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NOTE

From:	Presidency
To:	Working Party on Technical Harmonisation (Construction Products)
Subject:	Presidency Flash

Swedish Presidency of the Council of the European Union

Flash – Working Party on Technical Harmonisation (Construction Products)

8 May 2023

Dear colleagues,

We are happy to welcome you to the seventh meeting of the Working Party on Technical Harmonisation (Construction Products) during the Swedish Presidency. It will be a full day meeting starting at **10:00 a.m**. in the Council Building (tentatively in room JL 35.1).

We will continue our work on the Commission's proposal for a new Construction Product's Regulation. To steer our work, the Presidency has prepared an updated partial compromise proposal (doc. ST 8634/23) covering Articles 7, 8, 15, 19, 21, 23-25, 27, 30, 32-33, 62, 78, 82, 85 and 89 as well as Annexes V and Va.

Additionally, we will have policy discussions on provisions mirroring distinct Articles in ESPR proposal (see document WK 5605/23) as well as the possibility to introduce the concept of common specifications.

Questions for discussions and annotations to the proposals can be found annexed to this flash in a tentative running order for the meeting.

As usual, the Presidency invites delegations which want to submit written comments – either on the discussion questions or on the Presidency text proposals – to send these to se23.techharm-cpr@gov.se and tech.harmonisation@consilium.europa.eu before May 15 close of business. Please indicate in your email if you do not approve of circulation through Delegate's Portal.

We look forward to seeing you on the 8th!

Swedish Presidency CPR team

Discussion questions ahead of the Working Party

Guidance on way forward for provisions mirroring distinct Articles in ESPR proposal

As has been communicated previously, the Presidency has waited for the ESPR negotiations to progress sufficiently in order to enable a discussion on possible alignment based on the Council position on that dossier. The ESPR discussions have now reached their fourth complete compromise proposal (see doc. ST 8613/23), and the dossier is slated for discussion in Coreper.

Our CPR text contains a number of provisions which, directly or indirectly, are designed to mirror corresponding ESPR articles, either in substance or in ambition. These are the provisions on Member State incentives (CPR Article 83), green public procurement (CPR Article 84) and traffic light labelling (CPR Article 22(5)(6)) as well as the manufacturer's obligations which have been moved to Article 5(2a).

To further our discussion, the Presidency has in document WK 5605/23 drafted an illustration of what an alignment to the latest ESPR text might look like, taking into account the current structure of the compromise CPR text.

- *During the coming meeting, Member States will be asked about these provisions, including on whether they should be aligned with ESPR proposal or adapted specifically towards a construction product context.*

Guidance on possible inclusion of a common specification empowerment

In light of the current structure of the text, the Presidency has been approached by the Commission with a request to introduce the concept of common specifications in relation to the voluntary standards that are to be developed in accordance with Article 5(2b).

The concept of common specifications is an empowerment for the Commission to – as a fall-back in case of a standardisation blockage – develop technical specifications which would be given the same legal status as voluntary harmonised standards, i.e. providing presumption of conformity. The concept has been developed in Batteries and Machinery negotiations and have been the main inspiration of the fall-back provision currently in Article 4a(1). Further information about the Commission's reasons for introducing the concept in various pieces of product legislation can be found in an earlier non-paper (WK 10046/2022).

If the concept is introduced as a new Article 5a, this Article would be to Article 5, what Article 4a(1) is to Article 4. The text used would be clean copy of the horizontal provisions included in other acts (for reference, see Article 20 paragraphs 3 to 8 in the final Machinery text).

- *During the coming meeting, Member States will be asked for guidance on the Commission request to introduce a possibility for voluntary common specifications in a new Article 5a.*

Annotations to the Presidency partial compromise proposal

Document ST 8634/23 includes amendments to Articles 7, 8, 15, 19, 21, 23-25, 27, 30, 32-33, 62, 78, 82, 85 and 89 as well as to Annexes V and Va. In order to introduce elements relevant for other Articles, they are explained in the following order (which also will be our tentative running order during the meeting):

- *Proposals regarding the harmonised zone (Article 7 and recital 23)*
- *Proposals regarding regulatory empowerments (Articles 8, 33, 62 and 85 and Annex Va)*
- *Proposals regarding the database or system (Article 78)*
- *Proposals regarding electronic documents (Articles 15 and 89)*
- *Proposals regarding economic operators' obligations (Articles 19, 21, 23-25, 27, 30 and 32)*
- *Proposals regarding international cooperation (Article 82)*
- *Proposals regarding the assessment and verification systems (Annex V)*

Proposals regarding the harmonised zone (Article 7 and recital 23)

In paragraph 1, a few delegations have expressed concerns that the harmonising effect of Article 7 would apply solely based on this Regulation. It has therefore been clarified that the Regulation and any adopted HTSs jointly establishes the harmonised zone.

In paragraph 2 and in some additional places throughout the Article, comments have been raised about the meaning of 'other rules'. The text has on the advice of Council lawyer linguist been changed to the standard phrasing 'national laws, regulations or administrative measures'.

Following comments, the chapeau of paragraph 2a have been clarified, including with a reference to emphasise that the letters only apply in relation the products covered by the harmonised zone.

Among the letters in paragraph 2a, letter (c) has been deleted to avoid a potential mismatch with paragraph 2 and an overlap with letter (e) threshold levels. Similarly, letter (d) has been removed to avoid overlap with letter (g), elements have been moved from the former to the latter. Letter (d1) has been clarified following the request of a delegation.

At the end of the first subparagraph of paragraph 4, the Commission has identified the need for Member States to flag their ambition to initiate the notification/authorisation mechanism already in the TRIS notification.

Following concerns of some delegations that the procedure would take too long time, a new second subparagraph has been introduced, whereby the Commission first need to react to the notification within the deadlines set out in the TRIS Directive. After such a reaction, the Commission shall within 12 months either put forward an implementing act authorising the measure or communicate its grounds for rejecting it.

Following concerns of some delegations that the notification/authorisation mechanism would undermine the harmonised zone, a third subparagraph has also been introduced stating that all notifications should trigger discussions in the CPR Acquis Expert Group on whether standards need to be updated.

In paragraph 7 and 8 – following questions about the impact of the conditionality included – the text has been simplified to more clearly state that the Regulation (and its harmonised zone) shall not affect the possibility for Member States to do the things listed. References to collection of waste and waste treatment have been deleted following the discussion on the delimitation of the CPR in relation to used products.

Following requests from a few delegations, recital (23) is amended to further emphasise that the harmonised zone is not introduced with the intention to limit national competence in relation to construction works.

Proposals regarding regulatory procedures (Articles 8, 33, 62 and 85 and Annex Va)

Following the Working Party discussion on March 30, the Presidency has now introduced the content of WK 3954/2023 in Article 8. Following the request of a delegation, a second subparagraph now sets out that safety levels should not be lowered. As both a majority of delegations as well as the Council lawyer linguist preferred putting the list of legal acts in an annex, a new Annex Va has been created. The new Machinery Regulation has been introduced in the list.

In the empowerment in Article 33, the triggering element has been clarified to the 'fragmenting the internal market' following suggestions from the Council legal service in light of the previous wording being deemed too vague. Furthermore, a minor linguistic clarification in the title and also in the final part to avoid questions about the execution of rights (and also in light of the deletion of Article 20).

In the empowerment in Article 62, the same change has been made as in Article 33.

In the empowerment in Article 85, an editorial clarification has been included.

Proposals regarding the database or system (Articles 19(5&5a) and 78)

Following the Working Party discussion on April 18, the Presidency has finetuned the proposal which was earlier presented as a rough draft in WK 4662/23. As highlighted during that meeting, this Article should mainly be seen as the specification of the functionalities and technical requirements that we as a legislator would like to see in the database or system (henceforth, just 'database' for readability and without further implications) which is to be established. However, to fully understand its functioning, the Article needs to be read together with related articles on economic operators' obligations and electronic documents (especially Article 19 and 89).

As mentioned during earlier discussions, the entire compromise text builds on the notion that the Regulation needs to be functional even without a database at the start of its application. The interplay between the relevant articles in this Presidency proposal can however be better explained as a three-step procedure:

- At the start of the application of the Regulation there will be no database. Economic operators can fulfil their obligations on supplying document (*see Articles 15(1) and 21(6)*) by physical or electronic means, the latter as long as requirements in Articles 89(2) are

satisfied. Economic operators need to retain documents as today in accordance with Article 19(4).

- As soon as the database is operational, economic operators will have the possibility to upload documents the documents specified in Article 19(5). By doing so, they will be able to use the functionality to generate permalinks to those documents to fulfil obligations on supplying documents and connecting various elements to the product registration/DoPC (*see Articles 15(1), 17(2)(d), 21(6), 32(1a)(a) and Annex II point 2(a), all read in the light of Article 89(2)*). They will also have fulfilled the obligation to retain those documents for the period set out in Article 19(4).
- After a period to be defined, and on the condition that the functionality of the database has been proven, the Commission is given the empowerment in Article 78(1d) to determine that the database should be mandatory for economic operators to use. The obligations on economic operators which then would be triggered can be found in Article 19(5a).

Following consultations with the Council Legal Service, and in light of the horizontal request by some delegation to strive for implementing acts, the overall empowerment for establishing the database is shifted to an implementing act. However, given requests during the Working Party on April 18 to keep it open for additional functionalities and/or to differentiate the period for the retainment of documents which would require a delegated act, a separate empowerment to that effect has been introduced.

- *Comments on changes in specific paragraphs*

Article 19(5) creates the possibility for economic operators to make a selected number of documents available in the database. Following requests by delegations during the Working Party on April 18, it is specified that the data of the DoPC should be uploaded rather than a scanned copy of the physical document.

Article 19(5a) sets the obligation to, when the Commission deems it as appropriate, always make the covered documents available in the database before placing the corresponding product on the market. Given that DoPC's and the documents referred to in Article 21(6) might have to be translated before a product can be placed in a new Member State, a specific provision is included on this. For translation of technical documentation, see section 7.4.1.1. of the NLF blue guide. Following requests by delegations during the Working Party on April 18 to safeguard trade secrets, it is specified that an economic operator may choose to exclude any elements of the technical documentation which contains confidential information.

Article 78(1) contains the empowerment to establish the database through implementing acts.

Article 78(1a) lists the functionalities the database should have. Following requests from delegation, letter (d) sets additional conditions on the format in which the documents or data should be accessible (machine-readable, structured, searchable, transferable and printable). Letter (e) specifies the functionality of generating permalinks as highlighted above – but given some comments above technology-neutrality, different wording may need to be used. Letter (f) replaces the rights set out in the previous paragraph 2.

Article 78(1b) specifies technical requirements which the database needs to fulfil, including compatibility with ESPR digital product passport and a 25-year retention period.

Article 78(1c) sets out the previously mentioned empowerment to supplement the database and to set differentiated retention periods for certain products categories or documents.

Article 78(1d) sets out the previously mentioned empowerment to render the database mandatory for economic operators to use.

Article 78(2) has been moved to 78(1a)(d) and Article 78(3) has been moved to Article 82(4).

Proposals regarding electronic documents (Articles 15 and 89)

- *Article 15*

Article 15(1), the second subparagraph of Article 15(2) and Article 15(4) has been aligned closer to Article 7 of the current CPR, making it a general obligation on the economic operator making the product available rather than a specific obligation on the manufacturer. The current structure in Article 7(1) allowing for a choice of physical or digital copies is kept, and the provision should be read in conjunction with the changes in Article 89 explained below.

Given questions about the overlap between the first subparagraph of Article 15(2) and Article 89, which covers all other documents, the content has been moved to the latter. The reference to the Delegated Regulation under the current CPR has however been deleted on the advice of the Council Legal Service.

Article 15(3) has been deleted as this covers the content of the DoPC and should therefore be inserted in Article 11 or Annex II.

- *Article 89*

In Article 89(1), the reference to 'decisions [made by national] authorities' is removed so as to not regulate national administrative law.

In Article 89(2), the first subparagraph is deleted in order to strive for uniform rules throughout the Regulation, parts of the substance have been moved down to the subparagraph below. In the second subparagraph, the list of provisions has been replaced by a simpler reference to 'all information obligations, unless otherwise stated'. The only current requirement would be the provision on the DoPC in Article 15(2). References to 'only for professional use' have been deleted following the removal of the concept from Chapter III. At the end of the subparagraph, a new sentence has been included merging elements from the deleted first subparagraph ('*commonly used electronic format that permits downloads*') and Article 15(2) ('*commonly readable electronic format*'). Following discussions on the same issue in the recently concluded Machinery negotiation, a provision on printability has been added (see Article 10(7)(b) in the Machinery final text). A newly added subparagraph contains the possibility to send links to a document which previously could be found in Article 15(2), it has been complemented with a provision on the period for accessibility of such documents which was regulated in Article 7(3) of the current CPR (see also Article 10(7)(c) in the Machinery final text)

Proposals regarding economic operators' obligations (Articles 19, 21, 23-25, 27, 30, 32)

Following discussions about economic operators during the Working Parties on March 8 and 30, and having analysed written submissions afterwards, the Presidency impression is that the majority of Member States seem to be in favour of a slimmed down chapter on economic operators with a limited number of economic operators and coherence with other legal acts when it comes to structure as well as scope. A number of delegations have expressed preferences for a conservative approach, while others have signalled that either the current CPR's or horizontal structures should be used rather than new inventions.

In light of the rather far-reaching comments received, the Presidency has chosen to put forward a compromise proposal with quite a bit of changes. The proposal aims for structural alignment to those already existing legal approaches as requested by delegations, which, given the input received, has been deemed as the more efficient way forward than opening up a line-by-line negotiation on every differing paragraph in the Commission proposal.

In order to do such a comprehensive re-alignment within the confines of an OLP negotiation, the Presidency has strived to extensively use already agreed language in other product legislation. The main inspiration elements have been the current CPR, the NLF template in decision 768/2008 and the recently negotiated and agreed Regulation on Machinery. Given that the ESPR negotiation is some steps ahead of ours, and recalling requests from some delegations for close alignment, inspiration has in some cases also been drawn from the ESPR dossier. It should however be noted that the CPR has been an outlier in product legislation, and that the new CPR will have a few even more novel elements for which no clear guidance can be had in already existing product legislation (such as the construction product database). The Presidency has therefore stopped short of full alignment with the current CPR or with other NLF templates.

- *Economic operators*

The Presidency took note of a majority view that the Commission proposal contained to many economic operators. There has been a number of delegations asking to keep the same actors as in the current CPR, others have requested to have it aligned with the Market Surveillance Regulation. The Presidency has however also noted a few delegations expressing wishes for addressing actors involved in online sales, but noted limited support for other proposed economic actors. The Presidency suggestion is therefore to delete provisions on 'brokers', 'online search engines', 'suppliers' and 'service providers', while provisions on 'online sellers' and 'online shops' are covered through existing obligations for the main economic operators complemented by dedicated provisions on 'online and other distance sales' in Article 32. The economic operators of the current CPR together with 'fulfilment service providers' and 'online marketplaces' would be covered by obligations as described below:

- *Article 19 – All economic operators*

In Article 19(0), the Presidency has introduced a catch-all provision to underline a request from some delegations to be clearer about the ambition to only have obligations applicable when products are subject to harmonised technical specifications (or have been CE marked as part of

the EOTA route). With this catch-all provision, corresponding provisions in other Articles can be removed.

Articles 19(1) and 19(2) have been removed on the count of aligning closer to current structures. Article 19(1) overlaps with the procedures in Article 70-71, and given delegations wish to remain closer to existing market surveillance procedures there, the Presidency has not seen a need to merge it in there. For Article 19(2), the Presidency has taken note of the criticism towards a provision which seem to underpin a fragmented approach to the single market.

Article 19(3), the reference to authorities in the chapeau has been clarified as market surveillance authorities, as has been the case in the current CPR (Art. 16), in decision 768/2008 (Art. R7) and in other product legislation, while still using the structure of the new proposal. The Presidency has kept Commission addition to those standard provisions, including extending them to components/replacement parts, to the quantity of supply and to service providers, but have limited the provision to services covered by this Regulation to avoid delimitation problems. The second subparagraph has however been deleted on the count of aligning closer to current structures.

Article 19(4) with a general timeline for keeping documents is a novel provision, seeing as most other product legislation usually set tailored provisions in relation to each document at hand. The new approach is however kept – albeit with some alignment to the standard phrasing in the current CPR and decision 768/2008 – as this provision enables operators to fulfil the document-keeping-obligation by making documents available in the database established according to Article 78.

Article 19(5) and a new 19(5a) sets out the interplay between economic operators and the database established in Article 78, as described above. The reference to registering in the national system in Article 19(5) second subparagraph is deleted following changes in Article 77(5). The third subparagraph has also been deleted in light of the recent GPSR political agreement limiting such obligations to manufacturers and seeing as the general information according to Article 21(6) already would require such information making it redundant.

Article 19(6) has not been subject to any changes.

Article 19(7) has been deleted following the deletion of the provisions on 'suppliers' and 'service providers', as these were the main target of this paragraph. Provisions on the interlinkage between the manufacturer and the notified bodies can be found in Chapter VI.

Article 19(8) has been deleted following the deletion of Article 31.

- *Article 21 – Manufacturers*

In Article 21(1), parts of the introductory sentence can be removed following the introduction of Article 19(0).

Article 21(1a) has been linguistically clarified following a comment from a delegation which was concerned that the previous wording could be read as an obligation to demonstrate the

performance of all essential characteristics of a product. In the second sentence, an 'and' has been changed into a 'to' in order to indicate that the exemption in Article 10 still applies.

Article 21(3) contain the previously announced reference that the declared use must fall within the scope of the intended use set out for a product.

In Article 21(5), a 'where available' has been included following a delegation's comment that non-series or custom-made products rarely bear batch or serial numbers. The third subparagraph is moved to a dedicated provision in Article 32.

Article 21(7) has been removed given the ambition to have the Regulation workable also in the absence of a database established under Article 78. The content of the paragraph will be covered by Article 19(5a).

In Article 21(8), delegations have in parallel requested the reintroduction of wording on declared performance from Article 11(7) of the current CPR and the deletion of the references to HTS's as superfluous. The second part of the paragraph is deleted following the deletion of provisions on 'suppliers' and 'service providers'.

In Article 21(9), the reference to products likely to present a risk is removed as it is not compatible with the definition of products presenting a risk. Following the request of a delegation, references to alerting the media has been toned down somewhat.

- *Article 23 – Authorised representatives*

In line with the explanation above, the Article has been subject to structural alignment with the current CPR and with other product legislation. The Article is thereby also aligned closer to the corresponding Article 22 of the ESPR proposal.

Most novel elements not existing in other product legislation has therefore been removed. The exceptions being Article 23(3)(c) which instead is aligned with ESPR Article 22(2)(e), and Article 23(3)(d) which is kept so that the authorised representative can fulfil its obligations under Article 19(6).

- *Article 24 – Importers*

In line with the explanation above, the Article has been subject to structural alignment with the current CPR and with other product legislation. The Article is thereby also aligned closer to the corresponding Article 23 of the ESPR proposal.

- *Article 25 – Distributors*

In line with the explanation above, the Article has been subject to structural alignment with the current CPR and with other product legislation. In this case inspiration has mainly been drawn from recent product legislation which has evolved a bit structure-wise, when compared with the original decision 768/2008. The Article is thereby also aligned closer to the corresponding Article 24 of the ESPR proposal and Article 15 of the Machinery agreement.

- *Article 27 – Fulfilment service providers, brokers, online marketplaces, online sellers, online shops and online search engines*

As previously mentioned when it comes to economic actors, provisions on 'brokers' and 'online search engines' have been removed while provisions on 'online sellers' and 'online shops' are covered through existing obligations for the main economic operators complemented by dedicated provisions in Article 32.

When it comes to fulfilment service providers and online marketplaces, the Presidency has taken note of conflicting preferences amongst delegations. While some delegations have highlighted wishes to have dedicated provisions on these actors, others have emphasised the importance of not duplicating and/or goldplating the Digital Services Act. As a compromise, the Presidency has strived to find a middle-ground where the Article contains some provisions, but where the wording has been aligned with corresponding provisions in the ESPR proposal.

Article 27(1) and (2) are therefore deleted as Article 27(8) corresponds to the sole provision on fulfilment service providers in Article 27 of ESPR.

Article 27(3) on online marketplaces have been split up into two paragraphs to match the structure of the ESPR text. In the remaining Article 27(3), letters (a) and (b) have been aligned with ESPR Articles 29(2) and 29(5) while letter (c) has been deleted. In the new Article 27(3a), letter (d), (e) and (f) has been aligned with letters (a), (b) and (c) respectively of ESPR Article 29(1). The remaining letters (g) and (h) has been moved to a new provision in Article 32(3).

- *Article 30 – Suppliers and service providers*

As previously mentioned when it comes to economic actors, provisions on 'suppliers' and 'service providers' have been removed.

- *Article 32 – Online and other distance sales*

Article 32(1a) is included to replace the recurring provision that different economic operators shall, in a visible manner, display information which is to be labelled according the Regulation. The chapeau is based on the corresponding chapeau in Article 19 of the GPSR agreement. Seeing as most labelling requirements have been deleted ("only for professional use", former empowerment in Annex I-D to establish labelling requirements), the Presidency is suggesting including a link to the product registration in the database as well as any applicable traffic-light label (subject to outcome of discussions on doc. WK 5605/23).

The provisions originally in Article 27(3)(g) and (h) has been merged into a new Article 32(3) so that they – even without references to online shops – can be applicable in relation to both online marketplaces and the main economic operators' own websites.

Proposals regarding international cooperation (Article 82)

Article 82 on international cooperation has, on the advice of the Council Legal Service, been aligned much closer to Article 35 of the Market Surveillance Regulation. Among other things to safeguard the Council's role and prerogatives in the Union's external action.

To give better oversight, the Article has more clearly been divided into three parts – systematic and non-systematic administrative cooperation (paragraphs 1 and 3), access to or participation in certain programmes (paragraph 4) and data protection rules (paragraph 6). Paragraph 2 has been merged into other paragraphs as it blurred the division between the first and second part. Paragraph 5 has been deleted on the count of safeguarding the Council's role and prerogatives in the Union's external action. Paragraph 7 has been merged into paragraph 1.

In paragraph 1, the counterpart has on the advice of the Council Legal Service been clarified as other regulatory authorities, and the letters have been amended to fall within the area of administrative cooperation.

Paragraph 4 has been widened to incorporate three previously separate but overlapping empowerments in Articles 77, 78 and 80 which already were subject to parallel conditionality in the original paragraph 4. As these empowerments covers similar substance, but with somewhat differing vocabulary, the Presidency has seen reason to streamline and simplify the structure. The second subparagraph is lifted from Article 78(3).

Proposals regarding the assessment and verification systems (Annex V)

Annex V has been subject to both systematic changes, affecting a number of different systems, and changes affecting just singular provisions. Changes mainly reflect comments from Member States, but some are initiated by the Commission, and highlighted as such in the following text.

Changes affecting several provisions

Given criticism from many delegations towards the specific random points that need to be checked under a number of systems, these provisions have been deleted and in all systems (except for 3) been replaced by the less prescriptive task of 'continuing surveillance' by the notified bodies. On the same note, point 7 letter (f) that contained consequences of non-compliance with the deleted provisions is also deleted.

Following comments, there has been some editorial clarifications and streamlining of the roles of manufacturers and notified bodies. Each system now contains one letter (a) listing the tasks of the manufacturer and, where applicable, a letter (b) listing the tasks of the notified body. All references to manufacturers verifying the technical documentation have been reworded, as manufacturers are the ones doing the actual drawing up of the technical documentation as per Article 21(3). Provisions that requires certain tasks to be performed not only by the manufacturer but also by the notified body, see points 1(b)(ii), 2(b)(ii) and 5(b)(i.a), have been deleted, leaving the notified bodies to asses what's been done by the manufacturer.

Changes in specific provisions

Following comments by a delegation, some wording introduced in the chapeau has been removed.

For System 3+ (point 4), its limitation to environmental sustainability assessments has been reintroduced. The rather detailed provisions previously moved from point 7(e) to letter (c) in

System 3+ has been transformed into the same structure as other systems for ease of reference, including using the same wording to express that the manufacturer need to carry out factory production control as in all other systems.

In the bracketed point 4(b)(iv), the Presidency has tried to clarify earlier provisions in point 4(c) regarding an obligation on inspecting also the manufacturing plant, but it has also taken note of some delegations' wishes for System 3+ to focus on documentary checks only. The Presidency is therefore ***asking for Member State guidance*** on whether an initial inspection should be included in System 3+ (thereby having it closer to System 2+, and also be subject to obligation in point 7 letter a) or whether it should be removed (thereby having it closer to System 3).

For System 4 (point 6), confirmation of the correct determination of the product type has been removed as it is already a task for the manufacturer to determine the product type in Article 21(1).

In point 7, the wording on letter (a) on inspections of manufacturing plants has been subject to editorial clarifications based on input from the group of notified bodies to the Commission.

In point 7 letter (b) on factory production control, the wording has been amended based on input from the Council lawyer linguist. Following requests from the Commission, a missing point on AVS implementation clauses have been introduced (see article 4 paragraph 2b).

In point 7 letter (c) on sample testing, the same structure as above is introduced. References to EAD's and harmonised standards are included to also cover those scenarios. The provision of zero tolerance for non-conformity which was criticised by many delegations is removed, thereby falling back on general rules in Chapter VI.

In point 7 letter (c)(ii), a practice used today in cases where test of samples or verification of such tests are hard to realize is introduced in the legal text, thereby answering a question from a delegation in relation to letter (d) concerning such cases. Since the rule in letter (d) is not generally applicable to all relevant cases it is deleted.

In point 7 letter (c)(iii), an information on the possibility to share test results between manufacturers and notified bodies is introduced after questions from delegations in relation to the possibility for several manufacturers of identical products to use the complete assessment and verification done by one notified body in Article 67.