



European Furniture Industries Confederation

## Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the mutual recognition of goods lawfully marketed in another Member State

### POSITION PAPER

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#### In brief:

- A well-functioning mutual recognition is key for the industry's growth
- Barriers to trade are existing, and need to be promptly addressed
- SOLVIT and National Contact Points should reach SMEs and improve effectiveness
- Clarify definitions and qualify the "legitimate public interest grounds" reasons for refusal of market access
- The decision for a denied market access should be detailed in proving its legitimacy.

#### Background

The Single Market for Goods is one of the EU's greatest achievements, as well as one of its most important and continuing priorities. It finds its legal roots in the free movement of goods, the first of the four fundamental freedoms of the internal market established by the Treaties.<sup>i</sup> The principle of mutual recognition complements this essential rule, by ensuring that all products can circulate freely in the EU without the need to adapt to specific National requirements, even in areas lacking of Union harmonization legislation or only partly covered by it, including furniture products.

According to the mutual recognition, a Member State may not prohibit the sale on its territory of products which are lawfully marketed in another Member State, even where those products were manufactured in accordance with technical rules different from those to which domestic products are subject. In this case, product requirements should be accepted as equivalent.<sup>ii</sup> The only exceptions to the mutual recognition principle are restrictions justified on the grounds of overriding reasons of public interest, on the basis of a decision which is proportionate, suitable and effective to the aim pursued and less restrictive for trade purposes.<sup>iii</sup> The burden of the proof belongs to the Member States.

However, there is today a growing awareness that the mutual recognition principle is not working as it should. Too often, businesses cannot now rely completely on mutual recognition to access the market across the EU. National product requirements are often set by Member States, which raise questions about their compatibility with the Treaty obligations. Operators have to abide to those rules, and the functioning of the principle is weakened.

The European Commission has presented new measures aimed at improving the regulation on mutual recognition with the aim of helping businesses to market their products in another EU country. In particular, the European Commission has presented on 19 December 2017 a “Goods package”, composed of two legislative proposals: 1) New Mutual Recognition Regulation; 2) Regulation on Compliance and Enforcement of EU product legislation – which applies to EU harmonised sectors. In this paper, EFIC shares its experience and comments on the first proposal. The two proposals are now being discussed by the European Parliament and the Council of the EU in view of their adoption.

## **EFIC experience with mutual recognition**

- **About the European furniture industry**

The furniture sector is labour-intensive sector which employs about 1 million workers in close to 118.000 companies. Most companies are SMEs and micro firms. In 2016, the production reached about 88 bill €.iv

Furniture products are currently not subject to harmonised European legislation, and in the absence of European rules, certain Member States have been active in drafting country specific regulations and standards for different types of furniture. Office furniture and furniture for the public and contract market can be subject to different standards and regulations, comparing to those applied to domestic furniture intended for private use.

Europe accounts for about 25% of total world furniture production. The European furniture industry is highly export-oriented, with the main share of export happening inside the EU.v To exploit the opportunities for trade is crucial for the growth of the furniture industry.

- **Existing problems and concerns with mutual recognition**

1. National products’ requirements

EFIC members experience the existence of trade barriers when operating in the Single Market. Many times, companies adapt their products to specific National demands by changing the products’ requirements, the labelling and/or performing additional testing to prove compliance. In certain cases, companies may opt for not trading their products in a specific Member State, as compliance could be too costly or too burdensome. This risk is particularly significant for SMEs, which play a pivotal role in the EU furniture industry. Their competitiveness might be harmed, to a larger extent than is the case for large companies, by costs stemming from the need to adapt labels and product to the requirements of different national rules and to certify their products in one or more Member States. Find below some examples of existing trade barriers.

## UK and Ireland - Furniture Flammability regulations

Since the end of the 80s, UK and Ireland have adopted two National furniture flammability regulations: The Furniture and Furnishings (Fire) (Safety) Regulations No. 1324 1988 (UK), and S.I. No. 316/1995 - Industrial Research and Standards (Fire Safety) (Domestic Furniture) Order, 1995 (Ireland). They impose the following:

- a) Testing: the regulations impose a number of complex testing requirements, following a National standard, which vastly increase costs for European furniture producers exporting to UK and Ireland.
- b) Labelling: a permanent, display and clearly visible label is made compulsory.
- c) Report keeping and requirement to give information are imposed.
- d) Costs from flame retardants chemicals: the set requirements lead to the use of risky chemicals which otherwise wouldn't be used in the EU furniture consumers' market.

The existence of equivalent regulations in UK and Ireland gives preference to the bilateral trade between the two markets, while behaving as a substantial barrier for producers from other European countries. Many EU producers today are not exporting to UK or Ireland due to the regulations or they have to adapt specifically their production line, suffering from an impactful increase in costs.

EFIC has presented a legal complaint against the Governments of the United Kingdom and the Republic of Ireland for breach of their obligation under articles 34 and 36 of the Treaty on the Functioning of the European Union. The complaint is under evaluation by the European Commission since 2016.

## Germany – GS Mark

GS Mark (verified safety) is the German system that distinguishes the products subject to third-party certification. It is applicable to various categories of products, including furniture.

Formally, it is a mark of conformity to the German transposition of the European directive General Product Safety Directive (GPSD 2001/95/EC). The GS trademark checks the fulfilment of requirements defined mainly in the European EN standards on product safety, but it is not limited to it.

The brand also provides for several additional requirements, introduced exclusively by German national documents. The certification is issued by a German body and the laboratory tests can be performed by a limited number of approved German laboratories only.

## 2. SOLVIT and National product points

There is a lack of full knowledge of the SOLVIT mechanisms among companies, as well as of direct contact with National contact points. SOLVIT procedures can be difficult to reach for smaller companies and most SMEs are not aware of its functioning. EFIC members which have used

the SOLVIT mechanism in the past, have found in it a useful tool to clarify the rationale of a denied market access, but with still a limited effect in the resolution of the case.

### SOLVIT Case example

#### SOLVIT SPAIN – CHILDRENS CHAIRS – SOLVIT SPAIN REFUSES TO TAKE THE CASE

Spanish Authorities demand that children’s chairs are labelled with a warning not to place the item close to a window, since a child may climb the chair and fall out of the window. This warning is not demanded on other European markets. Spain justify its claim by referring to article 5 in the General Product Safety Directive reading “*Within the limits of their respective activities, producers shall provide consumers with the relevant information to enable them to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and to take precautions against those risks.*” Spain also refers to a mandate from the European Commission to the European standardisation bodies to justify the claim.

Spain also demands fire safety tests of children’s chairs according to EN 71-2: This is not required at any other market. Spain generally refers to Article 3 of the GPSD to support its claim. While not sharing the reading of the legislation, the company performed the *ah hoc* testing anyway. The products passed the test.

## EFIC proposal

### General remarks

EFIC fully support the Commission’s efforts in the areas of an improved application of the free movement of goods, with special regard to an effective application of the mutual recognition principle.

It is vital for furniture companies to exploit the full potential of the internal market

For this reason, EFIC calls the Commission to:

- **Act promptly against existing unjustified physical and technical trade barriers and thus eliminate unproportionate burdens for EU companies, in its role of guardian of the Treaties. In this regard, the European Commission should timely act and respond without undue delay to complaints presented by the affected European industry.**
- **Avoid the creation of new barriers to trade with harmonisation of requirements at the EU level, when appropriate, and ensuring a smooth functioning of the mutual recognition.**

### Specific remarks

With regard to the proposal from the European Commission – now addressed by the co-legislators – EFIC would like to share the following:

**a) Definition of obstacles to the free movement of goods and duplication of testing [Recital 2, Recital 26, Article 5 – paragraph 2]**

EFIC suggests to include the request for additional testing and/or duplication of tests among the obstacles to the free movement of goods between Member States which are listed in the proposal. The competent authorities of Member States shall accept test reports and certificates issued by other conformity assessment bodies in accordance with Union law, without request duplication of tests.

**b) Definition of “legitimate public interest ground” [Recital 4, Recital 15, Article 5(5)].** Such definition founds the reason for the authorities to deny the application of the Mutual Recognition Principle. The expression “Legitimate public interest ground” is too vague and could include a very wide area of issues. Such vague definition could also prevent the assessment on the legitimacy of a denied market access. EFIC supports a more circumscribed definition and the introduction of clear obligations for competent authorities to fully justify in written an administrative decision restricting market access.

**c) Mutual Recognition Declaration [Article 4]**

The declaration should facilitate companies in proving compliance. To this extent, EFIC supports the idea of having a standardised format at the European level. However, there are a number of issues which deserve higher attention:

- EFIC stresses the importance of clarifying that the burden of proof to prove the legitimacy of the denied market access falls on Member States.
- The proposal requires that the declaration has to be up-to-date and accompanied by ‘any evidence reasonably required’ by the market surveillance authority. Further clarification is necessary on what is considered ‘reasonable’ and ‘up-to-date’.
- In case the mutual recognition declaration is not supplied [Article 4, paragraph 8] the information requested by the Member State should be strictly related to what is necessary for the assessment.

**d) Assessment of goods [Article 5]**

- Under Article 5.3 of the Commission’s proposal, the competent authorities have to notify the operator, the Commission and Member States, of the administrative decisions that limit or deny market access. EFIC welcomes the proposal but this should be accompanied by an immediate legal effect in case of lacking notification.
- The administrative decision should be promptly notified by the Member State. EFIC proposes a time frame lower than 20 days [Article 5.3].
- The justification for a denied market access [Article 5.4] should be complete and detailed in listing the minimum information of Article 5.5.

**e) Article 8: SOLVIT.**

SOLVIT should have a more prominent role as a problem-solving tool. To improve it EFIC suggests to strengthen the collaboration among the different players, including producers, trade associations and public officials. The European Commission should establish and support a dissemination program to the benefit of SMEs in cooperation with Member States and trade Associations.

## About EFIC

EFIC – the European Furniture Industries Confederation - is the voice of the jointly united European Furniture Industries.

EFIC was founded in 2006 by seven national federations representing the furniture industries in Belgium, Denmark, Germany, Italy, Slovakia, Spain and Turkey and it was later joined by Portugal, Sweden, Austria, Russia and Norway. Furthermore, Hungary, the Netherlands and France joined EFIC in 2015. Since 2018, IKEA of Sweden is an Associated member and Bulgaria joined EFIC.

EFIC now represents more than the 70% of the total turnover of the furniture industries in Europe.

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<sup>i</sup> Article 34 of the TFEU

<sup>ii</sup> Regulation (EC) No 764/2008 of the European Parliament and the Council of 9 July 2008 ([link](#)).

<sup>iii</sup> Set out in Article 36 of the TFEU

<sup>iv</sup> Source: CSIL World Furniture Outlook, Centre for Industrial Studies

<sup>v</sup> According to the different estimates and sources available, the EU accounts for about 40-45% of world furniture imports and for around 30-35% of world furniture exports, and accounts for about 45% of total world trade. The majority of this (about 85%) is represented by intra-EU trade. Source: "THE EU FURNITURE MARKET SITUATION AND A POSSIBLE FURNITURE PRODUCTS INITIATIVE", report commissioned by DG GROW, November 2014 ([link](#))