












Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2017/0354(COD) Procedure completed
Mutual recognition of goods lawfully marketed in another Member State Repealing Regulation (EC) No 764/2008 2007/0028(COD)	
Subject 2.10.03 Standardisation, EC/EU standards and trade mark, certification, compliance 3.40.17 Manufactured goods	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Internal Market and Consumer Protection		23/01/2018
		 ŠTEFANEK Ivan	
		Shadow rapporteur	
		 ROZIÈRE Virginie	
		 MCCLARKIN Emma	
		 LØKKEGAARD Morten	
	 DURAND Pascal		
	 ZULLO Marco		
	Committee for opinion	Rapporteur for opinion	Appointed
	 Industry, Research and Energy	The committee decided not to give an opinion.	
	 Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Environment	3676	05/03/2019
European Commission	Commission DG	Commissioner	
	Internal Market, Industry, Entrepreneurship and SMEs	BIEŃKOWSKA Elżbieta	
European Economic and Social Committee			

Key events

19/12/2017	Legislative proposal published	COM(2017)0796	Summary
05/02/2018	Committee referral announced in Parliament, 1st reading		
03/09/2018	Vote in committee, 1st reading		
03/09/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
06/09/2018	Committee report tabled for plenary, 1st reading	A8-0274/2018	Summary
10/09/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/09/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
06/12/2018	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE634.701 PE634.702	
13/02/2019	Debate in Parliament		
14/02/2019	Results of vote in Parliament		
14/02/2019	Decision by Parliament, 1st reading	T8-0123/2019	Summary
05/03/2019	Act adopted by Council after Parliament's 1st reading		
19/03/2019	Final act signed		
19/03/2019	End of procedure in Parliament		
29/03/2019	Final act published in Official Journal		

Technical information

Procedure reference	2017/0354(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealing Regulation (EC) No 764/2008 2007/0028(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/8/11956

Documentation gateway

Legislative proposal	COM(2017)0796	19/12/2017	EC	Summary
Document attached to the procedure	SWD(2017)0471	19/12/2017	EC	

Document attached to the procedure		SWD(2017)0472	19/12/2017	EC	
Document attached to the procedure		SWD(2017)0475	19/12/2017	EC	
Document attached to the procedure		SWD(2017)0476	19/12/2017	EC	
Document attached to the procedure		SWD(2017)0477	19/12/2017	EC	
Committee draft report		PE620.869	19/04/2018	EP	
Amendments tabled in committee		PE622.183	22/05/2018	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0274/2018	06/09/2018	EP	Summary
Committee letter confirming interinstitutional agreement		PE634.702	04/02/2019	EP	
Text adopted by Parliament, 1st reading/single reading		T8-0123/2019	14/02/2019	EP	Summary
Draft final act		00070/2019/LEX	13/03/2019	CSL	
Commission response to text adopted in plenary		SP(2019)354	16/04/2019	EC	

Additional information

Research document

[Briefing](#)

Final act

[Regulation 2019/515](#)

[OJ L 091 29.03.2019, p. 0001](#) Summary

Mutual recognition of goods lawfully marketed in another Member State

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.

Mutual recognition of goods lawfully marketed in another Member State

The Committee on the Internal Market and Consumer Protection adopted the report by Ivan TEFANEC (EPP, SK) 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 committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

Objective: according to the principle of mutual recognition, goods lawfully marketed in one Member State should not be prohibited in another Member State, unless the latter has justified reasons for banning or restricting the sale.

Members considered that the objective of the proposed new regulation should be to strengthen the functioning of the internal market by improving the application of the principle of mutual recognition and removing unjustified barriers to trade.

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.

Economic operators shall be liable in accordance with national laws for providing declarations containing false or misleading information.

Declarations that are made available online shall be accompanied by supporting evidence that may reasonably be requested, upon a reasoned request from the competent authority.

Assessment of goods: the purpose of the assessment is to establish whether the goods or that type of goods are lawfully marketed in another Member State and, if so, whether the legitimate public interests covered by the applicable national technical rule of the Member State of destination are adequately protected having regard to the characteristics of the goods in question.

Administrative decisions need to be always duly justified, legitimate, appropriate and in respect with the principle of proportionality and the competent authority has to make the least restrictive decision possible.

In order to assist Member States in their task of justifying restrictions to the principle of mutual recognition, the Commission should provide non-binding guidance reviewing the case law on the concept of overriding reasons of public interest and on how to apply the principle of mutual recognition. Competent authorities should have the ability and opportunity to provide contributions and deliver feedback on the guidance.

The report called on Member States to provide for clear and unambiguous 'single market clauses' in their national technical rules which ensure that goods lawfully marketed in one Member State are presumed to be compatible with the national technical rules of another Member State.

Problem-solving procedure (SOLVIT): each Member State and the Commission must ensure that a national SOLVIT centre is established and that adequate human and financial resources are available to guarantee that the SOLVIT centre takes part in the European SOLVIT network. The Commission shall raise awareness of the existence and benefits of SOLVIT, in particular among companies.

Where the SOLVIT's informal approach fails, and doubts remain regarding the compatibility of the administrative decision with the mutual recognition principle the Commission shall be empowered to look into the matter and provide an assessment to be taken into account by the competent national authorities at the request of any of the SOLVIT centres.

For the purposes of collecting additional information or documents necessary for completing its assessment, the Commission shall inform the relevant SOLVIT centres about its communications with the economic operator or competent authority concerned.

When completing an assessment, the Commission shall issue an opinion to be communicated through the relevant SOLVIT centre to the economic operator concerned and to the competent authorities and to be considered during the SOLVIT procedure. The Commission's intervention shall be subject to a two-months' time-limit. If the case is solved during this two months period, the Commission should be able to decide not to issue an opinion.

Administrative cooperation: Members proposed to strengthen cross-border cooperation by setting up a coordination group composed of representatives of the competent authorities and product contact points of the Member States.

The tasks of the coordination group shall be to: (i) facilitate the exchange of information and best practice of control activities in the Member States; (ii) support the functioning of the product contact points; (iii) provide the Commission with feedback on the guidelines on the concept of overriding public interest; (iv) promote and coordinate the exchange of officials between Member States, in particular with regard to particularly problematic sectors.

Where possible, the Commission shall develop an indicative and non-exhaustive list up to date online to help identify which types of goods are subject to this Regulation.

Mutual recognition of goods lawfully marketed in another Member State

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.

Mutual recognition of goods lawfully marketed in another Member State

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.