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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations of an agreement with the United States of America on conformity assessment

Delegations will find attached document COM(2019) 15 final.

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Brussels, 18.1.2019
COM(2019) 15 final

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations of an agreement with the United States of
America on conformity assessment**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

- **Reasons for and objectives of the recommendation**

On 25 July 2018, the President of the European Commission and the President of the United States of America reached agreement to launch a new phase in the trade relationship between the United States and the European Union with a view to facilitate trade and avoiding an escalation of trade tensions. The Joint Statement envisaged the establishment of an Executive Working Group to consider, inter alia, measures to reduce administrative obstacles and costs, while preserving the high level of protection of each side.

This recommendation for the opening of negotiations with the United States forms part of a larger set of actions aiming at improving cooperation between the European Union and the United States on regulatory issues and on the use of standards in support of regulations. The recommendation provides for draft negotiating directives to facilitate trade and thus increase trade flows in industrial goods between the European Union and the United States through a reduction of the costs of conformity assessment, in a reciprocal and balanced manner.

The EU and US are the largest and most integrated economies in the world, with a long, shared history of trade and a similar rate of economic development. The US is the main export destination of EU exports in industrial goods and is the second largest exporter of industrial goods to the EU (after China). EU-US trade in goods amounted to EUR 633 billion in 2017, composed mostly of industrial products (EUR 598 billion, mostly composed of EUR 166 billion trade in machinery and equipment). Around 4.7 million EU jobs are associated with production for exports to the US. Industrial goods account for most of our trade in goods with the US (94 % of EU exports and 95 % of imports). EU-US trade in goods has been growing consistently over the last 10 years. In light of these important trade flows, economic operators on both sides of the Atlantic stand to benefit greatly from the elimination of duplication of testing, inspection and certification requirements, thereby reducing the costs for companies to access our respective markets.

The European Union and the United States have their respective practices of conformity assessment to ensure that manufacturers can only place a product on the market when it meets all the applicable requirements to ensure that unsafe or otherwise non-compliant products do not find their way to their respective markets. These may include testing, inspection and certification. Differences in approaches to conformity assessment can result in additional costs and lengthy and complex administrative processes without necessarily improving the safety of products. In case of mandatory third party conformity assessment (approximately 70% of cases in the United States), enabling exporters to seek certification in the country of export of products to prove compliance with the applicable rules in the country of importation can facilitate trade. This possibility only exists for certain sectors under the existing mutual recognition agreement concluded between the EU and the US in 1998, which does not function properly for all of the sectors covered. Costs of conformity assessment can thus be significant for EU exports in particular in key sectors such as machinery and equipment.

The reduction in the costs of conformity assessment can bring significant economic benefits, in particular for small and medium-sized enterprises (SMEs) who are disproportionately affected by them. Given their size, it is often much harder for SMEs to cope with trade barriers than it is for larger firms. They often lack the capacity and/or resources to deal with

differences in product requirements and applicable conformity assessment procedures, and struggle to find the relevant information. Therefore, a reduction in the number of barriers in relation to conformity assessment could be of particular benefit for exporting SMEs in the manufacturing industries. They are likely to gain in greater proportion from a decrease in costs of trading. This decrease in trade costs can sometimes make the difference between exporting or not.

Facilitating acceptance of conformity assessment results requires an international agreement in order to allow, upon fulfilment of the relevant requirements, the conformity assessment bodies that are not established within the territory of the EU to certify product compliance with the relevant EU legislation. This recommendation therefore proposes entering into negotiations with the US with the objective of reducing conformity assessment costs for economic operators on both sides of the Atlantic by agreeing on acceptance of results of conformity assessment carried out by conformity assessment bodies located in the territory of the exporting Party in the territory of the importing Party in accordance with the technical requirements of the latter.

- **Consistency with existing policy provisions in the policy area**

The scope of this recommendation is limited to the implementation of the part of the Joint Statement of 25 July 2018 to improve trade in goods through the facilitation of the acceptance of conformity assessment results while ensuring that the high level of protection is fully preserved. The objective is to facilitate trade and de-escalate trade tensions between the EU and the US and is fully consistent with the Treaty on European Union (TEU), which enshrines that the EU should encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.¹

- **Consistency with other Union policies**

The recommendation is consistent with other Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

Article 207(3) and (4) first subparagraph in conjunction with Article 218(3) and (4) of the Treaty on the Functioning of the European (TFEU).

Subsidiarity (for non-exclusive competence)

According to Article 5(3) of the TEU, the subsidiarity principle does not apply in areas of exclusive EU competence. The common commercial policy is listed among the areas of exclusive competence of the Union in Article 3 of the TFEU. This policy includes the negotiation of trade agreements pursuant to, inter alia, Article 207 TFEU.

Proportionality

The Commission recommendation is in line with the principle of proportionality, and necessary in light of our objective to de-escalate trade tensions with the US.

¹ Article 21 paragraphe 2 (e) TEU.

Choice of the instrument

Decision of the Council of the European Union.

2. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Ex-post evaluations/fitness checks of existing legislation

Not applicable

- **Stakeholder consultations**

Several stakeholder consultations in the form of hearings and civil society dialogue meetings have taken place since 2012 to consider possible gains from closer EU-US regulatory cooperation. This is in addition to public debates in or organised by the European Parliament and EU Member States.

In the context of this recommendation, a new round of stakeholder consultations will soon be launched on possible regulatory cooperation initiatives with the US, consisting of the publication of a roadmap setting out a stakeholder consultation strategy (with a possibility of stakeholder “feedback” within a four-week period).

The results of the consultations will be summarised in a short synopsis report. The Commission will also provide a reaction to the main stakeholder recommendations. The consultation will not be limited to the issue of conformity assessment, but will also aim at identifying other initiatives with the US, which could result in significant benefits, while maintaining - if not enhancing - existing levels of protection.

- **Collection and use of expertise**

Considerable expertise about the possible gains from closer EU-US cooperation on conformity assessments was already gathered in previous consultation activities since 2012 (please see links and documents on the following website: http://trade.ec.europa.eu/doclib/cfm/doclib_section.cfm?sec=146). However, this expertise will be updated in the context of the new stakeholder consultations mentioned above.

- **Impact assessment**

Due to the political imperative to move ahead quickly in order to lower trade tensions between the EU and the US, as expressed by the President of the Commission after his meeting with the US President, and endorsed by the European Council in its informal meeting of 16 May 2018 in Sofia, the formal impact assessment process has been waived in favour of a more proportionate approach to ensure evidence gathering and stakeholder consultation. This proportionate approach is also justified because it is expected that the new agreement will not have significant economic, social or environmental impacts beyond those benefits arising from simplification of conformity assessment for specific product sectors.

- **Fundamental rights**

The recommendation is consistent with the EU Treaties and the Charter of Fundamental Rights of the European Union.

3. BUDGETARY IMPLICATIONS

The agreement on the conformity assessment between the United States and the European Union will have no negative impact on the budget of the EU. Indirect positive impacts can be expected from increased trade flows.

4. OTHER ELEMENTS

- **Procedural aspects**

The Commission will negotiate on behalf of the EU. In accordance with Article 218(4) TFEU, it is suggested that the Council of the European Union designates the Trade Policy Committee as the committee in consultation with which the negotiations must be conducted.

The European Parliament will be informed at all stages of the procedure, in line with Article 218(10) TFEU.

The Commission will make this Recommendation and its Annex public immediately after its adoption.

The Commission recommends that the negotiating directives be made public immediately after their adoption by Council.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations of an agreement with the United States of America on conformity assessment

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(3) and (4), first subparagraph in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations, on behalf of the European Union, with the United States of America for an agreement on conformity assessment.

Article 2

The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the Annex.

Article 3

The Commission shall conduct negotiations in consultation with [name of the special committee to be inserted by the Council].

Article 4

This Decision and its Annex will be made public immediately after their adoption.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*