

Brussels, 29 November 2000

OPINION
of the
Economic and Social Committee
on
Mutual Recognition in the Single Market
(Own-initiative opinion)

On 2 March 2000, the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an Own-Initiative Opinion on

Mutual Recognition in the Single Market
(Own-Initiative Opinion)
(Single Market Observatory).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 November 2000. The rapporteur was **Mr Lagerholm**, the co-rapporteur **Mr Bedossa**.

At its 377th plenary session (meeting of 29 November 2000) the Economic and Social Committee adopted the following opinion unanimously.

1. Introduction

1.1 At the Internal Market Council in March 1998, Member States recognised that the principle of mutual recognition must be part of a wider debate on future action with regard to the Single Market and that a well-functioning mutual recognition Principle must be part of the future priorities of the Communities.

1.2 To this end and as a part of the Commission strategy in the Single Market Action Plan, the Commission has presented a Communication on mutual recognition¹ and a first biannual report on the application of mutual recognition in product and services markets². The Council supported the Commission by adopting a Council Resolution on mutual recognition on 28 October, 1999³.

1.3 The ESC would like to make the following comments on the Communication: the Commission Communication deals with mutual recognition of both products and services. This paper deals mainly with mutual recognition of products. In the services area, the paper comments specifically regarding mutual recognition of diplomas.

2. Background

2.1 Mutual recognition is seen as one of the most important instruments for creating Free Movement of Goods in the Single Market. As a long standing principle it is part of the *Acquis Communautaire*. During a large part of the 1990s, the Council and Commission have relied heavily on mutual recognition to solve the remaining problems of free movement of goods between the Member States⁴. The difficulty of applying the principle of mutual recognition efficiently has however in many cases become apparent and a problem for the proper functioning of the Single Market.

1 COM(1999) 299 final, of 16 June 1999

2 SEC(1999) 1106 final, of 13 July 1999

3 12122/99

4 Including 3 EFTA Member States, making up the EEA

2.2 Defining mutual recognition

2.2.1 Under the Principle of mutual recognition, an economic operator has the right to put its products on the market or freely provide its services in one Member State if these have been lawfully produced/marketed or provided in another Member State. A Member State may not forbid the sale of such lawful products or services on its territory. A Member State may waive this Principle only under extremely restrictive conditions, for instance where health consumer protection or the environment are at stake, or where there is an overriding requirement of general public importance. The reasons for such an exception are set out mainly in Article 30 (ex-Article 36) of the EC Treaty.

2.2.2 The preconditions for the functioning of mutual recognition differ greatly between goods and services, and between specific sectors - e.g. foodstuffs, electrical engineering, motor vehicles - and professions - doctors, lawyers, dentists, etc.

2.2.3 For products, the following levels of mutual recognition can be distinguished:

- a) recognition of *technical rules*, including standards and specifications;
- b) recognition of conformity assessment *procedures* accepting each other's testing procedures, test report forms, accreditation systems as equivalent;
- c) recognition of *results* of conformity assessment procedures which involves recognising test results, certificates of conformity, marks of conformity or inspections.

2.2.4 With Articles 28 (30) and 30 (36) and the *Cassis de Dijon* principle as a base, mutual recognition has mainly been dealt with at the regulatory level, i.e. recognition of the technical rules. In order for the internal market to function fully, it is however important for mutual recognition to function at all the above levels. Mutual recognition on the conformity assessment level is in fact an important prerequisite for free movement also in the harmonised area.

2.2.5 It is important to take note that the application of the principle is primarily the responsibility of individual Member States. An efficient functioning of the principle therefore depends on mutual confidence between the Member States, regulatory agencies and conformity assessment bodies.

2.2.6 Among the instruments intended to monitor and safeguard the functioning of the mutual recognition principle are the infringement procedures which the Commission can use against a Member State (article 226) and the notification systems. Two notification systems are laid down in directive 98/34 (former 83/189) and decision 3052/95. The former concerns notification of new national legislation and the latter concerns ex-post notification when a Member State takes the product off the market or stops a product from being imported to or circulated on their territory. The system is thus intended to keep track of new national legislation or government actions in individual Member States which may disrupt the internal market.

2.3 Problems with the functioning of mutual recognition

2.3.1 As the Commission acknowledges in its communication, according to results of a business survey presented in the October 1998 Single Market Scoreboard, 80% of the companies asked still found obstacles to free movement within EU inhibiting their ability to do business in other Member States. For products, 41% related these obstacles to differing national specifications/ standards and 34% related them to unusual testing, certification or approval procedures. A large part of these obstacles could be expected to be tied to areas where there are no harmonised directives and where mutual recognition is the guiding principle for assuring market access.

2.3.2 The ESC has also taken note from the Commission Communication and other studies made that the largest problems with mutual recognition for products can be found in sectors with strong safety and health concerns and differing regulatory objectives between Member States. The obstacles to implementing the principle are often found at the conformity assessment level.

2.4 The following points can be made regarding problems/malfunctions with mutual recognition for products⁵:

- lack of confidence between Member States in each other's conformity assessment – i.e. accepting only national testing and certification bodies;
- lack of regulatory co-operation between government agencies in Member States on applying the principle;
- difficulty of applying the principle where there are differing national health and safety concerns or differences in regulatory objectives - for example in areas such as foodstuffs or dietary supplements;
- difficulty of applying the principle in the environmental area where there are differing environmental concerns or regulatory objectives;
- lack of knowledge of the principle at regulatory level and level where it is to be applied;
- difficulty for government agencies to make the required assessments of proportionality and taking into account other Member States' rules - this requires a good regulatory knowledge of other Member States;
- difficulty of applying the principle and making the proper risk assessment in complex product areas requiring in-depth technical analysis;
- Member States' ambitions to go ahead and set an example in consumer and environmental areas leads to differing requirements, overriding the mutual recognition principle;

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Position Paper from UNICE, "Mutual Recognition", June 1999

- there is an overlap and lack of efficiency in the notification/information procedures - some of them are not used or do not catch the trade barriers that they are designed to assess;
- inefficiencies in applying the principle include administrative delays and costs or red tape imposed on operators; and
- where harmonised directives for different reasons do not work, e.g. in the construction equipment area, the principle of mutual recognition should be able to work as a base for giving products market access. This is today not the case.

2.5 In the services sector, business surveys referred to in the Commission Communication show little improvement in removing obstacles to trade between Member States. Difficulties in the functioning of mutual recognition of services are often related to different consumer protection rules in Member States.

3. Comments on the Commission Communication

3.1 The ESC gives strong support to the approach and measures proposed by the Commission in their Communication on Mutual Recognition. Within this approach, the ESC welcomes the following important proposals:

- 1) Strengthening the monitoring of the application of the principle to make it more credible – e.g. issuing a biennial report; underlining Member States’ obligations and speeding up the infringement proceedings; making better use of the notification procedures.
- 2) Measures aimed at citizens and economic operators – e.g. improving information, economic analysis and training (sector round tables) - rendering mechanisms which help put the principle into place.
- 3) Action by Member States – inserting mutual recognition clauses in national legislation; increasing administrative cooperation.

3.2 Referring to the problems of implementing mutual recognition of products, the Commission, in its future work, needs to distinguish further between problems with implications at different levels of recognition - technical rules, conformity assessment, procedures and results - as defined above. This is important since the problems and remedies are different for different levels.

3.3 The present obstacles for products, perceived by business in the conformity assessment area may prove difficult to eliminate with the principle of mutual recognition. These barriers, which the Commission tends to look upon as “market related” / “grey area” requirements, have strong ties to national standards and regulations. While harmonisation would be a catalyst for changing national regulatory culture and thus removing some of these “grey area” barriers mutual recognition could rather give these barriers further foothold.

3.4 Since a major part of the conformity assessment in the EU today is done by private bodies, it is difficult for the Commission to do anything about the problems of the principle not functioning in this area. In many cases however, harmonised legislation gives a better base for mutual recognition to function in the conformity area.

3.5 Referring to the fact that mutual recognition seems to function inefficiently in areas with strong safety and health concerns, one could conclude that mutual recognition can most likely only work properly where there is a general acceptance/recognition between Member States of the functional equivalence of the objectives and the regulatory approach. Where great differences exist in objectives and regulatory approach, strong harmonising mechanisms need to be put into place in order to bridge this gap so mutual recognition can work. A more systematic approach to reinforcing exchanges of information and administrative co-operation is needed to deal with this problem.

3.6 In the Communication, the Commission argues in favour of mutual recognition, which gives the impression that the Commission favours this instrument over harmonisation. In some cases the ESC thinks that the case for mutual recognition is argued too strongly.

3.6.1 One of the main arguments behind the Commission favouring mutual recognition over harmonisation is the respect for subsidiarity. While the ESC acknowledges the importance of subsidiarity, this principle may be less relevant in areas dealing with the harmonisation of product requirements where business, including SMEs, as well as consumers are better off with one standard and one set of product requirements in a harmonised directive.

3.6.2 The ESC would also like to underline that harmonising legislation in many cases may very well be in line with the EU goal of keeping legislation in the EU and its Member States to a minimum, making EU legislation more effective. Harmonisation in this case means going from more to less legislation, substituting different and disparate national rules for harmonised ones. This is especially important taking into account the enlargement process where "one set of rules is better than fifteen plus". In harmonised product areas the EU has in fact been able to go ahead and conclude pre-accession agreements covering conformity assessment and acceptance of industrial products (so called PECA-agreements - Protocol to the European Agreement between the European Community and candidate countries on Conformity Assessment and Acceptance of industrial products.) with certain candidate countries. These Agreements align the candidate countries legislation with EU legislation and extend the benefits of the Single Market to these countries, on a sector basis.

3.6.3 As the Commission points out in its Communication, mutual recognition may, when working efficiently, promote product diversity. When the principle is not working however, it may have the opposite effect - i.e. the lack of harmonisation could have a negative impact on diversity by protecting local markets and excluding products from other Member States. Harmonised requirements in the form of a directive and or a standard are normally not prescriptive but performance or functionally based and should not have any affect on product diversity.

3.6.4 Harmonisation is in many cases a prerequisite for a multilateral dismantling of technical barriers to trade and for aligning regulations. The Communication refers to support for the mutual

recognition principle in the WTO Agreement on Technical Barriers to Trade. The ESC would like to point out that this reference is relevant mainly in the conformity assessment area. Even here, if we look at the Mutual Recognition Agreements which have been agreed between the EU and the US, a prerequisite for such agreements has been that the EU has had harmonised legislation.

4. Recommendations

4.1 The ESC is of the opinion that a well-functioning principle of mutual recognition should be one of the top priorities for the Commission and Parliament, especially considering that the Commission seems to prefer mutual recognition as an instrument for completing the Single Market. The ESC gives strong support to the proposals in the Commission Communication and especially the first biennial report.

4.2 The Commission states that striking a balance between harmonising legislation in the Member States and applying mutual recognition is a delicate but essential task. The ESC would like to underline that the costs of not harmonising and relying on mutual recognition may be much higher than the Commission implies in their communication. A harmonised European market is in many cases the only way forward to eliminate the barriers which remain. The Commission should in its further work strike a better balance when choosing between harmonisation and mutual recognition.

4.3 A harmonised European market is in many cases a prerequisite for a multilateral dismantling of technical barriers to trade and global alignment of product requirements. The development of the Single Market strongly affects the global competitiveness of European industry, where products are becoming more complex and the time span to develop and market products more short. For both industry and consumers, this global aspect is important for the Commission to take into account in choosing what instrument to use, i.e. harmonisation or mutual recognition.

4.4 With many of the obstacles to free movement remaining in the conformity assessment area, the ESC suggests that the Commission needs to put stronger focus on mutual recognition at the level of conformity assessment and the role played by testhouses, certifiers and standardisation bodies. The ESC specifically proposes that the Commission look at the following: 1) how to create a stronger pan-European infrastructure tying the conformity assessment bodies to the mutual recognition principle; 2) widening the current notification procedures obliging conformity assessment bodies to notify when duplicative tests are required; 3) looking further into the role of product marking in this area.

4.5 The ESC would like to see the Commission put greater emphasis on strengthening the network between the Single Market Coordination Centres in each Member State and their role in promoting mutual recognition.

4.6 Since administrative cooperation is a cornerstone for the functioning of mutual recognition the ESC calls for a progress report from the Commission on administrative co-operation as a follow up on the Council resolution from 1994, reinforcing exchanges of information and administrative co-operation between Member States.

4.7 According to the Commission's Strategy for Europe's Internal Market and the Target Actions for eliminating the remaining obstacles⁶, Member States and the Commission should have implemented measures from the Commission Communication and Council Resolution by June 2001. The ESC would be interested in following up this implementation when it comes to the following:

- refining the notification system;
- promoting mutual recognition of certificates and tests; and
- reinforcing exchanges of information and administrative cooperation.

4.8 The ESC would also like to give its support to its Single Market Observatory cooperating with the Commission on this matter, and play a role in improving the efficiency of measures taken to promote mutual recognition.

4.9 In general the ESC believes that complaints from business on obstacles created due to the malfunctioning of mutual recognition need to be taken care of and processed in a more structured and transparent way. The ESC supports the proposals made in the Communication related to this.

5. Comments and recommendations regarding mutual recognition of diplomas

5.1 The Commission's Communication clearly states the problems experienced by a number of the professions, particularly those for which there is no specific directive concerning the introduction of the principle of mutual recognition and application of the principle of free movement of diploma-holders.

5.1.1 It is therefore necessary to find ways of improving the application of the principle of mutual recognition, which constitutes for these professionals a practical and powerful tool for economic integration.

5.1.2 Problems in this area particularly affect individuals because they arise from the case-by-case assessment of the equivalence of qualifications obtained.

5.1.3 It is important to improve and increase awareness of the principle of mutual recognition by the relevant authorities of the Member States, as emphasised in the communication from the Commission.

5.1.4 The ESC endorses the guidelines proposed by the Commission concerning the recognition of diplomas:

5.1.4.1 Sector-based round tables at European level between representatives of authorities responsible for supervision and representatives of the professions concerned; national seminars on specific issues.

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COM(2000) 257 final

5.1.4.2 Realisation of specific projects submitted to the Commission by the Member States, to help bring about an interactive information policy.

5.1.4.3 Management of individual complaints in problem sectors, and systematic follow-up of solutions proposed by the Member States. If the Member States are responsible for the implementation of this principle, there must be partnership and successful co-operation between Member States in order to raise the profile of this process.

5.1.4.4 The ESC considers it particularly important that a telematic contact network be set up, and that greater use be made of "contact points" - or more specifically co-ordinators - set up for regulated professions in all sectors of the internal market.

5.2 The ESC particularly approves of the measures proposed to ensure the credible monitoring of the application of the principle of mutual recognition:

- evaluation reports, particularly Reports on Directives 89/48 and 92/51 on the general arrangements, already sent to the Council and European Parliament, and work to increase the awareness of Member States confronted with similar problems;
- compliance with obligations arising from the proper application of Community law and (in some cases automatic) application of the infringement procedures provided for under the Treaty in all relevant cases;
- notification procedure, particularly in non-harmonised areas, with the aim of incorporating the principle of mutual recognition into the national law; and
- improving information and economic analysis.

5.3 Professional bodies and associations, both at national and Community level, have sometimes tried to propose ways of closing the gap between the generality of Directive 89/48 and the specificity of individual professions, in view of the clear advantages secured by adoption of the sectoral directives.

5.3.1 The legislative approach, which encompasses the current revision of Directive 89/48 now undergoing its second reading at the European Parliament, proposes a new Directive bringing together the current sectoral directives which would also cover those professions currently regulated by 89/48 which require a high level of education - five or more years. The goal is to provide the Community with a common tool capable of facing technological innovation and the demands of the complexity of the market, providing the consumer with a guarantee of the quality of services.

5.3.2 Since the legislative approach takes time and resources, a second approach has been followed towards the establishment of a European frame of reference without the force of law but possibly that of a recommendation.

5.3.2.1 The non-regulated professions may adhere to a set of common rules of education, professional standards and ethical codes, so as to distinguish their qualification in a voluntary but recognisable way.

5.3.2.2 The current example of this process is the title Eur-Ing which is awarded to European engineers who fulfil certain educational and professional criteria commonly set at European level by the European engineering community.

5.3.3 Other professions are ready to follow this example, provided that:

- They have some kind of European professional organisation;
- They have already set standards of education and possibly rules for mutual recognition;
- They are willing to assert their professionalism in the market for the protection of consumers.

5.3.3.1 Among the professions concerned are agronomists, geologists, land and building surveyors, agro-industrial technicians and laboratory technicians. It is interesting to note that these professions all have something to do with health and safety, in line with the provisions of Article 152 of the Treaty .

5.3.3.2 Obviously this list must be considered provisional and will require gradual updating since the data collected by the Group of Coordinators set up in the framework of Directives 89/48 and 92/51 are patchy.

5.3.3.3 Of course this second approach applies only to the professions which are not regulated, i.e. which have not set up a professional order or body of their own.

5.4 However, in view of the urgency of the situation and the importance of the recognition of diplomas, particularly in non-regulated professions, the ESC supports the establishment of a European system granting recognised status, recorded in a European register, to all professionals covered by the arrangement throughout the European Union.

Brussels, 29 November 2000

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