

*Title Short:*

Placing a product on the market

*Fiche Nb:*

2

*Subject:*

Definition of “*placing on the market*”: clarification of all aspects, particularly of placing on the market for imported products.

*Last Update:*

02/06/2009

*Category:*

Definitions

*Legal basis:*

Regulation , art 2.1 and 2.2; Decision art R1 (1), (2)

**Legislative references:**

- **Regulation No 765/2008/EC** of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation No 339/93/EEC – Published in the [OJEU L 218/30 of 13/08/2008](#)
- **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 – Published in the [OJEU L 218/82 of 13/08/2008](#)

**ISSUE TO BE ADDRESSED:**

In the context of the New Legislative Framework (NLF), there is a need for a common understanding of the definition of “*placing a product on the Community market*” and “*making it available*” to its users and consumers. The meaning of these two definitions needs to be clarified in the following respects:

- 1) For unfinished products and/or products not ready for intended end-use (e.g. supply of unfinished products to another manufacturer for further processing, such as assembling)
- 2) For products made for own (professional) use.
- 3) For imports in particular, it should be clarified whether passing the EU external borders corresponds to “*placing on the market*”.

**SOLUTIONS ENVISAGED:**

The concepts and solutions given in the Blue Guide (Chapter 2.3)<sup>i</sup> reflect proven business practices and should be maintained.

Both definitions of “*placing a product on the Community market*” and “*making it available*” should apply to all European product legislation in the harmonised field, including environmental legislation whether the product is manufactured within the Community market or is imported. The same definitions should also apply to the General Product Safety Directive.

With regard to the three issues requiring clarification, in Orgalime’s view, a product is “*placed on the Community market*” by the manufacturer or the importer and “*made available*” to its end-users (professionals and consumers) when:

- 1) It is finished and ready for its intended end-use. Concerning unfinished products, specific legislation may include components or sub-assemblies in its scope. In such cases these components or sub-assemblies must be regarded as finished products within the terms of the legislation, and their end-use may be the assembly or incorporation of such components or sub-assemblies into the end-product;

- 2) It is a product for own (professional) use and only if a product specific regulation provides for this.
- 3) It is an imported product into the EU that has passed EU-borders from a third country after customs clearance. The transfer of the product takes place from the manufacturer, or the manufacturer's authorised representative in the community, to the importer.

NB: in cases 1 and 3 presented above, the transfer of ownership should be formalised by a legal act, even if the product is not intended for further re-sale (e.g. for a free promotional activity).

#### **LEGAL CONSEQUENCES:**

**From the moment the product is placed on the market, the person who has placed the product on the Community market (usually the manufacturer, his authorised representative or the importer), must ensure that the product complies with all applicable Community directives, and that the appropriate conformity assessment procedure(s) has(ve) been carried out:** At this moment, the product must be in full compliance with all EU legislative requirements, such as essential health and safety requirements, electro-magnetic and radio-spectrum requirements, as regards environment protection and energy efficiency, etc...

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<sup>i</sup> Blue Guide: [Guide to the Implementation of Directives Based on New Approach and Global Approach](#)

