GNB-CPR **GNB-AG**	Guidance from the Group of Notified Bodies for the Construction Products Regulation (EU) No. 305/2011	NB-CPR/19/813r1 Issued: 11 November 2019 **APPROVED GUIDANCE**

Position Paper:

Guidance to notified certification bodies providing services in relation to rebranded construction products in AVCP systems 1+, 1, and 2+

1. INTRODUCTION

In many industry sectors, rebranding is a well-known phenomenon. The term rebranding is used when identical products, made in the same factory are sold by different companies under different trade names.

Rebranding may be considered a special form of "outsourced manufacturing", by which a manufacturer contracts one or more companies to manufacture, fully or partially, the construction products to be placed on the market by the manufacturer. However, this position paper only covers *rebranding.*

This position paper aims to provide guidance for notified certification bodies requested to provide their services in relation to rebranded construction products.

2. DEFINITIONS

This position paper applies the terminology defined by CPR supplemented by the position paper, NB-CPR 18/775.

3. REBRANDING SCENARIO – ROLES AND RESPONSIBILTIES

3.1. BASIC SCENARIO

Rebranding may take many different forms. For the sake of simplicity, this position paper describes only one single 'basic' rebranding scenario involving only two practically identical construction products:

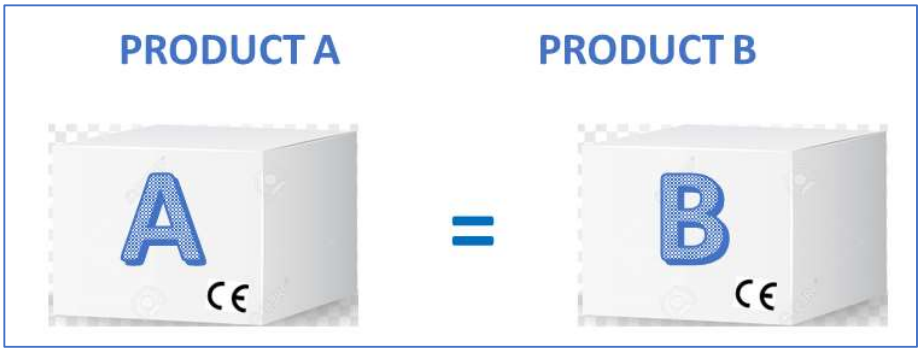

Figure 1. For all practical purposes, products A and B are identical. Only tradenames and markings are different.

Except for the tradenames and markings, products A and B are identical: Same factory, same raw materials, same specifications, same machinery, same FPC etc.

Only, Product A is *placed on the market* by Company A (in capacity of *manufacturer)* under the tradename "Product A", while Product B is placed on the market by Company B (also in capacity of *manufacturer*) under the tradename "Product B"

Physically, both products are made by the factory of Company A.

In figure 2, the interaction between the two companies is illustrated.

- Company A has a factory producing Product A. From the factory, Product A is taken to the warehouse of Company A from which the product is being supplied; either directly for use or for further distribution.
- Companies A and B enters into a contract allowing Company B to purchase a "clone" of product A to be placed on the market by Company B under the tradename "Product B".
- Products (to be) marked "Product B" are supplied by company A to the warehouse belonging to Company B, from which "Product B" is being supplied; either directly for use or for further distribution.
- Both products are CE marked and accompanied by Declarations of Performance issued by the respective manufacturers.
- The same levels and classes of performance are declared for both products.

Rebranding may take many different forms. For instance, the rebranded products may be shipped by the physical producer directly to the clients of the rebranding manufacturer, who would then not need any warehouse of his own.

It is assumed that notified certification bodies, when confronted with rebranding scenarios different from the scenario described by this position paper, will be able to adapt the guidance provided by this position paper to apply it in the actual circumstances.

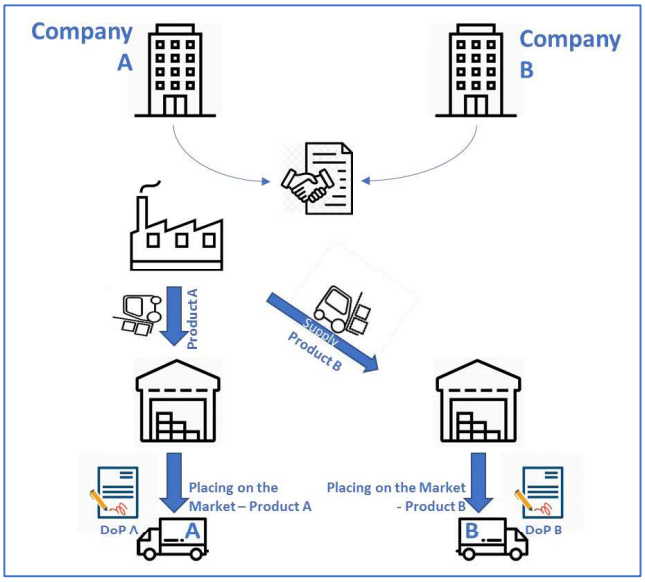

Figure 2 – Interaction between physical producer (Company A) and rebranding manufacturer (Company B).

3.2. ROLES AND RESPONSIBILITIES OF ECONOMIC OPERATORS

This section is included for the purpose of common understanding amongst notified certification bodies. It is neither intended as guidance for economic operators nor to define any additional obligations for them.

CPR Article 2(10) defines the manufacturer as follows:

> *'manufacturer' means any natural or legal person who manufactures a construction product or who has such a product designed or manufactured, and markets that product under his name or trademark;*

CPR Article 15 further clarifies that the one placing a product on the market under his name or trademark is considered the manufacturer; even if he does not physically make the product:

> *An importer or distributor shall be considered a manufacturer for the purposes of this Regulation and shall be subject to the obligations of a manufacturer pursuant to Article 11, where he places a product on the market under his name or trademark or modifies a construction product already placed on the market in such a way that conformity with the declaration of performance may be affected.*

Hence, in legal terms Company A would be the *manufacturer* of Product A, while Company B would be the manufacturer of Product B.

CPR Article 15 also makes it clear that Company B would be subject to all obligations of a manufacturer as defined by CPR.

CPR does not allow for any limitation of the obligations of *Rebranding manufacturers*. All manufacturers, both manufacturers who physically produce the products they place on the market and rebranding manufacturers have exactly the same obligations, which they cannot transfer to anybody else; each manufacturer is fully responsible for the construction products he places on the market.

As regards Product B, in legal terms Company A would not be the manufacturer, and Product B cannot be covered by the DoP issued for Product A.

Accordingly, as regards Product B, Company A would not have any obligations according to CPR.

In legal terms, only Company B would be the manufacturer of Product B.

The transaction between the companies A and B would not be covered by CPR, only by the private law agreement between the two companies.

3.3. AGREEMENT BETWEEN COMPANIES A AND B

This section is included for the purpose of common understanding amongst notified certification bodies. It is neither intended as guidance for economic operators nor to define any additional obligations for them.

CPR defines a number of obligations for manufacturers, for instance:

- Draw up technical documentation describing all the relevant elements related to the required system of AVCP,
- Keep the technical documentation and the DoP for a period of at least 10 years,
- Ensure that procedures are in place to ensure that series production maintains the declared performance,
- Where deemed appropriate, carry out sample testing of construction products placed or made available on the market,
- Investigate, and, if necessary, keep a register of complaints, of non-conforming products,
- On request from a national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the construction product with the declaration of performance.

To enable itself to meet the above-mentioned obligations, Company B will need a contract with company A.

As the contract will regulate as well the assessment of performance as the verification of constancy of performance of Product B, notably the factory production control, that contract shall be of interest to the notified certification body serving Company B.

4. ROLES AND RESPONSIBILITIES OF NOTIFIED CERTIFICATION BODIES

The requirements and obligations defined by CPR fully apply to notified certification bodies serving rebranding manufacturers. The general guidance on the systems of Assessment and Verification of Constancy of Performance found in the position paper NB-CPR 17/722 shall also apply to notified certification bodies when serving *rebranding manufacturers.* However, at some points it seems necessary to

supplement by guidance specifically aimed at providing services to rebranding manufacturers.

4.1. NOTIFIED BODY FOR "PRODUCT A"

If Product A is in AVCP system 1+, 1, or 2+, Company A would need to contract a notified certification body. That certification body would have a role in the AVCP for Product A, of which Company A is the manufacturer.

The operational obligations of the notified certification body as defined by CPR Articles 52(3), 52(4) and 52(5) would only apply in relation to Product A and the certificate issued by that notified body for product A.

The notified certification body contracted by Company A would not have any relationship with Company B and no role in the AVCP for Product B.

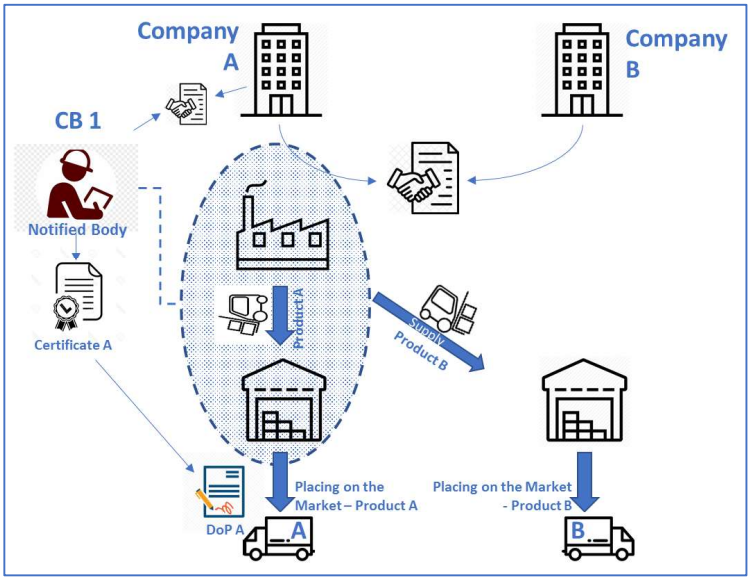

Figure 3 – Subject to inspection by certification body CB1 serving Company A as notified body.

In figure 3 is illustrated what would be subject to inspection by the notified certification body serving Company A.

In figure 3, it is assumed that the transfer of Product A from the factory to the warehouse of Company A and the subsequent storage in that warehouse might have an influence on the performance of Product A. Therefore, the warehouse of Company A is considered part of the *manufacturing plant* and hence subject to inspection by the notified certification body. If the transfer and storage would not have any such influence, there would be no reason for the notified certification body to carry out any inspection of these activities.

The work of CB1 would not be affected by the cooperation between companies A and B. It is emphasised that the notified certification body serving company A would have no role in relation to "Product B".

4.2. NOTIFIED BODY FOR “PRODUCT B”

When Company B contracts a notified certification body, “CB2”, that body would assume the role of notified body in relation to Product B only. CB2 would have no role in relation to Product A.

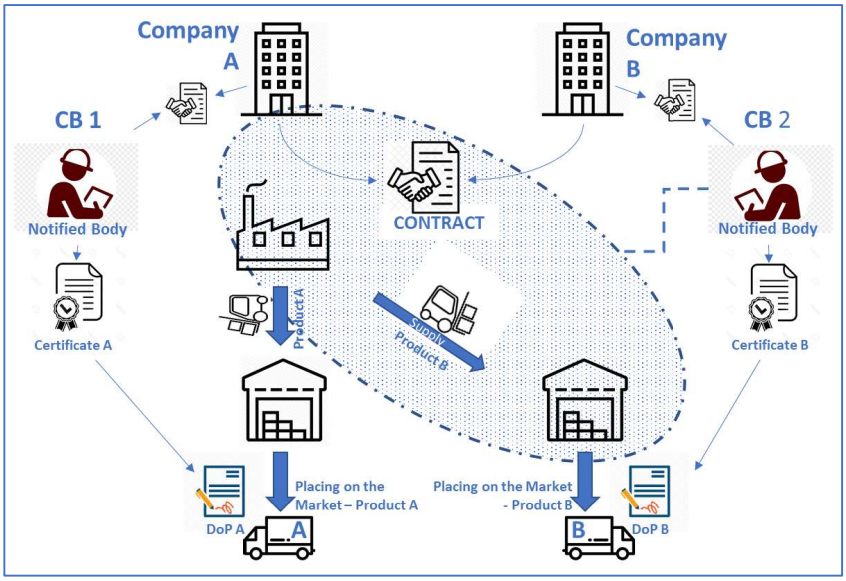

Figure 4 – Subject to inspection by certification body CB2 serving Company B as notified body.

In figure 4 is illustrated what would be subject to inspection by the certification body, CB2, serving as notified body for Product B.

The role of CB2 would be parallel to the role of CB1 described above. CB2 will need to inspect and assess the processes influencing the performance of Product B, including transfer, packaging and storage if relevant.

As the significant manufacturing processes of product B are mainly carried out by Company A, CB2 would also need to carry out inspections at the factory of Company A in order to verify the constancy of performance.

As the controlling of the manufacturing processes would be governed by the agreement between companies A and B, CB2 would also need to know the content of that contract to be sure that the effectiveness of the factory production control will be safeguarded.

4.3. OVERLAPPING NB ASSESSMENTS

As it appears from figures 3 and 4, the manufacturing processes in the factory of Company A would be subject to inspection by both CB1 and CB2. Consequently, there would be certain overlap between the work of the two bodies, which would result in repetition of work and “double assessment”, unless measures are taken to avoid it.

This is illustrated in figure 5.

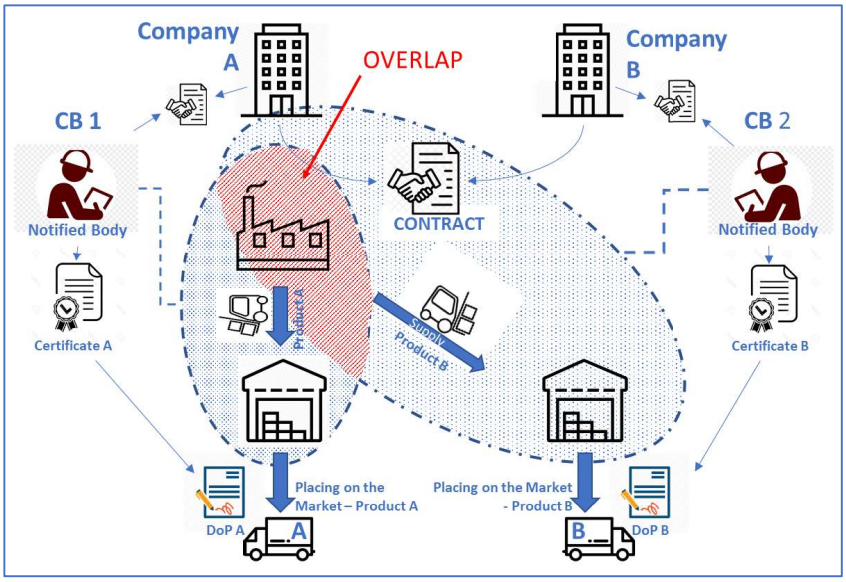

Figure 5 – Overlap between work of certification bodies CB1 and CB2

5. COOPERATIVE FRAMEWORK

As described in section 3.3, an agreement would be necessary between companies A and B to enable Company B to meet its obligations.

To avoid repetition of notified body work, additional agreements would be necessary.

Below is described the purposes for which agreements would be necessary.

As the agreements would be subject to private law of the Member State(s), this position paper does not provide any guidance on how such contracts should be drawn up.

For the purpose of this guidance, the agreements on the below elements are referred to as a "four parties' agreement", which may consist of one or more documents.

5.1. EXCHANGE OF INFORMATION

Unless an agreement has been made on the exchange of information, notified bodies cannot share information about the manufacturers they serve – or any other information they come across in the course of AVCP activities.

CPR Article 43(10) states:

> *The personnel of the notified body shall be bound to observe professional secrecy with regard to all information gained in carrying out its tasks under Annex V, except in relation to the competent administrative authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.*

This means that information gained by CB1 when working for Company A cannot be shared with anybody else – including CB2.

Accordingly, CB2 cannot share any information about Company B.

In order to avoid repetition of work, Company A will need to release CB1 from its secrecy obligation and permit CB1 to share relevant information with CB2.

Situations may also occur where CB2 will need to share information about Company B with CB1. This would for instance be the case if CB2 is contacted by a market surveillance authority informing about nonconforming products placed on the market by Company B.

As CB2 would need to operate with transparency towards Company B (See CPR Article 52(2)), situations may occur where CB2 would need to share with Company B information about Company 1 provided by CB1.

Therefore, to facilitate the cooperation, agreements should be in place to allow for the necessary exchange of information between the parties involved.

5.2. SUBCONTRACTING OF INSPECTIONS

For CB2, the starting point would be that it would have to carry out inspections at the *manufacturing plant*, including the factory owned by Company A.

In order to use the results of inspections carried out by CB1 at the factory of Company A, it would be necessary with a subcontracting agreement between CB2 as notified body and CB1 as subcontractor. The position paper NB-CPR 17/744 provides guidance on subcontracting of notified body work.

5.3. AGREEMENT ON THE USE OF SUBCONTRACTOR(S)

Notified bodies are only permitted to subcontract work with the agreement of the manufacturer.

CPR Article 45(3) states:

> *Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.*

Hence, to allow CB2 to employ CB1 as subcontractor, it would be necessary to have an agreement in place with Company B.

Without such agreement it would not be possible for CB2 to take into account the inspections carried out by CB1 when issuing the certificate to Company B.

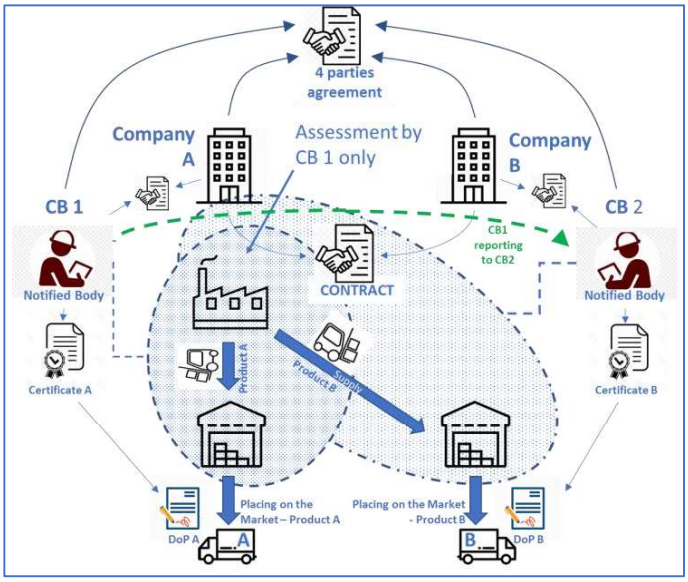

Figure 6 – Example of cooperative framework, where inspection at the factory of Company A is carried out by CB1 in support of certificates to both companies A and B

6. GUIDANCE ON AVCP ACTIVITIES

General guidance on the AVCP activities is found in the position paper NB-CPR 17/722, which also applies to notified certification bodies serving rebranding manufacturers. This section supplements the guidance already found in that position paper.

Hence, this section must be read in conjunction with NB-CPR 17/722.

In this section, the *notified body* is understood as the notified certification body (CB2) serving the *rebranding manufacturer* (Company B). In systems 1+ and 1, CB2 will be *notified product certification body*. In system 2+, CB2 will be *notified FPC certification body.*

6.1. CERTIFICATION AGREEMENT

For the certification agreement between the notified body (CB2) and the rebranding manufacturer (Company B), NB-CPR 17/722 section 6.2 applies with the following additions:

- The written agreement shall reflect the actual conditions:
    - Location of physical manufacture,
    - Conditions for the access of the notified body to carry out inspection at the factory,
    - If inspections in the factory is to be subcontracted to another certification body, namely “CB1”,
    - In systems 1+ and 1, the conditions for the assessment of performance, e.g. if testing or calculation is being replaced by Appropriate Technical

Documentation (ATD), which would be subject to verification by the notified body.

6.2. ASSESSMENT OF PERFORMANCE

This section is only relevant in AVCP systems 1+ and 1.

The notified product certification body shall carry out the assessment of performance in accordance with NB-CPR 17/722 section 7.

If the rebranding manufacturer wishes to use test results provided by the supplier (Company A), the following applies additionally:

- The notified product certification body shall satisfy itself that the rebranding manufacturer (Company B) has obtained the authorisation of the supplier (Company A) to use the test results.
- The notified product certification body shall check that the rebranding manufacturer has drawn up Appropriate Technical Documentation demonstrating that the Product B corresponds to the product-type of Product A.
- The notified product certification body shall carry out a verification of the Appropriate Technical Documentation with regard to the following criteria, which are further described in the document NB/CPR 19/792:
    - Technical correctness
    - Competence, impartiality and independency
    - Integrity
    - Suitability

It is emphasised that only *test results* can be shared. The assessment of performance carried out by CB1 in capacity of notified product certification body for company A cannot as such be used by the notified body, CB2.

In figure 7 is illustrated the assessment of performance when testing and/or calculation is replaced by Appropriate Technical Documentation.

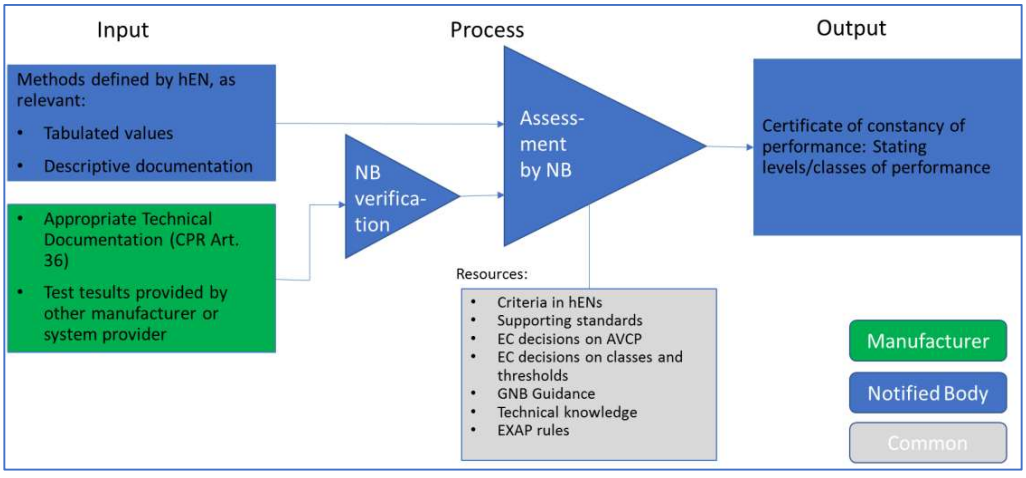

Figure 7 – Process diagram on the Assessment of Performance in AVCP systems 1+ and 1. Testing and/or calculation is here replaced by Appropriate Technical Documentation.

It is further emphasised that the responsibility for the assessment of performance lies solely with the notified product certification body, CB2.

It is considered that the notified product certification body (CB2) would not need any subcontracting agreement with neither CB1 nor any laboratories to use shared test results as basis for the assessment of performance.

6.3. INITIAL INSPECTION

NB-CPR 17/722 section 8 applies with the following additions.

The initial inspection may be carried out by the notified certification body (CB2) or it may be subcontracted to CB1 in accordance with NB-CPR 17/744.

If the initial inspection has already been carried out by CB1, the notified certification body (CB2) may, on the basis of a subcontracting agreement with CB1, choose to replace the initial inspection by evidence of the initial inspection provided by CB1.

Such evidence shall at least include:

- Report of the initial inspection provided by CB1,
- Evidence that any non-conformity found in the course of initial inspection have been effectively rectified,
- Statement from CB1 that the report of the initial inspection reflects the current situation and that no subsequent findings would affect the conclusions of the report,
- If continuing surveillance has been carried out by CB1, the report(s) of the surveillance visits carried out since the initial inspection, in order to confirm the conclusion of the initial inspection.

All part of the *manufacturing plant* shall be subject to the initial inspection.

This means that if the transfer of Product B and/or any subsequent packaging and storage of Product B in the warehouse of Company B is considered likely to influence the conformity of Product B with the declaration of performance, CB2 will need to subject these activities/locations to the initial inspection.

As part of the initial inspection, the contract between companies A and B shall be assessed with regard to its ability to ensure the effectiveness of the FPC related to Product B.

6.4. CERTIFICATION DECISION

NB-CPR 17/722 section 9 applies.

6.5. ISSUANCE OF CERTIFICATE

NB-CPR 17/722 section 10 applies, including its reference to NB-CPR 14/612.

6.6. CONTINUING SURVEILLANCE

NB-CPR 17/722 section 11 applies.

Surveillance inspections may be subcontracted, fully or partially, to CB1 who will then have to report to the notified certification body, CB2, notably on:

- the effectiveness of the FPC in terms of ensuring the conformity of the construction products with the declared performance for all essential characteristics covered by the scope of certification.
- The continuing conformity of the FPC with the requirements of the harmonised specification applied.

The reporting shall include descriptions of nonconformities detected (see NB-CPR 17/722 section 11.5).

Assessment of the effectiveness of corrective actions implemented by the manufacturer may be carried out by the notified certification body, CB2, itself or it may choose to subcontract to CB1 to assess corrective actions and report to the notified certification body, CB2.

If the transfer of Product B and/or the subsequent storage of Product B in the warehouse of Company B is considered likely to influence the conformity of Product B with the declaration of performance, CB2 will need to subject these activities/locations to the continuing surveillance.

Based on the reporting by CB1 and its own findings, the notified certification body, CB2, shall decide either to maintain, restrict, suspend or withdraw the certificate.

It is emphasised that the decision to maintain, restrict, suspend or withdraw the certificate lies solely with the notified certification body, CB2, which cannot subcontract the decision.

6.7. AUDIT TESTING

This section is relevant to system 1+ only.

The guidance of NB-CPR 17/722 section 12 applies.

CPR Article 36 does not cover sharing of audit test results. Therefore, it is emphasised that the guidance for sharing of test results for the purpose of assessment of performance found in section 6.2 does not apply to audit testing.