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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

The Goods Package: Reinforcing trust in the single market

1. STRENGTHENING THE SINGLE MARKET FOR GOODS

The single market for goods is one of the greatest achievements of the European Union. We will celebrate its 25th anniversary in 2018. Its foundation is trust, between consumers, businesses and authorities. Consumers have to trust that the products they buy and use are safe. Businesses need to be able to trust that there is a level playing field where rules apply to all and protect everyone equally. In particular small and medium-sized businesses (SMEs) should be freed from red tape, to promote entrepreneurship and job creation. Trust has enabled unprecedented integration of markets within the EU, has been and continues to be a cornerstone of economic growth. Industry added value alone has grown by 25% in EU27 (23% in EU28) in real terms since 2009. Its share as a proportion of the economy has therefore significantly increased since 2009 from 15.5% (14.7% in EU28) to 17.1% (16.1% in EU28) today.¹

As the Single Market Strategy² underlines, the EU and the Single Market need to adapt to a changing environment. Obstacles in product and services markets hamper efficiency, productivity and the competitiveness of the European economy. Businesses often feel stifled by outdated and excessively burdensome regulations and unable to find the information that they need. Also, a disregard for EU product rules hampers the creation of a truly level playing field.

Both the European Parliament and the European Council have endorsed the aims of the Single Market Strategy and have called on the Commission to remove remaining obstacles and to facilitate solutions.³ It follows from the Leader's Agenda that the European Council will review progress made towards the 2018 deadlines of the Single Market Strategies in March 2018.⁴

For the single market for goods there are especially two remaining structural weaknesses that have to be rapidly addressed to reap its full potential and to justify trust. The potential is there, consumers, businesses and authorities are ready; we just have to provide the necessary environment to make it work.

The first structural weakness of the single market for goods relates to the enforcement of EU harmonised product safety rules. Despite far-reaching safety rules, there are still too many unsafe and illicit products on the market. These products cause major risks for consumers. They do not get value for their money and may be exposed to health risks. A lack of enforcement of EU product rules should not result in an unfair advantage for those who deliberately try to circumvent essential safety rules. The Commission has recently adopted measures to improve enforcement action against breaches of intellectual property rights⁵. But

¹ Source Eurostat (2016 figures are provisional). These figures include manufacturing, extractive industries and utilities industries. They exclude business services and construction, which are however closely linked to EU industry, not least against the backdrop of the growing role of value chains and of servitisation.

² COM (2015) 550 final, Upgrading the Single Market: more opportunities for people and business", 28.10.2015.

³ European Parliament, Resolution on the Single Market Strategy, 26 May 2016, P8_TA(2016)0237; European Council, Conclusions, 15 December 2015.

⁴ European Council, Leaders' Agenda, <http://www.consilium.europa.eu/media/21594/leaders-agenda.pdf>, October 2017.

⁵ See the Intellectual Property package adopted by the Commission on 29. 11. 2017 which includes several measures and notably a Communication on a balanced IP enforcement system responding to today's societal challenges (SWD(2017) 430 final).

it is time to do more to ensure compliance. On a market the size of the Single Market, enforcement authorities in Member States have to cooperate well with each other to remove unsafe products from the market in an effective and swift way.

The second structural weakness relates to products that do not fall under harmonised EU product safety rules, or only fall partially under such rules, for example in the area of furniture, tableware or certain construction products. Such products may be considered safe and in line with the public interest in one Member State, but may face market access difficulties in another Member State. There may be legitimate differences due to national specificities. However, any refusal should be duly justified and explained on the basis of public policy concerns. Assistance to better understand and eventually overcome market access obstacles for these products should be offered. Business opportunities, and this is especially relevant for SMEs, need to be improved.

Therefore, the Commission is today proposing a "goods package" that will comprehensively address these weaknesses for a better functioning single market for goods. It contains two ambitious legislative proposals. The first aims to strengthen compliance and enforcement of EU product rules⁶. The second intends to revamp and facilitate the use of mutual recognition in the Single market⁷. The "goods package" is completed by a Report on the operation of 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 from 2014 to 2015⁸, a Report on the implementation of Regulation (EC) No. 765/2008⁹, as well as soft law measures spelt out in this Communication which aim to build trust in the Single Market.

2. TRUST IN THE ENFORCEMENT OF EU PRODUCT RULES

Consumer safety and environmental protection are the cornerstones of the single market for goods. Across the EU, we have agreed on common safety and environmental rules to protect us against safety hazards, pollution and environmental damage. Still, many consumers were knowingly and deliberately misled when they bought a diesel car. Unfortunately, cars were not the only goods where there has been unfair competition by circumvention of the rules. Large numbers of unsafe products are being sold in Europe every day. This ranges from mislabelled products to products posing severe risks to health or the environment. Between

⁶ Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council. (COM(2017)795).

⁷ Regulation of the European Parliament and of the Council on mutual recognition of goods lawfully marketed in another Member State (COM(2017)796).

⁸ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the operation of Directive (EU) 2015/1535 from 2014 to 2015 (COM(2017)788).

⁹ Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (COM(2017)789).

2011 and 2017, there were about 2,500 incidents where illegal products had to be withdrawn from the market¹⁰. And this is probably the tip of the ice-berg.

EU product rules cover a large share of manufactured products in the EU. These have a value of EUR 2 400 billion and are produced or distributed by some 5 million businesses. EU rules allow products to circulate freely across the Union while ensuring a high level of environmental, health and safety protection. For many sectors, such as toys and electric equipment, the EU has lean un-bureaucratic ways of allowing market access. A level playing field for businesses, with clear rules and a high level of consumer protection is needed for the single market to work. Trust and a level playing field are already achieved in other sectors such as foodstuffs, plant health or animal health, on the basis of stringent rules agreed at EU level.

We are also living in a world increasingly affected by societal changes such as globalisation and digitalisation. Products and distribution chains across the EU are increasingly interlinked. On the other hand, national market surveillance authorities lack resources and are confined to their national territory. We need a European perspective to enforcement. Too often, investigations launched in one Member State end at the national border. To overcome this discrepancy, market surveillance must be consistent no matter whether the product is made outside or inside the EU, or whether it is bought online or offline.

In line with other EU initiatives such as the Industrial Policy Strategy¹¹, the Digital Single Market Strategy¹² and its mid-term review,¹³ and the action plan for customs management¹⁴, the Commission therefore proposes to step up **the enforcement of common EU safety rules**. Consumers need to regain trust that the goods they purchase online or offline are safe. If problems arise, we need to have the right framework for addressing the risks and restoring a level playing field.

The single market for goods is about creating economic opportunities, boosting competitiveness and making the EU fit to tackle the challenges of a global economy. At the same time, as the Commission's reflection paper on harnessing globalisation has underlined, the EU needs to act and to restore a level playing field with strong enforcement of EU rules¹⁵. In an open single market, rules are there to protect EU citizens' safety. It can only function well if a high level of trust in this protection can be guaranteed. Strong enforcement is vital to ensure that competition occurs among compliant goods, not between compliant and non-compliant goods.

a) Smart enforcement in a borderless single market

Market surveillance is handled by the Member States, and rightly so. They are best placed to monitor their markets and impose penalties if need be, because they are closest to any incidents, the first to react and the most familiar with their national economy.

¹⁰ Source: RAPEX. This number covers only products that are subject to EU harmonisation legislation.

¹¹ COM(2017) 479 final, Investing in a smart, innovative and sustainable Industry: A renewed EU Industrial Policy Strategy.

¹² COM(2015) 192 final, A Digital Single Market Strategy for Europe.

¹³ <https://ec.europa.eu/digital-single-market/en/news/digital-single-market-mid-term-review>.

¹⁴ COM(2014) 527 final, EU Strategy and Action Plan for customs risk management: Tackling risks, strengthening supply chain security and facilitating trade.

¹⁵ European Commission, *Reflection paper on harnessing globalisation*, 10 May 2017.

However, purely national enforcement is insufficient. There are over 500 distinct market surveillance authorities (from 1 to over 200 per Member State) policing one Single Market for specific products. Businesses are more often than not based in a different place from the market surveillance authority that detects a problem. This leads to difficulties as regards the determination of the applicable law and jurisdiction, access to justice and the enforcement of decisions. Rogue suppliers currently abuse this market fragmentation, to the detriment of consumer and product safety.

Despite a willingness to act at national level, enforcement in the single market for goods is often hampered by a lack of resources (staff, budget, laboratory capacity), coordination and exchange. Rogue traders may make money from placing unsafe products on the market but it is the authorities that have to pick up the bill, e.g. paying to destroy unsafe products. In an integrated single market for goods, the work of national authorities to control unsafe products therefore needs to be better coordinated, so rogue traders cannot hide behind borders and the response to non-compliance with EU rules is consistent across the Union.

Therefore, this package is a big step towards smarter enforcement, complementing and strengthening, where necessary, existing and future Union harmonisation legislation¹⁶:

Enforcement authorities will work more closely together through **single liaison offices**. Use of another Member State's evidence, test reports and decisions will be made easier. There will be a presumption that if a product is found not to comply with EU product rules in one Member State, the evidence and decisions can be transferred to another, to facilitate enforcement across the EU.

Actions against incompliant products can only be effective when authorities **share more information about investigations and illegal products**. The Commission will engage more intensively in ensuring common knowledge gathering among enforcement authorities and convergence of different IT tools, such as the Rapid Alert System for dangerous non-food products (RAPEX) and the Information and Communication System on Market Surveillance (ICSMS), to facilitate the enforcement work of authorities.

Furthermore, reliable **market surveillance indicators** should make sure that there is a common understanding of the challenges facing market surveillance.

National enforcement authorities will get more support for the coordination and performance of their tasks. A **Union product compliance network** will be set up. This network will provide administrative support for the joint investigations needed to coordinate the enforcement actions of over 500 national authorities. The network will allow authorities to pool knowledge, organise exchanges of officials, develop a common intelligence picture, and devise efficient methods for more targeted and risk-based controls. It will also provide standard training for inspectors and assist with joint procurement of product testing capacity. The network will infuse market surveillance with the common European perspective that is necessary in a common European market. However, subsidiarity will be fully respected. National market surveillance authorities alone will enforce concrete decisions on traders.

¹⁶ In accordance with the principle of *lex specialis*, the enforcement Regulation proposal should apply only in so far as there are no specific provisions with the same objective, nature or effect in other existing or future rules of Union harmonisation legislation. This is particularly relevant for Union legislation covering drug precursors, medical devices, in vitro diagnostic medical devices; etc.

Closer cooperation between businesses and enforcement authorities is also essential. Both parties need to trust each other. The following strands of closer cooperation are envisaged:

- Compliance information: Manufacturers consider that they should be the first to be contacted if there is a suspicion their products fall short of the rules. This way, they can immediately intervene, dispel misunderstandings or take corrective measures, if necessary. They will also know if the product in question is being sold elsewhere. Most manufacturers who sell in the Union already have a representative who can be easily contacted. This good practice will become mandatory¹⁷.
- 'Compliance Partnership Agreements' with their local authorities will allow businesses to get advice on compliance issues.
- Businesses and authorities can conclude 'memoranda of understanding' about joint projects to identify non-compliant products¹⁸.
- As prevention and enforcement go hand in hand, businesses in the EU and around the globe can seek regulatory advice from national 'Product Contact Points'¹⁹.

For a safe and functioning single market, businesses and consumers must be aware of the rules and have information they need to react and adapt. **Market surveillance authorities will have to publish their findings**, especially when they restrict the marketing of certain products.

b) Enforcement at external borders

Consumers should expect the same level of protection for goods manufactured inside or outside the EU. In a globalised world, it remains a challenge to ensure that imported products also meet EU requirements and do not compete unfairly by breaking EU rules. In principle, imported products should be checked on entry into the single market. Yet the sheer volume of imports makes it impossible to check all consignments. Over 30 % of all goods on the EU markets were imports in 2015. They had an estimated value of almost EUR 750 billion²⁰.

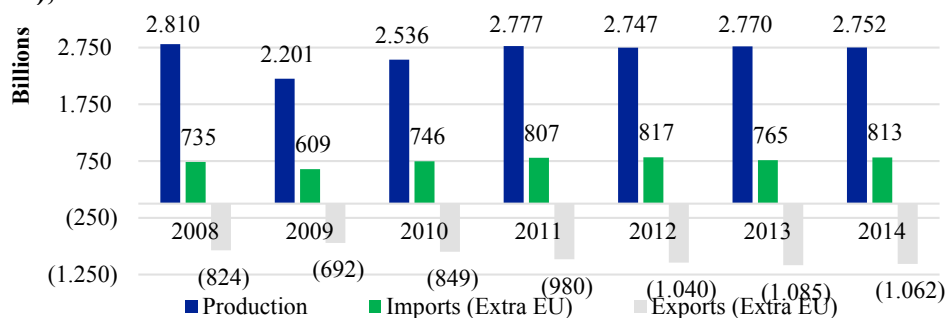
¹⁷ A product can only be made available on the market if a person responsible for compliance information is established in the Union and can be a direct interlocutor for market surveillance authorities. This person could be the manufacturer, the importer or any other economic operator mandated by the manufacturer and shall keep the required relevant technical documentation including the EU declaration of conformity, when applicable, of the product and shared it with the market surveillance authorities upon request.

¹⁸ In the context of intellectual property rights infringements, Memoranda of Understanding are used between industry partners, see the Commission Communication of Communication on a balanced IP enforcement system responding to today's societal challenges (SWD(2017) 430 final), p. 8-9.

¹⁹ https://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition/contacts-list_fr.

²⁰ SWD(2017)466 — Commission services staff working document, Impact Assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council.

Trade in harmonised products: sold production and trade with non-EU countries (2008-2015, EU-28), € billions



Source: Prodcom — statistics by product, EUROSTAT (2016)

The rules on the enforcement at the external borders need to be adapted to the new realities of the 21st century, including the increasing number of online sales, and the new Union Customs Code.

The new proposal adapts the current legal setting to the new customs rules. It provides for more clarity for controls on products entering the EU, and for coordination of and cooperation between customs and market surveillance authorities.

It also simplifies the paperwork for importers. Trusted businesses will benefit from lighter controls and, as a result, authorities will be able to concentrate their efforts where the risk to product safety is greatest.

Also, when enforcement authorities have doubts about the legality of a product, they will **suspend release for free circulation** in the EU until they receive appropriate evidence that the product is fit to be sold in the EU.

c) Accreditation and CE-marking

While the current market surveillance rules are in need of improvement, the EU rules for accreditation and the CE marking have shown to work reasonably well. This communication is accompanied by a report that highlights the importance of a well-run and reliable accreditation and conformity assessment system that underpins EU policy and reinforces trust in product safety.

3. UNITED IN DIVERSITY IN THE SINGLE MARKET FOR GOODS: MUTUAL RECOGNITION

Where there are no common EU product rules, for example in the area of childcare articles or cash registers, the principle of mutual recognition should ensure that a product that is lawfully marketed in one Member State can also be sold in any other Member State — as long as it is safe and respects the public interest.²¹ However, too often businesses today cannot rely on mutual recognition to access markets across the EU. Especially small and medium-sized enterprises report serious difficulties when attempting to rely on mutual recognition to sell

²¹ These interests include for instance: public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property.

their products in another Member State. Member States introduce additional requirements and duplication of testing, thus unnecessarily increasing red tape and costs. This deprives economic operators from the efficiencies of scale of the single market, increases the prices for consumers and decreases trade to the detriment of all.²²

National authorities often lack trust in the judgment of authorities from other Member States, which results in additional requirements and duplication of testing, thus unnecessarily increasing red tape and costs. In addition, challenges via court decisions which deny or restrict market access are lengthy and costly for operators. Consequently, businesses are facing unwarranted costs because they must **adapt their products** to the requirements of several national markets and they encounter **market entry delays** and **lost opportunities**. This hits small and medium-sized enterprises in particular.²³

This must change. The current system can and needs to be improved. The Commission therefore proposes to boost and clarify the existing opportunities and to facilitate market access.

A targeted and cooperative approach will also be followed with regard to the implementation of the Single Market Transparency Directive (EU) No 2015/1535. This Directive is an important tool for the prevention of barriers for products which are not or only partially harmonised. Member States are obliged to notify any draft legislation concerning these products so that barriers can be prevented ex-ante. In line with the results of the report on the implementation of the Directive, also published today, the Commission and the Member States need to solve difficulties at an earlier stage, focus on the most widespread concerns and the most economically significant areas in Member States.

a) **Making it work**

The principle of mutual recognition for goods is derived from the Treaty on the Functioning of the European Union (TFEU)²⁴. It has been repeatedly upheld and strengthened by the Court of Justice of the European Union. However, the current framework has not proven sufficient to ensure consistent and effective application. Therefore, it is proposed to replace the **Mutual Recognition Regulation**²⁵ with a new **Regulation** that clarifies and simplifies the procedures to be followed by businesses and public administrations.

Market access based on mutual recognition should only be denied if there is a legitimate and proportionate public interest at stake. Today, if the denial is illegitimate or disproportionate, the only way to challenge the decision is via national courts. Such processes are long and costly, and do not meet the specific needs of mutual recognition. Challenging a decision denying market access can cost between EUR 10 000 and EUR 100 000 per product and per market. Businesses state that this is the biggest obstacle to the smooth functioning of the mutual recognition system. In many cases, rather than facing uncertain outcomes, businesses

²² See also: "The Cost of Non- Europe in the Single Market, 'Cecchini Revisited', An overview of the potential economic gains from further completion of the European Single Market," [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/510981 /EPRS_STU\(2014\)510981_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/510981 /EPRS_STU(2014)510981_REV1_EN.pdf).

²³ Idem.

²⁴ Articles 34 and 36 of the Treaty.

²⁵ Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC, OJ L 218, 13.8.2008, p. 21.

end up adapting their products at extra cost — with a corresponding cost to consumers and loss to the efficiency of the European economy.

The new mutual recognition proposal introduces a **problem solving procedure** to provide effective remedies and re-establish trust in mutual recognition. First, amicable and hands-on solutions will be sought by **making use of the existing SOLVIT mechanisms**. If dialogue fails, the Commission may intervene on the matter by issuing an Opinion, and where appropriate, making recommendations to assist the parties in solving the case. In this way, businesses and exporting Member States, instead of waiting for years to have their products and laws recognised by other Member States, will know what to expect in a matter of weeks or months. In addition, the Commission will be able to strategically implement its enforcement powers under Article 258 TFEU where systemic problems in specific sectors are identified.

At present, businesses need to prove that their product is already on sale elsewhere in the EU if they want to obtain mutual recognition. The range of evidence required by the authorities varies from a simple invoice to a Member State's declaration that the product has been lawfully marketed. To help businesses demonstrate that their product already meets the requirements of another Member State, to reassure the authorities and facilitate cross-border cooperation we propose a new simple voluntary '**mutual recognition declaration**' to be completed by economic operators, which will reduce administrative burden.

Those involved in mutual recognition do not communicate sufficiently well with each other. This is often because powers and responsibilities for specific regulations are scattered, which complicates navigation around these — often very technical — matters. Therefore, we aim to reinforce **product contact points as the communication channel for mutual recognition**²⁶. To make these contact points easily distinguishable, a common visual identity could be developed. **Cross-border cooperation between contact points** will be enhanced. An online platform will allow the authorities to connect with each other.

b) More cooperation and deeper trust

Cooperation and trust are needed for mutual recognition to work well. They will help to build mutual understanding of the different national approaches and concerns. This will be fostered by **exchanges of officials** working in particularly problematic sectors such as construction products. Equally important, the Commission will work more closely with **specific countries and sectors** to make mutual recognition work.

The Commission will further assess the possible benefits for businesses and public authorities of further developing the **existing product list for mutual recognition**²⁷.

To increase national authorities' reliance on and trust of the mutual recognition, the Commission will also try to raise awareness of national authorities on how mutual recognition works via dedicated training efforts. This will be aimed mainly at national administrations (e.g. at product contact points, departments responsible for problematic product areas, national courts, market surveillance authorities and SOLVIT staff) and businesses. A targeted '**train the trainer**' package on mutual recognition for authorities and businesses and a '**mutual**

²⁶ 'Product contact points' are the interface between business and national administrations and the place to find information on all applicable national rules.

²⁷ http://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition/products-list_en.

recognition rule book’ will give comprehensive guidance on how to apply mutual recognition.

Finally, Member States should continue to explicitly provide for mutual recognition in their national technical rules, but they should do so in a comprehensible manner. The Commission therefore encourages Member States to insert a **clear and unambiguous ‘single market clause’**²⁸ in national technical regulations, and will develop specific guidance for its use:

‘Goods lawfully marketed in another Member State of the European Union or in Turkey, or originating and lawfully marketed in an EFTA State that is a contracting party to the EEA agreement are presumed to be compatible with this measure. The application of this measure is subject to Regulation [reference].’

4. CONCLUSION

The single market for products is one of the EU’s best assets. It gives the EU a competitive advantage in meeting the challenges of globalised trade flows and value chains. To meet these challenges, we need to ensure that the Single market delivers successfully by offering market opportunities for businesses and a high level of protection for everyone. All those involved — the general public, workers, consumers, businesses and authorities — need to be assured that they can act and acquire safe products in a transparent and fair environment where the rules apply in an equal manner to all. They need to be able to trust that products are safe and comply with the law.

This Package is about making sure that we establish such a transparent and fair single market of safe products for everyone. Authorities and businesses will gain trust in mutual recognition as a principle that protects the public interest for all and opens up the Single Market. Improved compliance and enforcement will reinforce consumers' trust in the safety of products placed in the Single Market. This is even more important in an ever faster changing and more integrated world.

Alongside the legislative proposals of this Package, we will work closely with competent authorities and stakeholders, taking the necessary steps to build this trust. This will ensure that as of today already, real impact and benefits for all can make a difference in the Single market for goods of tomorrow.

²⁸ This does not apply to products originating from EFTA States and Turkey that have been excluded from the EEA agreement or from the customs union with Turkey (e.g. fish and fish products).

Appendix: Proposed timeline for ‘soft law’ measures

2018:

- Single market clause
- Ongoing: Optimising the convergence of market surveillance IT tools (such as RAPEX and ICSMS) in compliance with the applicable legal basis.
- Application of market surveillance indicators
- Prepare awareness-raising campaign on mutual recognition
- Elaborate train-the-trainer programme for mutual recognition
- Cooperative approach to specific sectors under the Single Market Transparency Directive

2019:

- Mutual recognition rulebook
- Exchange of officials
- Examine further development of existing product list for mutual recognition