EUnited
European Engineering Industries Association

POSITION PAPER
September 2026

DETERMINING THE DATE OF PLACING ON THE MARKET DURING A TRANSITION BETWEEN EU PRODUCT LEGISLATION

Continued distribution of products placed on the market before new requirements become applicable

Under EU product law, the applicable legal requirements are generally determined by the date on which each individual product is first placed on the Union market. “Placing on the market” means the first making available of a product on the Union market. “Making available on the market” means the supply of a product for distribution or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge.

These definitions are expressly contained in Article 3(11) and (12) of Regulation (EU) 2023/1230[1] on machinery.

Consequently, a product that was lawfully placed on the Union market before new or revised product requirements became applicable may, as a general principle, continue to be distributed and resold after the legislative change. Such subsequent transactions do not constitute a new placing on the market. They constitute further instances of making the product available on the market.

This general principle is described in Section 2.10 of the Blue Guide[2] on the implementation of EU product rules 2022. According to the Commission, a product placed on the market before the end of the relevant transitional period should be allowed to remain available on the market and to be put into service. Conversely, a product that was not placed on the market before the end of the transitional period may subsequently be placed on the market only if it fully complies with the new legislation. The Blue Guide notes that specific Union legislation may provide otherwise, particularly for safety reasons.

For the transition from Directive 2006/42/EC[3] to Regulation (EU) 2023/1230, this principle is established specifically in Article 52(1) of the Regulation:

"Member States shall not impede the making available on the market of products which were placed on the market in conformity with Directive 2006/42/EC before 20 January 2027."

Accordingly, machinery that was lawfully placed on the Union market under Directive 2006/42/EC before 20 January 2027 may continue to be made available, including through subsequent resale or distribution, after that date. It does not have to undergo a new conformity assessment solely because Regulation (EU) 2023/1230 has become applicable in the meantime. .

Importation from a third country as a strong indication of placing on the market

The importation of a product from a third country may constitute a strong indication that the product is being placed on the Union market, particularly where the product has been manufactured, sold and transferred between a third-country supplier and an EU-based economic operator.

Section 2.5 of the Blue Guide 2022 states that products coming from outside the EU and intended to be placed on the Union market are declared for release for free circulation. The purpose of that customs procedure is to complete the import formalities so that the goods can be made available and circulate freely on the EU market. The Commission therefore concludes:

"[…] when products are presented to customs and declared for the release for free circulation procedure, it can generally be considered that the goods are being placed on the EU market […]."

The Blue Guide nevertheless qualifies this conclusion by stating that release for free circulation and placing on the market do not necessarily occur at the same time. Placing on the market may take place before or after customs release, depending on when the product is supplied for distribution, consumption or use.

A commercial transaction is particularly relevant. Under Sections 2.2 and 2.3 of the Blue Guide 2022, making a product available normally presupposes an offer or agreement between two or more legal or natural persons concerning the transfer of ownership, possession or another right relating to a finished product.

A transaction between a third-country manufacturer or supplier and an EU manufacturer can therefore support the conclusion that a specific finished product has been placed on the Union market, particularly where:

- the product has been fully manufactured;
- it is the subject of a binding sale or supply agreement;
- ownership, possession or another right relating to the product has been transferred;
- the product is intended for distribution or use within the Union; and
- it has been declared and released for free circulation.

The Blue Guide 2022 includes a directly relevant example. A printer manufactured in China and sent to a Spanish importer for further distribution is considered to have been placed on the Union market on the date of its release for free circulation. The Guide also gives an example of products transferred to an EU fulfilment service provider for distribution, which are considered placed on the market when released for free circulation.

Transactions within the European Union

The same basic principles can apply to commercial transactions within the European Union. The legal definition of making available does not depend on the product crossing an external EU border. The decisive issue is whether a finished product is supplied for distribution or use on the Union market in the course of a commercial activity.

The Blue Guide 2022 further explains that making a product available on the market normally presupposes an offer or agreement between two or more legal or natural persons regarding the transfer of ownership, possession or another right relating to a finished product. The transfer may take place for payment or free of charge and does not require physical delivery.

The Commission illustrates this principle with a practical example: a toy manufactured in the EU is supplied to the manufacturer's distribution branch. The Blue Guide concludes that the date of placing on the market is the date on which the product is first supplied for distribution on the Union market, even though the receiving distributor belongs to the same corporate structure as the manufacturer. (Blue Guide 2022, Section 2.12, Example Nr. 3)

However, this example must be distinguished from a purely internal logistical movement. The mere physical transfer of goods between two warehouses of the same legal entity does not necessarily demonstrate that the goods have been supplied for distribution or use. The determining factors remain the legal identity of the parties, the purpose of the transfer and whether the individual product has entered the distribution chain.

About us

EUnited is the European association representing manufacturers of municipal equipment, professional cleaning machines and vehicle wash systems. It brings together more than 60 member companies in 16 European countries.