

**TRANSATLANTIC CONSUMER DIALOGUE (TACD)**  
**2006 RECOMMENDATIONS REPORT**

**AND**

**EUROPEAN COMMISSION SERVICES' RESPONSES**

May 2007

# TACD

TRANS ATLANTIC      DIALOGUE TRANSATLANTIQUE  
CONSUMER DIALOGUE      DES CONSOMMATEURS

## **TACD 2006 RECOMMENDATIONS REPORT**

As part of its role as a consultative forum to the EU and U.S., TACD makes policy recommendations on issues of concerns to the EU and US governments.

This report brings together the recommendations made in 2006, as well as those made in the first two months of 2007, to allow the governments to formally respond. The inclusion of the recommendations from early 2007 is in recognition of the fact that many TACD resolutions are adopted in the run-up to its Annual Meetings with EC and U.S. officials. This report is the third of an annual collection TACD's recommendations in a year-end report to governments and the public.

TACD represents the demand side of the two biggest economic blocks in the world - the 735 million U.S. and EU consumers. Its network of 65 EU and U.S. national consumer organisations has a direct paid-up membership of some 20 million consumers.

On both sides of the Atlantic, these groups have long track records of achievement in the consumer protection and safety fields. Many have successful publishing, research and product testing operations as well as advocacy and policy activities and are self-financed; others, according to their cultural traditions, are financed from public or foundation funds. All are independent.

More information can be found at [www.tacd.org](http://www.tacd.org).

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## **Nutrition, Obesity and Diet-Related Disease**

### **May 2006, Food-26-07**

(this is limited to the recommendations – for the full resolution with footnotes and introduction, go to [www.tacd.org/docs/?id=299](http://www.tacd.org/docs/?id=299))

### **Overall Recommended Approach To Diet-Related Disease**

TACD urges the EU and U.S. to address the growing incidence of diet-related disease through a coordinated set of public policy mechanisms. As recognised by the World Health Organisation (WHO) in its Global Strategy on Diet, Physical Activity and Health, it is necessary to promote and protect health by guiding the development of an enabling environment that supports healthy choices. This should include introducing restrictions on food marketing, particularly to children, encouraging reformulation of products to lower the use of unhealthy fats, salt and added sugars, clearer labelling, and improvements in the school food environment.

As one element of a comprehensive public health campaign, the governments of the EU and U.S. should publicly fund social marketing campaigns to promote healthier eating. It is also important that efforts to tackle obesity and diet-related disease are not undermined by other government policies, such as agricultural promotional programs. A co-ordinated, multi-faceted approach is essential.

TACD believes that there are specific actions that can be taken by the governments of the EU and U.S. that will help reduce the incidence of obesity and diet-related disease.

### **Specific Recommendations**

#### **Marketing of foods to children**

- TACD urges the governments of the EU and U.S. to strengthen regulations restricting the marketing of foods of low nutritional value (i.e. foods high in fat, sugar and / or salt) to ensure that children are not targeted by producers of such products. Such regulations must address all forms of marketing.
- TACD urges the governments of the EU and U.S. to take measures to stop the marketing of beverages of low or no nutritional value on school premises.
- Within the EU, the revision of the Television without Frontiers Directive provides an opportunity to introduce restrictions for TV advertising of foods high in fat, sugar and / or salt across Europe.
- In the U.S., Congress should rescind limits on the authority of the Federal Trade Commission to regulate in this area and mandate regulatory programs consistent with the First Amendment of the Constitution.
- As part of responsible corporate behaviour, food companies associated with foods high in fat, sugar and / or salt, that sponsor children's sporting events or equipment and activities in schools, should do so without making use of their brand.

#### **Healthier products**

- TACD calls for the governments of the EU and U.S. to work with manufacturers and retailers to set binding targets for reducing fat (including saturates and trans fats), added sugars and salt in their products. Governments should ask caterers to do the same for their standardized products, and review the appropriateness of portion sizes.

### **Clearer and honest labelling**

- TACD urges the EU to make the provision of full nutrition information on the back of pack a mandatory requirement. Such information should be based on standardized serving sizes, include a daily reference amount for each nutrient, and be displayed in an easy-to-read format based on consumer testing.
- In the U.S. current requirements for mandatory nutrition labelling should be updated to emphasize calorie content, set daily reference levels for trans fatty acids and added sugars.
- TACD calls for the governments of the EU and U.S. to also develop simplified front-of-pack labelling schemes to be used consistently by the food industry which help consumers to easily identify which foods are high, medium or low in unhealthy fats, added sugars or salt.

### **School foods**

- TACD urges the governments of the EU and U.S. to prohibit the sale of soft drinks and snack foods of low nutritional value on school premises.
- TACD urges the governments of the EU and U.S. to introduce strict standards for school meals that help to ensure that they meet or exceed dietary guidelines for children.
- TACD urges the governments of the EU and U.S. to provide adequate funding for nutrition education and physical activity programs.
- TACD urges the governments of the EU and the U.S. to establish programs providing for free fruits and vegetables to school-children.
- TACD urges the governments of the EU and U.S. to adequately fund school meals and meal preparation sites, and to prevent the sale of "competitive foods" on school premises.

### **Corporate behaviour and best practices**

1. TACD calls on the governments of the EU and U.S. to monitor such corporate behaviour, and encourage corporate policies to be based on best practices throughout the EU and U.S.
  2. TACD encourages the governments of the EU and U.S. to share best practices by considering the positive effects of actions already taken at various levels.
  3. TACD calls for multinational companies to introduce positive changes in a consistent manner throughout the EU and U.S., so that consumers throughout the transatlantic marketplace can benefit equally from changes in product reformulation, portion sizes, and marketing practices.
- TACD calls on the food industry to voluntarily take a more responsible approach, but believes that concrete and consistent action to address these problems generally requires legislative solutions.

### **Economic incentives and disincentives to promote healthier eating**

- TACD encourages the governments of the EU and U.S. to explore ways in which subsidies for fruits and vegetables, and existing sales taxes on food, could be sensibly reallocated to promote healthy eating.

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## European Commission Services' Response

Regarding the recommendation on healthier products, the Commission services believe that restriction of the levels of certain nutrients in foods through legislation needs careful consideration. This requires careful analysis of the potential impacts of the measures including not only public health impacts but also the feasibility and sustainability of the measures.

At the moment, there are voluntary initiatives by food manufacturers and retailers to reformulate their products, and some Member States have actively encouraged their food industry to take such actions. At the Community level, within the EU Platform for Action on Diet Physical Activity and Health, the industry has made commitments to reformulate their products, particularly with respect to fats (including saturated and trans fatty acids), sugars and salt. The Commission services welcome such initiatives that lead to enhanced possibilities for the consumer to make healthier choices within their overall diet.

The Commission White Paper "A Strategy for Europe on Nutrition, Overweight and Obesity related health issues" was adopted 30 May 2007<sup>1</sup>. The White Paper sets out a wide range of proposals on how the EU can tackle nutrition, overweight and obesity-related health issues. The White Paper stresses the importance of enabling consumers to make informed choices, ensuring that healthy options are available, and calls upon the food industry to work on reformulating recipes, in particular to reduce levels of salt and fats. Stressing the benefit of physical activity and encouraging Europeans to exercise more is another area to develop.

In its proposal to amend the Television without Frontiers Directive<sup>2</sup> the Commission has introduced a provision by which the Commission and the Member States should encourage audiovisual media services providers to develop a code of conduct regarding children's programming containing or being interrupted by advertising, sponsorship or any marketing of unhealthy and inappropriate foods and drinks such as those high in fat, sugar and salt.

The new business to consumer EU legislation on Unfair Commercial practices (the "UCP" Directive 2005/29/EC), which will enter into force at the end of 2007, contains provisions that aim at preventing the exploitation of vulnerable consumers such as children. In particular, this Directive expressly bans the action of "Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products to them" ("pester power").

The 2007 Commission proposals for reform of the Common Market Organisation (CMO) Fruit & Vegetables<sup>3</sup> take into consideration the World Health Organisation recommendation of consumption of 400g per day of fruit and vegetables. Currently, only Greece and Italy reach this level. The proposal defines the increase of fruit and vegetables consumption as an objective of the new CMO. The measures proposed include:

- Producers Organisations will continue to be able to include generic promotion for fruit and vegetables in their operational programmes.
- Community co-financing will be increased to 60 percent if the promotion of fruit and vegetables is targeted towards school-age children and adolescents. Market withdrawals are 100% EU-funded only if they are distributed for free to charitable organisations, schools, public education institutions and children's holiday camps.

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<sup>1</sup> COM(2007) 279 final

See: [http://ec.europa.eu/health/ph\\_determinants/life\\_style/nutrition/documents/nutrition\\_wp\\_en.pdf](http://ec.europa.eu/health/ph_determinants/life_style/nutrition/documents/nutrition_wp_en.pdf)

<sup>2</sup> COM(2005) 646 final

<sup>3</sup> COM(2007) 17 final

- The budget for promotional measures under Council regulation 2826/2000 is increased from € 4 to 10 Mio per annum.
- Furthermore, the Commission is currently exploring other possibilities to support Member states initiatives in providing fruit and vegetables to schools for healthy diets of children.

During the Sixth Framework Programme for Research and Technological Development (FP6, 2002-2006), a number of projects has been funded that are relevant for obesity and diet-related diseases. The links between nutrition and obesity are clear, and research can contribute to provide healthier products. At the same time, the Commission services are aware of the importance of actions taken at a young age. Three project examples, which consider three different age groups: early programming, children and adolescents, can be given:

The first project - EARNEST (The Early Nutrition Programming Project)<sup>4</sup> started in 2005 and will investigate early nutrition programming using an approach which integrates knowledge from randomised controlled trials, prospective observational studies and animal, cellular and molecular techniques. This will enable a better understanding of the extent to which nutritional influences in early life can programme a person's development and metabolism in adulthood. Other aspects of the project include studies to investigate consumer attitudes to early nutrition programming and the economic importance of early nutrition programming.

The second project – IDEFICS (Identification and prevention of Dietary- and lifestyle-induced health EFfects In Children and infants)<sup>5</sup> started in 2006 and will identify risk profile inventories for children susceptible to any of these disorders and their co-morbid conditions and shall devise tailored prevention strategies that are effective, easy to implement and that take into account the needs of different social groups. In particular, population-based studies will investigate the impact of sensory perception and provide results concerning internal and external triggers, children's consumer behaviour and short and long-term effects of food choices.

The third project – HELENA (Healthy Lifestyle in Europe by Nutrition in Adolescence)<sup>6</sup> – started in 2006 and will contribute to understand why health-related messages are not being as effective as expected in the adolescent population. A realistic intervention strategy will be proposed in order to achieve the goals of understanding and effectively enhancing nutritional and lifestyle habits of adolescents in Europe.

The role played by consumer behaviour is crucial in understanding the links between nutrition and obesity. Apart from aspects that are already under investigation in the running projects mentioned above, new insights and knowledge need to be developed. With this respect, the Commission Directorate General for Research and the US National Institute of Health are planning to participate in the International Society of Behavioural Nutrition and Physical Activity annual meeting to be held in Oslo, Norway, on 20-22 June 2007. In particular, they will jointly be in charge of a session entitled “Neuroimaging and its potential application to the study of food intake”, that would bring together experts in neuroimaging techniques and investigators interested in the behavioural determinants of food intake to better understand consumer eating behaviour.

The Commission services' response to the TACD recommendation on simplified nutrition labelling (see below) covers the labelling issues raised in this recommendation.

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<sup>4</sup> The project website is: <http://earnest.web.med.uni-muenchen.de/index2.htm>

<sup>5</sup> The project website is: <http://www.ideficsstudy.eu/Idefics/>

<sup>6</sup> The project website is: <http://www.helenastudy.com/>

More information on projects funded in the area of nutrition and obesity can be found at the website [ftp://ftp.cordis.europa.eu/pub/food/docs/nutrition\\_obesity\\_examples.pdf](ftp://ftp.cordis.europa.eu/pub/food/docs/nutrition_obesity_examples.pdf)

## **Letter on Passenger Name Records**

**September 12, 2006**

(this is limited to the recommendations – for the full letter go to [www.tacd.org/docs/?id=303](http://www.tacd.org/docs/?id=303))

TACD urges the governments of the United States and the European Union:

- To abide by the decision of the European Court of Justice and establish an adequate legal basis, consistent with EU and U.S. privacy law, to protect the privacy of air traveler information.
- To undertake a comprehensive study on the effectiveness of air traveler profiling and the alternative techniques that could be pursued to promote air travel safety and protect the privacy of passengers.
- To publish on an annual basis a report on the implementation of any PNR transfer arrangements established, which includes a reporting of complaints received and resolution procedures.

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### European Commission Services' Response

- The EU and US concluded a new Passenger Name Record Agreement in October 2006 after the annulment by the European Court of Justice of the previous Agreement in order to take due account of the Court's ruling on incorrect legal basis<sup>7</sup>. This present agreement is in force until 31 July 2007. After the adoption of the negotiation directives on 22 February, the Council Presidency and the Commission have started the negotiations with the US for a new agreement to replace the interim one.
- The European Commission services thank the TACD for its proposals and take note of it for their future work.

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<sup>7</sup> ECJ ruling of 30 May 2006

## **Simplified Nutrition Labelling**

### **February 2007, Food-27-07**

(this is limited to the recommendations – for the full resolution and footnotes go to [www.tacd.org/docs/?id=309](http://www.tacd.org/docs/?id=309))

#### **Recommendations**

TACD believes that a simplified labelling scheme should be based on the following principles:

- It should be based on scientific criteria developed by experts while also taking into account the need for effective, simple communication and consumer research as to what is the most useful and easy to understand approach;
- It should be prominent, on the front of pack, and complement the nutrition information on the back of the pack;
- It should enable consumers to easily make comparisons between different products within a food category, as well as across food categories;
- No product groups should be excluded *a priori* from a simplified labelling scheme, although the consumer is likely to find it more beneficial for processed foods;
- It should be mandatory, because a proliferation of supposedly 'simple' corporate labelling schemes in the U.S. and Europe, or nationally developed schemes will only add to consumer confusion;
- The underlying criteria of such a scheme should be endorsed by an independent body (e.g. EFSA or the U.S. National Academy of Sciences) and a harmonised format should be developed by DG SANCO or the U.S. FDA in consultation with key stakeholders including consumers, industry, public health and communication experts;
- It should put the nutrition information into context by indicating whether or not a product is high, medium or low in key nutrients as established by scientific research;
- It should include an interpretative element (i.e. traffic light system indicating the levels of nutrients or the overall nutritional value of food products), in addition to factual information to enable consumers to have an 'at-a-glance' assessment of the nutritional value of the food and a preliminary comparison of products.
- It should be based on the nutrients that are of most public health significance and, in order to keep the information clear and immediate, it should include a limited number of nutrients including fat, saturated fat, sugar and salt.
- It should be backed up by clear government advice on what to eat for a healthy diet and how to use the labelling scheme;
- While ultimately developed for pre-packaged food, the scheme should be extended to catering outlets serving standardized menu offerings and its use in other catering outlets should be explored.

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## European Commission Services' Response

The work on the revision of the nutrition labelling legislation is one of the priorities of the Commission for 2007. In spring 2006, the Commission published the consultative document on "Labelling: Competitiveness, Consumer Information and Better Regulation for the EU"<sup>8</sup>. One of the issues highlighted in the consultation document was whether the inclusion of nutrition information on food packs should remain voluntary or become mandatory and the inclusion of nutrition labelling on the front of packs. The responses to the consultation<sup>9</sup> are being taken into account during the development of proposals for the revision of the legislation. However, at present there is no consensus among stakeholders on the presentation of nutrient content information when included on the front of pack.

The Commission Directorate General for Research is planning to contribute to provide some more insight to the role of food labelling and to its impact on consumers. Simplification is indeed one of the first requirements for consumers, however this has to be combined with exhaustive and clear information. Moreover, the impact that simplification and completeness may have needs to be investigated. This is why the following topic, which was open for calls for proposals in the Seventh Framework Programme for Research and Technology Development (FP7, programme KBBE, May 2007) tries to address these issues:

### **KBBE-2007-2-1-03: Food labelling and consumer behaviour Call: FP7-KBBE-2007-1**

Labelling of food, the information perceived by consumers and the way in which they react to such information are increasingly important. Behavioural and cognitive sciences will be required to determine what information is required and desired by the consumer, how that information might be presented and what behavioural consequences and changes in purchasing and consumption patterns this produces in the purchaser and the interaction/feedback from consumers. The inter-relationship between labelling information and the other influencing factors should be considered. Particular attention should be paid to advertising in relation to food targeted at children. Full account should be taken of European legislation on food labelling (e.g. health claims, fortification and supplementation). The participation of agro-food SMEs would help to better identify their specific needs on labelling and target the research component in this area.

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<sup>8</sup> [http://ec.europa.eu/food/food/labellingnutrition/betterregulation/competitiveness\\_consumer\\_info.pdf](http://ec.europa.eu/food/food/labellingnutrition/betterregulation/competitiveness_consumer_info.pdf)

<sup>9</sup> [http://ec.europa.eu/food/food/labellingnutrition/betterregulation/index\\_en.htm](http://ec.europa.eu/food/food/labellingnutrition/betterregulation/index_en.htm)

## **Food Products from Cloned Animals**

### **February 2007, Food-28-07**

(this is limited to the recommendations – for the full resolution, including detailed reasons for concern and footnotes, go to [www.tacd.org/docs/?id=308](http://www.tacd.org/docs/?id=308))

With regard to the use of animal clones and their progeny in the food supply, the TACD makes the following recommendations to the EU and U.S. Governments:

- Prior to any cloning for commercial purposes, TACD calls for the EU and U.S. governments to sponsor an open and transparent public discourse on the economic, ethical and social impacts and issues associated with the use of such technologies. Such discourse should fully analyze any purported benefits of animal cloning, should inform the governments and the public about whether and why cloning should be allowed and, if so, how it should be used
- Prior to any use of animal cloning for commercial purposes, which TACD believes is currently inappropriate, TACD calls for the EU and U.S. governments to establish a system of mandatory approval that will assess the safety of all foods produced or derived from cloned animals and/or their offspring. Such a pre-market mandatory approval process should be transparent and allow for public input before any safety determination is made. Until a particular cloned animal and its progeny has been evaluated under such a regulatory process, products from those cloned animals and their progeny should not be allowed into the food supply. As well as a safety assessment, the approval process should utilize the Precautionary Principle and include an analysis of other legitimate factors, such as social and ethical considerations (see TACD resolution Food-16-00, [www.tacd.org/docs/?id=18](http://www.tacd.org/docs/?id=18)). TACD reiterates that the Precautionary Principle applies in cases where the scientific evidence is not conclusive to determine the level of protection but there is a necessity to take measures for the purposes of protecting public health, safety, or the environment. (See TACD position paper Food 9PP-99, [www.tacd.org/docs/?=15](http://www.tacd.org/docs/?=15)).
- TACD currently believes that there is a paucity of publicly available scientific evidence concerning the safety of cloning on the welfare of animals, food products derived from those animals, and the impact on agricultural management practices. Furthermore, appropriate regulatory agencies shall conduct a thorough safety assessment, including a cost/benefit assessment as well as an assessment concerning the impact on sustainable agriculture. It must be guaranteed that this assessment for a particular cloned animal be conducted in a transparent and participatory manner, and publicly-available information must be used.
- Consistent with existing principles, regulations and practices, the governments of the EU and U.S. should maintain prohibitions on the use of cloned animals and their progeny in organic production.
- If cloned animals or their offspring are used for food production, TACD calls upon the EU and U.S. governments to establish mandatory labeling and traceability of such products. Such information should allow consumers to exercise their choice to eat or not eat food made from this technology.

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## European Commission Services' Response

The European Commission services are closely following any developments in animal cloning which could lead to the placing on the market of food produced from clones or from their offspring. The Commission services are guided by food safety, consumer desires for information and by other relevant factors such as ethical considerations. Different aspects of animal cloning have been studied in some EU funded projects, e.g. 'Cloning in Public' and 'Animal Cloning and Genetic Modification: a Prospective Study' (Danish Centre for Bioethics and Risk Assessment and Joint Research Centre/Institute for Prospective Technological Studies, respectively).

The issue of the possible use of cloned animals and their offspring in the agro-food sector is a new and complex one. The European Commission is carrying out consultations on the implications of animal cloning in the agro-food sector, in particular, on animal health, animal welfare and food safety and the environment in order to carefully consider the possible need for specific measures. To this end, the Commission has asked the advice of the European Food Safety Authority as to whether the technique raises specific safety issues. Independently of the pure safety questions, the Commission has also requested an updated opinion on the ethics of animal cloning to the European Group on Ethics.

As regards organic agriculture, the use of animal cloning is prohibited according to the legislation.

The European Commission services believe that the discussion on animal cloning is relevant to future societal choices regarding the production and use of animals. It would be important to facilitate a public dialogue and proper information of citizens on both sides of the Atlantic in order to increase their understanding of the technique, its use and potential benefits. The European Commission services consider particularly important international coordination and international dialogue on the issue of cloning in the agro-food sector.

## **Identity Theft, Phishing and Consumer Confidence**

### **February 2007, Infosoc-33-07**

(this is limited to the recommendations – for the full resolution, including risks for consumers and e-commerce and recommendations to businesses, go to [www.tacd.org/docs/?id=306](http://www.tacd.org/docs/?id=306))

TACD resolves that the EU and U.S. governments should:

- Enact laws to explicitly prohibit using malware and spyware as well as remote manipulation of external computers or servers for the purpose of ID theft. New laws on ID theft and phishing should be more specific and provide rigorous punishment.
- Enact or - where applicable - update national laws to deal with ID theft holistically. This should include:
  - ▶ legal sanctions (including criminal legal sanctions) against intrusion in private computers or external computer systems
  - ▶ general duties on companies to adopt adequate security policies and procedures and to inform customers when their data has been compromised (for example, as required by the California law on security breaches)
  - ▶ provisions to enable individuals to place “freezes” on their credit reports to strictly control access to their sensitive personal information and thereby reduce the risk of identity theft
  - ▶ requirements for businesses to provide assistance when customers’ data has been compromised as a result of security breaches.
- Promote research and provide incentives for the development of best practices to combat phishing, ID theft and other types of high-tech fraud via the Internet.
- Better coordinate anti-fraud prevention initiatives and measures internationally and within the EU by, for instance, implementing recommendations in the EU Fraud Prevention Action Plan.
- Provide incentives and regulatory guidance to spur industry to further invest in the security of their systems and their brands.
- Require Certification Authorities to ensure that the entities to which they issue certificates actually exist and meet the relevant security standards, and to provide clear information in the certificates about the identities and locations of the certified entities. Certification Authorities should also be required to be independently monitored on a regular basis to ensure that they are fulfilling those obligations.
- Require financial institutions to implement effective procedures for authenticating online access to accounts and closely monitor the effectiveness of the procedures they use.
- Assign the liability for financial damages caused by ID theft or phishing to the respective companies or service providers involved and not to consumers unless they are proven to have acted negligently.
- Mandate the deployment of Internet provider-based spam filters.
- Support the development (with consumer participation) of common standards on web authentication.

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## European Commission Services' Response

The issue of consumer trust and confidence in the on-line environment in particular, and in the Information Society in general, has been addressed in a number of policy and regulatory initiatives of the European Commission.

In a recent Communication, adopted on 15 November 2006<sup>10</sup>, the Commission addressed the issues of spam (which is a common vehicle for phishing messages), spyware and malicious software. In particular, the document encourages Member States and competent authorities to:

- continue to vigorously enforce rules on traditional spam as well as on spyware, phishing malware and the use of botnets;
- ensure that reasonable resources are made available to national enforcement efforts;
- establish clear responsibilities between different enforcement agencies at national level;
- respond positively to requests for cross border assistance.

Moreover, Internet Services Providers (ISPs) are encouraged to assess their filtering policy and ensure compliance in light of the recommendation and guidance on e-mail filtering. The Commission will reinforce its dialogue and cooperation with third countries, examine the opportunity to make new legislative proposals and undertake research actions to further strengthen privacy and security in the electronic communications sector.

In addition, the Commission services continue to actively support the Contact Network of Spam enforcement Authorities (CNSA), an informal group of EU Member State bodies involved in fighting spam and related problems, such as malware. The CNSA has worked, in particular, on cross-border cooperation and assistance and exchange of best practice. The next CNSA meeting will take place in Brussels in June 2007.

The Commission and EU Member States cooperate with the US and other countries, e.g. in the framework of the London Action Plan on International Spam Enforcement Cooperation<sup>11</sup>.

In the context of the current review of the regulatory framework for electronic communications<sup>12</sup>, the Commission services are examining the opportunity to make new legislative proposals (see the section on internet security) to further strengthen privacy and security in the electronic communications sector.

Under the 6th Framework Programme for Research and Technical Development, the Commission supports research projects addressing the issues; these activities are also a priority of the 7th Framework Programme.

The Commission's objective is to create an accessible and trustworthy information society for all. More specifically, one of the main objectives of the i2010 initiative<sup>13</sup> is to create an inclusive information society. Making Information and Communication Technologies (ICT) products and services more accessible is an economic, social, ethical and political imperative. In this context, the Commission launched in January 2006 a general study to support the i2010 initiative by analysing

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<sup>10</sup> COM (2006) 688 Final: "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Fighting spam, spyware and malicious software".

<sup>11</sup> On 11 October 2004, government and public agencies from 27 countries responsible for enforcing laws concerning spam met in London to discuss international spam enforcement cooperation. At that meeting, an Action Plan was issued with the aim to promote international spam enforcement cooperation and address spam related problems, such as online fraud and deception, phishing, and dissemination of viruses. For more information: <http://londonactionplan.org>

<sup>12</sup> More information on: [http://ec.europa.eu/information\\_society/policy/ecommm/tomorrow/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecommm/tomorrow/index_en.htm)

<sup>13</sup> COM(2005) 229 final. [http://ec.europa.eu/information\\_society/eeurope/i2010/what\\_is\\_i2010/index\\_en.htm](http://ec.europa.eu/information_society/eeurope/i2010/what_is_i2010/index_en.htm)

the origins as well as the impacts of the current lack of consumer's confidence in the information society products and services. The results of the study will be available by the summer 2007.

The Study focuses on case studies in five areas: online games; online media; mobile services; consumer software and eHealth applications. The consumer issues raised by the case studies relate to the improvement of the quality of services offered to consumers online. Case studies point, for instance, to the need to protect personal data better and to strengthen consumers' rights. Two other issues relate to the improvement of consumer information on price and quality of the products and services offered. Information on price is necessary to enable consumers to compare prices between offers; information on the quality of services and on terms and conditions under which they can be used is also necessary for consumers to be able to make their choices. The last issue concerns the enforcement of consumer rights. If suppliers break the law or a contract with a consumer, how consumers are given acceptable, usable and proportionate access to redress?

## **Internet Security**

### **February 2007, Infosoc-34-07**

(this is limited to the recommendations – for the full resolution, including the problem for consumers and e-commerce and recommendations to businesses, go to [www.tacd.org/docs/?id=306](http://www.tacd.org/docs/?id=306))

TACD resolves that the governments of the EU and U.S. should:

1. Enforce and, where necessary, improve or enact laws that oblige providers of electronic products and services to safeguard the security of electronic products and services through appropriate measures. The notion of appropriate measures must be further clarified and specified through the establishment of dynamic and technologically neutral standards.
2. Properly monitor and enforce legal obligations for Internet Service Providers to provide for safe networks and to inform consumers about possible security breaches in their systems.
3. Make providers of electronic products and services legally accountable for losses as a result of damage caused by not taking the appropriate security measures. This works as an incentive for the industry. National regulatory authorities (NRAs), private attorneys and consumers should have the legal instruments to be able to ask for compensation on behalf of individual consumers as well as through class actions.
4. Issue a coherent action plan for Internet security, which includes technology-neutral, dynamic standards for security products and services to comply with, and a certification scheme for privacy and security enhancing technologies developed and monitored by the industry and enforced by National regulatory authorities (NRAs) taking into account recommendation 5 of the TACD resolution on ID Theft, Phishing and Consumer Confidence.
5. Require security to be the default setting. Of course TACD prefers the industry to secure its products, services and networks from its own initiative (as recommended in the TACD resolution on phishing, ID Theft and Consumer Confidence). However, in this regard, TACD is of the opinion that there should be regulation to ensure that the default security setting is part of the level playing field. This regulation provides the means to ensure the weeding out of commercial initiatives that provide and contribute to insecure digital products, services and networks.
6. Establish effective enforcement mechanisms to prevent large-scale economic damages as a result of security breaches.
7. Raise awareness amongst consumers as well as SME's about security measures and existing rights and remedies through information campaigns in partnership with privacy and consumer groups, taking into account recommendation 10 of the TACD resolution on Phishing, ID Theft and Consumer Confidence.

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### **European Commission Services' Response**

The Commission services are fully aware of the security challenges of Internet and more broadly the Information Society. Both the nature and sophistication of threats have changed and attacks are increasingly motivated by economic, financial and political interests as well as better targeted to exploit vulnerabilities and the lack of security of information systems and networks. Despite all this, businesses, individuals and public administrations in Europe still underestimate the risks, some seem to ignore them totally, and others believe deploying certain security technologies such as antivirus and firewall will suffice to secure them. This is why the Commission services welcome the TACD initiative and recommendations that would certainly contribute to stimulate and reinforce the EU-USA cooperation in this area. The Framework for advancing transatlantic economic integration,

adopted at the EU/US Summit on 30 April 2007 notably foresees to work together to improve international enforcement in the fight against fraud and illegal spam and spyware. The Commission services highlight that a stronger bilateral cooperation on security of the information society is important but the far-reaching and global nature of security issues requires concerted international efforts. The European Union will continue to play its part in fostering an efficient dialogue with the global community and third countries. In particular, the EU is part of the UN Working Group on Internet Governance. In that context, the EU brokered a worldwide political agreement at the World Summit on Information Society which took place in Tunis in November 2005.

In 2006, the Commission adopted a Strategy for a secure Information Society<sup>14</sup> to guarantee a coherent approach to network and security. This strategy aims at mobilising all stakeholders to coordinate efforts and calls for a structured process of dialogue as well as for new partnerships between the public sector and the private sector including SMEs as well as consumers. In this context, the Commission invites the private sector, in partnership with the public sector, to be proactive in several areas. Among other things, the private sector should promote the use (and the development) of standardised processes (best practices) which would meet commonly agreed security standards. This would contribute to develop a true “culture of security” and assess what is the right mix of methods, i.e. technology and regulation needed to tackle the security challenges. Lastly, the strategy highlights the need to recognise that everybody (users, consumers, private sector, public administrations and governments) has a role to play in order to enhance the security of Internet and the Information Society.

Enhancing security of electronic communications networks and services is one of the objectives of the on-going review of the regulatory framework for electronic communications. The ePrivacy Directive 2002/58/EC already includes, in its Article 4, an obligation for eCommunications service and network providers to take appropriate measure to safeguard the security of their services, taking into account the state of the art, the cost of implementation and risk assessment. In addition, Article 23 of the Universal Service Directive 2002/22/EC deals with the issue of network integrity.

In June 2006, the Commission put forward a number of proposals<sup>15</sup> to strengthen the security-related elements of the regulatory framework, including:

- strengthening and specifying the current security obligations for service providers and operators;
- introducing an obligation for service providers and network operators to inform their customers and competent authorities about breaches of security which resulted in loss or destruction of personal data;
- updating the provisions on integrity of networks, in order to reflect the technological convergence and the growing importance of the internet protocol and mobile networks in modern society; and
- improving the implementation and enforcement mechanisms in order to ensure that regulators (both at EU and Member State levels) have adequate and flexible powers to implement and enforce the law. In particular, ISPs should have the possibility to protect interests of their customers by taking direct action against spammers.

The Commission's initial suggestions were followed by a public consultation last year. More than 200 responses from Member States, National Regulatory Authorities (NRAs), industry and other interested parties were received. The Commission services are currently in the process of looking

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<sup>14</sup> COM(2006)251

<sup>15</sup> Communication from the Commission to the Council, European Parliament, the European Economic and Social Committee and the Committee of the Regions on the Review of the EU Regulatory Framework for Electronic Communications Networks and Services (COM (2006) 334 Final, approved on 29.6.2006)



into the options with more detail, also based on additional research and analysis. The legislative proposals are expected to be ready in the summer of 2007.

Growing threats, and increasingly, also failures due to complexity, may compromise the security and resilience of the Internet and other modern ICT network and service infrastructures. Applications and services require security of data handling and we need new security architectures and scalable and interoperable security policies for this. Our security policies need to be based on understanding the operational and contextual changes, threats or failures and should facilitate dynamic modification and adaptation accordingly. There is a need to guarantee end-to-end security in data communications and storage, including identity management and authentication. Moreover, we need technology to enable network security monitoring and tracing and to assess the trustworthiness of infrastructures and services. We need to provide sufficient attention for the development of technology to ensure the protection of personal data and privacy and to properly align liability and risks.

Developing and deploying solutions for a trustworthy and privacy protecting Information Society will continue to be our main research priorities in the Commission 7<sup>th</sup> Framework Programme for Research and Technical Development. In particular, we will aim to:

- Develop research and technology for substantially improving trust and security in the ICT infrastructures, by ensuring the design and development of trustworthy computing, communications, data storage, applications and services and protection against any malfunctions or deliberate attacks.
- Support the further advancement of core technologies in ICT security and trust such as trusted computing; cryptology; advanced multi-modal biometrics; emerging security problems in communication networks (e.g. malware, phishing); identity management and privacy protection; support to interoperability and standardisation.
- Further empowering the Users through new, interoperable solutions for easy and secure access to the digital infrastructures; and, through novel trust services that, depending on the situation and context, can help users understand which entities, systems and services they can trust when interacting in untrustworthy environments.
- And finally and most importantly, to develop new solutions respecting people's personal data, privacy and rights, digital business assets and our society's values and ideals.

The future Internet, including its secure and resilient architectural aspects, is the subject of investigation by two complementary and inter-cooperating working groups that were recently launched under the 7<sup>th</sup> Framework Programme: EIFFEL and FIRE.

EIFFEL (Evolved Internet Future for European Leadership)<sup>16</sup> is a new think-tank aiming at proposing evolution paths from the current Internet towards a Future Networked Society and studying related research and policy directions. EIFFEL stresses technological challenges such as generalised mobility, addressing and routing schemes, data and control planes but also network security, survivability and robustness in the face of scalable, flexible and adaptable network paradigms. EIFFEL encourages, among others, a selectable degree of anonymity and trust, network-to-network security and trust versus user privacy and anonymity. According to the EIFFEL White Paper<sup>17</sup>, there are two possible paths to address the above research goals: the evolutionary and the "clean slate". The white paper presents both of them as well as related policy challenges and governance issues.

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<sup>16</sup> EIFFEL has been launched as part of ICT-FP7 Call 1, Objective 1 "the network of the future", sub-objective 1.c "Technologies and systems architectures for the Future Internet".

<sup>17</sup> see <http://future-internet.eu/docs/EIFFEL-FINAL.pdf>

FIRE (the Free and Secure Internet initiative)<sup>18</sup> addresses long-term, experimentally-driven research for investigating new architectures and approaches to build the foundations for the future Internet. FIRE aims at establishing and federating experimental validation facilities (including test beds and overlays) which can serve as proof of concept for new, unforeseen paradigms and technologies. Stakeholders to experiment with such facilities include researchers from academia and industry (network operators, technology and service providers). International collaboration can provide the means to bridge this experimentally-driven research, ensuring the ability to perform experiments at a very large scale. The security research agenda of FIRE not only addresses securing experimental facility federations but also ensuring future secure and resilient communication and service infrastructures as well as increasing user trust.

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<sup>18</sup> FIRE has been launched as part of ICT-FP7 Call 2, objective 1.6 "New Paradigms and Experimental Facilities". More information on FIRE is available at <http://cordis.europa.eu/fp7/ict/fire>.

## **Digital Rights Management, The Sequel**

**February 2007, IP-03-07**

(this is limited to the recommendations – for the full resolution, including the a detailed background paper, go to [www.tacd.org/docs/?id=307](http://www.tacd.org/docs/?id=307))

### **TACD Resolves:**

To request that the governments of the United States and the European Union endorse the following principles for DRMs, which are focused on consumer rights. These principles can be implemented in a number of ways, but several may require legislative changes, for example to limit the sale of DRM-protected content that does not live up to reasonable consumer expectations and allow for the removal of DRMs from content or devices if DRMs do not live up to these expectations.

TACD asks the EU and U.S. governments to endorse the following principles for DRMs and, where appropriate, legislate accordingly:

- **Principle of fairness**

Consumers require fair access to, and fair use of, content. Normal consuming of content in the digital environment requires users to engage in time-shifting, place-shifting and limited sharing of a work. Therefore DRMs must respect consumer rights contained in the exceptions and exclusions in copyright law. They may not create a risk of losing access to a work due to discontinuation of a service or lack of a right to back-up copies of the work. DRMs shall not define social entities such as ‘household’ and ‘families’ in their technology more narrowly or restrictively than has been defined in local law or custom. DRMs shall not block the use of assistive technologies employed by disabled people. Finally, software producers should be allowed to make and distribute software that enables consumers to make use of their lawful rights and exceptions to copyright.

- **Principle of end-user creativity**

Fair access and use to content includes the ability to transform that content. Innovation, cultural and economic prosperity can only flourish if creativity is not unduly inhibited. Users need to be allowed to interact with the work. DRMs should not limit legitimate forms of building (remix, tweak, comment) upon creative works.

- **Principle of Transparency**

Consumers require sufficient information about any impact a DRM system may have on, for example, the potential uses of a work and the interoperability with devices in order to make informed product choices. Consumers must be given proper information on relevant product characteristics, including relevant restrictions on the work, effects on interoperability, and any modifications the DRMs may make to a user's devices. Consumers should also be made aware of applicable laws that would penalize them for circumventing DRMs. This information must not be hidden in small print or long and legalistic license agreements and it should be given prior to agreeing to a contract.

- **Principle of proportionality**

The impact of DRMs on functionality should be limited to what is necessary to protect copyright and should not otherwise affect a consumer's use of the works.

- **Principle of privacy and data protection rights**

DRMs should be compliant with data protection rules and privacy rights. The individual should be able to use the media without first having to disclose personal information, or consent to marketing or other secondary uses of their personal information. DRMs should not use registration, usage data, or other personal information for secondary purposes without first obtaining the individuals' informed and voluntary consent. DRMs should be able to guarantee the anonymity of the user.

- **Principle of internet safety and security**

The practical use of DRMs on the Internet may pose threats to consumers' security settings and therefore to the economic interests of consumers. DRMs must not result in unnecessary vulnerabilities to consumers' equipment or personal information.

- **Principle of Interoperability**

The lack of interoperability between different DRMs requires consumers to either purchase their content from one specific provider or use more than one device or platform to access their content. Consumers should be able to purchase content from any provider and use it on any device.

- **Principle of competition and innovation**

DRMs should allow innovation and facilitate new business models that fulfil previously unaddressed demand. They should give consumers the new choices that were the promise of the digital age. DRMs must not be used to lock consumers into old business models and to limit consumers' choices in services and devices. Consumers must have real options for purchasing rights to works at different price points. The menu of options must not be unduly limited by content producers using market power or acting jointly to restrict choices.

- **Principle of consumer rights**

Consumers must have clearly defined and enforceable consumer rights that cannot be overridden by contract terms, DRMs or other technological measures.

Among the consumer rights that should be clearly expressed are:

- the right to private copy
- the right to fair commercial practices
- the right to be informed and refunded for faulty products
- the right to privacy and data protection
- the right to free speech

A simple and speedy alternative dispute resolution system should be established for DRM disputes so consumers do not have to rely on costly litigation for low value disputes, whilst retaining the right to use court action as a last resort.

- **Principle of circumvention / removal**

Consumers should be allowed to circumvent DRMs if any of their usage rights are not respected. If circumvention is technically not possible service providers must provide consumers with access to the protected content in a way that lives up to these principles. Generally, service providers that offer DRMs that do not live up to the above mentioned principles should have a legal obligation to take unlawful DRMs from the market and give customers their money back or access to the protected content in a way that lives up to these principles.

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### European Commission Services' Response

The Commission services will continue to closely monitor the development of Digital Rights Management (DRM) technologies and of the emerging market of DRM protected content distribution, and assess its compliance with economic and social objectives set out in various EU policies (Information Society and Media, Internal Market, Competition, Consumer protection).

The Commission services' objectives concerning Digital Rights Management systems (DRMs) are:

- To ensure adequate protection of copyright protected content, which is a condition for the availability of 'rich' online content;
- To contribute towards take-up of DRMs in order to achieve digital technologies' full potential in terms of creation, dissemination and access to 'rich' online content, which in turn favours the development of the information space and the content industries;

- To ensure a high level of consumer protection and make sure that DRM shall not, under any circumstances, be used to lower consumers' rights (privacy, freedom of expression, transparency, etc.), This is, in itself, a condition for the take-up of the new services which are made possible by DRMs.

Furthermore, the Commission services strongly support open standards as the way forward for DRMs. However, they should be voluntary and market-driven. It is clear that interoperability is a key element. Therefore, the Commission services will encourage the industry to take steps both towards interoperability and towards transparency about the (possible lack of) interoperability of services and devices. The i2010 strategy<sup>19</sup> intends to address the issue of the interoperability of DRM systems.

The Commission services has taken due note of the principles set out in the TACD recommendations report and can endorse some of them. On some of these principles, the Commission services wish to point out some legal considerations.

### **Re 1) Principle of "fairness":**

DRM is a tool that can allow for a variety of digital offers. This includes the possibility to use a work only a limited number of times (pre-listening). With the help of DRM, time-limited downloads will be charged less than permanent downloads.

"Fair use" is a concept of US law, applying to possible exceptions to copyright. The EU has, however, chosen another approach, i.e. an exhaustive list of well-defined exceptions. In practice, the Directive allows each Member State to choose which exceptions will be retained in national law, thus creating different situations for consumers according to the country. This aspect will be assessed in the framework of the evaluation report regarding the 2001 Copyright Directive due for the end of 2007.

Reference to "consumers' rights contained in copyright exceptions" is not foreseen in the EU copyright framework. Users enjoy privileges and statutory protection but not "rights".

The circumvention of DRM/technological measures is not allowed under the copyright Directive. More specifically, under Article 6(4) of the 2001 Copyright Directive rights holders are invited to take voluntary measures vis-à-vis beneficiaries of exceptions. In the absence of voluntary action, Member States can take appropriate measures to introduce certain exceptions. These exceptions cover, for instance, specific acts of reproduction by certain publicly accessible libraries; use for teaching or scientific research and use for the benefit of people with a disability.

### **Re 2) Principle of end-user creativity:**

See answer to principle 1 regarding "fair use" (transformative use). This creative use should respect applicable copyright. The integrity of the work must remain intact. In some cases, specific exceptions (caricature, parody, quotations for purposes such as criticism or review) are available under the Member States' laws.

### **Re 4) Principle of proportionality:**

In 2001, the EU decided to go further in the legal protection of technological measures than strictly needed under the WIPO<sup>20</sup> treaties. We are examining this in the framework of the evaluation report regarding the 2001 Copyright Directive.

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<sup>19</sup> COM(2005) 229 final

<sup>20</sup> World Intellectual Property Organisation

### **Re 7) Principle of interoperability:**

Although interoperability is an issue that is certainly encouraged by the European Commission, the question remains whether interoperability should be market-driven or whether it should be imposed by the state (e.g. via compulsory licenses). One should be prudent as to imposing compulsory licenses in order to achieve interoperability, since the underlying software in the DRM technology is protected by Intellectual Property Rights (both under copyright and patent protection).

### **Re 8) Principle of competition and innovation:**

It is not clear what is meant by "new business models" that fulfil previously unaddressed demand. The Commission services still believe in primary markets and IP-based sales and think that proposing a global license is premature.

### **Re 9) Principle of consumer rights:**

The Commission services follow the principles within the ambit of Consumer protection law (e.g. fair commercial practices, adequate information, refund for faulty products). The proposed "Right to private copy" and "right to free speech" would rather qualify as copyright exceptions than genuine users' rights.

### **Re 10) Principle of circumvention/ removal**

This would not be in compliance with Member States' and the EU's international obligations to provide adequate legal protection and effective remedies against the circumvention of effective technological measures (WCT<sup>21</sup> and WPPT<sup>22</sup>). Rights holders are free to apply DRM/TPM provided that these DRM/TPM<sup>23</sup> respect applicable legislation (e.g. privacy).

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<sup>21</sup> WIPO Copyright Treaty

<sup>22</sup> WIPO Performances and Phonograms Treaty

<sup>23</sup> Technological Protection Measures

## **Horizontal Regulatory Initiatives in EU-US Regulatory Cooperation** **February 2007**

(this is limited to the recommendations – for the full resolution and position paper go to [www.tacd.org/docs/?id=311](http://www.tacd.org/docs/?id=311))

### **TACD RECOMMENDATIONS**

- The EC and EU member states should not adopt centralized political review and control of regulations, regulatory impact assessments, or information collections, in the mode of OMB's Office of Information and Regulatory Affairs. Primary responsibility for implementing legislation and developing regulations to protect the public should continue to reside with the agencies charged with those responsibilities, which have the resources and expertise to exercise them most wisely.
- TACD calls on participants in the EU-U.S. horizontal regulatory dialogue not to pursue the goal outlined in the initial April 2002 TEP Guidelines on Regulatory Cooperation and Transparency Implementation Roadmap of harmonizing impact assessment methodologies and assumptions used in impact assessments. Although the EC has developed its own impact assessment requirements and guidelines, it would be contrary to the Precautionary Principle for the EC to adopt proposals such as the pending OMB bulletin on risk assessment methodologies, which would eliminate precautionary methods such as use of worst-case assumptions (like environmental risk assessments that pinpoint exposure levels based on the most exposed person rather than the average exposure). Additionally, it has been documented that U.S. economic impact assessments routinely overestimate regulatory costs and underestimate regulatory benefits. (Although OIRA has tried to disprove the empirical observations with a skewed study of its own, it has been subsequently discredited.) Simply adopting skewed U.S. impact assessment assumptions would skew European assessments in a manner that would essentially create a transatlantic policy reward to the lobbying efforts of U.S. industry.
- Information resource management must be a two-way street, so that calls for "administrative cost reduction" or "paperwork reduction" are balanced against an imperative that no such policy will threaten the quality, quantity, or utility of information needed to protect the public. Any such initiatives should avoid arbitrary reductions in time spent complying with information collection requirements, avoid centralized political review and control of information collection, and instead focus on electronic reporting and the use of sensors and other modern technologies that enable us to gather needed information more efficiently.
- Too many of the U.S. initiatives, such as the OMB peer review guidelines and the draft guidelines for risk assessment, establish onerous requirements for government assessments that do not apply to industry assessments, such as scientific studies offered in support of licensing or other applications. Additionally, some U.S. policies (such as the Small Business Regulatory Enforcement Fairness Act) grant business interests a seat at the table for policy development that consumer and labor representatives do not enjoy. The EU-U.S. dialogue should counsel the U.S. on correcting these imbalances in its policies, and the EC and EU member states should not replicate those imbalances in their own policies.
- The Precautionary Principle should apply in cases when the scientific evidence is not conclusive enough to determine a level of protection but there is a necessity to take measures for the purposes of protecting public health, safety, or the environment. The TACD once again calls on the U.S. to incorporate the Precautionary Principle in regulatory decisions involved in consumer health and safety and the environment. The U.S. and the EU should include the Precautionary Principle as an agenda item in the EU-U.S. horizontal regulatory dialogue.

## European Commission Services' Response

1 This recommendation is inspired by US governance practices. In the EU's institutional order, the European Commission exercises its right of initiative by submitting legislative proposals to both the Parliament and the Council. Where the "co-decision" procedure applies, the Parliament is placed on an equal footing to the main decision-making body of the EU, the Council of the EU. This implies that the Council cannot adopt a proposal without the explicit approval of the Parliament, who has the right to introduce amendments and can even put an end to the legislative procedure if it wishes to do so. Recent Treaty changes have increased significantly the number of areas where this procedure has to be applied. In other, fewer, cases, the Council decides alone or merely has to consult Parliament.

The independence of the Commission is underlined by the fact that it is appointed by the Council, meeting in the composition of Heads of State or Governments, and after the approval of the Parliament. As an independent political and executive institution, the College of Commissioners exercises full centralized political and executive control over all Commission's departments (Directorates Generals) whose mandates cannot be compared to those of US agencies. The oversight function of the College over all Commission's policy and regulatory management practices is a key feature of the EU's institutional set up.

2 The 2005 Roadmap for US-EU Regulatory Cooperation, the November 2005 Joint EU-US Work Programme on implementation and more recently the Framework for advancing transatlantic economic integration adopted at the 2007 EU/US Summit refer only to pursuing dialogue on general regulatory policies and practices of mutual interest, with the objective of enhancing mutual understanding. In the light of its unique institutional context, the Commission has developed its own approach to impact assessment which puts equal emphasis on examining the economic, social and environmental implications of taking action to tackle an identified problem or challenge. This includes, in particular, a clear evaluation, in qualitative and/or quantitative terms, of the trade-offs involved in pursuing given policy objectives. Precautionary principles and risk evaluations are an integral part of the Commission's assessments, where their considerations are relevant for EU's political decisions. As regards regulatory choices, both the US administration and the EC recognize the need to avoid unnecessary differences in their respective regulatory frameworks. Seeking to avoid such unnecessary differences helps to reduce transaction costs and can improve competitiveness, with significant benefits for industry and consumers alike. However, there is a clear understanding of the fundamentally different legal, institutional and political environments in which they operate. Thus, although there is certainly scope for sharing more information and closer cooperation in general – particularly in cases where there are likely to be significant impacts on the other side – there is no scope for common impact assessments or a harmonization of approaches. This was also the conclusion of a recent study carried out, in a personal capacity, by two officials from the OMB and the European Commission.

3 The European Commission's administrative cost reduction action programme states very clearly that it is targeted at obsolete information obligations and categorically aims not to reduce the amount of useful information. By the same token, it does not reduce the ambition of present and future policy goals, including those in the fields of the environment, consumer protection or health and safety.



4 An essential feature of the on-going horizontal dialogue consists of learning from each other's experiences and sharing information on current practices. That also applies to the issue raised in the recommendation. As public consultation contributes to regulatory quality and transparency, the Commission has a long tradition of consulting interested parties on its policy and regulatory proposals. In order to improve its consultation processes, the Commission adopted a set of 'General principles and minimum standards for consultation of interested parties' to ensure wider and more open consultation with better information and effective participation and dialogue.

These principles and standards offer a framework for consulting civil society and stakeholders (including consumer interests), which ensures transparency and access to consultations, feedback to contributors and a minimum reply time of 8 weeks.

In addition, the Commission Directorate General for Health and Consumer Protection organised a conference on stakeholder involvement on 23 May notably with the idea to share experiences and best practices with US counterparts.

5 The European Commission services have taken note of this recommendation, essentially addressed to the US administration, and will consider to discuss the issue of the Precautionary Principle with its US counterparts in a future meeting.

In particular, the Commission Directorate General for Health and Consumer protection is considering launching a dialogue with the relevant US agencies to look at:

- Emerging issues in the domain of health and consumer affairs on both sides of the Atlantic which are likely to be on the agenda in both EU and US in the near future, notably nanotechnology or cloning.
- Comparisons of specific, substantive risk assessment issues, like analysis of uncertainty in exposure assessment, risk assessment of genotoxic carcinogens/mutagens, risk assessment of mixtures, data quality in exposure assessment.