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COMMISSION DECISION

of 22 December 2006

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 number C(2006) 6903)

(Text with EEA relevance)

(2007/76/EC)

(OJ L 32, 6.2.2007, p. 192)

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(2007/76/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 [1]), and in particular Article 6(4), Article 7(3), Article 8(7), Article 9 (4), Article 10(3), Article 12(6), Article 13(5), and Article 15(6),

Whereas:

(1) Regulation (EC) No 2006/2004 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' interests are to cooperate with each other and with 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.

(2) It provides for the establishment of networks between those competent authorities in the Member States.

(3) It is necessary to adopt measures for the implementation of the provisions of that Regulation on the mechanisms and conditions governing mutual assistance between competent authorities and on the position of the single liaison office.

(4) It is appropriate to lay down minimum requirements for the information to be supplied in all requests for mutual assistance to enable the system to operate effectively. Rules should also be laid down on the content of the standard forms through which information is exchanged to ensure greater efficiency and ease of processing of that information.

(5) Time-limits should be laid down for each step in the mutual assistance procedures to ensure that the system operates expeditiously.

(6) Rules should be laid down on the notification of intra-Community infringements to enable prompt and effective steps to be taken against them in all the Member States concerned.

(7) Since information supplied pursuant to Regulation (EC) No 2006/2004 may often be sensitive, it is necessary to lay down appropriate rules restricting access to it.

(8) Appropriate general arrangements should be made to ensure that communications are not hindered by language problems while permitting flexibility to address specific cases.

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[1] OJ L 364, 9.12.2004, p. 1. Regulation as amended by Directive 2005/29/EC (OJ L 149, 11.6.2005. p. 22.)

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(9) Further measures may be adopted on the basis of the experience gained with the operation of the enforcement cooperation networks of competent authorities in the Member States.

(10) 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

Subject matter

This Decision lays down rules for the implementation of Regulation (EC) No 2006/2004 as regards mutual assistance between competent authorities and the conditions governing that assistance.

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply in addition to those laid down in Regulation (EC) No 2006/2004:

1. 'database' means the database provided for in Article 10(1) of Regulation (EC) No 2006/2004;

2. 'alert' means a notification of an intra-Community infringement under Article 7(1) of Regulation (EC) No 2006/2004;

3. 'confidential treatment' means treatment of information in accordance with the requirements of confidentiality and professional and commercial secrecy as provided for in Article 13 of Regulation (EC) No 2006/2004;

4. 'legal basis': means the provision of the laws that protect consumers' interest that is, or is suspected to be, the subject of an intra-community infringement, including a precise indication of the relevant provision of the laws of the Member states of the applicant authority.

Article 3

Information requirements

The rules on the information to be supplied pursuant to Regulation (EC) No 2006/2004 and on the format of that information are laid down in Chapter 1 of the Annex to this Decision.

Article 4

Time-limits for action

The rules on the time-limits applying to the different stages of mutual assistance pursuant to Regulation (EC) No 2006/2004 are laid down in Chapter 2 of the Annex to this Decision.

Article 5

Alerts

The rules on alerts are laid down in Chapter 3 of the Annex.

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Article 6

Access to information exchanged

Access to information exchanged pursuant to Regulation (EC) No 2006/2004 shall be restricted in accordance with the rules laid down in Chapter 4 of the Annex to this Decision.

Article 7

Languages

The rules on the languages to be used for requests and for the communication of information pursuant to Regulation (EC) No 2006/2004 are laid down in Chapter 5 of the Annex to this Decision.

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Article 7a

Coordination of market surveillance and enforcement activities

The principles governing the coordination of market surveillance and enforcement activities are laid down in Chapter 6 of the Annex.

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Article 8

Date of application

This Decision shall apply from 29 December 2006.

Article 9

Addressees

This Decision is addressed to the Member States.

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ANNEX

Rules concerning mutual assistance between competent authorities pursuant to Chapters II and III of Regulation (EC) No 2006/2004

1. CHAPTER 1 — INFORMATION REQUIREMENTS

1.1. *Information fields to be made available to competent authorities in the database standard forms*

The fields to be made available in the different database standard forms may be defined as follows:

(a) Details of the authorities and officials dealing with intra-Community-infringements

(i) competent authority,

(ii) single liaison office,

(iii) competent official,

(b) Details of the seller or supplier responsible for an intra-Community infringement or a suspected intra-Community infringement

(i) name,

(ii) other trading names,

(iii) name of parent company, if any,

(iv) type of business,

(v) address(es),

(vi) E-mail address,

(vii) telephone number,

(viii) fax number,

(ix) website,

(x) IP address,

(xi) name(s) of company director(s), if any.

(c) Information relating to exchanges of information without requests (alerts) (Article 7 of Regulation (EC) No 2006/2004)

(i) type of intra-Community infringement,

(ii) status of intra-Community infringement (verified, reasonable suspicion),

(iii) legal basis,

(iv) short summary,

(v) estimated number of consumers likely to harmed and estimated financial detriment,

(vi) any requirement for confidential treatment.

(vii) attached documents (in particular relating to statements and other evidence),

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(viii) name of product or service,

(ix) COICOP code, [Classification of Individual Consumption According to Purpose (United Nations statistical methodology, http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl = 5)],

(x) Advertising and sales medium involved.

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(d) Information relating to requests for mutual assistance (Articles 6 and 8 of Regulation (EC) No 2006/2004)

(i) location of consumers likely to be harmed,

(ii) name of product or service,

(iii) COICOP code, [Classification of Individual Consumption According to Purpose (United Nations statistical methodology, http://unstats.un.org/unsd/cr/registry/regcst.asp? Cl=5)]]

(iv) legal basis,

(v) advertising or sales medium involved,

(vi) type of intra-Community infringement,

(vii) status of intra-Community infringement (verified, reasonable suspicion),

(viii) estimated number of consumers likely to be harmed and estimated financial detriment,

(ix) proposed time-table for a response,

(x) attached documents (in particular relating to statements and other evidence.) and any requirement for confidential treatment,

(xi) indication of the assistance requested,

(xii) reference to alert (if applicable),

(xiii) list of requested authorities and Member States concerned,

(xiv) request for a competent official to participate in investigation (Article 6(3) of Regulation (EC) No 2006/2004).

1.2. *Minimum information to be included in requests for mutual assistance and alerts (Articles 6, 7 and 8 of Regulation (EC) No 2006/2004)*

1.2.1. When issuing a request for mutual assistance or an alert, a competent authority shall supply all information at its disposal that may be useful for other competent authorities to fulfil the request efficiently or ensure a proper follow-up to the alert, and indicate whether any of the information supplied must be given confidential treatment.

1.2.2. When requesting information under Article 6 of Regulation (EC) No 2006/2004, the applicant authority shall at least:

a) inform the requested authority of the nature of the suspected intra-Community infringement and its legal basis

b) provide sufficient elements to identify the conduct or practice under investigation;

c) specify the information requested.

1.2.3. When issuing a request for enforcement measures under Article 8 of Regulation (EC) No 2006/2004, the applicant authority shall provide the requested authority at least with:

a) an identification of the seller or supplier against whom the measures are requested;

b) details of the conduct or practice concerned;

c) legal qualification of the intra-Community infringement under the applicable law, and its legal basis.

d) evidence of harm to the collective interests of consumers, including if possible an estimate of the number of consumers likely to be harmed.

1.3. *Responses to requests for mutual assistance*

1.3.1. When responding to a request for information under Article 6 of Regulation (EC) No 2006/2004, a requested authority shall supply any information specified by the applicant authority which is

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necessary to establish whether an intra-Community infringement has occurred or whether there is a reasonable suspicion that it may occur.

1.3.2. When responding to a request for enforcement measures under Article 8 of Regulation (EC) No 2006/2004, the requested authority shall inform the applicant authority of the actions taken or planned and the powers exercised to address the request.

1.3.3. In all cases, the requested authority shall indicate whether any of the information supplied must be given confidential treatment.

1.3.4. If a competent authority refuses to comply with a request as provided for in Article 15(2), (3) and (4) of Regulation (EC) No 2006/2004, it must include in its response a statement of grounds for that refusal.

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1.3.5. When an enforcement measure is taken, the requested authority shall notify, pursuant to Article 8(6) of Regulation (EC) No 2006/2004, the measures taken, and the effect thereof on the intra-Community infringement to the Commission and to all the other competent authorities designated by Member States as being the authorities responsible for the enforcement of the legislation that is subject to the infringement.

It shall provide, with the enforcement measures taken and the effect thereof on the intra-Community infringement, the following information:

(a) the details of the requested and of the applicant competent authorities;

(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) the type of intra-Community infringement;

(h) the estimated number of consumers likely to be harmed and the estimated financial detriment.

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1.4. *Additional powers granted to competent authorities under national law*

Member States shall inform the Commission and the other Member States, via the discussion forum which shall be made available in the database, of any additional investigation and enforcement powers granted to competent authorities in addition to those set out in Article 4(6) of Regulation (EC) No 2006/2004.

1.5. *Designation of bodies having a legitimate interest in the cessation or prohibition of intra-Community infringements in accordance with Article 8(3) of Regulation (EC) No 2006/2004*

1.5.1. When, in accordance with Article 5(1) of Regulation (EC) No 2006/2004, a Member State communicates to the Commission and the other Member States the identity of a body designated in accordance with the second sentence of Article 4(2) of that Regulation as having a legitimate interest in the cessation or prohibition of intra-Community infringements, it shall specify the investigative and enforcement powers granted to that body.

1.5.2. A requested authority which intends, pursuant to Article 8(3) of Regulation (EC) No 2006/2004, to instruct a body having a legitimate interest in the cessation or prohibition of intra-Community infringements, shall provide the applicant authority with sufficient information about that body to enable the applicant authority to establish that the conditions set out in Article 8(4) are met. It shall also obtain the prior agreement of the applicant authority as regards the instruction of that body, specifying the nature and details of the information communicated

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by the applicant authority that the requested authority may disclose to that body.

2. CHAPTER 2 — TIME-LIMITS

2.1. *Requests for mutual assistance and responses*

2.1.1. Requested authorities shall respond to requests for mutual assistance from applicant authorities to the best of their ability, making use of all the appropriate investigation and enforcement powers and without delay.

2.1.2. The time-limits for addressing requests for mutual assistance under Articles 6 and 8 of Regulation (EC) No 2006/2004 shall be agreed by the applicant authority and the requested authority on a case-by-case basis, using the database standard forms.

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 fourteen 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 at least on a monthly basis 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.

2.1.4. The single liaison office for the requested authority shall forward all the requests it receives via the single liaison office for an applicant authority to the appropriate competent authority as soon as technically possible and in any case no later than two working days after the date of receipt of the request.

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2.1.5. The applicant authority shall request the Commission to remove the information from the database as soon as technically possible and, in any case, not later than seven days after the closure of the case, if following a request pursuant to Article 6 of the Regulation (EC) No 2006/2004:

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(a) the information exchanged does not generate an alert or a request pursuant to Article 8,

or

(b) it is established that no intra-Community infringement has taken place.

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2.1.6. The requested authority shall notify the Commission and the other competent authorities concerned of the enforcement measures taken pursuant to Article 8(6) of Regulation (EC) No 2006/2004 as soon as this is technically possible and in any case not later than seven days after the measures were taken.

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2.2. *Alerts*

2.2.1. A competent authority shall issue an alert as soon as technically possible and in any case no later than seven days after it has become aware of an intra-Community infringement, or has established a reasonable suspicion that such an infringement may occur.

2.2.2. A competent authority shall, where an alert proves to be unfounded, withdraw it as soon as technically possible and in any case within seven days. The Commission shall remove all information relating to an unfounded alert and stored in the database as soon as technically possible and in any case no later

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than seven days after the withdrawal of the alert by the competent authority.

3. CHAPTER 3 — ►M1 ALERTS ◄

►M1 3.1. ◄ A competent authority which issues an alert shall transmit it, through the appropriate standard form in the database, to the Commission and to the authorities competent in other Member States for the enforcement of the legislation under which the alert is made. The notifying competent authority shall have sole responsibility for determining which other Member States receive the alert.

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3.2. When a competent authority takes enforcement measures related to an alert, it shall, pursuant to Article 7(2) of Regulation (EC) No 2006/2004, notify these measures to the Commission and to all the other competent authorities designated by Member States as being the authorities responsible for the enforcement of the legislation that is subject to the infringement.

It shall provide, with the enforcement measures taken, the following information:

(a) the details of the competent authority which has taken the measures;

(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) the type of intra-Community infringement;

(h) the estimated number of consumers likely to be harmed and the estimated financial detriment.

3.3. When a competent authority receives a request for mutual assistance related to an alert, it shall notify the request, identifying the type of request, to the Commission and to all the other competent authorities designated by Member States as being the authorities responsible for the enforcement of the legislation that is subject to the infringement.

It shall provide with the request received, the following information:

(a) the details of the competent authority requesting mutual assistance;

(b) the name of the seller or supplier, if available;

(c) the name of the product or service;

(d) the classification code;

(e) the advertising or sales medium involved;

(f) the legal basis;

(g) the type of intra-Community infringement;

(h) the estimated number of consumers likely to be harmed and the estimated financial detriment.

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4. CHAPTER 4 — ACCESS TO INFORMATION EXCHANGED

4.1. *Competent authorities*

A competent authority shall be able to access and consult only the information in the database relating to the laws that protect consumers' interests for which it has direct enforcement responsibilities pursuant to the designations transmitted by the Member State under Article 4(1) of Regulation (EC) No 2006/2004.

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4.2. *Single liaison offices*

In carrying out their coordination tasks as defined in particular by Article 9(2) and Article 12(2) and (5) of Regulation (EC) No 2006/2004, single liaison offices shall be able to access information relating to requests for mutual assistance which has not been given confidential treatment.

5. CHAPTER 5 — LANGUAGES TO BE USED FOR REQUESTS FOR MUTUAL ASSISTANCE AND FOR THE COMMUNICATION OF INFORMATION

5.1. The agreements on the use of languages for requests and for the communication of information made between competent authorities under the first sentence of Article 12(4) of Regulation (EC) No 2006/2004 shall be recorded in a table which shall be made available to competent authorities through the database.

5.2. Those agreements shall include a clause permitting a competent authority to propose the use in a specific case of another language in view of the language skills of the competent official concerned.

5.3. The relevant database standard forms include a data field allowing a competent authority to propose to another authority the use of another language.

If no agreement can be reached, the second sentence of Article 12(4) of Regulation (EC) No 2006/2004 shall apply.

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6. CHAPTER 6 — COORDINATION OF MARKET SURVEILLANCE AND ENFORCEMENT ACTIVITIES

6.1. In order to fulfil the obligation pursuant to Article 9(2) of Regulation (EC) No 2006/2004, all the competent authorities concerned may decide that one of them will coordinate the enforcement action. The competent authorities, while taking into account the specific features of each case, shall normally 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.

6.2. The Commission shall facilitate the coordination if invited to do so.