

# Mutual recognition of goods lawfully marketed in another Member State

2017/0354(COD) - 19/12/2017 - Legislative proposal

**PURPOSE:** to ensure the proper application by Member States of the principle of mutual recognition, in individual cases, in relation to goods lawfully marketed in another Member State.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure on an equal footing with the Council

**BACKGROUND:** within the single market, the free movement of goods generates around 25% of EU GDP and 75% of intra-EU trade. However, much remains to be done to achieve a deep and fair European Single Market.

The principle of mutual recognition requires that a good that is lawfully marketed in one Member State should not be prohibited in another Member State, unless the latter has sound reasons for banning or restricting its sale. Mutual recognition applies to products not subject to Union harmonisation legislation or only partly covered by it, such as a wide range of consumer products (textile, footwear, childcare articles, jewellery, tableware or furniture).

The evaluation on the functioning of the mutual recognition in the field of goods and [Regulation \(EC\) No 764/2008](#) to facilitate mutual recognition has shown that **where there are no common rules, the principle of mutual recognition is not always being applied.**

The majority of businesses wishing to sell products in another Member State check the applicable rules in that Member State, and, if these rules prevent them from selling the product, they don't rely on the principle of mutual recognition but most of them adapt the product to those rules. Where businesses try to rely on the principle of mutual recognition, national authorities often deny market access to those products.

Following the conclusions of the evaluation, the Commission presents an initiative whose overall objective is to **achieve a fairer and deeper single market for goods through more and better mutual recognition.**

**IMPACT ASSESSMENT:** the option chosen consists of **significant legislative changes to Regulation (EC) No 764/2008 combined with soft law to improve the functioning of mutual recognition** (awareness-raising, training, exchanges of officials, etc.)

The combination of these two options would increase awareness and knowledge about mutual recognition, while bringing legal certainty on the application of the principle and improving administrative cooperation among Member States. It would facilitate the placing on the market of products lawfully marketed in other Member States, by framing and streamlining the discussions on whether or not the product can enter the market on the basis of mutual recognition and by reducing the risk to see market access denied.

A study done for the European Parliament tried to estimate the magnitude of the impact that non-tariff barriers on trade have on the internal market. It concluded that a reduction of such non-tariff barriers to trade could lead to an **increase in intra-EU trade of more than EUR 100 billion per year.**

CONTENT: the proposed Regulation lays down rules and procedures concerning the application by Member States of the principle of mutual recognition, in individual cases, in relation to goods lawfully marketed in another Member State in the context of the principle of mutual recognition. It shall replace Regulation (EC) No 764/2008.

In concrete terms, the proposal:

- **clarifies the scope of mutual recognition**, by clearly defining when it is applicable, will increase legal certainty for businesses and national authorities as to when the mutual recognition principle can be used;
- provides for a **mutual recognition declaration**, to be used on a voluntary basis by economic operators in order to facilitate the demonstration that a product has been lawfully marketed in another Member State. It sets out the conditions to be met by such declaration, and clarifies that it can be provided online;
- establishes the **procedure to be followed by competent authorities of Member States** when assessing if goods lawfully marketed in another Member State can be marketed on their territory on the basis of the mutual recognition principle;
- contains requirements addressing the **temporary suspension** of goods lawfully marketed in another Member State, in case such goods pose serious risks on health and safety or run contrary to public morality or public security;
- provides for a **mutual recognition problem solving mechanism** allowing economic operators to challenge an administrative decision denying or restricting market access by referring it first to the SOLVIT network. Such administrative decision shall be subject to an assessment by the Commission at the request of the relevant SOLVIT centre;
- sets the framework for **administrative cooperation** among competent authorities;
- provides for the Union to be able to finance **awareness raising, training, exchange of officials and data collection** in order to strengthen collaboration and trust between national authorities. The latter may nevertheless continue to take into account legitimate public interests.

BUDGETARY IMPLICATION: the proposal requires the mobilisation of human and administrative resources as well as operational appropriations. The total impact on expenditure is estimated at **EUR 2.710 million** up to the year 2020 inclusive.