



Council of the
European Union

Brussels, 6 November 2019
(OR. en)

5980/09
DCL 1

CONSOM 18
MI 42
USA 6
EDPS 1
DATAPROTECT 6

DECLASSIFICATION¹

of document: ST 5980/09 RESTREINT UE

dated: 2 February 2009

new status: Public

Subject: Recommendation from the Commission to the Council in order to authorise the Commission to open negotiations with the United States of America for an agreement on cooperation in the enforcement of consumer protection laws

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

¹ Document declassified by the European Commission on 29 October 2019.

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 2 February 2009

5980/09

RESTREINT UE

**CONSUM 18
MI 42
USA 6
EDPS 1
DATAPROTECT 6**

COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 29 January 2009

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Recommendation from the Commission to the Council in order to authorise the
Commission to open negotiations with the United States of America for an
agreement on cooperation in the enforcement of consumer protection laws

Delegations will find attached Commission document **SEC(2008) 3111 final**.

Encl.: **SEC(2008) 3111 final**



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.1.2009
SEC(2008) 3111 final

RESTRICTED

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to open negotiations with the United States of America for an agreement on cooperation in the enforcement of consumer protection laws

(presented by the Commission)

DECLASSIFIED

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to open negotiations with the United States of America for an agreement on cooperation in the enforcement of consumer protection laws

A. EXPLANATORY MEMORANDUM

Cooperation between public authorities responsible for the enforcement of laws that protect the interests of consumers in order to detect, investigate and bring about the cessation of infringements in cross-border cases is essential to contribute to the smooth functioning of the internal market and the effective enforcement of consumer protection legislation. Indeed, a lack of co-operation and the resulting lack of effective enforcement in cross-border cases enables sellers and suppliers to evade enforcement attempts by relocating their place of establishment. This is detrimental to the protection of consumers' rights, it undermines the confidence of consumers in taking up cross-border offers and hence their confidence in the internal market and also gives rise to a distortion of competition for law-abiding sellers and suppliers.

Aware of this problem, in the case of intra-Community infringements, the Community has sought to facilitate cooperation between Member State public authorities responsible for the enforcement of the laws that protect consumers' interests through the adoption of **Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws** (the "Consumer Protection Cooperation Regulation").

The Consumer Protection Cooperation Regulation lays down the conditions under which the competent authorities in the Member States designated as responsible for the enforcement of the laws that protect consumers' interests² shall co-operate with each and the Commission in order to ensure compliance with those laws and the smooth functioning of the internal market, and in order to enhance the protection of consumers' economic interests.

However, the enforcement challenges that exist go beyond the frontiers of the European Union and the interests of Community consumers need to be protected from rogue traders based in third countries. Indeed, the successful implementation of the Consumer Protection Cooperation Regulation and the efficient enforcement of EC consumer protection legislation may also encourage rogue traders to establish themselves outside the European Union and to target European consumers from outside the reach of the public authorities of the Member States. Hence there is a need for international agreements to be negotiated with third countries to create a legal basis and clear legal structures for cooperating with third countries in the

² The laws falling within the scope of the co-operation mechanism established by the Consumer Protection Cooperation Regulation are the directives as transposed into the legal order of the Member States and the Regulations listed in the Annex to the Consumer Protection Cooperation Regulation.

enforcement of the laws that protect consumers' interests. These international agreements should be negotiated at Community level in the areas covered by the Consumer Protection Cooperation Regulation in order to ensure the optimum protection of Community consumers and the smooth functioning of enforcement cooperation with third countries.

The Consumer Protection Cooperation Regulation offers the possibility to work together with third countries in order to enhance the protection of consumers and includes provisions for the conclusion of international agreements. Article 18 of the Regulation provides that the Community shall co-operate with third countries and with the competent international organisations in the areas covered by the Regulation in order to enhance the protection of consumers' economic interests, and that the arrangements for cooperation, including the establishment of mutual assistance arrangements, may be the subject of agreements between the Community and the third countries concerned. Article 14 of the Regulation foresees the conditions for sharing information received from third countries and for the communication of information to third countries. The Consumer Protection Cooperation Regulation also provides for confidentiality rules applying to the exchange of information and specifies that the exchange of information with third countries shall be carried out in accordance with Community legislation regarding the protection of individuals with regard to the processing of personal data.

The Consumer Protection Cooperation Committee established under the Consumer Protection Cooperation Regulation has identified the United States of America as a priority candidate for cooperation in the enforcement of consumer protection laws.

The Commission considers, therefore, that it should start negotiations with the United States of America for the conclusion of an agreement within the scope of the Consumer Protection Cooperation Regulation.

The negotiations should have the following objectives:

Firstly, to provide a legal basis for cooperation with the United States of America in activities falling within the scope of the Consumer Protection Cooperation Regulation.

Secondly, to introduce similar obligations to those of the Member States in terms of the Consumer Protection Cooperation Regulation in order to make it possible to exchange information with the competent authority or authorities in the United States of America and, if appropriate, to request and undertake enforcement actions as referred to in the said Regulation, while providing for the necessary conditions and safeguards for the processing of personal data communicated to the United States of America so as to ensure a level of protection of personal data exchanged in accordance with the principles of Directive 95/46/EC³, in particular Article 26(2) thereof. When negotiating such conditions and safeguards the Commission shall pay due account to the advice of the European Data Protection Supervisor.

³ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. OJ L281, 23/11/95.

Thirdly, to provide for the exchange of statistical data, participation in exchange of officials activities and other forms of co-operation falling within the scope of the Consumer Protection Cooperation Regulation with the competent authority or authorities in the United States of America.

Fourthly, to set out the financial arrangements for the above-mentioned co-operation with the United States of America including its financial contribution to the operation and technical maintenance and upgrading of any database that may be set up for the purpose of secure exchange of information.

In addition to these general objectives, more general provisions may be considered during the negotiations, including the establishment of a Joint Committee composed of representatives of the Contracting Parties to ensure the proper application of any agreement resulting from the negotiations with the capacity to adapt the agreement to new or amended legislation.

B. RECOMMENDATION

In the light of the above, the Commission recommends:

- that the Council authorise the Commission to negotiate with the United States of America an agreement on cooperation in the enforcement of consumer protection laws covered by the Consumer Protection Cooperation Regulation and in accordance with the conditions laid down in the said Regulation;
- that, since in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task, and;
- that the Council issue the negotiating directives in the Annex.

ANNEX

NEGOTIATION DIRECTIVES

1. The aim of the negotiations shall be the adoption of an agreement with the United States of America on cooperation in the enforcement of consumer protection laws covered by the Consumer Protection Cooperation Regulation and in accordance with the conditions laid down in the said Regulation. On-going discussions with third countries and existing agreements in other policy areas are to be taken into consideration when deciding on the final legal structure of such agreement;
2. The Commission shall negotiate to ensure that any agreement:
 - (1) provides a legal basis for cooperation with the United States of America in the activities falling within the scope of the Consumer Protection Cooperation Regulation;
 - (2) introduces similar obligations to those of the Member States in terms of the Consumer Protection Cooperation Regulation in order to make it possible to exchange information with the competent authority or authorities in the United States of America and to request and undertake enforcement actions as referred to in the said Regulation;
 - (3) provides for the exchange of statistical data, participation in exchange of officials activities and other forms of co-operation falling within the scope of the said Regulation with the competent authority or authorities in the United States of America;
 - (4) sets out the financial arrangements for the above-mentioned co-operation with the United States of America including its financial contribution to the operation and technical maintenance and upgrading of any database that may be set up for the purpose of secure exchange of information;
 - (5) provides for the necessary conditions and safeguards for the processing of personal data communicated to the United States of America so as to ensure a level of protection of personal data exchanged in accordance with the principles of Directive 95/46/EC;⁴
 - (6) provides, where necessary, for the setting up of a Joint Committee, composed of representatives of the Contracting Parties, to ensure the proper application of any agreement resulting from these negotiations, and its adaptation to new or amended EU legislation;
 - (7) is adopted for an unlimited period of time;
 - (8) shall come to an end six months after the notification of either Contracting Party of the denouncement of the Agreement.

⁴ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. OJ L281, 23/11/95.

3. The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.

DECLASSIFIED