

BERR

Department for Business
Enterprise & Regulatory Reform

**PROPOSED EC MUTUAL
RECOGNITION REGULATION**

**Government Response to
Consultation**

NOVEMBER 2008

URN 08/1474

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**

GOVERNMENT RESPONSE TO CONSULTATION

CONTENTS

Introduction	3
Summary of Responses	4
The Government Response	5
What Happens Next	6
Annex A: List of Respondents	7

INTRODUCTION

1. In February 2007, the government published a consultation document seeking views on the Proposal for a Regulation to improve the free movement of goods within the EU by improving the functioning of Mutual Recognition.
2. The principle of Mutual Recognition helps to ensure that the EU single market functions effectively in respect of products which are not subject to harmonised EU rules. It requires Member States to allow goods legally sold in another Member State to be sold within their own territory unless their refusal to do so can be justified in terms of proportionality and an overriding public interest requirement. These requirements are laid down by Article 30 of the EC Treaty and the case-law of the European Court of Justice. They include consumer protection and public morality...
3. The Commission's proposal aims to improve the functioning of Mutual Recognition which the Commission contends 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 working of Mutual Recognition and thereby provide greater regulatory certainty for businesses wishing to sell goods in other EU Member States.
4. The proposal sets out a procedure that market surveillance authorities will have to follow if they want to stop goods, lawfully sold in other Member States, being marketed in their territory on the basis of their national technical rules. It also obliges Member States to set up Product Contact Points to provide information to businesses on their national technical rules.
5. 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 pieces of EU legislation which have already established similar regimes in relation to particular categories of products, such as the General Products Safety Directive (GPSD which covers consumer goods), various rules relating to food safety and the rail sector.
6. The full text of the Regulation is available from the following link:

http://ec.europa.eu/enterprise/regulation/goods/docs/mutrec/2007/com2007-36regulation_en.pdf
7. A copy of the consultation document is available from:

<http://www.berr.gov.uk/consultations/page38029.html>

SUMMARY OF RESPONSES

8. There were six responses [See Annex A for list of respondents].
9. A summary of responses to each question is set out below:

Consultation Questions

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 for 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.

Half of the respondents indicated that they had not encountered any such problems or that it was not relevant to their situation, however, the other half cited difficulties in exporting in areas such as the requirements for materials and articles in contact with food, and the request for additional safety testing where this had already been completed in the UK and should have been acceptable across the EU.

2. **Scope: The Commission has provided for exemptions for certain existing measures. For example, national laws arising from the General Product Safety Directive or from food safety laws, are excluded. Railway systems and equipment are also excluded.**

Question: Are these exemptions sufficient? Do they go too far and why? Alternatively, what other exemptions should be considered and why?

Respondents generally agreed with the proposed exemptions. Some respondents felt that the hallmarking of precious metals should also be exempted from the Regulation.

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

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

Most respondents did not give any examples, however, one suggested spare parts for non-consumer goods and another second hand goods.

- 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?

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. Nearly half the Respondents welcomed this. One respondent felt that a system of arbitration should be the first step in any disagreement on the sale of goods from another Member State. The British Council for Hallmarking were worried that if enforcement agencies could not remove items without appropriate marks during the “standstill” period this would be enough time to flood the market, particularly at Christmas, with goods which it is not lawful to sell as gold, silver or platinum.

- 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 consequence of this proposal?

Two respondents thought that the twenty day period was appropriate. One respondent was concerned that twenty days would not give Producers adequate time to obtain the necessary paperwork/approvals etc required by Member State authorities. Representatives for the Hallmarking industry took the differing view that the twenty day standstill period was too long if Producers could continue to sell items with possibly inappropriate marks during this period.

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?

The majority of respondents welcomed the establishment of Contact Points as removing uncertainty and increasing awareness of national technical rules. They wanted the whole system to be online with links to appropriate external contacts. It should operate in at least 3 of the main EU languages.

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?**

One Respondent raised concerns about the cost involved in recalling items already placed on the market, if they were subsequently found to be in breach of technical rules.

One respondent wanted greater enforcement action against Member States who do not comply fully with EU legislation.

GOVERNMENT RESPONSE

10. We would like to thank all the Respondents for taking part in this consultation and for their very useful contributions.
11. A fully functioning internal market for goods is important for European integration, leading to greater choice and value for consumers, and greater prosperity for businesses. The Commission estimates that national technical rules that prevent EU manufacturers from marketing their goods in other Member States have reduced trade in goods inside the EU by up to 10% - or €150 billion in 2000.
12. The UK supports the Mutual Recognition Principle as it provides UK/EU operators with greater legal certainty in marketing their goods in other Member States based on the rules and regulations of their home country. The principle is particularly important for SMEs, who do not have the means to research and comply with up to 29 sets of national rules (including EEA countries) to sell their products within the Internal Market.

13. However, it is vital that Member States are able to enforce technical rules which are justified in terms of an overriding public interest requirement proportionately and effectively. In some cases, where is a genuine threat to public safety/consumer confidence, Member State authorities need to be able to act immediately, without waiting for 20 days. The final text of the Regulation allows for this immediate action.
14. We support the Product Contact Points. The agreed Regulation requires Member States to establish product contact points to provide essential information, but allows flexibility in their format and ability to provide optional additional information.

WHAT HAPPENS NEXT

15. The Regulation was adopted by the Council and Parliament in July 2008, and published in the Official Journal in August 2008. It will come into force on 13 May 2009.
16. BERR will implement the Regulation in the UK by ensuring that other government departments and market surveillance authorities follow the procedures set out in the Regulation when enforcing national technical rules, and by establishing a product contact point containing information on the UK's national technical rules.
17. Copies of original responses are available for original inspection on request. Please contact Paul Brione via email at paul.brione@berr.gsi.gov.uk

Annex A

List of Respondents to consultation:

1. British Hallmarking Council
2. The Birmingham Assay Office
3. The Sheffield Assay Office
4. Bureau Veritas Consumer Product Services UK Limited
5. Secure Consultants (Europe) Limited
6. Private Individual