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Plenary sitting

A7-0201/2011

30.5.2011

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REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2010)0791 – C7-0012/2011 – 2011/0001(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Mitro Repo

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2010)0791 – C7-0012/2011 – 2011/0001(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0791),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0012/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the Economic and Social Committee of 5 May 2011¹,
 - having regard to Rules 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A7-0201/2011),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation – amending act
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is necessary to assess the effectiveness and operational mechanisms of Regulation (EC) No 2006/2004 and thoroughly examine the possible inclusion

¹ Not yet published in the Official Journal of the European Union.

in its Annex of additional laws that protect consumers' interests, with a view to a possible revision of that Regulation aimed at providing public enforcement authorities with improved means to effectively detect, investigate and bring about the cessation or prohibition of infringements harming the collective interests of consumers in cross-border situations. To that end, the Commission should submit as soon as possible, and in any event by the end of 2014, a report to the European Parliament and the Council, accompanied, where appropriate, by a legislative proposal.

Amendment 2

Proposal for a regulation – amending act

Article 1 - introductory part and point -1 (new)

Regulation (EC) No 2006/2004

Article 21 a (new)

Text proposed by the Commission

Amendment

Regulation (EC) No 2006/2004 is amended as follows:

-1. the following Article is inserted:

"Article 21a

Review

By 31 December 2014, the Commission shall submit a report to the European Parliament and the Council which shall assess the effectiveness and operational mechanisms of this Regulation and thoroughly examine the possible inclusion in its Annex of additional laws that protect consumers' interests. The report shall be based on an external evaluation and extended consultation of all stakeholders, and shall be accompanied, where appropriate, by a legislative proposal."

EXPLANATORY STATEMENT

I. Regulation 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

Regulation 2006/2004 (the 'CPC Regulation') was adopted by the European Parliament and the Council on 27 October 2004 and entered into force on 29 December 2006.

The Regulation aims to abolish the barriers to cross-border cooperation between public enforcement authorities to detect, investigate and bring about the cessation or prohibition of intra-EU infringements of the laws which protect consumers' interests. The Regulation is intended to efficiently and effectively tackle cross-border rogue traders which disrupt the smooth functioning of the internal market, and thus increase consumer confidence in taking up cross-border offers, and prevent sellers and suppliers from evading enforcement to the competitive detriment of law-abiding sellers and suppliers.

The Regulation achieves its aims by establishing an EU-wide network of public authorities responsible for enforcing consumer laws in the Member States (the 'CPC Network'), which started operating in December 2006. The CPC Regulation partially harmonises the authorities' investigative and enforcement powers and lays down the mechanisms for exchanging relevant information and/or taking enforcement action to stop infringements in cross-border situations.

II. Grounds for and objectives of the current proposal

The network established by the Regulation monitors and enforces legislation which protects consumers' interests. The legislation which falls within the scope of the CPC network is listed in the Annex to the Regulation. The proposed amending regulation has as its objective to update the contents of the Annex to reflect recent legislative developments in the field of consumer protection.

The update of the Annex will consist of the removal from the Annex of legislation which is not relevant for consumer protection cooperation between the national enforcement authorities and the updating of references to old legislation which is no longer in force with references to new legislation in the field of consumer protection.

More importantly, the update of the Annex is necessary as Directive 87/102/EEC has been repealed by Directive 2008/48/EC on credit agreements for consumers, without expressly stating that references to the repealed Directive are to be construed as references to the new Directive. For reasons of legal certainty, this Regulation should therefore enter into force as a matter of urgency.

III. Rapporteur's general remarks on the functioning of the CPC Regulation

The Rapporteur welcomes the Commission's proposal as it is necessary to ensure that the Annex to the Regulation reflects the developments of the EU legislative body on consumer protection.

Taking into account the limited objectives of this proposal, the Rapporteur considers, however, that the key political issue to be examined is whether the current Regulation provides a sufficient framework for the cross-border enforcement of the consumer acquis.

The last report from the Commission on the application of the CPC Regulation published on 2 July 2009¹ and the High-Level Meeting “Enforcement of the Economic Rights for Consumers in the Internal Market” (Brussels, 22 September 2010) reveal a number of concerns about the achievements in cross-border enforcement of the consumer acquis.

A significant number of authorities notified are either not connected or do not actively use the system, although this is a precondition for the effective functioning of the CPC Network. Requests are taking longer and longer to be closed, whereas authorities are using the IT tool in such different ways that this may be having a negative impact on their cooperation efforts.

Some other issues are of a more horizontal nature, like the question of diverging national consumer laws, the question of jurisdiction and applicable law and the extent to which the obligation to cooperate introduced by the CPC Regulation applies. It is not always possible to comply with a request for mutual assistance in a situation where an action may be prohibited in the Member State of the consumer but not in the Member State of the supplier.

Another problem concerns prioritisation. Currently there is no common set of priorities among enforcement authorities. It is crucial and normal that national public authorities have their own system or prioritisation as resources are limited. But if every request for mutual assistance is subject to national prioritisation, and there is no shared view on how to determine what should be prioritised, the system cannot work efficiently. A role for the Commission in setting up a common approach in priority setting and multi-annual planning should therefore be envisaged.

There is also a need to develop a shared understanding of relevant facts and a common interpretation of EU consumer protection rules, for instance, a definition of “collective consumer interests”. Different views have also emerged as to how the consumer acquis interacts with other pieces of relevant EU legislation.

In addition, the procedural rules for enforcement remain fragmented. Differing national legal and enforcement systems make it difficult to tackle intra-EU infringements in an efficient way. Some public authorities have rather far-reaching means to stop an infringement whereas others have to go to court and face fairly lengthy proceedings.

Court costs may also pose problems. As provided for in Article 15 of the Regulation, the applicant authority shall remain liable for any costs and losses incurred as a result of measures held to be unfounded. In some countries, like Finland, the applicant authority does not have to pay as no-cost rule is applied, but in many countries this is not the case. This may reduce the number of infringement procedures to be taken up, if the applicant authority is not able to bear the possible costs of the court proceedings.

¹ Report on the application of 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(2009)0336)

Finally, the fact that requests are taking longer and longer to be closed (an average of 81 days until June 2008, this figure had increased to 148 days by the end of 2008) can partially be explained by the greater complexity of cross-border cases, but is often an indicator of non-compliance with established deadlines or other operating requirements.

This in turn has an effect on the number of requests which seem to have stagnated or even decreased in 2010. This is not a desirable trend and should be reversed as soon as possible in order to meet the ultimate aim of the CPC Regulation. It is the Rapporteur's firm conviction that the decline in the number of requests does not reflect a decrease in the number of intra-EU infringements but rather the shortcomings of the system.

Regarding the issue of coordination, the current sector-based approach for consumer policy initiatives does not facilitate coherent enforcement. A greater role for the Commission in coordinating the enforcement of pan-European activities would be necessary as this problem is currently insufficiently addressed.

The Rapporteur is also of the opinion that, in order to meet the objectives of fostering better consumer protection in Europe, the scope of the CPC Regulation should be broadened in order to reflect the EU legislative body of consumer protection in a more holistic and horizontal way. The scope of the CPC Regulation has already been to some extent broadened, but a more general assessment of the scope should take place to include legislation managed by different departments of the Commission (e.g. financial services, passenger rights legislation).

IV. Rapporteur's overall position

Taking into account that the current results of cross-border enforcement cooperation are not satisfactory and that measures need to be taken, the Rapporteur has identified three alternative lines of action in relation to this proposal:

(a) propose substantive amendments aimed at addressing the problems that have been so far identified in the application of the Regulation, (b) accept the Commission's technical proposal without proposing any modifications, (c) propose a limited number of amendments, i.e. a 'review clause', asking the Commission to undertake an assessment of the effectiveness and operational mechanisms of the Regulation, and come up, within a plausible timeframe, with a legislative proposal aimed at a more substantial revision of the current Regulation, including the broadening of its scope.

Recognising the need for a fast update and consolidation of the Regulation's Annex, in order to ensure legal certainty for business, consumers and enforcement authorities, the Rapporteur considers the third option to be the most appropriate at this stage.

The Rapporteur would like, however, to emphasise that this proposal is the right occasion to confirm the need for a more substantial review of the Regulation. In the Rapporteur's view, there is a real need to tackle the shortcomings and problems in cross-border enforcement of the consumer acquis and to improve the overall functioning of the CPC Network.

The Rapporteur is aware that for the time being there is insufficient information on the

operation of the Regulation and such information should be obtained through a thorough analysis. At the moment, the Commission is preparing the second report on the application of the CPC Regulation to be published later this year. The Commission has also foreseen to carry out an external evaluation followed by a public consultation among stakeholders. Therefore, it seems reasonable to wait for the results of this process before proposing any far-reaching modifications to the CPC Regulation.

By including a 'review clause' in the Regulation, the Rapporteur wants to underline the need for the Commission to commit itself to and speed up the review process and come up with a new legislative proposal by the end of 2014.

The Rapporteur also emphasises that EU consumer law should be mapped thoroughly when assessing the scope of the CPC Regulation. The scope of the Regulation should be seen more holistically, and should ultimately cover all EU legislation having an impact on consumers' collective interests.

As a conclusion, the Rapporteur is of the opinion that the cross-border enforcement of consumers' interests should be placed high on the political agenda. Improved cooperation between national enforcement authorities should develop into a more efficient remedy in the hands of European consumers and boost their confidence in the internal market.

PROCEDURE

Title	Amendment of Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws						
References	COM(2010)0791 – C7-0012/2011 – 2011/0001(COD)						
Date submitted to Parliament	3.1.2011						
Committee responsible Date announced in plenary	IMCO 18.1.2011						
Committee(s) asked for opinion(s) Date announced in plenary	JURI 18.1.2011						
Not delivering opinions Date of decision	JURI 26.1.2011						
Rapporteur(s) Date appointed	Mitro Repo 4.2.2011						
Rule 51 – joint committee meetings Date announced in plenary							
Date adopted	25.5.2011						
Result of final vote	<table> <tr> <td>+: </td><td>33</td></tr> <tr> <td>–: </td><td>0</td></tr> <tr> <td>0: </td><td>0</td></tr> </table>	+:	33	–:	0	0:	0
+:	33						
–:	0						
0:	0						
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Cristian Silviu Buşoi, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Malcolm Harbour, Iliana Ivanova, Sandra Kalniete, Eija-Riitta Korhola, Edvard Kožušník, Hans-Peter Mayer, Phil Prendergast, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Laurence J.A.J. Stassen, Catherine Stihler, Kyriacos Triantaphyllides, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler						
Substitute(s) present for the final vote	Cornelis de Jong, Constance Le Grip, Morten Løkkegaard, Sylvana Rapti						
Date tabled	31.5.2011						