

MBB Position Paper

The Malta Business Bureau is the EU-Business advisory office of the Malta Chamber of Commerce, Enterprise and Industry, and the Malta Hotels and Restaurants Association.

The Goods Package

The European Commission has adopted two proposed regulations intending to strengthen the Single Market for Goods through **revising the Mutual Recognition Regulation and enhancing Market Surveillance**.

At first glance, the MBB sees the legislative proposals as being a positive step forward in ensuring that true free movement of goods is realised, while ensuring that unjustified national barriers are done away with. Moreover, the proposals should, on paper at least, ensure that market surveillance is effective throughout the Single Market, and thus guaranteeing a level-playing field for operators.

To ensure that market surveillance is carried out effectively, better cooperation between competent authorities is necessary to maintain fair competition by ensuring that non-compliant traders are detected.

Turning to mutual recognition, operators are often not fully aware of their rights, and moreover they have no effective remedies at their disposal if they suspect those rights have not been respected.

Key aspects from the proposed regulations

Mutual Recognition

In the area of Mutual Recognition, the Goods Package contains a [proposal](#) (with [Annex](#)) for a new Regulation, which will replace [Regulation 764/2008](#). Relevant elements from the proposal include the following (non-exhaustive):

- **Voluntary mutual recognition declaration** (Article 4) to demonstrate that goods are already lawfully marketed in another Member State, in order to make it easier to invoke the mutual recognition principle. This declaration would frame what information is required from the operator via a standardised template. The operator would not be obliged to use it, but it would certainly make life easier.
- **Certificates and test reports** (Article 5(2)). The proposed regulation entails a provision emphasising that Member States should in principle recognise certificates and test reports from conformity assessment bodies.
- **Communication when market access is denied** (Article 5(3) and 6(2)). All Member States will need to be informed of decisions to deny, restrict or suspend market access (not only the economic operator and the Commission, as before).
- **SOLVIT as a remedy for Mutual Recognition** (Article 8). SOLVIT would be able to refer to the European Commission for input.
- **Product Contact Points** (Articles 9-10). The Commission wants to ensure a good functioning of the PCPs, including administrative cooperation between the PCPs in different Member States. Also, economic operators are not always aware of the existence of PCPs. The proposal enhances their role.

In the area of Market Surveillance, the Goods Package contains a [proposal](#) (with [Annex](#)) for a new Regulation, complementing [Regulation 765/2008](#). Relevant elements from the proposal include the following (non-exhaustive):

- **EU responsible person** (Article 4). The proposal introduces a ‘responsible person’ within the EU for products coming from third countries.
- **Product Contact Points** (Article 6). The proposal provides that Product Contact Points are extended to harmonised products. This could allow for the provision of more integrated information to economic operators beyond the harmonised/non-harmonised divide and for better information to economic operators.
- **Possibility of agreements between authorities and operators** (Articles 7 and 8). The proposal introduces the possibility of enhanced cooperation between market surveillance authorities and market operators through compliance partnerships and memoranda of understanding. This could allow for better cooperation with market operators.
- **Activities and powers of market surveillance authorities** (Articles 12 and 14). The proposal covers the activities and powers of market surveillance authorities.
- **Introduction of EU testing facilities** (Article 20). The proposal would introduce the possibility for the Commission to designate EU testing facilities. In principle this could be a positive development as long as market surveillance authorities are obliged to recognise the test results from these facilities.
- **Administrative fees** (Article 21). The proposal makes clear that market surveillance authorities can charge administrative fees to the economic operator in case of non-compliance. It is key that paying fees by companies for market surveillance only applies to non-compliant cases, not for those products that are investigated but turn out to be compliant.
- **Customs and market surveillance authorities** (Articles 26-30). Market surveillance authorities would have to inform border authorities about categories of high-risk products. The customs authorities would notify market surveillance authorities of suspended products, after which the surveillance authorities can step in. These surveillance authorities would then inform customs authorities not to release products if they present a serious risk or if they do not comply with harmonisation legislation.
- **Network of market surveillance authorities** (Articles 32-33). The establishment of an EU network (“Union Product Compliance Network”) could improve coordination, especially since Member States would also have to designate a single liaison authority (article 11).

ENDS

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