



30 September 2016

BusinessEurope's comments on the possible revision of the mutual recognition Regulation

As part of the DG GROW consultation on the possible revision of the mutual recognition Regulation 764/2008, BusinessEurope welcomes the opportunity to provide feedback on improving the functioning of mutual recognition in practice, especially as no effective mechanism exists to check national decisions denying mutual recognition. In practice, national rules are used as a basis to deny mutual recognition. Further to this, we feel that the overarching principle of mutual recognition should take precedence in existing grey areas for harmonised goods. Therefore, our comments below relate to non-harmonised and harmonised areas.

Reply to the Commission consultation on the possible revision of the Mutual Recognition Regulation (EC) No 764/2008

About you

+ Question 1: Are you reply as:

Business Organisation (BusinessEurope)

+ Question 2: Please indicate your registration number in the transparency register:

3978240953-79

+ Question 3: Please indicate the country of establishment or the countries where your members are established:

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic Slovenia, Spain, Sweden, United Kingdom, Iceland, Montenegro, Norway, San Marino, Serbia, Switzerland, Turkey.

+ Question 4: Please indicate all the countries in the EU/EEA where you sell or have sold your products:

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic



Slovenia, Spain, Sweden, United Kingdom, Iceland, Montenegro, Norway, San Marino, Serbia, Switzerland, Turkey.

+ Question 5: Please indicate your sector of activity:

Manufacturing.

+ Question 6: Do you agree to the publication of all information on your contribution?

Yes (I consent to the publication of all the information in my contribution, and I declare that none of it is subject to copyright restrictions that would prevent publication).

Your experience and views on mutual recognition and its potential shortcomings

+ Question 7: When selling products in other Member States, do you check if there are any national rules which may apply to your products?

Yes

+ Question 8: If these rules prevent you from selling your products as such, do you adapt it?

Yes

+ Question 9: Do you know that a product lawfully marketed in one Member State must, in principle, be admitted to the market of any other Member State, based on the mutual recognition principle?

I am partially aware of it

+ Question 10: Do you think it is necessary to raise awareness on mutual recognition?

Yes

+ Question 11: Have you ever tried to use mutual recognition to get access to a new market within the EU for a product?

Yes

+ Question 12: Based on your experience, do you consider the following as obstacles to the application of mutual recognition? Please rank their importance from 1 to 5, 1 being the lowest and 5 the highest.



	1	2	3	4	5	No opinion
Lack of awareness about mutual recognition	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Difficult to obtain information about whether mutual recognition applies to a specific product and thus to assess if mutual recognition can be used or not for a specific product	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Difficult to demonstrate to authorities in other Member States that a product is lawfully sold in a Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient communication between national authorities within the same Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient communication between national authorities of different Member States	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Slow/inefficient communication between businesses and national authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Difficult for businesses to challenge national decision denying market access	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

🚩 Question 13: Have you faced that obstacle yourself? Please briefly explain.

Yes. National technical rules are applied by Member States which add additional requirements for products to fulfil that are already being lawfully marketed. These requirements fragment the single market through applying additional criteria for businesses to gain market access. In 2014 alone, 700 national technical regulations were notified to the Commission. Many examples exist in practice, to name a few, additional requirements exist with regard to labelling, packaging, testing, design requirements and prior notification procedures. Some authorities even require non-harmonised parts of harmonised products to apply additional



requirements as applicable rules are interpreted differently, especially for new innovative products. As a result of this market fragmentation, predetermined markets are abandoned or costly additional measures endured.

Your views on the functioning of Mutual Recognition Regulation

✚ Question 14: How much do you know about the Mutual Recognition Regulation?

I am partially aware of it.

✚ Question 15: The table below lists the objectives of the Mutual Recognition Regulation. Based on your experience, have these objectives been achieved?

	Yes, fully	Yes, partially	No	I do not know
To ensure legal certainty for businesses and national authorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
To improve administrative cooperation between national authorities and communication between national authorities and businesses	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
To reduce the risk to businesses of having products refused when entering another national market	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

✚ Question 16: The table below lists the main tools put in place through the Mutual Recognition Regulation to facilitate the use of mutual recognition for selling products in other Member States. How would you assess them?

	Useful and still necessary	Useful but no longer necessary	Not useful	I do not know
Product Contact Points providing information to businesses on national rules upon request	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Obligation for national authorities to notify to the Commission and justify a decision denying market access based on national	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>



rules				
Product list mentioned under Article 12.4 of the Regulation listing non-exhaustively products for which mutual recognition could apply	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Guidelines for national authorities and businesses on the application of the mutual recognition principle	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

✚ Question 17: Have you ever contacted a Product Contact Point in order to obtain information on national rules applicable to your product?

No.

✚ Question 18: Is it easier to sell products in another national market since the Mutual Recognition Regulation is in force?

Yes.

✚ Question 19: Do you assess if mutual recognition can be used for selling products in another Member State internally or do you outsource?

Both, depending on the product and/or market.

✚ Question 20: How many hours do you or one of your employees / external advisors need to demonstrate that your product is lawfully sold in your Member State where you are already lawfully selling the product?

Immeasurable hours and lost opportunities.

✚ Question 21: Could you also provide an average cost per hour?

Immeasurable costs and burdens to due additional steps taken to enter a national market even though already existing in another.

✚ Question 22: If you have been denied access to another market on the basis of national rules (if replied yes to question before) or if you do not choose to use the principle of mutual recognition based on that experience, what were the approximate costs for you to bring a product to the market in another country? (Costs per country and per type of product, only costs related to lawfully putting the product on the market, not marketing costs that would be incurred anyhow)



	Highly important	Relatively important	Of little importance	I do not know
Costs related to aligning products on national rules, i.e. testing, labelling, certification, etc. (Compliance costs)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs caused by the delayed entry on the market	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(If you challenged the decision) Costs related to the challenge before courts	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Upon denial I renounced selling products on that market entirely – costs related to lost opportunities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

✚ Question 23: Please quantify the significant costs identified above per product and market:

Immeasurable costs and burdens to due additional steps taken to enter a national market even though already existing in another.

✚ Question 24: How often do you need to bear such costs per year? Please specify:

Immeasurable costs and burdens to due additional steps taken to enter a national market even though already existing in another.

✚ Question 25: Below are listed the main benefits the Mutual Recognition Regulation was expected to have. Based on your experience, to what extent do you consider them to be realised?

	I fully agree	I partially agree	I disagree	I do not know
Better information to businesses on national product rules via the Product Contact Points	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Justification and notification to businesses and to the Commission of administrative decision denying market access based on	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>



national rules				
Reduced risks of seeing market access denied based on national rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Increased awareness of mutual recognition	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 26: Based on your experience, would you agree or disagree with the following statement: "these costs (as referred to in Question 23) are acceptable and proportionate to the benefits the Mutual Recognition Regulation brings in terms of facilitating market access"?

I disagree.

Question 27: From your experience, are you aware of potential overlaps or synergies between the Mutual Recognition Regulation and other European initiatives?

The scope and application of the Mutual Recognition Regulation must be understood by all those currently responsible for upholding its functioning in practice. This goes further than those directly responsible for its implementation in the Consultative Committee on Mutual Recognition (product contact points). Other initiatives should also work around ensuring a good application of the Regulation. For example, SOLVIT should solve individual cases for businesses when their EU rights have been breached. Also, TRIS (the Technical Regulation Information System) should enable Member States to notify all national technical rules that will be developed in order to keep businesses and other Member States informed.

However, little dialogue between these three initiatives takes place. The synergy between all three parties should be improved at national and European level. This would begin to improve the efficiency of the application Mutual Recognition in practice as collaboration would better determine how to interoperate the rules and when to react.

For example, if SOLVIT accepts that a national technical rule is justified it should notify the Consultative Committee on Mutual Recognition. Regardless of a TRIS notification, the national technical rule should also be checked to see whether it is in fact justified and if mutual recognition applies.

The next step could be involving market surveillance authorities and specific units at European and national level in charge of that product area which specific knowledge in the field. Currently, in many situations, it is the specific unit in charge of that sector that takes precedence in decision making over horizontal units responsible for mutual recognition.



With regard to future work of the Commission, we believe that the success of [the Quick Assessment Procedure \(QAP\)](#) could be aided by the creation of the Single Digital Gateway. It could be the landing page where businesses first apply to take part in the procedure (input). It could also be an information page businesses access to understand the existing state of the single market for goods across to see if national rules in certain Member States apply to the good they wish to sell in order to help them make more informed decisions (output).

Question 28: What is the added value of the European common rules on mutual recognition? Please indicate if you agree or not with the following statements:

	I agree	I do not agree	I do not know
European common procedures on mutual recognition guarantee equal treatment of businesses, regardless of where they want to sell their products	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
European common procedures on mutual recognition guarantee that national authorities apply the principle in the same manner	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The absence of European common procedures on mutual recognition would weaken the principle by dismantling its application into 28 different and possibly contradictory procedures and undermine the internal market	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 29: In your view, what should be the priorities for the Commission with regard to mutual recognition in the future? Please rank their importance on a scale from 1 to 5, 1 being the lowest and 5 the highest.

	1	2	3	4	5
Increase general awareness on the mutual recognition principle	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increase effectiveness of mutual recognition facilitating access to the internal market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Increase legal certainty for businesses when using	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>



mutual recognition to sell products abroad					
Facilitate communication between all actors involved in mutual recognition (business, national authorities, European Commission)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Ensure that the procedures are duly followed when decisions denying market access are taken by national authorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensure that businesses have effective remedies at their disposal to take action against decisions denying mutual recognition when needed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Your views on the possible options for the possible revision of the Mutual Recognition Regulation

✚ Question 30: Which of these options would make mutual recognition easier to apply and more reliable? (Multiple choices)

	I agree	I do not agree	I do not know
Clarify the scope of the Regulation as regards the circumstances under which mutual recognition could apply	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitate the identification of products to which mutual recognition applies, by updating the Product list (Article 12.4 of the Regulation) and make it more user friendly (The product list contains the products not covered by harmonised legislation where mutual recognition is applicable)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Make it simpler for businesses to demonstrate that their product is lawfully sold in a Member State by issuing a declaration indicating the technical rules with which the product complies	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Introduce dissuasive measures to ensure that the obligation for national authorities to notify administrative decisions denying or restricting mutual recognition is respected	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>



Ensure that effective remedies are available to businesses who wish to take action against an administrative decision denying mutual recognition	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strengthen the role of Product Contact Points	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strict deadlines to reply to requests made from one authority to the other	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Other / Please specify:

The Commission should maintain a good functioning single market for goods. However, the Mutual Recognition Regulation permits national technical rules to frustrate the single market for goods for reasons related to a public interest. These must be non-discriminatory and proportionate in practice. However, the Commission has limited powers and tools at its disposal to question and assess whether national technical rules are in fact non-discriminatory or proportionate in practice and ultimately in line with the Mutual Recognition Regulation. In order for the Commission to successfully uphold the single market for goods in this area it could be aided by being permitted more powers to determine if a national technical rule is compatible with the overarching EU right to mutual recognition.

Question 31: What would be the most appropriate as an alternative to mutual recognition? (Multiple choices)

	I agree	I do not agree	I do not know
Harmonise technical requirements in specific fields where mutual recognition does not appear sufficient to ensure free movement of goods	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Harmonise certain basic requirements that a product would need to satisfy	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Facilitate market access for products lawfully sold in one Member State and complying with European standards	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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