Council of the European Union

Brussels, 21 December 2017
(OR. en)

Interinstitutional File:
2017/0354 (COD)

15965/17
ADD 5

COMPET 897
ECO 82
MI 991
ENT 279
CONSOM 411
GAF 52
AGRI 712
CODEC 2137
IA 229

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	20 December 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2017) 476 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE REFIT EVALUATION Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition on goods lawfully marketed in another Member State

Delegations will find attached document SWD(2017) 476 final.

Encl.: SWD(2017) 476 final

EUROPEAN
COMMISSION

Brussels, 19.12.2017
SWD(2017) 476 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE REFIT EVALUATION

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

on the mutual recognition on goods lawfully marketed in another Member State

{COM(2017) 796 final} - {SWD(2017) 471 final} - {SWD(2017) 472 final} -
{SWD(2017) 475 final} - {SWD(2017) 477 final}

EXECUTIVE SUMMARY

Mutual recognition is influential for a proper functioning of the single market for goods. It consists of a principle, embedded in Articles 34 and 36 of the Treaty on the Functioning of the European Union (TFEU), and further elaborated on in the case law, and of a legal act, Regulation (EC) No 764/2008 (the Mutual Recognition Regulation), defining the practical modalities of its implementation.

If a business is lawfully selling a product in one Member State, it should be able to sell it in other Member States without adapting it to the national rules of that Member State, even when there are no common European rules on how the product has to be manufactured (rules on i.e. characteristics of the product, size, composition, etc.). The right to sell a product lawfully marketed in another Member State[1] can be refused only when the Member State of destination has diverging product requirements whose mandatory imposition is justified by the need to protect a certain public interest, and those requirements are necessary and proportionate for achieving that objective. This is the principle of mutual recognition in the field of goods. The application of the principle has proved to be problematic in practice. Therefore, in 2008, the Mutual Recognition Regulation was adopted. It introduces procedural guarantees to ensure on one hand that businesses can easily invoke their right to mutual recognition, and on the other hand that Member States use their right to deny mutual recognition in the light of the proportionality principle.

This evaluation assessed the functioning of mutual recognition in the field of goods, i.e. the mutual recognition principle and the Mutual Recognition Regulation. Its findings feed the impact assessment for the planned initiative on achieving higher and better mutual recognition, called upon in the Single Market Strategy, Upgrading the Single Market: more opportunities for people and business, adopted on 28 October 2015[2], and one of the main objectives of the 2017 Commission Work Programme[3]. This initiative, called "the Goods package", aims to give citizens and businesses the assurance that the Single Market protects and empowers them by proposing, on the one hand, to strengthen the implementation of EU harmonisation legislation by supporting compliance and enforcement and on the other, to give a major boost to mutual recognition in the area of goods. The initiative has been linked to the REFIT programme due to the impacts that the malfunctioning of mutual recognition has on the internal market.

Effectiveness

The general objective of the mutual recognition principle and Regulation was **to facilitate free movement of goods in the non-harmonised area.** Additionally, the Regulation had the following specific objectives:

- *To increase awareness of the principle ,*
- *To ensure legal certainty when using the principle,*
- *To improve administrative cooperation among national authorities when applying the principle*

Despite the existence of the principle and the adoption of the Regulation, free movement of goods in the non-harmonised area remains problematic. Businesses are still facing difficulties with regards to market access, even if their products are already lawfully marketed in other Member States. Thus, they often adapt their products or give up entering a new market. The comparison of the value of the intra EU exports with domestic consumption shows that for harmonised products, the value of intra EU exports is 55% of the domestic consumption, while for the non-harmonised and partially harmonised goods it represents only 35%. Stakeholders' consultation shows that the level of awareness about mutual recognition increased over the years, but not sufficiently. All stakeholders consider that awareness should be increased, and that this should be one of the Commission's main priorities. Legal certainty when using mutual recognition remains a major obstacle to free movement of non-harmonised products, and one of the main reasons why businesses and national authorities are reluctant towards mutual

1 Applies also to EEA products
2 Communication from Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Upgrading the Single Market: more opportunities for people and business, COM 2015 550/2
3 http://ec.europa.eu/atwork/key-documents/index_en.htm

recognition. As regards administrative cooperation, the evaluation shows that it needs to be further enhanced in order to facilitate the application of the mutual recognition principle. Furthermore, the lack of reliable data on the functioning of mutual recognition needs to be addressed, in order to allow the gathering of accurate data on how mutual recognition impacts the free movement of goods.

Efficiency

In terms of costs, the Regulation generated few costs for national authorities: the implementation and functioning of the PCPs (EURO 7417-47 450, based on 1 FTE) and the costs related to the assessment of products lawfully marketed in another Member State (EURO 420 000 in one sector such as fertilisers). The main costs incurred by businesses are rather due to the incorrect application of mutual recognition. They have to adapt their products, redo tests and procedures (EURO 1000-150 000 per product and market), or lose opportunities (EURO 40 000-500 000 per product and market). National authorities tend to agree that the costs are proportionate to the benefits, while businesses mostly disagree. A study done for the European Parliament[4] shows that a reduction of barriers to trade could lead to an increase in intra-EU trade of more than 100 billion EUR per year. The fact that mutual recognition does not function as well as it should is, de facto, a regulatory burden triggering barriers to trade. Therefore, any efforts to improve it would result in simplification for businesses.

Coherence

There does not seem to be any contradiction between mutual recognition and other EU policies in this area. Rather, the mutual recognition principle and the Regulation complement and are coherent with a number of initiatives such as the "Transparency" Directive[5], the Construction Products Regulation[6], The SOLVIT network[7], the General Product Safety Directive[8] and EU harmonisation legislation.

Relevance

Mutual recognition is seen as an alternative to harmonisation, when the latest is not necessary, justified and proportionate. There are currently 0.99 million enterprises operating in the non-harmonised area. It is particularly relevant for supporting innovation.

EU added value

There is a general consensus among stakeholders that mutual recognition allows free movement of goods, while maintaining the Member States' regulatory autonomy and diversity. It is widely acknowledged that the objectives it sets out can be met only by acting at EU level.

4 The costs of non –Europe in the Single market, 'Cecchini Revisited', An overview of the potential economic gains from further completion of the European Single Market, CoNE 1/204

5 Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services OJ L 241, 17.9.2015, p. 1–15

6 Regulation (EU) No 305/2011 on Construction products OJ L 88, 4.4.2011, p. 5–43

7 http://ec.europa.eu/solvit/what-is-solvit/index_en.htm

8 Directive 2001/95/EC on General Product Safety, OJ, L 001? 15.01.2002