

Blue Book Definitions of Placing a product and Making a product available on the Market

This annex reports two sections addressing the concepts of 'placing on the market' and 'making available on the market,' as outlined in the Blue Guide on the implementation of product rules, issued by the European Commission in 2022.

Although the introduction of the GPSR in 2023 rendered the previous version of the Blue Guide obsolete, it is evident that the fundamental principles of the product rules, which are echoed in various key EU legislations, remain unchanged. This includes the definitions of 'placing on the market' and 'making available on the market.'

Consequently, readers consulting the EDANA guidelines on the implementation of the GPSR applicable to the nonwovens industry are encouraged to review these two sections meticulously, should they require clarification on interpreting these definitions.

In case more information is needed on the topic, please visit the [EU website](#).

1. MAKING AVAILABLE ON THE MARKET

A product is made available on the market when supplied for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge.¹ Such supply includes any offer for distribution, consumption or use on the Union market which could result in actual supply in relation to products already manufactured (e.g. an invitation to purchase, advertising campaigns).

Supplying a product is only considered as making available on the Union market, when the product is intended for end use on the Union market. The supply of products (whether for further distribution, for incorporation into a final product or for further processing or refinement) with the aim to export the final product outside the Union market is not considered as making available. Commercial activity is understood as providing goods in a business related context. Non-profit organisations may be considered as carrying out commercial activities if they operate in such a context. This can only be appreciated on a case by case basis taking into account the regularity of the supplies, the characteristics of the product, the intentions of the supplier, etc. In principle, occasional supplies by charities or hobbyists should not be considered as taking place in a business related context.

'Use' refers to the intended purpose of the product as defined by the manufacturer under conditions which can be reasonably foreseen. Usually, this is the end use of the product.

The central role that the concept of making available plays in Union harmonisation legislation is related to the fact that all economic operators in the supply-chain have traceability obligations and need to have an active role in ensuring that only compliant products circulate on the Union market.

The concept of making available refers to each individual product, not to a type of product, and whether it was manufactured as an individual unit or in series.

¹ See Article 2 of Regulation (EC) No 765/2008, Article 3 of Regulation (EU) 2019/1020 and Article R1 of Annex I of Decision No 768/2008/EC.

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The making available of a product supposes an offer or an agreement (written or verbal) between two or more legal or natural persons for the transfer of ownership, possession or any other right² concerning the product in question after the stage of manufacture has taken place. The transfer does not necessarily require the physical handover of the product.

This transfer can be for payment or free of charge, and it can be based on any type of legal instrument. Thus, a transfer of a product is considered to have taken place, for instance, in the circumstances of sale, loan, hire³, leasing and gift. Transfer of ownership implies that the product is intended to be placed at the disposal of another legal or natural person.

2. PLACING ON THE MARKET

For the purposes of Union harmonisation legislation, a product is placed on the market when it is made available for the first time on the Union market. This operation should be done by the manufacturer or by an importer⁴. When a manufacturer or an importer supplies a product to a distributor⁵ or an end-user for the first time, the operation is always labelled in legal terms as 'placing on the market'. Any subsequent operation, for instance, from a distributor to distributor or from a distributor to an end-user is defined as making available.

As for 'making available', the concept of placing on the market refers to each individual product, not to a type of product, and whether it was manufactured as an individual unit or in series. Consequently, placing on the Union market can only happen once for each individual product across the EU and does not take place in each Member State. Even though a product model or type has been supplied before new Union harmonisation legislation laying down new mandatory requirements entered into force, individual units of the same model or type, which are placed on the market after the new requirements have become applicable, must comply with these new requirements.

Placing a product on the market requires an offer or an agreement (written or verbal) between two or more legal or natural persons for the transfer of ownership, possession or any other property right concerning the product in question; it requires that the manufacturing stage has been completed. This transfer could be for payment or free of charge. It does not require the physical handover of the product. Sometimes products are manufactured following the placing of an order. An offer or agreement concluded before the stage of manufacture has been finalised cannot be considered as placing on the market (e.g. an offer to manufacture a product according to certain specifications

² Excluding intellectual property rights.

³ In case of the making available of a product taking place through renting, repeated renting of the same product does not constitute a new placing on the market. That product would need to be in compliance with the applicable Union harmonisation legislation at the time the first renting takes place.

⁴ E.g. the Lifts Directive uses the concept of 'installer' who also places on the market.

⁵ The distribution chain can also be the commercial chain of the manufacturer or the authorised representative.

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agreed by the parties to the contract, where the product will only be manufactured and delivered at a later stage).

Placing on the market is considered not to take place where a product is:

- manufactured for one's own use unless Union harmonisation legislation covers products manufactured for own use in its scope^{6 7};
- bought by a consumer in a third country while physically present in that country⁸ and brought by the consumer into the EU for the personal use of that person;
- transferred from the manufacturer in a third country to an authorised representative in the Union whom the manufacturer has engaged to ensure that the product complies with the Union harmonisation legislation⁹;
- introduced from a third country in the EU customs territory in transit, placed in free zones, warehouses, temporary storage or other special customs procedures (temporary admission or inward processing)¹⁰;
- manufactured in a Member State with a view to exporting it to a third country (this includes components supplied to a manufacturer for incorporation into a final product to be exported into a third country);
- transferred for testing or validating pre-production units considered still in the stage of manufacture;
- displayed or operated under controlled conditions¹¹ at trade fairs, exhibitions or demonstrations¹²; or
- in the stocks of the manufacturer (or the authorised representative established in the Union) or the importer, where the product is not yet made available, that is, when it is not being supplied for distribution, consumption or use, unless otherwise provided for in the applicable Union harmonisation legislation.

The placing on the market is the most decisive point in time concerning the application of the Union harmonised legislation¹³. When made available on the Union market, products must be in compliance with the Union harmonisation legislation applicable at the time of placing on the market. Accordingly, new products manufactured in the Union

⁶ See for instance, the Directives on Machinery, Measuring Instruments, ATEX, Civil Explosives.

⁷ When Union harmonisation legislation covers own use, this does not refer to the occasional manufacturing for own use by a private person in a non-commercial context.

⁸ This exception does not include products which are shipped by the economic operator to the consumers in the EU, such as the case of products bought online and shipped to the EU.

⁹ For authorised representative, see Section 3.2. of the Blue Guide.

¹⁰ See Regulation (EU) No 952/2013 establishing the Union customs code. In accordance with this Regulation, non-Union goods placed under a suspensive customs procedure or in a free zone are subject to customs supervision and do not benefit from the free circulation in the internal market. Before benefiting from the free circulation in the internal market, these goods must be declared for release for free circulation. That entails application of commercial policy measures, completion of the other formalities laid down in respect of the importation of goods and the charging of any duties legally due.

¹¹ The prototype must be safe and under complete control and supervision. Controlled conditions would mean expert operators, restrictions to public contact with the product, avoiding inappropriate interaction with other neighbouring products etc.

¹² However, in such circumstances a visible sign must clearly indicate that the product in question may not be placed on the market or put into service until it has been made to comply.

¹³ The design in accordance with the essential requirements of the applicable legal act, the following risk and conformity assessment, the issue of a Declaration of Conformity, the marking requirements (CE marking, name, address of the manufacturer etc.), the compilation of the technical file, must have been completed by the manufacturer at the time of placing on the market.

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and all products imported from third countries¹⁴ – whether new or used – must meet the provisions of the applicable Union harmonisation legislation when placed on the market i.e. when made available for the first time on the Union market. Compliant products once they have been placed on the market may subsequently be made available along the delivery chain without additional considerations, even in case of revisions to the applicable legislation or the relevant harmonised standards, unless otherwise specified in the legislation.

Member States have an obligation in the framework of market surveillance to ensure that only safe and compliant products are on the market¹⁵. Used products, which are on the Union market, are subject to free movement according to the principles laid down by Articles 34 and 36 TFEU. It must be noted that used products made available to consumers in the course of a commercial activity are subject to the GPSD, unless they are supplied as antiques or as products to be repaired or reconditioned prior to being used, provided that the supplier has clearly informed the person to whom he supplies the product to that effect.

¹⁴ Except if they had been placed on the Union market prior to their export to a third country, and subsequent import into the Union.

¹⁵ For market surveillance, see Chapter 7 of the Blue Guide.