EUROPEAN COMMISSION
ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL

New Approach Industries, Tourism and CSR
Construction and Pressure Equipment

Brussels, 8 June 2007

STEERING NOTE

For the discussion in the internal meetings on the CPD revision

Subject: Proposal for the revision of the conformity procedures of construction products against the technical specifications

This note intends to serve as a basis for the internal discussions regarding the need to clarify and simplify the issue related to the attestation of conformity of the performances / characteristics of CE marked construction products, in the revised legislation.

1 The issue of clarification

The need of clarification is originated by the fact that the set of procedures described in the present version of the CPD and known as "*attestation of conformity procedures*" is aimed at verifying that a construction product constantly:

- complies with the applicable provisions of the CPD;
- complies with the applicable provisions of the relevant harmonised technical specifications;
- is able to offer a reasonably stable performance / characteristic level, compatible with what has been determined for the purpose of affixing the CE marking.

However, as expressed in the present version of the CPD, the attestation of conformity procedure give rise to misunderstanding and misinterpretation mainly, but not exclusively, due to the use of the term "*conformity*".

Related to the CPD, this term has not the same meaning as assigned to it by the legislative framework where the conformity has to be demonstrated against the essential requirements of the product itself. Construction products are not final products and the ERs of the CPD refer to the works in which products are incorporated. Therefore, the

ERs of the works have been "translated" (by the Interpretative Documents) into characteristics and performances applicable to these intermediate products.

Moreover, the "conformity" can be only demonstrated (and therefore certified and declared afterwards), if technical specifications include such a request. This is never the case for construction products and related harmonised technical specifications.

With few exceptions, linked to the existence of regulatory classes or threshold values, the testing of the product is not subject to any established and fixed evaluation criteria of the results obtained (nearly always pass/fail criteria). These test results are assumed as they are. They are considered as defining the "*behaviour*" of the "product-type" to be assumed as a reference for attesting that all the population manufactured is able to provide compatible (the same) results.

Therefore, in the revised legislation the term "attestation of conformity" should be changed into "conformity procedures" and understood as defined by two different but complementary steps:

- definition of the product-type (obtained by carrying out the type tests (TT);

- verification of the constancy of the population manufacturer compared to behaviour of the product-type defined by the type tests.

These two steps can be undertaken by a conformity assessment body or by the manufacturer himself, depending from the established level of attestation of conformity.

Such an activity is carried out with the double purpose of:

- stating that the correctness of performance /characteristic of the concerned product, specified in the applicable harmonised technical specification, has been demonstrated;

- allowing Member States to presume the reliability of the way of expressing performances /characteristics related to basic requirements of the works.

2 The issue of simplification

The need of simplification relates to the number of attestation of conformity systems in the present CPD and the consistency of each of them in connection with the purpose of stating that a performance / characteristic of the construction product is stable for the entire manufactured population.

The criteria followed by the Commission to propose Commission Decisions establishing the level of attestation of conformity to be included in mandates, harmonised technical specifications, are governed by Article 13 of the CPD.

As a matter of fact, the provisions of the above-mentioned article have been "translated" in practice by assigning System 1+ and System 1 to products having characteristics and intended uses directly linked to ER 1 and/or ER 2. System 2 was assigned only once to building lime products and System 2+, 3, 4 to the remaining products.

Examining the differences existing between these systems, the following considerations are possible.

System 1+ - System 1

The only significant difference between them is the possibility of carrying out audit testing foreseen by System 1+. However, these audit testing can be carried out on samples taken at the factory, in the open market or on site. Therefore, it could be argued that if the purpose of the CE marking is to allow the products to be placed on the market, the fact of performing tests on samples taken in the open market or on site imply the verification of products which are already on the market. This verification appears to be more related to the verification of the conformity of the supply against the purchase order or the delivery note.

This aspect should be considered in the revised legislation.

System 2+ - System 2

The only significant difference between them is the possibility of periodical inspections (surveillance) of the FPC foreseen by System 2+ and carried out by the notified body in the manufacturing plant /s (the frequency is established by the harmonised technical specifications - usually twice a year). In addition to that, it could be argued that verifying just once the FPC as foreseen by System 2 should not be assumed as a suitable basis for issuing the certificate of conformity of the FPC in the lack of any other kind of control.

This aspect should be considered in the revised legislation.

System 3

It foresees the intervention of a notified laboratory for carrying out the TT (Initial Type Tests – ITT in the present CPD) just once. The results are then given to the manufacturer in the form of test reports and used by the latter as the basis for its declaration of conformity. It could be argued that these tests results should not be assumed as a suitable basis for the declaration of conformity due to the fact that no third party intervenes in checking the suitability of the FPC (set of manufacturer provisions in place for keeping under control the constancy of its production) and that any variation affecting each member of the manufactured population could not be kept, in reality, under control and could lead to a test results (therefore a different product behaviour) different form those assumed as a basis for the declaration of conformity.

This aspect should be considered in the revised legislation.

System 4

Do not foresee any third party intervention. The manufacturer itself does TT and assumes the test results obtained as the basis for its declaration of conformity. It could be argued that a suitable application of system 4 would imply not only the fact that the manufacturer must have a suitable FPC system (which is not always the case in reality), but also that it should also have the laboratory facilities representing the minimum set of test equipment allowing the necessary TT to be carried out on finished products (which is never the case especially for SMEs).

The manufacturer could therefore be obliged to turn to an external laboratory (not necessarily notified for the concerned test) and, in principle, to wait the availability of the test reports before preparing the declaration of performances. This could be certainly possible (depending on the frequency of the tests established by the internal control plan of the plant regarding finished products and the length of the test), but hardly credible unless it is assumed that the manufacturer will delay the placing on the market of its product to wait the preparation of the test reports by the external laboratory. In addition to that, it could be that the manufacturer is only aware of unacceptable test results when its declaration of performance is ready and the concerned product has been already placed on the market.

This aspect should be considered in the revised legislation.

All the above-mentioned systems foresee, in the CPD as it is today, a set of common elements systematically applicable, or applicable only in some cases, to one or the other system of attestation of conformity of the product:

§ Factory Production Control - FPC, defined by Annex III of the CPD as "*the permanent internal control of production exercised by the manufacturer. All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic manner in the form of written policies and procedures. This production control system documentation shall ensure a common understanding of quality assurance and enable the achievement of the required product characteristics and the effective operation of the production control system to be checked*". FPC has to be systematically carried out by the manufacture independently of the level of the attestation of constancy established for its product.

  This aspect should be maintained in the revised legislation.

§ Initial Type Testing - ITT, to be re-named in the revised legislation as “Type-Testing - TT” (new wording) whose results define the “*behaviour*" of the “product-type” and are taken as a reference for checking (attesting and declaring afterwards) that all the population manufactured is able to provide compatible results. Type-Testing (TT) has to be systematically carried out by the manufacturer itself or by a third party, according to the measured adopted by the Commission and included in the applicable harmonised technical specification or in any of the alternative documents (e.g. Technical File).

  This aspect should be maintained in the revised legislation.

§ Certificate of Conformity of the product: issued by a notified certification body to products covered by System 1+ and System 1.

The wording should be changed in the revised legislation into "Certificate of Compliance of the product".

§ Certificate of Conformity of the FPC: issued by a notified inspection body to FPC applied in the manufacturing plant where are manufactured products covered by System 2+ and System 2.

The wording should be changed in the revised legislation into "Certificate of Compliance of the FPC".

§ Declaration of Conformity: issued by the manufacturer of products covered by System 2+, 2, 3 and 4.

The wording should be changed in the revised legislation into "Declaration of the Performance / characteristic".

ATTESTATION OF COMPLIANCE WITH TECHNICAL SPECIFICATIONS

1 METHODS OF CONTROL OF COMPLIANCE

When the procedures for attestation of compliance of a product with technical specifications pursuant to Article [**to be numbered**] are being determined, the following methods of control of conformity shall be used.

The choice and combination of methods for any given system shall depend on requirements for the particular product or group of products according to the criteria indicated in Article [**to be numbered**].

(a) Type-tests of the product by the manufacturer or a notified conformity assessment body;

(b) testing of samples taken at the factory in accordance with the prescribed test plan, by the manufacturer or a notified conformity assessment body;

(c) audit-testing of samples taken at the factory by the manufacturer or a notified conformity assessment body;

(d) testing of samples from a batch which is ready for delivery, or has been delivered, by the manufacturer or a notified conformity assessment body;

(e) factory production control;

(f) initial inspection of factory and of factory production control by a notified conformity assessment body;

(g) continuous surveillance, assessment and evaluation of factory production control by a notified conformity assessment

2 SYSTEMS OF ATTESTATION OF COMPLIANCE

2.1 Declaration of the performances of the product by the manufacturer on the basis of:

(a) tasks for the manufacturer

1 - factory production control;

2 - further testing of samples taken at the factory by the manufacturer according to the prescribed test plan;

(b) tasks for the notified conformity assessment body

1 - certificate of compliance of the product on the basis of:

- type-testing of the product;
- initial inspection of the manufacturing plant and of FPC;
- continuous surveillance, assessment and evaluation of FPC;
- audit-testing of samples taken at the factory.

2.2 **Declaration of the performances of the product** by the manufacturer on the basis of:

(a) ***tasks for the manufacturer***

1 - type-testing of the product;

2 - factory production control;

3 - testing of samples taken at the factory according to the prescribed test plan;

(b) ***tasks for the notified conformity assessment body***

1 - certificate of compliance of the FPC on the basis of:

- initial inspection of the plant and of factory production control;

- continuous surveillance, assessment and evaluation of FPC.

2.3 **Declaration of the performances of the product** by the manufacturer on the basis of:

(a) ***tasks for the manufacturer***

1 - type-testing of the product;

2 - factory production control.

(b) ***tasks for the notified conformity assessment body***

none.

3 BODIES INVOLVED IN THE ATTESTATION OF COMPLIANCE

With respect to the function of the bodies involved in the attestation of compliance, distinction shall be made between:

(1) *certification body:* means an acccredited and notified body, governmental or non governmental, possessing the necessary competence and responsibility to carry out a certification according to given rules of procedure and management;

(2) *inspection body:* means an accredited and notified body having the organization, staffing, competence and integrity to perform according to specified criteria functions such as assessing, recommending for acceptance and subsequent audit of manufacturers'quality control operations, and selection and evaluation of products in the plant, according to specific criteria;

(3) *testing laboratory:* means an accredited and notified laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics orperformance of materials or products.

In cases under paragraph 2, the three functions 2.1 to 2.3 may be performed by one and the same body or by different bodies. In the latter case, the inspection body and/or the testing laboratory involved in the attestation of compliance carries out its function on behalf of the certification body.

The competence, impartiality and integrity of certification bodies, inspection bodies and testing laboratories is assessed and evaluated according to the accreditation activity referred to in Article [**to be numbered**] of the Decision [**to be numbered**].

ANNEX

Comparison between attestation of conformity systems under the present CPD and the proposed draft Regulation

Directive 89/106			draft Regulation		
AoC	**Task of Manufacturer**	**Task of Notified Body**	**AoC**	**Task of Manufacturer**	**Task of conformity assessment body**
1+	FPC testing of samples according prescribed test plan	Product certification based on: - ITT of product - initial inspection of FPC - continuous surveillance, assessment and approval of FPC - audit testing of samples taken at the factory, on the open market or on site	**1+**	• FPC; • Testing of samples of finished product according to the test plan foreseen by the FPC	***Certificate of compliance of the product*** based on: • TT of the product • initial inspection of FPC • continuous surveillance, assessment and evaluation of FPC • audit testing of samples taken at the factory
1		Product certification based on: - ITT of product - initial inspection of FPC - continuous surveillance, assessment and approval of FPC			
2+	ITT of product FPC (testing of samples according prescribed test plan)	Certification FPC based on: - initial inspection, continuous surveillance, assessment and approval of FPC	**2+**	• FPC • TT of all the characteristics of the product; • Testing of samples of finished product according to the test plan foreseen by the FPC	***Certificate of compliance of the FPC*** based on: • initial inspection, continuous surveillance, assessment and evaluation of FPC; • at the first inspection: TT of a limited number of characteristics chosen by the conformity assessment body amongst those showing a less stable behaviour according the results obtained by the manufacturer on the finished product and recorded in the FPC registers; • at any further inspection: TT of a limited number of characteristics different from those tested during the first inspection, so that all the characteristics can be tested by a third party at least once a year.
2		Certification of FPC based on: - initial inspection			
3	FPC	ITT of product			
4	ITT of product FPC	none	**4**	• FPC • TT of all the characteristics of the product	none