

April 2016

Regulation 2006/2004 on consumer protection cooperation

This briefing is one of a series of 'Implementation Appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is, or will shortly be, subject to an amending proposal from the European Commission, intended to update the current text. 'Implementation Appraisals' aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date – drawing on available inputs from, inter alia, the EU institutions and advisory committees, national parliaments, and relevant external consultation and outreach exercises. They are provided to assist parliamentary committees in their consideration of the new Commission proposal, once tabled.

EP committee responsible at time of adoption of the EU legislation: Committee on Legal Affairs and Internal Market – JURI
Date of adoption of original legislation in plenary: 20 April 2004.
Entry into force: 29 December 2004 (Art. 22 of the Regulation).
Planned date for review of legislation and other procedural features: Member States should report (Art. 21) on the application of the Regulation every two years from its entry into force. ¹ In addition, Art. 21a states that the Commission should report to the co-legislators by 31 December 2014 on the effectiveness and operational mechanisms of the Regulation on the basis of an external evaluation and, where appropriate, put forward a legislative proposal. The external evaluation was carried out in 2012 and the subsequent Commission report was published in July 2014. Impact assessment work in support of a potential legislative proposal was ongoing at the time of writing this briefing. ²
Timeline for new amending legislation: A Roadmap kick-starting the impact assessment work for a revision of the Regulation was first published in September 2013 and revised in October 2015. The revision of the Consumer Protection Cooperation (CPC) Regulation features among the flagship initiatives of the Digital Single Market Strategy and is expected in 2016. ³

1. Background

[Regulation 2006/2004](#) on cooperation between national authorities responsible for the enforcement of consumer protection law (commonly known as the Regulation on Consumer Protection Cooperation or CPC Regulation) aims at facilitating cooperation in this area between enforcement authorities in the EU and EEA countries. It does so by setting the conditions under which competent authorities at the national level⁴ shall cooperate with one another and with the European Commission to ensure compliance with consumer laws.⁵

¹ For further details, see the Commission's [2009 Report](#), the [2010 Report](#) and the [2012 Report](#). These reports draw i.a. on the biannual contributions on the functioning of the CPC Regulation provided by the Member States.

² Note that the [original Commission proposal](#) in 2003 was not subject to an impact assessment, as the Commission impact assessment guidelines were not systematically applicable at the time.

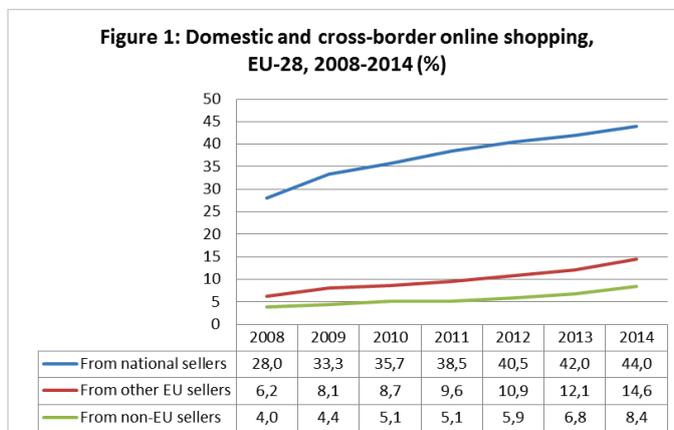
³ On this point, see also [Commissioner Jourová's speech](#) of 21 May 2015 at the BEUC (the European Consumer Organisation) General Assembly.

⁴ Article 3 (c) of the CPC Regulation defines competent authorities as 'any public authority established either at national, regional or local level with specific responsibilities to enforce the laws that protect consumers' interests'.

⁵ For further details on EU consumer policy, see the dedicated [factsheet](#).

Such cooperation is meant to serve the dual goal of safeguarding the smooth functioning of the Internal Market and of protecting consumers' collective economic interest.⁶ It is worth stressing that the CPC Regulation applies to cross-border infringements and exists to facilitate cooperation between relevant authorities and specifies the powers and obligations of those authorities when cross-border cases are at stake. The Regulation does not, however, alter the Member States' approaches to infringements.

In terms of scope, seventeen legislative acts, such as the [Unfair Commercial Practices Directive](#), the [Regulation on air passenger rights](#),⁷ certain aspects of the [Audio-visual Media Services Directive](#)⁸ and the [Directive on electronic commerce](#), fall under the remit of [Regulation 2006/2004](#).⁹ As will be explained below, the growing impact of the internet and of the digital economy on consumer behaviour and welfare is changing the landscape in which enforcement authorities operate. Indeed, the forthcoming revision of the CPC Regulation was already linked to the Digital Single Market package in the Commission's 2015 Work Programme. This connection is also in line with one of the four priorities of the [European Consumer Agenda](#), i.e. aligning existing rights and policies to key economic and societal changes, including digitalisation.¹⁰



The enforcement of consumer protection rules in a digital environment

Enforcing consumer protection legislation in a digital environment poses new challenges for competent authorities and has brought to the fore the need for new tools and solutions to keep guaranteeing the level of protection envisaged by existing legislation in this field. Such challenges are expected to become more pressing in the coming years, following i.a. growth in online shopping, as illustrated in Figure 1,¹¹ the emergence of innovative and sometimes increasingly complex products with a potential to generate new policy problems in terms of e.g. the security of online financial transactions, privacy and data protection, and so on.¹²

⁶ Individual economic interests are normally protected at the national level; for cases with a cross-border dimension, individual consumers can also rely on the European Consumer Centres (the [ECC-Network](#); for additional information and recent data see also the [ECC-Network Anniversary Report 2005-2015](#)) for information and free advice. The rationale for Regulation 2006/2004 is to remedy or prevent collective harm to consumers' interests. By way of example, the CPC Regulation would allow tackling a case of online misleading advertising by a company selling package holidays to consumers in several Member States. Note that the Regulation only applies to business-to-consumer (B2C) transactions and not to business-to-business (B2B) ones.

⁷ This Regulation is currently under revision. Further details on the procedure are available [here](#).

⁸ Specifically Articles 9, 10, 11 and Articles 19 to 26.

⁹ Note that this list is applicable as of 18 December 2014. An assessment of the scope of Regulation 2006/2004 was part of [the 2012 external evaluation of the Regulation](#) (see Chapter 2 of the evaluation). For instance, the possibility of adding energy specific legislation to the acts covered by the CPC Regulation was mentioned in the Commission's Communication on [Delivering a New Deal for Energy Consumers](#) of 15 July 2015 (point 2.1.3). For further details on the external evaluation, see Section 2 below.

¹⁰ Section 4.3. On this point see also the [Multi-annual Consumer Programme 2014-2020](#), the EPRS publication [Consumer protection in the EU: Policy overview](#) and the [Commission factsheet on the Digital Single Market Strategy](#) and its impact on Consumer Protection Cooperation.

¹¹ Source: author's elaboration of the [Consumer Conditions Scoreboard 2015](#), p. 56. The growing importance of online shopping and its cross-border dimension is expected to increase the number of infringement cases and to potentially aggravate the damage to the collective interests of consumers, as non-compliant behaviour is repeated on multiple websites in different languages across the EU and only coordinated action can stop such harmful practices.

¹² On this point see e.g. the [European Parliament resolution of 22 May 2012 on a strategy for strengthening the rights of vulnerable consumers](#); see also the European Parliament's study [New Trends and Key Challenges in the Area of Consumer Protection](#). On digital content, see the recent [Study on Digital Content Products in the EU](#) funded by the European Commission.

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The very nature of the digital world allows for new forms of infringements on a rapid and unprecedented scale. The classical case of a good sold by one infringing trader to a consumer in another Member State is becoming a thing of the past. Nowadays, EU enforcement authorities are faced with new business models featuring a parent company established in one country (not necessarily within the EU) that trades through local subsidiaries established in various Member States. When one or more of these subsidiaries commit an infringement, the latter is treated as a domestic matter by each national authority. This facilitates EU-wide consumer detriment, as the same trader can infringe the same rules simultaneously in several Member States via its various subsidiaries. As such an infringement is likely to be detected (at least initially) only at the national level, it may escape the CPC coordination mechanisms and result in diverging enforcement approaches and an overall increase of enforcement costs (several national actions instead of a coordinated one).¹³ Rogue traders are potentially more numerous and difficult to identify in the online environment and malpractices, big or small, can spread faster and more easily online. Indeed, some have commented that the CPC Regulation was designed with law-abiding businesses in mind,¹⁴ thus raising the issue of which type of infringements a revised version of the CPC Regulation should address. In the digital world the timing of malpractice becomes an additional challenge for enforcement authorities. An online infringement that occurs only for a very limited period of time (weeks or months) simultaneously in several countries may be difficult to detect and to be addressed by the competent national authorities. By the time enforcement instruments have been activated, the malpractice may have already ceased or moved to another country. The question of coordination and of a uniform availability of enforcement tools across the EU28 is also important.¹⁵ In this context, the power for competent authorities to carry out test purchases (mystery shopping) was requested by several commentators as a valid additional enforcement tool.

The CPC Network and its cooperation mechanisms

One of the main achievements of the CPC Regulation is the establishment in 2007 of the [CPC Network](#) linking competent national authorities. The CPC Network operates on the basis of common enforcement priorities. Besides facilitating the exchange of best practices and know-how, the CPC Network is instrumental in stopping breaches of consumer legislation where the trader(s) and the consumer(s) are established in different countries and the collective interest of consumers is at stake. As enforcement competences for consumer law are distributed differently in each country (e.g. some Member States exercise enforcement at the national level, while others also rely on local authorities), the CPC Network also provides for the designation of a [Single Liaison Office](#)¹⁶ in each country to facilitate cross-border coordination. In addition, the CPC Regulation has established the following cooperation mechanisms:

- Three types of **mutual assistance requests** between national authorities: namely, information requests,¹⁷ enforcement requests¹⁸ and alerts.¹⁹ Requests are routed through a special IT tool, the CPC System.

¹³ With regard to this and other examples, see the Commission's intervention (Paola Testori Coggi) at the [Conference on the CPC Regulation](#) organised by the Italian Presidency of the Council of Ministers of the EU in July 2014. The Commission also evoked the so-called 'rip and run' practice, whereby a trader from a third country sells goods online that are never delivered to the consumer and operates through entities with different legal forms or names that are difficult for the CPC Network to detect.

¹⁴ See the concluding remarks of the [Conference on the CPC Regulation](#) organised by the Italian Presidency of the Council of Ministers of the EU in July 2014.

¹⁵ See the intervention of the Danish Ombudsman at the [Conference on the CPC Regulation](#), who explained that a lack of consistency in applicable law and of a common understanding of legal provisions between competent enforcement authorities is among the problems encountered during the implementation of the CPC Regulation. It is worth recalling that for some of the [legal acts covered by the CPC Regulation](#), the national Ombudsmen are the competent enforcement authority.

¹⁶ Art. 3 (d) defines Single Liaison Offices as 'the public authority in each Member State designated as responsible for coordinating the application of this Regulation within that Member State'.

¹⁷ Art. 6. These requests facilitate the timely exchange of information 'to establish whether an intra-Community infringement has occurred or to establish whether there is a reasonable suspicion it may occur'.

Between 2007 and 2014, the CPC Network handled nearly 900 information requests and more than 1 000 enforcement requests.²⁰ Over 400 alerts were circulated in the same period. The network also allows for coordinated surveillance activities, when at least three Member States are involved. These also include 'sweeps',²¹ i.e. concerted enforcement activities on online markets, as described in greater detail below.

- Common activities **aimed at fostering a common approach to enforcement, e.g. through the exchange of officials, EU co-funded projects between national authorities, as well as reporting and committee meetings.**

Sweeps allow competent national authorities to carry out a simultaneous and EU-wide screening of websites to check whether a given sector is complying with EU consumer rules. To ensure consistency a common checklist is developed ahead of each sweep. If breaches of consumer law are suspected, authorities act to remedy the situation: first a deeper investigation on suspected irregularities is conducted and then, if necessary, the infringing companies are contacted or other corrective measures are taken. Classical examples of malpractice encountered during a sweep include incomplete information on the real price of a product (e.g. when hidden costs, such as delivery fees, are added to the bill) or the non-respect of information obligations on statutory product guarantees. Corrective measures can range from a request to correct/stop the infringing practice to website closure. Legal action can follow in case of non-compliance. For each 'swept' sector, dedicated tips for consumers are provided on the Commission website to complement enforcement efforts and increase awareness on the rights granted by EU consumer legislation.

Online market	N. websites investigated	Websites with irregularities	Share of websites with irregularities that were corrected*
Airline tickets	447	32%	81%
Mobile phone content	554	54%	71%
Electronic goods	369	55%	71%
Online tickets sales	414	59%	79%
Consumer credit	565	69%	75%
Digital content	330	52%	80%
Travel services	552	69%	62%**
Guarantees on consumer electronics	473	54%	66%***

Source: Author's elaboration on the [Report on the functioning of the CPC Regulation](#), p. 4 and [sweep website](#).

*Defined as 'enforcement rate' in the Report, i.e. the ratio of corrected websites to the number of websites with irregularities; ** Results after 6 months. *** Results in June 2015. All other data on the enforcement rate are considered final as they reflect the situation after a minimum of 12 months following the initial investigation.

The sectors subjected to a sweep vary on a yearly basis and normally correspond to areas perceived as being problematic or worthy of prioritisation because of e.g. market size, the number of complaints received by the European Consumer Centres Network ([ECC-Net](#)), a higher potential of creating collective harm to European consumers, and so on. Since the first sweep in 2007, the following sectors have been covered: [airline ticket selling websites](#) (2007); [mobile phone content](#), including websites selling wallpapers and ringtones (2008); [electronic goods](#) (2009); websites selling [tickets to cultural and sporting events](#) (2010); websites offering [consumer credit](#) (2011); [digital content products](#) (2012); [travel services](#) (2013); and legal and commercial [guarantees in consumer electronics](#) (2014).

As illustrated in the table above, since the first sweep, over 3 700 websites have been checked across the EU, and the share of websites displaying irregularities varies between 30% and 70% depending on the sector.

¹⁸ Art. 8. Thanks to an enforcement request, the national authority of the country where consumer harm is occurring can call on the corresponding authority in the country where the trader operates to intervene and stop the infringement.

¹⁹ In the case of alerts, competent authorities can flag malpractices in their country that could potentially spread across borders (Art. 7 of the Regulation).

²⁰ Further details are available [here](#). For an overview of requests per legislation infringed, see also p. 88 of the [external evaluation](#).

²¹ Sweeps are based on Art. 9 of the Regulation.

Following targeted interventions by the competent authorities, the ratio of compliant websites to the number of websites with suspected irregularities ranged between 71% and 81% twelve months after the initial investigation.

2. EU-level reports, evaluations and studies

External Evaluation 2012²²

As required by Art. 21a of the CPC Regulation, the European Commission requested an external evaluation in 2012. The evaluation was commissioned to assess the relevance and the efficiency of the Regulation and to identify potential areas for improvement.²³ It drew on data and evidence collected between 2007 and 2011.

The evaluation concluded that the Regulation and its intervention logic are still relevant, even more so in the wake of recent developments in the digital environment. It also stressed that while the objectives of the Regulation remain appropriate and relevant, 'none of the specific objectives have been fully achieved',²⁴ sometimes because they were interpreted differently between Member States. In terms of overall efficiency, as well as the efficiency of individual mechanisms, the evaluation found that the benefits of the Regulation outweigh the costs of 'the inputs required to implement its activities'.²⁵

Turning to the question of the scope of the CPC Regulation, the acts currently covered were assessed on the basis of four criteria: 1) whether the inclusion of a given act in the Regulation's scope reinforces the public enforcement of the consumer acquis; 2) the extent to which the act under examination touches upon the collective interest of consumers; 3) the structure of the product market at stake and in particular its cross-border relevance; and 4) the consistency and need to eliminate gaps.²⁶ By mapping and scoring each act according to these criteria, the evaluation concluded that the current scope of the CPC Regulation is appropriate; even for acts that appear as less relevant, the mere fact of being included in the CPC Regulation may have the benefit of generating a deterrent effect on potential infringers. As regards enlarging the existing list of acts covered by the Regulation, the evaluation suggested adding to the list the [Regulation on Rail Passenger Rights and Obligations](#) in order to foster consistency between different modes of transport. Other potential candidates, albeit with some caveats, for example concerning consistency with other parts of the consumer acquis, include the [Roaming Regulation 531/2012](#) and the [Mortgage Credit Directive](#),²⁷ as well as selected provisions in other pieces of EU legislation such as the [Air Services Regulation](#). The potential extension of the CPC Regulation's scope to B2B aspects in order to support small and micro-enterprises²⁸ was not recommended by the evaluation on the grounds that such inclusion would dilute the coherence and consumer focus of the Regulation. This conclusion was also supported by stakeholders consulted for the evaluation, and in particular by [Consumer Policy Network](#) representatives and competent authorities.²⁹

²² The first Commission Report on the functioning of the Regulation was due in 2009. For further details, see the [Commission Communication on the enforcement of the consumer acquis](#), COM(2009)330 of 2 July 2009.

²³ Specifically, the evaluation had to address the following questions: the relevance of the CPC Regulation's rationale; whether its scope is appropriate or should be extended to business-to-business (B2B) transactions; the impact of differences in substantive law, procedural law and enforcement powers between Member State on cross-border enforcement; the strengths and weaknesses of the cooperation tools and coordinated actions established by the Regulation; possible improvements to increase 'the efficiency, effectiveness and value added of consumer protection legislation and its enforcement', *Ibid.* p.4-5.

²⁴ *Ibid.*, p. 18 and p. 115-116. The objectives of the CPC Regulation are: to provide for cooperation between enforcement authorities; to improve the quality and consistency of enforcement; and to monitor and enhance the protection of consumers' economic interests.

²⁵ *Ibid.*, p. 18. Note that this conclusion is based on feedback provided by stakeholders and on quantitative information pertaining to specific costs and estimated potential for cost savings, see e.g. Chapter 7 of the external evaluation.

²⁶ See Section 2.6 of the external evaluation.

²⁷ Note that at the time of the external evaluation, Directive 2014/17 was only at the proposal stage.

²⁸ These players are considered more vulnerable than bigger businesses, as they may face the same difficulties as consumers in cross-border transactions.

²⁹ *Ibid.*, p. 39-40.

The evaluation also found that some of the problems experienced at the stage of implementation can be traced back to the fact that the CPC Regulation does not state which substantive law is applicable in mutual assistance requests.³⁰ This may create legal barriers and hamper cross-border cooperation, although the origins of the problem differ on a case-by-case basis and it would be difficult to devise a one-size-fits-all change to the Regulation to address this issue. The evaluation recommended providing guidance on applicable law and other interactive solutions (e.g. an outsourced legal helpdesk) to increase awareness of and compliance with EU consumer legislation. It also suggested monitoring how mutual assistance requests are handled under the CPC Regulation, in order to better understand the nature of legal issues, and adopting more formalised approaches and tailored solutions to specific conflicts. Another challenge examined by the evaluation concerned differences between national procedural rules to stop infringements. Despite the existence of minimum common investigative powers thanks to the Regulation, in the case of considerable procedural differences between two Member States (e.g. regarding the competent authority, the nature and magnitude of sanctions, or the evidence required to establish an infringement), cross-border cooperation is negatively affected. By way of example, one Member State may require the competent authority to undertake a survey to show that the average consumer would be misled by a certain claim in order to prove in court that such claim was indeed misleading. In another country, however, just the theoretical risk of consumers being misled would be deemed as sufficient in court. In a cross-border case involving these two countries, the evidence provided by the second Member State would thus be insufficient to prove a case in the first one.³¹ The evaluation recommended the adoption of guidance to improve the quality of mutual assistance requests; in light of a potential revision of the CPC Regulation, it also suggested exploring the possibility of including minimum procedural standards in the Regulation and of expanding the minimum investigative and enforcement powers provided for in the legal act.

Finally, as regards the CPC Network and more generally the cooperation mechanisms foreseen by the CPC Regulation, the evaluation concluded that implementation has delivered concrete benefits (e.g. improved cooperation between authorities, increased effectiveness in enforcement, increased awareness among competent authorities of emerging trends and practices). The Network in particular is valued and its absence would lead to gaps in enforcement. However the evaluation also pointed to various shortcomings. Awareness of the Network remained low with some national authorities. In addition, the use of mutual assistance requests varied between Member States and the use of the mechanism was deemed sub-optimal: a greater volume of cases would indeed allow using the full potential of the CPC Network. The evaluation also noted that the number of alerts (Art.7)³² decreased over time and that these were perceived as less useful than information and enforcement requests. Some weaknesses were identified also within the CPC System (i.e. the dedicated IT tool routing the alerts) as regards, for instance, the timeliness of traffic, which leads at times to the stagnation of cases. It also appeared that more informal activities, such as the exchange of officials and the development of joint projects,³³ remained limited, i.a. for a lack of resources and because of a limited capacity within the concerned authorities to use available funding and/or manage EU co-funded projects. In terms of remedies to those problems, the evaluation (also drawing on the feedback provided by stakeholders) called on the Commission to provide greater clarity and guidance on, for example, the tools of the CPC Regulation, on how to coordinate enforcement against the same infringing trader and on the obligations of the Member States, including setting stricter requirements on the time available for responding to requests. It also suggested developing a standard reporting protocol to streamline the handling of information within the Network. The possibility of envisaging an EU body separate from the Commission (to ensure a separation between the legislative and the enforcement function), to arbitrate in the case of conflicts between Member States hindering the enforcement of the EU consumer acquis, was also evoked.

³⁰ For further details, see *ibid.*, section 3.4.

³¹ See *ibid.*, p. 58-59 for other concrete examples and, for example, p. 69-70 on national differences in fines and penalties imposed on traders infringing EU consumer law. For additional examples of cross-border issues that might be encountered by consumers (but not necessarily touching on the enforcement of consumer protection legislation) see also the [Your Europe](#) website.

³² See footnote 19 for the definition of alerts.

³³ On, for example, a project led by France and Portugal to increase the visibility of the CPC Network, see the [contribution](#) of Teresa Moreira, Consumer Director-General for Portugal.

European Commission's report on the functioning of the CPC Regulation, 1 July 2014

The Commission Report complemented the external evaluation with additional data for 2012-2013 and with the results of a public stakeholder consultation completed in 2014.³⁴ It stressed the positive impacts of sweeps and explained how these are a valuable tool to gain a better understanding of the level of compliance with the EU consumer acquis in various markets and sectors. It also clarified the nature of the 'common enforcement approach', a new joint enforcement action developed since 2013 that allows for competent authorities 'to coordinate their approach on the application of consumer protection law for a specific issue',³⁵ with the European Commission acting as a facilitator. This action is normally followed by discussions with the industry concerned so as to find appropriate solutions, as in the case of the so-called [in-app purchases](#)³⁶ and for the [car rental sector](#).³⁷

In many respects the Commission Report echoed the findings of the external evaluation, in particular regarding the need to address certain shortcomings observed since the implementation of the CPC Regulation, such as the under-use of alerts and persisting barriers to effective cross-border enforcement deriving from different procedural standards between the Member States. In addition, it highlighted the fast pace of development in the digital economy and the importance of taking an increasingly [international perspective](#) on retail trade, as infringements quickly spread across borders, a view that was also expressed in recent national biennial reports.³⁸ As noted elsewhere (e.g. the [dedicated workshop organised by the Italian Presidency](#) in 2014) infringements committed by the same trader simultaneously in several Member States cannot be fully addressed under the current CPC Regulation.³⁹ The Report also called for a definition of 'EU-level relevant infringement' so as to strengthen the existing legal coordination framework and clarify the role and responsibilities of the actors involved, possibly with a greater role for the Commission, and to make the CPC Regulation a stronger basis to tackle widespread infringements.

The Report also focused on the structure of the CPC Network and noted that some of the difficulties with implementing the Regulation stem not only from legal barriers but also from diverging institutional frameworks: for instance, in one country the enforcement of consumer protection is in the hands of a single authority, while in another responsibilities are shared by a variety of actors. This can affect i.a. the speed in responding to cross-border requests. The responsibility of Single Liaison Offices in charge of coordinating CPC matters in each Member State was reiterated. The Report also signalled another positive development: the more formal involvement of consumer organisations at the national level to support enforcement efforts.⁴⁰ Finally, the Report's conclusions on the functioning of the CPC System and the underlying database were more negative than those of the external evaluation. At the time of writing this briefing, an additional [study on the enforcement authorities' powers in the application of Regulation 2006/2004/EC](#) was ongoing and not yet publicly available.

3. European Parliament activities

European Parliament Resolution of 9 March 2010 on consumer protection

The Parliament noted that the number of cross-border purchases remains uneven between the Member States and that an increased level of consumer confidence would positively contribute to cross-border trade. The Resolution therefore called on the Commission to include more data in future Consumer Scoreboards on the

³⁴ See section 4 below.

³⁵ *Ibid.*, p. 4.

³⁶ On this issue, see also the [written question by MEP Mitro Repo](#) below.

³⁷ See the first CPC Network [Common Position on Online Games](#) which was followed by a [Second Common Position](#) featuring an assessment of proposals made by major companies in the sector such as Apple and Google.

³⁸ See, for example, the [2011 Biennial Report from the UK](#) and the [2011-2012 Biennial Report from Italy](#). There appears to be no single repository for all national biennial reports.

³⁹ *Ibid.*, p.8; see also the text box in this briefing on the enforcement of consumer protection rules in a digital environment.

⁴⁰ Besides acting at the national level, cross-border cooperation between consumer organisations also occurs via, for example, the [Consumer Justice Enforcement Forum](#) (COJEF).

level of cross-border sales and on the type of problems encountered by cross-border consumers. As regards enforcement, the Parliament stressed the existence of persisting discrepancies across the EU and urged Member States to devote the necessary resources to ensure that competent authorities can investigate illegal commercial practices. It also suggested that the Commission and the Member States publish the results of market surveillance and enforcement activities, naming repeat infringers if appropriate, so as to increase the transparency and the effectiveness of enforcement efforts.

European Parliament Resolution of 15 December 2010 on the impact of advertising on consumer behaviour

In the context of a broader discussion on the problems raised by new advertising practices online and via mobile devices, and the difficulties observed in the implementation of existing legislation such as the Unfair Practices Directive, the European Parliament welcomed 'EU sweeps' and called for broadening both the number and the scope of such joint investigations. It also invited the Commission to present the sweep 'results to the European Parliament and, if needed, envisage additional steps to improve the Internal Market for consumers'.

European Parliament Resolution of 2 February 2012 on 'Towards a Coherent European Approach to Collective Redress'⁴¹

In connection with the Commission's and the Member States' efforts to facilitate collective redress for consumers, the Parliament noted that the mechanisms introduced by the CPC Regulation and by Directive 2009/22/EC on injunctions for the protection of consumer interests could be improved and strengthened. The Parliament also recalled that 'public enforcement to stop infringements and impose fines does not of itself enable consumers to be compensated for damage suffered'⁴² and that private enforcement should therefore supplement, but not replace, public enforcement.

Members' questions

Written question by Olga Sehnalová (S&D, Czech Republic), 27 May 2015

The MEP recalled that the enforcement of consumer protection rules featured among the priorities of the Juncker Commission and that the importance of addressing existing infringements, as well as of deterring future ones, was also raised by Commissioner Jourová during her hearing in Parliament. According to Article 21a of the CPC Regulation, the Commission was supposed to submit an assessment of the Regulation to Parliament and Council by the end of 2014 with an accompanying legislative proposal, if necessary. As a Roadmap had already been published in 2013 and a dedicated consultation was held in 2014, the MEP asked when the Commission intended to submit the evaluation report to Parliament⁴³ and whether a legislative proposal was to be expected.

Answer given by Věra Jourová on behalf of the Commission, August 2015

The European Commission explained that the revision of the CPC Regulation had been delayed to ensure that any proposal would be in line with political guidelines and to maximise its contribution to the priorities of the Juncker Commission. A revision of the CPC Regulation featured among the flagship initiatives of the Commission's Digital Single Market Strategy of May 2015 and was expected to clarify and reinforce the powers of enforcement authorities to ensure they can meet the challenges of an online environment. As regards timing, a proposal should be expected in 2016.

Written question by Mitro Repo (S&D, Finland), 7 April 2014

The case of free downloadable games for mobile phones which then offer billable 'in-app purchases' to continue playing or improve the game experience have already caught the attention of consumer protection authorities. Children are particularly vulnerable to 'in-apps', as they often fail to realise the actual costs of those purchases, especially when the account is directly linked to a credit card, leading to 'bill shocks' that can amount to several

⁴¹ Note that more recent Parliament resolutions are less closely connected to the enforcement of consumer protection legislation.

⁴² Ibid., recital J.

⁴³ Note that the evaluation was submitted shortly afterwards, in July 2014, but without a proposal.

hundred euro. In 2014, the European Commission and the CPC Network met representatives of Apple, Google and the game developers' organisation to discuss issues related to online games. The MEP asked how the Commission intended to secure a commitment by game app companies as regards the respect of consumer rights. He also asked how the Commission planned to tackle the issue of 'in-app' purchases by children and how it would ensure that the companies concerned change their business practices, and how it planned to intervene if needed.

[Answer given by Neven Mimica on behalf of the Commission](#), June 2014

Following several consumer complaints across the EU, the members of the CPC Network decided to act jointly on the issue of 'in-app purchases' and have reached a common understanding of how consumer protection rules apply to online games. The 2014 meeting mentioned by MEP Repo has already led Apple and Google to change some elements on their platforms, and further improvements should be expected. It remains in the remit of national authorities to decide if additional follow-up actions are needed. As a complement to the enforcement of existing rules, self-regulatory initiatives such as the '[CEO Coalition](#)' develop best practices to improve the internet environment for children, including parental control functions, for example.

Other oral and written questions concerned the legislative acts falling under Regulation 2006/2004. In particular, Roberta Metsola (EPP, Malta) mentioned the inclusion of [cross-border banking services](#); Cornelis de Jong (GUE/NGL, Netherlands) raised the issue of [misleading and fraudulent advertising targeting SMEs](#)⁴⁴ and whether such practices should also be addressed under the CPC Regulation, and Anneli Jäätteenmäki (ALDE, Finland) asked whether [Article 22 of the Services Directive](#) should be included in the list of rules covered by Regulation 2006/2004. Moreover, in its [answer](#) to a question by Gianluca Buonanno (ENF, Italy) on [subscription to unsolicited mobile phone and internet services](#), the Commission indicated that it had commissioned a study on 'misleading free or cheap offers that subsequently trap consumers into unwanted subscriptions', the results of which are expected in early 2016 and will be shared with the members of the CPC Network.

4. European Commission Stakeholder Consultations

In October 2013, the European Commission held a [public consultation](#) in view of a possible reform of the CPC Regulation. Four main themes were covered, namely:

1. Identifying main challenges and key priority areas for improvement in the enforcement of consumer rights, so as to generate greater benefits for consumers and businesses operating in the Internal Market. The consultation asked for concrete examples of malpractices and uneven application of consumer rules as well as for good examples of legislation and national practices to boost enforcement;
2. Improving the methodology to identify infringements. The consultation document stressed that no practical procedures are in place to 'strengthen the alerts and knowledge base available in the CPC Network' and put forward various options to 'support the knowledge base for enforcement prioritisation'.⁴⁵ Respondents were also asked to provide feedback and suggestions to improve the existing CPC alert mechanism;⁴⁶
3. The consultation also concentrated on ways to enhance the capacity of national designated authorities to perform their duties under the CPC Regulation. While competent authorities already have a dedicated 'toolbox' of powers to support their enforcement duties, the consultation put forward some additional

⁴⁴ As mentioned above, Regulation 2006/2004 covers business-to-consumer cases and not business-to-business ones. On misleading and aggressive sales practices to consumers, see also the [written question by Jiří Pospíšil](#) (EPP, Czech Republic).

⁴⁵ Specifically, respondents were asked to indicate – on a scale of three – the priority level for each of the following actions: a mechanism to gather and analyse enforcement intelligence from available sources in Member States and at EU level; a requirement for coordinated surveillance actions by Member States; EU-funded surveillance actions; EU-funded studies on emerging consumer threats and new market practices which are relevant for enforcement of consumer rights; an IT platform to share enforcement expertise; and an EU complaint system directly accessible online to citizens. For further details, see the [consultation document](#), question 3.2.

⁴⁶ Article 7 of the CPC Regulation allows designated competent authorities to sound the alarm on suspected cross-border infringements by circulating early warning messages between one another.

options.⁴⁷ It also explored means to make it easier for consumers to claim compensation after a decision in their favour has been taken within the CPC and raised the issue of developing common standards to handle infringements under the CPC Regulation and thus overcome procedural differences between Member States.

4. Finally, the consultation focused on the potential downside of the otherwise beneficial opening of national markets: possible infringements may spread to more than one country because of the Single Market, for instance via misleading advertising practices targeting more than one Member State. In this context, besides looking for practical suggestions on how to improve the way such infringements are addressed, the consultation (question 5.5) also asked to what extent the European Commission itself should be involved in tackling EU-level relevant infringements and proposed a series of options to that effect.

The consultation received [222 responses](#), a vast majority (83%)⁴⁸ from stakeholders familiar with the CPC Regulation, such as public authorities or governments and consumer organisations.

In relation to the first set of questions on the key challenges and priority areas to improve the enforcement of consumer rights, the remaining fragmentation and differences between national legal systems were identified as central barriers to the cross-border enforcement of existing consumer protection rules. The length of procedures to handle cross-border cases, language differences and lack of adequate resources were also mentioned. In addition, respondents pointed to price transparency and price discrimination, fair and transparent contractual terms, misleading online advertising and selling tactics, data protection and infringements of privacy as pending horizontal issues when it comes to consumer enforcement. As regards specific sectoral concerns, transport, financial services and e-commerce were singled out as the most problematic sectors.

On the second group of questions (i.e. improving the methodology for detecting infringements), 44% of the respondents⁴⁹ deemed the current system of surveillance insufficient, while 35% considered it as being sufficient.⁵⁰ Most stakeholders supported the various EU level measures proposed in the consultation document to improve the knowledge base for enforcement action. In terms of specific measures, a preference for requiring 'coordinated surveillance action by Member States' and for 'an IT platform to share enforcement expertise' was voiced by the respondents: in both cases, 55% of the respondents classified these two solutions as a top priority.⁵¹ As regards the scope of the CPC alert mechanism and its ability to operate efficiently, 54% of respondents were in favour of allowing organisations (other than the competent national authorities) with an interest in enforcing consumer rights to post alerts on infringing behaviours.

To enhance the capacity of national authorities with CPC duties (third group of questions), many were in favour of adding the following additional powers/tools to a revised CPC Regulation: the possibility of carrying out mystery shopping exercises (66% of respondents fully agreed to this), to name and shame (under certain conditions) infringing traders (60%), to request penalty payments to recover illicitly obtained gains (60%), and to

⁴⁷ Options included: the possibility to request the application of sanctions irrespectively of whether an infringement has ceased or not (this is particularly relevant in an online context where infringements often occur for a limited amount of time. Even when they are detected, the competent authority might be able to sanction the infringer only once the wrongful conduct has already stopped, thus complicating cross-border enforcement efforts); the power to request penalty payments to recover illicitly obtained gains; the application of interim measures while proceedings are still ongoing; an explicit power – under certain conditions – to name infringing traders; and the possibility to carry out 'mystery shopping' exercises.

⁴⁸ See p.5 of the [Final Report on the Stakeholder Consultation](#) for further details. Note that when asked about their awareness of the CPC Regulation, respondents representing enterprises and the self-employed appear to be the least aware of the CPC Regulation. The consultation also tested the level of awareness of the Regulation in various sectors. Respondents in the telecommunications, financial services, transport and e-commerce sectors were those exhibiting the highest level of awareness. Tourism and recreation had the lowest.

⁴⁹ Note that the total number of respondents may not be identical for all questions (i.e. some stakeholders skipped part of the questionnaire); hence reported percentages refer to the number of responses received for each question.

⁵⁰ Note that public authorities represented 16% of the respondents considering the system as insufficient and 11.5% of the respondents stating that the current system is sufficient.

⁵¹ *Ibid.*, p. 16. The possibility of setting up an 'EU complaint system directly accessible online to citizens' follows, with 54% of respondents indicating it as a top priority.

require interim measures while awaiting the completion of full proceedings (51%). As regards common standards to handle infringements within the CPC Regulation so as to overcome existing differences in national procedural rules, 88% of respondents supported the possibility of introducing common procedural criteria/standards. Areas in which the introduction of standards was considered as particularly relevant included: the publication of enforcement decisions (a high priority for 65% of respondents); access to documents (64%), the collection of evidence (63%), investigation of websites (62%) and the acceptance of the results of an investigation by a partner authority (55%).⁵² Yet some respondents also stressed that national procedural law is a Member State competence and were therefore less supportive of introducing common standards.

Finally, as regards the Single Market dimension of infringements, the obligation for a Member State 'to notify cases corresponding to defined criteria for EU-level relevance so as to trigger a joint enforcement action' and 'an obligation for Member States to alert other enforcement authorities on an enforcement action when it is suspected that similar practices by the same company or its branches are done in other markets, so as to trigger a joint enforcement action' were indicated by over 80% of the respondents as very or highly effective in tackling EU-level relevant infringements.⁵³ The complementary but essential role of consumer organisations, for example, in assisting competent authorities in their enforcement efforts, was stressed once again together with the need for enhanced IT tools to facilitate cross-border cooperation. A greater role for the European Commission in supporting enforcement efforts at the national level was also supported in the two following areas: identifying in which sectors consumer conditions are the poorest, and requesting a Member State to enforce and/or impose a sanction in case of non-compliance.

The [European Consumer Summit](#) of March 2013

Organised on a yearly basis by the Commission, [European Consumer Summits](#) provide EU and international stakeholders and policy-makers with a forum to debate key themes in consumer policy. The 2013 edition,⁵⁴ 'Europe joining forces to enforce consumers' rights', attracted over 400 representatives to discuss, among other things, the enforcement of EU consumer protection rules. A [discussion paper](#) prepared for the Summit pointed to the rapid evolution of consumer markets, and to the growing size of the consumer acquis that national authorities have to manage, as being two of the obstacles to a complete and uniform enforcement of consumer protection rules across the EU. Among various options put forward to adequately respond to such challenges, a contribution by business associations (e.g. to make SMEs aware of their obligations under the consumer acquis), self-regulation in certain areas, the automation of certain types of compliance checks in an online environment and the potential for centralised enforcement in cases of EU-wide infringements, were evoked. The continuous 'downward pressure on public resources' and their uneven distribution across the EU were also recalled by the discussion paper. In connection to this, it is worth noting that relatively recent data and indicators on national enforcement capacities were included in the [9th Consumer Conditions Scoreboard](#) of July 2013; however, these figures cannot provide a complete and comparative picture between enforcement systems and their strength because of intrinsic national differences, incomplete data and variations in methodology for data collection between countries and within the same country across time.⁵⁵

Summit participants agreed on the need to 'step up enforcement efforts' and amend the CPC Regulation to make CPC mechanisms more efficient and to avoid the duplication (and thus the costs) of enforcement efforts across the EU. The Summit also hosted two multi-stakeholder dialogues on [misleading environmental claims](#)

⁵² For a breakdown per type of respondent, see *Ibid.*, chapter 5.

⁵³ *Ibid.*, Figure 6.7.

⁵⁴ The 2014 edition was dedicated to 'ensuring that consumers reap the benefits of the digital economy' and the 2015 Summit focused on 'shaping the consumer policy of the future'.

⁵⁵ These indicators cover i.a. available budget, number of inspectors, inspections, notifications of non-compliance to traders, business visits with detected infringements, and court decisions. Later editions of the Consumer Scoreboard (i.e. for [2014](#) and [2015](#)) do not contain the same set of indicators but provide a composite figure on the 'enforcement of consumer and product safety legislation' for each country showing trends across years. See also Petition No 1474/2014 on understaffing in Member States' control bodies and the impact on consumer protection and food safety received by the [EP Petitions Committee](#).

that may prevent consumers from making truly sustainable purchasing choices,⁵⁶ and on the so-called [comparison tools](#) (e.g. price comparison websites for insurance products), so as to identify best practice to improve their transparency and reliability for consumers.

5. Conclusions

The CPC Regulation and its objectives (i.e. facilitating cooperation between enforcement authorities; improving the quality and consistency of enforcement; and monitoring and enhancing the protection of consumers' economic interests) remain relevant and valid today. However, the landscape in which consumer protection authorities operate has significantly changed since the adoption of the Regulation in 2004.

In particular, and despite its considerable economic and societal benefits, the advent of digitalisation poses new challenges to detect and tackle infringements of consumer protection rules in a timely, effective and efficient manner. For instance, infringements committed simultaneously in several Member States by the same trader cannot be fully addressed under the current CPC Regulation. In addition, a recent external evaluation (2012) and Commission reports (from 2009 to 2014) on the functioning of the CPC Regulation indicate that the original objectives of the Regulation have not been entirely achieved. This is in spite of some very positive developments such as the creation of the CPC Network and a tangible increase in enforcement cooperation between national authorities, as testified by joint initiatives such as the 'sweeps'. Indeed, legal and procedural barriers to effective cross-border cooperation remain in place and, as noted also by the EP, downward pressure on resources allocated to enforcement authorities at MS level hampers the correct and effective implementation of the Regulation.

In view of the forthcoming review of the Regulation in 2016, options to include additional minimum investigative and enforcement powers, such as the ability to request penalty payments to recover illicitly obtained gains; an explicit power – under certain conditions – to name infringing traders; and the possibility to carry out 'mystery shopping' exercises, received wide support by stakeholders consulted. Other possible modifications to the CPC Regulation, such as the establishment of common standards to handle infringements and a potential revision of the Commission's role in the CPC Network, raise more complex questions. The various policy options outlined in the Roadmap announcing the revision of the Regulation were still being assessed by the Commission at the time of writing this briefing.

6. Other sources of reference

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www.europarl.europa.eu/thinktank (Internet) – www.eptthinktank.eu (blog) – www.eprs.sso.ep.parl.union.eu (Intranet)

⁵⁶ For example, when an electronic appliance labelled as eco-friendly in fact uses more energy than another that is not accompanied by a similar claim.