

# Mutual recognition of goods lawfully marketed in another Member State

2017/0354(COD) - 14/02/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 540 votes to 52, with 9 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State.

The position of the European Parliament adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

## *Mutual recognition*

The regulation would aim to strengthen the functioning of the internal market by improving the application of the principle of mutual recognition and removing unjustified obstacles to trade.

The regulation would apply to goods of all types, including agricultural products within the meaning of the second subparagraph of Article 38(1) of the TFEU and to administrative decisions taken by a competent authority of a Member State of destination in relation to such goods which are lawfully marketed in another Member State, where the administrative decision (a) is based on a national technical rule applicable in the Member State of destination; and (b) has the direct or indirect effect of restricting or denying market access in the Member State of destination.

## *Declaration of mutual recognition*

The producer of goods which are intended to be made available on the market of a Member State may establish a voluntary legal marketing declaration for the purpose of mutual recognition in order to demonstrate to the competent authorities of the Member State of destination when assessing the goods that the goods in question are lawfully marketed in another Member State. The producer may mandate its authorised representative to draw up the mutual recognition declaration on its behalf.

Where an economic operator is only able to provide the information on the lawfulness of the marketing of the goods in the declaration, it should be possible for another economic operator (importer or distributor) to provide the information that the goods are being made available to end users in the Member State concerned, provided that that economic operator takes responsibility for the information that it provided in the mutual recognition declaration and is able to provide the necessary evidence to verify this information .

Economic operators who sign the mutual recognition declaration or a part of it shall be responsible for the content and accuracy of the information that they provide in the mutual recognition declaration, including the correctness of the information they translate.

When the declaration is made available online, the technical means used should be easy to navigate and monitored to ensure that the declaration is accessible.

The Commission should ensure that a model mutual recognition declaration and instructions to complete the declaration are available on the single digital portal in all official languages of the Union.

## *Assessment of goods*

The assessment should aim to determine whether the goods are lawfully marketed in another Member State and, in that case, whether the legitimate public interests covered by the applicable national technical regulation of the Member State of destination are protected in an appropriate manner taking into account the characteristics of the goods in question.

When entering into contact with the economic operator concerned, the competent authority of the Member State of destination shall inform the economic operator of the assessment, indicating the goods that are subject to that assessment and specifying the applicable national technical rule or prior authorisation procedure. The competent authority of the Member State of destination shall also inform the economic operator of the possibility of supplying a mutual recognition declaration.

The economic operator would be allowed to make the goods available on the market in the Member State of destination while the competent authority carries out the assessment and may continue to do so unless the economic operator receives an administrative decision restricting or denying market access for those goods.

### ***Problem-solving procedure (SOLVIT)***

SOLVIT is an effective non-judicial, problem-solving mechanism that is provided free of charge. It works under short deadlines and provides practical solutions to individuals and businesses when they are experiencing difficulties in the recognition of their Union rights by public authorities.

Where the SOLVIT's informal approach fails, and doubts remain regarding the compatibility of the administrative decision with the principle of mutual recognition, the Commission should be empowered to look into the matter at the request of any of the SOLVIT Centres involved.

Following its assessment, the Commission should issue an opinion to be communicated through the relevant SOLVIT Centre to the economic operator concerned and to the competent authorities, which should be taken into account during the SOLVIT procedure. The Commission's intervention should be subject to a time-limit of 45 working days. If the case is solved during this period, the Commission should not be required to issue an opinion.

### ***Administrative cooperation***

The Commission would provide for and ensure efficient cooperation among the competent authorities and the Product Contact Points of the various Member States through the following activities: (i) facilitating and coordinating the exchange and collection of information and best practices with regard to the application of the principle of mutual recognition; (ii) supporting the functioning of the Product Contact Points and enhancing their cross-border cooperation; (iii) facilitating and coordinating the exchange of officials among Member States and the organisation of common training and awareness raising programmes for authorities and businesses.