



Council of the
European Union

Brussels, 6 November 2019
(OR. en)

12536/09
DCL 1

CONSOM 154
MI 294
USA 63
EDPS 6
DATAPROTECT 52

DECLASSIFICATION¹

of document: ST 12536/09 RESTREINT UE

dated: 31 July 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 and information exchange in the area of consumer product safety

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.

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COVER NOTE

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

date of receipt: 27 July 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 and information exchange in the area of consumer
product safety

Delegations will find attached Commission document **SEC(2009) 1045 final**.

Encl.: **SEC(2009) 1045 final**.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.7.2009
SEC(2009) 1045 final

RESTREINT UE

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 and information exchange in the area of consumer product safety

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A. EXPLANATORY MEMORANDUM

Growing international trade and global product supply chains mean that ensuring a high level of consumer product safety is a matter of shared concern for the European Community and the United States of America. Cooperation and exchange of information between public authorities is essential for effective market surveillance and enforcement of consumer product safety legislation, including import controls, and for the smooth functioning of markets. Imperfect cooperation and the resulting deficiencies in enforcement enable producers and distributors to continue to supply dangerous products in the territories where the risks have not yet been detected. This is detrimental to the health and safety of consumers. It also undermines the confidence of consumers in markets and gives rise to a distortion of competition to the detriment of law-abiding producers and distributors.

Within the European Union, the Community has sought to ensure the safety of non-food consumer products and to facilitate cooperation and information exchange between Member State authorities through the adoption of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (the "GPSD")².

The GPSD lays down the conditions under which the authorities responsible for consumer product safety must carry out market surveillance and enforcement and cooperate and exchange information with each other and the European Commission in order to ensure the safety of consumer products. In particular, the GPSD establishes the Community Rapid Information System for non-food consumer products (RAPEX) which ensures efficient communication between national authorities and the Commission to avoid the supply of dangerous products to consumers.

However, the market surveillance and enforcement challenges that exist go beyond the frontiers of the European Union. Given that to a large extent same (brands of) consumer products, such as toys and childcare articles, electronic equipment and clothing, are marketed on both sides of the Atlantic, the Commission is already in dialogue with the authorities responsible for consumer product safety in the United States of America. Moreover, experts from both the Commission and the United States of America (Consumer Product Safety Commission) participate in informal multilateral cooperation fora discussions among product safety regulators.

² OJ L 11, 15.1.2002, p. 4.

While consumer product safety cooperation is ongoing under the 2005 Guidelines³, including regular exchanges of non-confidential information on dangerous products and corrective actions, there is nevertheless a need for stronger legal base and clearer structures to enter into systematic sharing of confidential product safety information. In the United States of America, the responsible authorities gained the statutory authority to engage in exchange of confidential product safety information with foreign governments with the adoption of the Consumer Product Safety Improvement Act in August 2008.

In the Community, the GPSD offers the possibility to work together with third countries and includes a provision for the conclusion of international agreements. Article 12(4) of the GPSD provides that access to RAPEX is open to third countries within the framework of agreements between the Community and those countries, according to arrangements defined in these agreements. Any such agreements must be based on reciprocity and include provisions on confidentiality corresponding to those applicable in the Community.

Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93⁴ also resorts to the use of RAPEX for the purpose of information exchange on risks posed to consumer safety, among other public interests, by products covered by Community harmonisation legislation. According to Article 22(4) of the Regulation, Article 12(4) of the GPSD shall apply mutatis mutandis. In addition, Article 26 of the Regulation foresees the possibility for market surveillance authorities in the EU to cooperate with the competent authorities of third countries with a view to exchanging information and technical support, promoting and facilitating access to European information support systems and promoting activities relating to conformity assessment, market surveillance and accreditation (e.g. exchange of officials, joint actions, exchange of experience, information and best practice). The Regulation requires the Commission to develop appropriate programmes for that purpose, in cooperation with Member States. The Regulation applies from 1 January 2010.

There is clear added value in concluding an international agreement with the United States of America on cooperation and information sharing. Receiving information from the United States of America on dangerous products, injuries and corrective actions in their territory would allow the EU Member State authorities to better target their market surveillance and enforcement actions. Similarly, information on dangerous products and corrective measures taken in the Community would allow authorities in the United States of America to take action. All such actions would increase the safety of consumer products on both sides of the Atlantic.

The Commission considers, therefore, that it should open negotiations with the United States of America for the conclusion of a cooperation and information exchange agreement in the field of consumer product safety. This agreement should be negotiated at Community level to ensure the best possible protection of the health and safety of consumers and the smooth functioning of cooperation with the United States of America. Indeed, Member States essentially rely on the Commission to organise such cooperation. The proposed agreement

³ Guidelines for information exchange and on administrative cooperation between the U.S. Consumer Product Safety Commission and the Directorate-General for Health and Consumer Protection of the European Commission, February 2005, http://ec.europa.eu/consumers/cons_safe/prod_safe/coop_USA_guidelines.pdf.

⁴ OJ L 218, 13.8.2008, p. 30.

should also be seen as a first stage in a process possibly leading to the conclusion of similar agreements with the competent US Regulatory Agencies on information exchange and technical cooperation for non-consumer products covered by Community harmonisation legislation in accordance with Article 26 of Regulation No 765/2008.

This Recommendation proposes an authorisation for the Commission to negotiate with the United States of America in this policy area on behalf of the Community, subject to agreement of EU Member States in the Council.

The negotiations should have the following objectives:

Firstly, to provide a stronger legal basis for cooperation and information exchange with the competent authority or authorities of the United States of America in the area of consumer product safety, including for granting access to RAPEX information.

Secondly, to provide for the participation in exchange of officials, joint activities and other forms of cooperation falling within the scope of the GPSD with the competent authority or authorities in the United States of America.

Thirdly, to set out, as necessary, the financial arrangements for the above mentioned cooperation with the United States of America, including financial contribution to the operation and technical maintenance and upgrading of any database that may be set up or used for the purpose of the information exchange.

In addition to these 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 light of the above, the Commission recommends

- that the Council authorise the Commission to negotiate with the United States of America a cooperation and information exchange agreement in the area of consumer product safety;
- 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 Annex.

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ANNEX

NEGOTIATION DIRECTIVES

1. The aim of the negotiations shall be the conclusion of an agreement covering cooperation and information exchange in the area of consumer product safety between the Community and the United States of America.
2. The Commission shall negotiate to ensure that any agreement:
 - (1) provides a stronger legal basis for cooperation and information exchange with the competent authority or authorities in the United States of America in the area of consumer product safety, including for granting access to RAPEX information;
 - (2) is based on reciprocity, as defined in the relevant agreement, and provides for the necessary conditions and safeguards to ensure confidentiality of information which is covered by professional secrecy;
 - (3) provides for the participation in exchange of officials, joint activities and other forms of cooperation falling within the scope of the GPSD with the competent authority or authorities in the United States of America;
 - (4) sets out, as necessary, the financial arrangements for the above mentioned cooperation with the United States of America, including financial contribution to the operation and technical maintenance and upgrading of any database that may be set up or used for the purpose of the information exchange;
 - (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/EC⁵ and the Regulation (EC) No 45/2001⁶ ;
 - (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; and

⁵ 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 L 281, 23.11.1995, p. 31.

⁶ Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1

- (8) shall come to an end after the notification of either Contracting Party of the denouncement of the agreement.
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.

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