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Fourth edition
The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.

Mutual recognition of goods

The revision of the regulation on mutual recognition of goods was announced in the 2015 Single Market Strategy. The Commission adopted its proposal in December 2017, which aimed to revise previous rules dating from 2008.

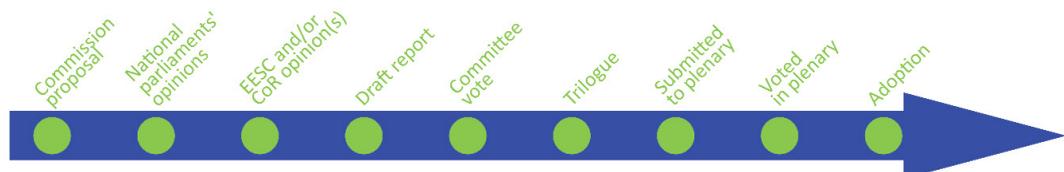
This regulation aims to improve the rules governing the trade of goods in the single market. Intra-EU trade remains twice as big as extra-EU trade, and is rising constantly. This is, in large part, due to free movement of goods in the EU, which is based on either harmonised product rules at the EU level or, where there are no harmonised rules, the principle of mutual recognition under which goods lawfully marketed in one Member State may be sold in another Member State. The proposal addressed a number of shortcomings in the application of the mutual recognition principle.

A provisional agreement between the co-legislators was reached on 22 November 2018. The text was adopted in plenary in February 2019. The new rules will improve collaboration among national authorities and enhance the role of national product contact points. They will introduce a faster problem-solving procedure for disputes between companies and national authorities, as well as a new voluntary declaration to be filled in by economic operators to prove lawful marketing in an EU Member State. The new rules will apply from 19 April 2020.

Proposal for a regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State

COM(2017) 796, 19.12.2017, 2017/0354(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

| | |
|------------------------|--|
| Committee responsible: | Internal Market and Consumer Protection (IMCO) |
| Rapporteur: | Ivan Štefanec (EPP, Slovakia) |
| Shadow rapporteurs: | Virginie Rozière (S&D, France); Emma McClarkin (ECR, United Kingdom); Morten Løkkegaard (ALDE, Denmark); Pascal Durand (Greens/EFA, France); Marco Zullo (EFDD, Italy) |
| Procedure completed. | Regulation (EU) 2019/515 OJ L 91, 29.3.2019, pp. 1-18 |



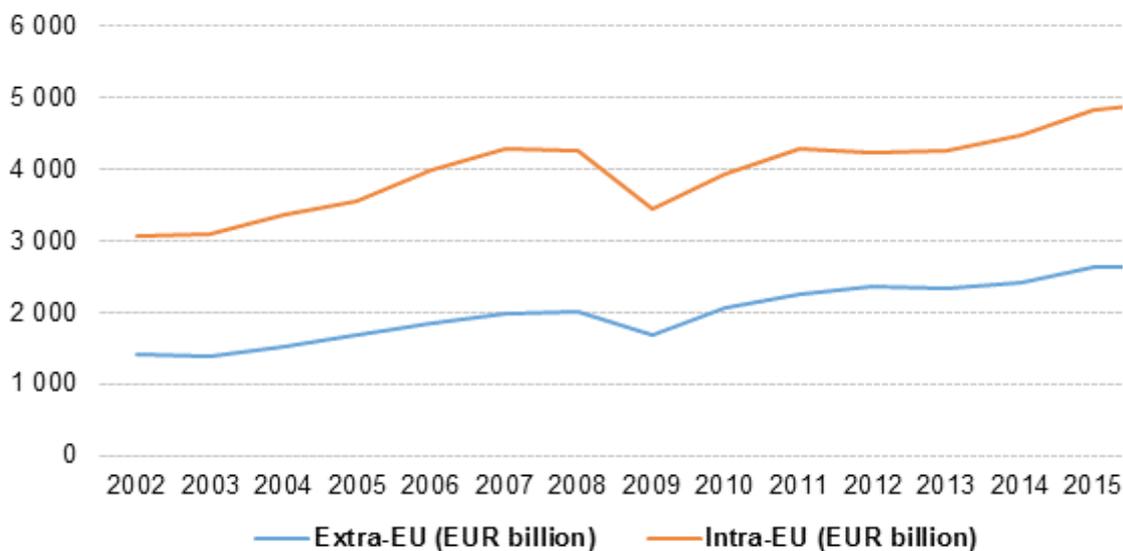
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Introduction

The value of intra-EU trade is one of the measures of the integration of the single market. Exports between EU Member States more than [quadrupled](#) between 1994 and 2015, partly due to EU enlargements. Considering the top five most traded product groups,¹ which [correspond](#) to about half of intra-EU trade, the value of exports between EU Member States has increased from €732 billion in 1994 to €3 072 billion in 2015. This growth rate has exceeded that of EU trade with the rest of the world which has tripled from €537 billion in 1994 to €1 791 billion in 2015.

Looking at the last 15 years, one can observe that a fairly stable level of intra-EU exports in 2002-2003 was followed by a period of rapid increase, which came to a halt with the arrival of the global financial and economic crisis (see Figure 1). Exports first declined between 2008 and 2009² and then rebounded, with rapid growth continuing until the beginning of 2011, when it had returned to the pre-crisis level. This growth continues up to now, albeit at a less rapid pace: for example, between 2015 and 2016, intra EU-28 trade, measured by dispatches, increased by 1.3 % across the EU-28.

Figure 1 – Intra- and extra-EU trade in goods 2002-2016



Source: [Eurostat](#), 2017

The importance of the internal market for goods is highlighted by the fact that intra-EU trade has been consistently about twice as high as extra-EU trade since 2002. Furthermore, intra-EU trade in goods has been higher than extra-EU trade for all Member States except Malta and United Kingdom where they were nearly balanced.

1 These groups are 'motor vehicles, trailers and semi-trailers', 'chemicals and chemical products', 'computer, electronic and optical products', 'food products', and 'machinery and equipment'.

2 The sharp decrease occurred precisely between the fourth quarter of 2008 and the end of the second quarter of 2009.

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Integration of the single market for goods has many positive effects. European consumers benefit from a wider choice of products, and increased competition in the manufacturing sector has led to [convergence of prices](#) and encouraged innovation. The single market led to decreasing trade costs, which created additional trade flows. Between 1992 and 2012, intra-EU [trade intensity](#) increased from 12 % to 22 % of GDP. Indeed, trade in [goods](#) is roughly 60 % higher in the EU than it would be, were it based on World Trade Organization rules. Other estimates suggest that an increase of 8 % in bilateral trade in goods in the EU occurred due to the existence of the internal market, which contributed to a 2 %-3 % higher per capita income in the Member States. Since 1992, intra-EU exports of goods have risen from 9 % to 21 % of EU GDP, and currently goods generate about 75 % of all intra-EU trade.

However, despite the growing economic importance of the single market for goods, its integration remains incomplete. An EPRS study on the cost of non-Europe found that the untapped [potential](#) for realising genuine free movement of goods amounts to €183 billion per year, or 1.3 % of EU GDP. Recognising this, the European Commission under Jean-Claude Juncker made creation of a deeper and fairer internal market with a strengthened industrial base one of its main priorities. In its 2015 [single market strategy](#), the Commission pointed out that inadequate application of the mutual recognition principle, under which goods lawfully marketed in one Member State may be sold in another Member State, creates difficulties for enterprises seeking to expand beyond the domestic market. Therefore, the Commission pledged to improve the application of the principle in order to strengthen the single market for goods.

Existing situation

About 80 % of regulatory [barriers](#) on the single market for goods have been addressed through the adoption of common rules, which focus on harmonisation of legislation and are based on [Article 114 TFEU](#).³ However, not all the products marketed in the EU are covered by such rules. The principle of mutual recognition applies to such non-harmonised products, and [aspects](#) of products which fall outside the scope of harmonisation legislation.⁴

The legal base for mutual recognition is formed by Articles 34 and 36 TFEU, which permit products lawfully marketed in one Member State to be sold in other Member States without adapting them to national technical rules⁵ unless those rules are necessary and proportionate to protect the public interest. The only justified exceptions are those described in Article 36 TFEU (such as protection of public

Notification procedure

According to [Directive \(EU\) 2015/1535](#), EU Member States must notify the Commission of any draft technical regulation concerning goods before its adoption. The Commission and other EU countries then have three months to examine the draft, during which time the notifying country must refrain from adopting the technical regulation in question. The Commission considers that the procedure generally prevents the creation of new technical barriers, but also recognises that [incorrect implementation](#) of rules by national authorities may still hamper freedom of movement of goods.

³ This article concerns harmonisation of rules for the establishment and functioning of the internal market. Decisions on measures to approximate EU countries' legislation fall under the ordinary legislative procedure with EP and Council co-deciding after consulting the Economic and Social Committee.

⁴ Examples of harmonised goods include toys, machinery, medical devices and pharmaceuticals. Non-harmonised goods include certain foodstuffs, furniture, shoes, bicycles, tableware and precious metals.

⁵ These could be related to features such as the design, form, size, weight, composition, presentation, labelling and packaging.



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morality or public security, protection of the health and life of humans, animals or plants). The Commission mentions specifically⁶ that these must be 'overriding requirements of general public importance recognised by the case law of the Court of Justice, and proportionate to the aim pursued.' The main objectives of the principle are to ensure the free movement of goods within the internal market, to lower remaining trade barriers and to promote trade in goods among EU Member States.

The principle originated in the 1979 *Cassis de Dijon* judgment⁷ of the Court of Justice, which also introduced two underlying principles to the free movement of goods framework, known as the principle of equivalence and the principle of home state control (or country of origin).⁸ The nature of the mutual recognition obligation can be either substantive (e.g. concerning fabrication rules) or procedural (e.g. regarding testing procedures). The subsequent, important *Keck and Mithouard* judgment⁹ determined that while product norms are covered by the principle, selling arrangements applying to all traders operating on the national territory and affecting domestic and foreign products in the same way are not within its scope.

In order to improve implementation of the principle¹⁰ the EU adopted [Regulation \(EC\) No 764/2008](#) laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing [Decision No 3052/95/EC](#).¹¹ Its goal is to reduce the possibility of technical rules creating unlawful barriers to free movement of goods.

The regulation mainly defines the rights and obligations of national authorities and businesses in cases where the former intend to deny mutual recognition and refuse market access to a product lawfully marketed in another Member State. It covers administrative decisions based on a technical rule that leads to the prohibition of market placement, modification, or additional testing of products before their placement or withdrawal. The burden of proof is placed on the national authorities that intend to deny market access, requiring them to provide, within a specified deadline, a written notice with the technical or scientific evidence justifying their intention. The notice must explain how this decision is justified by overriding reasons of public interest and why no less trade-restrictive measures can be taken. National authorities are obliged to begin a dialogue in which the economic operator has the opportunity to defend its case and submit evidence.

The regulation also requires each Member State to set up 'product contact points' (at least one per country), which provide information about technical rules, advice on prior authorisation, give contact details for responsible authorities and advise on remedies available in case of dispute.

The main problems [identified](#) by the Commission with regard to application of the regulation include its unclear scope (which products are covered); difficulties in demonstrating that the product was lawfully

6 See for example European Commission, [Free movement of goods. Guide to the application of Treaty provisions governing the free movement of goods](#), 2010, p.15.

7 Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*, 20 February 1979.

8 For an in-depth discussion of both these principles in the context of mutual recognition, please refer to C. Janssens, [The Principle of Mutual Recognition in EU Law](#), pp. 31-41.

9 Case C-267/91 and C-268/91, [Criminal proceedings against Bernard Keck and Daniel Mithouard](#), 24 November 1993.

10 The Commission [mentioned](#) specifically that 'the most important problem for implementation of the mutual recognition principle was without any doubt the general legal uncertainty about the burden of proof.'

11 This earlier decision established a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community.



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marketed in a given Member State; national administrations favouring their own rules; difficulties with challenging authorities' decisions; and insufficient communication among all actors, including inside and among national administrations, as well as with the Commission, national contact points and companies.

Parliament's starting position

The European Parliament recently voiced its opinion on the matter in two resolutions: on the [single market strategy](#) (May 2016) and on the Commission's [annual report](#) on single market governance (February 2017). MEPs recognised that problems with application and non-respect of the mutual recognition principle often mean businesses focus excessively on overcoming related difficulties, rather than on their core business. The Parliament favoured a legislative instrument to address the issues, and emphasised that this needs to contain improved instruments for resolving disputes. It also asked the Commission to be more proactive in 'identifying sectors with high potential for cross-border trade and digitalisation where the mutual recognition principle could apply'.

Council starting position

In December 2013, the [conclusions](#) of the Council on single market policy underlined that 'in order to improve framework conditions for businesses and consumers in the single market, all relevant instruments should be used including harmonisation as well as mutual recognition'. The Commission was requested to report to the Council on sectors and markets where the application of the principle would yield most economic benefits, but where its application is insufficient or problematic. In its February 2015 [conclusions](#), the Competitiveness Council underlined that the mutual recognition principle is necessary for a fully functioning single market, and urged the Commission to bring forward proposals to address its shortcomings and foster awareness among businesses and public administration.



Proposal

Preparation of the proposal

In 2012, the Commission published a first [report](#) on application of Regulation (EC) No 764/2008. It covered the 2009-2012 period and concluded that no amendment of the regulation is necessary. However, it identified problematic areas which need close and regular monitoring. These concern ways of demonstrating lawful marketing of products in another Member State, identification of applicable legal provisions and responsible authorities, compatibility of product-testing methods, and the role of prior authorisation procedures.

In 2015, the Commission published an external [evaluation](#) of the functioning of the mutual recognition principle. It concluded that the principle still does not fully achieve its objectives. This creates barriers to the free movement of goods and is caused by ineffective application (or non-application) and insufficient knowledge of the principle by the Member States, and by companies' lack of awareness of the principle. Some specific issues included lack of trust in authorities, difficulties in applying the principle to innovative products, a slow and costly compliance verification process, incorrect application of national requirements instead of the mutual recognition principle, and slow and incomplete dialogue among national authorities. The main administrative burden for contact points was the requirement to translate answers into English, while for companies it was the requirement to conduct national product tests. Furthermore, enterprises considered that challenging national authorities' decisions was too lengthy and costly (particularly for SMEs).¹² The evaluation recommended measures to improve application: better monitoring of application of the principle by the contact points, establishing a mechanism for easier demonstration of lawful marketing for economic operators, better dialogue between national authorities (as well as with the Commission), covering more sectors through harmonisation, and awareness-raising campaigns.

In May 2016, the Commission published an inception [impact assessment](#) that took the external evaluation, experience with application of the regulation and input of stakeholders into account. It identified the main shortcomings (as described in the 'Existing situation' section above) and identified various options to tackle them, including through legislative action as well as enhancing implementation of the principle, particularly by increasing awareness among businesses and national authorities.

Between June and September 2016, the Commission ran a [consultation](#) on the possible revision of Regulation (EC) No 764/2008, receiving 153 replies from businesses, authorities and citizens. The results showed that the majority of companies adapt products to the national rules of the country in which they want to market their product, despite being aware of the principle. More than half of businesses tried to use the principle when entering a new market, with half of them having their access denied and only 2 % managing to successfully overturn that decision. The lack of rapid remedies for challenging national authorities and insufficient communication among authorities were identified as the biggest obstacles. The majority of respondents did not see an improvement in placing their products on foreign markets in

¹² This is particularly problematic, as, according to Commission [data](#), around 87 % of the enterprises operating within the non-harmonised sectors are micro enterprises (i.e. with less than nine employees) and around 11 % are small and medium enterprises (i.e. with a number of employees between 50 and 250). The Commission [estimated](#) costs of challenging market access decisions as between €10 000 and €100 000.

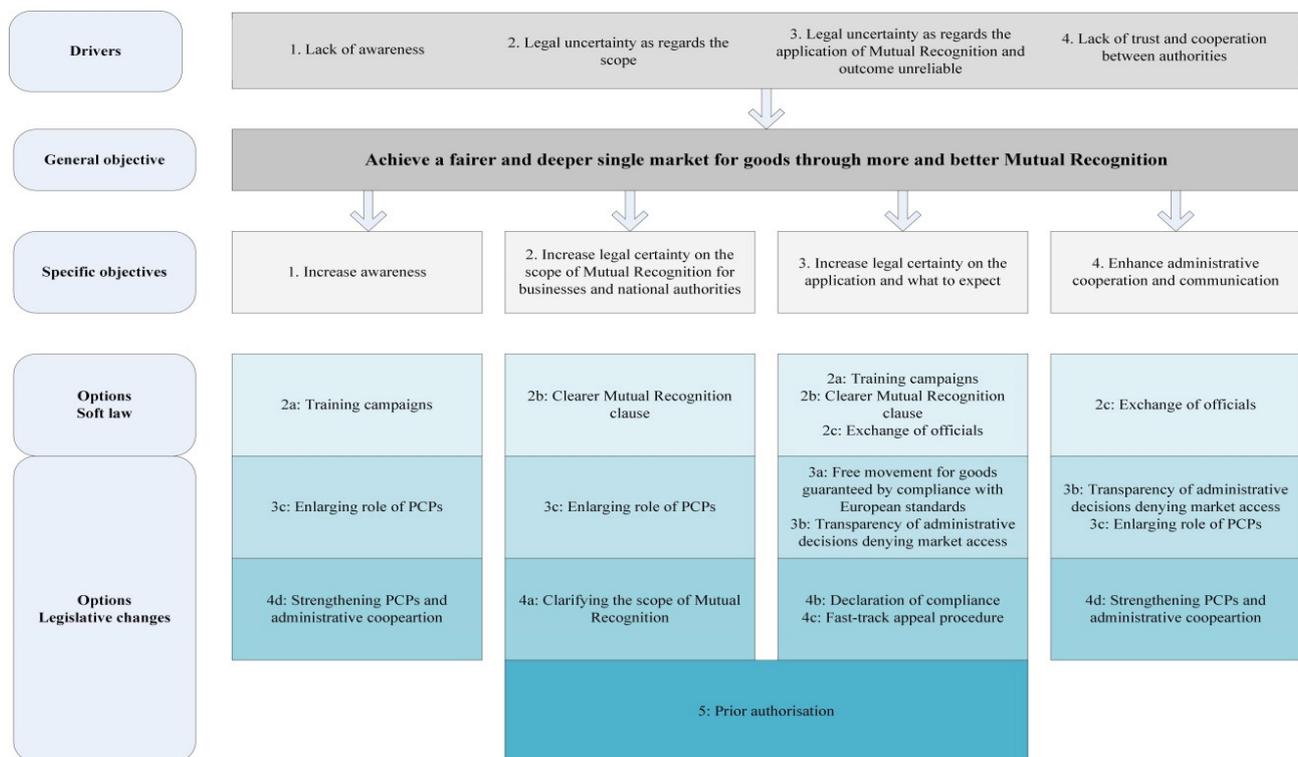


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the period since the regulation entered into force. Most of the businesses never interacted with a product contact point, mainly because they were not aware of their existence. At the same time, they perceived that non-application of the principle causes significant costs related to adapting a product to national rules, delays in entering the market, or lost opportunities when they ultimately decide not to sell the product abroad. While businesses opted for availability of quick remedies as the most effective measure to improve the functioning of the principle, citizens and authorities indicated raising awareness to be the most important.

The Commission’s [impact assessment](#), which accompanied the 2017 proposal for regulation on mutual recognition of goods (discussed in detail in the next section), proposed a choice of policy options, including baseline scenario, soft law and legislative measures.

Figure 2 – Impact assessment options



Source: [European Commission](#), 2017.

The impact assessment concluded that the preferred option would be a combination of soft law instruments (2a to 2c in the diagram above) and legislative changes (4a to 4d above).



Preparation of the proposal

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On 19 December 2017, the Commission [proposed](#) a new regulation on mutual recognition of goods. This was tabled together with a proposal for a regulation on [compliance and enforcement](#) within what the Commission has labelled the 'goods package'. Further non-legislative actions were announced in the accompanying [communication](#). The [proposal](#) introduces a new problem-solving procedure. In case of disagreement, economic operators are to rely on the [SOLVIT network](#) and its mechanisms. If agreement is reached, there is no need for further action. In the opposite case, and when serious doubts on compatibility of the decision with the mutual recognition principle exist, the Commission may intervene in the matter by issuing an opinion, and making recommendations to assist the parties in finding a solution. These would concern a specific administrative decision, but if the Commission identifies systemic problems with application of the principle, it will have the option of using its enforcement powers under [Article 258 TFEU](#) (reasoned opinion and ultimately the Court of Justice). During the assessment process, decisions suspending market access should only be taken in exceptional cases, such as to prevent crime or harm to the safety and health of users. The decision must specify remedies available to operators, such as action before a court. Currently the evidence required to prove that the product is lawfully marketed elsewhere in the EU varies from a simple invoice to an official declaration by authorities. In order to harmonise and streamline the process, a new voluntary 'mutual recognition declaration' by economic operators (usually the producer, but the importer or distributor are also permitted) is introduced. The declaration will be simple, available online and will constitute sufficient proof.

Furthermore, the role of product contact points will be enhanced. They should be adequately equipped and resourced to provide the principal channel for provision of free online information on national technical rules and application of the mutual recognition principle. They will also be required to cooperate and exchange information and expertise and will be assisted by an information and communications support system.

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Views

Advisory committees

The European Economic and Social Committee adopted its [opinion](#) in May 2018. It welcomed the proposal but was concerned about a number of provisions. It sees a risk that making economic operators responsible for affixing the declaration may harm the effectiveness of the principle. The Committee also asked for the establishment of a reasonable timeframe for verification of the information concerning compliance by the authorities, in case an economic operator fails to supply the required declaration. It also called for inclusion of the [precautionary principle](#) in the product assessment requirements, and for allowing Member States to make the final decision on putting the product on the market after the assessment under the procedure has been completed.

National parliaments

No [reasoned opinions](#) have been submitted on the grounds of subsidiarity, with the deadline having passed on 29 March 2018. The Czech, Romanian and Spanish Parliaments submitted comments on the proposal.

Stakeholders' views¹³

[Business Europe](#), a confederation representing enterprises of all sizes in the EU, welcomed the proposal, saying it is a step towards improving businesses' awareness of their rights and providing them with effective remedies to challenge administrative decisions. It called on the Bulgarian Presidency of the Council to prioritise the 'goods package' in Council discussions.

[Eurochambres](#), which represents chambers of commerce and industry, supported the revision of the mutual recognition regulation, underlining that it should result in streamlined communications between national authorities. It welcomed involving the SOLVIT network and the Commission in the process, particularly important for SMEs, which often cannot afford to challenge decisions in the courts due to high costs.

[Eurocommerce](#), which represents the retail, wholesale and trading sector, welcomed the new regulation saying that presently 'Member States persist in demanding unjustified and unnecessary information and changes from retailers and wholesalers about products already found to be safe and sold legally in another Member State. In some cases, competent authorities are unaware of this, or simply choose to impose their own different national rules'. It particularly supported the new procedure for problem solving, enhancing the role of contact points and increasing mutual trust, exchange and awareness of the principle.

13 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



Legislative process

In the European Parliament, the lead committee is that on Internal Market and Consumer Protection (IMCO). The rapporteur (Ivan Štefanec, EPP, Slovakia) published his draft [report](#) on 19 April 2018. The draft report was discussed in IMCO on 16-17 May 2018, and subsequently, 220 amendments were tabled – supportive, overall, of the draft report.

The IMCO committee voted its [report](#) on 3 September 2018, with 31 votes for, one against and one abstention. The committee also voted in favour of opening trilogue negotiations, a decision which was confirmed during the September plenary session.

The report proposed to add requests for additional testing and/or duplication of tests to the list of possible obstacles to free movement of goods, as well as the obligation to clearly justify why market access is refused. It also asked the Commission to provide guidance on the concept of over-riding reasons of public interest and on how to apply the principle of mutual recognition. Furthermore the report proposes that the Commission maintains online an indicative and non-exhaustive list of types of goods which are subject to the present regulation. The role of SOLVIT centres would be strengthened, for example they should be informed by the Commission about its communications with the economic operator or competent authority. The report also clarifies definitions of 'serious risk' and 'conformity assessment body' and proposes to shorten the deadline to communicate a decision on assessment of goods from 20 to 15 working days, and to set the maximum time for the Commission to issue an opinion, when asked to do so by a SOLVIT centre, to two months. The Commission is also to establish a Coordination Group of representatives from the competent authorities and the Product Contact Points of the Member States to enhance cooperation between all actors and facilitate exchanges of officials.

The [Council](#) agreed on a general approach on 28 May 2018. It proposed to clarify the scope of mutual recognition, introduce a self-declaration to make it easier to demonstrate lawful marketing of goods in a Member State, establish a non-judicial problem-solving procedure to provide solutions to citizens and businesses in cases where an administrative decision denying or restricting market access is taken, and set up efficient administrative cooperation to enhance the exchange of information and trust among national authorities.

A provisional agreement was reached on 22 November 2018, and the IMCO committee approved it on 6 December 2018. The EP adopted the text at first reading in plenary on 14 February 2019, and formal signature by the co-legislators took place on 19 March 2019. Parliament ensured that the new rules would oblige the Member States to clearly justify limiting access to their markets. Any such restrictions would need to be in line with the provisions of the Treaties and the case law of the Court of Justice. The agreed text also contains provisions ensuring quick and effective assessment of goods by the competent national authorities, while avoiding any arbitrary discrimination or disguised restrictions. Parliament also pushed successfully for simplified procedures for both enterprises and national authorities, and more efficient cooperation between the latter and the national Product Contact Points of the Member States, based on, among other things, the use of IT tools. Furthermore, it advocated deploying a mechanism based on the SOLVIT network to improve problem-solving procedures and this is in the final text. This mechanism should lead to faster resolution of disputes between enterprises and national authorities. The agreed text also contains provisions which would enhance training and collaboration among national authorities, and envisages the possibility of EU financial assistance for mechanisms established by the regulation. In



order to ensure uniform conditions for the implementation of the regulation, implementing powers are conferred on the Commission.

The [final act](#) was published in the Official Journal on 29 March 2019. The new rules will be applied from 19 April 2020. By 20 April 2025, and every four years thereafter, the Commission is to carry out an evaluation of this regulation in light of the objectives that it pursues and submit a report to the European Parliament, to the Council and to the European Economic and Social Committee. Furthermore, the Commission may ask Member States to submit any relevant information for evaluating the free movement of goods lawfully marketed in another Member State or for evaluating the effectiveness of the regulation, as well as an assessment of the functioning of the Product Contact Points.



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