



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2017)

Opinion

Title: Evaluation / Mutual recognition of goods

Overall opinion: POSITIVE

(A) Context

According to the Mutual Recognition principle, a Member State of destination may not prohibit the sale on its territory of products that are lawfully marketed in other Member States. This applies even for products that were made in accordance with different technical rules. A Member State can only deny market access if there are overriding public interest concerns such as protection of health, consumers, environment, etc. Mutual recognition helps the single market for goods to function properly. It is in Articles 34 and 36 of the Treaty on the Functioning of the European Union (TFEU) and applicable case law.

This evaluation assesses how well mutual recognition is functioning in the field of goods. It covers the mutual recognition principle itself and Mutual Recognition Regulation 764/2008, which defines practical implementation modalities.

(B) Main considerations

The Board gives a positive opinion, but considers that the report should be improved with respect to the following key aspects:

- (1) There is scope to improve the description and the relative importance of the main problems encountered in the application of the mutual recognition principle and the corresponding Regulation. Why do the key instruments put in place by the Regulation not deliver?**
- (2) While being a REFIT evaluation, it does not clearly estimate existing regulatory burdens on companies or public administrations, or the potential for cost savings.**
- (3) The report does not provide clear conclusions on whether the Mutual Recognition Regulation remains relevant or not, or on the extent to which there is scope to remedy its ineffectiveness.**

(C) Further considerations and recommendations for improvement

(1) Effectiveness and magnitude of the problem

The report gives indications that the application of the mutual recognition principle and the related Regulation do not work properly. However, it does not provide robust evidence to show the extent of the problem. It should use information from the parallel draft impact assessment to estimate the magnitude of the problem (with the necessary caveats). In particular, it should further assess bottlenecks of the main delivery mechanisms: Contact Points in the national administrations, Commission database, mutual recognition clause in technical specifications. The report should differentiate between technical difficulties, lack of resources for enforcement, lack of awareness and political reluctance.

The presentation of the results of the open public consultation should mention that they are not statistically representative. The report should better explain why it considers that the replies provide a reliable basis to substantiate the assessment.

(2) Baseline

The baseline should analyse how the situation would have evolved without the Regulation. It should show to what extent the observed evolution correspond to the estimates foreseen in the 2007 impact assessment accompanying the Regulation. It should also show to what extent the objectives of the Regulation were attained or not.

(3) Efficiency

The report should quantify costs and benefits as much as possible and identify the unnecessary regulatory burden. This is particularly important given the REFIT dimension. The report should clearly indicate the efforts made to obtain quantified data. The evaluation should compare figures against other estimates available (from statistics, studies, etc.) to show their robustness.

(4) Relevance

The report should discuss in this section how the lack of effectiveness of mutual recognition (both the principle and the Regulation) has no apparent major negative effects on the goods markets. In particular, the report should assess the relevance of the main measures of the Regulation, given their lack of effectiveness. The report should better analyse how new developments in e-commerce affect mutual recognition and its application.

(5) Conclusions

The evaluation should present clear conclusions and underpin the statements with evidence. It should elaborate on the applicability of the mutual recognition principle, on whether the related Regulation remains relevant and to what extent there is scope to improve its effectiveness. It should also assess the usefulness and functioning of the main elements of the Regulation, for instance of the Product Contact Points or of the mutual recognition clause.

The overall conclusions (e.g. on effectiveness and efficiency) should be consistent with the findings of previous sections. The report should present the limitations of the available evidence more transparently.

The report should draw lessons from the suboptimal functioning of the monitoring and reporting framework. It should further explain how the DG would collect more reliable data for monitoring purposes.

Some more technical comments have been transmitted directly to the author DG.

(D) RSB scrutiny process

The lead DG is advised to ensure that these recommendations are duly taken into account in the report prior to launching the interservice consultation.

Full title	REFIT evaluation accompanying the proposal for a Regulation on mutual recognition of goods
Reference number	2015/GROW/056
Date of RSB meeting	5 April 2017