GNB-CPR GNB-AG	**Co-ordination of the Group of Notified Bodies for the Construction products** **Regulation (EU) No 305/2011**	**NB-CPR/24-949r1** Issued 15 March 2024 **Approved Guidance**

Position paper:

Information obligations of notified bodies towards other notified bodies

1 INTRODUCTION

CPR Article 53(2) requires in certain circumstances notified bodies to provide information to other notified bodies.

CPR Article 53(2) goes:

> *Notified bodies shall provide the other bodies notified under this Regulation carrying out similar third party tasks in accordance with the systems of assessment and verification of constancy of performance and for construction products covered by the same harmonised technical specification with relevant information on issues relating to negative and, on request, positive results from these assessments and/or verifications.*

The text of CPR Article 53(2) has left notified bodies in doubts as to the cases in which they shall provide information to other notified bodies, how to identify the bodies to which information shall be provided, what information to provide, and by what means it should be provided.

Over the past years, some national accreditation bodies seem to have applied incorrect interpretations of CPR Article 53(2) requiring bodies accredited by them to inform widely about any case of changed status of a certificate – even when a manufacturer has requested the cancellation of a certificate or if the production has ceased.

As such expansive interpretations have resulted in an extreme proliferation of notifications that may seem contrary to the purpose of CPR Article 53(2), it is considered necessary to provide guidance to notified bodies on their application of CPR Article 53(2).

2 BASIC CONSIDERATIONS

1) The CPR requires in certain circumstances notified bodies to provide information to other notified bodies. To meet that requirement, notified bodies need to understand the purpose of providing the required information and:
   - in which situations notified bodies are required to provide information;
   - how to identify the other notified bodies to which information shall be provided;
   - the nature of the relevant information to provide; and
   - the methods for providing the information.
2) CPR Article 53(2) which defines the obligation for notified bodies in certain cases to provide information to other notified bodies is an adaptation of the model Article R28(2) of

Decision No. 768/2008[1], which is a central element of the New Legislative Framework, the NLF. Therefore, Article 53(2) may be construed as serving the same purpose as similar articles of harmonisation legislation based on the NLF.

3) Preamble recital No. 46 of Decision No. 768/2008 states:

> *To ensure the proper functioning of the certification process, certain procedures, such as exchanges of experience and information between notified bodies and notifying authorities and between notified bodies, should be consolidated***.**

4) That recital may speak for the understanding that the purpose of the requirement to provide information would be to serve *the proper functioning of the certification process.* However, recalling the CPR context, the "certification process" should be construed rather as the assessments and verifications carried out by notified bodies under the CPR. Hence, the purpose may be considered to be *the proper functioning of the assessments and verifications of constancy of performance.*

5) For the proper functioning of the assessments and verifications, it may seem relevant that other notified bodies are made aware when a manufacturer has been the subject of a *negative assessment* so that the other notified bodies can take that information into account, should they be approached by that manufacturer. However, it would not seem relevant to inform other notified bodies if a manufacturer decided for any reason to cancel a given certification or if the manufacturing of a given product is ceased. Neither would it seem relevant to provide information about changed status of certificates. In that respect, it must be taken into account that such superfluous information may cause an information overflow that would not serve the proper functioning.

6) For the harmonised interpretation of the New Legislative Framework, the so-called Blue Guide is one of the main reference documents. Though it is generally recognised that the Blue Guide is not directly applicable to the CPR, it may be helpful for the parts of the CPR that are aligned with the NLF. In the Blue Guide, section 5.2.2, it is stated:

> *Given the confidentiality requirements that notified bodies have to observe when fulfilling their tasks, the information to be shared with other notified bodies cannot concern confidential commercial information on the product. Relevant information to be exchanged on issues relating to negative conformity assessment results should thus primarily concern the refusal to issue a conformity assessment attestation identifying the product and manufacturer in question.*

7) The above quote from the Blue Guide seems to indicate that the information to be provided should primarily concern the refusal to issue a certificate, which would be the consequence if the notified body finds that technical and/or procedural requirement are not complied with. However, considering the above-mentioned adaptation to the CPR context (see above No. 3), it seems natural to consider that the information obligation should also apply if the notified body decides to restrict, suspend or withdraw a certificate.

8) The above quote from the Blue Guide (see No. 6) also seems to indicate that the information obligation should not be considered a derogation from the general secrecy obligation for notified bodies. Therefore, it should be considered that the requirement in CPR Article 43(10), that notified bodies and their personnel shall observe *professional secrecy*, also applies when providing information to other notified bodies. This seems to speak for limiting the information to be provided to non-sensitive information only, as for

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[1] *DECISION No 768/2008/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC*

instance the name and address of the manufacturer, the applicable harmonised specification, and the identification number of the certificate.

9) The addressees of the information to provide are indicated as

> *…the other bodies notified under this Regulation carrying out similar third party tasks in accordance with the systems of assessment and verification of constancy of performance and for construction products covered by the same harmonised technical specification.*

Therefore, it is necessary for notified bodies to limit the number of notified bodies to which they provide information. It would not seem justified to provide information to all notified bodies.

10) The Single Market Compliance Space information system provided by the Commission, the SMCS, allows for the identification of notified bodies on the basis of various characteristics such as the harmonisation legislation, harmonised specification, system of AVCP etc. Hence, the SMCS website may allow for the identification of the other notified bodies to which information shall be provided. However, should doubts arise as to the reliability of the information extracted from the SMCS, information may be requested from the notifying authorities of the Member States or from the Commission.

Unfortunately, the SMCS does not allow for the direct extraction of a mailing list of notified bodies to which information shall be provided. Therefore, notified bodies will need first to identify the notified bodies to which information shall be provided, and then to look up their email addresses one by one. That may be rather time consuming.

11) The GNB-CPR generally uses the CIRCABC platform for its internal communication. However, the CIRCABC does not allow for targeting information at specific types of notified bodies. Therefore, if the CIRCABC were used the information intended for other notified bodies would reach many other notified bodies for whom the information would not be intended, besides that the information would reach CIRCABC users who are not representing notified bodies. Hence, the CIRCABC is considered not suitable for providing the required information. The GNB can offer no other communication tools or targeted databases. Neither would it be the role of the Commission, the administrative and technical secretariats, nor any of the GNB officials to transmit the information.

Therefore, notified bodies need to use emails or ordinary mail for providing the information to other notified bodies.

12) In relation to assessments and verifications with negative results, it is utmost important that notified bodies cooperate and coordinate in the Group of Notified Bodies to ensure a common basis for their assessments and verifications. Therefore, notified bodies should bring up with the pertinent sector group their considerations. To respect the secrecy obligation, information relating to individual manufacturers should be anonymised. However, bringing up such matters in sector groups should not be understood as replacing the provision of information to other notified bodies.

13) In AVCP system 3, due to the common technical language approach of the CPR, an assessment of performance could normally not be considered as leading to “negative results”. Accordingly, no situations have been identified where notified laboratories shall inform other notified bodies of issues relating to negative results of assessments and verifications.

3 Cases where information shall be provided

Information shall be provided in case of *negative results from assessments and/or verifications.*

The following situations may be considered representing such *negative results*:

- The notified body finds that the manufacturer has not ensured the constancy of performance and therefore it has refused[2] to issue a certificate.
- The notified body finds that a construction product no longer has the same performance to that of the product-type, or that the manufacturer does no longer demonstrate that the constancy of performance of the product is ensured, and therefore it has restricted, suspended, or withdrawn the certificate.

Generally, notified bodies may consider that the below situations would not require information to other notified bodies:

- The manufacturer has given notice of the cancellation of the certificate,
- The manufacturer informs that the production has ceased,
- Surveillance audit has not been scheduled or carried out,
- The manufacturer failed to pay the notified body's fee.

However, as the above listing is only indicative and not exhaustive, notified bodies should consider on a case-by-case basis if information to other notified bodies would be required and justified.

4 information to provide

When providing information to other notified bodies, notified bodies shall respect the secrecy obligation defined by CPR Article 43(10).

Therefore, the information provided to other notified bodies should be limited to non-confidential information. Normally, information already made publicly available may be considered non-confidential.

Regarding the reason for the action taken, it is recommended not to go into any kind of detail.

Phrasings like the below may be useful:

> *As the negative result of an assessment and/or verification, the below manufacturer has been refused a certificate",* or
>
> *As the negative result of an assessment and/or verification, the below certificate has been restricted, suspended, or withdrawn,*

The below information may be considered non-sensitive and providing it to other notified bodies may not be considered as violating the secrecy obligation:

- The name and address of the manufacturer
- Certificate details (if a certificate has been issued):
    - The number of the certificate
    - Date of issue
    - Date of first issue

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[2] *The situation where a notified body requires the manufacturer to take appropriate corrective actions before a certificate can be issued should not be considered a refusal.*

    - Product(s) covered by the certificate
- Harmonised technical specification
- System of AVCP
- The date of the refusal, restriction, suspension, or withdrawal of the certificate,

In Annex I of this position paper is found a template that notified bodies may use when providing information to other notified bodies.

5 Identification of notified bodies to address

The information shall be provided ONLY to bodies notified

- under the CPR (Regulation (EU) No. 305/2011), **and**
- for the same harmonised specification, **and**
- for the same system of assessment and verification of constancy of performance

On the SMCS[3] website, it is possible to identify notified bodies on the basis of the above-mentioned characteristics. Unfortunately, currently the SMCS information system doesn't allow to extract the emailing list of the identified notified bodies. That makes it difficult for notified bodies to contact the pertinent other notified bodies.

6 Method of providing the information

Information to other notified bodies can be sent by email or by ordinary mail.

Notified bodies shall **not** use the CIRCABC for providing the information.

Notified bodies shall **not** use mailing lists including other notified bodies than those identified in accordance with above section 5.

Notified bodies shall **not** request the Commission, the administrative and technical secretariats, or any GNB officials to transmit the information to other notified bodies.

7 GNB Coordination

In addition to the information that shall be provided to other notified bodies, notified bodies shall bring up with the pertinent sector group any issue where assessments and verification by notified bodies could potentially lead to different results.

This shall in particular apply to situations where the provisions of harmonised technical specification are not sufficiently clear in their technical or procedural provisions and thereby leave room for different interpretations.

[3] *Link: https://webgate.ec.europa.eu/single-market-compliance-space/#/notified-bodies*

Annex I

Information on negative results of assessment and/or verification

Notified body

ID number:

Name:

Email of the notified body:

Information

In accordance with CPR article 53(2), the above notified body hereby provides information to other notified bodies carrying out similar third party tasks in accordance with the systems of assessment and verification of constancy of performance and for construction products covered by the same harmonised technical specification that an assessment or verification has had the below negative result:

☐ Refusal to issue a certificate,

☐ Restriction to a certificate,

☐ Suspension of a certificate

☐ Withdrawal of a certificate,

Details

Manufacturer

Name

Address

Postcode, City

Country

Concerned manufacturing plant (if different or specific):

Harmonised technical specification

Harmonised standard / EAD number

Products concerned.

System of AVCP

Certificate (if relevant)

Number

Date of issue

Date

Date of refusal/suspension/withdrawal