



CONSULTATION DOCUMENT

MUTUAL RECOGNITION:

Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC.

28 FEBRUARY 2007

URN 07/720

Consultation seeking views on the Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC. The full EU proposal can be viewed at:

http://ec.europa.eu/enterprise/regulation/goods/docs/mutrec/2007/com2007-36regulation_en.pdf

This consultation document seeks your views on the above proposal, which was adopted by the European Commission on 14 February 2007 and is currently under consideration by the European Parliament and Council of Ministers

You should note that although the consultation will last for twelve weeks, there are strong indications that negotiations are likely to move very swiftly, with the Presidency looking to complete negotiations by the middle of May. Accordingly, you are strongly advised to respond as quickly as possible in order to ensure that your views are fully taken into account during the negotiation period.

You should also be aware of a separate consultation on the proposals for a Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and a decision on a common framework for the marketing of products. This consultation relates to measures adopted as part of the same package of measures on the Free Movement of Goods. It is therefore possible that those with an interest in this proposal may have a similar interest in the other proposals. Copies of this consultation can be obtained from Richard Lawson at Richard.Lawson@dti.gsi.gov.uk.

Starting Date: Wednesday 28 February 2007

Closing Date: Wednesday 23 May 2007

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1. EXECUTIVE SUMMARY

a. About the Proposal

The Commission's proposal aims to facilitate the free movement of goods within the EU by improving the functioning of Mutual Recognition. Mutual Recognition is the principle of EU law under which Member States must allow goods that are legally sold in another Member State to be sold within their own territory.

The Commission contends that the Principle of Mutual Recognition (see box below for detailed definition of principle) is not being respected fully, due to legal uncertainty and lack of awareness among businesses and Member State authorities. It therefore aims to improve the functioning of Mutual Recognition and thereby provide greater regulatory certainty for businesses wishing to sell goods in other EU Member State. It should be noted at the outset that this proposed Regulation only applies to the "non-harmonised" field of goods, and does not apply to goods that are already subject to EU harmonising legislation (such as the EU Directives on Toy Safety, Machinery, Medical Devices, Pharmaceuticals, etc). As noted above, a separate consultation is being conducted on measures to improve the operation of certain types of harmonising legislation known as the New Approach Directives. For more information on these, please see:

<http://www.dti.gov.uk/innovation/strd/ecdirect/index.html>

The proposal for a Regulation on Mutual Recognition is now under consideration by the European Parliament and the Council of Ministers. It is expected that negotiations will move very swiftly, and may even be completed within the next two months. The purpose of this consultation is therefore to obtain views and information on the likely effects of the Commission's proposal on UK consumers, citizens, businesses, market surveillance authorities, and local authorities, so as to better inform the UK Government's position in negotiations in the Council and elsewhere. This consultation will run from 28 February until 23 May. However, as negotiations are likely to move swiftly, early responses would be particularly appreciated.

The Mutual Recognition Principle

Mutual Recognition is the principle of EU law under which Member States must allow goods that are legally sold in another Member State to be sold within their own territory. Member States are only allowed to derogate from this principle if they adopt their own national technical rules which are proportionate and which are justified by the EU Treaty or by "overriding requirements of public interest" as defined by the European Court of Justice. At present, Mutual Recognition only exists as a concept defined by the European Court of Justice's interpretation of the EU Treaty. It is not explicitly enshrined in the Treaty.

b. Principle features of the proposed Regulation

Chapter 1 – Subject Matter and Scope

This section outlines the purpose of the measure and its scope.

- In terms of purpose, the proposal: (a) sets out a procedure that market surveillance authorities will have to follow if they want to use national technical rules in order to prevent goods being marketed in their territory; and (b) obliges Member States to set up Product Contact Points to provide information to businesses on their national technical rules.
- In terms of scope, the proposal applies to measures taken by authorities in any EU Member State applying national technical rules with respect to all industrial and agricultural products. There are specific exemptions for measures taken under existing EU legislation, such as the General Products Safety Directive (GPSD), which covers consumer goods, various food safety rules, and rules for the rail sector.

Chapter 2 – Application of a technical rule

This section lays down the procedure that market surveillance authorities in Member States will have to follow if they wish to take action to prevent a product from being marketed in that Member State or require it to be modified. The procedure requires:

- Before taking action to remove or require modification of a product, the market surveillance authority must write to the producer or distributor.
- In writing, it must set out under which national law the action is being taken and how the national law is compatible with EU law on the free movement of goods.
- The producer concerned has twenty working days to respond.
- After twenty days the authority can take its planned action, but it must inform the producer of the reasons for its decision and state what routes of appeal there are.

Chapter 3 – Product Contact Points

This section requires each Member State to set up an information point which will store and provide information relating to:

- national technical rules applicable in the Member State
- contact details of competent authorities; and
- means of judicial redress available in the Member State

Chapter 4 – Final Provisions

This section outlines details relating to implementation of the Regulation.

c. The UK's current position

In principle, we support any measure which aims to facilitate trade within the EU as this will lead to greater choice and value for consumers, and greater prosperity for businesses. We would like to see the Mutual Recognition principle being applied correctly and it is clearly preferable for businesses to have greater certainty about which national technical rules exist and how they are applied. We are therefore supportive of the principles behind this Regulation.

It is also important for Member States to be able to maintain their own rules and to take action swiftly, especially when there is a genuine threat to public safety. Accordingly, we will need to analyse the proposal closely in order to ensure that it does not undermine these rights. We would welcome the views of market surveillance authorities and consumer groups in particular on this issue.

More generally, we are currently uncertain as to scale of the problem facing UK businesses when they wish to take advantage of the Mutual Recognition principle in marketing goods in other Member States. It is consequently difficult to understand whether a Regulation along the proposed lines would help to solve the problem. We would therefore welcome the views of businesses as to how substantial the problem is and whether the proposal would help to address it.

With regard to specific proposals:

- **Scope:** We support the list of exemptions listed in the Regulation. We will need to look more closely at the effect of the apparent inclusion within the scope of safety measures with respect to non-consumer goods. We would welcome the views of stakeholders on these questions and indeed on other potential exemptions.
- **Procedure:** We are unsure as to whether the procedure would genuinely assist businesses. Conversely, we are aware that such a procedure could potentially be burdensome for market surveillance authorities. Accordingly, we would welcome the views of stakeholders on the procedure outlined in Chapter 2.
- **Product Contact Points:** This proposal appears to provide a genuinely useful service for businesses, but we will wish to ensure that the information which it requires Member States to keep and to provide is reasonable. Views from businesses as to what sort of information would be helpful for a Contact Point to keep and what form that Contact Point should take (e.g. web database) would be welcome.

2. How to Respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A copy of the Consultation Response form is enclosed at Annex C.

Please respond, either by email, fax or letter to:

Angela Pearce
Europe and World Trade Directorate
Department of Trade and Industry
Bay 4125
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 2748
Fax: 020 7215 2234

Email: angela.pearce@dti.gsi.gov.uk

Additional copies

You may make copies of this document without seeking permission. The documents for this consultation are downloadable electronically from the DTI website: <http://www.dti.gov.uk/consultations/>. Further printed copies of the consultation document can be obtained from:

DTI Publications Order line
ADMAIL 528
London SW1W 8YT
Tel: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845 015 0030
www.dti.gov.uk/publications

Other versions of the document are available in Braille, or audiocassette.

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance

with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want any information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

3. Help with queries

Questions about the policy issues raised in this document can be addressed to:

Name: Angela Pearce

Team: Europe and World Trade Directorate
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 2748

Email: angela.pearce@dti.gsi.gov.uk

Name: Jerome Glass

Team: Europe and World Trade Directorate
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 3534

Email: jerome.glass@dti.gsi.gov.uk

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Simon Towler,
Department of Trade and Industry
Better Regulation Team
1 Victoria Street
London
SW1H 0ET

E-mail: Simon.Towler@dti.gsi.gov.uk
Tel: 020 7215 1964
Fax: 020 7215 1304

A copy of the Code of Practice on Consultation is in Annex B.

4. What happens next?

The final closing date for this consultation will be **23 May 2007**.
The Government response to consultation should be published on the DTI website within 3 months of the close of consultation.

5. Consultation questions

Please respond to questions only if applicable. These are repeated in the Consultation Response Form.

1. **General:** The Commission's perception is that the application of the Mutual Recognition Principle in the EU is not working effectively at the moment. We currently do not have much evidence on how UK businesses are faring in seeking to take advantage of the Mutual Recognition principle whilst exporting goods to the EU.

Question: Have you encountered problems with another Member State's national technical rules when trying to export goods? If so, please describe.

2. **Scope:** The Commission has provided for a number of exemptions from the Regulation. Measures taken under the General Product Safety Directive and EU food safety legislation are excluded. Railways systems and equipment are also excluded.

Question: Do you agree with these exemptions? Do they go too far and why? Alternatively, what other exemptions should be considered and why?

3. **Scope:** The proposal applies to both consumer goods and non-consumer goods. It is assumed that the vast majority of non-consumer goods will be subject to EU harmonizing legislation. However, it would be extremely useful to have examples of non-consumer goods that are not subject to this harmonizing legislation and consequently to which Mutual Recognition applies.

Question: Are you aware of any non-consumer goods, which are not subject to harmonizing legislation, and to which this Regulation would therefore apply?

4. **Procedure:** The Commission contends that greater regulatory certainty would assist businesses wishing to export goods to other Member States. It has therefore put forward a procedure (described in Articles 4 –6 of the Regulation) to be followed by market surveillance authorities wishing to take action under national rules.

Question: Do you think that such a procedure would be effective or would other methods be more effective?

5. Procedure: The procedure as outlined in the Regulation (Articles 4 – 6) includes a twenty working day “standstill” period to allow businesses to submit comments to the Member State authority which intends to take action against one of its products.

Question: What do you think of this proposal? What are your views on the practical consequences of this proposal?

6. Product Contact Points: The Commission believes that contact points would assist businesses in trading across the EU (Articles 7 – 9 of the Regulation) .

Question: How would such a system be beneficial, if at all?

7. **Question: Do you have any observations or comments that might help the consultation process as a whole, (for example in identifying costs and benefits in the UK)? Are there any particular additions or changes to the Regulation that you would like to see?**

Annex A

Summary of EU Commission Impact Assessment

1. Title of Proposal

Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC.

The Proposals are currently at the pre-negotiating stage.

2. Summary of EU Impact Assessment

Please see the Commission's Impact Assessment that is attached.

The impact assessment provides a definition of the Mutual Recognition principle and identifies the problems which have resulted in its incomplete application by Member States. It then seeks to evaluate the scale of these problems and concludes that obstacles to the Mutual Recognition Principle reduce trade in goods in the internal market by up to 10% – or €150 billion – in 2006.

The impact assessment evaluates four options for policies that aim to ensure the proper application of the Mutual Recognition Principle. These options are:

- Option 1: No change to current situation
- Option 2: A non-regulatory approach (e.g. using websites, screening)
- Option 3: The purely regulatory approach (i.e. only a Regulation)
- Option 4: A combination of regulatory and non-regulatory approaches. (i.e. which would include a website as well as a Regulation)

The different options are outlined in Section 4 and evaluated for impact in Section 5.

The document concludes that option 4 is optimal and it is this option which is given flesh in the proposal for a Regulation. Accordingly, it should be noted that although the impact assessment outlines four possible options, in going forward the negotiation will focus only on the proposal for a Regulation i.e. option 4.

Benefits

In terms of benefits, it is estimated that ensuring the perfect operation of mutual recognition inside the EU would produce a one-off increase in EU GDP of 1.8%.

Costs

Conversely, in terms of costs, the Commission estimates that the implementation of mutual recognition in daily practice would have a very tangible impact on the workload of national authorities and that setting up Product Contact Points would certainly result in initial start-up costs. Due to the varying degree to which Member States already apply these rules and have these systems, it is very difficult to estimate costs on a Member State by Member State basis.

The work to assess how much implementing the Regulation in the UK would cost has now begun. We should be aware, however, that although the Regulation (i.e. Option 4) is almost the least burdensome option for the Commission according to the impact assessment, this is not necessarily the case for the Member States. This is because the burden of applying the procedure would fall on market surveillance authorities, and that of setting up the Contact Points would fall on governments. It should also be borne in mind at all times that the proposal, as drafted, should not place any burden on businesses.

Conclusion

We would welcome any views which you may have on the impact assessment, potential costs which have not been accounted for and potential benefits which may arise. Similarly, in order to aid our own impact assessment, evidence of the difficulties (or ease) of trading across Member State boundaries by taking advantage of the Principle of Mutual Recognition would be welcome.

You can view the EU's Commission's full Impact Assessment and their Executive Summary of the Impact Assessment on their website see links below:

The Impact Assessment:

http://ec.europa.eu/enterprise/regulation/goods/docs/mutrec/2007/sec2007-112impactassessment_en.pdf

The Executive Summary of the Impact Assessment:

http://ec.europa.eu/enterprise/regulation/goods/docs/mutrec/2007/sec2007-113_en.pdf

Annex B

The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation practices, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

**MUTUAL RECOGNITION: PROPOSAL FOR A
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL LAYING
DOWN PROCEDURES RELATING TO THE
APPLICATION OF CERTAIN NATIONAL
TECHNICAL RULES TO PRODUCTS LAWFULLY
MARKETED IN ANOTHER MEMBER STATE AND
REPEALING DECISION 3052/95/EC.**

CONSULTATION RESPONSE FORM

The closing date for this consultation is: 23/05/2007

Name: _____

Organisation (if applicable): _____

Address: _____

Please tick a box which best describes your organisation or role:

<input type="checkbox"/>	Large International Business
<input type="checkbox"/>	Small to Medium Enterprise
<input type="checkbox"/>	Representative Organisation
<input type="checkbox"/>	Trade Union
<input type="checkbox"/>	Interest Group
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Other (please describe):

Return completed forms (by email, fax or letter) to:

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1 Victoria Street
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Email: angela.pearce@dti.gsi.gov.uk

Question 1

General: The Commission's perception is that the application of the Mutual Recognition Principle in the EU is not working effectively at the moment. We currently do not have much evidence on how UK businesses are faring in seeking to take advantage of the Mutual Recognition principle whilst exporting goods to the EU.

Question: Have you encountered problems with another Member State's national technical rules when trying to export goods? If so, please describe.

Comments:

Question 2:

Scope: The Commission has provided for a number of exemptions from the Regulation. Measures taken under the General Product Safety Directive and EU food safety legislation are excluded. Railways systems and equipment are also excluded.

Question: Do you agree with these exemptions? Do they go too far and why? Alternatively, what other exemptions should be considered and why?

Comments:



Question 3:

Scope: The proposal applies to both consumer goods and non-consumer goods. It is assumed that the vast majority of non-consumer goods will be subject to EU harmonizing legislation. However, it would be extremely useful to have examples of non-consumer goods that are not subject to this harmonizing legislation and consequently to which Mutual Recognition applies.

Question: Are you aware of any non-consumer goods, which are not subject to harmonizing legislation, and to which this Regulation would therefore apply?

Comments:

Question 4:

Procedure: The Commission contends that greater regulatory certainty would assist businesses wishing to export goods to other Member States. It has therefore put forward a procedure (described in Articles 4 –6 of the Regulation) to be followed by market surveillance authorities wishing to take action under national rules.

Question: Do you think that such a procedure would be effective or would other methods be more effective?

Comments:



Question 5:

Procedure: The procedure as outlined in the Regulation (Articles 4 – 6) includes a twenty working day “standstill” period to allow businesses to submit comments to the Member State authority which intends to take action against one of its products.

Question: What do you think of this proposal? What are your views on the practical consequences of this proposal?

Comments:



Question 6:

Product Contact Points: The Commission believes that contact points would assist businesses in trading across the EU (Articles 7 – 9 of the Regulation) .

Question: How would such a system be beneficial, if at all?

Comments:

Question 7:

Question: Do you have any observations or comments that might help the consultation process as a whole, (for example in identifying costs and benefits in the UK)? Are there any particular additions or changes to the Regulation that you would like to see?

Comments:



Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

Here at the Department for Trade and Industry we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No