



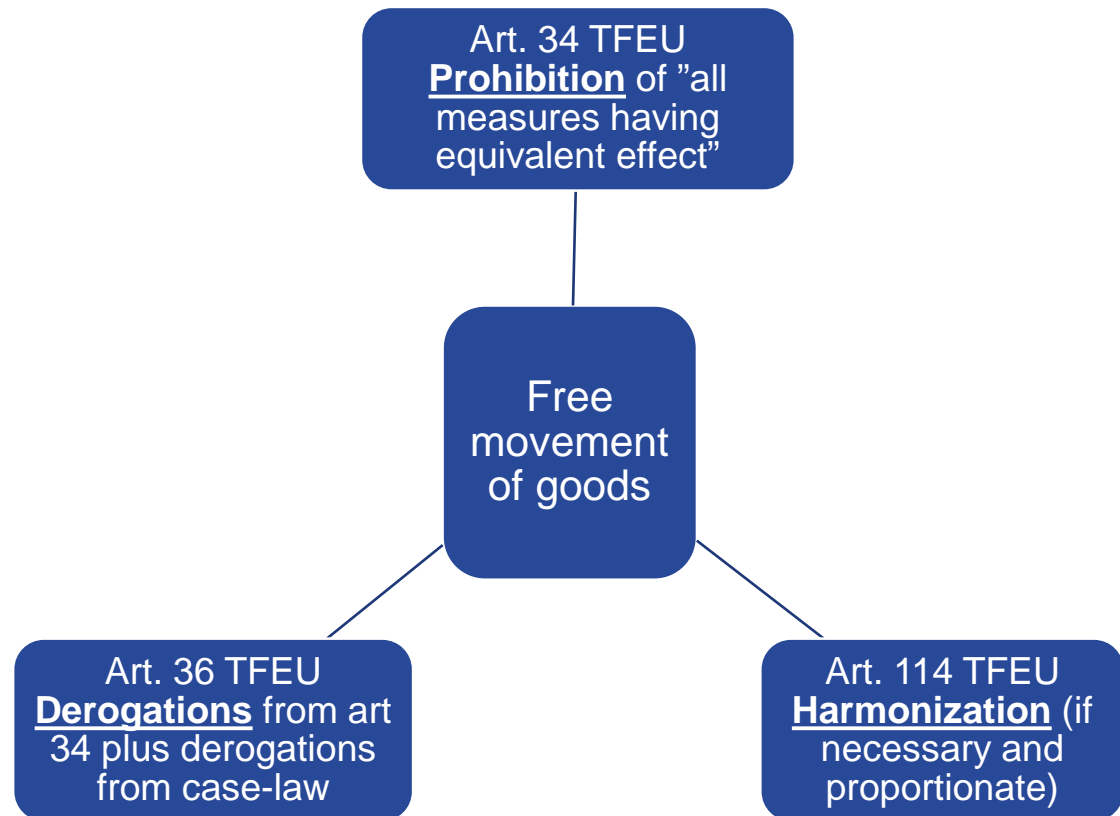
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Mutual recognition of technical rules





Origin of the principle: The free movement of goods "trilema"





The principle

”A Member State may not prohibit the sale of products that are lawfully marketed in another Member State”

- Even when the product does not fully comply with the technical rules of the Member State of destination
- Only non-harmonised products
- Creates a **”right”** to free movement



Exceptions to the principle

- Member State of destination may refuse the marketing of a product only where this is **strictly necessary** for the protection of, for example, public safety, health or environment (Art. 36 TFEU + mandatory requirements).
- Does the product live up to the national level of protection?



Advantages of mutual recognition:

- Free movement without harmonisation
- Greater variety of products
- Respecting diversity and subsidiarity
- Can be invoked by citizen and companies before national courts



Application of the principle in the EU: the mutual recognition regulation (764/2008)

Procedural framework for adopting decisions to stop (prohibit or withdraw) products by national authorities

- National authorities must notify and justify a decision denying market access based on overriding national rules
 - Burden of proof on Member State of destination
 - Tight deadlines
- Product Contact Points and a products database to know if mutual recognition is applicable



Revision of the mutual recognition regulation

- Public consultation in 2015
- Proposal for a the "Goods Package" (market surveillance + mutual recognition)
- Two aspects:
 - Revision of the MR Regulation
 - Action plan



Results of the public consultation

- Lack of awareness of the principle
- Legal uncertainty about its scope and the burden of proof
- Use of mutual recognition is not reliable
- Absence of dialogue between authorities and with the economic operators



Ranking of obstacles by order of importance	
Difficult for businesses to challenge a national decision denying market access	62%
Insufficient communication between national authorities of different Member States	46%
Lack of awareness about mutual recognition	35%
Difficult to obtain information about whether mutual recognition applies to a specific product and thus to assess if mutual recognition can be used or not for a specific product	32%
Other	29%
Slow/inefficient communication between businesses and national authorities	27%
Difficult to demonstrate to authorities in other Member States that a product is lawfully sold in a Member State	26%
Insufficient communication between national authorities within the same Member State	21%



Ranking of priorities by businesses

Ensure that businesses have effective remedies at their disposal to take action against decisions denying mutual recognition when needed	72%
Increase legal certainty for businesses when using mutual recognition to sell products abroad	67%
Ensure that the procedures are duly followed when decisions denying market access are taken by national authorities	65%
Increase effectiveness of mutual recognition to facilitate access to the internal market	64%
Facilitate communication between all actors involved in mutual recognition (business, national authorities, European Commission)	54%
Increase general awareness of the mutual recognition principle	52%



Ranking of priorities by Member States

Increase general awareness of the mutual recognition principle	51%
Ensure that the procedures are duly followed when decisions denying market access are taken by national authorities	42%
Ensure that businesses have effective remedies at their disposal to take action against decisions denying mutual recognition when needed	40%
Increase effectiveness of mutual recognition to facilitate access to the internal market	35%
Increase legal certainty for businesses when using mutual recognition to sell products abroad	33%
Facilitate communication between all actors involved in mutual recognition (business, national authorities, European Commission)	31%



Revision of 764/2008

- Clarification of the scope
- Transparency for administrative decisions denying market access
- Fast track appeal procedure
- Self-declaration of compliance



EU Action Plan

- EU-wide Action Plan to increase awareness of mutual recognition
- Tools to enhance the knowledge of business and national administrations of the principle of mutual recognition and its functioning
- Build trust among the different Member States
- Set up cooperation mechanisms between the different national administrations involved



THANK YOU !