

## COMMISSION DECISION

of 1 March 2011

**amending Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance**

*(notified under document C(2011) 1165)***(Text with EEA relevance)**

(2011/141/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) <sup>(1)</sup>, and in particular Articles 6(4), 7(3), 8(7), 9(4), 10(3), 12(6), 13(5) and 15(6) thereof,

Whereas:

(1) On 22 December 2006 <sup>(2)</sup>, the Commission adopted Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance.

(2) Decision 2007/76/EC was amended by Commission Decision 2008/282/EC <sup>(3)</sup> to establish the principles governing the notification of enforcement measures, the information to be supplied in notifications following the notification of an alert and the coordination of market surveillance and enforcement activities.

(3) The requirements laid down by Decision 2007/76/EC in respect of deletions in the database provided for in Article 10(1) of Regulation (EC) No 2006/2004 and in respect of regular notifications need to be reviewed on the basis of the experience gained with the operation of the enforcement cooperation network.

(4) It is also appropriate to clarify rules governing the obligations of the coordinating competent authority, the

participation in coordinated enforcement activities, and the minimum information to be supplied in the framework of such activities.

(5) It is necessary to align Decision 2007/76/EC with opinion 6/2007 <sup>(4)</sup> of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by Article 29 of Directive 95/46/EC of the European Parliament and of the Council <sup>(5)</sup> and the opinion of the European Data Protection Supervisor <sup>(6)</sup>.

(6) Decision 2007/76/EC should therefore be amended accordingly.

(7) The measures provided for in this Decision are in accordance with the opinion of the Committee set up by Article 19(1) of Regulation (EC) No 2006/2004,

HAS ADOPTED THIS DECISION:

*Article 1*

The Annex to Decision 2007/76/EC is amended in accordance with the Annex to this Decision.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 1 March 2011.

*For the Commission*

John DALLI

*Member of the Commission*

<sup>(1)</sup> OJ L 364, 9.12.2004, p. 1.

<sup>(2)</sup> OJ L 32, 6.2.2007, p. 192.

<sup>(3)</sup> OJ L 89, 1.4.2008, p. 26.

<sup>(4)</sup> Opinion 6/2007/EC on data protection issues related to the Consumer Protection Cooperation System (CPCS) 01910/2007/EN, WP 139, adopted on 21 September 2007.

<sup>(5)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(6)</sup> EDPS Opinion Ref. 2010-0692.

## ANNEX

The Annex to Decision 2007/76/EC is amended as follows:

(1) point 2.1.3 is replaced by the following:

‘2.1.3. If no agreement can be reached, the requested authority shall issue a response supplying all the relevant information at its disposal and indicating the investigation and enforcement actions taken or planned (including time limits) no later than 14 days after the date of receipt of a request via its single liaison office. The requested authority shall update the applicant authority on these actions on a regular basis as appropriate but at least every 3 months until:

(a) any relevant information required to establish whether an intra-Community infringement has occurred or to establish whether there is a reasonable suspicion it may occur has been sent to the applicant authority; or

(b) the intra-Community infringement has ceased or the request has proved to be unfounded.’;

(2) in point 2.1.5, the following paragraphs are added:

‘A competent authority shall, as soon as it discovers that a request for mutual assistance pursuant to Articles 6, 7 and 8 of Regulation (EC) No 2006/2004 contains erroneous data that can not be corrected by other means, request the Commission to remove the information from the database as soon as technically possible and, in any case, not later than 7 days after receiving the request for deletion.

All other information relating to requests for mutual assistance pursuant to Article 6 of Regulation (EC) No 2006/2004 shall be removed from the database 5 years after the closure of the case.’;

(3) in point 2.2.2 the following paragraph is added:

‘Founded alerts shall be removed from the database 5 years after they are issued.’;

(4) in Chapter 4, the heading is replaced by the following:

‘4. CHAPTER 4 – ACCESS TO INFORMATION EXCHANGED AND DATA PROTECTION’;

(5) the following points 4.3 and 4.4 are inserted:

‘4.3. *Commission access to data*

The Commission’s access to data shall be limited to what is required under Regulation (EC) No 2006/2004. This includes access to alerts pursuant to Article 7(1), to notifications pursuant to Articles 7(2) and 8(6), and to information relating to the coordination of market surveillance and enforcement activities pursuant to Article 9 and to conditions pursuant to Article 15(5) of Regulation (EC) No 2006/2004.

4.4. *Sensitive data*

The processing by competent authorities of personal data linked to race, ethnicity, political opinions, religion, trade-union membership, health or sex life shall be prohibited, unless the fulfilment of the obligations under Regulation (EC) No 2006/2004 is otherwise impossible and the processing of such data is permitted under Directive 95/46/EC.

The use by competent authorities of personal data linked to offences, suspected offences and security measures shall be limited to the specific purposes of mutual assistance as defined in Regulation (EC) No 2006/2004.’;

(6) Chapter 6 is replaced by the following:

‘6. CHAPTER 6 – COORDINATION OF MARKET SURVEILLANCE AND ENFORCEMENT ACTIVITIES

6.1. When applying Article 9(2) of Regulation (EC) No 2006/2004, the authorities who have agreed to coordinate their enforcement activities may decide on all the necessary steps to ensure adequate coordination and shall carry them out to the best of their abilities.

6.2. A competent authority may refuse to follow an invitation to participate in coordinated enforcement activities, following consultation with the inviting authority if:

- (a) judicial proceedings have already been initiated or a final judgment has already been passed in respect of the same intra-Community infringements and against the same sellers or suppliers before the judicial authorities in the Member State of the requested or applicant authority;
- (b) in its opinion, following appropriate investigation, it is not concerned by the intra-Community infringement.

If a competent authority decides to decline an invitation to participate in coordinated enforcement activities it shall state the reasons of its decision.

This point shall be without prejudice to the application of Articles 6 and 8 of Regulation (EC) No 2006/2004.

6.3. In order to fulfil their obligations pursuant to Article 9(2) of Regulation (EC) No 2006/2004, the competent authorities concerned may decide that one of them shall coordinate the enforcement action. The competent authorities, while taking into account the specific features of each case, shall in principle designate as coordinating authority the authority where the trader has its headquarters or main centre of activities, or where the greater number of consumers affected are located.

6.4. The Commission shall facilitate the coordination of activities pursuant to Article 9(1) and (2) of Regulation (EC) No 2006/2004 if invited.

6.5. The competent authority designated as coordinating authority pursuant to 6.3 shall at least be responsible for the following:

- (a) managing the communication between the authorities participating in the coordinated activities through appropriate means;
- (b) drafting a short summary report at the end of the coordinated activity when appropriate;
- (c) closing the coordinated enforcement activity in the database as soon as technically possible and in any case within 7 days after the last mutual assistance request issued between two competent authorities participating in coordinated enforcement activities is closed by the applicant authority concerned.

The obligations of the coordinating authority shall not affect the information requirements incumbent upon the other participating competent authorities in accordance with Regulation (EC) No 2006/2004 and its implementing rules.

6.6. In addition to the information requirements required for mutual assistance pursuant to Articles 6, 7 and 8 of Regulation (EC) No 2006/2004, when a competent authority decides to invite other authorities to coordinate enforcement activities it shall provide at least the following information:

- (a) the details of the competent authority inviting to coordinate the enforcement activities;
  - (b) the name of the seller or supplier;
  - (c) the name of the product or service;
  - (d) the classification code;
  - (e) the advertising or sales medium involved;
  - (f) the legal basis;
  - (g) a short summary of the infringement;
  - (h) a summary of the aims of the coordinated activities.
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