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AK Position Paper

Regulation of the European Parliament and the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State (COM (2007) 36 final)

About Us

The Federal Chamber of Labour is by law representing the interests of about 3 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labor.

Herbert Tumpel
president

Werner Muhm
director

Executive Summary

In the free movement of goods, the principle of mutual recognition is already commonly applied today. The need for a further regulation in this area is therefore not evident. The problem with the proposal under reference seems to be that the principle of mutual recognition now no longer seems to be directed at the Member States as legislators, but at the authorities with competence in the individual case. The draft regulation asks the responsible authorities to make an individual examination by reference to 27 different legal systems, and for that reason it seems to be virtually impossible to administer. From the perspective of the Austrian Chamber of Labour, it would make more sense to put forward proposals for further harmonisation at Community level in the areas in which there has been actual evidence in the past of problems with the recognition of technical rules.

The planned creation of Product Contact Points seems basically useful, because it leads to greater transparency with regard to the technical rules in force in the Member States. To allow easier controls by the national authorities, however, it is crucial that the Product Contact Points serve not only the needs of businesses, but also cooperate closely with the national authorities.

Recognition of technical rules

This proposed regulation provides that in the future, the national authorities in a Member State have to provide a justification to the economic operator involved in a given individual case as to why they do not wish to allow a product from another Member States access to their own market. It will admittedly continue to be permissible to prohibit the commercialisation of a product on grounds of the common interest (for example, public policy and public security, protection of health, environment or consumers); however, the national authority will be required to substantiate the existence of such a ground vis-à-vis the economic operator concerned using 'adequate technical or scientific proof'.

The need for this new legal instrument is not apparent. As the Commission itself rightly states in the considerations for the proposed regulation, the principle of mutual recognition (= goods which are properly produced or commercialised in another Member State may in principle be sold in every Member State) is already applied today, and is implemented in practice. In connection with the discussion about the Services Directive, the Commission has already referred to the sound operation of the free movement of goods.

What seems to be problematic with the new proposed regulation is the fact that the principle of mutual recognition is now directed no longer at the Member States as legislators, but at

the authorities with responsibility in the individual case. From the point of view of the authorities, the proposed regulation looks virtually impossible to administer, and if it can be administered at all, it will take a disproportionate amount of effort and entail higher costs. Instead of enforcing just the Austrian provisions, the authorities will be expected in the future to carry out time-consuming individual assessments demanding a knowledge of 27 different legal systems.

Instead of this type of administrative arrangement, the Commission should supply proposals for further harmonisation at Community level in areas in which there has been actual evidence in the past of problems with the recognition of technical rules. The Commission would be able to bring about further steps towards harmonisation: on the basis of decision 3052/95/EC, dated 13 December 1995, the Member States are already required to notify the Commission of any measures which restrict the free movement of goods properly manufactured in a Member State.

The fact that the Commission – instead of putting forward proposals for further harmonisation – has opted for the course it has chosen raises fears that pressure might be brought to bear upon the national legislators to undertake a levelling process with regard to the national standards.

The chosen course by the Commission raises fears that pressure might be brought to bear upon the national legislators

An initial assessment indicates that the scope of the proposal seems to be very wide, because it is supposed to apply basically to all industrially manufactured products and agricultural products. In our opinion the precise scope of the concept of 'technical rules' is still unclear.

One question here might be, for example, whether provisions in the field of genetic technology (such as environmental sustainability examinations for test releases or monitoring after approval, co-existence issues, restrictions on application because of regional circumstances, alternative marking issues) should be classed as technical rules within the meaning of the regulation. Genetic technology law is harmonised, albeit with many points still open.

Establishment of Product Contact Points

It will be crucial for the Product Contact Points **to serve not just the interests of businesses, but also the national authorities and/or consumer protection bodies.**

The regulation requires the Member States to establish on their territory one or more Product Contact Points, and to notify these to the Commission and the other Member States. The intended purpose of these Contact Points is to provide information, on request, regarding the national technical rules in force, etc. The establishment of such Product Contact Points seems basically sensible. This could be a way of achieving enhanced transparency regarding the national provisions in force in each individual Member State.

However, initial experience with the implementation of the directive on services in the internal market (and the Points of Single Contact for cross-border service activities, due to be set in place) shows that the establishment of single points of contact does mean a substantial amount of bureaucracy and administrative outlay. The establishment and operation of Product Contact Points will also, therefore, entail a not inconsiderable cost implication. It would need to be ensured, in any event, that when businesses are provided with information on request, the associated costs can also be passed on. Compared to the Points of Single Contact under the services directive, the establishment of the Product Contact Points seems in any case to be less difficult, because it seems that what is to be set up will be simple information points (without any sovereign governmental tasks).

It will be crucial for the Product Contact Points to serve not just the interests of businesses, but also the national authorities and/or consumer protection bodies. For instance, in the field of food safety, it would already be of great importance today from the point of view of consumer protection for the national authority to be able to get information on the particular standards going beyond the harmonised areas (for instance, as they could be found in the Austrian Codex Alimentarius) which are in force in the case of the individual product in its country of origin.

Other open questions

In conclusion, we should like to raise two further questions. It seems doubtful whether the present proposed regulation basically stands in the way of (preliminary) authorisation procedures. One example in this area might be the obligation for a prescription and the dispensing provisions for medicinal products. In Austria at the moment, some 85% of medicinal products do not require a prescription, while others such as magnetic field devices do require a prescription and can be bought only in certain shops. Higher-class medicinal products must be dispensed by qualified staff. All three of the quoted restrictions on the free sale of medicinal products are reasonable on grounds of public health and on the grounds of the proper handling of medicinal products. If, for example, there had to be a ban on free sale in every individual case in this area, this would lead to dubious offers (exorbitantly priced products, excessive advertising) and should be rejected from the consumer point of view.

Another unresolved issue is whether the proposed legal form of the regulation (what was originally planned was actually a directive) is appropriate for this purpose, for the characteristics of a regulation are general and immediate validity in every Member State and being binding in all parts. The problem in this connection might be that individual stipulations appear vague and unclear in the regulation.

For any further questions please contact

Ms Alice Wagner

(expert of AK Vienna)
T +43 (0) 1 501 65 2368
alice.wagner@akwien.at

as well as

Mr. Amir Ghoreishi

(in our Brussels office)
T +32 (0) 2 230 62 54
amir.ghoreishi@akeuropa.eu

Austrian Federal Chamber of Labour

Prinz-Eugen-Strasse, 8-10
A-1040 Vienna, Austria
T +43 (0) 1 501 65-0
F +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation of Austria to
the EU
Avenue de Cortenbergh, 30
B-1040 Brussels, Belgium
T +32 (0) 2 230 62 54
F +32 (0) 2 230 29 73