

# Application of certain national technical rules to products lawfully marketed in another Member State

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The Commission presents a first report on the application of Regulation (EC) No 764/2008 ('the Mutual Recognition Regulation') laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State. It recalls that the Regulation defines the rights and obligations of, on the one hand, national authorities and, on the other, enterprises wishing to sell in a Member State products lawfully marketed in another Member State, when the competent authorities intend to take restrictive measures about the product in accordance with national technical rules. It is generally perceived to be a helpful piece of legislation and has contributed towards an increased awareness of the principle of mutual recognition. The Regulation has eased the burden on economic operators introducing in a given Member State products previously lawfully marketed in another Member State.

The report demonstrates that the Regulation works by and large in a satisfactory way and that there is no need for amendments at present. It also shows that there are certain specific categories of products where the difficulties in the application of the Regulation seem to concentrate.

**Application of the Regulation between 2009 – 2012:** the Regulation establishes the obligation for national authorities to notify to economic operators and the Commission, respectively, of decisions establishing the temporary suspension of the marketing of a product. In the period between the entry of the Regulation into force on 13 May 2009 and 31 December of 2011, the Commission has received a total of 1524 notifications. Of these notifications, **90% refer to articles of precious metals**, whereas the rest to variety of products: foodstuffs (or food additives/medicines), energy drinks and electrical equipment.

The notifications have to date come from seven Member States. However, 1378 of the total notifications come from one Member State and concern articles of precious metals. The Commission considers that Member States do not notify all decisions taken which fall under the Regulation. The high number of notifications concentrating in the precious metals area can be by the existence in many Member States of control bodies (assay offices) specifically devoted to the assaying (testing), hallmarking and control of articles of precious metals.

It must be recalled that the Commission has presented in the past two different proposals concerning the harmonisation of national laws relating to articles of precious metal, the most recent proposal being adopted in 1993. A number of Member States (those following a compulsory hallmarking system) were adamant in their opposition to these proposals and the latest proposal was withdrawn on 24 March 2005. In the absence of harmonised EU legislation, free movement of articles of precious metals between the Member States can be achieved by following the mutual recognition route charted by the ECJ's Houtwipper judgment; the Commission does not consider proposing further harmonisation in this area for the moment.

As concerns foodstuffs, food additives and medicines, in light of the partial harmonisation within this area, there might be differences in national legislation (e.g. the classification of some products as medicinal products or foodstuffs, in various Member States, the use of substances other than vitamins or minerals in the manufacture of food supplements, etc.) which may be factors affecting the free movement of those products. Further harmonisation efforts in those sectors are envisaged.

**The yearly reports from the Member States :** the main conclusions to be drawn are:

- Member States are almost unanimously positive as regards the effectiveness of the Regulation in raising the awareness of the principle of mutual recognition among those businesses involved in intra-EU trade ;
- the majority of decisions, requests for information and complaints received by the national administrations concern specific categories of goods: articles of precious metals, foodstuffs, food additives and food supplements, construction products, fertilisers, automobile spare parts, electrical products, and spring water ;
- national authorities are not always communicating to the Commission the negative decisions actually adopted by them. This situation may be due to several reasons: (a) in some decentralized Member States, regional or local bodies are able to adopt negative decisions that, in turn, are notified neither to the central government (which prepares the yearly reports) nor to the Commission; (b) there seem still to be some misunderstandings as to the scope of the Regulation as well as to its relationship with other pieces of EU legislation.

The Commission discusses the guidelines that it has issued.

**Conclusion:** certain aspects of the Mutual Recognition Regulation require continued monitoring and could be subject to further clarification. Apart from the specific categories of goods mentioned above, the following issues constitute areas where the European Commission proposes that close and regular monitoring through the consultative committee on mutual recognition takes place:

- difficulties demonstrating that a product has been lawfully marketed in another Member State;
- difficulties in indentifying which legal provisions apply and which are the relevant national authorities in charge;
- different testing methods relied upon by the Member States and their possible compatibility through mutual recognition;
- the role of prior authorisation procedures which are not covered by this Regulation.

The Commission does not consider it necessary, at this stage, to submit any proposal for amendment. Nevertheless, it would also like to underline its commitment to continue monitoring the particularly important area of mutual recognition in the single market by: a) improving information and developing training; b) taking advantage of the instruments for preventing and for amicably and effectively settling problems of free movement and c) resorting, if need be, to existing possibilities afforded under EU law to eliminate unlawful barriers.

In this sense, the Commission proposes the continuation during the period 2012-2017 of the discussion within the Consultative Committee of the topics in the areas mentioned above with the objective of analysing the functioning of the existing EU legal framework for mutual recognition. If discrepancies in the operation of the Mutual Recognition Regulation between Member States assume greater practical significance, an intervention by the Commission may be warranted.

Lastly, the report stresses that **mutual recognition cannot always offer a solution for ensuring the free movement of goods in the single market**. Harmonisation remains one of the most effective instruments, both for economic operators and for the national administrations. The Commission will continue to monitor the application of the Regulation it asks the European Parliament, the Council and the European Economic and Social Committee to take note of the report.