



Ms Kidmose Rytz
Danish Technological Institute
Gregersensvej
2630 Taastrup
Denmark

18th December 2014

RE: Evaluation of the application of the principle of mutual recognition in the field of goods

Dear Ms Kidmose Rytz,

The Commission are carrying out an evaluation on the application of the principle of mutual recognition in the field of goods. This evaluation emerges from the conclusions on single market policy adopted by the Competitiveness Council in December 2013 (see point 8). In 2015, the Commission will report to the Council on sectors and markets where application of the principle is advantageous but in practice functions incorrectly or is insufficient.

In order to fill the information gap that currently exists with regard to the functioning practice of mutual recognition, BUSINESSSEUROPE were invited by the Commission to take part in a survey being carried out by the Danish Technological Institute.

BUSINESSEUROPE agrees that regular evaluation of the use of mutual recognition in practice will aid correct functioning of this principle. However, we feel that relevant information on mutual recognition cannot be concretely conveyed to the Commission through the survey supplied. The survey does not offer the opportunity to supply the Commission with detailed information to illustrate the true functioning of mutual recognition in practice.

For this reason, BUSINESSSEUROPE would like to convey some relevant and practical input that illustrates the current state of mutual recognition in Europe (at annex). We hope that this will be beneficial when concluding the results of your consultation for the Commission.

Yours sincerely,

Jérôme P. Chauvin
Deputy Director General



Annex

Evaluation of the application of the principal of mutual recognition in the field of goods

National technical regulations

National technical regulations are being excessively used in Member States. These specific requirements may take the form of additional: technical requirements, testing methods, certification, packaging requirements, labelling or documentation for goods that have already fulfilled similar provisions in other markets. These additional requirements limit the accessibility of the single market and are incompatible with the principle of mutual recognition (they also increase the cost of the good).

Directive 98/34 governs the notification procedure that Member States should follow when developing national technical regulations. Article 8 provides specifically for Member States to send justification when introducing national technical regulations. However, in practice such information is rarely provided or published. The confidential nature of comments and detailed opinions make it difficult for businesses to assess such a regulation.

Regulation 764/2008 is not being fully respected by national authorities. In practice, the burden of proof to determine product conformity with national technical rules is being transferred onto businesses.

Even within Member States, differing local interpretations of rules exist. Certain goods are required to undergo additional local testing methods or required to fulfil additional labelling imposed by local specifications. These localised tests often have to be repeated after a few years, adding further to the burden for businesses to undergo. Furthermore, local authorities overseeing these additional requirements often have different priorities or interpretations of results within the same Member State.

National standards

Certain national standards are interfering with the free movement of goods that are already being sold in many markets. A national standard often blocks full circulation of goods in the single market as they require different specifications or methods that the good does not fulfil. National authorities are using national standards as an explanation to block entry of a product on their market even though it is already being successfully sold in many other Member State markets.

Harmonised goods

Mutual recognition also relates to the marketing of harmonised goods. It is often experienced that requirements are imposed by national authorities on goods that have already been subject to conformity assessment procedures for the CE marking e.g.



additional testing. It is also experienced that products already carrying the CE mark meet barriers when placed on new markets, simply because national authorities are not recognising the new technology in the CE marked good and as a result do not accept market access e.g. for innovative products. Member states also enforce national supplementary requirements, standards or bans on certain goods that are already permitted under harmonising legislation for CE marking e.g. within the construction area.

Better application

In both areas of harmonised and non-harmonised goods, the principle of mutual recognition is enshrined in EU jurisprudence and the goods legal framework. However businesses regularly does not know which obligations they need to comply with or which rights should be upheld on their behalf in certain product areas. Better application of Directive 98/34/EC is needed by Member States as a preventive measure to ensure mutual recognition is upheld when a national technical regulation is developed. Whereas better application of Regulation 764/2008 should be made by the Commission as a corrective measure on a case by case basis to uphold the principle of mutual recognition after national regulation has come into effect. Both legal acts apply across the single market to EU members and EEA Agreement members.

A mutual recognition clause

Although mutual recognition is deeply enshrined in EU jurisprudence and the goods legal framework, businesses still do not know which obligations they need to comply with or which rights should be upheld on their behalf in certain product areas. Instead, new legislation should specifically contain a mutual recognition clause to provide legal certainty for businesses, Member States and the Commission to uphold.

Economic operator barriers

Private economic operators also have an impact on the principle of mutual recognition. Local agents or subsidiaries are often required to grant access to national markets in certain areas of goods. Additional approval is blocking market access for many businesses that are willing to participate cross border. Also, large retailers often have their own 'in-house' rules that involve supplementary testing. However, many economic operators claim that these additional requirements are a result of increased responsibility put on distributors by increasingly disproportionate regulation.

SOLVIT

SOLVIT is an effective complaint instrument to address specific misapplication of EU rules but it is not tailored to handle complaints regarding national technical regulations. As a result these instances are often left unresolved and require Commission involvement. This process can be timely and costly for business due to the administrative burden involved and loss of market share through lengthy procedures.

Guidance

Member States and national authorities are often misinformed on the extent of how EU legislation and free movement of goods principles prevail over national legislation. Mutual recognition is a concept developed from jurisprudence of the Court of justice and Articles 28 and 30 of the EC Treaty. This legal framework should be fully understood by desk officers that are implementing provisions impacting the free movement of goods. Training and enhanced guidance should be encouraged.

Impact on business

The ineffective use of the principle of mutual recognition, as described above, is excluding business from fully utilising the free movement of goods. Practically, this means businesses are not entering into previously determined markets following research or are abandoning markets that currently prove successful.

Most businesses choose to comply with additional requirements imposed on them as alternatively they face losing their market share or potential market share following investment. As a result, businesses suffer extensive economic costs and often have to postpone market entry to fulfil additional criteria.

Companies that wish to challenge decisions made by national authorities do not have an effective form of redress. Instead businesses have to take part in long and costly legal disputes in order to ensure the correct functioning of the single market and application of mutual recognition.

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