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NOTE

From:	Presidency
To:	Working Party on Technical Harmonisation (Construction Products)
Subject:	Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 - Issue paper on used and remanufactured products

Swedish Presidency CPR Team



Issue paper on used and remanufactured products

In light of the progress on the regulatory framework for ‘normal products’, the Presidency intends to continue discussions about used and remanufactured products. Provisions on these products can be found in **Articles 2(2), 2(4a), 3(19), 10(2 and 3), 12, 21(3), 22(3), 24(4), 26(2) and 29** as per the current draft.

The Presidency has the impression that there is a strong wish among Member States to increase the re-use of construction products. We have however also taken note that a number of delegations find the Commission’s proposed approach for these products hard to comprehend while others are not convinced that it will have the intended effect.

In order to ascertain possible ways forward on this issue, the Presidency is hereby presenting three possible alternative routes forward, with the Commission’s proposed approach first explained as the reference point.

The Commission proposal – a granular set of dedicated opt-ins for used products

This is a summarisation of the Commission’s proposed approach as it is understood by the Presidency in light of changes already done in other parts of the text.

The starting point is the inclusion of used products in the expanded definition of ‘placing in on the market’ in Article 3(19), thereby making it possible to place the same product on the market more than one time. The definition of used products in Article 3(24) sets limits to the concept in both ends, by establishing that they must have been installed in a construction work but not have reached the point where they are waste as defined by the Waste Directive.

The list of letters in Article 2(2) limits the application of the Regulation to just certain used products, which can be divided into three categories:

1. Used products which are sold with a new declared use (letter b) or with claims about its performance in relation to other essential characteristics (letter c), or those who have been subject to a transformative process going beyond repair, cleaning and regular maintenance (letter d) –hereinafter referred to as ‘modified used products’.
2. Used products which have not been subject to physical modification or changes in declared use or performance, which according to letter (e) would only be subject to this Regulation if an actor opts for its application.
3. Used products which come from third countries, covered by letter(a) which reflects standard practise in that EU product legislation should be applied on used products from third countries as if they were new.

If the opt-in in letter (e) is not chosen, then the making available of used products not subject to modifications (physical or declared) falls outside of the scope of the Regulation, leaving the possibility to regulate them nationally unaffected.

As for new products, the fact that a used product falls within the scope of the Regulation does not mean any obligations to economic operators (or limitations to Member States’ competence to regulate) until that product is covered by harmonised technical specification (HTS). As soon as such an HTS is introduced, the used product subject to the Regulation shall be assessed and verified in accordance with that HTS and the applicable AVS system, leading to the drawing up of a declaration of performance and conformity and CE-marking. However, since the Article 4 standards/Article 4a fall-backs as well as the AVS systems are typically developed to fit production under conditions where variation can be controlled or avoided, they will often mean an obstacle to used products. The Commission has therefore included a possibility for Member States to exclude some (modified) used products from the obligation to be assessed, declared and CE-marked in Article 10 (2) and (3). These products would still be covered by the Harmonised zone, and Member States cannot introduce national rules on their making available or base national rules on their use on essential characteristics or assessment methods not established at EU level.

For those actors opting to apply the Regulation in relation to unmodified used product, the proposal includes an alternative route to CE-marking in Article 12.

This route includes the introduction of the new economic operator ‘de-installer’, which in turn comes with a set of obligations in Article 29.

Finally, the proposal includes some exemptions from the obligations in Articles 21(3) and 22(3) relating to the assessment of a product’s environmental sustainability.

In this description of the Commission’s approach, the separation between ‘used’ and ‘remanufactured’ products has intentionally not been discussed in detail. While this separation makes it possible to tailor any provisions on a more granular level, it also makes all scenarios more complex, and it raises questions about delimitation between remanufacturing and such modifications which are so substantial that the Regulation should be applied as if the product was new (substantial modifications). The Presidency would therefore suggest that the Council – regardless of which route forward is chosen – strive for a single category of used products and then try to establish the level of modifications of a product which would lead to it being treated as new or ‘normal’.

A) A simpler opt-in for used products

The definition of placing on the market in Article 3(19) is kept and the scope in Article 2(2) is reduced only to include letter (e). The economic operator using the opt-in possibility is given an option to use a simplified route to CE-marking, based on the one proposed in Article 12 but without provisions on de-installers. Used products from third countries should be considered as new products. The main difference from the Commission’s approach is that the introduction of an opt-in possibility doesn’t affect the Harmonised zone or the national possibility to regulate used products, except for the ones being CE-marked having used the opt-in.

B) Long-term harmonisation through dedicated HTS

The definition of placing on the market in Article 3(19) is kept without the reference to Article 2(2) which is excluded. Used products are included in the CPR Acquis process and changes are made in Article 3a to clarify that used products of a certain family is a separate category that must either be explicitly mentioned in a standardisation request to be included in an HTS or subject to their own standardisation requests. When not covered by an HTS, used products would not be included in the Harmonised zone and the possibility to keep or introduce national regulation is not affected. Separate provisions on economic operators placing used products on the market in Article 21(3) and 22(3) could be kept, if deemed useful.

C) Complete exclusion of used products from text

The definition of placing on the market in Article 3(19) is changed not to include used products and all references to them are removed from the legal text. The possibility to regulate used products nationally is not affected. Used products from third countries should be considered as new products. A recital to explain the intention is introduced, inspired by a similar recital in the ESPR-proposal.

(15) Circular and sustainable business models, including those based on the resale of second-hand goods, need to be promoted. In line with this performance and information requirements imposed on new products should not apply to products already placed on the market. Products which are modified or reworked in such a substantial way that they are to be considered as new products having been placed on the market should however be subject to all requirements if they fall within the scope of the regulation.

Question to Member states – would you want to continue our discussions along the approach proposed by the Commission, or would you want us to move forward with any of the three alternatives A–C as presented above (and if so, which ones would be acceptable to you)?