GNB-CPD **All**	**Co-ordination of the Group of Notified Bodies for the Construction Products Directive** **89/106/EEC**	**NB-CPD/All-13/112** Issued: 13 June 2013 **Answers to GNB-CPD questions**

GNB-CPD Conference on CPR

Group of Notified Bodies for Construction Products Directive – Conference on the CPR

The CPR, and changes from the CPD, for Notified Bodies

Thursday 18 October 2012

Le Plaza Hotel – Theatre, Boulevard Adolphe Max 118, City of Brussels

Answers to the GNB-CPD questions are taken from panel discussions at the Conference and from the slides of the presenters who were previously asked to try and answer the questions in their presentations. Further clarifications and comments to questions were made at the 32nd AG meeting held on Friday 19 October 2012 and in subsequent discussions with the European Commission. It is anticipated that an updated version of document "GNB-CPD issues with the CPR requiring clarification by SCC or the Commission" (GNB CNB-CPD/11/469) will be produced based on these answers, the AG discussions and subsequent comments.

Panel Questions – Session 1 - Requirements and responsibilities of NBs

Panel Question 1.1: *What will be the extent of the authority of the GNB-CPR under Articles 55 and 43 (11) with regard to issues such as (1) the numbering and format of certificates, whether certificates must include the location of factories inspected and (2) how harmonised specifications should be interpreted?*

(1) Certificates: There will be GNB-CPR guidance on the format of certificates and each NB is expected to have its own numbering system as it does under the CPD. The certificate should include the location of the factory/production site as this is important for traceability.

(2) Harmonised specifications: hENs should be clear and not need interpretation – if there is a need for interpretation then NBs should continue to raise these through CEN or EOTA with the specification writers. (See also Question 1.2, below).

Panel Question 1.2: *Will the GNB-CPR be able to impose requirements rather than make recommendations in its position papers?*

NBs have no authorisation to set rules for other parties, but they can agree guidance on how a NB will behave in particular situation if it helps to make the AVCP process work more effectively. One area that generates questions is the scope of specifications (hENs and EADs) and NBs can help specification writers come to an answer.

In general, GNB-CPR Position Papers shall not:

- Be used to revise technical aspects of a standard – the GNB-CPR is not the place for amending standards;
- Be drafted so as to compel a manufacturer to carry out additional tasks or place obligations on them – only a standard (and the CPR) can do that;
- Contradict standards.

One concern for NBs is the time aspect of making changes to hENs and EADs as it is often not fast enough for commercial clients and the certification (and testing) of their products. Some mechanism is needed to 'fill the gap' and this has in the past been Position Papers. For example, quick responses are needed when standards are not clear and when NBs have different interpretations of technical aspects of them. In these cases, Position Papers should be prepared in consultation with Working Group/Task Group of CEN Technical Committees.

Panel Question 1.3: *Article 53.2 requires NBs to provide other NBs carrying out similar tasks with relevant information on issues relating to negative assessments and/or verifications. Will this provision be implemented, and if so, how should this be achieved whilst maintaining client confidentiality?*

Information on negative results is a means to increase credibility of the CE marking and increase its quality but there needs to be some proposals on 'how' it will be made to work. There is a need to maintain a balance considering how much information is necessary whilst avoiding problems of confidentiality.

> **Nota Bene (from the Commission):** The reference to negative results applies either to audit testing (AVCP System 1+), FPC (AVCP Systems 1+, 1 and 2+) or to the Determination of Product Type (AVCP Systems 1+, 1 and 3) where a given threshold level is not reached or where it is not possible to determine the level or class of the essential characteristic of the construction product using the stated procedure or test method when assessing the performance of the construction product.

Post conference note: A discussion on how to meet CPR Article 53(2) (negative results) occurred at the 33rd Advisory Group (AG) meeting on 20 March 2013 in Brussels. See NB-CPR/13/566. A further discussion will take place at the next AG meeting on 22 October 2013 in Brussels.

Panel Questions – Session 2 – Accreditation and Notification

Panel Question 2.1: *Do MS choose Accreditation or Non-accreditation to designate NBs under the CPR?*

Accreditation / non-accreditation is down to the MS – but the choice has implications for NB designation as this requires consultation and validation, and is subject to a 2 weeks (rather than 2 months) objections period. If the non-accreditation route is followed then there is useful guidance[1] from SOGS (Senior Officials Group for Standardisation and Conformity Assessment Policy).

Notifications remain at the level of the MS.

Post conference note: For further information, please see NB-CPD/13/560 - CPR Art54-002/3.1 *Accreditation Standards and AVCP System - Results of Survey*.

Panel Question 2.2: *How will NBs be designated?*

Notified bodies will be designated according to the notification procedure set up by EEA States (Article 42, CPR).

Post conference note: For further information, please see Member State notifying procedures by selecting "Regulation (EU) 305/2011 –Construction products" at: http://ec.europa.eu/enterprise/newapproach/nando/index.cfm?fuseaction=na.main

Panel Question 2.3: *Will there be a harmonised approach in the designation of NBs from MS?*

If the accreditation route is chosen, harmonisation will be more feasible. The preferred accreditation standard for product and FPC certification is likely to be EN 45011, which will be replaced by ISO EN 17065 after a three year transition period. Before ISO 17065 can be used for NB designation it will need to be cited in the OJEU. To ensure consistent notification processes between MSs there needs to be cooperation with and between Notifying Authorities.

Post conference note: The Article 54 meeting held on 4th December 2012 demonstrated that co-operation between Notifying Authorities is helping towards harmonisation.

[1] N640, CERTIF 2010-08 REV1 - Notification without accreditation (Article 5.2 of Regulation 765/2008)

Panel Questions – Session 3 – Basics of the CPR

Panel Question 3.1a: *Does the 'Blue Guide' to the New and Global Approach directives apply to the CPR?*

The 'Blue Guide' continues to be seen as useful guidance but parts of it out of date. The guide is currently being updated to cover the New Legal Framework. However it should be remembered that the CPD was not a New Approach Directive and the CPR only takes over some elements of the NLF legislation.

Post conference note: A draft version of the revised 'Blue Guide' has been produced. In the current version dated Version 22 February 2013 references are made to the CPR and exclusions for construction products are noted where practice differs from that in other EU Directives/Regulations. Also, note that Commission Services has asked for the CPR to be excluded from the revised 'Blue Guide'.

Panel Question 3.1b: *Will the Commission or SCC provide guidance in place of the CPD Guidance Papers?*

These will remain as an archive of useful information and can be referred to as agreed guidance when not in conflict with the CPR.

Panel Question 3.2: *Should certification NBs limit their work to the requirements of the hEN, or should they check whether manufacturers are meeting their obligations under Article 11?*

NBs should limit their work to the Annex ZA of each hEN and should not be checking whether manufacturers are meeting their obligations under Article 11, as this is the responsibility of Market Surveillance Authorities.

Additional question 3.3: *When can derogations be used?*

When Article 5 conditions have been fulfilled it is up to the manufacturer to decide whether to apply Article 5 or not. No involvement of NBs is foreseen in this decision. A NB should nonetheless be aware of derogations and as good practice inform their client if they believe the construction product could be covered by Article 5.

Article 5 is seen as an exception – the starting point must be that products are affixed with the CE Marking and the manufacturer can only ask for a derogation if all the conditions are met – not just some of them. Article 5 is an exception to DoP and CE marking while Article 38 (simplified procedure) is a shortened route to CE marking. It is important that derogations are applied consistently across MSs.

Additional question 3.4: *When can voluntary marks be used?*

Voluntary Marks can cover any essential characteristics that will form part of the CE Marking, provided they are not in conflict with the CPR. Recital 33 of the CPR states that the CE Marking is the only legal mark that can indicate a product is compliant with one or more of the essential characteristics. However, it goes on to say that in the private sphere other marks are allowed but they must give the users a greater level of protection. They cannot be used as a means to demonstrate compliance and must not, cannot replace the CE Marking. Voluntary Schemes and Voluntary Marks can do almost anything but they must be Voluntary and cannot be used as a means to demonstrate the legal requirements covered by the CE Marking.

Voluntary marks cannot be linked to a national requirement.

Post conference note: A revised conference presentation taking into account comments made was presented at the 33rd AG meeting on 20 March 2013 (Please see NB-CPD/13/563 - *Voluntary product certification schemes in relation to the CPR)*.

Panel Questions – Session 4 – Harmonised technical specifications

Panel Question 4.1: *CEN has introduced a requirement to declare the "durability of essential characteristics" into their example CE Markings within their guidance document 'Template for Annex ZA' for the CPR. At what AVCP systems will these characteristics be set?*

In order to answer this question it is necessary to define 'durability' in the context of the CPD/CPR. The answer for harmonised technical specifications is that it is the ability of the product to continue to function and meet declared values. Durability should be expressed as foreseen in the mandate and CEN should apply the mandate in the standard and not create additional requirements.

Durability does not have a separate AVCP – the AVCP system is normally assigned to the product and not to a specific essential characteristic – so if system 1 all essential characteristics are system 1.

One exception to this is reaction to fire. See Panel Question 4.3.

Panel Question 4.2: *The Commission has given its opinion that, if a manufacturer commenced CE marking a product in accordance with a harmonised standard cited at that time, the manufacturer should be able to continue CE marking that product into the future without modifications to conform with subsequent versions of that standard. How should Article 11 (3) "Changes in the product-type and in the applicable harmonised technical specifications shall be adequately taken into account" be interpreted by a NB under AVCP systems 1+/1 or 2+?*

Work undertaken before the CPR still remains valid. If a standard is revised then the manufacturer needs to be aware and see if anything has changed. If there are significant technical changes then the manufacturer(s) can choose to retest and/or re-certify their product(s). If the NB involved carries

out continuous surveillance then they should inform the manufacturer. But the obligation is for manufacturers not the NB.

> **Nota Bene (from the Commission):** As regards the entry into force of the CPR, in principle the assessment does not need to be redone after 1st July 2013.
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> If the manufacturer has not changed their construction product the existing test/assessment reports and certificates would need to be renewed only:
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> - if the harmonised EN has changed to include other test/assessment methods for the essential characteristics for which the manufacturer intends to declare the performance,
>
> and
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> - if these changes in the assessment methods would have effected changes in the declared performance,
>
> and/or
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> - the product type has changed.
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> The NB certificate applies until the construction product (or FPC) changes. There is no obligation to renew it for the CPR and manufacturers will not need to re-test/re-certify until the construction product (or FPC) significantly changes. But if manufacturer intends to follow the new requirements then they can choose to re-test/re-certify for the new requirements and ask for a new certificate to be issued by the NB.
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> If the product is at AVCP system 1+,1 or 3 then the NB will need to carry out the determination of product type.
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> If a NB is not notified to CPR by 1st July 2013 then their surveillance work for the manufacturer will have to be taken over by a CPR NB. For the sake of traceability, the scope of designation of CPD NBs will be available in the "Withdrawn" part of NANDO. CPD NBs designated as CPR NBs before 1st July 2013 will incur no disruption of the service.

It should be remembered that the certificate is not enough to place a construction product on the market - the DoP is the means to market a product. The CE certificate is a provided by the NB to the manufacturer and used to support the DoP.

Panel Question 4.3: *Many Decisions specify different attestation systems for different "uses" ("cumulative attestation of conformity systems"). CONSTRUCT 06/761 §4 explains that under cumulative attestation, certificates should be issued only for the specific performance characteristic(s) concerned. But the Tables ZA.3 of current harmonised standards have headings that suggest that only a single system applies to an individual product, and do not explain clearly how responsibilities should be assigned when assessing a product that is subject to cumulative attestation. Will future harmonised standards make clear which characteristics of any product are subject to particular AVCP systems, and which should be certified?*

The Commission informed the conference that the approach described in CONSTRUCT 06/761 §4 remains applicable under the CPR.

In some cases the intended use of a construction product may require provision for different AoC/AVCP systems according to the essential characteristic concerned, and for combining them. The AoC /AVCP system, which is different from that specified for the generic use of the product, is generally referred to as "cumulative" attestation of conformity (AVCP). The cumulative AoC /AVCP requires that the system established by EC Decision for its generic intended use is "cumulated" with the system established for the specific characteristic relevant for respect of the Essential Requirements /Basic Works Requirements (usually AVCP system 1, 3 or 4). The established generic system remains unchanged and the provisions deriving from the cumulated system are applicable only to the essential characteristic(s) concerned, are just added to those envisaged under the generic system.

Panel Question 4.4: *When can notified bodies expect to see requirements for the sustainable use of natural resources in harmonised technical specifications (hENs and EADs)?*

Requirements related to the sustainable use of natural resources are to be set by MS national regulators; harmonised technical specifications are not supposed to introduce any further requirement.

To date four MSs have introduced or are introducing requirements on sustainability which could be considered as coming under BWR 7 *Sustainable Use of Natural Resources*. At present manufacturers can make declarations about sustainability and there are references in draft standards for the sustainable use of natural resources but they are not part of the CE Marking and should be seen as part of the transition towards BWR 7.

Changes to harmonised standards are not expected until mandates are issued by the Commission and standards are amended by CEN which transfer the requirements to the harmonised parts of the standards. The Commission considers Mandate M366 for dangerous substances as a first step in introducing harmonised requirements for sustainability. It is anticipated that the test methods for this will be ready in 2015 and that the revision of the hENs will follow after this. Mandates for BWR 7 are seen as some way 'further down the line'.

Additional Question 4.5: *Under the transition arrangements in Article 66 which CE Marking template is used with an existing 'CPD' hEN or ETA?*

The CE Marking should be as in the relevant standard – so if it is an existing standard drafted under the CPD then the CE Marking should be as in the standard. However, it shall be modified if necessary to meet the requirements stated in Article 9(2) of the CPR.

Panel Questions - Session 5 - Assessment and verification of constancy of performance

Panel Question 5.1: *Under AVCP System 3, is there any requirement for the manufacturer to limit the number of NBs it contracts to undertake and report different tests or calculations on a product, as required under Annex V 1.4 (b)? In this context, does "determination of the product type" (a task for the NB) require more than submitting reports on the tests it was commissioned to undertake?*

There is no limit to the number of NBs that can provide determination of product type reports under AVCP system 3. The need to use more than one laboratory will increase with the need to include dangerous substances and environmental performance declarations. It is up to the manufacturer to decide on the number of NBs.

NBs should follow the AVCP system tasks stated in the relevant EC AoC/AVCP Decision, taken over accordingly in the harmonised technical specification.

Panel Question 5.2: *What will notified bodies need to do to provide verification of Simplified Procedures using Appropriate Technical Documentation at System 1/1+ (Article 36.2) and Specific Technical Documentation at System 1/1+ (Article 38.2)?*

The answer to this panel question is subject of further consultation within the Commission and is awaiting further developments of Simplified Procedures.

Panel Question 5.3: *Are any member states likely to introduce requirements for Environmental Product Declarations (EPDs) for construction products from 1 July 2013? If so, at what AVCP systems might these characteristics be set?*

This question was partly answered in Panel Question 4.4 above. The following additional remarks were made.

The process of harmonisation for BWR 7 has only just begun; few MSs have requirements or have indicated they will introduce requirements from 1 July 2013. It is not currently possible to state how EPDs will be implemented within the CPR or the applicable AVCP System(s).

If the manufacturer wishes to include EPDs in their technical data then ISO EN 14025 and EN 15804 will both require independent 3rd party verification.

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