GNB-CPR AG	Co-ordination of the Group of Notified Bodies for the Construction Products Regulation (EU) 305/2011	NB-CPR/16/683r2 Issued 20 October 2016 Approved Guidance

GNB-CPR POSITION PAPER - INFORMATIVE:

Communication between Notified Bodies and Market Surveillance authorities

1 FOREWORD

Market surveillance authorities and notified bodies both have essential roles in making the Construction Products Regulation effective and achieving the objectives defined by it.

Although the functions of market surveillance and notified bodies are basically very different and cannot be combined situations occur where the two types of organisations interact.

In particular three cases of interaction are foreseen:

a) A market surveillance authority informing a notified body about a non-compliant construction product for which the Notified Body has been involved

b) A notified body being requested to supply a market surveillance authority with information for the purpose of evaluation.

c) A market surveillance authority requesting a notified body to conduct testing and or inspection on behalf of the market surveillance authority.

The purpose of this position paper is to provide information to notified bodies regarding how they are expected to react when approached by market surveillance authorities.

This Position Paper is also intended to serve as information to market surveillance authorities regarding how they should expect notified bodies to react.

2 GENERAL CONSIDERATIONS

Notified bodies are independent organisations bound to observe professional secrecy with regard to all information gained as part of their work as notified bodies.

It is essential to the integrity of the function of notified bodies that the secrecy obligation is respected.

Market surveillance authorities are public authorities and expected always to operate in accordance with Regulation 765/2008, the CPR, as well as public and administrative law of their member state.

Information about noncompliant products may be an indication of failure in either the Factory Production Control (operated by the manufacturer) or failure in the assessment of performance of the product conducted by the manufacturer and/or the notified body.

For products in systems 1+, 1 or 2+ the information may also indicate failure in the assessment of the manufacturing plant and the FPC conducted by the notified certification body.

For the above reason, notified bodies should consider such information from market surveillance authorities, e.g. in accordance with their internal procedures for complaints.

3 INFORMATION FROM A MARKET SURVEILLANCE AUTHORITY TO A NOTIFIED BODY

If a market surveillance authority finds that a construction product does not comply with the requirements of the CPR, notably with the declared performance, the market surveillance authority should inform the notified body accordingly, if a notified body is involved (see CPR Article 56(1) 3rd para). Such information can be sent by the market surveillance authority of the notified body's own member state by any other market surveillance authorities where the given construction product has been made available.

Depending on the type of notified body, it should undertake the below reactions:

a) Notified testing laboratories (AVCP System 3):

- Acknowledge in writing to the market surveillance authority that the information has been received and confirm that the notified testing laboratory will look into the matter to satisfy itself that the assessment of performance has been correctly performed by the notified testing laboratory.

b) Notified certification bodies (AVCP Systems 1, 1+ and 2+):

- Acknowledge in writing to the market surveillance authority that the information has been received and confirm that the notified certification body will look into the matter and as relevant take the necessary steps towards the manufacturer in accordance with CPR article 52(4)

In any case it should be clear to the market surveillance authority that the notified body is excluded from sharing any detailed information regarding the manufacturer and that no further information should be expected.

IMPORTANT: Notified bodies shall inform their notifying authority of any request for information on assessment and/or verification of constancy of performance activities carried out which they have received from market surveillance authorities (CPR Article 53(1)c).

4 A NOTIFIED BODY BEING REQUESTED TO SUPPLY A MARKET SURVEILLANCE AUTHORITY OR A NOTIFYING AUTHORITY WITH INFORMATION

4.1 Request for information from market surveillance authorities

Market surveillance authorities should be aware of the secrecy obligations on notified bodies and the narrow limits to the information that notified bodies can share with others.

However, there are types of information that notified bodies may share with market surveillance authorities of any member state, without violating their secrecy obligations.

- Confirmation of validity of a given test report
- Confirmation of validity of a given certificate.

Many notified certification bodies also make lists of certificates publically available, e.g. on their websites.

Further details can only be given if required by law or with the consent of the manufacturer. The communication from the market surveillance authority should always indicate the legal basis for the request for information.

4.2 Request from the notifying authority

In their task, market surveillance authority may request the help of the notifying authority of the member state of the notified body..

On request from their notifying authorities, notified bodies are exempt from their secrecy obligation and obliged to supply the notifying authority with any information regarding any manufacturer.

A notified body is normally not expected to supply neither market surveillance authorities nor notifying authorities of other member states with detailed information regarding specific manufacturers.

The exchange of information between the authorities would be at the discretion of the authorities involved and subject to the relevant union and member state legislation, including provisions regarding confidentiality.

IMPORTANT: Notified bodies shall always inform their notifying authority about any request for information received from a market surveillance authority.

5 A NOTIFIED BODY BEING REQUESTED BY A MARKET SURVEILLANCE AUTHORITY TO CONDUCT TESTING AND/OR INSPECTION

In many cases, market surveillance authorities do not have in-house all the competencies and types of equipment required to assess all construction products on the market and to verify if the related factory production control has been conducted properly by the manufacturers.

Therefore, it may be relevant for market surveillance authorities to subcontract certain tasks to external bodies. As notified bodies have already been notified on the basis of documented competence it seems natural for market surveillance authorities to subcontract work to notified bodies.

However, as well notified bodies as market surveillance authorities should be aware of the following:

5.1 Scope of notification

CPR Article 39 states:

> *Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party tasks in the process of assessment and verification of constancy of performance under this Regulation (hereinafter referred to as 'notified bodies').*

Notified bodies and market surveillance authorities should be aware that the notification is limited to *third-party tasks in the process of AVCP*. As activities related to market surveillance are not AVCP activities, notifications cannot cover activities as testing, inspection and assessment for the purpose of market surveillance. Hence, notified bodies should not give the impression that they conduct such activities in their capacity of notified body. Accordingly, no documentation related to such activities should indicate any notified body ID number.

5.2 Potential conflicts of interests

CPR Article 43(4) states:

> *A notified body, its top-level management and the personnel responsible for carrying out the third party tasks in the process of assessment and verification of constancy of performance shall not become directly involved in the design, manufacture or construction, marketing, installation, use or maintenance of those construction products, nor represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement and integrity related to the activities for which they have been notified. This shall, in particular, apply to consultancy services.*

Notified bodies should be aware that conducting activities for the purpose of market surveillance may conflict with their role as notified body. This may for instance be the case if an organisation for a market surveillance authority carries out activities related to construction products and/or manufacturers for which the same organisation has a role as notified body.

6 FURTHER ACTIONS

A notified testing laboratory that has received information from a market surveillance authority about a non-compliant product should:

- as appropriate, check the internal records related to the testing of the product in question. The notified testing laboratory may apply its procedure for dealing with complaints.

- if the internal records show or give reason to believe that the testing concerned have not been correctly conducted the laboratory should apply its procedure for control of nonconforming testing in accordance with ISO 17025.

A notified certification body that has received information from a market surveillance authority about a non-compliant product should:

- require the manufacturer to investigate the matter thoroughly and inform the NCB of the results within a specified timeframe.

- if the manufacturer cannot demonstrate that the declared performance is maintained and ensured, the notified certification body should require the manufacturer to take appropriate corrective measures

- if deemed necessary the notified certification body shall suspend or withdraw the certificate (for the performances concerned); see Articles 52(4) and 52(5).

- if deemed necessary to obtain sufficient evidence as basis for the decision to maintain, suspend or withdraw the certificate, the notified certification body may conduct an extraordinary audit/inspection at the premises of the manufacturer.

If the product concerned is in AVCP Systems 1 or 1+, the notified product certification body should also

- as appropriate, check the internal records related to the testing of the product in question, and

- if the internal records show or give reason to believe that the testing concerned have not been correctly conducted the laboratory should apply its procedure for control of nonconforming testing in accordance with ISO 17025.

- If testing was conducted by a subcontractor to the notified product certification body, the notified product certification body should request the subcontractor to undertake the above actions and report to the notified certification body within a specified timeframe.