

## 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.**

### Proposed Amendments to the proposal on Mutual Recognition (COM(2017) 796)

**Voluntary mutual recognition declaration (Article 4).** This declaration to demonstrate that goods are already lawfully marketed in another Member State can be helpful for economic operators in reducing the administrative burden of demonstrating that a product is lawfully marketed in another Member State, if the facility is given the awareness it deserves.

<p><b>4(2a) (new)</b></p>	<p><b>The Commission shall ensure that a template for the Mutual Recognition Declaration and relevant guidelines to complete the declaration are made available on the Single Digital Gateway in official languages of the Union.</b></p> <p><i>Justification: More awareness should be created about what the economic operators need to provide for correctly filling out the Mutual Recognition Declaration, and the Single Digital Gateway is the most appropriate tool to do that.</i></p>
<p><b>4(8)</b></p> <p>(a) any relevant information concerning the characteristics of the goods or type of goods in question;</p> <p>(b) any relevant information on the lawful marketing of the goods in another Member State;</p> <p>(c) any other information the competent authority considers useful for the purposes of its assessment.</p>	<p>(a) any relevant <b>and necessary</b> information concerning the characteristics of the goods or type of goods in question;</p> <p>(b) any relevant <b>and necessary</b> information on the lawful marketing of the goods in another Member State;</p> <p>(c) Any other information the competent authority considers <b>useful necessary</b> for the purposes of its assessment. <b>In such cases, the competent authority shall provide a justification for that request to the relevant economic operator.</b></p> <p><i>Justification: It is key that that companies who decide not to use this declaration are not subjected to extensive requests by national authorities. In this respect paragraph 8 seems too far-reaching, as ‘any other information’ could be requested without giving the reason for that request.</i></p>

**Assessment of Goods (Article 5):**

<p><b>5(1)</b> Where a competent authority of a Member State has doubts as regards goods which the economic operator claims are lawfully marketed in another Member State, the competent authority shall contact the relevant economic operator without delay and shall carry out an assessment the goods.</p>	<p>Where a competent authority of a Member State has doubts as regards goods which the economic operator claims are lawfully marketed in another Member State, the competent authority shall contact the relevant economic operator without delay <b>and the competent authorities of the member state where the economic operator claims the goods are lawfully marketed so as to verify the claim. In case the claims of the economic operator are not verified, then the competent authority shall carry out an assessment of the goods.</b></p> <p><i>Justification: In case of doubts, there is no need to revert immediately to a costly assessment of the goods. A step by step approach would make more sense because if the authority of the Home Member State can indeed certify that the goods are lawfully marketed in its territory, there is no need to assess the goods.</i></p>
<p><b>5(2)</b> In carrying out assessments under paragraph 1, the competent authorities of Member States shall take due account of the content of test reports or certificates issued by a conformity assessment body and provided by any economic operator as part of the assessment. Competent authorities of Member States shall not refuse certificates or test reports issued by a conformity assessment body accredited for the appropriate field of conformity assessment activity in accordance with Regulation (EC) No 765/2008 on grounds related to the competence of that body.</p>	<p>In carrying out assessments under paragraph 1, the competent authorities of Member States shall <b>take due account of consider</b> the content of test reports or certificates issued by a conformity assessment body and provided by any economic operator as part of the assessment. Competent authorities of Member States shall not refuse certificates or test reports issued by a conformity assessment body accredited for the appropriate field of conformity assessment activity in accordance with Regulation (EC) No 765/2008 on grounds related to the competence of that body.</p> <p><i>Justification: While we welcome the fact that the proposed regulation entails a provision emphasizing that Member States should ‘take due account of’ certificates and test reports from conformity assessment bodies, we believe that the wording could be stronger, given that such documentation can provide sufficient evidence that a good or type of goods is lawfully marketed.</i></p>

<p><b>5(3)</b> Where, on completion of an assessment under paragraph 1, the competent authority of a Member State takes an administrative decision with respect to the goods, it shall communicate its decision within 20 working days to the relevant economic operator referred to in paragraph 1, to the Commission and to the other Member States. Notification to the Commission and to the other Member States shall be done by means of the system referred to in Article 11.</p>	<p>Where, on completion of an assessment under paragraph 1, the competent authority of a Member State takes an administrative decision with respect to the goods, it shall communicate <b>its decision without delay and in any case</b> within <b>10 20</b> working days to the relevant economic operator referred to in paragraph 1, to the Commission and to the other Member States. Notification to the Commission and to the other Member States shall be done by means of the system referred to in Article 11.</p> <p><i>Justification: Since we are talking about the communication, and not the assessment, it is unreasonable to think that such a long timeframe is required.</i></p>
<p><b>5(6)</b> The administrative decision referred to in paragraph 3 shall specify the remedies available under the law in force in the Member State concerned and the time limits applicable to those remedies, and it shall also include a reference to the procedure under Article 8.</p>	<p>The administrative decision referred to in paragraph 3 shall <b>specify include a clear and detailed explanation of</b> the remedies available under the law in force in the Member State concerned, <b>how economic operators may avail themselves of these remedies</b> and the time limits applicable to those remedies, and it shall also include reference to the procedure under Article 8.</p> <p><i>Justification: It is crucial for businesses that all remedies available to them under national law are explained clearly to them.</i></p>

**Temporary Suspension of Market Access (Article 6):**

<p><b>6(2)</b> The competent authority of the Member State shall immediately notify the relevant economic operator, the Commission and the other Member States of any suspension pursuant to paragraph 1. The notification to the Commission and other Member States shall be made by means of the system referred to in Article 11. In cases falling within point (a) of paragraph 1 of this Article, the notification shall be accompanied by a technical or scientific justification demonstrating why the case is considered to fall within that point.</p>	<p>The competent authority of the Member State shall immediately notify the relevant economic operator, the Commission and the other Member States of any suspension pursuant to paragraph 1. The notification to the Commission and other Member States shall be made by means of the system referred to in Article 11. In cases falling within point (a) of paragraph 1 of this Article, the notification shall be accompanied by a technical or scientific justification demonstrating why the case is considered to fall within that point. <b>That scientific or technical justification shall at the same time also be communicated to the economic operator.</b></p>
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	<p><i>Justification: The economic operator should not only be notified of any suspension, it should also have the right to know the justification. According to Articles 5.3 and 5.5 economic operators have the right to receive all information of the administrative decision (art 5.3), including technical and scientific evidence (art 5.5.c). Obliging authorities to include the scientific evidence in this present article, is necessary and makes the whole text more consistent.</i></p>
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**SOLVIT as a remedy for Mutual Recognition (Article 8).** While we welcome the Commission’s proposal, and in particular the possibility of Commission involvement in the SOLVIT procedure, we believe that the proposed three-month deadline is too long for an opinion to be issued, particularly since the this would likely come in addition to the ten weeks it takes for SOLVIT to process a case. Moreover, we believe there should be an independent possibility for companies to request the Commission’s involvement in the process via SOLVIT.

In addition, it should be clear that the provisions of Article 8 have an effect on both decisions taken under Articles 5 and 6.

As such, we suggest the following amendments, which seek to improve clarity and the transparency of the process:

<p><b>8(1)</b> This Article applies if an economic operator affected by an administrative decision has submitted the decision to the Internal Market Problem Solving Network (SOLVIT) and, during the SOLVIT procedure, the Home Centre asks the Commission to give an opinion to assist in solving the case.</p> <p><b>8(2)</b> The Commission shall, within three months of receipt of the request referred to in paragraph 1, enter into communication with the relevant economic operator or operators and the competent authorities who took the administrative decision in order to assess the compatibility of the administrative decision with the principle of mutual recognition and this Regulation.</p> <p><b>8(3)</b> Following completion of its assessment, the Commission may issue an opinion identifying concerns that should, in its view, be addressed in the SOLVIT case and,</p>	<p><b>8(1)</b> This Article applies if an economic operator affected by <u>a an administrative decision in accordance with the provisions laid out in Articles 5 or 6</u> has submitted the decision to the Internal Market Problem Solving Network (SOLVIT) <u>and:</u></p> <p style="padding-left: 40px;"><b>(a)</b> during the SOLVIT procedure, the Home Centre asks the Commission to give an opinion to assist in solving the case, <u>or</u></p> <p style="padding-left: 40px;"><b>(b) during the SOLVIT procedure, the economic operator requests the Home Centre to ask the Commission to give an opinion to assist in solving the case.</b></p> <p><b>8(1a) (new) In case of a refusal by SOLVIT to issue a request referred to in paragraph 1, it shall provide justification to the economic operator.</b></p> <p><b>8(2)</b> The Commission shall, <u>without delay, and in any case</u> within <del>three months</del> <u>thirty working days</u> of receipt of the request referred to in paragraph 1, enter into communication with the relevant economic operator or</p>
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where appropriate, making recommendations to assist in solving the case.

**8(4)** The Commission's opinion shall be considered during the SOLVIT procedure referred to in paragraph 1.

operators and the competent authorities who took the administrative decision in order to assess the compatibility of the administrative decision with the principle of mutual recognition and this Regulation.

**8(3)** Following completion of its assessment, the Commission may issue an opinion identifying concerns that should, in its view, be addressed in the SOLVIT case and, where appropriate, making recommendations to assist in solving the case. **In the case that the Commission decides not to issue an opinion, it shall provide justification to the economic operator.**

**8(4)** The Commission's opinion shall be considered during the SOLVIT procedure referred to in paragraph 1.

## **ENDS**

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