



28.9.2016

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion by the National Assembly of the Czech Republic on the proposal for a European Parliament and Council regulation 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.

Please find attached a reasoned opinion from the Chamber of Deputies of the Parliament of the Czech Republic on the above-mentioned 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.

**Parliament of the Czech Republic
CHAMBER OF DEPUTIES
2016
7th parliamentary term
292nd RESOLUTION
of the Committee on European Affairs
at its 53rd meeting
on 1 September 2016**

on the proposal for a European Parliament and Council regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws (Text with EEA relevance), 9565/16, COM(2016) 283 final

The Committee on European Affairs of the Chamber of Deputies of the Czech Parliament, after hearing the contribution from the Director and temporary Head of the Enterprise, Digital Economy and Consumer Affairs Department of the Ministry of Industry and Trade, Vladimír Bártl MBA, after hearing the rapporteur's report of Lubomír Toufar MP, and after debating the issue, **approves** the opinion annexed to this resolution.

(signed) Josef Šenfeld
Verifier

(signed) Lubomír Toufar
Rapporteur

(signed) Igor Jakubčík
Vice-Chair

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) 283 final, Council No 9565/16
Interinstitutional file 2016/0148 (COD)**

- **Legal basis:**

Articles 114 and 294 of the Treaty on the Functioning of the European Union

- **Date submitted to the Chamber of Deputies by the Committee on European Affairs:**

7.6.2016

- **Date of consideration by the Committee on European Affairs:**

28.6.2016 (1st phase)

- **Procedure:**

Ordinary legislative procedure.

- **Provisional opinion of the Government (pursuant to Article 109a(1) of the Rules of Procedure of the Chamber of Deputies):**

Dated 30 June 2016, delivered to the Committee on European Affairs on 20 July 2016 via the ISAP system

- **Evaluation with regard to the subsidiarity principle:**

The proposal is not in compliance with the principle of subsidiarity (see below).

- **Justification and subject:**

The proposal for a regulation replaces the original Regulation (EC) N° 2006/2004 of 27 October 2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (hereinafter ‘the CPC Regulation’), in order to better adapt it to the challenges of the digital economy and the development of cross-border trade. The original Regulation was adopted in 2004 and has applied since 2006.

The proposal for a regulation was published by the Commission on 25 May 2016 and forms part of a legislative package seeking to boost e-commerce across borders, which also includes a proposal for a regulation on geo-blocking, a proposal for a regulation on cross-border parcel delivery and guidance for the implementation/application of the Unfair Commercial Practices Directive.

The Commission has over several years gradually carried out an assessment of the functioning of the CPC Regulation to see if its objectives are being properly fulfilled. In May 2016, it published a report on the assessment of the effectiveness of the CPC

Regulation¹, which it had drawn up pursuant to Article 21a of that Regulation, according to which the Commission had, ten years on from initial implementation of the Regulation, to assess its mechanisms, functioning and efficiency. The report on the functioning of the CPC Regulation shows that the previous external evaluation and a public consultation had pointed up the existence of problems that are detrimental to the effectiveness of this regulation. In practice, there are issues with, for example, the impossibility of obtaining information as to the real identity of traders or of requesting effective assistance in the enforcement of consumer protection law from other institutions or third parties. Problems were also identified in the failure to share market information, by for example sending alert warnings. Last but not least, there is also a lack of mechanisms for dealing with infringements affecting several countries at the same time, where each national body has to take action independently in almost identical cases involving more than one EU country, which imposes unnecessary costs. These problems stem from the inadequate powers of the competent authorities that would allow them to cooperate swiftly and effectively, in particular in the digital environment.

The Commission has therefore decided to replace in full the existing CPC Regulation by a new consolidated version, which would expand its scope and increase its effectiveness. The general objective of the proposal for a regulation is to develop modern, efficient and effective CPC mechanisms that will reduce the consumer detriment caused by cross-border and widespread infringements of EU consumer law. The proposal for a regulation is intended in particular to ensure that infringements of consumer law are detected in good time and that law enforcement authorities reach the same outcomes for the same infringement cases. Consumers will thus be afforded greater protection when shopping across borders and in particular on purchases made online. The proposal for a regulation is intended specifically to prevent situations arising in which consumers shopping across borders (in particular on-line) suffer harm because goods ordered from another EU Member State are not delivered, or because they are given misleading information about payment terms, or because the payment is automatically made for goods ordered without their consent.

- **Content and impact:**

The proposal for a regulation replaces the current text of the CPC Regulation. Its aim is to create an effective and efficient mechanism for the exchange of information between competent national authorities and, where necessary, to enable action to be taken to enforce consumer law in cross-border cases. The scope of the CPC Regulation needs to be clarified compared with the wording of the current version so as to ensure that it also covers widespread infringements of consumer law occurring in several EU Member States.

The minimum powers of the competent national authorities need to be clarified to ensure that they are entitled to request information and to access the evidence required.

Designation of the competent CPC authorities and of other entities under the CPC Regulation will remain a matter for the Member States. The Member States will have the duty to endow the competent CPC authorities with sufficient human and other resources to enable them to fulfil their obligations under the proposal for a regulation.

¹ Proposal for a Regulation of the European Parliament and of the Council replacing 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), COM(2016)284 final

The proposal for a regulation consists of eight chapters comprising 53 articles and one Annex.

Scope and definitions (Introductory provisions – Articles 1 to 4)

The preamble to the proposal for a regulation defines its scope, which is extended compared with the current CPC Regulation to cover widespread infringements of consumer law and infringements which have already ceased. ‘Ceased infringements’ are unlawful situations which are of short duration and will end before it is possible to take punitive measures against those responsible for them, but which may in the longer term still cause harm to consumers (e.g. short-lived advertising campaigns) In the context of the extension of the scope of the CPC Regulation the definitions of certain terms have been updated.

Competent authorities and their powers (Articles 5 to 10)

The proposal for a regulation sets out how the competent authorities and single liaison offices are to be designated. It also clarifies the role of the single liaison offices. The proposal for a regulation does not require the Member States to provide the competent authorities with the power to impose criminal penalties. Under the proposal for a regulation, the competent authorities will have the power to impose only civil sanctions. For this reason, in this Chapter the proposal for a regulation requires Member States to ensure that the competent authorities have, where necessary, adequate support from the authorities responsible for imposing criminal penalties.

The proposal for a regulation at the same time lays down certain *minimum powers which Member States must endow their competent authorities with* in order to cooperate effectively with each other and to carry out cross-border enforcement of consumer law. Compared to Article 4(6) of the current CPC Regulation, the set of minimum powers has been extended and further minimum powers added, such as the power to make test purchases and carry out mystery shopping, to adopt interim measures, to block websites and to impose penalties and safeguard consumer compensation in a cross-border context. Some existing responsibilities have been clarified in order to ensure their convergent application across the EU, for example the power to request information and documents or to conduct on-site inspections. The proposal for a regulation allows Member States to decide whether the minimum powers should be exercised by application to courts.

Mutual assistance mechanism (Articles 11 to 15)

The proposal for a regulation provides for a mutual assistance mechanism involving two instruments:

- i. requests for information to enable competent authorities to obtain information and evidence across borders;
- ii. requests for enforcement measures.

The mutual assistance mechanism will serve to implement EU consumer protection legislation in cross-border situations (e.g. when the interests of a consumer in one Member State are harmed by a trader domiciled in another Member State).

The proposal for a regulation also sets out the situations in which a competent authority may refuse to comply with a request for information or a request for enforcement measures. In such cases, the competent authority is to inform both the applicant authority and the Commission of the reasons for which it has refused to comply. The Commission may, in the event of disagreement between the applicant authority and the requested authority, decide to issue an opinion on the matter, either on the basis of a referral by the

applicant authority or on its own initiative.

The Commission is to have access to requests in the context of the mutual assistance mechanism. The role of the Commission is, inter alia, to monitor the operation of the mutual assistance mechanism and compliance with the established procedures and time limits by competent authorities.

Coordinated surveillance, investigation and enforcement mechanism for widespread infringements (Articles 16 to 32)

The proposal for a regulation also provides for investigation and enforcement tools to deal with widespread infringements of consumer protection legislation. These include so-called coordinated actions, common actions against widespread infringements with a Union dimension and concerted investigations of consumer markets.

Coordinated actions

The proposal for a regulation allows law enforcement authorities to carry out coordinated investigation measures and enforcement measures. Competent authorities may adopt a common position on a case or empower one authority to take enforcement measures on behalf of consumers in other Member States concerned by the infringement of consumer law.

Common actions for widespread infringements

Common action against widespread infringements of the legislation are a tool to address infringements of consumer rights which have a Union dimension. The proposal for a regulation sets out the criteria for determining what constitutes a widespread infringement of consumer law. These criteria depend on the number of countries in which the infringement occurs and, in addition, on the number of citizens of those countries who are affected by it. For there to be an infringement with a Union dimension, both criteria need to be fulfilled at the same time.

The decision as to whether an infringement is one with a Union dimension lies with the Commission which, if it considers that such an infringement has occurred, will launch a common action. In this case, the Commission also coordinates the investigation measures and other measures taken by Member States to stop the infringement.

Concerted investigations of consumer markets

The proposal for a regulation allows a concerted investigation of consumer markets (a ‘sweep’) to be conducted in cases where market trends, consumer complaints or other indications suggest that widespread infringements may have occurred. The Commission is to coordinate this investigation.

The proposal for a regulation also contains common provisions for coordinated and common actions (the right to defence, the role of the coordinator, the language regime, etc.).

Consumer protection cooperation surveillance mechanism (Articles 33 to 36)

The proposal for a regulation provides for the introduction of a consumer protection cooperation surveillance mechanism whereby Member States can exchange information concerning an infringement or a suspected infringement.

The proposal for a regulation also introduces the so-called ‘alert’: when there has been an infringement of consumer law on the territory of one Member State and such an infringement could affect consumers’ interests in other Member States, the competent

authority is to notify the Commission and other competent authorities of it without delay using the standard form and databases. Other entities designated by the Member States, such as consumer organisations or trade associations, may participate in this alert mechanism. They are, however, only entitled to issue alerts ‘for information’ and, having regard to the protection of professional secrecy, they have no access to the information and alerts exchanged between competent authorities.

Other Union-wide activities (Articles 37 to 40)

The proposal for a regulation also provides for other activities related to the application of EU consumer protection law, for example as regards the reciprocal exchange of officials, the exchange of information on consumer policy and international cooperation with third countries.

Professional secrecy and other arrangements (Articles 41 to 47)

The proposal for a regulation sets out the rules and restrictions on the use of evidence, documents, information, explanations and investigation findings made by the competent authority. It is also laid down that Member States cannot require the Member State of the applicant authority to reimburse the cost of the mutual assistance they have provided except for losses incurred as a result of measures which are subsequently held to be unfounded by a court as far as the substance of the infringement in question is concerned. The proposal for a regulation also contains provisions on the database and the system for the exchange of information on infringements. The Commission is to maintain this electronic database, in which it is to store and process information on infringements and imminent infringements, requests for mutual assistance, etc. Only the competent national authorities and the Commission will have access to the database.

Member States are required under the proposal to submit to the Commission every two years a biennial enforcement plan using a dedicated online standard form. This obligation replaces the biennial reporting requirement pursuant to the CPC Regulation as it stands. The proposal for a regulation stipulates that enforcement plans should contain information that may affect consumers’ interests, for example concerning market trends. They should also ensure the prioritisation of activities and a more efficient use of resources to combat infringements in the Single Market. Member States are also required to include in this plan an overview of resources available and committed for enforcement of the laws that protect consumers’ interests during the previous two years and a statement of resources committed to the implementation of this regulation for the next two years.

Final provisions (Articles 48 to 53)

Member States are to communicate to the Commission without delay the text of any provisions of national law that they adopt in the context of this proposal for a regulation, and the text of agreements that they conclude on matters covered by this regulation

Annex to the proposal for a regulation

The proposal for a regulation also updates the Annex to the CPC Regulation, which contains a list of the legislation covered by the proposal for a regulation. The aim of this update is to extend the scope of the regulation to EU consumer protection legislation that is currently not covered. It is proposed, for example, to include in the CPC Annex the Mortgage Credit Directive, the Payment Account Directive, the Rail Passenger Rights Regulation, the Regulation on rights of disabled persons and persons with reduced mobility when travelling by air, the pricing provisions of the Air Services Regulation,

and Article 20 of the Services Directive. Conversely, legislation which is no longer in force is to be struck out of the Annex.

- **Opinion of the Government of the Czech Republic:**

The Government of the Czech Republic finds this proposal for a regulation valuable in so far as it constitutes an update of existing legislation, which should lead to a more active and more consistent enforcement of consumer protection rules. At the same time, the Czech Government takes a positive view of the incorporation into law of certain practices that are already in use although there has been no suitable legal basis for them, which can lead to legal uncertainty (for example, sweeps).

However, the Czech Government has reservations on three new rules to be introduced by the proposal for a regulation. Particularly controversial in its view are the minimum powers which the competent authorities are required to have, both as regards the scope of these powers and the detail of the laws relating to them. Specifically, the Czech Government has expressed its concern that the minimum powers permit intervention in administrative penalties, control mechanisms and criminal proceedings. The Government of the Czech Republic does not agree with the minimum powers of the competent authorities in the form currently proposed.

The Czech Government also expressed its concern about the quantity of the powers being given to the Commission to adopt implementing acts by means of which the Commission can regulate in detail the various cooperation mechanisms (in particular as regards the mutual assistance, coordinated surveillance and enforcement mechanisms in respect of widespread infringements of consumer protection law, and the consumer protection surveillance cooperation mechanism).

The Czech Government also has reservations as regards the adverse effects of the proposal for a regulation on the administrative burden on surveillance bodies (the need to draw up national enforcement plans and set priorities).

The opinion of the Czech Government contains further remarks on the individual chapters of the proposal for a regulation.

Impact on the state budget and legal order of the Czech Republic:

In terms of the impact on the state budget, there will be a need for an increase in the human and financial resources of the supervisory bodies. In terms of the implications for the legal order, it will be necessary to amend the legislation on the 17 administrative offices and their powers in the field of cross-border cooperation. It will probably also be necessary to amend the relevant procedural laws.

- **Timetable for consideration of the proposal by the European institutions:**

Discussion of the proposal for a regulation in the Council working party on consumer protection and information has begun. The proposal for a regulation was sent to the Committee on the Internal Market and Consumer Protection (IMCO) of the European Parliament on 9 June 2016. The timetable for further discussion in the EU institutions is not yet known.

- **Conclusions:**

The Committee on European Affairs:

1. Notes the proposal for a European Parliament and Council regulation on cooperation between national authorities responsible for the enforcement of consumer protection

laws, COM(2016) 283 final, Council No 9565/16;

2. Welcomes in general terms the Commission initiative to improve the effectiveness of cooperation and coordination in the field of enforcement of consumer protection laws;

3. Does not call into question the need to revise the current wording of the Regulation in the light of the development of the digital market and cross-border trade;

4. Is aware of the fact that EU Member States cannot, in cases of cross-border infringement of consumers' rights, autonomously achieve the effective enforcement of EU consumer protection legislation;

5. Is aware of the fact that different national consumer protection rules, as well as the jurisdictional boundaries, can be detrimental to the effective enforcement of consumer law in cross-border situations;

6. Takes the view, however, that the proposal for a regulation in some of its aspects goes beyond what is needed to achieve its declared objectives and impinges on the powers of European Union Member States;

7. In line with Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, annexed to the Treaties, adopts this reasoned opinion 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, for the following reasons in particular:

- i. The minimum powers of the competent authorities as set out in the proposal for a regulation go beyond the powers conferred on the EU in the field of administrative cooperation, in which the EU has only to support, coordinate and supplement the actions of the Member States;
- ii. In setting the mandatory minimum powers of the competent authorities, insufficient account has been taken of the legal traditions of the Member States and issues relating to the uniformity and consistency of their legal systems, since the competent authorities, as a result of the adoption of such legislation, may have different powers for national and for cross-border infringements of consumer law;
- iii. The stipulation, in Article 4 of the proposal for a regulation, of a limitation of five years on the possibility to apply sanctions in case of infringements that have ceased goes beyond the legislation necessary in order to achieve the declared objectives of the proposal for a regulation and does not respect the national legislation of Member States concerning the limitation period;
- iv. The powers conferred by the proposal on the Commission to adopt implementing acts are too frequent and extensive, and often in view of the importance of their content should be included in the operative part of the Regulation (e.g. Articles 10, 11(5) and 12(5)), as the options open to the Member States to shape EU legislation in these areas are thereby reduced;
- v. The power to monitor the implementation of national enforcement plans within the meaning of Article 46 of the proposal for a regulation, including providing advice and establishing benchmarks for the resources necessary for the implementation of the proposal for a regulation, interferes with the competence of the Member States in the field of law enforcement, going beyond what is necessary to meet the objectives of the proposal for a regulation;

8. Authorises the Chair of the Committee on European Affairs, in accordance with the Rules of Procedure of the Chamber of Deputies, to forward this resolution, through the

Speaker of the Chamber of Deputies, to the Government of the Czech Republic, the Speaker of the Senate, the President of the European Parliament, the President of the Council and the President of the European Commission.

(signed) Josef Šenfeld
Verifier

(signed) Lubomír Toufar
Rapporteur

(signed) Igor Jakubčík
Vice-Chair