

Mutual recognition of goods lawfully marketed in another Member State

2017/0354(COD) - 29/03/2019 - Final act

PURPOSE: to improve the mutual recognition of goods lawfully marketed in another Member State and to remove unjustified trade barriers.

LEGISLATIVE ACT: Regulation (EU) 2019/515 of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No 764/2008.

CONTENT: Regulation (EC) No 764/2008 of the European Parliament and of the Council was adopted in order to facilitate the application of the principle of mutual recognition by establishing procedures to minimise the possibility of creating unlawful obstacles to the free movement of goods which have already been lawfully marketed in another Member State.

Despite the adoption of that Regulation, many problems still exist as regards the application of the principle of mutual recognition. The principle of mutual recognition is not absolute since sometimes access to the market for goods considered safe and in the public interest in one Member State is refused or restricted in another Member State.

This Regulation replaces Regulation (EC) No 764/2008 in order to improve the application of the principle of mutual recognition in the internal market, and thus to ensure that goods lawfully marketed in one Member State can be sold in any other Member State, provided that they are safe and compatible with the public interest.

Compared to the current legislative framework, the new Regulation:

- clarifies the scope of mutual recognition with a view to enhancing legal certainty for companies and national authorities as regards the cases in which they may have recourse to the principle of mutual recognition;
- shall apply to goods of all types, including agricultural products and to administrative decisions taken by a competent authority of a Member State of destination for such goods which are lawfully marketed in another Member State, provided that the administrative decision (i) is based on a national technical rule applicable in the Member State of destination; and (ii) has the direct or indirect effect of restricting or denying market access in the Member State of destination;
- introduces a voluntary declaration on honour that economic operators may use to facilitate the demonstration that a product is already legally marketed. The operators who sign the declaration shall be responsible for the content and accuracy of the information they have provided. Where the declaration is made online, the type of goods or series covered by the declaration must be easily identifiable;
- defines the procedure to be followed by the competent authorities of the Member States when assessing whether goods lawfully marketed in another Member State may be marketed in their territory on the basis of the principle of mutual recognition;

- contains requirements governing the temporary suspension of goods lawfully marketed in another Member State, where such goods present a serious risk to the health and safety of persons or to the environment or where their availability on the market is contrary to public morality or public security;
- provides for a non-judicial mechanism for solving mutual recognition problems to provide practical solutions for citizens and businesses as regards the compatibility of an administrative decision to refuse or restrict market access with the principle of mutual recognition. The Commission shall examine the notified administrative decision and the documents and information provided under the Internal Market Problem Solving Network (SOLVIT) procedure;
- establishes the framework for administrative cooperation to improve the exchange of information and strengthen trust between national authorities. Member States shall designate product contact points on their territory and ensure that they are equipped with sufficient competences and resources to carry out their tasks properly;
- provides for the possibility for the Union to finance awareness-raising campaigns as well as education and training activities or exchanges of officials and best practices.
- ENTRY INTO FORCE: 18.4.2019.
- APPLICATION: from 19.4.2020.