

MARKET SURVEILLANCE OF CONSTRUCTION PRODUCTS STRATEGY

2023

Ireland



Prepared by the National Building Control
and Market Surveillance Office

January 2023





Article 13 of Regulation 2019/1020, Regulation ANNEX I List of Union harmonisation legislation. 38. Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

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1. Details of your organisation and responsibilities.

1.1 Sector – Construction

Regulation (EU) No 305/2011

1.1.1 Responsible authority and contact details

- Dublin City Council - National Building Control and Market Surveillance Office (DCC-NBCMSO)
- 31 Local Building Control Authorities with [Authorised Officers](#)
- Contact: [Dublin City Council - National Building Control and Market Surveillance Office](#) – support@nbco.gov.ie Web address: <https://nbco.localgov.ie/>
- Point of contact: Mairead Phelan, Dublin City Council - National Building Control and Market Surveillance Office, 01 22 27 947/794

2. Relevant background information

2.1 Overview

2019 saw Dublin City Council (DCC) become the lead local authority for the National Building Control Office, and 2020 saw DCC become the lead local authority for the National Market Surveillance Office. These offices collectively known as [Dublin City Council - National Building Control and Market Surveillance Office \(DCC-NBCMSO\)](#), provides oversight, support and direction for the development, standardisation and implementation of Building Control ([Building Control Acts 1990-2014](#)) and Market Surveillance of Construction Products ([EU Construction Products Regulations 2013 \(S.I. No. 225 of 2013\)](#)) (CPR) in the 31 Market Building Control/Surveillance Authorities.

31 Building Control Authorities are designated Market Surveillance Authorities under the Regulations. DCC-NBCMSO/Building Control Authorities do not have the technical resources in-house to test construction products which may be non-compliant with the requirements of the Regulation (EU) No. 305/2011. Typically, the testing and evaluation of construction products, where considered necessary, will be outsourced to accredited bodies providing such services. Market Surveillance Authorities carry out active liaison, advice, guidance and consultation and enforcement with the principal economic operators and stakeholders involved in the construction sector.

[Geological Survey Ireland \(GSI\)](#) and the National Roads Authority ([TII](#)) are prescribed Competent National Authorities who provide specialist support with development of a Market Surveillance programme within the aggregates and road construction and road fixtures sectors i.e., Area Codes 24, 23, 12.

Regulatory activity is undertaken under a mixture of both reactive and proactive procedures to ensure compliance of products under the Construction Products Regulation.

DCC-NBCMSO's aim is to build capability through an awareness education and training programme; and enhancing the sharing of data and intelligence to support the various notification and intelligence transfers between economic operators, regulators, and consumers to deliver effective and agile proactive and reactive market surveillance.





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2.2 Legislation & Competent Market Surveillance Authorities

EU harmonisation legislation	Irish legislation	Short Title	Appointed Market Surveillance Authority / Competent Authority
ANNEX LIST 38 REGULATION (EU) 2019/1020 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5);	S.I. No. 225 of 2013 - European Union (Construction Products) Regulations 2013. S.I. No. 682 of 2020 WITHDRAWAL OF THE UNITED KINGDOM FROM THE EUROPEAN UNION (CONSEQUENTIAL PROVISIONS) ACT 2020 (CONSTRUCTION PRODUCTS – MARKET SURVEILLANCE) REGULATIONS 2020	Construction Products	Dublin City Council - National Building Control and Market Surveillance Office (DCC-NBCMSO) 31 Building Control Authorities.

2.3 Authorised Officers

Market Surveillance is carried out by the [Dublin City Council - National Building Control and Market Surveillance Office \(DCC-NBCMSO\)](#) who has a team of authorised officers dedicated to carrying out reactive and proactive market surveillance on a nationwide basis. This office leads on policy for Market Surveillance of Construction Products, with the aim to strengthen the oversight and enforcement of the existing construction products regime and establish a systematic approach to ensure effectiveness of market surveillance and enforcement activities. This is achieved through liaison with and compliance support to the Authorised Officers appointed in each of the 31 local Building Control Authorities to promote compliance and enforce the statutory requirements set out under the [European Union \(Construction Products\) Regulations 2013](#), [Regulation \(EU\) No. 305/2011](#) and [Regulation \(EU\) 2019/1020](#).

Building Control Authorities also have primary responsibility for the enforcement of the [Building Regulations 1997 - 2020](#), the [Building Control Regulations 1997 – 2021](#) as well as for parts of the [European Union \(Energy Performance of Buildings\) Regulations](#).

All enforcement activity is performed within existing budgets. However, where a construction product is sent for testing by DCC-NBCMSO/31-Building Control Authorities and that product is found to be non-compliant with the requirements of Regulation (EU) No. 305/2011, the regulations provide that DCC-NBCMSO/31-Building Control Authorities may seek to recover the costs of that test from the relevant economic operator as simple contract debt from any court of competent jurisdiction. Similarly, where an economic operator has been convicted on indictment for an offence under the regulatory regime, DCC-NBCMSO/31-Building Control Authorities may seek a forfeiture order to seize and destroy the construction products concerned; the costs associated with the destruction or disposal of the products may be recovered by the building control authority from the relevant economic operator as simple contract debt from any court of competent jurisdiction.

2.4 2021 Market Surveillance Programme Report from Activities Conducted

Activities take the form of proactive and reactive market surveillance of construction products for formal and technical compliance with the CPR.

- a) Proactive includes planned market surveillance activity including planned and routine inspections and surveys of products - such inspections may include announced and unannounced inspections.
- b) Reactive includes typically, market surveillance activity will be triggered on foot of acting on information received from complaints (e.g., from the public, public bodies, contractors, designers, customs, police, or other market surveillance authorities etc.).





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Follow up market surveillance inspections and investigations may be undertaken where appropriate. Every complaint/query received by DCC-NBCMSO/31-Building Control Authorities is taken seriously, risk-assessed, categorised, and systemic issues identified and corrected. Some queries take considerable time to bring into compliance while others can be resolved quickly. Resolution takes the form of formal and/or technical CPR compliance, inspections, sampling, and testing.

In 2021, 48 **reactive market surveillance** inspections, triggered on foot of acting on information received from complaints were carried out.

These inspections were carried out following notification from Notified Bodies of the withdrawal of 8 Certificates of Factory Production Control (FPC), relating to [EN1090](#), [EN12620](#), [EN 13242](#), [EN 771-3](#) & [EN 13225](#); 22 relating to [EN1090](#), Brexit, and the deregistration of a UK Notified Body; three inspections relating to [EN 3218](#); and one each relating to [EN 14428](#), and [EN 14351](#). Assessments were carried out on 12 other construction product related complaints which included 3 online sales complaints.

Voluntary corrective actions were taken by the relevant economic operators and the outcome then informed the market surveillance strategy in 2022.

The 2021 **proactive market surveillance** inspection programme concentrated on construction products generated by economic operators from quarries and pits, specifically products from Area Code 24 (Aggregates) of the CPR focusing on Aggregates for:

- Concrete ([EN 12620](#));
- Bituminous Mixtures ([EN13043](#));
- Unbound and hydraulically bound materials ([EN 13242](#))

In addition, the Minister for Housing, Local Government and Heritage requested a Market Surveillance Audit of all quarries in Donegal, to be carried out by NBCMSO in partnership with Donegal County Council and Geological Survey Ireland, with a specific focus on Area Code 24 (Aggregates) and Area Code 17 (Masonry related products, Masonry Units, Mortars and Ancillaries), in particular:

- Aggregates for Concrete ([EN 12620](#));
- Masonry units (Dense and lightweight aggregates) ([EN 771-3](#)).

A total of 107 inspections/sampling was carried out in quarries and pits. Each of these economic operators received an information note with an "Article 12(3) of the European Union (Construction Products) Regulations 2013 Request for Information" relating to the construction products they are placing on the market.

Thirty-three cases were uploaded to the [ICSMS \(Information and Communication System for Market Surveillance\)](#).

There were twenty-five findings of non-compliance resulting in twenty voluntary corrective actions being taken by the relevant economic operator and five restrictive measures being taken by the market surveillance authority.





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2.5 2022 Market Surveillance Programme Report from Activities Conducted

In 2022, 4 **reactive market surveillance** inspections, triggered on foot of acting on information received from complaints were carried out.

Voluntary corrective actions were taken by the relevant economic operators and the outcome has informed the market surveillance strategy in 2023.

The 2022 **proactive market surveillance** inspection programme continued to concentrate on construction products generated by economic operators from quarries and pits, specifically products from Area Code 24 (Aggregates) of the CPR focusing on Aggregates for:

- Concrete ([EN 12620](#));
- Bituminous Mixtures ([EN13043](#));
- Unbound and hydraulically bound materials ([EN 13242](#))

In addition, NBCMSO in partnership with Donegal County Council and Geological Survey Ireland carried out the Market Surveillance Audit of all quarries in Donegal as requested in 2021 from the Minister for Housing, Local Government and Heritage and the [Report of the Market Surveillance of Construction Products produced from County Donegal Quarries 2021/2022](#) was published. This audit had a specific focus on Area Code 24 (Aggregates) and Area Code 17 (Masonry related products, Masonry Units, Mortars and Ancillaries), in particular:

- Aggregates for Concrete ([EN 12620](#));
- Masonry units (Dense and lightweight aggregates) ([EN 771-3](#)).

A total of 70 inspections/sampling was carried out in quarries and pits. Each of these economic operators received an information note with an “Article 12(3) of the European Union (Construction Products) Regulations 2013 Request for Information” relating to the construction products they are placing on the market.

26 cases were uploaded to the [ICSMS \(Information and Communication System for Market Surveillance\)](#). There was 1 finding of non-compliance resulting in 1 restrictive measure being taken by the market surveillance authority.

3. Activities and Initiatives

Prior to 2020 the market surveillance function operated mainly on a reactive basis by the market surveillance authorities. With the implementation of the DCC-NBCMSO, the policy is for active market surveillance which typically involves a combination of proactive and reactive activities over the course of a defined period (i.e., annually).

DCC-NBCMSO/31-Building Control Authorities have powers to obtain access to premises to examine, test or inspect products, request documentation regarding the performance of a product, take samples of the product, request the Minister for Housing, Local Government and Heritage to prohibit or restrict the use of a product and prosecute offences. Any construction products identified as non-compliant will be subject to the specific provisions of the [EU \(Construction Products\) Regulations 2013](#) and the broader overarching





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requirements of [Chapter III of Regulation \(EU\) No. 765/2008](#) and [Chapter VIII of Regulation \(EU\) No. 305/2011](#) as amended by [Regulation \(EU\) 2019/1020](#).

3.1 Monitoring and Surveillance Activities

A pragmatic approach to monitoring and surveillance activities will be taken and it is intended to combine these activities with existing inspection and survey programmes where possible.

3.1.1 Market Screening Exercise

The 2023 DCC-NBCMSO/31-Building Control Authorities' priority is to commence a market screening exercise in conjunction with industry to identify construction products supply chains and market share and conduct market research among end users, i.e., conduct an intelligence led overview of:

- the overall size of the national market, i.e., the amount and type of products supplied on the market
- the names and market share of the Economic Operators supplying given construction products in Product Areas 1-35.
- the type of Economic Operator (e.g., manufacturers, importers, distributors) and main channels of sales (e.g., online, or retail premises).

This will also require information sharing with Government Departments/Agencies/industry, Enterprise Boards, Rates, Procurement and Planning Authorities.

3.1.2 Approach for Setting Priorities

The approach for setting priorities includes the following factors:

- I. allocation of available resources including time, personnel, and budgets.
- II. selection of target manufacturers, importers, distributors, and retailers for inspection / investigation.
- III. selection of type of inspection / investigation; and
- IV. selecting frequency and target dates for inspection.

3.1.3 Risk Evaluation

Risk factors may include:

- I. end-use of the construction product, i.e., the safety implications of products while in use.
- II. extent of use of the construction product.
- III. construction products known to contain certain materials not in compliance with Regulation (EU) No. 305/2011 / European Union (Construction Products) Regulations 2013 / relevant harmonised standard(s).
- IV. compliance record of relevant manufacturers, importers, distributors, and retailers.
- V. results of previous inspections / investigations (where relevant); frequency of previous inspections / investigations or date of last inspection / investigation (where relevant).
- VI. requirement for the involvement of other market surveillance authorities and agencies as appropriate.
- VII. cost benefit factors of inspections / investigations; and
- VIII. resource capacity of DCC-NBCO/ building control authorities (time, human and budget resources).

3.1.4 Measures/tools for alerting users of hazardous products





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In addition to requiring manufacturers and distributors to alert end users, the standard practice is to issue an alert to registered users of the Building Control Management System, which includes those involved in building works.

3.1.5 Approach to Penalties

Generally, DCC-NBCMSO/31-Building Control Authorities will seek to find a satisfactory solution that does not require penalties – i.e., through corrective actions. This may not always be sufficient, and a range of penalties are available. The offences and penalties are defined within S.I. No. 225 of 2013. Depending on the offence a person, on conviction, can be subject to fines and/or imprisonment.

3.1.6 2023 Market Surveillance Planned/Proactive Activities

It is proposed to continue with and expand on the 2022 **proactive market surveillance** inspection programme concentrated on construction products generated by economic operators from quarries and pits, specifically products from Area Code 24 (Aggregates) of the CPR focusing on Aggregates for:

- Concrete ([EN 12620](#));
- Bituminous Mixtures ([EN13043](#));
- Unbound and hydraulically bound materials ([EN 13242](#))
- Masonry units (Dense and lightweight aggregates) ([EN 771-3](#)).

The prescribed Competent National Authorities [GSI](#) and [TII](#) specialist support will be leveraged for the programme implementation.

Because of Brexit and the deregistration issues relating to Notified Bodies in the UK, along with the lack of testing facilities in Ireland and the extent of use of these products in masonry construction the following construction products have been added to the 2023 planned Market Surveillance programme.

- Structural Steel & Aluminium ([EN1090](#))
- Lintels ([EN 845-2](#))
- Wall Ties, Tension Straps, Hangers, and Brackets ([EN 845-1](#))

3.1.7 2023 Market Surveillance Reactive Activities

In 2023, reactive market surveillance inspections/enforcement will continue to be carried out, triggered on foot of acting on information received from complaints, or in relation to a specific suspected offence or through [RAPEX](#) or [ICSMS](#), and notifications from other authorities.





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4. Monitoring, evaluation, and Indicators

DCC-NBCMSO/31-Building Control Authorities will carry out proactive and reactive market surveillance as set out in the 2023 programme. They may choose to carry out an extensive compliance evaluation involving administrative verification and sampling, technical verification including testing/inspection by (internal or external) laboratory/inspection bodies (where no conflicts of interest exist). Alternatively, they may conduct a limited compliance evaluation involving administrative verification and/or sampling and internal testing (visual) of easily feasible requirements for which no or simple equipment is needed.

4.1 Products Presenting a Serious Risk

DCC-NBCMSO/Building Control Authorities will put in place procedures to ensure that products presenting a serious risk are withdrawn or recalled, where there is no other effective means available to eliminate the serious risk, or that their being made available on the market is prohibited.

4.2 Tangible Indicators Market Surveillance of Construction Products under S.I. 225 of 2013

The following tangible Market Surveillance indicators have been implemented to support compliance with Article 10(6) of Regulation (EC) No 2019/1020. These indicators will be collated by DCC-NBCMSO annually. This data collection will also support sharing of data and intelligence to support the various notification and intelligence transfers between regulators.

Market Surveillance of Construction Products under S.I. 225 of 2013 Indicators to end of year	2021	2022	2023
1. Total No. of construction product related complaints	10	4	2
2. No. of formal complaints by industry concerning unfair competition	0	1	0
3. Total No. of inspections and broken down by:			
i. No. of reactive inspections undertaken on foot of complaint,	10	2	0
ii. No. of on-site self-initiated inspections	109	70	7
iii. No. of desk-top self-initiated inspections, and	109	70	7
iv. No. of inspections prompted by the Revenue Commissioners (i.e., Customs)	0	0	0
4. Assessment of product compliance based on:			
i. Tests performed in laboratories	148	257	6
ii. Checks of products and/or documentation e.g., CE Mark, DoP, Safety Information in Use	109	70	4
5. No. of inspections/ assessments resulting in:			
i. A finding of non-compliance	2	3	0
ii. Corrective actions being taken by relevant economic operator (i.e., voluntary measures)	2	2	0
iii. Restrictive measures being taken by the market surveillance authority	2	1	0
iv. No of ICSMS Inspections logged	45	26	10
v. No of Article 12(3) of the EU(CPR) 2013 Requests for Information	32	70	7
vi. No of Article 14(1) of the EU (CPR) 2013 Notices Issued/Served	6	3	0
vii. No of Article 14(2) of the EU (CPR) 2013 Notices Issued/Served	0	0	0
viii. No of Article 14(3) of the EU (CPR) 2013 Notices Issued/Served	0	0	0
6. No of prosecutions taken	0	0	0
7. No. of successful prosecutions i.e., where sanctions/penalties were applied	0	0	0
8. No. of notifications to other Member State Market Surveillance Authorities	0	0	1
9. Additional Comments/Other	N/A	N/A	N/A





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5. Cooperation between Member States

Mechanisms for ensuring cooperation and involvement of stakeholders (business, consumer organisations, economic operators including stakeholders in other member states) to ensure market surveillance of construction products is delivered in an effective and efficient manner on a nationwide basis include:

5.1 Active Liaison, Advice and Guidance

DCC-NBCO/ Building Control Authorities will continue to carry out active liaison, advice, guidance and consultation with the Economic operators, end users and principal stakeholders involved in the construction sector.

5.2 Co-operation

Other organisations, agencies, and regulatory authorities, including those of other Member States may be involved in the plan by providing information or assistance as agreed.

5.3 Horizontal Co-operation

Other organisations, agencies, and regulatory authorities, including those of other Member States may be involved in the plan by providing information or assistance as agreed. DCC-NBCMSO envisages the involvement of a broader stakeholder group of Government Departments, National and European Agencies/industry to work in partnership to ensure market surveillance of construction products is delivered in an effective and efficient manner on a nationwide basis.

5.4 Informing undertakings:

Building control authorities will continue to carry out active liaison, advice, guidance and consultation with the principal stakeholders involved in the construction sector including stakeholders in other member states.

