

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

Fields marked with * are mandatory.

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Introduction

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.). This is the principle of mutual recognition.

The right to sell a product lawfully marketed in another Member State 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.

The practical modalities on how mutual recognition works in practice are defined by Regulation (EC) No 764/2008 (the Mutual Recognition Regulation). The Regulation introduces, among other things, Product Contact Points to assist businesses wishing to sell products which are already lawfully sold in other Member States. It also establishes an obligation for national authorities to notify and justify any decision which denies mutual recognition and market access because of overriding national rules.

An external evaluation carried out in 2015 showed that mutual recognition is not fully exploited by either businesses or national authorities, leading to lost opportunities. To fully benefit from the potential of the internal market, the Commission undertook, in its [Single Market Strategy](#), to improve the functioning of mutual recognition by revising the Mutual Recognition Regulation. More information can be found in the [background document](#).

With this open-line consultation the Commission seeks the views of all interested parties on the mutual recognition principle and its possible shortcomings, the functioning of the Mutual Recognition Regulation and potential options to be explored for the revision of the Mutual Recognition Regulation.

The consultation will run until 30/09/2016.

We strongly encourage responding organisations to register in the [EU Transparency Register](#) and to subscribe to its Code of Conduct.

If you are a registered organisation, please indicate in the questionnaire the name and address of your organisation and your Register ID number.

About you

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1. Please identify the national authority you are responding for:

- ☐ Product Contact Point for mutual recognition
- ☒ Other

*

Please specify:

Ministry of Economic Affairs

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2. Please indicate the country of establishment of the authority:

- ☐ 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
- ☐ Other

*

3. 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).
- ☐ Only anonymously. No information regarding identification will be published but only replies to the following sections. In this case, please ensure that your replies to the following sections do not allow identification.
- ☐ No (your contribution will not be published and its content may be used internally within the Commission. In any case, the contribution will be subject to the rules on access to documents, Regulation (EC) No 1049/2001).

Your experience and views on mutual recognition and its potential shortcomings

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4. When checking if products available on your market and coming from another Member State comply with the national rules you are enforcing, do you verify if they are already lawfully marketed in the Member State of origin?

- ☒ Yes
- ☐ No

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5. 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 fully aware of it
- ☐ I am partially aware of it
- ☐ I only found out about it through this public consultation

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6. Do you think it is necessary to raise awareness on mutual recognition?

- ☒ Yes
- ☐ No
- ☐ I do not know

Your views on the functioning of Mutual Recognition Regulation

The Mutual Recognition Regulation defines when mutual recognition can be used and introduces procedural guarantees for businesses wishing to rely on it for selling their products, such as: Product Contact Points to inform businesses about national rules, the obligation for national authorities to notify and justify a decision which denies mutual recognition and market access because of national rules.

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7. How much do you know about the Mutual Recognition Regulation?

- ☒ I am fully aware of it
- ☐ I am partially aware of it
- ☐ I am aware of its existence but I do not really know what it means for my business in practice or how I can make use of it
- ☐ I am aware of its existence but I do not use it because it is too costly
- ☐ I am aware of its existence but I do not use it because it is too burdensome
- ☐ I only found out about it through this public consultation

8. 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

9. 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Obligation for national authorities to notify to the Commission and justify a decision denying market access based on national rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Product list mentioned under Article 12.4 of the Regulation listing non-exhaustively products for which mutual recognition could apply	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Guidelines for national authorities and businesses on the application of the mutual recognition principle	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

10. Based on your experience, how do you assess communication when applying mutual recognition?

	Good	Average	Poor	I do not know
*Communication with authorities within your Member State	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Communication with authorities from other Member States	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Communication with businesses	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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10a. If communication is average / poor, what are, based on your experience, the main causes? (Multiple choices)

- ☒ Lack of knowledge about mutual recognition
- ☐ Language problems
- ☐ IT tools not appropriate to ensure proper communication
- ☒ Other

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Please specify:

The long duration and administrative burden of the current mutual recognition procedure under the regulation causes authorities and businesses to avoid or abandon the mutual recognition administrative procedure.

11. What are the costs for national authorities related to the implementation of the Mutual Recognition? Please rank their importance on a scale from 1 to 5, 1 being the lowest and 5 the highest.

	1	2	3	4	5
*Establishing and ensuring the functioning of Product Contact Points (<i>infrastructure and IT</i>)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Recurrent costs related to the functioning of the Product Contact Points, including translation costs (<i>staff only</i>)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*The obligation of the Member State of destination to notify a decision denying market access and the accompanying procedural safeguards	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other / Please specify:

According to our authorities responsible for the mutual recognition procedure, the current procedure is burdensome: it takes a lot of time and resources in order to complete the procedure. Simplifying the procedure should therefore be a priority in this possible revision of Regulation 764/2008

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

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13. Based on your experience, would you agree or disagree with the following statement: "these costs (as referred to in Question 11) are acceptable and proportionate to the benefits the Mutual Recognition Regulation brings in terms of facilitating market access"?

- ☐ I agree
- ☐ I disagree
- ☒ I do not know

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

- ☒ Yes
- ☐ No

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Please specify:

Questions on Mutual recognition are often (also) dealt with in the SOLVIT network

15. 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 checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" 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"/>

16. 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>
*Increase legal certainty for businesses when using mutual recognition to sell products abroad	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Facilitate communication between all actors involved in mutual recognition (business, national authorities, European Commission)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>

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

17. 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 (<i>The product list contains the products not covered by harmonised legislation where mutual recognition is applicable</i>)	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other / Please specify:

1. Provide for national mutual recognition authorities more clarity and guidance about the rules regarding refusal or acceptance of product test reports and certificates, especially when the certificates are issued by conformity-assessment bodies other than accredited conformity-assessment bodies as laid down in Regulation (EC) No 765/2008.
2. Provide more clarity for national mutual recognition authorities and businesses on who needs to provide evidence of the fact that a product is already lawfully marketed in another Member State. Also, provide more clarity on how to provide this evidence (form and extent of evidence). Finally, provide more clarity on how to deal with this issue of providing evidence in the situation where the other Member State does not have any specific regulation in place regarding the product (making it unclear whether the authorities in the other Member State were aware, involved and/or in a position to act when the product was put on the market).

18. 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"/>

Other / Please specify:

This question is difficult to answer, because these three options do not seem to be an 'alternative' for mutual recognition, but rather co-existing procedures to ensure market access. Each of these procedures are used in specific situations: (technical) harmonisation is used when there are specific reasons to regulate (certain aspects of) a product. The development of product standards is often market-driven and of a voluntary nature. Mutual recognition is a principle that ensures market access when there are no specific product rules or standards in place, or when there are diverging rules applicable. So these procedures are not an alternative in the sense that one procedure can take over when the other procedure fails. All there market-access procedures should co-exist, strengthening together the single market for goods.

Thank you very much for replying to these questions!

Contact

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