

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

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SUBCOMMITTEE I ON THE FREE MOVEMENT OF GOODS

EEA EFTA Comments to the European Parliament on COM(2007) 36 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC

The present comments are made by Iceland, Liechtenstein and Norway (the EEA EFTA Member States) and are supported by Switzerland.

The EEA EFTA Member States welcome the European Commission's initiative set out in COM(2007)36 of 14 February 2007, presented with a view to strengthening the application of the principle of mutual recognition in the Single Market. This initiative is relevant to the European Economic Area (EEA) Agreement.

In the Single Market, mutual recognition is the general principle when product legislation has not been harmonised. Industry reports that this is not always the case at present. Therefore, the application of this principle needs to be improved, by means of **new legislation and administrative cooperation**, which would:

- make the principle more visible and easily enforceable;
- facilitate the work of national authorities who would know their procedural rights and obligations when it is necessary to protect legitimate interests in accordance with Article 30 of the EC Treaty and related jurisprudence;
- ensure equal national practice throughout the European Economic Area;
- facilitate the exchange of information between national authorities across borders;
- benefit economic operators and thus give a positive contribution to our common competitiveness agenda, by avoiding extra production cost when products unduly need to be adapted to national regulations, and by avoiding that economic operators are unduly forced to withdraw a product from a national market;
- reduce the number of cases where economic operators have to bring costly and time-consuming legal action before a national court in the Member State of destination in a dispute concerning the (non-) application of the principle of mutual recognition;
- contribute to Better Regulation, as the rights and obligations of economic operators and public authorities would be laid down by legislation instead of approximately 300 rulings of the European Court of Justice.

The EEA EFTA Member States support the following measures:

- A clear and transparent system is required, c.f. Articles 4 and 5, with regard to rights and obligations of public authorities and economic operators, when a public authority intends to make a decision, as listed in the proposed Article 2(1), while at the same time ensuring that dangerous products are banned on the market with immediate effect, c.f. recital (9) and Article 3.
- The establishment of product contact points in Member States, c.f. articles 7-9, i.e. an efficient system for administrative cooperation across borders to assist public authorities to collect and share information, if required, when a product is prevented from being placed on the market. Furthermore, such a system would assist economic operators in gathering information on national products requirements. Similar systems and processes are developed under other directives/sectors and coordination is needed.
- An electronic tool must support this system. As such tools are planned in relation to several other acquis, we see a need to coordinate such electronic tools.

More specifically, the EEA EFTA Member States would like to draw attention to the following points.

- As a general observation, we are of the opinion that, in the name of Better Regulation, all references to other acts, c.f. Article 3, should be accompanied by the full name of this act (at least the first time that reference is made to it).
- In accordance with a Convention of 15 October 1972 regulating trade with precious metals, to which several EU and EFTA Member States are affiliated, a common marketing system has been established. The control pursuant to this Regulation is based on the marking by the producer and market surveillance authority. As the proposed Regulation also includes precious metals, we would propose a clarification of the coherence between the existing system and the new one. We consider that it is important not to introduce different and conflicting systems.
- The EEA EFTA Member States would like to draw attention to Article 2(2)(b) of the proposal, defining “other requirements”. This provision seems to be aligned with Article 1(3) of Directive 98/34, laying down requirements "for the purpose of protecting, in particular, consumers or the environment". However, COM (2007) 36 is restricted to establishing requirements "for the purpose of protecting consumers or the environment". Thus, the scope of the 98/34 Directive is wider than that of the proposed Regulation. It should be clarified whether the difference in scope is intended, and if so, what consequences it will have. Or, should Article 2(2)(b be extended in line with 98/34?
- Article 4(2) of the proposal requires that the Member State’s decision Shall "state the reasons on which it is based, including the reasons for rejecting any arguments put forward by the operator". We find the wording "any arguments" too extensive, and propose to remove the word "any" from the text.

Finally, we would like to propose some follow-up after adoption:

- Once the Regulation is adopted, an information campaign should be undertaken throughout the EEA in order to raise awareness to support the application of the principle of mutual recognition. There are two justifications for this: (I) For market surveillance authorities to apply the principle correctly, it is essential that they are aware of the procedural rights and obligations when departing from the principle of mutual recognition (c.f. Article 30 of the EC Treaty/Article 13 of the EEA Agreement). (II) For economic operators, it is important to know the basics of the principle of mutual recognition, and how to respond when a product is restricted on a market in a Member State.

- A Regulation reinforcing the application of the principle of mutual recognition should be accompanied by an amendment to Directive 98/34/EC, when the latter is revised. In the future, national (draft) rules notified under Directive 98/34/EC should refer to the new EC legislation on mutual recognition (the present proposal).
