

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**.

The MBB sees the legislative proposals as being a positive step forward in ensuring that true free movement of goods is realized, 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. Good cooperation between 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.

The MBB believes that it is of paramount importance to focus on the following three elements:

1. Ensuring that the application and acceptance of a properly filled mutual recognition declaration works in practice and not just in theory.
2. Test reports/certificates issued by conformity assessment bodies, provided by an economic operator should be a crucial part of any assessment by a competent authority, and not just taken account of.
3. Added transparency in the SOLVIT procedure
4. The market surveillance proposal does not do enough to ensure surveillance and control of distance/online sales from outside the EU directly to the EU consumer, when many of these products would not be compliant with EU rules.

Specific comments:

Mutual Recognition

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. However, it is key that that companies who decide not to use this declaration are not subjected to extensive requests by national authorities.

Article 4(8)(c) seems too far-reaching in this respect, as ‘any other information’ could be requested without giving the reason for that request. As such perhaps the following amendment could be made:

4(8)(c) any other information the competent authority considers useful for the purposes	any other information the competent authority considers useful necessary for the purposes of its assessment. In such
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of its assessment.	cases, the competent authority shall provide justification for the request to the requested economic operator.
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Certificates and test reports (Article 5(2)). 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. As such, we propose the following slight amendment to add clarity to the provision:

<p>5(2) 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 take due account of consider 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>
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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. As such, we suggest the following amendments, which seek to improve clarity and the transparency of the process:

<p>8(1) 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>8(2) 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>8(1) 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:</p> <p style="padding-left: 40px;">(a) during the SOLVIT procedure, the Home Centre asks the Commission to give an opinion to assist in solving the case, or</p> <p style="padding-left: 40px;">(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.</p> <p>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.</p>
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<p>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.</p> <p>8(4) The Commission's opinion shall be considered during the SOLVIT procedure referred to in paragraph 1.</p>	<p>8(2) The Commission shall, without delay, and in any case within three months thirty working days 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>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.</p> <p>8(4) The Commission's opinion shall be considered during the SOLVIT procedure referred to in paragraph 1.</p>
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Compliance and Enforcement / Market Surveillance

Introduction of EU testing facilities (Article 20). The proposal would introduce the possibility for the Commission to designate EU testing facilities. We consider this a positive development because it would allow for a better use of the existing facilities and for more efficient use of surveillance resources at an EU scale. For these benefits to materialize, we suggest that the regulation should state more firmly that market surveillance authorities are obliged to recognize the test results from these facilities. We further urge the Commission to ensure, in the actual implementation of this measure, a level playing field between private, public and designated test facilities. As such, we suggest the following new paragraph in the Article:

20 (6) (new) Competent Authorities shall recognize the results, analysis and conclusions from the tasks carried out by Union testing facilities specified in paragraph 4.

ENDS

Contact person:

- Mark Seychell, Senior Advisor (Internal Market and Legal Affairs)
 - Email: mseychell@mbb.org.mt GSM: +32 479 43 67 19
- EU Transparency Register: 891881518347-25*