

ROADMAP

Title of the initiative: **Council decision for the conclusion of an agreement with the US on cooperation in the enforcement of consumer protection laws.**

Type of initiative (CWP/Catalogue/Comitology): CWP

Lead DG: SANCO

Expected date of adoption of the initiative (month/year): September 2010

Date of modification:

Version No:

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

The Regulation on Consumer Protection Cooperation - Regulation (EC) No. 2006/2004 (the CPC Regulation) - offers the possibility for the Community to work with third countries in order to enhance the protection of the collective economic interest of consumers. The CPC Regulation does not cover the individual cases but focuses on cases of collective interest..

The CPC Regulation provides for international agreements, Article 18 states that "The Community shall cooperate with third countries and with the competent international organisations in the areas covered by this Regulation in order to enhance the protection of consumers ' economic interests. The arrangements for cooperation, including the establishment of mutual assistance arrangements, may be the subject of arrangements between the Community and the third countries concerned".

The Consumer Protection Cooperation Committee established by the Regulation has indicated the the United States of America (USA) as a priority candidate for cooperation (Switzerland was ranked 2nd priority). To note that three Member States have already voluntary cooperation arrangements in place in the CPC area with the US.

Cooperation may be expanded to the relations with enforcers in other countries at a later stage.

On 5 May 2009 the Council has authorised the Commission to open negotiations with the USA. Formal negotiations started on 8 June the same year and are currently ongoing.

What are the main problems identified?

The CPC Regulation lays down the conditions under which the enforcement authorities in the Member States shall cooperate with each other and the Commission in order to ensure compliance with the consumer protection laws and the smooth functioning of the internal market.

However, the enforcement challenges that exist go beyond the frontiers of the EU and the interests of Community consumers need to be protected from rogue traders based in third countries. Therefore, there is the need for negotiating international agreements to create a legal basis and legal structures for cooperating with third countries in the enforcement of consumer protection laws.

The objective of the negotiations with the US is:

a) to create a legal base for the cooperation (a binding international agreement)

b) to introduce similar obligation to those of the Member States in terms of CPC in order to make it possible the exchange of information with the competent authorities in the USA and if appropriate to request and undertake enforcement actions. It should be noted that the cooperation agreement should provide the necessary conditions and safeguards for the processing of personal data communicated to the US in accordance with the principles of Directive 95/46/EC.

c) to provide for the exchange of statistical data and participation in exchange of official and activities falling within the scope of the CPC Regulation.

Currently only three Member States have in place arrangements that allow cooperation on voluntary basis with the US for enforcing consumer protection laws. The other Member States have expressed the need for a binding agreement that would put in place a mechanism for enforcers to exchange information and stop illegal practices from rogue traders. At present for instance, if a US trader is doing illegal practices targeting EU consumers, Member States enforcers do not have the possibility to oblige US authorities to have such practices stopped. The binding agreement will create a mechanism where the Member States will – in the case mentioned – ask the US authorities to stop the illegal practice.

Who is affected? Enforcement authorities in the EU and in the United States and the Commission, consumers and businesses.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

Enforcement is the exclusive competence of the Member States. However the CPC Regulation gives the Community a role in negotiating and reaching international agreements to facilitate cooperation between the enforcement authorities (Article 18 of the CPC Regulation).

B. Objectives of EU initiative

What are the main policy objectives?

- to better protect European consumers from rogue traders established in the United States of America, who pursue business activities that are addressed EU consumers
- to share intelligence and experience between enforcement authorities to enhance enforcement
- to create a common framework and cooperation for all EU enforcement authorities responsible for the enforcement of consumer protection laws whilst guaranteeing the necessary conditions and safeguards for the processing of personal data

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

Not relevant.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered?

(iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

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The Council authorised the Commission to open negotiations with the United States of America for an agreement on cooperation of consumer protection laws on 5 May 2009. The agreement will establish a framework and conditions for cooperation between EU enforcement authorities and their counterpart(s) in the US.

The mandate given by the Council includes the provision that the Commission shall negotiate to ensure that any agreement provides the necessary conditions and safeguards for the processing of

personal data communicated to the US as to ensure a level of protection of personal data exchanged according with the principles of Directive 95/46/EC.

Progress has been made on most of the aspects of the Agreement under negotiation (such as on the types of cooperation, the role of the Commission and the prioritisation of requests)

However, at this stage of the negotiations, "data protection" appears to be the principle obstacle. From the discussions we had on 11 December 2009 with the US, it seems that they are unable to meet the requirements imposed by our provisions on data protection due to the lack of equivalent data protection principles in the US.

EP rejection of SWIFT on 11 February this year is likely to impact on other international agreement with the US including on CPC cooperation.

The negotiations are currently ongoing and it is therefore not possible to anticipate the outcome of the negotiations in this area. However, the Commission has the mandate from the Council to come to an agreement that provides the necessary conditions and safeguards for the processing of personal data communicated to the US as to ensure a level of protection of personal data exchanged according with the principles of Directive 95/46/EC.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

The agreement will cover legislation that is enforced via the CPC Regulation, ref. in the Annex. The agreement will not cover all the legislation enforced by the CPC Regulation but only the legislation that is also enforced by the US counterpart (the Federal Trade Commission). For the EU side, the legislation is Directive 2005/29/EC on unfair commercial practices and Article 13 of Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector.

Explain how the options respect the proportionality principle.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

Positive impacts for consumers, i.e., better protection from illegal practices and therefore better protection of their rights. We can anticipate also positive impacts for businesses, rogue traders will be punished and this does not count as a cost and law abiding businesses will not be face by unfair competition.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

iii) The agreement will establish a framework and conditions for cooperation between EU enforcement authorities and their counterpart in the US.

E. Planning of further impact assessment work

When will the impact assessment work start?

It is still to be decided if an impact assessment is necessary. The mandate to negotiate with the US has been given to the Commission by the Council on 5 May 2009 and currently negotiations are ongoing.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?
(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

Not relevant.

Which stakeholders & experts have been/will be consulted, how and at what stage?

Services concerned by the agreement (INFISO, JLS, RELEX, LS) have been involved in all stages since the beginning.