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(concerning the Construction Products Directive 89/106/EC)

THE ATTESTATION OF CONFORMITY SYSTEMS AND THE ROLE AND TASKS OF THE NOTIFIED BODIES IN THE FIELD OF THE CONSTRUCTION PRODUCTS DIRECTIVE.

(Revision Sep 2002)

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Preface

Article 20 of the Construction Products Directive (89/106/EC) states that the Standing Committee may, "at the request of its Chairman or a Member State, examine any question posed by the implementation and the practical application of this Directive".

In order to ensure as far as possible a common understanding between the Commission and the Member States as well as among the Member States themselves as to how the Directive will operate, the competent services of the Commission, assuming the chair and secretariat of the Standing Committee, may issue a series of ***Guidance Papers*** *dealing with specific matters related to the implementation, practical implementation and application of the Directive.*

These papers are not legal interpretations of the Directive.

They are not judicially binding and they do not modify or amend the Directive in any way. Where procedures are dealt with, this does not in principle exclude other procedures that may equally satisfy the Directive.

They will be primarily of interest and use to those involved in giving effect to the Directive, from a legal, technical and administrative standpoint.

They may be further elaborated, amended or withdrawn by the same procedure leading to their issue

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THE ATTESTATION OF CONFORMITY SYSTEMS AND THE ROLE AND TASKS OF THE NOTIFIED BODIES IN THE FIELD OF THE CONSTRUCTION PRODUCTS DIRECTIVE.

1. Scope

1.1 This Guidance Paper goes into detail on the various attestation of conformity (AoC) systems within the context of the implementation of Council Directive 89/106/EEC (hereafter referred to as the Construction Products Directive or CPD), as amended by Council Directive 93/68/EC.

1.2 It also addresses the relation between the AoC systems and the Notified Bodies. It clarifies the role of the relevant Notified Body/Bodies under the different AoC systems.

1.3 The Guidance Paper refers, in particular, to Articles 13 and 18 and to Annex III of the CPD. The full text of these provisions can be found on the Internet site[1] of DG Enterprise Construction.

1.4 The Guidance Paper is intended for a number of different audiences, particularly Notified Bodies and Regulators and enforcement authorities within the European Economic Area (EEA). It is also of interest to technical specification writers (CEN/CENELEC and EOTA members), for consideration together with the respective mandates, manufacturers and other users for information purposes.

1.5 This document gives information which complements Guidance Paper A[2] because it describes the practical role of the notified bodies. It does not specify the criteria to be used by Member States to examine bodies wishing to be considered for notification (covered by Guidance Paper A).

2. Underlying Principles

2.1 The CPD identifies a complete set of attestation of conformity systems including all the actors with their respective roles and tasks. Voluntary European or international standards[3], or documents produced on a horizontal level[4] for new or global approach directives, describing practices similar to those under the CPD, can be used as a starting point where appropriate but are not obligatory.

2.2 This document is limited to aspects relating to CE marking under the Construction Products Directive. Voluntary aspects that might be addressed in the technical specifications are not dealt with.

2.3 The producer is fully responsible for the attestation that products are in conformity with the requirements of a technical specification. The involvement of a third party,

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[1] http://europa.eu.int/comm/enterprise/construction/index.htm

[2] Guidance Paper A: THE DESIGNATION OF NOTIFIED BODIES IN THE FIELD OF THE CONSTRUCTION PRODUCTS DIRECTIVE

[3] ISO 9000 series, EN 45000 series

[4] CERTIF series, including Guide to the Implementation of Directives based on the New Approach and the Global Aproach (2000 edition)

even to provide an EC certificate of conformity, does not relieve the producer of any of his obligations. However, under the CPD, responsibility for specific actions is given to a third party for all systems of attestation of conformity (AoC) except system 4.

2.4 Whether or not there is third party intervention in attestation of conformity, all of the tests and procedures required by the CPD and the technical specifications must be performed and documented correctly. The documentation shall be available for notifying authorities and surveillance authorities where relevant.

2.5 In specifying the systems of AoC it has been recognised that the importance of the part played by a product with respect to the essential requirements will not usually be the same for each ER. Thus, within a given system of AoC certain tests of a product's performance have usually been allocated to the notified bodies and the rest to the producer. Details of this allocation of tests shall be specified in the technical specifications, elaborated on the basis of mandates from the Commission.

2.6 In addition, many Commission Decisions relating to the attestation of conformity of construction products are based on a cumulative procedure, in which different systems of AoC are allocated to the various possible intended uses[5] of a product. The type of notified bodies involved, if any, therefore depends upon the range of intended uses that the producer chooses to make his product available for.

2.7 The term "Notified Body" is used only for organisations notified under article 18 of the CPD to avoid confusion with the terminology used for organisations designated by member states under article 10 of the CPD (ie EOTA Approval Bodies).

3. Methods of control of conformity

3.1 initial type-testing (ITT) of the product (by the manufacturer or a notified body) applicable to all AoC systems

(1) An Initial Type test is the complete set of tests or other procedures described in the harmonised technical specification, determining the performance of samples of products representative of the product type.

(2) An ITT verifies that a product complies with the harmonised technical specification. It defines the performance of all harmonised characteristics to be declared.

(3) Depending on the limitations of intended uses chosen by, and the specific markets envisaged by the manufacturer, the scope of the ITT could be limited to those applicable to the uses foreseen.

(4) A product type may cover several versions of the product, provided that the differences between the versions do not affect the level of safety and the other requirements concerning the performance of the product.

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[5] Intended use is defined in the IDs as referring to the roles(s) that the product is intended to play in the fulfilment of the essential requirements.

(5) An initial type test (ITT) is not an assessment of the fitness for use of a product. The ITT is rather a determination of the performance of a product, on the basis of tests or other procedures described in the technical specifications.

(6) The ITT is only one element which determines whether or not a product can be attested to be in conformity with a technical specification. However, the ITT does play a fundamental role under the CPD as it provides the reference for the declared performance of the product.

3.2 ***Audit-testing of samples taken at the factory, on the open market or on a construction site by the manufacturer or an notified body;***

(1) Commission Decisions generally limit audit testing by Notified Bodies, under the attestation of conformity procedures, to the premises of the manufacturer or his authorised representative.

(2) A proper "audit-test " assumes that:

The construction product is tested in accordance with the test methods specified in the technical specification and the initial type test.

The test results are compared with the declared performances of the product derived from the initial type test.

A test report is delivered, confirming that the findings are in conformity with the technical specifications, the ITT and FPC provisions.

3.3 Factory production control

(1) In the CPD, factory production control means the permanent internal control of production exercised by the manufacturer. Normally this includes testing by the manufacturer, to assure compliance of the manufactured products with the declared performances of the initial type test.

(2) Further details on factory production control can be found in Guidance Paper B: "The definition of factory production control in technical specifications for construction products."

4. <u>Systems of conformity attestation</u>

(1) According to Article 13 of the CPD, the manufacturer, or his authorised representative established in the Community, is responsible for the attestation that products are in conformity with the requirements of a technical specification within the meaning of Article 4. Conformity shall be established by means of testing and/or other evidence on the basis of the technical specifications in accordance with Annex III where preference is given to the application of two procedures of conformity attestation, namely:

(i) Certification of the conformity of the product by an approved certification body…(on the basis of 2 alternative systems)

(ii) Declaration of conformity of the product by the manufacturer…(on the basis of four alternative systems)

(2) The certification body[6] in procedure (i) has to perform conformity assessment of the product, and in procedure (ii), first possibility, has to do the assessment of the capabilities of the manufacturer to assess ITT and FPC outcomes against the product specifications and, when surveillance is required, periodically review this.

(3) Under procedure (i) and procedure (ii), first possibility, notified bodies (other than the certification body) may work as sub-contractor to the certification body.

(4) Under procedure (ii) second possibility, the tests to be carried out in respect of any one Essential Requirement must be the responsibility of one notified test laboratory (see 4.2.2 (3) below). However, that laboratory may subcontract specific tests to other laboratories.

(5) To facilitate referencing the various AoC systems in the Commission Decisions on the Attestation of Conformity and in the corresponding mandates, the systems have been given a number. Annex 1 recapitulates this numbering scheme.

4.1 Certification of the conformity of the product by a notified certification body on the basis of different tasks for the manufacturer and notified bodies (CPD Annex III.2(i) (*Systems 1 and 1+*)).

(1) Under systems 1 and 1+, responsibility for the certification of the conformity of the product (on the basis of tasks by the producer and the notified body) is given to a third party.

(2) It is normal practice that the individual tasks required to enable product certification to take place are carried out by various parties – e.g. producer, certification body, inspection body, laboratory. The certification body is responsible for assembling all of the relevant information, verifying that tasks have been carried out according to the technical specification and assessing and certifying the conformity of the product.

(3) Product certification can therefore be considered to be an umbrella activity, making use of information from various sources. Within this overall scheme, the producer has a significant role to play, including the testing of certain product characteristics as part of an initial type test (see paragraph 3.1 above). The allocation of such tests to the

[6] The involvement of the certification body is not intended to relieve any of the responsibilities for the manufacturer but to reassure the users and the authorities that everything is satisfactory.

producer shall be indicated in the technical specifications, elaborated on the basis of the mandates from the Commission.

(4) Under systems 1 and 1+, responsibility for product sampling for the ITT, in accordance with the rules laid down in the technical specification, lies with the certification body (often delegated to an inspection body), rather than the producer.

(5) The result of the actions of the notified body under CPD Annex III.2(i) (*Systems 1 and 1+*) is in all cases a product conformity certificate. The only difference between the commonly used terms 'system 1' and 'system 1+' are the methods used by the notified body to assess the product (ie. 1+ includes audit testing).

4.2 Declaration of conformity of the product by the manufacturer (CPD Annex III.2(ii)).

(1) Under systems 2, 2+, 3 and 4, the responsibility for product sampling for the ITT test, in accordance with the rules laid down in the technical specification, lies with the manufacturer.

This second system (Annex III of the CPD) distinguishes between 3 possibilities:

1.1.1. first possibility (Systems 2 and 2+)

(1) The result of the actions of the notified body under this first possibility is in all cases a factory production control certificate. The only difference between the commonly used terms 'system 2' and 'system 2+' are that whereas both 2 and 2+ involve assessment of Factory Production Control, system 2+ also involves surveillance.

(2) The certification of factory production control (FPC) refers to an evaluation of the permanent internal control of production exercised by the producer (to enable achievement of the required product characteristics to be checked). Thus, both initial inspection and continuous surveillance are general activities relating to a particular production facility, in order to demonstrate that the FPC is in conformity with the requirements of the technical specification and the CPD.

(3) Given the general character of FPC certification, there is no one-to-one relationship with the individual product characteristics, even if some aspects of a product's performance may warrant particular attention (to be specified in the technical specifications if this is the case). Hence, the allocation of tasks to the notified body or the producer on the basis of individual product characteristics does not have any practical value. The assessment of FPC concerns all of the elements, requirements and provisions adopted by the producer to fulfil his obligations under the CPD.

(4) Certification of FPC does not involve assessment of the overall conformity of a product with a technical specification – this remains the responsibility of the producer.

1.1.2. second possibility (system 3).

(1) Under system 3, responsibility for the Initial Type Test (ITT) is given to a third party or parties, rather than to the producer. All other responsibilities fall on the producer.

(2) The responsibility for sampling of the products to be tested, in accordance with the rules laid down in the technical specification[7], lies with the producer. The producer has a duty to ensure that the samples are representative of the product to be placed on the market and to keep satisfactory records of this (i.e. as part of his factory production control).

(3) Having responsibility for the ITT does not necessarily mean that the third party (or parties) has to carry out all of the tests required for a given product type. It is quite normal for the producer to carry out some of the testing himself. The technical specifications, elaborated on the basis of the mandates from the Commission, will indicate which of the tests on individual product characteristics may be performed by the producer, as opposed to the notified laboratories *(reports will always indicate who has performed the test).*

(4) For the tests to be carried out by a third party, the producer may approach one or more notified laboratories, although the tests to be carried out in respect of any one Essential Requirement must be carried out by the same laboratory (i.e. a maximum of 6 notified laboratories may be used, one per ER). This practice will allow highly specialised laboratories (e.g. for fire or acoustical testing) to be notified and brought within the Group of Notified Bodies co-ordination process. The producer shall inform each notified laboratory of the identity of any other notified laboratories used and shall keep appropriate records.

(5) Any tests carried out by the producer himself *(or the notified bodies)* must be performed and reported in accordance with the technical specification(s). The test reports shall make reference to the sample identities referred to above.

(6) The complete ITT Report, assembled by the producer, shall include all of the test reports from the notified laboratories and the producer. Any notified laboratory involved in the ITT may request to examine the full ITT Report, in order to satisfy himself that all of the sample identities correspond with those provided to it for testing. If they are not from

[7] In the absence of sampling rules (and other initial type testing or factory production control details) in the technical specification, the Group of Notified Bodies shall provide appropriate common instructions to producers. These common instructions will be communicated to the SCC for endorsement. Specification writers could use these as basis for future amendments of the specifications.

the same batch, identification testing shall allow comparing the results with the other parts of the testing[8].

1.1.3. third possibility (system 4)

(1) No compulsory intervention of a third party in attestation of conformity. This does not, of course, prevent producers from having the necessary tests done by outside laboratories if they so choose (e.g. if they lack the facilities or expertise to carry out the tests and procedures themselves).

5. Notified bodies involved in the Attestation of Conformity

(1) Currently, different attestation and market surveillance systems are operational in the Member States. Many of the 'third parties' involved in these schemes will become Notified Bodies under article 18 of the Construction Products Directive. In each national system, a certain terminology is used for these bodies.

(2) Many Commission Decisions relating to the attestation of conformity of construction products are based on a cumulative procedure, in which different systems of AoC are allocated to the various possible intended uses[9] of a product. The type of notified body involved, if any, therefore depends upon the range of intended uses that the producer chooses to make his product available for.

(3) It is not relevant to compare the role and tasks of the types of Notified Bodies under the CPD with existing terminology or practices in Member States as the functions of the latter are not necessarily equal to traditions under national systems.

(4) The Notified Bodies for one and the same product(s) or product characteristic (or type of test) shall regularly exchange their experience and the information necessary to perform their tasks in a way that the procedures are consistent and transparent and that the results are reproducible. This exchange shall take place in the respective Sector Group of the Group of Notified Bodies (GNB). Matters of general interest shall be put forward to the Advisory Group of the GNB.

5.1 Division of tasks

(1) For various reasons Notified Bodies can appoint sub-contractors that will perform tasks on their behalf. Annex 2 details the different types of Notified Bodies as defined in Annex III of the CPD and their roles under the various AoC systems.

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[8] This to allow the use of test results from different times during the development of new products

[9] Intended use is defined in the Interpretative Documents as referring to the roles(s) that the product is intended to play in the fulfilment of the essential requirements.

(2) A sub-contracting notified body remains responsible for all the activities covered by the notification. Sub-contracting does not entail the delegation of powers or responsibilities. Certificates and reports are always issued in the name and under the responsibility of the sub-contracting notified body but will indicate who has performed the actual tasks. Serial sub-contracting is prohibited in order to avoid undermining the coherence of the system and the confidence in it.

(3) A notified body can sub-contract strictly limited technical tasks (e.g. tests, factory production control audits), as long as these can be defined as substantial and coherent parts of the technical operation.

Two mechanisms for sub-contracting can be identified.

On basis of a long-term contract:

(1) Sub-contracting is permissible where a body, applying for notification, identifies clearly its sub-contractors and the role these are going to play in the attestation of conformity system.

(2) This kind of sub-contractor does not need notification but should demonstrate to the respective Member State technical competence and impartiality by fulfilling the requirements of annex IV of the CPD for the tasks that are contracted to them.

(3) The notified body must in all cases have a direct private-law contractual link with its sub-contractors to ensure the fulfilling of its general responsibilities.

(4) This mechanism provides an answer where notified bodies seek solutions to enable them to give a complete service to Industry. Council Decision 93/465/EC[10] defines a number of conditions on sub-contracting.

Adapting this to the specific case of the CPD we can say that the sub-contracting of work shall be subject to certain conditions guaranteeing:

- the competence of the establishment operating as a sub-contractor, on the basis of conformity with the requirements of Annex IV of the CPD, Guidance paper A and the respective harmonised technical specification, and the capability of the Member State that has notified the sub-contracting body to ensure effective monitoring of such compliance

- the ability of the body notified to exercise effective responsibility for the work carried out under sub-contract."

[10] Council decision 93/465/EC concerning the modules for the various phases of the conformity assessment procedures and the rules for affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives.

Sub-contracting to other Notified Bodies

(1) In many cases, the notified bodies will look for sub-contractors to solve isolated problems (lack of capacity in their own laboratories, inspections in a plant across the border…).

(2) Notified Bodies can make use of the services of other Notified Bodies (that have been notified in the relevant area) to perform tasks. The certificates or reports produced must clearly indicate who has performed a particular task. The overall responsibility remains with the sub-contracting Notified Body.

(3) This second type of sub-contracting assures transparency by public knowledge of the assessment of all the bodies involved by the respective Member State, involves all actors in the European co-ordination within the GNB and offers more possibilities to Industry.

6. Sample marking and Reporting

6.1 Marking of samples

(1) All samples to be used for testing purposes shall be suitably marked to allow a subsequent verification that the producer has fulfilled his obligations. This demonstrates that the manufacturer has followed the rules in the harmonised EN or ETA, that all tests have been carried out on the same batch of samples, if this is specified, and that the samples are representative for the product to be placed on the market.

(2) Sample-marking on the product will at least include production line, date and time of the taking of the sample. The sample identity shall be recorded in all test reports to enhance trace ability.

(3) Products declared by the manufacturer to be defective shall only then be excluded from sampling if they have been set aside and marked accordingly.

(4) In the case of sampling by a Notified Body, the sampler shall prepare and sign a record on sampling that shall be countersigned by the manufacturer or his representative (when relevant). The record should at least include the following information:

Manufacturer and manufacturing plant

Place of sampling

If necessary, stock or batch quantity (from which the samples have been taken)

Number or quantity of samples

Identification of the construction product in accordance with the technical specification

Marking of the product by the manufacturer

Marking of the samples by the sampler (when relevant)

Where necessary, properties to be tested

Place and date

Signatures

Registration number of the Notified Body

6.2 Test Reports

(1) The results of each test, independent of whether this test is part of the initial type test or audit testing by the manufacturer or a third party, shall be recorded in a *"test report"*. The test report should at least include the following information:

Manufacturer and manufacturing plant

Identification of the construction product in accordance with the relevant technical specification

Information about

- sampling
- date of testing
- involved personnel
- applied testing methods according the relevant technical specification

Identification of the organisation and personnel executing the test

Place and date

The results of the test, including analysis of these when relevant.

Place and date of the delivery of the test report

Registration number of the Notified Body (when relevant)

Signature of the head of the testing laboratory and stamp (when relevant).

The test report must comply with the relevant clauses of the technical specifications. The complete set of test reports will be kept by the manufacturer and the certification body (when relevant) and will be made available to the inspection body (where relevant) and market surveillance authorities on demand.

Test laboratories will keep the test reports that they have issued.

6.3 Note

Where possible, model reports and other model documentation should be developed by the specification writers and should be included in the technical specifications.

As an interim solution and to avoid extra work for the specification writers, the test reports may need to appear as separate documents developed by the relevant sector groups and/or the Advisory Group of the Group of Notified Bodies. Suitable common presentation should be assured by close collaboration between specification writers and the GNB.

7. References

The Construction Products Directive.

CONSTRUCT 99/345 REV.3: THIRD PARTY INTERVENTION IN AoC

CONSTRUCT 99/342: Discussion paper on the notification of bodies by Member States and the relation with sub-contracting of tasks by Notified Bodies

Guidance paper A: The Designation of Notified Bodies in the field of the Construction Products Directive.

Guidance Paper B: The definition of Factory Production Control in technical specifications for construction products.

Position papers of working group 1 from the Advisory Group of the Group of Notified Bodies (NB-CPD-001/NB-CPD-002 rev4)

The Guide to the implementation of Directives based on the New Approach and the Global Approach.

Annex 1: Attestation of Conformity Systems.

System	Task for manufacturer	Task for notified body	Basis for CE marking
4	Initial type testing of product Factory production control		Manufacturers conformity Declaration
3	Factory production control	Initial type of testing of product	
2	Initial type of testing of product Factory production control	Certification of factory production control on basis of initial inspection	Manufacturers conformity Declaration + certification of factory production control
2+	Initial type testing of product Factory production control Testing of samples according prescribed test plan	Certification of factory production control on basis of initial inspection continuous surveillance, assessment and approval of production control	
1	factory production control Further testing of samples according prescribed test plan	Certification of product conformity on basis of tasks of the notified body and the tasks assigned to the manufacturer Tasks for notified body: initial type-testing of the product; initial inspection of factory and of factory production control; continuous surveillance, assessment and approval of factory production control;	Manufacturers Conformity[11] Declaration accompanied by Certificate of product conformity
1+	Factory production control Further testing of samples according prescribed test plan	Certification of product conformity on basis of tasks of the notified body and the tasks assigned to the manufacturer Tasks for notified body: initial type-testing of the product; initial inspection of factory and of factory production control; continuous surveillance, assessment and approval of factory production control; audit-testing of samples taken at the factory, on the market or on the construction site	

[11] A declaration of conformity is always required (see Guidance paper D).

Annex 2

Table 1: Attestation of Conformity Systems and Tasks of the Notified Bodies

Text extract from CPD Annex III	Tasks	Attestation systems						Certification
Preference is given to application of the following systems of conformity attestation		1+	1	2+	2	3	4	required
(i) Certification of the conformity of the product by an notified certification body on the basis of:								
(a) (tasks for the manufacturer)								
(1) factory production control;	1	M	M					
(2) further testing of samples taken at the factory by the manufacturer in accordance with a prescribed test plan;	2	M	M					
(b) (tasks for the notified body)								
(3) initial type-testing of the product;	3	A	A					CP
(4) initial inspection of factory and of factory production control;	4	A	A					CP
(5) continuous surveillance, assessment and approval of factory production control;	5	A	A					CP
(6) audit-testing of samples taken at the factory , on the open market or on a construction site	6	A						CP
(ii) Declaration of conformity of the product by the manufacturer on the basis of:								
First possibility:								
(a) (tasks for the manufacturer)								
(1) initial type-testing of the product;	7			M	M			
(2) factory production control;	8			M	M			
(3) testing of samples taken at the factory in accordance with a prescribed test plan (*);	9			M				
(b) (tasks for the notified body)								
(4) certification of factory production control on the basis of:								
initial inspection of factory and of factory production control,	10			A	A			CF
continuous surveillance, assessment and approval of factory production control.	11			A				CF
Second possibility:								
(1) initial type-testing of the product by an notified laboratory;	12					L		Report only by L
(2) factory production control	13					M		
Third possibility:								
(a) initial type-testing by the manufacturer;	14						M	
(b) factory production control	15						M	

KEY (see also table 2 for definitions):

CP -certification body required for certification of the conformity of the product
CF - certification body required for certification of the factory production control
A - certification body or, when acting on behalf of a certification body, an inspection body and/or testing laboratory.
L - testing laboratory
M – manufacturer

(*) when required

Table 2: Bodies involved in Attestation of Conformity and their functions							
Text extract from CPD Annex III	Tasks	Attestation systems					
BODIES INVOLVED IN THE ATTESTATION OF CONFORMITY		1	1+	2	2+	3	4
With respect to the function of the bodies involved in the attestation of conformity, distinction shall be made between							
(i) certification body, which means an impartial body, governmental or non-governmental, possessing the necessary competence and responsibility to carry out product conformity certification or FPC certification according to given rules of procedure and management;	3 to 6, 10 and 11	Y	Y	Y	Y		
(ii) inspection body, which means an impartial 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' factory production control system	4, 5, 6,10, and 11	s	s	s	s		
(iii) testing laboratory, which means a laboratory which measures,examines,tests,calibrates or otherwise determines the characteristics or performance of materials or products.	3, 6 and 12	s	s			Y	
In case (i) and (ii) (first possibility) of paragraph 2, the three functions 3 (i) to (iii) may be performed by one and the same body or by different bodies, in which case the inspection body and/or the testing laboratory involved in the attestation of conformity carries out its function on behalf of the certification body.	Note: Inspection Bodies and Testing Laboratories can undertake the tasks but under systems 1, 1+, 2 and 2+ they do so on behalf of the certification body.						
KEY: Y - Body is involved in these tasks or in certification based on them. s - Body can undertake these tasks on behalf of a certification body.							