after 10 years from the time when the product is placed on the market.[59]

- **Belgium:** as there is not specific regulation for delivery and conformity, the general 30-years statute of limitation foreseen in the ordinary laws applies.

  In the case of latent defects, claims must be lodged within a shorter period in order to allow authorities to determine whether the latent defect already existed at the time the contract was signed.
  Concerning defective products, the injured parties' rights to claim damages expire within a primary ten year period following the product's date of placement on the market. However, a secondary limitation period applies as the claimant must act within three-years from the time the damage, defect and manufacturer's identity are discovered.[60]

- **Bulgaria:** the global limitation period of defective products is ten years. Within that global limitation period a secondary limitation period applies. The claimant has three years to make a claim from the date the claimant becomes aware of the damage, the defect and the identity of the manufacturer.

  Strict liability applies in cases of non-compliance. For the first six months of a product being placed on the market, the seller will have to demonstrate compliance. Thereafter, the burden will pass on to the buyer.

In cases of tort liability (non-pecuniary damages: pain, suffering, personal loss, etc), the limitation period is of 5 years as of the identification of the manufacturer.

When a construction work exhibits a lack of conformity, the consumer benefits from a five-year warranty. The consumer must denounce the defect within one year from being aware of it. The right of annulment of the contract or the claim to a price reduction expires within three years from the date of the complaint.[61]

- **Cyprus:** contractual claims are subject to a time limit of six years from the date when the cause of action accrued.
  With respect to claims in negligence (tort), they must always be brought within three years from either when the act or omission which gave rise to the claim took place, the cessation of damage, the time when the claimant suffered the damage or the discovery of the damage from the claimant or the time when such civil wrong could have been discovered by the claimant had he exercised reasonable care and diligence.

  Under the Defective Products Law, the right of any person to bring a claim for compensation in relation to damages caused by a defective product may not be exercised after the lapse of three years from the time at which that person became aware or could have reasonably become aware of the damage, the defect or the identity of the producer. In any case, a right of action under the said Law is extinguished after ten years from the time when the defective product which caused the damage was placed on the market. Certain exceptions may apply.[62]

- **Czech Republic:** the buyer has to notify the seller of the defects on the products as soon as possible, and never later than two years from the day of the delivery of the goods.
  For constructions works, the defects must be notified within five years after the handover of the work.

If buyers or costumers fail to notify sellers or contractors within that period, buyers or consumer lose their rights arising from the rules regulating liability for defects.

This statute of limitations may be modified by agreement of the parties.

Construction products sold to consumers or custom work including use of construction products are covered by a two-year statutory warranty period, which may be extended by the seller or the contractor.[63]

- **Germany:** the standard limitation period is three years. This period starts at the end of the year in which the claim arose and the claimant obtains knowledge of the circumstances giving rise to the claim and the identity of the liable party, or should have obtained such knowledge.

  Claims basing on Product Liability Act are also time bared with a three years' limitation period.[64]

- **Denmark:** the limitation period for building defects is five years starting from handover of the building. The contractor must repair all defects notified by the owner. If the contractor refuses to make the necessary repairs, the owner may repair them at the contractor's expense or claim a price reduction. A longer liability period can be agreed upon between the parties.

  Claims for damages in relation to construction defects is subject to a limitation period of three years from the date the owner became aware of the defects, with an global limitation period of ten years.[65]

- **Estonia:** the buyer must notify the seller of the defect within two years after receiving the goods (three years after receiving the work in cases of construction contracts), five years in case of construction materials or products that have produced defects in the construction or even ten years if the obliged person intentionally violated its obligations, according to the Civil Code Act.

  In cases of non-conformity, the buyer must inform the seller within a reasonable time (two months in cases either of consumer sales or consumer contracts) on

the lack of conformity. This does not apply when lack of conformity is due to negligence.

The constructor guarantees any damages of the construction for two years. (S)He must eliminate construction faults which are revealed during the guarantee period at his/her expenses and within reasonable time. [66]

- **Greece:** the global limitation period is ten years from the date the product was made available. The secondary limitation period of civil liability is five years for claims against the Greek State, three years for claims against manufacturers with a secondary limitation period, knowledge of the damage. The statute of limitation is extended to twenty years in cases of illegal acts.[67]

- **Spain:** there is a:

- ten year limitation period on liability for material damages caused by flaws or defects arising from or affecting the foundations or other structural components and directly compromising the building's mechanical resistance and stability,
- a three year limitation period on liability for material damages made by faults or defects of constructive elements or when they can affect basic habitability and
- a one year limitation period on liability for faults or defects affecting to the completion materials or work finish.[68]

- **Finland:** in cases of either consumer protection or damages or injuries for products liability, the limitation period stands at three years from the date at which the claimant became aware of the damage, the defect and the identity of the liable party. However, an action for damages must be instituted within a global limitation period of ten years from the date on which the liable party put the product which caused the injury or damage in circulation.

  In cases of tort liability, a claim for damages shall be made within ten years of the occurrence of the injury or damage, unless a shorter limitation period has been agreed upon by the parties provided however that in cases of criminal liability the period is statutory and longer.[69]

- **France:** limitation periods on liability are different depending on the type of liability: a) liability of the constructor is ten years from approval of the work for defects in the construction work and two years for inseparable and integral part of the works, b) liability for defective products runs for ten years after the product was put into circulation but claims must be files within three years at the victim being informed of the defect, the damage or the identity of the manufacturer, c) liability for hidden defects is two years from the discovery of the defect but one month or one year when selling a building, d) liability on non-conformity is two years after delivery for consumers but five years in contracts between professionals and e) common contractual liability is five years after the owner of the right has been informed of the facts enabling him to launch the action.[70]

- **Croatia:** any obvious defects must be notified without undue delay upon examination and delivery of the construction. Latent defects, manifested after the delivery, may be notified within ten years or two years, respectively, depending whether they relate to the essential requirements for a construction or to other defects.[71]

- **Hungary:** the limitation period for product liability is ten years from the date of the product's placement on the market.
  The general civil liability statute of limitation is five years in total.
  Civil warranty has a global statute of limitation of three years and a secondary limitation period of six months from discovering the fault.
  Special warranty for new flats is three years. [72]
  Lengthier prescription periods of five or ten years may exist for certain types of buildings.
  Longer warranty periods can always be agreed upon contractually[73].

- **Ireland:** product liability covers design, manufacturing and marketing defects.
  Contractors are liable to remedy defects in materials and/or workmanship which are apparent or patent for a limited period of time once a project has reached

substantial or practical completion, period which has to be expressly stated in the contract.

Actions for breach of contract have a limitation period of six years unless they are of the particular type of contract under seal where limitation is twelve years.
Actions in negligence, which can be asserted against either builders and/or designers, must be filed six years from the date the cause of action arises (that is, when physical damage occurs or becomes manifest).

Liability for latent defects may also arise under contract law where a party has a direct contract with a builder or a designer. Those will be liable for latent defects under a contract for the period of time that it is liable for breach of contract -either six or twelve years-, from the date of the breach, unless the contract expressly provides otherwise.
Actions claiming damages for personal injuries arising out of negligence generally have a limitation period of two years from the date of injury.[74]

- **Iceland:** Act No. 150/2007 of December 20, 2007 reduced the general statute of limitations for compensation and damages from ten to four years. However, for all general damage claims arising prior to the enactment of the above-mentioned act, the ten years period applies.
  In cases of damages for faulty products, the claimant has three years to assert the claim since the date (s)he became aware of the damage caused, the faulty product and the name and address of the party that marketed the product. This period is ten years for claims that have not lapsed according to this stipulation.

  For defects in properties, the buyer must notify the seller within a reasonable amount of time and within after five years.[75]

- **Italy:** direct action to assert differences and/or defects of the work against the contractor shall expire within two years from the date of delivery of the work, however, the buyer can always interpose a claim, provided that the discrepancies

or defects haven been denounced within the time limitation period of sixty days from the discovery and before two years have elapsed from delivery.

In case of building products, the building contractor will be responsible if defects in the soil or in construction appear within ten years from its completion, as well as if the construction shows any significant danger of destruction or serious defects. [76]

- **Liechtenstein:** the statute of limitations is three years for claims for defective products from the date of the damage and such claims must be made within ten years from the date at which the manufacturer placed the construction product causing the damage on the market.
  In all other instances, the statute of limitations is three years, starting with the transfer of the product or the completion of the construction work. Should there be a defect that was not identifiable at the time when the construction product was handed over, such a defect is deemed to have existed at the point in time of the handover.[77]

- **Lithuania:** the general statute limitation is ten years. When it comes to claims arising from non-conformity, it is six months.
  For construction guarantee periods, independent work contractors, architects and technical supervisors shall be liable for collapse of the construction or defects within the time-limit of five years (as general rule), ten years in case of hidden defects on the construction works and twenty years in cases where defects were intentionally concealed.[78]

- **Luxembourg:** In constructions, liability of the participants in construction operations as a consequence of construction defects varies depending on whether a damage occurs before, in which case, general liability rules apply, or after handover, where liability can be for two or ten years.

  There are also several specific limitation rules applying when selling an existing building or a building to be erected. These are of two years starting from

handover in case of defects affecting minor works and of ten years in case of defects affecting the building shell and its stability.

The sellers' liability for lack of conformity in the selling of construction products or existing buildings is subject to a limitation period of thirty years starting from the date of discovery of the hidden non conformity, although it is ten years in cases of purchase contracts between professionals.

The statute of limitation for liability for defective products is three years from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer. This secondary limitation is limited by the global limitation period of ten years from the date on which the producer place the product which caused the damage.[79]

- **Latvia:** The general principle is that the statute of limitation for liability arising either out of contract or in tort is ten years

  Nonetheless, specific limitation period applies for defects buildings. The limitation period is two years for contractors. During this period contractor is responsible for repairs of any defects.

  In case of non-conformity the buyer has a right to annul the purchase within six months or to obtain a price reduction within one year of the purchase.[80]

- **Malta:** A general limitation period of fifteen years applies for architects and contractors if the construction perishes, wholly or in part, or is in manifest danger of falling to ruin. This period applies from the day on which the building was completed. A secondary limitation period applies whereby the action be brought within two years from the day on which the event giving right to damages occurred.

  Actions for rescission of the sale or a reduction in the price are barred after one year from the day of the contract or six months from the date of the delivery in the case of movable goods.[81]

- **The Netherlands:** for Liability for products, in accordance with Directive 85/374, article 10, section 6:191 determines that the statute of limitations for a claim based on section 6:185-193 is three years.

  For non-Contractual liability claims, the Civil Code determines the statute of limitations for all legal action on the bases of damages suffered. In principle legal action is not possible after a period of 5 years once the damages have become apparent and the person responsible for the damages is known. The global statute of limitation is twenty years. One exception to this, is damages suffered because of dangerous substances (such as asbestos). [82]

- **Norway:** the claim is barred three years after the date at which the claimant knew of the damage, safety defect and who the manufacturer was. However, the global statute of limitation is ten years after the manufacturer had placed the damaging product on the market.[83]

- **Poland:** unless a specific provision provides otherwise, the global statute of limitation is ten years. More specifically the period is three years between economic operators and ten years when dealing with a consumer.

  The statutory warranty for defects expires no later than one year from the day when the product was delivered to the buyer (but the latter has to notify the seller within one month from having discovered the defect).

  The quality guarantee lasts one year unless the parties have stipulated otherwise contractually. Since the constructors' statutory warranty for defects is three years, buyers will often require additional quality guarantee from manufacturers in order to cover the whole period.

  In tort liability, a claim for the redress of the damage inflicted by a civil wrong is subject to a limitation period of three years from the day when the injured party learnt about the damage and the person liable to redress it, and the global limitation period may not be longer than ten years.

When inflicting injury to a person, the limitation period may not end earlier than upon the lapse of three years.

When the damage results from a crime, a claim may be asserted within twenty years.
Claims for the damage inflicted by unsafe products are subject a limitation period of three years.[84]

- **Portugal:** Concerning defective products, there exists an exclusion of responsibility for the producer if he/she proves: a) the product was not put into circulation; b) that having taken into account the circumstances, he can demonstrate that the product upon entering the market was not defective; c) that the product was not manufactured for sale or distribution, nor produced or distributed it exerting an economic activity; d) that the defect is due to the conformity of the product as required in the legal norms; e) that at the time of the product's entrance in the market, to their technical and scientific knowledge, the defect's presence had not been detected; f) that the defect of a component is attributable solely to the conception of the product or to instructions given by the supplier.

  There is an entitlement to compensation or to a compensable amount of damages when the product causes death or injury suffered to people.

  The decree-law 67/2003 of April 8th[85], altered by the decree-law n.º 84/2008 of May 21st (*Decreto-Lei n.º 84/2008 de 21 de Maio*)[86] which transposes into the internal legal order the Directive EEC/1999/44[87] on certain aspects of the consumer goods sales, are also applied to contracts for work.
  If ten years have passed since the producer put the product into circulation, the consumer foregoes his right to reimbursement unless a judicial action is pending.[88]

- **Romania:** buyers must put the sellers on notice of the defect within three months after receiving the goods, in case of constructions. Absent this

notification buyers forfeit the right to invoke the defect unless otherwise provided by a warranty or similar protection in the contract.

In case of hidden defects, the statute of limitation is of ten years, and for the whole life of the building in case of structural defects.

For defective products or consumer sales, the statute of limitations runs for three years, in the case of producers, starting from the date when the buyer became aware of the defect but never being longer than ten years from the date when the product was placed into the market and two years in the case of consumer goods sales and the warranties attached to them.[89]

- **Sweden:** buyers must put the sellers on notice of the defect within two years after receiving the goods, otherwise they will have forfeited their right to invoke the defect, unless otherwise provided by a warranty, except where the defect is due to gross negligence from the seller or when the seller has acted in bad faith.

  As for consumer sales, buyers have three years to put seller on notice after receiving the goods except where the defect is due to gross negligence from the seller or when the seller has acted in bad faith.

  For the sale of building elements intended to form and essential part of a family house, the statute of limitation is two years from the awareness of the defect and globally no longer than ten years from the day when the construction was approved.

  According to relevant standard agreements the contractor's and/or seller's liability is divided into two periods: guarantee period, which lasts five years from the delivery, and liability, which starts with the expiration of the guarantee period and lasts for ten years after the delivery of the goods, but can be altered by agreement.

  This ten years period is only applicable where products are intended to form the main part of the building. For other products the limitation period is two years.

  For materials and products, the warranty period is two years and ten years for the liability one.

In case of injured parties, the limitation period is three years from the date the injured party knew or ought to have known that the claim could be asserted, with a maximum global limitation period of ten years from the date at which the harmful product was put into circulation.

For tort liability, the general statute of limitation is ten years, unless it is interrupted prior thereto.[90]

- **Slovakia:** the statute of limitations is four years in commercial relations and three years in non-commercial ones.[91]

- **Slovenia:** the statute of limitations is 6 months in sales contract (unless the seller was aware of defective product), 2 years in services contract in case of hidden defects and up to 10 years in construction contracts if the defect refers to the soundness of the building. In this latter case, the defect must be notified within 6 months after it was noticed and the lawsuit must be filed one year thereafter. The latter two periods do not need to be respected if the contractor was or should have been aware of the defect. The general limitation period is 5 years (just 3 in business to business relationships).[92]

- **The United Kingdom:** a claim for breach of contract must be brought six years from the date of the breach of contract. The date of the breach will ordinarily be the date of supply, except in the case of a contractor, where the six year period will ordinarily run from the date of the completion of the building works.
  This time period can be extended if the contract is executed as a deed. In this case the buyer will be liable for twelve years from the date of the breach.
  This liability is only for defects inherent at the time of supply.
  Sellers may also be liable in tort. Claims in these cases must be brought six years from the date of damage.
  Liability in claims in negligence is extended to fifteen years from the date of the damage, or three years from the date of discovery or the date when the damage should have been reasonably discovered under the Latent damage Act of 1988.

In Scotland the limitation period is called the prescription period. It is of five years for breach of contract and tort.[93]

2.1.4. Summary of the rules relating to authorizations pertaining to the use of construction products in the different Member States

In general there are no specific authorizations for the use of construction products in the different Member States. Instead, products are placed on the market provided they comply with the hENs or by having ETA issued by the national approval bodies. For products that are neither covered by hENs or ETA other types of approvals may apply.

Further, authorisations may be needed when products are to be used in a construction project but only indirectly as it is the construction project that is the subject of authorisations.

- **Austria:** products may be placed into the market if they are fit for their intended use by complying with the harmonised standards or by having an ETA issued by the approval bodies of the nine provinces of Austria. After any of these, the product needs a Declaration of Conformity and has to be CE-marked.[94]

- **Belgium:** the manufacturer may profit from a previous test done to a construction product according to the harmonised standards when both products are of the same type. ETAs and NTAs/ATGs[95] assert the fitness to construction works of the means, materials, elements or non-traditional equipment.

  The manufacturer, then, will be allowed to declare a featuring related to all or just a part of the results obtained at the tests of this other construction product but he/she will only be allowed to use these results when the first manufacturer authorises him/her to do so, since this first manufacturer will keep being responsible for the suitability, trustworthy, approval and adaptation of the features declared to the harmonised standards.

  Also, the manufacturer may do this when the product consists of a group of parts to assemble which have previously been tested by the original manufacturer

according to the harmonised standards and this original manufacturer has given proper and clear instructions on how to deal with these parts when being assembled. Despite this, the manufacturer will also need the authorisation of the original manufacturer to declare the performance of his/her product using the previous tests passed by the latter.[96]

- **Bulgaria:** administrative bodies would not require the DoP at the stage of granting a building authorisation. However at a later stage, the DoP is used in the process of drawing up of the application for acceptance of the construction works.

  It shall assess both, the conformity of the construction works with the project and the documents evidencing the conformity of the construction products used in the construction with the essential requirements.

  The absence of documents evidencing the performance of the construction products used in the construction process is grounds for denial of acceptance of the construction works.

  The DoP may also be requested by the market surveillance bodies.[97]

- **Cyprus:** the Department of Town & Housing of the Ministry of Interior is the relevant urban planning authority dealing with construction works. It processes development and construction applications. However, this department would not generally require the DoP in the application process. Instead it relies on the assurance and certificates given by the architect and civil engineer of the construction.[98]

- **Czech Republic:** only products and materials fulfilling the requirements for mechanical resistance and stability, fire safety, hygiene, protection of health and environment, safety at maintenance, noise protection, energy savings and thermal insulation are allowed to be used in construction works. These requirements are guaranteed by public authorities (the Building Office, in the

relevant district) when they issue the building permit. As a result these authorities would rely on relevant documentation including the DoP in making their assessment prior to granting the building permit.[99]

- **Germany:** a building product has to be usable as defined in the Building Product Act and may be placed into the market it is fit for the intended use by complying with harmonised standards or by having an ETA issued by the approval bodies. It has also to be labelled with the CE marking.

  In the federal System of Germany there are several state building codes of the federal states, which contain further regulations about the application of building products.[100]

- **Denmark:** the Agency for Energy and DANAK are competent bodies that issue authorisations under the CPR.[101]

- **Estonia:** The final version of design documentation must specify the choice of construction products (including the trade mark and manufacturer). The design documentation is the basis for the granting of a building permit by a local municipality. The local municipality that grants building permits may check if the used construction products enable the construction to meet the mandatory (e.g. safety) requirements. For these purposes the local municipality may require presentation of DoPs.

- **Greece:** products placed in the Greek market should meet the requirements of the applicable EU directives and signified by the CE marking. Contractors are required to only use CE-marked construction products.[102]

- **Spain:** all construction products used in buildings will bear the CE mark.[103]

- **Finland:** there are 3 major rules relating to authorization pertaining to the use of construction products: a) harmonised technical specifications reflected in harmonised European product standards (hENs) or European Assessment

Document (EADs), as both assess and declare all the performance characteristics required by regulations in any Member State which affect the ability of construction products, b) CE marking, which enables a product to be placed legally on the market in any Member State and assures a product has been done with respect to the characteristics stated in its DoP and c) DoP, done for each different construction product to which a CE marking is to be affixed when it is placed on the market and a copy of it has to be provided every-time a good is sold, either printed or submitted electronically. VTT Expert Services Ltd is a notified approval body for construction products whether the building construction product falls in category covered by, the Harmonised European Standard or European Technical Approval (ETA) etc.[104]

- **France:** "Organisme tiers" is a notified certification or testing body. Where no harmonised standard exists (European or French norms), or when the product departs from harmonised standards or a European decision provides so, the manufacturer can ask for an ATE (European Technical Approval), which will be delivered by one of the bodies mentioned on a list established by the government after a European decision. An ordinance was adopted on the 21st of June 2013, which provides for a list of notified bodies and their mission statement.[105]

- **Croatia:** builders are required to use construction products that comply with the standards set forth under applicable regulations and procure appropriate DoPs, which may be requested for inspection and required in the process of obtaining the final building 'use' permit.[106]

- **Hungary:** Apart from the standards set at the European level and implemented locally, there are currently no mandatory vertical requirements for the use of construction products.[107]

- **Ireland:** The DoP may be adduced as evidence as a method of a certain responsibility.
  CE marking will make products and materials easier to be trusted.[108]

- **Iceland:** all construction products marketed must be in conformity either with common European standards, an ETA or a domestic standard. Products certified to be in conformity with any of these provisions are required to bear the CE mark. The certificate or declaration of conformity must be in Icelandic.
  Building permits must be issued after an assessment by a construction representative is carried out.[109]

- **Italy:** For a few minor categories of products it is possible that the producer personally draws up a technical certification for purposes of the DoP. However, in the majority of cases, Italian law imposes that such a document be drafted by special inspection bodies for testing and certification, as there are several rules related to this issue.[110]

- **Liechtenstein:** legislation applicable on this issue is the Legal Order. Transposing Directive 89/106/EEC and the Swiss legislation on construction products (due to a bilateral contract adopted in 1924). However, any third country's test result and/or certificate of conformity will be recognized if emanates from a body whose qualifications meet legal requirements or if an agreement on reciprocity exists with the third country.[111]

- **Lithuania:** the use of construction products is currently not subject to any mandatory authorisations. Instead, there is a national system for construction product accession and verification, as well as a national body responsible for accreditation according to EU requirements and market surveillance.[112]

- **Luxembourg:** the use of construction products is currently not subject to any mandatory authorisations. However, the placement on the market of construction products not bearing the EC mark shall be authorized by the Ministry of Labour and Employment following consultation with the Inspectorate of Labour and Mines.[113]

- **Latvia:** construction products have to be properly assessed by competent, independent bodies and their conformity with relevant standards is established by one of the four procedures described in CPR and specified in the standard.

  Builders and sellers must attest that the construction products at their disposal have the necessary documentation regarding the conformity of the products to the relevant standards. Otherwise, they are not authorised to sell or use these products.[114]

- **Malta:** the DoP is not generally required in the application process by the MEPA (Malta Environment and Planning Authority). MEPA will rely solely on the architect's certification in issuing its final endorsement of the construction work.[115]

- **The Netherlands:** BB 2012 determines the minimum quality of building and construction works. In order to conform to the minimum quality, only construction products with a known performance can be used. There are no mandatory authorisations, but the builder is responsible for conforming to the requirements of BB 2012.[116]

- **Norway:** authorisation of construction products is not part of the processing of building and construction applications. However, a series of requirements must be met by the products and they are supposed to be observed in the planning process of the project.

  The characteristics and documentation for construction products shall be in compliance with technical specifications, pursuant to The Regulation on requirements for construction works and products for construction: harmonised products standards, ETAs, national technical specifications and/or other satisfactory technical specifications. [117]

- **Poland:** a construction product may be commercialised if it is suitable for use in construction works, what means the product has to be CE-marked (which entails

its conformity with one of the standards among 'harmonised standards', 'ETA' or 'national technical specifications'), placed in the list of products having little relevance to health and safety or marked with a building mark.

Also, products legally commercialised in other Member States, even if not covered by the scope of the harmonised standards and guidelines are accepted in Poland.[118]

- **Portugal:** The conformity of an internally produced product is granted by the evaluation proceedings carried out by the technical assessment bodies and the notified bodies that authorize the affixing of the CE marking.
  The CPR and the law-decree n.º 130/2013 of September 10, which implements the former, enables the placement on the market of construction products for their proper use in accordance to their own characteristics. The construction products with the CE marking do not require any other authorization in order for them to be used, without prejudice of certain legal provisions which demand an extra certification for specific category of products.[119]

- **Romania:** In general no authorization is required. CE marking is mandatory, because some quality requirements apply to construction products and construction works, as well as Romanian language for products sold in the national territory of Romania.[120]

- **Sweden:** the use of construction products is currently not subject to any mandatory authorizations. Instead, there is a voluntary national system, Type-Approval, for assessing and verifying construction products with the requirements of Swedish building regulations. Such Type-Approval may only be issued if a product is not covered by a harmonised standard or an ETA. These Type-Approval will no longer be issued and cease to be valid if CE marking are the only marking verifying a declared performance.[121]

- **Slovakia:** the Commercial Code regulates commercial relationships and the Civil Code so does with non-commercial relationships.[122]

- **Slovenia:** the Construction Product Act determines that a manufacturer of construction products is responsible for the DoP fulfilling the requirements of the technical specifications. The DoP must be obtained by testing and controlling the performance. This testing and controlling must also be a certification body.[123]

- **The United Kingdom:** construction products should be fit for their purpose, of merchantable quality. The Building Regulations 2012 provide detailed requirements in relation to mechanical resistance and stability; safety in case of fire; hygiene, health and environment; safety and accessibility in use; protection against noise; energy economy and heart retention and sustainable use of natural resources.[124]

Summary

Relevance of the DoPs in administrative contexts

In many countries the DoP may be particularly relevant in three administrative contexts:

- Standardization
- Approvals for constructions projects
- Market surveillance activities

Standardization is of little interest here since it is a process that occurs prior to the preparation of DoPs.

Approvals for construction projects may involve the provision of the DoPs. Indeed the DoP may contain data that would be useful to administrations in order to make appropriate decisions on building permits or post building approval processes. However, building authorities may only require documents that refer to DoPs, such as architect plans and general specifications, rather than the DoPs themselves.

Market surveillance authorities will require, as part of their functions, that the marketing of construction products be organized in a manner that complies with the CPR and in particular that the DoPs are prepared if required and that their content is both complete and correct.

Relevance of the DoPs in disputes

However, the main relevance of the DoP will most likely be in relation to a dispute regarding the product or the building into which such product is incorporated. The DoP contains important data on a product. It also constitutes an undertaking by operators in the supply chain that the product meets certain predefined standards. Liability will most likely stem from the damages or losses resulting from a defective product or a product that does not conform with its declared specifications.

Liability can be civil or even criminal. Falsifying DoPs or DoP data to sell products, obtain a building permit or pass market surveillance scrutiny would lead to criminal or administrative proceedings in most countries. Additionally, the DoP may have relevance in, for example, contracts disputes or misleading marketing practices.

There are a number of liability theories that may apply in the field of construction products.

The basis for liability may generally be found in contract law or tort. Consumer protection and market regulation may also result in increased liability for companies.

All Member States have liability regulations for defective products and for misleading commercial practices.

The fact that the DoP may be required within the context of litigation means that DoPs not only have to be drawn but also have to be kept for lengthy periods of time in the event that a dispute arises at one point in time.

However, to ensure that businesses enjoy some visibility in terms of risk management and archiving and that claimant pursue their claims with reasonable diligence, claims for liability must be brought within a certain period of time.

As shown herein, there are basically as many statutes of limitations as there are causes for action and Member States.

In most countries statute of limitations work through the combination of two parameters. First, there is a global limitation period which can be anywhere from 10 to 30 years. Second, within that limitation period, a claimant must act within a certain period after becoming aware of the damages or the products' defect. This second period can run, depending on the country, from one to three years.

2.2. Administrative bodies that may require the DoP

In general administrative bodies have functions that involve the review of the DoP. Such review may occur at the time of placing of a construction product into the market, prior to starting the building construction, during the construction process or when a finished building is inspected. In most countries the nature of construction work planned will determine the competence of a specific administrative body. For construction work that constitutes public works or involve national interests, the central administrations will be responsible for approvals and supervision. Construction projects that are more local will tend to involve local governments or municipalities.

In the case of building permits and construction projects approvals, the DoP would normally not be required. Documents such as architects' plans would be required and may refer to material used and relevant DoP. However, as previously stated, in Hungary, new regulation gives the DoP an enhanced function for temporary buildings. As such temporary buildings do not require a building permit provided that the DoPs are available[125].

Typically, market surveillance authorities may also require the DoP since they are generally in charge of making sure that DoPs, when required, are drawn up and contain complete and correct information on the construction products that they refer to.

Administrative bodies may also have dispute adjudication functions where a building permit or a final approval has been refused and such refusal is contested.

2.2.1. General Presentation, role, function and competence of these bodies in different Member States

- **Austria:** the administrative bodies concerned with construction law may require a DoP. The local building authorities, the market surveillance authority for construction products and the federal authorities responsible for infrastructure such as railways, airports,… within the Federal Ministry of Traffic, Infrastructure

and Technology and may at different stages of the use of construction products require the production of the DoP.

Construction law is generally implemented by the communities. In the first instance the main building authority is usually the mayor or the municipality. In second instance proceedings, the building authority is normally the local council of the community. From January 2014 new administrative courts will replace all second instance authorities. These will thus provide an effective judicial review of decisions made at the mayor/municipality level.

The Austrian Institute of Construction Engineering (OIB) is the market surveillance authority for construction products.

The Austrian Accreditation body is the Federal Ministry of Economy, Family and Youth.[126]

- **Belgium:** The DoP may be required by some administrative bodies that are competent to deal with matters related to construction products or to building permission.

  DoP may be used by administrative organs and bodies in reviewing building permit applications and related proceedings.[127]

- **Bulgaria:** The State Agency for Metrological and Technical Surveillance is a governmental body subordinated to the Minister of Economics, Energy and Tourism. It has broad jurisdiction over matters related market surveillance of products put on the market. It can perform on-site inspections, check the conformity of construction products against the relevant technical documentation, take samples, and has authority to impose restrictions on the placing on the market of products that do not conform to regulations.

  With respect to the use of construction products in construction projects, in Bulgaria the competence of different administrative authorities depends on the nature of the construction. Construction types are categorized according to size, with the bigger works such as highways and airports belonging to the first category and smaller works such as greenhouses, fences, retaining walls belonging to the sixth category. The Director of the National Construction

Control Directorate ("NCCD") or an official authorised by him are competent for construction works from the first through to the third category.

The mayor of the municipality or the region or an official authorized by him/her is the competent body for constructions from the fourth to the sixth category.[128]

- **Czech Republic:** The Building Office is part of the Czech administrative system. The Building Office is responsible for the performance of local building offices in handling applications for such permits as building permits or occupancy permits. The Czech Trade Inspection Authority is an administrative institution, specialized in market surveillance.[129]

- **Germany:** The German Institute of Construction Technology of Berlin, is the German Technical assessment body for construction products and types of construction.
  In case of the existing of harmonized European standards, applicable on a Building Product, a testing procedure is conducted by the inspection bodies, monitoring bodies and certification bodies. If the essential attributes of a product do not affect harmonised European standards, the admission of the product can even be given by the German Institute of Construction Products.
  German Federal Landers are competent for the legislation on building permits. Local building authorities are competent for the grant of building permits.[130]

- **Denmark:** The supervision of the CE markings was transferred in 2008 from the regional authorities to the Agency for Business and Constructions, and the functions of that agency have subsequently been transferred again to the current Agency for Energy. The Agency of Energy has become the central Danish authority for construction matters. It is in charge of building permits, inspections and any issues relating to the DoP.[131]

- **Estonia:** The local municipalities in charge of issuing building permits and the Estonian Technical Surveillance Authority are the two administrative bodies likely to ask for the DoP.[132]

- **Greece:** The General Secretariat of Industry constitutes the National Market Surveillance Authority on Greek territory for all industrial products and quality services. Building permit applications are submitted to the planning Council.[133]

- **Spain:** The Public Authorities in charge of Industry in each Autonomous Communities may require DoPs. Local administrative bodies (city planning authorities) may also require the DoP in order to concede a building permit/ first occupation license.[134]

- **Finland:** Administrative bodies that may require DoP are the Local Building Supervision Authority ("Rakennusvalvontavirasto"), the Ministry of the Environment and its notified bodies (certification, inspections or testing laboratory) that performs the harmonized product standard or European technical approval defined in the Code of certification, inspection or testing activities are conducted by the following agencies: Finnish Environment Institute (SYKE), Finnish Safety and Chemicals Agency (TUKES), VTT Expert Services LTD, Contesta Oy, DNV Certification Oy and Finotrol. In various kinds of building permit process the Building Inspector may also require DoP.[135]

- **France:** Article L 215-1 of the Consumption Code provides that DGCCRF agents (Direction Générale de la Concurrence de la Consommation et de la répression des fraudes) are in charge of the control and administrative sanctions for all offences mentioned in chapter II of the Code. This Article provides for the list of the categories of agents entitled to make such controls. Therefore, the DGCCRF may require the production of the DoP.[136]

  A security commission is in charge of checking all requirements of ERP[137] constructions "public construction open to the public" have been respected. Therefore, they may ask the DoP. French authorities cannot require the DoP for products produced in another Member State with the CE marking.

  Under the system in force, the declaration of conformity of the product is not part of the compulsory elements to be communicated to administrative bodies (Mairies) to obtain constructing permits. However, it should include the

architectural plan which under article R-431-8 of the "Code de l'Urbanisme", and include a notice relating to the products used for the construction.

- **Croatia:** Construction inspectors ensure that constructions works are performed pursuant to construction regulations. They are organised within the Ministry.

  Commission for appeals against decisions of construction inspectors are appointed by the Government of Republic of Croatia.

  Ministry, local or regional administrations competent for construction matters, as the case may be, are authorised for issuing final building permits. Ministry also acts as the appellate authority for appeals against decisions of local or regional administrations competent for construction matters, in the context of final building permits.

  Commissions for technical audits, in charge of issuing building permits, are appointed by the Ministry, local or regional administrations competent for construction matters, as the case may be.[138]

- **Hungary:** The Building Authority is located within the Municipalities. It is a governmental administrative body. The Building Authority coordinates the building permit procedures, consults other technical authorities and issues building and occupancy permits.
  Some buildings do not need a building permit. Most do however and it is likely that the Building Authority will require the presentation of the DoP as part of the documentation package that it deems useful. Appeals against decisions made by the Building Authority are lodged with the "second instance Building Authority" which is competent to adjudicate disputes at the county level[139].

- **Ireland:** There is no requirement to show or include any form of description on how the building is actually constructed; the planning permission requirements are only concerned with the external materials of a building in terms of material and colour. The planning permission of a building is determined by the Irish

Planning and Development Acts whereas whether the building complies with the Building Regulations is determined by the Building Control Acts. Under the Building Control Act 1990 a building control authority is not under any obligation or duty to inspect the works or to insure that the building or works comply with the Building Regulations. The recent Building Control Regulations 2013 are aimed at strengthening the current arrangements in place for the control of building activity.

The local authorities as building control authorities may require DoPs to ensure that the products most suitable for their intended use in construction works are in fact being used. A building control authority has the power to serve an enforcement notice on the owner or person carrying out works if the works or the design, are not in compliance with the Building Regulations.

DoPs will however be considered in the main by Judicial bodies.[140]

- **Iceland:** Administrative bodies that may require the DoP include the Iceland Construction Authority, local authorities[141] within the jurisdiction of which a building is located, and the Appeals Committee for the Environment and Natural Resources.

  The Iceland Construction Authority is responsible for the administration and preparation of regulations and guidelines regarding building construction. The Authority plays a supervisory role with respect to the work of the local authority construction representatives.

  The Iceland Construction Authority is tasked with supervising construction products sold in the Icelandic market and ensuring that such products meet the requirements of the Construction Act and related regulations. If the relevant rules and regulations are not respected and serious danger ensues as a consequence of such non-respect, the Iceland Construction Authority shall conduct an investigation into the circumstances.[142]

- **Italy:** The High Council of Public Works is the most important technical advisory body of the state. Within the general presidency of the High Council exists the Central Technical Service, a technical organisation which operates in areas of

certification and qualification of building material and the enablement of inspection organizations.
For a few of the minor categories of products it is possible that the producer personally draws up a self-authorisation of the DoP. But in the majority of cases, Italian law imposes that such a document be drafted by special inspection bodies for testing and certification especially referring to products which are particularly dangerous like structural and fire-related products. In those cases the Declaration of Performance become the main root without which the construction product cannot be installed.
The activity is carried out in cooperation with the competent offices of the Ministry of Economic Development and the Home Office (Ministero dell'Interno), which following a strict procedure of qualification provide for the registration of these certification bodies, inspection and testing in the registers, divided by jurisdiction and available at the Higher Council of Public Works.
The Customs Agency carries out the control of the correct CE marking. In most cases this does not require any additional documentation, such as the DoP but it is possible that some of the customs authorities might require such documentation.

With reference to building permits no DoP is required. Indeed, at that stage, the Italian regulation requires the indication of the type of products that are going to be used, but it does not require the exact and detailed characteristics of those products, so that DoPs are not strictly required for obtaining the building permission.

During the works the construction site manager "Direttore Lavori" is responsible to verify that the material used in construction has a DoP, avoiding the presence of non-qualified products on the site. At this stage, the site manager will collect all the DoPs which will be submitted once the works are completed.

With reference to the approval process, once the works are completed, the construction site manager "Direttore Lavori" will show the collected documentation, including DoPs and "Provini" (which are samples of material

used in every different area during construction) to the certifying bodies "Enti Certificatori". The latter certifying bodies will release the attestation of conformity of the final product after analyzing the samples together with the documentation.

With reference to the inspections, the construction procedure provides a final test "Collaudo finale", during which all the documents listed above - like the attestation of conformity released by the certifying body, final report made by the construction site manager which is a "perizia giurata" (sworn report) – are given to an indipendent Inspector "Collaudatore", who will make a final static inspection "Collaudo Statico" and draft a report. This report will be sworn and presented at the Civil Engineering Department "Genio Civile", which can verify inspections at any time.[143]

- **Liechtenstein:** The Office for Public Economy ("Amt für Volkswirtschaft"). The *Amt für Volkswirtschaft* deals with all issues in relation to the placing on the market of construction products and it secures cooperation with other competent authorities including but not limited to expert panels.
  Due to the limited size of the territory, there are no established procedures and/or institutions for the issuing of authorizations in relation to the placing on the market of construction products. It's partly for this reason that Liechtenstein manufacturers of constructions products choose to use third countries' procedures and institutions in order to obtain authorizations for products that they intend to put into circulation.
  The task of supervising the process of constructing a building is entrusted with the *Amt für Bau und Infrastruktur*. It is entitled to ask for the production of the DoP either in written form, or in an electronic/digital format.[144]

- **Lithuania:** The Director of the Municipality Administration, State Territorial Planning and Construction Inspectorate under the Ministry of Environment, State Non Food Products Inspectorate under the Ministry of Economy, State Consumer Rights Protection Authority.[145]

- **Luxembourg:** Municipalities are responsible for granting building permits. Building permits are only delivered if the project is compliant with the building regulations, the general development plan, and where applicable, the special development plan.

  The Luxembourg Institute of Standardisation, Accreditation, Safety and Quality of Products and Services (ILNAS) is responsible for standardisation, accreditation of conformity assessment bodies and designation of notified bodies.

  Inspectorate of Labour and Mines is responsible for the surveillance market in the field of construction products.

  National Roads Authority analyses and tests the construction products used for public services on behalf of the State and of the municipalities.[146]

- **Latvia:** The administrative bodies that may require the DoP are the Consumer Rights Protection Center ("CRPC"), the Ministry of Economics and municipal building inspectors.

  The CRPC has the right to review all and any of the documents concerning the conformity of the building products with the relevant standards. Therefore, the CRPC in entitled to review the DoP as well. The CRPC is a state institution subordinate to the Ministry of Economics, which exercises supervision over the CRPC.

  The decisions of the CRPC may be appealed before Ministry of Economics and may require the DoP when assessing the appealed decision.

  DoPs may also be required by municipal building inspectors, which have the power to inspect construction sites and review documentation related to the construction products.[147]

- **Malta:** The Technical Regulations Division is the competent national authority for the regulation of standards relating to construction products in Malta as well as the market surveillance authority, the designating authority and the notifying authority for purposes of Regulation 305/2011. The Technical Regulations Division does not carry out any pre-approval certification of construction products; however it carries out training and awareness campaigns in relation to

construction products, DoPs, standards relevant testing and information to prospective manufacturers, distributors and imports of construction products.[148]

- **The Netherlands:** Control on the usage of CE marking for construction products in the Netherlands has been delegated to the Inspectorate Living environment and Transport ("ILT"). The ILT is the supervisory authority for CE markings and supervision on DoP and information provided by market operators. Manufacturers and distributors are responsible for the application of the CE markings and the draft of a DoP, as well as performing random tests to ensure that the construction products maintain the quality as recorded in the DoP.

  The Council for Accreditation ensures that CE-markings are based on valid research, by checking the certificates of Notified Bodies.

  The DoP may be used to show that the used construction products conform to BB 2012, however, usage of the DoP is not mandatory. As such, the DoP is not required for building permits or inspections, but a builder may need to use the DoP in order to prove that the used construction products conform to BB 2012.[149]

- **Norway:** Administrative authorities that are responsible for processing building and construction applications may require the DoP, especially the Municipalities, which are the local building authorities. The builder must keep the relevant documentation available for surveillance from the local building authorities until five years after the project is finally approved. During this period, the local building authorities may require the product documentation. However, the county administrator, the county administrator's superior ministry, and the ombudsman might require the DoP if a building case is brought before them.[150]

- **Poland:** A DoP will be required by the same administrative bodies that are competent to deal with matters relating to construction products-Inspectors of Building Control at various levels.

The Act on Construction Products and the Act on the Conformity Assessment System appoint the General Inspectors of Building Control, along with the Regional and County Inspectors of Building Control as the bodies responsible for performing tasks related to construction products.

Building Inspectors can require a DoP during and after an inspection carried out at a construction site or at the premises of the manufacturer or importer of construction products.[151]

- **Portugal:** The *Autoridade de Segurança Alimentar e Economica* ("ASAE") is an administrative national authority in the field of food security and economic supervision.

  The *Autoridade Tributária e Aduanéira* ("*AT*") is coordinated by the Finance Ministry and administers the customs duties and controlling the external border of the European Union and of national territory. It began its functions on January 1st, 2012[152].

  The *Direcção Geral Actividades Económicas* ("DGAE")[153], was created pursuant to article 2 of the ministerial order n. º 42/2012[154]. It is a governmental agency with as its goal promotion and development of a favourable institutional context of economic competitiveness and innovation.

  LNEC, I.P.[155] is the national laboratory of civil engineering, created in 1946. It is a State Institute of Science and Technology, directed by the *Ministry of Economics*.

  IPQ, I.P.[156] is a public institute regulated by the law-decree n.º 71/2012 of March 21st (*Decreto-Lei n.º 71/2012 de 21 de Março*)[157].

  IPAC, I.P. is the national institute of accreditation required by the Regulation n.º 765/2008[158].

  The Municipalities are responsible for the whole building permits process according to the Regime Juridico de Urbanizaçao e Edificaçao.

ASAE supervises compliance with decree-law n° 113/93. The technicians of the ASAE can collect samples of construction products along with the producer, importer, trader, or in the same work to verify the correspondence to the applicable technical specifications. The ASAE is also responsible for all the administrative proceedings for infringement.

Direcçao Geral da Empresa communicates the lack of technical specifications in the construction products to the approved entities in another Member State.[159]

- **Romania:** Administrative bodies that may require the DoP are the municipalities' technical Building Committees, the State Inspectorate in the Field of Constructions and the Permanent Technical Council for Constructions.

  The Technical Building Committee is usually led by the Chief Architect and is responsible for examining permits and tentative approvals. It also handles questions relating to the approval of control plans and control managers as well as the organisation of workplace visits.

  The State Inspectorate in the field of Constructions is the responsible Romanian central government authority in relation to EU Regulation no 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products. The Inspectorate is responsible for carrying out market surveillance of construction products covered by the Directive 89/106/EEC and Regulation 305/2011/EU.[160]

- **Sweden:** Administrative bodies that may require a DoP are the National Board of Housing, Building and Planning, Swedac and the municipalities' environmental committees.

  The National Board of Housing, Building and Planning is a government authority which is administered by the Ministry of Health and Social Affairs and supported by an Advisory Board consisting of delegates who ate commissioned by the government.

  Swedac is a government authority for quality and safety as regulated the Conformity Assessment Act and the Conformity Assessment Ordinance (*Swedish: Förordning om ackreditering och teknisk kontroll* (2011:811)). Swedac answers to the Ministry of Enterprise, Energy and Communications. Further, Swedac is

the Swedish accreditation body and is also the market surveillance coordinator in for Sweden.[161]

- **Slovakia:** The DoP may be required by some administrative bodies that are competent to deal with matters related to construction products or to building permission. There is no duty to submit a concrete declaration on parameters. If the building permit procedure requires documentation on the suitability of constructions products for a site, the DoP might be useful.

  DoP may be used by administrative organs and bodies in reviewing building permit applications and related proceedings[162]

- **Slovenia:** Administrative units (entities) or the statistical regions of Slovenia are 12 administrative entities created in 2000 for legal and statistical purposes. These are responsible for building permits. The competent Ministries are responsible for the inspections. For example: the building inspection unit is an organ within the Ministry of Infrastructure and Spatial Planning of the Republic of Slovenia.[163]

2.2.2. Link with the field of construction products

Construction products when made available on the market must comply with regulations.

Technical approval bodies provide the technical framework within which the products can be made available and used in the market.

Market surveillance authorities who are in charge of monitoring compliance are administrative bodies that can sanction failure by market participants to fulfil technical and informational obligations in relation to products that are placed into the market.

Often local government, municipalities, or regional entities or delegated services from the central government will grant approvals for the construction of buildings whether ex ante or ex post construction. These approvals may be conditioned upon the use of certain types of construction products or of construction products displaying specific characteristics.

Finally, some administrative bodies have powers of adjudication. They can resolve first degree/instance disputes relating to sanctions or approvals.

- **Austria:** municipalities are responsible authorities for all issues, while local councils of the communities (or the new Administrative courts as of January 1, 2014) are the appeal bodies.[164]

- **Belgium:** when the European Technical Approvals are limited to the Regulation and the European Directive 89/106/CEE, the national Technical Approvals may consist of voluntarily evaluations when as well regulatory characteristics as other characteristics are treated in order that the suitability for the foreseen use can be proven.

The "UBAtc" (Union belge pour l'agrément technique dans la construction) (Belgian Union for the technical approval in construction) is an example of an approval institute that delivers technical approvals for materials, products, construction systems for the installers.[165]

Though the ATG ("Agrément Technique") does not discharge:

- the user or the prescriber of its legal and contractual obligations;
- the manufacturer from its liability regarding the product.

An ATG is only applicable to a given construction product, made by a given manufacturer, and is only valid for a limited period of three years.

In most cases, the approval of ATG is followed with certification.

The product or system of construction that has been approved receives a label that means that it has received a positive evaluation, registered in a document called "technical approval".

The Technical Approval division coordinates, within the CSTC, the Belgian and European activities regarding the granting of technical approvals. They are known as quality declaration under the brand "ATG" for Belgium and "ETA" (European Technical Approval from July the 1st 2013 "European Technical Assessments) for harmonised European technical specifications. The label ATG means that the product or the system has received a positive appreciation confirmed by the technical approval itself. The latter is given by the UBAtc.[166]

- **Bulgaria:** inspectors of the State Agency for Metrological and Technical Surveillance take care of the market surveillance related to the products placed on the market or in usage and ensure their compliance with the legal requirements.[167]

The National Construction Control Directorate, through its Director, prohibits the usage of construction products which are not assessed for conformity to the

essential requirements for construction works and may perform inspections at the places for production of these products. It can also order suspension of construction products or works being performed with construction products which do not conform to the essential requirements, as well as order suspension or demolition of illegal constructions if they are performed with non-conformity to the essential requirements for construction works and when their security and safety are affected.

For buildings, mayors or their delegates conduct examinations at construction sites and may request the presentation of all documents they find relevant.

Administrative bodies issue certificates for initiation of exploitation of construction works as well as building permits for these works and a final report.

- **Cyprus:** where the Competition and Consumer Protection Service considers there is a transgression of the law, it may, if it deems it necessary, apply to the District Court for the issuing of an order against any physical or legal person who is liable for the transgression of the law.
  Similarly, where the Customs and Excise Department considers that construction products are not accompanied with a certificate of conformity may impose restrictions and prohibitions on their import, export or allow their transit.[168]

- **Czech Republic:** the Building Office is responsible for issuing building and occupancy approvals.
  The Czech Trade Inspection Authority is responsible for surveillance over marketing of products including construction products.[169]

- **Germany:** where harmonised European standards exist, a testing procedure is conducted by inspection, monitoring and certification bodies. If the essential attributes of a product do not affect these standards, the admission of the product can even be made by the German Institute of Construction Products.

Supervision authorities are responsible for the approval of construction projects and construction supervision. They also monitor compliance with regulations and the proper performance of the different industry actors.[170]

- **Denmark:** the Agency for Energy has become the central Danish authority for construction matters.[171]

- **Estonia:** local municipalities are in charge of issuing building permits and construction oversight.
  The Estonian Technical Surveillance Authority carries out the market surveillance.[172]

- **Greece:** the General Secretariat of Industry controls and examines technical documentation and makes tests in order to state the suitability and conformity of a certain construction product with the requirements to fulfill.[173]

- **Spain:** control boards/notified bodies serve for inspection and administrative tracking of products or market surveillance.[174]

- **Finland:** the Local Building Control Authority is responsible for inspection construction products used in building for issuing building permits. The SYKE is responsible for approval, construction products, certification and accreditation of expert bodies dealing with construction products. The TUKES carries out surveillance of CE-marked construction products placed in the market. VTT Expert Services provides testing, certification, approval services, inspections and analysis calibration services. Contesta Oy provides testing and research. DNV Certification OY/Ab provides testing and certifying. Finotrol provides certification and testing services related to CE marking.[175]

- **France:** Town councils are in charge of collecting documents and delivering constructing permits.[176]

- **Croatia:** construction inspectors ensure that construction products conform to the stipulated requirements and that DoPs for these products are obtained and kept at the construction sites by builders.[177]

- **Hungary:** The Building Authorities in their assessment of construction works may require all document pertaining to a building, included but not limited to DoPs. For some construction works, such as temporary constructions, DoPs are essential as they replace the building permit approval process.[178]

- **Ireland:** building control authorities have the power to serve an enforcement notice on the owner or person carrying out works if these works or their design are not in compliance with the building regulations.[179]

- **Iceland:** the Iceland Construction Authority is tasked with supervising construction products sold in the Icelandic market and ensuring that such products meet the requirements of the Construction Act and related regulations.[180]

  The Local Construction Inspector is required to report any construction products being sold which do not meet the requirements.

  If serious danger ensues from the non-respect of regulations, the Iceland Construction Authority shall investigate and may impose sanctions of up to ISK 500,000.
  If breaches are serious or repeated, the Authority can withdraw the corresponding certification, as well as the operating permit if any party involved neglects its duties or demonstrates serious or repeated lack of care in its work.

- **Italy:** the High Council of Public Works handles almost every issue related to construction products and building. The Central Technical Service certifies and grades construction products and, along with other Italian institutions, issues permits.[181]

- **Liechtenstein:** the Office for Public Economy is in charge for all issues related to construction products.[182]

- **Lithuania:** the municipality administration is responsible for examining and issuing permits and tentative approvals.
  The State Territorial Planning and Construction Inspectorate under the Ministry of Environment verifies that all required documents (including DoPs) are consistent with the law.
  The State Non Food Products Inspectorate under the Ministry of Economy deals with consumer complaints concerning improper non-food products as well as prohibits the supply of dangerous ones.

  The State Consumer Rights Protection Authority regulates consumers' rights.

  The Certification Centre of Building Products sets out the requirements for accreditation and market surveillance.[183]

- **Luxembourg:** municipalities are responsible for granting building permits. The ILNAS for standardisation, accreditation of conformity assessment bodies and designation of notified bodies. The Inspectorate of Labour and Mines is responsible for the surveillance market in the field of construction products. The National Roads Authority analyses and tests construction products used for public services.[184]

- **Latvia:** The Consumer Rights Protection Centre exercises supervision over the construction products' market.

  The Ministry of Economics is responsible for the policy in the construction sphere, as well as publishing standards applicable for these products.

  Building inspectors supervise construction process and review documentation regarding the conformity assessment of the building products.[185]

- **Malta:** the Technical Regulations Division is competent for the regulation of standards relating to construction products as well as the market surveillance authority.

  The Malta Department of Customs is responsible for the control of imports and exports of goods.[186]

- **The Netherlands:** the ILT is responsible for the supervision of CE markings. Local authorities assess whether the used construction products conform to the requirements of BB 2012. They also supervise construction work and may assess during construction if the products used are safe with regards to BB 2012 in the manner that the construction products are actually used.

  The Council for Accreditation ensures that CE-markings are based on valid research.[187]

- **Norway:** the Agency for Planning and Building Services reviews the description of a project and the information provided in the application which is submitted to the municipality.
  The municipality shall authorize the application.[188]

- **Poland:** the General Inspector of Building Control along with the Regional and County Inspectors of Building Control are appointed as the competent bodies to carry out the tasks related to construction products.[189]

- **Portugal:** *ASAE* supervises the respect of the arrangements found in the CPR Regulation and in the law-decree n.º 130/2013 of September 10th. The technicians of the ASAE can collect samples of the construction products along with the producer, importer, trader, or in the same work to verify the correspondence to the applicable technical specifications. The ASAE is also responsible for all the administrative proceedings of infringement.

AT is the authority, named by article 10 of the law-decree n.º 130/2013, to control the external border for products falling under the CPR.

DGAE is the national representative of the Standing Committee on Construction. It is also granted strategic tasks in the construction products field, such as following up on the execution of the law-decree n.º 130/2013.

In accordance with article 3 of the law-decree n.º 130/2013, *LNEC*, *I.P.* collaborates with the *D.G.A.E.*[190] in providing information on the basic requirements for the proper usage of construction products in construction works (cfr. Article 3 of CPR)[191].

IPQ, I.P. designate the Technical Assessment Bodies (TABs) and maintains contact with the European Commission and the other Member States on the aspects related to the TABs (see n.º 1 of article 5 of the law-decree n.º 113/2013). It also informs the European Commission and other Member States of the so called notified bodies and verifies their participation in the working group foreseen under article 55 of the CPR Regulation.

IPAC issues the accreditation rules and carries out the necessary procedures for the assessment and notification of the notified bodies for the purposes of this Regulation. It also monitors notified bodies.

Municipalities are responsible for both the authorisation and supervisory processes.[192]

- **Romania:** the (technical) Building Committee and the Chief Architect are responsible for examining permits and tentative approvals as well as for handling questions relating to the approval of control plans and control managers and organising workplace visits.
  The State Inspectorate in the Field of Constructions is the responsible Romanian central government authority for setting out the requirements for accreditation and market surveillance relating to the marketing of products.

The Permanent Technical Council for Constructions is responsible for activities related to standardization, harmonization and accreditation.[193]

- **Sweden:** the Building Committee is responsible for examining permits and tentative approvals.
  The National Board of Housing, Building and Planning is responsible for setting out the requirements for accreditation and market surveillance.

  The Swedish Board for Accreditation and Conformity Assessment ("Swedac") is responsible for accreditation and coordination of market surveillance.

  The environmental committees are responsible for the municipalities' work concerning the protection of the environment and public health.[194]

- **Slovakia:** DoP may be used by administrative organs and bodies in reviewing building permit applications and in related proceedings.[195]

- **Slovenia:** Inspectorates have the power to inspect construction sites or the construction market itself. They can issue decision in case of irregularities and impose fines.
  Ministry attend complaints against Inspectorates' decisions.
  Administrative Units issue construction permits and operating permits.[196]

- **The United Kingdom:** local authorities are responsible for agreeing planning permissions and assessing in requirements compliance, while the Health and Safety Executive is responsible for administering Health and Safety rules, in so far as these apply to construction products.[197]

2.2.3. Context in which these bodies might need access to the DoPs (including reference to rules and examples)

Technical approval bodies should not need access to the DoP because they enable the establishment if the DoPs for construction products in the first place.

Market surveillance authorities however may require access to the DoP as they firstly may wish to verify that the provision of the DoP is effective pursuant to the CPR. Indeed, they can sanction market participants who fail to provide the DoP when required under the CPR. They may also require the DoP to check it against the products that are made available on the market.

Often local government, municipalities, or regional entities or delegated services from the central government might require documentation such as the DoP in building approval processes. However, they would usually require more general documentation such as architects or inspectors reports on the structure of the construction itself and the materials used.

- **Austria:** building authorities may need access to DoPs in order to review whether construction products used comply with the requirements of the relevant provincial legislation. This may be necessary for issuing a construction permit in advance as well as approvals upon finalisation of the construction work.

  The Construction Law of Lower Austria (nö Bauordnung) for example requires in Section 44 et seq. that construction products have to be useable. Also regulations of other provinces require construction products that are fit for the intended use and state sanctions for the use of non-suitable construction products.

  The market surveillance authority performs controls and tests of construction products. The DoP is checked for compliance with the CPR and declared performance values are tested in a notified test laboratory.[198]

- **Belgium:** the above-mentioned Ministers and the UBAtc may need access to the DoPs to check the proper and/or improper EC-marking, the requirements met, or

not, by the construction products, in order to be placed into the market, their fitness for use, to carry on with inspections and possible bans.[199]

- **Bulgaria:** the State Agency for Metrological and Technical Surveillance, as a market surveillance body, is authorised to require the DoP in order to check the compliance of the construction products with the legal requirements arising from doubts from other controlling bodies, citizens or the mass media.

  Depending on the category of construction work, different administrative bodies will intervene to examine applications for construction projects, grant permits and preform onsite inspections to check the conformity of the construction with the approved specifications and plans.

  Depending on the category of works, mayors or construction officials of municipalities or regions or National Construction Control Directorate may need access to the DoP when performing inspections at construction sites and the Administrative Body Issuing the Building Permit may request it to check the compliance of construction works with essential requirements.[200]

- **Cyprus:** the Competition and Consumer Protection Service may require the DoP for the purposes of the law relating to the protection of consumers.
  The Customs and Excise Department may require the DoP for construction products which are being imported, exported or in transit.[201]

- **Czech Republic:** the Building Office may need access to the DoP in the examination of either the application for building permit, the notification of building use or the application for occupancy approval.

  The Czech Trade Inspection Authority may require access to the DoPs in the context of market surveillance over marketing of construction products. It also may require submission of documents, including the DoP.[202]

- **Germany:** manufacturers of construction products must issue a DoP, which must be verified by market surveillance authorities. While handling testing

procedures, in order to provide the CE marking inspection, monitoring and certification bodies need the DoP to prove whether a building product complies with the basic standards or not.[203]

- **Denmark:** the Agency for Energy is the market surveillance authority responsible for market surveillance of construction products and can in this capacity need access to the DoPs.[204]

- **Estonia:** local municipalities might need access to the DoPs when determining whether building permits should be issued and while performing construction owner sight.

  The Estonian Technical Surveillance Authority may require the DoPs while examining issues of market surveillance.[205]

- **Greece:** the General Secretariat of Industry needs the DoPs to conduct their surveillance.[206]

- **Spain:** administrative bodies may need access to DoP in order to control the use of CE marking products in building construction.[207]

- **Finland:** the DoP is used to determine in harmonised standards the applicable factory production control, as well as to conduct tests of construction products to ascertain whether they meet the entire requirements or not.[208]

- **France:** The DGCRF may require the DoPs for construction products as part of its market surveillance functions.[209]

- **Croatia:** Most administrative bodies involved in construction issues may need access to DoPs during administrative proceedings.[210]

- **Hungary:** when a construction work is finished but before the occupancy permit is obtained, the documentation pertaining to the building is provided to the Building Authority. This would most likely include the relevant DoPs.

  It should also be noted that under the construction code DoPs should be attached to the construction log book as annexes. Administrative bodies may thus control these log books[211].

- **Ireland:** 'proper materials' must be used in all works.
  Technical Guidance Document (TGD D) contains guidance on how to comply with the requirements established by law so, when works are carried out in accordance with this guidance, this will indicate compliance with the building regulations. The DoP and CE marks are the main source of information on the performance characteristics of these products and may need to be considered in the decision-making process carried under building control acts.[212]

- **Iceland:** the Construction representatives may need access to the DoP to ascertain whether the construction products used during the construction of a building were in compliance with legal standards.

  The Iceland Construction Authority might need the DoP when a building is located within the perimeter of a designed security area or on the ocean, outside the jurisdiction of local authorities, or in cases arising out of its mandate to supervise the work of Local Construction Inspectors.

  The Appeals Committee for the Environment and Natural Resources might need access to the DoP when it receives an appeal from a decision.[213]

- **Italy:** DoPs may be needed to attest products comply with legal requirements and are safe for trade, supply, use, etc.[214]

- **Liechtenstein:** the Office for Public Economy may need the DoP in case of a notification lodged by a third party complaining about non-compliance with the

law and in case of an accident at work which would appear to be attributable to a defective construction product.

The *Amt für Bau und Infrastruktur* may need access to the DoP if there are indicia of an infringement of applicable building law.[215]

- **Lithuania:** the local administration needs access to the DoP when determining whether building permits and tentative approvals should be issued.
  The State Territorial Planning and Construction Inspectorate under the Ministry of Environment requires the DoP for inspections to verify that the DoP is consistent with the law.

  The State Non Food Products Inspectorate under the Ministry of Economy might need access to DoP in order to review the information provided and reach a decision.
  The State Consumer Rights Protection Authority is similar to that stated for the State Non Food Products Inspectorate under the Ministry of Economy.[216]

- **Luxembourg:** in order to grant a building permit municipalities may require access to the relevant DoPs. This would help them determine whether the construction products to be used meet public safety, health and hygiene requirements.
  The *Institut luxembourgeois de la normalisation, de l'accréditation, de la sécurité et qualité des produits et services* ("ILNAS") may need access to DoPs when assuring the overall coordination between the different departments in charge of market surveillance.
  The Inspectorate of Labour and Mines, for its part, may request access to the DoP in his capacity as market surveillance authority in the field of construction products.
  The National Roads Authority may need the DoP when analysing and testing the construction products used for public service.[217]

- **Latvia:** The consumer Rights Protection Centre ("CRPC") will require DoP when carrying out market supervision regarding construction products.

  The Ministry of Economics will request DoPs when receiving appeals from decisions of the CRPC. Building inspectors will require the DoP when exercising supervision of the construction process and examining documentation regarding conformity assessment of building products.[218]

- **Malta:** the Technical Regulations Division may require the DoP when carrying out its market surveillance activities.
  The Malta Department of Customs may request a DoP for construction products which are being imported into or exported from Malta.[219]

- **The Netherlands:** the ILT may at any time request information regarding the DoP in order to confirm that a product is validly CE-marked.
  Local authorities may require the DoP to ensure that construction work is safe and whether the functional requirements for buildings are met by way of conforming to the performance requirements. The Council for Accreditation may require the DoP in order to ensure the DoP is correct.[220]

- **Norway:** the Agency for Planning and Building Services might need access to the DoP to determine whether the project meets technical requirements.[221]

- **Poland:** either General, Regional and County Inspectors of the Building Control authority can request access to the DoP during and after a control carried out at a construction site or at the premises of the manufacturer or importer of construction products.[222]

- **Portugal:** ASAE may need access to DoPs while exerting its supervision activity,

  DGAE may have access to the DoP if consulted, even by economic operators, or in the performance of its functions.

LNEC needs access to the DoP when it is called upon to verify that the basic requirements applicable to construction works are met in particular with respect to the proper usage of the construction products (article 4 of the law-decree n.º 130/2013).

IPQ, I.P. might access the DoP, carrying out its functions as national Contact Point and cooperating with the *DGAE* to perform the tasks listed in article 3 of the law-decree n.º 130/2013.

IPAC established the reference standards for the elaboration of the DoPs for the accreditation of notified bodies. It may require access to the DoPs during the accreditation proceedings.[223]

- **Romania:** the (technical) Building Committee and the Chief Architect might need access to DoPs when determining whether building permits and tentative approvals should be issued, as well as when handling questions concerning the approval of control plans and when organising workplace visits.

  The State Inspectorate in the Field of Constructions may need access to DoPs when carrying out its duties related to market surveillance of construction products. The Permanent Technical Council for Constructions might need access to DoP when dealing with standards and the conformity of construction products with the approved standards.[224]

- **Sweden:** the Building Committee might need the DoP when determining whether building permits and tentative approvals should be issued.
  The National Board of Housing, Building and Planning may need the DoP for market surveillance of construction products.
  The environmental committees may require access to the DoP when examining permissions.[225]

- **Slovakia**: the national building department may request various documents, including DoP, to verify the fact that products have the required attributes and the building will meet fundamental construction requirements.
  It may also be used to (i) ascertain if any administrative breach was committed and (ii) determine the offender.[226]

- **Slovenia:** Inspectorates will need access to the DoP in the process of inspection of a specific construction site or construction product.
  Administrative Units need it in the process of obtaining the construction and operating permits.[227]

- **The United Kingdom:** DoPs are needed either to pass a structure pursuant to Building Regulations and/or if there was an accident in a building. Manufacturers do not need to declare performance for every characteristic of a construction product, they do need to do so for those characteristics for which there are provisions in relation to the intended use or uses in the Member States where the manufacturer intends to supply his/her product.[228]

Summary

In general administrative bodies have functions that involve the review of the DoP.

In most countries the nature of construction work planned will determine the competence of a specific administrative body. For construction work that constitutes public works or involve national interests, the central administrations will be responsible for approvals and supervision. Construction projects that are more local will tend to involve local governments or municipalities.

Typically, market surveillance authorities may also require the DoP since they are generally in charge of making sure that DoPs, when required, are drawn up and contain complete and correct information on the construction products that they refer to.

Administrative bodies may also have dispute adjudication functions where a building permit or a final approval have been refused and the refusal is contested. They may when reviewing documents require information such as that contained in the DoPs.

2.3. Judicial bodies that may require the DoP

2.3.1. General presentation, role function and competence of these bodies in the different Member States

One can say that all courts - first instance and appeal courts - may either require or review documents such as the DoP the only exception being for Supreme Courts which in some countries do not review the facts of the cases.

Civil courts are the most likely to be involved in disputes where the DoP might become an important piece of evidence. In some countries civil courts are not competent for disputes that involve companies in their dealing. Commercial courts may be competent for such disputes and the DoP may be relevant especially where a breach of contract between business entities is alleged.

In some countries a system of administrative courts exists to deal with disputes between the State and other institutions or private parties. Administrative courts may thus review DoPs in building permits disputes generally on appeal from decisions by administrative bodies or where construction contracts are with the State.

Finally, in a few countries special courts were created for disputes related to competition and market abuses. These may be competent were market surveillance authorities have sanctioned market participants.

- **Austria:** The judicial bodies that may require the DoP are the general courts, district courts, regional courts, courts of appeal and the Supreme Court.
  Disputes may arise in relation to liability for defects in construction projects and for damage caused by defective products.
  The new administrative courts will also review decisions made by municipalities as of January 1, 2014[229][230].

- **Belgium:** All Courts and judicial bodies may require DoPs when determining liability with regards to construction products.

The District Court which deals with all civil disputes, with the exception of disputes regarding labour, lease and rent, cases where the claims is below 1.860 EUR.

As judgement of the District Court may be appealed, the Courts of Appeal may also require DoP in order to assess the facts of the case.
The Supreme Court does not assess the facts of a case, and therefore will not require the DoP itself in any ruling.[231]

- **Bulgaria:** Civil courts in Bulgaria are competent to hear any case on tort and contractual liability. The main source of procedural regulations is the Civil Procedure Code.
  Civil courts are subdivided into regional and district courts, court of appeal and Supreme Court of Cassation.
  Administrative courts are competent to hear appeals against orders of administrative bodies. Administrative courts (Article 128 of the Administrative Procedure Code) hear all cases regarding: issuance, amendment, repeal or declaration of nullity of administrative acts; declaration of nullity or invalidate agreements made under the Administrative Procedure Code.
  Administrative courts are organised in a two-tier system. Regional administrative courts operate as first instance. As an exception to this rule, the Supreme Administrative Court shall act as the court of first instance where appellants appeal, inter alia, acts of the Council of Ministers, the Prime Minister, Vice- Prime-Ministers and ministers. The instance of cassation is the Supreme Administrative Court.[232]

- **Czech Republic:** Courts in civil proceedings decide on disputes relating to civil liability for defects under the Commercial Code or the Civil Code, which may also concern liability for defects of sold construction products or of work, including the use of construction products. Courts in Civil Proceedings may also decide disputes with respect to unfair competition, such as that resulting from misleading information stated in the DoP.

Administrative Courts may decide on actions against the decision of Building Offices in respect of e.g. building permits or occupancy approvals, which may relate to the field of the construction products. Administrative Courts may also decide on actions against the decisions of the Czech Trade Inspection Authority, in respect of the marketing of construction products (Administrative Courts may e.g. review the Czech Trade Inspection Authority's decision imposing a fine for misleading information in the DoP).[233]

- **Germany:** German court jurisdiction is distributed between ordinary courts, industrial courts, administration courts, finance courts and social courts. Ordinary courts cover criminal cases and civil disputes between individuals and companies.

  Industrial courts decide on disputes arising from employment relations, in operation-constitutional affairs and in disputes between parties to collective agreement or between them and third parties.

  The General administrative jurisdiction is competent for all disputes between citizens and public authorities.

  Damages to persons or property, depending on not authorised products, violate German law. The responsible person might be penalised by criminal court and sentences to compensation by civil court. Disputes about the certification of products have to be settled at administration courts.[234]

- **Denmark:** Danish courts, which comprise single judicial line of jurisdiction from the Municipal Court, through the High Courts and the Supreme Court, with the addition of the specialised Marine and Commercial Court, which operates at the level of the High Courts. In addition, disputes may be settled by arbitration tribunals which thus may require DoP.[235]

  Disputed may arise in relation to liability for defects in construction projects and for damage caused by defective products, as well as cases of misleading marketing practices.

- **Estonia:** Judicial bodies that may require the DoP are the general courts, which comprise county courts, circuit courts and the Supreme Court, and the

administrative courts, that are the first court instances of administrative proceedings (the second and third level courts are circuit courts and the Supreme Court.)

Civil disputes over construction and sale and use of construction products is solved by general courts. If someone disputes an administrative body's decision relating to building and permits, the competent court to hear the case is the administrative court.[236]

- **Greece:** The Administrative Court of Appeals has jurisdiction over any disputes arising between the Greek State and the contractor from contracts of public work and concerns the non use of certified building materials.

  Jurisdiction lies with the District Court for the adjudication of Civil Liability of the State concerning cases for the compensation of private individuals for harm caused by the use of non certified construction products.

  The Civil Courts are competent for cases of compensation against construction products manufacturers that do not comply with the standards specified by law. At the first instance, the Court of Peace is competent for damages up to 20.000 euros, and the Single-member District Court is competent for damages upward to 20.001 euros and more.[237]

- **Spain:** The DoP may be required by civil and Contentious-administrative judicial bodies in cases of first instance claims as well as second Instance bodies.

  Administrative jurisdictions will need the DoP for example in case of non-compliance with the regulatory requirements.

  Civil Courts will admit the DoP as evidence in cases of building defects disputes (construction liability).[238]

- **Finland:** Judicial bodies that may require the DoP include general courts, administrative court and special courts.

  Disputes may arise in relation to liability for defects in construction projects and for damages caused by defective products. The Market Court, may require the DoP in cases of misleading marketing practices. Decisions from the Local Building Supervision Authority can be appealed to the administrative courts.[239]

- **France:** Neither the law nor the jurisprudence provide that the judicial bodies may require the DoP or, in the system in force until July 2013, the declaration of conformity.

  DoP will certainly be mentioned in procedures relating to contractual liability or tort. Therefore, common competences rules will apply. According to the circumstances, the Civil Courts (Tribunal de Grande Instance), commercial Courts (Tribunal de Commerce) or administrative Courts (Tribunal administrative) will be competent.[240]

- **Croatia:** DoPs (currently certificates of conformity) may potentially be required in the 1st degree by both ordinary courts of law, i.e. municipal courts, and specialised courts of law, i.e. administrative courts, petty offence courts and commercial courts. They may also be required in proceedings of review of judicial awards by the 2d degree judicial bodies.

  Municipal courts may require access to DoPs both in civil and criminal cases, e.g. involving legal consequences of defects of construction products used in construction works.

  Administrative courts may require access to DoPs in relation to judicial review of decisions by administrative authorities.

  Petty offence courts may require access to DoPs due to prosecution of petty offences, such as when builders have not timely procured required DoPs for the construction products used in construction works.

  Commercial courts may require access to DoPs in civil cases between commercial entities, e.g. involving consequences of defects of construction products. [241]

- **Hungary:** If there's a civil lawsuit regarding the quality or any characteristics of the construction products, the claimant can initiate a lawsuit before the district or regional court. The amount claimed will determine the competence of either court.

  If the second instance Building Authority's - being an administrative body- decision is appealed, this shall be before an administrative court. An appeal may be formed against the administrative court's decision to the regional court of

appeal. After the regional court of appeal's final decision, in restricted cases, an extraordinary appeal may be filed with the Curia, the highest instance in Hungary.

The DoP may be produced by the parties during these proceedings.[242]

- **Ireland:** The DoP might be used or considered (in the context of evidential material only) by the High Court, Circuit Court or District Court.

  The Irish Building Acts 1990 and 2007 allows building control authorities to seek an Order from the Irish High Court or the Irish Circuit Court to stop work on certain buildings. The relevant authorities may bring summary criminal prosecutions for all building code offences in the Irish District Court or by indictment to other courts, e.g. the Irish Circuit Court or the Irish Central Criminal Court.[243]

- **Iceland:** Any administrative decision relating to construction products can be referred to a District Court. The District Court's decision in such a case can be appealed to the Supreme Court. Similarly, disputes between private parties with respect to construction products may be brought before the District Court.[244]

- **Italy:** Judicial bodies that may require the DoP are the Italian Courts (Peace Officer, Inferior Courts, Courts of Appeal and the Supreme Court; TAR-Regional Administrative Courts, CGA and Consiglio di Stato- which are both administrative Courts of Appeal. Disputes on this matter can also be settled by arbitration tribunals and mediation centres.[245]

- **Liechtenstein:** The civil law courts (the Vaduz District Court, the Upper Court and the Supreme Court) would deal with claims brought under the Produktehaftpfichtgesetz, the ABGB and/or the UWG; i.e. with all sorts of warranty claims, damages claims or product liability claims.

  By contrast, the Liechtenstein Government, the Beschwerdekommission für Verwaltungsangelegenheiten and the Verwaltungsgerichtshof would have to decide cases associated with the placing on the market of construction products or the use of such products on site.[246]

- **Lithuania:** Disputes may arise in relation to the liability for defects in construction projects and for damage caused by defective products as well as in customer and traders relations regarding misleading marketing practise. In addition, decisions made by State Consumer Rights Protection Authority or State Non Food Products Inspectorate under the Ministry of Economy might be appealed to the first instance courts.[247]

- **Luxembourg:** Judicial bodies that may require the DoPs are the Court of Appeal, the District Courts, the Justices of Peace, the Administrative Courts and the Administrative Tribunal.

  The ordinary courts deal with disputes arising in relation to liability for defects in construction projects and for damage caused by defective products.

  Decisions from administrative bodies can be appealed to the administrative courts.[248]

- **Latvia:** The courts of general jurisdiction do not possess any particular link to the field of construction products. However, since there are no specific bodies designed under Latvian law to deal with disputes arising in relation to construction products, any such dispute falls within the competence of these courts as any civil claim would.

  Administrative courts also do not have any specific connection to the field of construction products. However, since the institutions of the state exercise supervision of the construction product market and administrative courts are the bodies before which decisions of these institutions may be disputed, it becomes evident that the administrative courts might potentially be more involved with dealing with matters regarding the conformity of construction products than the civil courts.[249]

- **Malta:** The Small Claims Tribunal deals with claims not exceeding the sum of 3.500,00 EUR and which are to be decided summarily.

  The Court of Magistrates (Malta) and the Court of Magistrates (Gozo), both have jurisdiction in civil and a criminal matters. The hears civil cases which exceed the

competence of the Small Claims Tribunal which do not fall within the competence of the First Hall of the Civil Court. The Court of Magistrates (Gozo) has a superior and an inferior jurisdiction. The First Hall of the Civil Court is the superior court which deals with all matters, civil and commercial, which are not by special provision of law assigned to be tried before another court.

The Courts mentioned above may be involved in matters relating to liability of sellers, architects, contractors, builders, manufacturers and their local representatives and those who place the construction product to which the relevant DoP relates, on the Maltese market. The Courts may be involved in the judicial review of actions carried out or decisions taken by the Technical Regulations Division. The Criminal Courts could be involved in situations relating to criminal liability arising out of the Products Safety Act, and the Consumer Affairs Tribunal could be involved with consumer claims relating to construction products.[250]

- **The Netherlands:** All courts which assess the facts in civil liability cases may review DoPs when determining liability with regards to construction products for damages suffered. The following courts may require the DoP, if a construction product has a CE-marking and therefore requires a DoP. The District Court (Rechtbank), which deals with all civil disputes, with the exception of disputes regarding labour, lease and rent, agency agreements and cases where the claim is below 25.000 EUR or an indeterminate value which is likely less than 25.000 EUR. These cases are handled by the Subdistrict Courts.

  As judgements of the District Court and Sub district Court may be appealed, the Courts of Appeal may also require DoPs in order to assess the facts of the case.

  The Supreme Court does not assess the facts of a case, and therefore will not require the DoP itself in any ruling.[251]

- **Norway:** Disputes that arise in the field of construction products, or where the qualities of the construction product is essential to the case, might be relevant for the Court. In such case, a DoP can be relevant as documentation or evidence.[252]

- **Poland:** The common courts hear disputes related to civil liability, including liability concerning construction products. This will probably be one of the most common cases in which a DoP may have to be produced before a judicial body. The common courts hearing civil disputes related to the non-performance or the improper performance of a contract, or to the liability for an unsafe product may want to examine the DoP in order to verify whether the construction products used were not dangerous to the health of users or were not the cause of an event that imperilled human life. Criminal sections of common courts may examine the DoP in order to verify whether the construction products used were not dangerous for health or were not the cause of an event that imperilled human life. The Competition and Consumer Protection Court may verify whether or not a decision by the president declaring that information included in a particular DoP is misleading, was accurate examining the DoP in question.[253]

- **Portugal:** There are two degrees of jurisdiction plus the Supreme Court of Justice. The Courts of the first jurisdictions normally have the name of the municipality where they hear and decide criminal cases and cases involving litigation between citizens.

  The courts of the second jurisdiction, are called Tribunais de Relaçao. They adjudicate cases which have already been examined by the first jurisdiction courts. All of their appeals come from the court of the first jurisdiction.

  The Supreme Court is situated in Lisbon and it is the final jurisdiction in Portugal. However, it may only decide on matters of law.

  Defective construction products and damages caused by them may lead to court litigation during which the DoP can always be put forward as evidence.[254]

- **Romania:** The District Court handles criminal, civil and administrative cases. The District Court also deals with various kinds of matters, except general civil, criminal and administrative.

  The Tribunal handles criminal cases as well as civil law cases. The tribunal also handles appeals against the decisions issued by district courts, or recourse, when special laws dispose so. There are 41 Tribunals in Romania.

The Court of Appeal is the first instance court in administrative and fiscal contentious cases, accordingly to special law. The Court of Appeal also works as the second instance court in the cases decided by the Tribunals or sits as court of recourse, accordingly to special laws. There are 16 Courts of Appeal in Romania.

The Supreme Court or the High Court of Cassation and Justice accordingly to its Romanian denomination is the final instance in the Romanian judicial system.

Disputes may arise in relation to liability for defects in construction projects and for damage caused by defective products. The DoP may also have relevance in cases of misleading marketing practices or unfair competition. Decisions issued by the mayor at the recommendation of the technical Building Committee and General Architects can be appealed to the ordinary courts.[255]

- **Sweden:** Judicial bodies that may require the DoP are the general courts, which comprise district courts, courts of appeal and the Supreme Court; the general administrative courts (administrative courts, administrative courts of appeal and the Supreme Administrative Court); and also the Market Court (which is a specialised court that handles cases related to the Competition Act as well as cases involving the Marketing Act and other consumer and marketing legislation). Moreover, disputes may be settled by arbitration tribunals which thus may require to review documents such as the DoP.[256]

- **Slovakia:** The DoP may be used in all of the following courts: Civil Courts, Administrative Courts, Criminal Courts and Arbitration Courts. The DoP will be used as a material piece of evidence to support claims of either of the disputing parties.

  The DoP may be used in a civil liability context and also in the context of judicial reviews of decisions by administrations.

  Courts acting in the area of administrative law review acts of administrative bodies and processes that lead to them. They determine if an effective administrative body's final decision respected the petitioner's right under the law. The DoP may be used as evidence in such proceedings.

  Criminal courts and the police may use DoP to determine if a criminal offence was committed.[257]

- **Slovenia:** The Judicial bodies that may require the DoP are the general courts, 1st and 2d district courts, courts of appeal and the Supreme Court of Slovenia, the general administrative courts. Against the judgements of an Administrative Court, a complaint is allowed. Such complaint must be filed with the Supreme Court of Republic of Slovenia.[258]

2.3.2. Link with the field of construction products

In some countries proceedings are lodge before courts that have a general competence in most matters. In Ireland for example, the Irish Building Act 1990 allows building control authorities to seek an Order from the Irish High Court or the Irish Circuit Court to stop work on certain buildings. It also introduces the option for authorities to bring summary criminal proceedings.
In other countries specialized courts have been created often based on the nature of the parties. Administrative courts provide judicial review of acts made by administrative bodies. Commercial courts decide on disputes between businesses. Given the nature and use of construction products more type of courts may be competent to hear cases involving their placement on the market and their use thereafter.

Civil and sometimes commercial courts will hear cases related to breach of contract, tort, breach of warranty, defective products. These arise in the context of the placing on the market of construction products.

Criminal courts may hear cases where construction products were placed fraudulently on the market or in cases of bodily harm that could have been caused by the use of construction products.

Specialised or administrative jurisdictions may be competent to review issues or decisions related to market rules and the violation thereof following the placement of construction products on the market.

Administrative courts will review appeals against administrative acts taken by administrative bodies such as orders to withdraw products from the market or refusals to grant building permits or approvals.

2.3.3. Context in which these bodies might need access to the DoPs (including reference to rules and examples)

In some countries judicial bodies may request the production of documents, including the DoP during proceedings. In Luxembourg for example, where the court considers that it does not have enough information on which to base a decision, it may take a measure of inquiry[259].

In other countries the only time where the DoP may be produced or required by a judicial body would be where a party refers to it as or produces it into evidence. In Bulgaria for example the court will not request documents *ex officio*.

- **Austria:** Civil Courts may require the DoP in cases of warranty claim, damages claim or product liability action; it may be used to ascertain or apportion responsibility in a liability context.
  Criminal courts might need DoPs with regard to fraud allegations or to negligence causing injury or manslaughter.
  Further, the DoP may be used by a party to show conformity of the products with warranty expectations. According to Sec 8 Para 2 of the Product Liability Act, a DoP may be a relevant evidence for an exclusion of liability. Indeed under the Act, liability shall be excluded by providing that according to the state of technology at the time when the product was put into circulation by the person against whom an action is brought its properties could not be recognised as a defect.[260]

- **Belgium:** Courts may always be allowed to request all necessary items to make progress on a dispute they are handling.[261]

- **Bulgaria:** courts may not gather documents (including DoPs) ex officio but only upon request of a party to the case. They can admit them either as a paper or as an electronic document.[262]

- **Cyprus:** both judicial bodies, District Courts and the Supreme Court, may need access to the DoP as an evidentiary tool in establishing liability of sellers, architects, contractors, builders, manufacturers and their local agents and those who place construction products to which the relevant DoP relates, on the Cyprus market. The DoP will also be a necessary piece of evidence in the event of any judicial review carried out or decisions taken or omission by the Ministry of Interior.[263]

- **Czech Republic:** the DoP may serve as evidence in the relevant court proceedings.[264]

- **Germany:** in order to prove the breach of rules compliance with the DoPs need to be reviewed by criminal courts, and also by civil courts in cases of liability for defective products or damages caused by building products.
  In administrative-judicial procedures it may also be necessary to inspect the DoP if decisions made by administrative bodies are appealed.[265]

- **Denmark:** as having a legal system based on the so called party principle, judicial bodies may examine the DoP only if any of the parties refers to it as evidence in proceedings. Thus, judicial bodies will not on their own accord require on review the DoP if no party submits, or refers to, the DoP.[266]

- **Estonia:** DoP is documentary evidence (article 272 Code of civil proceedings). It therefore may be used every time some factual information that is or should be present in DoPs needs to be verified.[267]

- **Greece:** The DoP will be relevant in any situation where a litigant wishes to use the DoP as evidence provided that the case relates to construction products. The court will not ask for the DoP on its own initiative.[268]

- **Spain:** first and second instance courts may admit the DoP as evidence if one of the parties introduces it as one of his means of proof.[269]

- **Finland:** the manufacturer ensures the quality of construction products through DoP, and judicial bodies may access to the DoP in order to serve the larger interest of justice in trials before municipal courts and commercial courts; administrative courts trials and petty offence courts trials.[270]

- **France:** the judge could eventually ask the parties to communicate all relevant documents to the tribunal or to the other party. However, generally the judge has to act at the request of the other party.[271]

- **Hungary:** judicial bodies might examine DoPs only if any if the parties refer to it as evidence in court proceedings or arbitration tribunals. Due to the principle of freedom of proof, judicial bodies will not on their own accord require the DoP if none of the parties submit it or refer to it during proceedings.[272]

- **Ireland:** the DoP could be adduced in evidence as a method to ascertain responsibility, as it may play an integral part of forming an evidentiary platform on which to base actions in market surveillance and to enforce penalties and fines.[273]

- **Iceland:** these bodies might need access to the DoPs in any court proceeding involving an alleged breach of contract or liability for defective products used in building construction.[274]

- **Italy:** DoPs may be used as evidence of the breach of a contract or other legal obligations in order to prove responsibilities of manufacturers, distributors and/or building companies.[275]

- **Liechtenstein:** it belongs to the parties to the proceedings to make the court aware of all factual elements of a case. The court does not investigate such circumstances *ex officio*.
  Authorities dealing with public law can use any document as evidence, including DoPs.[276]

- **Lithuania:** it is quite possible that in order to prove their rights, parties might submit DoP as evidence under article 177 and 179 of the Code of Civil Procedure.[277]

- **Luxembourg:** judicial bodies may examine DoPs in cases involving construction products if any of the parties refer to a fact relating to those products and the judge considers that this fact is necessary to the assessment of the claims. The judges may where necessary on their own accord requiere the DoP even if it is not submitted by the parties.[278]

- **Latvia:** the courts would need access to the DoP during the proceedings if the court had before it a case in which the DoP offers any kind of evidentiary value (article 92 of the Civil Procedure Law). The parties may present the DoP before the courts of general jurisdiction, but administrative courts might request the DoP *ex officio* in accordance with the principle of objective investigation. It will thus serve as evidence to ascertain liability.[279]

- **Malta:** The judicial may need access to the DoP as an evidentiary tool in establishing liability of sellers, architects, contractors, builders, manufacturers and their local representatives and those who place the construction product to which the relevant DoP relates on the Maltese market. The DoP will also be a necessary piece of evidence in the event that any judicial review of the actions carried out / decisions taken by the Technical Regulations Division.[280]

- **The Netherlands:** Determining liability may require assessing whether construction products used are either fit for a purpose or fit for the specific purpose for which they were selected by a builder, designer or architect. Parties

are responsible for the scope of the case, and, as such, are required to set forth their cases through facts and evidence. A wronged party may include a DoP as evidence, in which case the court may examine the DoP.[281]

- **Norway:** The declaration of Performance can be relevant as documentation or evidence in the context of disputes arising out of the purchase or use of construction products.[282]

- **Poland:** Access to the DoP might be required as evidence material through procedures concerning construction products.[283]

- **Portugal:** the DoP can always be put forth as evidence of proof based on the principle of freedom of proof. [284]

- **Romania:** the judicial bodies might examine the DoP if any of the parties refer to it as evidence, even if the DoP is not in the possession of the party who refers to it.

  According to the principle of the active role of the judge, DoPs may also be requested by the judge *proprio motu*.[285]

- **Sweden:** Access to the DoP shall be required when parties refer to it as evidence. Judicial bodies will not on their own accord access the DoP, due to the principle of freedom of proof.[286]

- **Slovakia:** as above-provided, DoP may be used as any other evidence in civil, administrative or criminal cases, where determining attributes of building products is relevant in adjudicating a dispute, liability and/or culpability of a party.[287]

- **Slovenia:** judicial bodies might need to examine the DoP if any of the parties refer to it as evidence.[288]

- **United Kingdom:** DoPs are important when a court case involved quality and specification materials. Parties can also refer to a DoP in their pleadings, stating the relevance to the claim and why it is relied upon. Experts called by the Courts can also refer to the DoPs in their reports, they can be referred to a hearing before a Judge if they have been adduced in evidence or expert evidence.[289]

Summary

Civil courts are the most likely to be involved in disputes where the DoP might become an important piece of evidence. In some countries, civil courts are not competent for disputes that involve companies in their dealing. Commercial courts may be competent for such disputes and the DoP may be relevant especially where a breach of contract between business entities is alleged. In most countries the courts will not *ex officio* request documents such as DoPs. In general it is the party that makes a claim or alleges a fact that will submit documents in support of the claims or obligations. Experts designated by the parties or by the Courts may request and use the DoP to form their opinion. Finally, in a few countries, the courts may request documents directly.

In some countries a system of administrative courts exists to deal with disputes between the State and other institutions or private parties. Administrative courts may thus review DoPs in building permits disputes generally on appeal from decisions by administrative bodies or where construction contracts are with the State.

Finally, in a few countries special courts were created for disputes related to competition and market abuses. These may be competent were market surveillance authorities have sanctioned market participants. Such courts may request documents *ex officio*.

Criminal courts may also be competent when fraud, false statements or misrepresentation are alleged or death or bodily injury has occurred. The prosecution will have a pro-active role and require all documents necessary for the case.

2.4. Insurance organisations

2.4.1. General role of insurance organisations in the construction products industry

Insurance companies play an important role in the construction industry in general. The risks of personal injury and the amounts at stake in some projects are such that insurance companies often come into play.

There is rarely a legal obligation to obtain insurance coverage for construction products. However, in some countries insurance is compulsory for architects, designers, builders and construction evaluators. Where insurance is not compulsory, it is often the rule that market participants will in practice be insurance for professional liability.

During the course of any construction project, damage may occur that is alleged to be the result of either (i) improper design by the architect, (ii) faulty by installation by a contractor, or (iii) a product that was defective when installed. For the end user affected by the damage, or for the contractor against whom a defect claim is made, the availability of insurance coverage is an important consideration. This may help determine whether the injured party will be made whole, how liability may be shared or how the dispute may be resolved.

Insurance companies will typically insure for third party liability insurance or public liability insurance and professional indemnity insurance which covers a party's liability caused by its negligence in carrying out professional duties. All risk insurance coverage will in addition provide a coverage for the insured party's own losses.

When insurers are called in to compensate they may be reluctant to defend and indemnify policyholders who are defendants in construction litigation and it is therefore important to evaluate whether the format in which the DoP is provided has any impact both on the award of a policy and on the application of any exclusions later on in the process.

- **Austria:** insurance organisations do not have a specific role in the construction products industry as it is not compulsory to conclude an insurance contract.[290]

- **Belgium:** the most common insurances on manufacturing are used, along with liability insurances.[291]

- **Bulgaria:** Bulgarian legislation does not impose mandatory insurance coverage for construction products used in construction works. Instead, some participants in the construction process such as designers and contractors shall be obliged to insure against professional liability for any damages inflicted on other participants in construction or third parties, or both, as a result of wrongful acts or omissions in the course of, or in connection with, the performance of their duties, including for death and bodily injury. The insurance is compulsory during the period of activity and must survive discontinuance of activity for at least five years from the date when the activities have ended.

  Separate insurance may be agreed upon between the participants in the construction covering their liabilities for a specific work. In addition, the contracting party may require that the contractor conclude additional insurance covering damage to property caused by the construction work.[292]

- **Cyprus:** There is currently no statutory obligation on constructors, architects, civil engineers or manufacturers to maintain a professional liability insurance.[293]

- **Czech Republic:** its role would depend on the circumstances in each specific case, as there is no special regulation regulating insurance with respect to construction products. The role of insurance organizations would depend on arrangements in a specific contractual relationship.[294]

- **Germany:** even though insurance coverage is not compulsory in the field of construction products, in practice, no company will work without insurance coverage.[295]

- **Denmark:** the building defects insurance covers serious building defects from errors in design, execution of works or from building materials.[296]

- **Estonia:** there is no obligatory insurance for construction products.[297]

- **Greece:** The law does not require manufacturers of construction products to obtain liability insurance coverage. Insurance is optional and is regulated by article 25 of No. 2496/1997 Insurance Law.[298]

- **Spain:** Insurance companies play a role concerning functionality, safety, habitability. To protect manufactures, promoters and individual property and building owners after the date of its receipt in case of material damage suffered due to construction defects.[299]

- **Finland:** in case of insolvency of the founding shareholder the insurer providing the cover has to compensate the housing company and the share buyers. DoP may then be used as a piece of evidence to prove defective quality of construction product, if it does not reach to the specification and standard stated in DoP.[300]

- **France:** damages insurances and liability insurances are compulsory. Damages insurance aims at ensuring a quick compensation, providing for a guarantee to the insured party. Liability insurance covers compensation for the risks attached to "*garantie décennale*".[301]

- **Hungary:** Insurance coverage is compulsory for experts and architects under the Building Act of 1997. There are no other systems of mandatory insurance coverage in Hungary relating to construction products.[302]

- **Ireland:** there is no legal requirement that insurance be procured in relation to construction products.[303]

- **Iceland:** The Insurance Contracts Act No. 30/2004 of May 2004 does not contain any provision specifically relating to construction products. However, it requires

building designers and construction supervisors to have a professional liability insurance covering potential liability, which could be provided by one of the main insurance companies operating in Iceland.[304]

- **Italy:** numerous insurance companies in Italy offer a so-called insurance policy "decennale postuma" for public works and the decennial insurance policy for private construction. These organizations ascertain that the construction product corresponds to the requirements of the project as a whole. This is carried out in terms of obtaining the relevant certification on the quality of construction with the aim of assigning a value and affording protection to the final user. Their role is thus to indemnify themselves from the risks associated with building or construction.[305]

- **Liechtenstein:** Insurance is not mandatory for construction products.[306]

- **Lithuania:** there is mandatory insurance for the designer and the contractor of a construction work, covering the civil liability of the designer and the contractor for the damage caused to the builder and the third parties. There are other construction related insurance types, such as C.A.R (construction all risks insurance), warranty insurance, and completion warranty insurance.[307]

- **Luxembourg:** the only compulsory construction insurances are those of professional liability of architects and engineers.
  Above and beyond this obligation, most construction firms cover their third party liability only.
  In case of public procurement projects or of private contracts, the contractual clauses may impose on the parties involved in the construction operation to take out one or several insurances.[308]

- **Latvia:** under Latvian law a builder is obliged to obtain compulsory construction civil liability insurance (CCCCLI). There are two types of CCCCLI: a CCCCLI, valid for one year and which may apply to several construction sites where the particular builder operates, and a CCCCLI, which applies only to one particular

construction site and remains valid throughout the entire construction process.[309]

- **Malta:** there are currently no insurance obligations for the construction products industry in Malta. It is however customary for every person in business to have some form of insurance cover, such as professional indemnity insurance for the architect.[310]

- **The Netherlands:** Manufacturers, architects, designers, builders, and developers are not required by law to obtain insurance coverage for construction products used in a building, nor do insurance companies require that specific documents related to the construction products be provided in order to provide insurance coverage. However, construction parties are almost always insured in practice. Principals usually require that builders have insurance, such as Construction All Risk (CAR) insurance and third party liability insurance. Dutch construction is heavily dependent on standard forms of contracts, such as the Uniform Administrative Conditions for the performance of works and technical installation works. Standard contracts often obligate the builder to take out insurance. Also, on the level of putting out orders to tender by the government, CAR-insurance may be an obligatory part of the tender conditions.[311]

- **Norway:** insurance companies are involved in different segments of the construction products industry. Insurance companies provide both manufacturers and developers with liability insurance.
  Insurance for liability is not mandatory in Norway, but builders have to provide warranty when the work they are carrying out is on behalf of a consumer.[312]

- **Poland:** commonly, insurance against all risks of construction and assembly is required. Another type of insurance services common in the construction industry is contract performance guarantee and guarantee for the removal of defects.[313]

- **Portugal:** entities which are involved in evaluating conformity of construction products are obliged to sign up for a liability insurance; technicians are also obliged to have civil liability insurance. In private contracts it is mandatory for the contractor to take out civil liability insurance.[314]

- **Romania:** there is no mandatory insurance for the construction products industry and, in practice, insurance companies sell a variety of insurance policies for builders, including all risks insurances.
  When the client is the State, the builder may be required to have special insurance.[315]

- **Sweden:** mandatory insurance is provided for under the Building Defects Insurance Act. This covers the building defects insurance, the building defects insurance for houses, the completion warranty insurance, and the completion warranty insurance for houses. The "all risk" insurance covers the risk of damage caused to materials during the performance of the contract work and two years after its completion; the third party liability insurance covers claims for damages, occurring during the performance of the contract work and two years after its completion, that can be directed by the contractor.[316]

- **Slovakia:** insurance is to be contracted with insurance companies; it may be required in some professions (architects).[317]

- **Slovenia:** role determined in article 28 of the Construction product act. It delivers an obligation for the certificate bodies, as their work must be insured unless their responsibility is already insured by the state on the basis of the law.[318]

- **United Kingdom:** the product liability insurance pays for any damage or injury (within the limits agreed) resulting from the use of the insured's goods or services. This insurance protects against liability for injury to third parties or damage to their property, arising out of products supplied by a business.

> Public liability insurance is the mandatory insurance that parties are required to have in order to cover damages caused by the negligence of the tort feasor to third party property, or to third persons. This provides an indemnity against any civil action brought by a third party non-employees against the insured.[319]

Professional indemnity insurance covers a party' liability caused by its negligence in carrying out its professional duties. It maintains its effects beyond the end of the project.
The contractor's all risk insurance covers accidental physical damage to construction works and site materials. It is likely to exclude damage caused by defective products installed.
NHBC covers damages and defects to a home bought under the benefits of this cover, which will make the developer rectify any defects within the first two years, and then, for the following eight years, defects will be rectified under the NHBC.
Latent defects insurance typically lasts for ten years from the original construction of a building. It usually protects the owner of a building against material damage to the building. In this case, the building owner does not have to prove fault by any party.

2.4.2. Context in which these organizations might need access to the DoPs

The Polish national consultant stated in his report that in order for the insurance companies to assess risk levels in order to determine the premiums for insurance coverage, insurance companies may need to review the DoP as they contain important undertakings on product characteristics and performance.
However, based on the information gathered in general, insurance companies do not require documents specifically containing the DoP prior to granting insurance coverage for a construction project or products. They may request building permits or construction approvals for coverage on specific projects.
The DoP may become useful where there is a claim. In this case, the DoPs may be of relevance in determining who is liable for a defect or damage and whose insurance may be likely called on or how liabilities should be apportioned between the different insurers and parties.
If a party has taken out an insurance policy and a claim for damages related to the products themselves is filed, the insurance company may need documents such as the

DoP to determine if its policy covers the type of liability on which the claim is based, determine the apportionment of responsibilities, and settle the matter or litigate.

Often, insurance companies will exclude coverage in cases of fraud, false declarations, or misrepresentation. Information contained in the DoP may be relevant for such issues. Insurance may include language in contracts that relevant documents be kept for a period of time and exclude coverage where the documentation is not properly kept. However, there is no indication that specific archival formats are imposed by insurance companies.

Hence, the DoP would most likely be requested once a dispute exists at the pre-litigation or litigation stage.

Summary

In most countries insurance is not compulsory. In some countries insurance is compulsory for architects, designers, builders and construction evaluators. Where insurance is not compulsory, it is often the rule that market participants will in practice be insured for professional liability.

Based on the information provided insurance companies do not require documents such as the DoP prior to providing coverage. They may with respect to construction works request architects' plans or evaluators' reports and these may refer to DoPs.

Documents such as the DoP will come in useful where there is a damage and the insurance company is either called in to compensate or to litigate. Before they compensate, insurance companies will verify whether any exclusions apply to coverage. Fraud or misrepresentation are often part of the list of exclusions. The insurance companies may thus require DoPs at that stage to determine the extent of coverage. When coverage is effective, the insurance company may need access to documentation such as that contained in DoPs to help determine whether the injured party will be made whole, how liability may be shared or how the dispute may be resolved.

3. CHAPTER 3: Electronic/digital provision of the DoPs before administrative and judicial bodies

3.1. Provision of electronic documents to administrative bodies in the different Member States

3.1.1. Overview of admissibility of electronic documents

In general electronic documents are admissible in the different Member States. However, their admission may be regulated and administrative bodies enjoy a degree of freedom on whether to accept or not electronic documents. In some countries paper copies may be required. In Austria for example although there is a general principle of admissibility, the limitations that may exist on such admissibility vary depending on the type of administrative body before which they are submitted and the nature of the procedure. In some cases the regulatory framework for admissibility of electronic documents is recent.[320] In Liechtenstein for example the Diet adopted the E-Government Act on September 21, 2011 aimed at providing the country with one of the most straightforward regulations on e-communication with administrative bodies both at the communal and national levels. [321]

In many instances, the infrastructure available will condition the effectiveness of the general rule. Although in recent years many countries have upgraded their infrastructure to enable the admission of electronic documents, some have lacked the resources to do so especially in rural or remote areas. Further, where electronic signatures are required the resulting increased costs may result in the administrative body clearly expressing its preference for traditional formats. In Romania for example, administrative bodies are reluctant to accept electronic documents because of the significant expenses which may be incurred in using electronic signatures and the fact that there are currently only three certified issuers of certificates for such signatures.[322]

- **Austria:** Yes, administrative bodies would generally accept electronic documents. The admissibility of electronic documents by administrative bodies depends on the respective authority, the type of procedure and the infrastructure available. The requirements concerning electronic communications with public authorities are specified in the General Administrative Procedure Act, the Federal E-Government Act, the Electronic Signature Act as well as in the Federal Delivery Act. Furthermore, specific administrative regulations may provide for deferring procedural requirements.

  According to the General Administrative Procedure Act a written submission may be presented in any technically feasible way, including emails.

- **Belgium:** Yes, electronic documents are acceptable, although administrative bodies may impose a printed version of any electronic document.

- **Bulgaria:** Administrative bodies may as part of their functions collect documents or evidence ex officio. As a result they may request printed information of documents. In some instances, they also require the certification of documents. The Administrative Procedure Code does not specifically authorize the provision of documents or evidence in electronic form which would indicate that administrative bodies remain free to accept or refuse these. With respect to administrative courts however, pursuant to Article 141 of the Administrative Procedure Code, parties may present electronic documents signed with a qualified electronic signature.

- **Czech Republic:** Yes, the Czech Republic recognizes two general approaches to electronic communications between natural and legal persons on the one hand and public bodies on the other. The first system employs so-called "Data Mail Boxes" and the other operates by means of ordinary electronic mail, with the additional application of an electronic signature.

- **Germany:** The transmission in electronic version is allowed under the Administrative Procedure Act, if the recipient has opened an access. In practice, administrative bodies in charge of construction sites will likely request paper

documents. The E-Government Act was adopted in 2013 and should facilitate transmission of electronic documents in the future.[323]

- **Denmark:** Yes, electronic documents are admissible. Currently requirements for establishing the authenticity are limited to digital signature, which is expected to be required for the use of judicial documents for example and the use of digital ID in certain circumstances.[324]

- **Estonia:** The local municipalities and the Estonian Technical Surveillance Authority would be competent. Local authorities are in charge of issuing building permits[325]

- **Greece:** The General Secretariat of Industry constitutes the National Market Surveillance Authority on Greek territory for all industrial products and quality services.[326]

- **Spain:** The Public Authorities in charge of Industry in each Autonomous Communities with the possibility for the Ministry of Industry, Tourism and Trade to foster and develop collaboration and coordination actions. Administrative body may also require the DoP in order to grant a building permit/ first occupation license.[327]

- **Finland:** Yes, electronic/digital documents are admissible before all municipal or central administrative authorities or their agencies, if they are relevant to the facts of the matter in question. There are two different Acts that deal with Electronic/digital documents before administrative authorities depending on the mode of delivery of such documents to authorities. If electronic/digital documents are delivered through postal mail or by hand to administrative authorities, the Administrative Procedure Act 434/2003 will apply. However, if documents are transmitted through e-mail or transmitted electronically to administrative bodies, the applicable law will be the Act on Electronic Services and Communication in the Public Sector 13/2003 which deals with the procedure of delivery and admissibility of documents.[328]

- **France:** Yes, almost all territorial communities are using the e-procedures in communication with citizens, concerning the transmission of legal acts regarding the legal control of administrative acts and as well as with the businesses.[329]

- **Croatia:** Yes, electronic documents, including DoPs are admissible as evidence in proceedings before administrative bodies, provided that they comply with the statutory requirements for electronic documents, including electronic signatures, and provided further that ICT system (both hardware and software) of the respective administrative bodies support processing of electronic documents, including resources needed to use public keys.[330]

- **Hungary:** Electronic documents are admissible in the building permit procedure pursuant to Article 53/A of the Building Act. The Building permit process is initiated with the Building Authority.[331]

  The first instance Building Authority is located within the Municipalitie. It is a governmental administrative body. The Building Authority coordinates the building permit procedure, consults other technical authorities and issues the building permit and also the occupancy permit.
  Buildings that do not need a building permit may be controlled by the Building Authority. When these buildings are controlled, the DoP has to be presented to the Building Authority.

  The process can be initiated online or offline. Since January 1, 2013, all information provided under the process whether online or offline, is eventually stored on an electronic system called the ÉTDR system.

  It should also be noted that under the construction code, DoPs should be attached to the construction log book as annexes. As of July 1, 2013, the construction log book takes the form of electronic logs[332] .

- **Ireland:** There are no requirements to show or include any form of construction on how the building is actually constructed; the planning permission requirements are only concerned with the external materials of a building in terms of material and colour. The planning permission of a building is determined by the Irish Planning and Development Acts whereas whether the building complies with the Building Regulations is determined by the Building Control Acts. Under the Building Control Act 1990 a building control authority is not under any obligation or duty to inspect the works or to insure that the building or works comply with the Building Regulations. The recent Building Control Regulations 2013 are aimed at strengthening the current arrangements in place for the control of building activity.

  The local authorities as building control authorities may require DoPs to ensure that the products most suitable for their intended use in construction works are in fact being used.

  DoPs will however be considered in the main by Judicial bodies.

  A building control authority has the power to serve an enforcement notice on the owner or person carrying out works if the works or the designs, are not in compliance with the Building Regulations.[333]

- **Iceland:** Administrative bodies that may require the DoP include the Iceland Construction Authority, local authorities within the jurisdiction of which a building is located, and the Appeals Committee for the Environment and Natural Resources.

  The Iceland Construction Authority is responsible for the administration and preparation of laws, regulations and guidelines regarding building constructions. The Authority plays a supervisory role with respect to the work of the local authority construction representatives.

  The Iceland Construction Authority is tasked with supervising construction products sold on the Icelandic market and with ensuring that such products meet the requirements of the Construction Act and related regulations. If the relevant rules and regulations are not respected and serious danger ensues as a consequence of such non-respect, the Iceland Construction Authority conducts investigations.[334]

- **Italy:** Yes, the Law of n. 59 of 15 March 1997, Art. 15.2 provided the general principle of validity of electronic documents. It reads "*data and documents created by Public Administrations and private persons by means of computer-based or telematics systems, contracts stipulated in such forms, as well as their storage or transmission by means of computer systems, shall be legally valid and relevant for any purpose of law*".[335]

- **Liechtenstein:** Yes, on September 21, 2011, the Diet enacted the E-Government Act ("E-GovG"). The E-GovG has been passed to provide the country with one of the most straightforward regulations on e-communication with administrative bodies both at the level of the eleven Liechtenstein communes and the Amt für Volkswirtschaft entrusted with the execution of directive 89/106/EEC. It is noteworthy that the E-GovG does not regulate e-communication with judicial bodies.[336]

  According to article 4 of E-GovG, any sort of electronic communication may be used when addressing a Liechtenstein administrative body. Therefore, technically speaking there is no restriction in the use of a DoP in electronic form.

- **Lithuania:** Yes, management of official documents received by institutions of Lithuania is regulated by the Rules on Management and Accounting of Documents, approved by the Order of the Chief Archivist of Lithuania. According to article 22 of these rules, documents or digital copies of documents received by fax or other telecommunication equipment are registered if the security of the content is ensured and if it is possible to identify the sender's signature.

  Electronic documents may be accepted and provided to local and state institutions but it must be signed with electronic signature.[337]

- **Latvia:** Yes, the use of electronic documents in administrative procedures is governed by the Electronic Documents Law and by Regulations No. 473 adopted by the Cabinet of Ministers on June 28, 2005 and entitled "Procedures for the Preparation, Drawing up, Storage and Circulation of Electronic Documents in

State and Local Institutions, and the Procedures by which Electronic Documents are Circulated between State and Local Government Institutions, or between these Institutions and natural and legal persons".

All documents, including DoPs may be submitted in electronic form if they comply with the mandatory requirements regarding the form of these documents. The main requirement is that the electronic document is signed either by using an electronic signature and a time-stamp or if it is signed by a type of electronic signature, which the administrative body and the private individual have agreed upon. Therefore the law distinguishes between "electronic signature" and "secure electronic signature".[338]

- **Luxembourg:** Yes, in general administrative bodies can accept electronic documents even sent by email. Communications with the administration are possible using a variety of methods and eventually all procedures will be organized through the "MyGuichet" secured platform which is an online platform that enables individuals to complete administrative procedures directly through the Internet. Not all services can be performed using "MyGuichet" at this point, but eventually procedures involving the submission of the DoP should be included in the system.[339]

- **Malta:** Yes, the Electronic Commerce Act recognizes the validity of electronic transactions and time-stamps. The E-Commerce Act is an enabling legislation and is the source of all rules determining the recognition, admissibility and integrity of electronic data and electronic transactions in Malta.

  Electronic documents are acceptable under any law in Malta, if it happens through electronic communication. The electronic communication must occur through reliable means and that the integrity of the information contained in the document is maintained. The information needs to be accessible and useable.[340]

- **The Netherlands:** Yes, electronic communication is possible if the administrative body has opted to allow electronic communications. If communicating electronically is allowed, then a choice may be made between communicating either electronically or through other means. A special website exists for permits.

This website provides the option to apply for a permit digitally and for providing the necessary information digitally.

There are no specific rules which obstruct the provision of electronic documents although in practice administrative bodies may prefer a printed version of any electronic document.[341]

- **Norway:** Yes, electronic documents are acceptable in Norway. The Norwegian Building Authority has reported that they usually receive documentation in PDF-format submitted by e-mail and not in paper-format.[342]

- **Poland:** Yes, a storage device with an electronic document has exactly the same weight as any other piece of evidence submitted in administrative proceedings. Pursuant to the principle of the free evaluation of evidence, the administrative body is not limited by any statutory rules of evidence. There are no legal provisions that would prohibit storage devices containing electronic documents as evidence.[343]

- **Portugal:** Yes, the admissibility of electronic documents to administrative bodies depends on the recipient authority and the kind of proceeding. The delivery to administrative entities of electronic document is possible in all municipalities and other involved entities through their own information systems, but each administrative body has its own site, not existing as such uniformity in weight limits and in access modalities**.** Since the administrative entities do not have the same procedural limitations as the courts, there will probably be no restrictions to consult a certain document available on a specific website.[344]

- **Romania:** Yes, at the present, the provision of electronic documents to administrative bodies, although possible in practice and sometimes even required by various bodies is not the rule. There are wide differences between various administrative bodies' requirements in matters related to electronic documents, and especially on the local level, there is a preference of both administrative bodies and of petitioners for the use of traditional documents.

This is due in part to the significant expenses which may be incurred for using and extended electronic signature and to the fact that currently in Romania there are only three certified issuers of certificates for such signatures.[345]

- **Sweden:** Yes, electronic documents are admissible if they are less than 30 megabyte in size if sent by e-mail and if they are made available to the administrative court by technical aids which the court itself employs for communication in such form that they may be read, listened to or otherwise comprehended.[346]

- **Slovakia:** Yes, but the issue of submission of electronic evidence is not addressed by the law in sufficient detail. Electronic evidence is permitted to be, and increasingly is, submitted as relied upon in various proceedings. The Courts and administrative bodies appear to be open to reviewing evidence submitted in electronic format, based on the general rule that as evidence, may be submitted anything that has evidentiary value for the purpose of determining the actual state of affairs, as long as such evidence is not obtained in violation of the law.
  The DoP may be required by the administrative organs in their decision in the administrative process, guided by the principles mentioned above. This includes evidence in electronic or digital format.[347]

- **Slovenia:** The Inspectorates, administrative units (58) and the competent Ministry. The Inspectorate is a body within the competent Ministry.

- **UK;** There are no particular rules pertaining to Administrative bodies. For example, in assessing whether a building complies with Building Regulations, it may be necessary to demand examination of electronic documents, but there is no particular requirement as to their format.[348]

3.1.2. Overview of weight of admissible electronic documents (including reference to rules and summary of case examples) in the different Member States

In general electronic documents have the same weight as other types of evidence. In some countries, administrative bodies and courts are free to give different types of evidence more or less weight. In any case they benefit from a margin of appreciation depending on the way in which the evidence has been authenticated and preserved. Electronic documents submitted into evidence are generally given more weight if an electronic signature authenticates the document.

Some countries such as the Luxembourg still apply the "best evidence rule". This old evidentiary rule states that where an original exists a copy or facsimile may be rejected. Hence, electronic copies of paper originals may have little evidentiary weight and may even be rejected by the judge based on Article 1333 of the civil code. The rule is more of an admissibility rule than a rule on the weight of evidence. However, where the rule is not applied anymore at the admissibility stage, it may impact the weight given to documents that are not originals. The issue would not arise where the documents are created originally as electronic documents.

- **Austria**: electronically submitted documents have the same weight as paper-based documents.[349]

- **Bulgaria**: evidentiary value of documents whether electronic or otherwiseis assessed in accordance with the law applicable at the time and place of their composition.[350]

- **Belgium**: there are no specific rules governing the weight of electronic documentary. Courts are free on the matter of weight given to evidence, although an electronic document with an electronic signature may have more weight than a document without. Indeed, if the conditions are met, documents bearing electronic signatures have the same weight as documents with a written signature do.[351]

- **The Czech Republic**: the admissible electronic documents *stricto sensu* (officially submitted documents through a Data Mail Box) carry the same weight as officially certified copies of such documents. Other documents duly submitted

in the electronic form may serve as evidence or as a basis for the administrative decision.[352]

- **Cyprus**: as provision of electronic documents to administrative bodies is not regulated by statute in Cyprus and it is within the discretion of the authority to accept such method or not. Neither do provisions over weight of electronic documents exist leaving the court with much discretion.[353]

- **Germany**: The weight given to electronic documents depends on the competent court and proceedings. [354]

- **Denmark**: there are no specific provisions concerning the weight of admissible electronic documents, but there is no basis for assuming any difference in the evidentiary value of paper based and digital documents. [355]

- **Estonia**: no specific regulation but according to the Civil Code Act the electronic format has the same weight as the written one if it fulfils prescribed conditions such as the electronic signature.[356]

- **Greece**: an electronic document constitutes full evidence.[357]

- **Spain**: The Act 30/1992 states that the electronic documents shall enjoy the force and effect of an original document.[358]

- **Finland**: electronic documents weigh the same as those received physically as the special method of authentication is predicted.[359]

- **France**: not relevant because the documents need to be send in the paper version.

- **Croatia**: all evidence has the same weight.[360]

- **Hungary**: the electronic documents have the same value as non-electronic ones[361].

- **Ireland**: the Electronic Commerce Act suggests that there ought to be no distinction and equal weight should be given to documents whether in hard copy or electronic soft copy.[362]

- **Iceland**: all evidence has the same weight.[363]

- **Italy**: the same value is attributed to all legal documents, acts, data and contracts including if transmitted by means of computer and transmitted electronically.[364]

- **Liechtenstein**: All evidence has the same weight and documents sent via the E-GovG have the same legal value as other documents.[365]

- **Lithuania**: if provided with a safe secure electronic signature, created by a secure device electronic documents shall have the same legal force that a hand-written signature.[366]

- **Luxembourg**: According to article 1322-2 of the Civil Code, an electronic private deed is considered as being the original when it presents reliable guarantees that its integrity was safeguarded from the moment when it was first created in a definitive form. An electronic private document which has been electronically signed has the same evidentiary weight as a handwritten document provided that it has not been altered since its signature. Nevertheless, electronic copies of paper documents may have a lesser evidentiary weight and the judge may require the production of an original when a copy is provided by a party, and may reject this copy for the sole reason that only an original is better evidence than an electronic copy. The electronic copy of a private paper document, where the original document no longer exists, has the same evidentiary weight of the original, and it is presumed a true and faithful copy of the original unless evidence on the contrary is provided.[367]

- **Latvia**: as long as electronic documents are properly signed, they hold the same legal value as documents in paper form..[368]

- **Malta**: an electronic document carries the same weight as a paper document if the requirements are fulfilled.[369]

- **The Netherlands**: There is no regulation which determines that electronic documents are not admissible. Judiciaries in civil law are free to weigh the evidence as they see fit on the basis of the Code for Civil Proceedings, section 152, paragraph 2. While such a rule does not exist for administrative courts, it is generally accepted to also apply in administrative proceedings.[370]

- **Norway**: the Planning and Building Act predicts that if the electronic document is admitted it will be assumed true, unless circumstances indicate that the information in the electronic document is improper or incomplete.[371]

- **Poland**: a storage device with an electronic document has exactly the same weight as any other piece of evidence submitted in administrative proceedings.[372]

- **Portugal**: the weight of the documents depends on a system adopted by each municipality.[373]

- **Romania**: formal requirements in administrative matters are more common than under civil law, such as extended electronic signature. However, once accepted, they carry the same weight as their correspondents in traditional forms, according to the principle of free evaluation of proof.[374]

- **Sweden**: the principle of freedom of proof applies, there's no provision stating that certain evidence shall be given different weight than other evidence.[375]

- **Slovakia:** There are no pre-set limitations on the court giving weight to such evidence. These bodies will weight all evidence on its merits.[376]

- **Slovenia**: documents in the electronic form have the same weight as documents in the physical form as long as legal conditions are met. [377]

- **United Kingdom**: there is no awareness of particular rules pertaining to administrative bodies. When assessing whether a building complies with Building Regulations, it may be necessary to demand examination of electronic documents, but there is no particular requirement as to their format/weight.[378]

3.1.3. Overview of authentication and integrity requirements (including those on preservation) in the different Member States

The person seeking to introduce an electronic document in a legal proceeding may have the burden of proving its authenticity and integrity.

Proving the authenticity of records initially concerned the integrity of paper-based records. Today however, it includes electronic documents. Several factors must be taken into account when laying the evidential foundations for submitting electronic evidence into courts.

Firstly, the identity of the document should be established. This will typically include the name of the purported author, the date the document was created, its place of origin and the subject matter. This information bares on reliability. Effectively, if a document can be identified correctly and there is a degree of certainty about it, it can be relied upon.

Secondly, the integrity should be ascertained. Integrity means that the document presented in complete and unaltered.

To ascertain integrity a number of factors can be taken into consideration such as whether (i) an accurate time stamp was used upon its creation (ii) whether integrity concerns the original document or circulated versions (iii) whether the metadata

associated with the document can be used as an integrity test, and (iv) whether an electronic signature was applied to the document.

It should be noted that in some countries, such as Hungary[379], electronic filing systems have been put in place and require the filing of the DoPs. In these circumstances, the authenticity and integrity of documents will be facilitated by the existence of mandatory filing with a public institution.

- **Austria**: Email submissions are generally accepted. In order to ensure authentication a system of citizen's electronic cards has been developed. However, this is not widely used as of yet. [380]

- **Belgium**: Electronic signatures are data in electronic form, which are attached to or logically associated with other electronic data, and which are used as an authentication method. They may be used to identify the signatory of a legal act executed by electronic means, have legal vale and are admissible as evidence. If they comply with some conditions regarding technical security, they can be considered as the equivalent to handwritten signatures.[381]

- **Bulgaria**: three different types of electronic signatures may be distinguished: electronic signature, advanced electronic signature and qualified electronic signature. The last one has the legal effects of a handwritten signature, while the other two may have such effect if explicitly agreed between the addressee and the author.[382]

- **Cyprus**: as provisions of electronic documents to administrative bodies is not regulated by statute in Cyprus and it is within the discretion of the authority to accept such method or not, neither an overview of authentication and integrity requirements can be done.[383]

- **The Czech Republic**: the authenticity and security of the Data Mail Boxes is assured by the Ministry of Interior and the identity of the officially converted documents is guaranteed by the converting authority. The provision of electronic

signature services is administered by private providers, who must apply for a recognition and certification with the Ministry of Interior.[384]

- **Germany**: if a declaration is made in electronic format it must be provided with a qualified electronic signature.[385]

- **Denmark**: legislative requirements for authenticity are limited to digital signatures, required for the use of for example judicial documents and the use of the digital ID for certain applications.[386]

- **Estonia**: the administrative body may accept such documents and investigate the authenticity of the documents on its own accord.[387]

- **Greece**: according to art23 of the Law on applications, statements and Supporting documents submission, Citizens and Private Law Corporate bodies can electronically submit applications, statements, supporting documents etc., provided that the pertinent accreditation is, identification and authentication requirements are met in each case.[388]

- **Spain**: Act 30/1992 states that authenticity, integrity and preservation of documents are requirements to prove legal acts.

- **Finland**: a reliable third party confirms the identity of the person, the integrity and originality of his/her electronic signature through public key or a set of data in digital certificate form.

- **France**: it is an electronic signature which must fulfil certain conditions determined by the Decree n°2001. In order to be considered secured, the signature has to be confirmed by a certificate.

- **Croatia**: authentication is ensured through required content and in the form of an electronic document, which ensures unique identification of the documents and their issuer, certified by an electronic signature.

- **Hungary**: authentication to access ÉTDR online can follow by using the client gateway of the Hungarian Government or by using secure electronic signature. Files are then stored on the system. Preservation can be carried out on the storage space of the ÉTDR system, but it can also be carried out individually.

- **Ireland**: there are no specific rules in relation to the authentication and integrity of documents before administrative bodies.

- **Iceland**: the Public Act does not specify in what way the integrity may be demonstrated, for documents requiring a signature, an electronic signature is considered an equivalent. Art. 4 of the Electronic Signatures Act No. 28/2001 stipulates that where a signature is required, a valid electronic signature shall be considered to fulfil such a requirement, it means the one supported by a "fully valid" certificate and attached with secure signature equipment.

- **Italy**: the Legislative Decree n° 82/05 states that an electronic document formed by anyone, recordings on a computer and the transmission by electronic means comply with the technical rules.[389]

- **Liechtenstein**: no specific regulation.

- **Lithuania**: there are certain requirements for electronic documents when documents are presented to institutions of public administration, like an electronic signature. The main requirement is the existence of an appropriate secure electronic signature.[390]

- **Luxembourg**: Only advanced electronic signatures relying on qualified certificates will be granted automatic legal recognition and be assimilated to handwritten signatures. Currently there is only one certification-service-provider issuing qualified certificates: LuxTrust SA.[391]

- **Latvia:** the main requirement is the existence of an appropriate electronic signature. The electronic document is signed either by using an electronic signature and a time-stamp or using an electronic signature on which the administrative body and the private individual have agreed upon.[392]

- **Malta:** the E-commerce Act provides that the integrity of information contained in an electronic document is only maintained if the information remains complete and unaltered". The electronic document can be signed by an electronic signature.[393]

- **The Netherlands**: There is no regulation regarding the authentication or integrity requirements of digital documents. Manufacturers and distributors are required to preserve and store the DoP's as the ILT may require this information at any time. If these documents cannot be provided, a fine or penalty may be incurred. [394]

- **Norway**: There are no rules regarding authentication and integrity of electronic documents. However, if there is circumstances that indicate that the documents is not genuine or that the information is contaminated, this might lead to that the processing authority does not assume the information pursuant to The Planning and Building Act section 21-4.[395]

- **Poland**: the provisions on the matter are rather obsolete, the main problem is to prove that at a given date the document existed, carried a specific content and it has not been subsequently modified. However, some rules refer to traditional written documents, therefore the rules of authentication do not apply here.[396]

- **Portugal**: Authentication and integrity requirements may vary from one authority to another, but the digital signature certificate may widely permit the source of information of both the administration and the interested party.[397]

- **Romania**: depending on the submission of the electronic signature.[398]

- **Sweden**: formal requirements in administrative matters are more common than under civil law like matters related to the social security systems where an electronic signature is required.[399]

- **Slovakia:** there is no established standard process by which the administrative bodies determine veracity and integrity of electronic evidence, with the exception of documents to which an electronic signature is attached. Documents provided with it are considered secure and authentic.[400]

- **Slovenia**: authentication is achieved through the safe electronic signature certified by a qualified certificate.[401]

- **United Kingdom**: There is no awareness of any rules relating to the preservation of electronic documents for administrative purposes.[402]

Summary

In general electronic documents are admissible in the different Member States. However, their admission may be regulated. Administrative bodies may enjoy some leeway as to acceptable formats and in a few countries paper formats are still required.

In many instances, the infrastructure available will condition the effectiveness of the general rule. Although in recent years many countries have upgraded their infrastructure to admit electronic documents, some have lacked the resources to do so, especially in rural or remote areas.

Further, where electronic signatures are required the resulting increased costs may result in the administrative body clearly expressing its preference for traditional formats.

3.2. Provision of electronic documents to judicial bodies in the different Member States

In general, facts may be proved and claims supported by:

- calling witnesses (known as witness evidence);
- producing documents (known as documentary evidence);
- producing things (known as real evidence).

When considering the evidence judicial bodies would generally be concerned with:

- relevance;
- admissibility; and
- weight.

Evidence must be both relevant and admissible.

Evidence is relevant if it logically goes to proving or disproving some fact at issue in the case.

Evidence is admissible if it has been properly obtained and relates to the facts in issue, or to circumstances that make those facts probable or improbable.

The weight of the evidence goes to the reliance that can be placed on it by the court.

3.2.1. Overview of admissibility of electronic/digital evidence (including reference to rules and summary of case examples) in the different Member States

The same principles usually apply before the judicial bodies as they apply before administrative bodies. Administrative bodies may impose more formal processes and require the use of electronic signature but by and large the rules are not fundamentally different.

In some countries no law has been necessary to allow the admission of electronic documents as evidence. Courts have started accepting such evidence and the legislator has not deemed it necessary to intervene. This is the case for Iceland for example. However, in other countries, the legislator has had to step in and regulate. When it has regulated, the legislator has often decided to provide a framework for the submission of electronic documents rather than just adapt the existing system. Sometimes, a whole new system has emerged based on the use by the government of electronic systems to communicate with parties. In Austria for example, the system of electronic submission means that documents may be and sometimes must be filed electronically. This is also the case in the Czech Republic with the Digital Mail Box.

For some countries the admissibility of electronic documents as evidence is recent. In Hungary[403] for example the relevant law came into force on January 1, 2013.
The best evidence rule may still apply in a number of Member States such as Luxembourg (a law on dematerialization of 2013 will change this) and Bulgaria. This is also the case in Malta where the best evidence rule still prevails. This means that electronic documents cannot replace paper originals and that where an original exists it is the only admissible evidence. However, in practice courts may admit electronic documents especially where no original paper document was created.[404]

On exception to the principle of admissibility of electronic documents would be Denmark where, even if documents may be originally created in digital or electronic format, they will have to be submitted to the court in paper form.

- **Austria:** The Ministry of Justice adopted a regulation establishing an advanced system to enable paperless communication between parties and the courts. According to this regulation, all submissions to the court and to the public may be submitted electronically. In fact this system is compulsory for legal professionals, which means that it is only under exceptional circumstances that documents would be submitted in paper form.[405]

- **Belgium:** Electronic evidence is admissible by the courts. Electronic/ digital evidence shall have the same weight if they are accepted by the court. Some

courts may ask for a printed version or for an electronic signature. Conformity and integrity of the electronic evidence shall be verified.[406]

- **Bulgaria:** Under the Civil Procedure Code, the parties may present electronic documents to the courts, either printed on paper, or recorded on a digital medium.

  Where the DoP has been drafted as an ordinary written document, it cannot be provided by electronic means but instead a paper copy of the DoP should be provided.

  Parties may submit electronic documents to administrative courts as permitted under Article 141 of the Administrative Procedure Code.[407]

- **Czech Republic:** Digital evidence as such, follows an informal regime analogous to that of the evidence before administrative bodies. Generally all evidence capable of ascertaining the facts of the matter is admissible, irrespective of its form. It is fairly common for evidence to be presented in digital form, whether submitted through the Data Mail Box, physical carriers or ordinary electronically signed e-mails. In some instances the digital form of evidence materials is explicitly prescribed, together with the appropriate digital format.

  The rule governing the general admissibility of any suitable evidence in court proceedings is contained in Sec. 125 of the Civil Procedure Code.

  The requirements for the authentication and integrity preservation of electronic documents submitted to judicial bodies are identical to demands placed on such documents by administrative bodies.[408]

- **Germany:** At the federal level, electronic correspondence, the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court and the Federal Patent Court levels is possible. At the level of the federal states the situation is different as each Lander has its own regulations, practices and priorities in terms of use and transmission of electronic documents. In General the German Code of Civil Procedure (*Zivilprozessordnung ZPO*) allows for the admissibility of electronic documents.[409]

- **Denmark:** The Danish Procedural Code provides under its article 148a that the rules requiring the submission of documents in a written form and signed are not to be interpreted as excluding digital communication with the court. When using digital communication, a digital signature will be required. The courts have an open access to evidence that is produced before it, subject to the processing rules set out above, such as the annotation requirement. The important issue is that Danish Courts do not apply formal rules for the admissibility of evidence, but instead undertake an evaluation of the evidentiary weight of any document submitted in support of a court case. However, it should be noted that the court will not yet accept communication and documentary evidence in a digital format.
  In the future, the digital signature as harmonised at the European Union Level, will serve to provide for the authenticity and integrity of documents produced by the parties and their representatives, which are submitted to the court.[410]

- **Estonia:** In civil court proceedings, the court will only accept evidence that is relevant to the matter at hand. The evidence has no relevance to the matter if:
  - the facts need not to be proved, or are not disputed;
  - enough evidence has already been provided, in the opinion of the court, in proof of the fact.

  The court may refuse to accept evidence if:
  - the evidence has been obtained by a criminal offence;
  - the evidence is not accessible, if the witness' data or location of a document is unknown;
  - the evidence is not presented or the request for taking the evidence is disproportionate to the time necessary for taking the evidence is not mad in a timely manner;
  - the need for the presenting or taking of evidence is not substantiated;
  - the participant in the proceeding requesting the taking of evidence fails to make an advance payment demanded by the court in order to compensate for the costs incurred upon the taking of evidence.

  In administrative court proceedings courts accepts only evidence that has relevance to the case. An electronic document has to be submitted to the court in the form of printouts or transmitted by electronic means in a format which

permits examination and safe storage thereof in the information system of the court.[411]

- **Greece:** Electronic documents are accepted as regular private documents. The Court accepts the submission of electronic documents as evidence. However, if the content of any electronic documents is to be accepted as valid and true, it must meet certain requirements regarding the authenticity of the evidence.[412]

- **Spain:** Electronic documents are generally accepted but courts aim to ask for authentication with an electronic signature. The probative value of an electronic document, or in other words, for a document to be recognized and admitted as a valid and legal document in a trial, it must meet the requirements of integrity and authenticity (authorship of the signature, the signature belongs to its owner).[413]

- **Finland:** Admissibility of electronic and digital documents as an evidence needs to meet two major requirements in Finland. First, the mode of delivery of documents to a judicial body and second court discretion as to whether the delivered documents are relevant to the facts of the case. Finnish law provides two modes of delivery of a document to judicial bodies; DVD, USB stick or any other saved data in device form may be submitted to judicial bodies. An electronic signature might be required in some cases. For example, if a party sends the DoP by email as evidence to judicial bodies, the sender should identify himself through the electronic signature or through an oral or written statement on the circumstances of the facts.[414]

- **France:** A written document in electronic form is admissible as evidence in the same manner as a paper-based writing, provided that the person from whom it proceeds can be duly identified and that it can be established and stored in conditions that secure its integrity.

  Where it is electronic, it should involve a reliable process of identifying which safeguards the link with the instrument to which it relates. The reliability of that process shall be presumed. Where an electronic signature is created, the identity

of the secured signer and the integrity of the instrument safeguarded is subject to conditions laid down by Decree in Conseil d'Etat.[415]

- **Croatia:** Admissibility of electronic/digital evidence in judicial proceedings is regulated by the Electronic Document Act and Electronic Signature Act, in addition to the acts regulating particular judicial proceedings. In many cases such evidence is subjected to the analysis of courts experts in various fields, including but not limited to evaluation of origin and authenticity. Both electronic documents and other electronic records are admissible as evidence before judicial bodies, provided that their evidentiary weight is different.[416]

- **Hungary:** Since 1 January 2013, electronic documents are admissible in civil proceedings albeit with certain restrictions. Currently, electronic procedure is only available for cases that are initiated before regional courts in the first instance, that is, as far as civil claims go, where the claimed amount is at least 110.000 EUR which is in many cases fulfilled when it comes to construction products related claims or for example the claim.

  There are obligatory forms to be used for filings. However the annexes can be in different formats: doc, odt, pdf.

  The judicial review of second instance building permit related administrative decisions is not an electronic procedure. Accordingly, the administrative court judging an appeal against the decisions of a second instance Building Authority, cannot accept electronic or digital evidence. However, given that the documents may now be filed with administrative bodies in electronic format (including construction products logs), it is possible to imagine that the documents as filed in the first instance could be produced as such before the courts.

  Since these regulations are all very recent, their impact in practice is not yet known[417].

- **Ireland:** If by law or otherwise a person or public body is required or permitted to give information in writing, the person or public body may give the information in electronic form, whether as an electronic communication or otherwise.

If by law or otherwise a person or public body is required or permitted to present or retain information in its original form, then the information may be presented or retained in electronic form, whether as an electronic communication or otherwise.[418]

- **Iceland:** Neither the Code of Civil Procedure nor the Code of Criminal Procedure makes reference to electronic data or the admissibility of electronic evidence. However, such data, including accounting data originating in electronic accounting systems, and e-mail correspondence, has been submitted in court in the past without problems, albeit in printed form. On the other hand, there is nothing in the Icelandic procedural code that really precludes the presentation, of electronic data as electronic evidence in court and such data have for many years been routinely presented in court cases. Icelandic courts are generally well equipped in terms of computer equipment to be able to handle electronic data as evidence although courts rooms are generally not equipped to present such data directly in electronic form during hearings.[419]

- **Italy:** Italy has equated the use of electronic documents into evidence as legally binding to any other paper document, without any other specification, but only referring to a subsequent implementing regulation. The Regulation 513/97 has introduced a series of technical requirements, and especially the electronic signature.

  If the documents are not signed, under the current legislation it is possible to affirm that they have the value of mere clues, useful only if they are supported by other consistent elements, in order to contribute to forming the appreciation of the judge.[420]

- **Liechtenstein:** In civil law matters the parties to the proceedings may produce means of proof in an electronic /digital format as they deem fit.

  No clear information can be inferred as to the type of electronic/digital means that may be used as evidence. Yet the party intending to rely on such evidence would most probably be invited by the judge to produce the DoP on paper too.

Though there's no published case law yet, one can therefore resume with good cause that in the future Liechtenstein judicial practice, documents submitted in an electronic/digital form will have the same weight as paper-based documents.[421]

- **Lithuania:** An electronic document should generally be equated to a "written document", provided that it was transmitted through a server or that it is a computer-made document which is saved on a non-paper material medium in an electronic format, that the protection of the text is assured and that the signatory may be identified.[422]

- **Latvia:** Latvian law doesn't contain any specific provisions as regards the admissibility of electronic documents before judicial bodies. The same rules that concern admissibility of electronic documents before administrative bodies are also applicable in regard to admissibility before courts. In this regard, the Senate first established that courts were bound to accept electronic documents in accordance with Electronic Documents Law, implying that the same rules of admissibility in regard to electronic documents apply to administrative bodies as well as courts.

  This means that as long as the electronic document complies with all relevant requirements under the law, it has the same legal value as paper document.[423]

- **Luxembourg:** With respect to the provision of electronic documents to judicial bodies, it should be noted that, in contrast to the situation with administrative bodies, the New Code of civil procedure does not allow the communication by electronic means of electronic documents to judicial bodies. Therefore, these documents need to be communicated via a material support (USB stick, CD/DVD, etc.) by deposit at the Registry of the court as provided by article 279 of the New Code of civil procedure.[424]

- **Malta:** The recognition of electronic documents as required by the E-Commerce Act does not apply to the rules, practices or procedures of a court or tribunal. Furthermore, Maltese law does not specifically provide for digital/electronic

evidence other than through the E-Commerce Act. The lack of such a law is certainly the prime legal obstacle for the provision of digital/electronic documentation in Malta.

One of the cardinal rules in Maltese procedural law is the "best evidence rule" which requires that the best evidence possible or available at the time must be adduced in a court of law.

It would be inaccurate to state that electronic evidence or an electronic document is completely inadmissible in court. However, a person relying on such evidence must be prepared to defend its authenticity and integrity before the court. This is generally achieved through the intervention of experts, such as experts in digital forensics appointed by the court, rather than through the operation of specific rules of law. If the person presenting the electronic evidence can prove its originality, authenticity and integrity, then there should be no reason why a court would not uphold it and give it the same weight as a physical counterpart.[425]

- **The Netherlands:** Evidence may be delivered through all means, unless he law determines otherwise. As such, in the context of civil proceedings evidence may be delivered electronically. Currently, it is impossible to hand in evidence through e-mail but evidence may be given through a CD-ROM.

  All electronic evidence is admissible as such, as long as the court is able to process the evidence. There is no case law specifically for the admissibility of electronic evidence.[426]

- **Norway:** The main principle is that all evidence can be submitted before the court (the principle of free calling evidence), unless it is prohibited pursuant to the Dispute Act section 26-1. The evidence will be examined by the Court or the Court will have the evidence examined pursuant to the Dispute Act section 26-1. There is no case law regarding the admissibility of electronic documents. However, the Court may impose on the party that presents the evidence to produce a factual abstract of the documents submitted electronically pursuant to section 26-5 subsection 2.[427]

- **Poland:** The concept of electronic document is unknown in the legal text reference for this type of proceedings. Polish civil procedure is based on the principle of free evaluation of evidence. It has to be noted that, even though the Code of Civil Procedure recognizes storage devices containing electronic documents as "other means of evidence", this does not affect their probative value, which solely depends on the discretion of the court. Therefore, the weight of electronic/digital evidence in judicial proceedings is- at least theoretically- exactly the same as of any other type of evidence that may be admitted in the proceedings.[428]

- **Portugal:** The ministerial regulation, n° 114/2008 of February 6th allows proceeding briefs and related documents to be presented using electronic means through the digital information system called CITIUS. Only courts, lawyers, probationers and implementing agents who are registered with the entity responsible for the coordination of the information system have access to the CITIUS system. This provides a guarantee as to the originator of any data or documents transmitted through the system.
  With respect to administrative proceedings, an information transmission system was introduced through the ministerial order n.º 1417/2003 of December 30th (*Portaria n.º 1417/2003 de 30 de Dezembro*)[429] for administrative courts. This is denominated SITAF[430].[431]

- **Romania:** Electronic documents are received as proof under the same conditions as documents provided on traditional support, if the electronic documents meet the applicable legal requirements. Courts evaluate all circumstances and therefore admissible electronic documents will admitted into evidence in the same manner as paper copies of documents. Therefore, electronic evidence once accepted has the same value as evidence on traditional material support.[432]

- **Sweden:** A document is considered to be received by the court on the day when the document or a note of the paid dispatch in which it is enclosed, reaches the court or was delivered to a competent court officer. In criminal cases, an application for summons, including evidence, shall be signed by the prosecutor.

However, the application shall generally be handed in electronically. It must then be signed using an electronic signature. In civil cases it is not yet possible to hand in summons applications electronically.[433]

- **Slovakia:** Electronic format is permitted to be submitted and relied on in various proceedings. The courts appear to be open to reviewing evidence submitted in electronic format, based on the general rule that as evidence may be submitted anything that has evidentiary value for the purpose of determining the facts of the case, as long as these were not obtained in contravention of the law.

  DoPs may be required by a court in connection with any dispute where facts relevant thereto are to be determined. DoPs may be submitted in electronic or digital format, on the basis of the fundamental legal principle that anything can be used as evidence if it has a capacity to clarify what the court is to determine and is obtained legally.

  Authenticity and integrity may be guaranteed by an electronic signature.[434]

- **Slovenia:** Electronic evidence is permitted to be submitted and relied upon in various proceedings. The courts appear to be open to reviewing evidence submitted in electronic format, based on the general rule that as evidence may be submitted anything that has evidentiary value for the purpose of determining the actual state of the affairs, as long as these were not obtained in contravention of the law.

  DoPs may be required by a court in connection with any dispute where facts relevant thereto are to be determined. DoPs may be submitted in electronic or digital format, on the basis of the fundamental legal principle that anything can be used as evidence if it has a capacity to clarify what the court is to determine and is obtained legally.

  Authenticity and integrity may be guaranteed by an electronic signature.[435]

3.2.2. Overview of weight of admissible electronic/digital evidence (including reference to rules and summary of case examples) in the different Member States

The dividing line between when evidence should be admitted in trial and when evidence is entitled to considerable weight by the finder of fact at trial may be difficult to discern. A break in the custody of evidence or the inability to identify the source of a document more often goes to the weight of the evidence than to its admissibility.

Courts are generally given latitude to determine the weight given to specific pieces of evidence. In assessing the evidentiary weight of an electronic document, the following factors such as: (i) the reliability of the method in which it was generated, stored or transmitted, including input and output procedures, controls, tests and checks for accuracy and reliability, (ii) the reliability of the manner in which its author is identified, (iii) the integrity of the recording or storing system, including the hardware and computer programs or software used as well as programming errors and logs, (iv) the familiarity of any witness or the person who made the entry with the recording or storage system, and (v) the nature and quality of the information which went into the system that generated the electronic output or document, are taken into consideration.

- **Austria:** Electronically submitted evidence has the same weight as paper-based documents.[436]

- **Belgium:** Electronic/digital evidence shall have the same weight as paper evidence once they are accepted by the Court. However, some Courts ask for a paper version of the electronic pieces of evidence.[437]

- **Bulgaria:** All signed private documents evidence that the statement are made by the person indicated as author (so called "formal evidentiary value of documents"). The Court is bound by this value of the documents if it is not explicitly contested and proved to be unauthentic by the party who bears the burden of proof thereof.[438]

- **Cyprus:** Specific rules on the evaluation and weight of hearsay evidence are contained in the Evidence Law.

  When evaluating the weight of hearsay evidence, the Court takes into account all the circumstances which may lead to the conclusion that the evidence has some evidential value.[439]

- **Czech Republic:** The admissible electronic documents *stricto sensu*, officially converted documents submitted through a Data Mail Box, carry the same weight as officially certified hard copies of such documents.The weight of admissible electronic documents before judicial bodies does not differ in principle from the approach of administrative bodies. The rule governing the general admissibility of any suitable evidence in court proceedings is contained in Sec.125 of the Civil Procedure Code. [440]

- **Germany:** The rules concerning the evidentiary value of private records and documents shall be applied mutatis mutandis to private electronic documents bearing a qualified electronic signature.

  The certified hard-copy printout of an electronic document that a public authority has created, in accordance with the requirements as to form, as well as the hard-copy of an electronic document issued by a court bearing an endorsement by the competent court, shall be equivalent to the certified copy of a public record or document.[441]

- **Denmark:** It may be assumed that documents must currently be submitted in a paper format, but their original form may well be digital or electronic. This reflects the main principle of Danish procedural law that the courts have an open access to assess the evidence that is produced before them, subject to the processing rules set out above, such as the annotation requirement in Section 38 of the DPC.

  The doubt referred to above, concerning the originality of the documentation in its digital format, will apply also to the evaluation of the version produced on paper. However, the important issue is that Danish courts do not apply formal rules for the admissibility of evidence, but instead undertake an evaluation of the evidentiary weight of any document submitted in support of a court case. [442]

- **Estonia:** There is no specific regulation governing the weight of electronic documents. There are no rules that state that some form of documents have more weight than others and courts are free tin their evaluation of evidence provided

to them. However, according to the civil code, an electronic format has the same legal standing as written format and it is required that the document: i) can be reproduced repeatedly, ii) contains the names of the persons who made it and iii) is electronically signed.

Apart from that, there is no specific regulation; the Courts are free to weight the electronic/digital evidence.[443]

- **Greece:** An electronic document constitutes full evidence, susceptible to counter proof as to the events that it lists only when it contains evidence able to substitute for the lack of a handwritten signature. The Court considers that e-mail addresses designated and used by each user individually has the character of a handwritten signature.[444]

- **Spain:** The Court will evaluate the electronic evidence in accordance with the rules of "sound criticism". Apart from that, the Court freely appreciated by virtue of its judicial powers electronic documents laid down before it pursuant to the Civil Procedure Act.

  There are certain rules relating to the manner in which of public and private documents should be presented.

  The probative force of private documents: when the authenticity is not contested, the documents provide full evidence of their content.

  Probative force of public documents: these documents shall provide full proof of the fact, action or state of affairs documented by them, as well as the date in which they were produced, of the identity of those certifying them and of any other persons, if any, intervening in them with the requirements and in the cases set forth.[445]

- **Finland:** Regulation establishes that in the lodging and consideration of a matter, the required written form is also met by an electronic document delivered to the authorities. If a signed document is required in the lodging or consideration of a

matter, an electronic signature meets the requirements for signature. For example, if a party sends the DoP as reference or evidence to judicial bodies then the sender should identify himself through the system of digital signature. [446]

- **France:** An electronic-based writing has the same probative value as a paper-based writing, under two conditions: the author of the signature can be duly identified, and it has been established and stored securely so as to its integrity. There is no definition of integrity.

  The same document if it is saved in two different formats would create two different versions of the numeric lecture, while their image would be completely the same. This is susceptible to create a doubt about integrity of the information if it is presented to the judge.[447]

- **Croatia:** Electronic documents have the same weight as other forms of evidence. It is not allowed to dispute an electronic document simply for the reason that it is made in electronic form, is not signed using an advanced electronic signature or does not contain a qualified certificate.

  In case of doubt as to the authenticity and integrity of admissible electronic evidence, judicial bodies may order examination of electronic evidence by court experts. In case of doubt as to the documentary value of electronic evidence, authenticity and integrity of which are not questioned, judicial bodies are authorised to exercise discretionary evaluations.

  Other electronic records are treated as a source of information, provided that their authenticity and integrity, as a matter of principle, should be verified by admitted court experts. Whether they would be taken into consideration as evidence is however subject to discretionary evaluation of the presiding judge(s). [448]

- **Hungary:** Electronic documents have the same value as non-electronic ones. In practice the court will decide on the weight given to the different pieces of evidence provided. The weight will also depend on whether the evidence is accepted or contested by the other party[449].

- **Ireland:** There is no distinction and equal weight is given to documents whether in hard copy or electronic soft copy.
  The new 2009 rules were brought in to give weight to the provision of ESI and to provide ESI in its native searchable format if so requested. [450]

- **Iceland:** The basic rule is the freedom of proof, the judge has a free hand in evaluating the evidence and whether an assertion concerning certain circumstances shall be considered proved or not.
  In the same vein, a judge assesses the validity of a private document, including electronic or digital evidence, with reference to the circumstances of each case. There are no specific rules concerning the weight of admissible electronic/digital evidence.[451]

- **Italy:** The electronic document signed with a digital signature or any other type of electronic signature, has probative value under Article 2712 of the Civil Code. The originator of the electronic document is presumed that of the signing party.

  The above-mentioned Article 15 of L.59/97 states that "acts, data and documents written by the Public Administration and privates with computer or internet, the contracts stipulated in the same forms as well as their storage and transmission by internet, are valid and relevant for all purposes of law".

  Under this rule, a document signed with a digital signature has the same value as its paper equivalent. As a result, for example, are considered valid the contracts online, as well as the commercial invoices or the purchase orders. The Italian Supreme Court has decided in two occasions that an electronic document, without any signature, can be used as evidence in a trial. Tribunals, under the previous legislation, had already issued decisions in which an email was considered meeting the legal requirements of writings in order to obtain a decreto ingiuntivo (Type of judicial order).

  With the entry into force of the Government Code in January 2006, the evidentiary value of electronic documents has undergone further modification. Paragraph 2 of Article 21 (as amended by Legislative Decree no. 4 April 2006, n.

159) states that *"The electronic document signed with a digital signature or any other type of electronic signature, as effective as laid down 'Article 2702 of the Civil Code. The use of the device of signature is presumed due to the owner, unless he proves otherwise".*[452]

- **Liechtenstein:** No specific regulation. Case law shows that the Liechtenstein Constitutional Court accepted the transmission of a pdf copy of a constitutional complaint via e-mail as a means to file such a complaint within the applicable time limit. This case law does not lead to a general principle according to which any sort of e-communication would have to be accepted by a Liechtenstein court as admissible.[453]

- **Lithuania:** No evidence has pre-determined evidential value for the court. The weight of electronic document depends on whether it satisfies the general criteria related with the authenticity, integrity and reliability of the document based on the assessment of the court of the individual electronic document. Article 185 prescribes the rule of free evaluation of evidence.[454]

- **Luxembourg:** It shall be noted that a great reform, expected to be implemented before the end of this year, has been launched on 13 February 2013. Indeed Bill n° 6543 introduces a new Law on the dematerialisation and conservation of documents (electronic archiving). It also amends the Law of 5 April 1993 on financial services and replaces the Grand Ducal Regulation of 22 December 1986 by a new Grand-Ducal Regulation. This bill's main objective is the recognition of the legal value of dematerialised documents and the establishment of legal presumption of copies that conform to the original.[455]

- **Latvia:** The electronic form of the document does not in any way affect the weight given to the particular document. As long as the document is not one of the documents specified not to be submitted in electronic form and it is signed in accordance with the law, the document has the same legal weight as any other document submitted in paper.[456]

- **Malta:** One of the cardinal rules in Maltese procedural law is the "best evidence rule", which requires that the best evidence possible or available at a given time

must be adduced in a court of law. However, the person presenting the electronic evidence can prove its original character, authenticity and integrity then there should be no reason not to accept it and give it the same weight as a physical counterpart.[457]

- **The Netherlands:** There are no regulations or case law concerning electronic or digital evidence or the weight thereof. In principle all forms of evidence are admitted and the judge will weigh the evidence. It is unlikely that the form of the evidence will influence any ruling on evidence freely. In civil cases, judges are free to weigh the evidence as they see fit on the basis of the Code for Civil Proceedings, section 152, paragraph 2.[458]

- **Norway:** The main rule is the free evaluation of evidence; the court will evaluate the evidence submitted before it in deciding on the facts of the case. If one of the parties or the court (by its own initiative), contest the evidence, the court executes the examination of this evidence in accordance with the rules of the Dispute Act.[459]

- **Poland:** The weight of electronic/digital evidence in judicial proceedings is (at least theoretically) exactly the same as of any other type of evidence that may be admitted in the proceedings.[460]

- **Portugal:** No specific regulation. Evidence is freely evaluated.

- **Romania:** There is no provision that certain evidence shall be given different weight than other evidence. Courts evaluate all circumstances and therefore admissible electronic documents will be regarded in the same way as paper copies of documents. Electronic evidence, once accepted has the same value as evidence on traditional material support.[461]

- **Sweden:** There is no provision stating that certain evidence shall be given different weight than other types of evidence. Courts evaluate all circumstances. Therefore admissible electronic documents will be regarded in the same way as paper copies of documents.[462]

- **Slovakia:** The courts will weigh all evidence on its merits, based only on the court's determination of its evidentiary value as to the questions that the court is to resolve. The court, as basic principle, is not limited by legal means in its manner of determining the value of the evidence (including that in electronic format), as long as the evidence is obtained legally – the principle of free evaluation of evidence applies. [463]

- **Slovenia:** The Civil Procedure Act determines that the information provided in the electronic form cannot have less evidentiary value solely as they are in electronic form.[464]

- **United Kingdom:** Electronic documents (those in which information is held in electronic form) have no less or different evidential weight than any others.[465]

3.2.3. Overview of authentication and integrity requirements (including those on preservation) in the different Member States

The DoP may be provided by a variety of parties. In the context of litigation for example, the parties whose responsibility is alleged and liability is sought will produce documents that demonstrate the absence of breach of contract or negligence. If they need to rely on the DoP, they will provide it in the form that they have it. This may be digital. In general the DoP will be accepted at face value unless its content is contested by another party. In such a case the party will have to demonstrate that the DoP is authentic and that the information that it contains is correct which means as initially provided when the product was placed on the market (or as amended if an official amendment was issued).

Like many other types of evidential material, electronic documents stored on magnetic and optical media may be damaged. They can also be tempered with; But, so can paper documents. However, unlike other types of evidential material, digital information is extremely sensitive to the smallest changes. And small changes may be hard to detect. If DoPs are generated automatically for example, a small bug in a program could alter the

content of all DoPs or affect their integrity when the servers on which they are stored are reconfigured.

There will be means however to check the integrity and authenticity of DoP type documents even if provided electronically. Indeed, the manufacturers have an obligation to maintain them. Distributors also. And builders receive them.

In general, there is no obstacle linked to the authentication and integrity requirements. The rules that apply to paper documents apply in the context of electronic documents though they are adapted to the constraints of electronic formats. The main requirements are that where the law provides that a document must be signed, then the regulations on electronic signature apply to electronic documents. In particular any encryption requirement will apply. Where a signature is not as such required, the courts will check manner in which the author is identified (i) in the documents, (ii) in the message accompanying the document and (iii) through the transmission mode of the message. In terms of the integrity, the courts will check, if integrity is put into question, the way in which the message was created, saved, stored and transmitted.

- **Austria:** It is required that technical and organisational measures are taken in order to grant that the submission can only be made by the registered person. For the purpose of integrity every submission in the electronic communication system has to be encrypted and to be granted the authentication all participants have to use certificates according to the E-signature Act. [466]

- **Belgium:** An electronic signature shall only be considered as the legal equivalent of handwritten signature if it complies with legal conditions regarding technical security.

  A number of providers of e-signature certification have been accredited. The ECONOMY Federal Public Service may, at any time, audit, without prior notice, a provider of certification services, who delivers approvals certificates.

  An accreditation delivered to those providers must be considered as a presumed evidence of the conformity and integrity of the services that they provide.

BE.SIGN is the Belgian accreditation system for providers of certification services that deliver certificates of approval for electronic signatures.[467]

- **Bulgaria:** Authenticity includes the authorship and the contents of documents. Authorship originates in the signature. The Electronic Document and Electronic Signatures Act identifies three types of electronic signatures: Electronic signature, advanced electronic signature and qualified electronic signature (this one has the legal effects of a handwritten signature).

  The authenticity may be disputed before the court by any party in the case, no later than the answer of the disputing party to the procedural motion whereby the document was provided by the court. To prove the authenticity of an electronic document the disputing party may request that a witness expert examines the document.[468]

- **Cyprus:** The Courts are granted by law with wide discretionary powers with respect to the admissibility of any type of document, including electronically produced documents. Print outs from computers and photocopies can be used as evidence in courts, and they may also admit the computer itself in Court in order to show the documents, although it is usual practice to use the print out itself or to require a witness to testify as to the contents of the document stored in the computer, rather than to bring the device itself into Court.[469]

- **Czech Republic:** Identical caveats concerning the burden of proof in respect of the authenticity of digital documents submitted to the courts apply. Should the court question the veracity of the documents, it is up to the submitter to fill the authentication gap, usually by providing the original document.

  The requirements for authentication and integrity of electronic documents submitted to judicial bodies are identical to demands placed on such documents for the purposes of administrative bodies. [470]

- **Germany:** If a declaration is made in electronic format it must be provided with a qualified electronic signature. Where there is an issue as to authenticity, the

court may request that the person who created the document or record makes a statement as to its authenticity.[471]

- **Denmark:** As set out above, the court will not yet accept communication or not documentary evidence in a digital format. Accordingly, the issue of authenticity and integrity requirements does not currently apply.

  In the future, with the coming into effect of Section 148a of the DPC, the digital signature, as harmonised at the European Union level, will serve to provide for the authenticity and integrity of documents produced by the parties and the representatives, which are submitted to the court, such as applications to the court.

  However, for documents used as evidence, not current provisions have been established so as to ensure the authenticity and integrity of such documents in their digital format. For this purpose, the courts will have to apply their right to undertake an evaluation of the evidentiary weight of any such document.[472]

- **Estonia:** Civil law: a factual circumstance is automatically counted as true if the opposing party admits it. A party can withdraw its admittance if a) the other party consents to withdrawal; or b) the party withdrawing admittance was due to incorrect understanding of facts (Code of Civil Procedure).

  In case of documentary authenticity, whether paper or digital, a party may dispute the authenticity of the document if he motivates it. In case the authenticity is under dispute, the court will decide on it freely.[473]

- **Greece:** The Courts ruled that a message sent by email, the sender's statement as attached to the sender's e-mail address, has the character of a handwritten signature. The legally certified copy of the sent electronic message, which is contained in the recipient's hard drive is full proof/evidence that the statement contained therein comes from its publisher-sender.

  Anyone claiming forgery has the burden of the proof.

In addition, below is a summary of yet another court decision No. 1932/2011 One- member Court of First Instance of Athens whereby the court assimilates an electronic document with a private document.

In the case a litigant provides a memory stick as evidence the court will accept its valid and true only if the memory stick contain evidence able to prove its origin and authenticity. Any relevant Case law relating to USB –stick as evidence, has not been traced yet.[474]

- **Spain:** The main problem is the reliability of electronic evidence which may pass the called "test of admissibility". The specific safeguards to be fulfilled are the integrity (nobody has tampered with the document's support), authenticity (statement of the reality of the subject to whom it is attributed and of the content) and legality (gathering evidence with due regard to fundamental rights and freedoms).[475]

- **Finland:** The judicial authority shall without delay notify the sender of an electronic message of the receipt of the message. The acknowledgement can be sent as an automatic reply through the data system or given in some other way.

  The acknowledgement of receipt has no effect on the prerequisites for processing the matter. This means that if a party sends the DoP or any other document by means of an electronic process such document will be admitted as received, however, the scope of such document depend on the facts of the legal case, whether, the received document be considered as a reference or evidence. Consideration of such document will depend on the facts of the legal process of litigation. Consideration of such document may also require oral or written statements in support of the contents of the documents in question pursuant to Judicial Procedure.[476]

- **France:** Writings presented in electronic formats as evidence before the courts has the same value as paper-based writing, provided the conditions mentioned under article 1386-1 of the Civil Code are respected. Each time a party contests the authenticity of an electronic signature, the judge should apply article 287 of

the Civil Procedure Code, in the same conditions as for the authenticity of paper version documents.[477]

- **Croatia:** In case of doubt as to the authenticity and integrity of admissible electronic evidence, judicial bodies may order examination of electronic evidence, authenticity and integrity of which are not questioned, judicial bodies are authorised to exercise discretionary evaluation. Regarding preservation, e-registers are operational, while case tracking systems are still under construction in several "pilot-courts".[478]

- **Hungary:** Authentication follows and documents can be filed using the client gateway of the Hungarian Government and preservation can be carried out individually.[479]

- **Ireland:** The process of authenticating electronic documents can vary depending on the level of security required and the vulnerability of a given document to spoliation or fraudulent interception and consequent alteration.

  There are no specific rules on determining the authenticity of electronic documents in Ireland. Where discovery is sought in its native searchable format, the documents should be provided with its original metadata intact. This can be done by making sure documents are collected in a forensically competent manner ensuring that data is not tampered with in any way before production. The original documents should be preserved as electronic documents as these may be lost or altered in the normal course of business before a party has the opportunity to collect it.

  Once the court is satisfied as to the authenticity of the printout with which it is concerned, it must then consider the question of its admissibility.[480]

- **Iceland:** There are no rules or requirements on authentication and integrity of electronic/digital evidence.[481]

- **Italy:** Electronic communications are regulated in exactly the same way as traditional manifestations of will. [482]

- **Liechtenstein:** No specific regulation.

- **Lithuania:** When, evaluating the evidence, the courts should take into consideration the following criteria:
  - The reliability of the way in which the data message was created saved and transmitted.
  - The reliability of document integrity.
  - The manner in which the person or institution is determined as the author of the data message.
  - The source of the data message.

  There is a specific law regarding the procedures for preparation, management, recording and storage of electronic documents. This also sets out the functional requirements for the management systems of electronic documents.[483]

- **Luxembourg:** In Luxembourg, a builder is allowed to produce any digital medium (memory stick, cd, smartphone) containing the content of the relevant DoPs before a court provided that such a medium may be read or otherwise comprehended through use of technical aids normally employed by the court. Therefore, the format of files contained in the digital medium must be readable through standard programs, i.e. for example file formats such as ".pdf", ".doc", ".html", or ".odt".[484]

- **Latvia:** The main requirements are the existence of an appropriate signature and agreement of the reviewing body to accept this type of signature.[485]

- **Malta:** If the person presenting the electronic evidence can prove that it is an original, authentic and complete then there should be no reason not to accept it and give it the same weight as a physical counterpart.[486]

- **The Netherlands:** There are no regulations with regards to authentication and integrity requirements. [487]

- **Norway:** There is no provision regarding this matter. However, if the court finds that the evidence is not genuine or has been contaminated, the evidence can be disregarded pursuant to the principle of free evaluation of evidence.[488]

- **Poland:** There are no specific rules applying to the authentication and integrity. The court, confronted with electronic document submitted as evidence, will apply the regulations concerning other means of evidence accordingly. Thus, every court will decide at its own discretion on how an electronic document should be authenticated.[489]

- **Portugal:** Through being accessible online, the presentation of proceeding briefs and documents through the information system of civil courts (CITIUS) dispose of the original copy, however it could be acquired in case of doubting of the authenticity of the documents or if it would be necessary to make an investigation about the original document itself. The summons and the documents cannot exceed 3 MB. If the summons itself reaches the 3 MB limit, the remaining documents must be delivered personally or through postal mail within five days of the date when the summons was sent.
  Concerning the administrative courts' information system (SITAF), the accepted formats for electronic documents (summons and documents) are Rich Text Format, PDF, and Tagged Image File Format. However, the digital copy dispenses with the delivery of the original copy as well, which is only specifically required when the file includes more than one hundred pages [490]

- **Romania:** The electronic document to which has been applied a simple electronic signature, recognized by the party to which it is opposed, has the same effect as the authentic act between these parties and between those who represent these parties.

  Where the law requires a written from as a condition of proof or of validity of a documents, an electronic document to which it has been attached an extended signature is deemed to accomplish these conditions.
  If one of the parties does not recognize the document and the signature, an expert would be designated.[491]

- **Sweden:** Formal requirements in administrative matters are more common than under civil law. There are not yet any authentication or integrity requirements concerning the DoP. Some municipalities have initiated an electronic process

which makes it possible to hand in applications for building permits electronically. [492]

- **Slovakia:** Electronic documents are evaluated similarly to other types of documents. In private documents the following must be determined:
  - veracity (which means that it must be determined that it originates from the therein indicated issuer, and
  - correctness (which means its veracity).

  If the stated issuer denies the document's correctness, the burden of proof lies with the party who seeks to benefit therefrom.

  An electronic document is considered authentic if signed using a certified electronic signature, which allows confirmation of the document's veracity and authentication of the signor. The certified electronic signature provides for the document's:
  - authenticity – verification of originality. i.e. identity of the signor,
  - integrity – it can be shown that no changes were made nor data were not altered after the signature, and
  - non-deniability – the document author may not claim that it was not created by him. [493]

- **Slovenia:** Authentication of documents is achieved through the safe electronic signature certified by a qualified certificate. The public databases are available to all administrative units and they have the possibility to verify the authentication and integrity of the submitted document. Preservation of the documentation is set down in the Decree on documentary and archival material custody.[494]

- **United Kingdom:** The documents should be preserved throughout proceedings, from when a party is aware of potential litigation. These documents to be preserved include electronic documents which would otherwise be deleted in accordance with a document retention policy or otherwise deleted in the ordinary course of business.

  If electronic documents are best accessed using technology which is not readily available to the party entitled to disclosure, and that party reasonably requires

additional inspection facilities, the party making disclosure shall co-operate in making available to the other party such reasonable additional inspection facilities as may be appropriate in order to afford inspection.[495]

Summary

Admissibility of electronic documents

In most countries electronic documents may be submitted to the courts.

In some countries no law has been necessary to allow the admission of electronic documents as evidence. In others, the legislator has decided to provide a framework for the submission of electronic documents rather than just adapt the existing system.

The best evidence rule may still apply in a number of Member States such as Luxembourg (a law on dematerialization of 2013 will change this), Bulgaria and Malta. This may hinder the possibility of submitting DoPs as electronic documents if they are mere copies of original paper documents.

One exception to the principle of admissibility of electronic documents would be Denmark where, even if documents may be originally created in digital or electronic format, they will have to be submitted to the court in paper form.

Weight given to evidence submitted in electronic format

Courts are generally given latitude to determine the weight given to specific pieces of evidence.

In general the same weight is given to the equivalent paper format. In many countries, all pieces of evidence are evaluated equally.

Authentication and integrity

The DoP may be provided by a variety of parties. In the context of litigation for example, the parties whose responsibility is alleged and liability is sought will produce documents that demonstrate the absence of breach of contract or negligence. If they need to rely on the DoP, they will provide it in the form that they have. This may be digital. In general the DoP will be accepted at face value unless its content is contested by another party. In such a case the party will have to demonstrate that the DoP is authentic and that the information that it contains is correct which means as initially provided when the product was placed on the market (or as amended if an official amendment was issued).

In general, there is no obstacle linked to the authentication and integrity requirements. The rules that apply to paper documents apply in the context of electronic documents though they are adapted to the constraints of electronic formats. The main requirements are that where the law provides that a document must be signed, then the regulations on electronic signature apply to electronic documents.

4. CHAPTER 4: Case Study

In order to complete and check the information provided in the preceding sections, a case study was submitted to the different national consultants.

The basic facts of the case study were as follows:

Manufacturers X and Z have supplied with the construction products the reference number for the DoPs and the Internet address ("Website") where the DoPs can be found.
Manufacturer Y has placed on the construction products QR codes that contain the content of the DoP and Website where the DoPs can also be found.
The Builder goes to the Websites of Manufactures X and Z, inputs the reference number for the DoP on the Website and a DoP appears. It can be downloaded the form of PDF or similar files, is readable and contains the information required by the CPR.
The Builder downloads the DoPs onto his computer and archives it.
The Builder uses his smartphone to read Manufacturer Y's QR Codes, enabling him to view the DoPs' contents. He downloads the DoPs' contents onto his smartphone. The information contained in the QR Codes is readable and reflect the information required by the CPR.

Based on these the following two hypotheses were submitted/

Hypothesis 1
A couple of years later a claim is brought up having a bearing with the factual performance of a construction product.

The Builder seeks to produce a digital medium (memory stick, cd, smartphone) containing the content of the relevant DoPs (bearing in mind that for a building there might by hundreds of DoPs) before a court (administrative or civil).

What type of digital medium, if any, is accepted by the Courts to be used in Court?

Would the content of the digital medium produced be accepted as evidence of the DoPs (please describe in detail in which circumstances and under which conditions (citing relevant rules or case examples), if any, the digital medium would or would not be accepted as evidence)?

Would the content of the digital medium produced be accepted as evidence of the content of the DoPs (please describe in detail in which circumstances and under which conditions (citing relevant rules or case examples), if any, the digital medium would or would not be accepted as evidence of the content of the DoPs)?

Would this be given the same weight as other types of evidence?

The Builder provides the addresses of the Websites where the DoP information can be found.

Would the Court accept the DoP information from the Websites as evidence of the DoPs (please describe in detail in which circumstances and under which conditions (citing relevant rules or case examples), if any, the Website addresses would or would not be accepted as evidence of the DoPs)?

Would the Court accept the DoP information from the Websites as evidence of the content of the DoPs (please describe in detail in which circumstances and under which conditions (citing relevant rules or case examples), if any, the Website addresses would or would not be accepted as evidence of the content of the DoPs)?

Would the Court give the same weight to this as other types of evidence?

Hypothesis 2

The builder needs to obtain a final building permit from the authorities.

He/she, as part of the documentation used to obtain the final building approval produces a digital medium (memory stick, cd, smartphone) containing the content of the relevant DoPs.

Would the building inspectors/approval body accept the builder's medium (please describe in detail in which circumstances and under which conditions (citing relevant rules or case examples), if any, the digital medium would or would not be accepted)?

He/she, as part of the documentation used to obtain the final building approval produces the Website addresses.

Would the building inspectors/approval body accept the builder's provision of the Website addresses (please describe in detail in which circumstances and under which conditions (citing relevant rules or case examples), if any, the Website addresses would or would not be accepted)?

The first hypothesis pertains to the operations of legal proceedings brought before a court. In general most Member States noted that a builder would be able to provide the DoP before a court in the form of an electronic document.
Whilst in some countries no specific conditions exist, in some Member States, such as in Austria and Sweden, specific requirements would apply in terms of format, size or method of transmission. In Germany, the electronic documents submitted would have to bear an electronic signature.
In Austria, submissions to the courts can be made electronically and this is even compulsory for legal professionals. [496]
In Austria, even though the courts would accept electronic submissions, they may also require printed copies of submitted files.
In other countries such as Bulgaria or Luxembourg, the electronic DoP would most probably be accepted into evidence.

In general, once admitted, evidence provided by means of a digital medium is evaluated according to the same principles as other types of evidence. Many countries apply the principle of freedom of proof. This means that the parties in a trial may refer to all the evidence that they feel is relevant and that the court should evaluate this evidence freely

giving all pieces of evidence equal weight. This is the case in Austria and Sweden for example.

In general the provision of website addresses where the evidence is located and can be accessed would not suffice as the actual presentation of the content of such evidence. Parties generally submit the evidence upon which their position is based. Merely providing an address to a website where such evidence may be accessed and from which it can be downloaded may result in the court not considering the evidence itself. The provision of the addresses of the website where the DoP information can be found may therefore not suffice as evidence of the DoP or of its content. Further, it is not in the interest of a party referring to the DoP to only provide the website address. It is in the interest of such party to produce before the court the documents or information retrieved from the Website, and referring to the Website as the origin of such documents or information.

With respect to the second hypothesis, the principles guiding courts submissions would also generally apply with administrative bodies except that these may more often impose more formal processes although they can in certain cases be more client focused than court (as in Sweden for example) and may even accept the provision of website addresses as sufficient means of obtaining relevant information concerning DoPs.
Although, there is no indication that electronic submissions of documents would be an issue, in many countries administrative bodies are free to accept the format in which submissions are made and may be restricted in their acceptance of electronic documents by infrastructure constraints. In Luxembourg for example the municipality would accept the builder's medium provided that such a medium may be read or otherwise comprehended through use of technical aids normally employed by the administration. Therefore, the format of files contained in the digital medium must be readable through standard programs, i.e. for example file formats such as ".pdf", ".doc", ".html", or ".odt".
In some countries such as Sweden, administrative bodies (municipalities) have also started to use electronic processes for demands, including building permits.
In other countries such as Bulgaria, if the law provides clearly that parties may submit electronic evidence to the courts, it is silent on that possibility with respect to administrative bodies.

This is appears to be a trend that is likely to lead to a generalisation of electronic processing in the future in most Member States.

5. CONCLUSION

5.1. Use of electronic means to provide DoPs before administrative bodies in the different Member States

In general parties may use electronic means to provide DoPs before administrative bodies in the different Member States. However, technical and legal hurdles may limit this possibility in practice.

From a technical standpoint, electronic submission of documents may be refused if the administrative body does not have the means to read or use such documents. Further, constraints may exist as to the acceptable format and the maximum size of files that the administrative bodies may apply. Indeed, in Sweden, for example, a party may use electronic means to send DoPs by email to administrative bodies if the size of the file is smaller than 30 megabytes and in the format of the file is acceptable to such body. However, where the party wishes to hand in electronic documents directly to the administrative body using a USB-stick or CD/DVD, any size is acceptable. In terms of format, the files contained in the digital medium must be readable through use of standard programs, such as PDF and DOC.

Such evidence will then be evaluated according to the same principles as other types of evidence and shall, as a starting point, be given equal weight as other types of evidence.

- **Austria**: a DoP can be submitted electronically but that depends on the administrative body, the procedure, the infrastructure available and the kind of digital media that can be submitted.[497]

- **Belgium**: local authorities only accept documents in their printed forms. There are no provisions on the conditions for DoPs to be admissible in courts.[498]

- **Bulgaria**: parties should be able to submit documents and electronic documents to administrative bodies. Where these submissions are recorded on a digital

medium, the latter should permanently preserve the document and should allow its visualisation multiple times.[499]

- **Cyprus**: there is a current lack of legal framework for electronic communication with administrative authorities, including those involved in the construction products. Cyprus has to adopt an eGovernment system in this respect.[500]

- **Czech Republic**: a party may use electronic means to provide evidence before administrative bodies if certain requirements are fulfilled (the total size of the files should not exceed 10 megabyte), this evidence shall be given equal weight as the paper one.[501]

- **Germany**: the use of electronic means to provide DoPs before administrative bodies in Germany is to be expected. Fully developed safety features and equipment has to be found, to guarantee quality identification.[502]

- **Denmark**: explicitly possible as in the eGovernment strategy.[503]

- **Estonia**: DoPs can be submitted electronically before administrative bodies.[504]

- **Greece**: The declaration of Conformity is usually provided via e-mail or fax, but it cannot be submitted to public Agencies in a digital form in order to obtain a building permit.[505]

- **Spain**: the use of electronic means by citizens in their relation with administrative bodies is largely accepted and the security is ensured by the electronic signature.[506]

- **Finland**: the use of electronic means to provide DoPs before administrative bodies is very smooth, rapid and secure due to official electronic culture.[507]

- **France**: for construction permits, only paper documents are accepted.

- **Croatia**: conditions apply for the full recognition of electronic DoPs before administrative bodies. For example, they should comply with the requirements for electronic documents and they should be made available by manufacturers in the Croatian language.

- **Hungary**: it is possible theoretically (legally) to use electronic means to provide DoPs before administrative bodies. However, in practice the use of electronic means to provide DoPs before administrative bodies may take a little time as the new regulations came in force in 2013[508].

- **Ireland**: custom is to accept documents in hard copy, but there is no reason why electronic documents should not be accepted.[509]

- **Iceland**: electronic means of providing DoPs to administrative bodies are acceptable provided the data is in an accessible format, sometimes it will be necessary to show that the document has not been changed.[510]

- **Italy**: it is possible to send electronic documents instead of the paper ones.[511]

- **Liechtenstein**: there are no restrictions to the use of electronic means to provide DoPs before administrative bodies, but an by the administrative body may refuse such submission if it doesn't dispose of suitable technical installations to process the document.[512]

- **Lithuania**: it is possible to use electronic means before administrative bodies, but they must comply with requirements such as the electronic signature and presentation in the prescribed format. This kind of evidence is given equal weight as the other types.[513]

- **Luxembourg**: In Luxembourg the possibility of producing private electronic documents before administrative bodies is permitted.
  Private electronic documents have the same evidentiary weight as handwritten documents provided that they present reliable guarantees regarding the

safeguarding of their integrity from the moment when they were first created in a definitive form.[514]

- **Latvia**: it is not expressly prohibited to provide administrative bodies with DoPs in electronic form using any kind of digital media, including websites, but sometimes this may be limited and dependent on each respective body's willingness to accept them.[515]

- **Malta**: a DoP can be submitted in electronic format, as long as it can be accessed and used for subsequent reference, but the mere reference to a website where the DoP is contained may not suffice without the agreement of the administrative body in question.[516]

- **The Netherlands**: there are no legal objections to providing DoPs in digital form to administrative bodies, but it may dictate in which format electronic documents are provided.[517]

- **Norway**: the use of electronic means to provide DOP's before administrative bodies is widely accepted in Norway.[518]

- **Poland**: using electronic means to provide DoPs before the competent administrative bodies is allowed and possible, but it depends on whether the particular administrative body accepts a DoP stored on a digital storage device or not.[519]

- **Portugal**: the delivery of DoPs through electronic means is possible in all municipalities, but they are free to choose the means they prefer, and to determine the acceptable format and size. The administrative body will also give the electronic DoP the evidentiary weight that it chooses.[520]

- **Romania**: a party may use electronic means to provide DoPs before administrative bodies if required and accepted by them; if so, it should be given the same weight as other types of evidence.[521]

- **Sweden**: a party may use electronic means to provide DoPs if they are less than 30mb in size or made available in a proper way. They are given the same weight as written evidence.[522]

- **Slovakia**: the use of electronic means is accepted. Generally, any evidence can be used before administrative bodies, including the electronic evidence which the bodies will weight in light of its specific circumstances and attributes.[523]

- **Slovenia**: a party may use electronic means to provide DoPs before administrative bodies if they are made available by technical means which the body itself employs; this kind of evidence is given equal weight to other types of evidence.[524]

- **United Kingdom**: there is flexibility in how DoPs can be submitted to administrative bodies. In Court proceedings, electronic data will be viewed no differently than other forms of data or other documents in assessing their validity and use. There should be co-operation between parties and administrative bodies as to how documents are handled and assessed. In particular in Court proceedings the rules are quite clear on limiting the costs of electronic disclosure, and emphasise the need for co-operation.[525]

5.2. Use of electronic means to provide DoPs before judicial bodies in the different Member States

In general parties may use electronic means to provide DoPs before administrative bodies in the different Member States. However, technical and legal hurdles may limit this possibility in practice. In Belgium, for example, each court has a margin of discretion as to whether it will accept electronic documents or whether it will request that all documents be submitted in paper format.

From a technical standpoint, electronic submission of documents may be refused if the judicial body does not have the means to read or use such documents.

From an evidentiary standpoint, the admissibility of electronic documents and weight given as evidence of the documents will depend from Member State to Member State. In general one can conclude that electronic documents are admissible but that their weight will depend on whether they are provided with an electronic signature or not.

In some Member States, if a signature is required, the document may not be admitted into evidence unless it contains an electronic signature in a format that is valid under the national regulations. In Sweden for example section 17 of the Qualified Signatures Act stipulates that "If a requirement of a handwritten signature or its equivalent, contained in a law or regulation may be satisfied by electronic means, a qualified electronic signature shall be deemed to fulfil this requirement. (...)[526]".

There is no general regulatory prohibition on the provision of electronic documents such as those that may contain the DoP before judicial bodies. The possibility may be regulated and face the hurdles of either a lack of practice or a lack of means to accept various formats or sizes but apart from these no major obstacles exist generally. In some countries, such as Hungary, new regulations on the presentation of electronic documents in some court proceedings have only been in force since 2013.

- **Austria**: judicial bodies accept documents and evidence submitted electronically.[527]

- **Belgium**: in principle, all elements to register before a jurisdiction have to be in their paper version. Elements stored in a digital key, a telephone or a computer have to be either printed or transcribed again by a court bailiff, but DVDs are generally accepted. The court is free to ask the type of evidence it usually accept, which may differ from court to court.[528]

- **Bulgaria**: courts uphold that e-mail are deemed a signed document as per the Civil Procedure Code if it is signed using an electronic signature. Therefore, e-mails which include no electronic signature are deemed private documents which are not signed by the party and which have no obligatory evidentiary

power but this shall not mean that the e-mails would not constitute written evidence. The same rules apply as to the administrative bodies.[529]

- **Cyprus**: since 2004, electronic evidence is accepted by Cyprus Courts as admissible 'hearsay' evidence, and as such, the Courts maintain their discretion the weight to give such evidence. In addition, electronic evidence produced without human intervention is accepted as 'real evidence', which means it is not necessary for a witness to testify to its correctness.[530]

- **Czech Republic**: a party may use electronic means to provide evidence before administrative bodies if certain requirements are fulfilled (i.e. the total size of the files should not exceed 10 megabyte), this evidence shall be given equal weight as the paper one.[531]

- **Germany**: in general, electronic documents are admissible as evidence, if they comply with the requirements.[532]

- **Denmark**: currently providing electronic evidence is not possible due to the paper requirements of the procedural code, although digital submission has in principle been made recently possible, but remains inoperative as the implementing measures have not yet been adopted.[533]

- **Estonia**: DoPs can be submitted electronically before judicial bodies, but they must be in a proper format.[534]

- **Spain**: the use of electronic means to provide DoPs before judicial bodies is generally admitted.[535]

- **Greece**: the Court accepts the submission of electronic documents as evidence, but it must meet certain requirements such as evidence proving its origin.[536]

- **Finland**: Electronic evidence is admissible, but the party who transmits electronic documents to a judicial body may have to testify his/her contention through an oral or written statement.[537]

- **France**: common rules of evidence apply; if electronic means used for generating and providing DoP comply with the regulations, then it is possible to use them before judicial bodies, if not it would be considered as commencement of proof of a writing.

- **Croatia**: equal application of the rules applying to administrative bodies.

- **Hungary**: it will be possible, but with important restrictions. In some procedures, the DoP may have to be presented in a hard copy, while in civil claims for damages surpassing HUF 30 million (EUR 110 000), the DoP may be filed electronically[538].

- **Ireland**: electronic evidence is acceptable and shall be given equal weight as other types of evidence.[539]

- **Iceland**: the DoP can be produced by electronic means, but these bodies are not legally obliged to accept it.[540]

- **Italy**: reference to the art.56 "identification of matters pending before the courts of all levels".[541]

- **Liechtenstein**: judicial bodies are not hindered from accepting evidence produced using electronic means. In the procedural law, a party is expected to provide any means of proof it disposes of at first instance.[542]

- **Lithuania**: it is possible to provide such evidence if it is signed using an electronic signature and in a proper format.[543]

- **Luxembourg**: In Luxembourg the possibility of producing private electronic documents before judicial bodies is permitted.

  Private electronic documents have the same evidentiary weight as handwritten documents provided that they present reliable guarantees regarding the safeguarding of their integrity from the moment when they were first created in a definitive form. In theory a party may refer to a website address where the documents are available. The judge may access the website and download the documents.

  This applies when the documents are created originally as electronic documents. If the electronic documents are copies of originals on the other hand currently, the best evidence rule may either limit admissibility of electronic copies of original paper documents or limit their evidentiary weight. This rule may however disappear with the new 2013 law on dematerialization.[544]

- **Latvia**: it is not prohibited for the DoPs to be provided before courts electronically using any kind of digital media. The electronic documents are treated in the same way as paper documents.[545]

- **Malta**: an obstacle may arise for the provision of DoP as an electronic document since the E-Commerce Act states that rules relating to the equivalence of electronic and paper-based transactions do not apply to "the rules, practices or procedures of a court or tribunal" or to "any law relating to the giving of evidence in criminal proceedings". However, electronic evidence or an electronic document is not completely inadmissible but the authenticity, originality and integrity thereof have to be proven on a case-by-case basis.[546]

- **The Netherlands**: there are no legal objections to providing DoPs in digital form before judicial bodies.[547]

- **Norway**: any electronic means used to provide DoPs will normally be accepted by judicial bodies. [548]

- **Poland**: it depends on judges whether they are admissible and what value they will be given.[549]

- **Portugal**: the courts are prepared to receive DoPs in electronic format.[550]

- **Romania**: a party may use electronic means to provide DoPs before judicial bodies; if so, it should be given the same weight as other types of evidence.[551]

- **Sweden:** a party may use electronic means to provide DoPs if they are less than 30mb in size or made available on a DVD or memory stick. They are given the same weight as the written evidence.[552]

- **Slovakia**: The use of electronic means to provide any evidence before courts is accepted.

- **Slovenia**: a party may use electronic means to provide DoPs before the judicial body if they are made available by technical means which the body itself employs; this kind of evidence is given equal weight as other types.[553]

- **United Kingdom**: there is flexibility in how DoPs can be submitted to judicial bodies. In Court proceedings, electronic data will be viewed no differently than other forms of data or other documents in assessing their validity and use. There should be co-operation between parties and the judicial bodies on the issue on how documents are handled and assessed. In particular in Court proceedings the rules are quite clear on limiting the costs of electronic disclosure, and emphasise the need for co-operation.[554]