



8.9.2016

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the National Assembly of the Republic of Bulgaria on the proposal for a regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws.
(COM(2016)0283 – C8-0194/2016 – 2016/0148(COD))

Under Article 6 of the Protocol No (2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The National Assembly of the Republic of Bulgaria has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure, the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

**REPUBLIC OF BULGARIA
NATIONAL ASSEMBLY**

**PRESIDENT
REPUBLIC OF BULGARIA
NATIONAL ASSEMBLY**

**TO
MR MARTIN SCHULZ
PRESIDENT OF
THE EUROPEAN PARLIAMENT**

SUBJECT: Reasoned opinion of the National Assembly of the Republic of Bulgaria on the proposal for a regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws

Dear Mr Schulz,

At its sitting of 27 July 2016, the Committee on European Affairs and Oversight of the European Funds (CEAOEF) within the National Assembly of the Republic of Bulgaria discussed the proposal for a regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws.

After deliberating on the draft regulation and taking into account the Framework Position of the Council for European Affairs within the Council of Ministers of the Republic of Bulgaria, together with the report of the Committee on Economic Policy and Tourism, the CEAOEF members agreed that the powers given to the National Assembly under Article 6 of Protocol (No 2) to the Treaty on the Functioning of the European Union need to be exercised by delivering a reasoned opinion (enclosed here) on the aforementioned proposal for a regulation.

Within the context of the established procedure, I hereby submit to you the approved report and the reasoned opinion thereto, representing the position of the Bulgarian Parliament on the topic.

Annex: As specified above.

YOURS SINCERELY,

(signature)

**TSETSKA TSACHEVA
PRESIDENT
OF THE NATIONAL ASSEMBLY
OF THE REPUBLIC OF BULGARIA**

**REPUBLIC OF BULGARIA
FORTY-THIRD NATIONAL ASSEMBLY
COMMITTEE ON EUROPEAN AFFAIRS AND OVERSIGHT
OF THE EUROPEAN FUNDS**

REPORT

SUBJECT: Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws - item 2 of the National Assembly's Annual Work Programme on European Union Affairs for 2016 and Framework Position No 602-00-48 of the Republic of Bulgaria thereon, introduced by the Council of Ministers on 08 July 2016.

I. At its sitting of **27 July 2016**, the Committee on European Affairs and Oversight of the European Funds (CEAOEF) discussed **the proposal for a regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM/2016/0283)**, incorporated as **item 2 of the National Assembly's Annual Work Programme on European Union Affairs for 2016**. It should be considered that **the deadline for the assessment of compliance with the principle of subsidiarity** for the aforementioned draft act **expires on 1 September 2016**.

The following persons attended the sitting of the CEAOEF: **Mr Emil Aleksiev – Head of the Consumer Policy Department within the Technical Harmonisation and Consumer Policy Directorate of the Ministry of Economy, Mrs Lyudmila Peovska – Senior Expert at the same directorate, as well as Mr Vladimir Nedyalkov – State Expert in the Directorate for Coordination of EU Affairs within the Administration of the Council of Ministers.**

II. With the present **proposal for a regulation**, the European Commission (the Commission) aims to respond to the challenges of the digital economy and the development of cross-border retail trade in the EU. For that purpose, the Commission has concluded that **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 needs to be reviewed** by replacing it with an entirely new act. The assessment on the functioning of Regulation (EC) No 2006/2004 had confirmed that its adoption had been beneficial for the competent authorities, consumers and traders, but at the same time its objectives had not been fully achieved and its potential had not been exploited to its full potential. In this regard, the Commission presents this legislative proposal to address the identified weaknesses, in particular to reduce the damages from cross-border and widespread infringements of the EU's consumer protection laws.

The planned changes should **improve the effectiveness of public action** and the governance of EU retail cross-border markets by making them fairer and more transparent for traders and consumers. At the same time, **the costs for the actions of the national authorities and transaction costs for the economic operators are expected to be reduced**, which will improve the overall competitiveness of the EU economy. **Consumers themselves would benefit from greater protection when purchasing cross-border, especially online**. One of the main objectives of the proposal for a regulation is **to save costs for authorities** because

they are able to reuse evidence, avoid duplication and ensure maximum consistency of enforcement actions. **The earlier detection of malpractices and an alignment of priorities** should contribute to **addressing widespread infringements across the EU**. This would lead to **a stronger deterrent effect** for potential perpetrators of violations.

The main costs envisaged for the Member States are primarily those relating to **familiarisation with the introduction of new powers and procedures** (some **EUR 3 000 per authority**) and some **EUR 174 000 in total for all Member States for coordinated enforcement action per each started year via a mandatory coordination procedure**, while **in the medium-term economies of scale** are expected to be achieved by switching from action at national to pan-European level.

Improvement of the regulatory environment for retail markets should permit enterprises, including **small and medium-sized enterprises** (SMEs), to avoid legal expertise costs when marketing cross-border and to be more confident that **the same EU legislation** for consumer protection **is equally enforced** in the other countries in which they want to trade.

III. According to **the Framework Position introduced by the Council of Ministers**, the Republic of Bulgaria generally supports the Commission's initiative for modernisation and harmonisation of the legal framework concerning the cooperation between national authorities responsible for the enforcement of consumer protection laws. In the Position it is noted that **the extension of the scope of Regulation (EC) No 2006/2004** combined with the introduction of **more effective mechanisms for common actions between the competent national authorities** is expected to have a positive effect on the protection of consumers' economic interests. The Republic of Bulgaria finds that, by adopting the proposal for a regulation, no legal obligations will be imposed on the economic sector and consumers, and both categories will be able to take advantage of **better functioning markets with fewer legal disputes** and associated **costs**. At the same time, the Republic of Bulgaria finds that **the envisaged 'minimum powers' of the competent authorities are too high**, and some of them **go beyond the principle of proportionality**. How exactly these authorities will be able to award **compensation**, given that this is a prerogative of the court according to the national law, should be seriously considered. Problems could also arise when implementing the competent authorities' powers to publish all final decisions, interim measures or orders, including also the identity of the trader who has committed the alleged violation. It should be considered that every decision by the relevant administrative authorities is subject to **judicial review**, which may result in a significant delay in the time.

IV. The aforementioned **proposal for a regulation** was reviewed on **20 July 2016** by **the Committee on Economic Policy and Tourism (CEPT)**. As a result of the discussion between the MPs and the vote, **CEPT** supports the Framework Position of the Republic of Bulgaria on it, but they find **that the principles of subsidiarity and proportionality have not been complied with**.

V. After the discussion held on the proposal for a regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws, the National Assembly of the Republic of Bulgaria, through the Committee on European Affairs and Oversight of the European Funds, delivers the following **REASONED OPINION** to be sent to the European institutions:

1. CEAOEF welcomes the European Commission's initiative, which is designed to enhance consumer protection in the EU. The regulation at EU level of cooperation between national authorities responsible for the enforcement of consumer protection laws is intended to prevent and detect cross-border infringements. In this sense, the implementation of such an initiative could be effective and efficient at EU level because of its prominent cross-border nature. However, CEAOEF finds that the proposal for a regulation **does not comply with the principle of subsidiarity** as defined in Article 5(3) of the Treaty on European Union because the European Commission provides insufficient justification for the proposed measures.

2. CEAOEF finds that not enough quantity and quality indicators have been provided (including evidence that the costs are proportionate to the expected result), on the basis of which to conclude that the objectives of the regulation will be better achieved through legislative measures at EU level, and, in particular for:

- the five-year limitation period established for the imposition of penalties starting from cessation of the infringement – Article 4 of the proposal;
- the established minimum powers of the competent authorities – Article 8 of the proposal – points (g), (h), (i), (k),(n), (o) (in the part ‘order the restitution of profits obtained as a result of infringements’) and point (p) (in the part for ‘the publication of the identity of the trader’);
- the power of the European Commission to adopt implementing acts setting out the conditions for the implementation and exercise of the minimum powers, along with the details of the implementation of the trader's rights of defence in coordinated and common actions – pursuant to Article 10, respectively Article 31 of the proposal;
- ensuring the compensation of consumers when taking measures on behalf of the other competent authorities – Article 18 of the proposal;
- the requirement that competent authorities shall ensure that the trader concerned regularly reports to the European Commission about the progress of the implementation of the commitments – Article 24 of the proposal;
- the mandatory participation of other entities in the alert mechanism and the power of the European Commission to adopt implementing acts setting out the details of the designation and participation of these entities – Article 35 of the proposal;
- the possibility to use as evidence any information, documents, findings, statements, certified true copies or intelligence communicated, including without further formal requirements, made by another competent authority – Article 42 of the proposal.

3. In the light of the legal certainty, CEAOEF draws attention to Article 23(1) of the proposal regarding the inclusion of assessment of widespread infringement with a Union dimension in the common position agreed upon by the competent authorities concerned. In this case, it should be considered that different legal definitions of a given act or omission are possible in the Member States. Of legal also importance is the clarification of the case of Article 29(2) of the proposal, as it may give rise to different interpretations as to whether to give the European Commission the powers under Article 8 of the proposal, in its capacity as coordinator under Article 21 of the proposal.

4. CEAOEF believes that the proposal for a regulation **does not comply with the principle of proportionality** set out in Article 5(4) of the Treaty on European Union because

the proposed measures exceed the minimum required level of protection of the internal market. The legislative proposals of the Commission, and, in particular, those related to the minimum powers under Article 8 of the proposal – the power of the Commission to establish benchmarks for resources needed to enact the Regulation pursuant to Article 46(1) of the proposal – goes beyond what is necessary to achieve the objectives specified thereto and will lead to additional administrative and financial burden for the Republic of Bulgaria, and to changes in current Bulgarian legislation.

In the light of the above, and following the CEAOEF discussion, the report and the REASONED OPINION thereto were approved unanimously with 16 votes in favour.

**CHAIR OF THE COMMITTEE
ON EUROPEAN AFFAIRS AND
OVERSIGHT OF THE EUROPEAN FUNDS:**

(signature)

SVETLIN TANCHEV