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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

**on the functioning 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)**

Report on the functioning of the Consumer Protection Cooperation Regulation

1. Introduction

Consumer expenditure currently represents more than 56% of EU GDP and is a strong driver of the European economy¹. EU consumer policy, by improving consumer conditions and trust in the Single Market, can significantly contribute to higher growth rates in the EU. As identified in the 2012 European Consumer Agenda, the stepped-up enforcement of consumer laws is one of the priorities of consumer policy. The equal and efficient enforcement is geared to boost private consumption and to provide a level playing field for businesses. This in turn stimulates competition and consumer-centred innovation².

The enforcement of EU legislation concerning consumers' economic interests was strengthened in 2004 with the adoption of the Consumer Protection Cooperation Regulation (CPC Regulation)³. This unique framework brings together national authorities from all EU Member States⁴. Its primary aim is to tackle cross-border infringements by establishing procedures for information exchange, cross-border enforcement requests and coordinated actions, to prevent infringing traders from moving between Member States to exploit gaps in jurisdictional boundaries. It also permits the conclusion of international cooperation agreements.

In two Biennial reports⁵ in 2009 and 2012, the Commission assessed the functioning of the CPC Regulation and identified avenues to make enforcement cooperation more efficient, under the existing legislative framework. Article 21a, introduced a review clause in the CPC Regulation, requiring the Commission to assess the effectiveness and operational mechanisms of the Regulation.

An external evaluation (referred to as "the Evaluation")⁶ concluded in 2012 that the CPC Regulation had been beneficial for the competent authorities and for consumers, and confirmed the appropriateness and relevance of the CPC objectives, noting that they had not yet been fully achieved.

¹ http://europa.eu/rapid/press-release_IP-12-491_en.htm

² http://ec.europa.eu/consumers/archive/strategy/docs/consumer_agenda_2012_en.pdf

³ 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 (OJ L 364, 9.12.2004, p. 1).

⁴ It also covers the EEA partner countries: Iceland, Liechtenstein and Norway

⁵ COM (2009) 336 and COM (2012) 100;

⁶ http://ec.europa.eu/consumers/enforcement/biennial_national_reports_en.htm#biennial

⁶ External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012 ("Evaluation"), http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

The 2013 EU Consumer Summit conclusions⁷ stressed that a more integrated approach to enforcement of consumer rights at EU level was necessary especially to address widespread infringements⁸. In the meantime, national enforcement authorities and consumer organisations took actions against such widespread infringements, for instance in cases concerning misleading practices linked to legal guarantee rights⁹. Such actions not only show that larger traders are likely to apply same practices in a number of Member States simultaneously but also provide valuable elements for reflection about how to best address such widespread EU-level infringements.

As a next step in the review process, the Commission published a Roadmap¹⁰ providing an overview of the main possible improvement areas and put them to the test through a public consultation¹¹ conducted from 11 October 2013 to 13 February 2014. These areas concern the uniform understanding of the CPC framework among all actors, potential gaps in alert mechanisms, procedural and legal barriers in the handling of mutual assistance requests, competent authorities' powers, the Commission's role and the need to develop common tools for tackling widespread infringements affecting several Member States at the same time (EU-level relevant infringements).

The review process thus far confirmed that the implementation of the CPC Regulation in 2007 led to the development of effective means to safeguard consumers' collective interests across the EU. The CPC Regulation set common minimum enforcement capacities for national authorities and allowed them to conduct joint enforcement actions coordinated by the European Commission. For example, more than 3,000 e-commerce websites in various economic sectors were screened for infringements of EU law resulting in increased compliance. In the last two years, a further step was made to require the industry to cease unfair commercial practices in areas of common interest across the EU - common CPC enforcement approaches. A recent CPC action on in-app purchases¹², which saw national enforcement authorities across the EU present large technology companies with a common understanding of how to apply relevant consumer rules in this area, is a concrete example of how CPC-led enforcement can deal with modern consumer problems occurring in a number of Member States.

In parallel, the Commission made efforts to develop interpretative guidelines to further facilitate enforcement and compliance¹³ as EU consumer protection and policy expanded. The upcoming guidelines on the application of the Consumer Rights

⁷ http://ec.europa.eu/consumers/events/ecs_2013/report/Summitconclusions.pdf

⁸ European Consumer Summit, Discussion Paper "Towards a more efficient enforcement of EU Consumer Rights", April 2013, http://ec.europa.eu/consumers/enforcement/docs/07032013_consumer_summit_discussion_paper_en.pdf

⁹ http://www.cojef-project.eu/IMG/pdf/BEUC_PR_Apple.pdf

¹⁰ Roadmap "Review of the Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws", 09/2013. http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2014_sanco_001_consumer_protection_cooperation_review_en.pdf

¹¹ Summary of stakeholder responses to the public consultation on the Consumer Protection Cooperation (CPC) regulation (2006/2004/EC), available at http://ec.europa.eu/consumers/enforcement/index_en.htm

¹² http://europa.eu/rapid/press-release_IP-14-187_en.htm

¹³ http://ec.europa.eu/justice/consumer-marketing/rights-contracts/directive/index_en.htm

Directive¹⁴ and on the Unfair Commercial Practices Directive¹⁵ should promote a common understanding in the assessment of cases and thus improve enforcement of consumer law.

Looking ahead, the review process has clearly indicated that in order to respond to the new challenges of the digital economy, enforcement of consumer laws needs to address both the specificities of dematerialised trade and the speed with which infringements to consumer laws can spread across the EU. Consumer scoreboard data and European Consumer Centres' reports also point to the persistence of unequal consumer conditions across countries and to a high number of cross-border infringements of consumer law. The public consultation showed a clear call from stakeholders that policy-makers increase their efforts towards effective enforcement of consumer laws.

The present Report is a further step in the review process. It integrates, all the documents cited, new biennial reports submitted by Member States in 2013¹⁶ and the outcome of the public consultation. In line with the principles of smart regulation¹⁷, this report will be followed by a thorough impact assessment of the possible improvements to the CPC Regulation to allow the Commission to complete the review called for in Article 21a of the CPC Regulation in early 2015 and to prepare grounds for decision whether a legislative proposal for the amendment of the CPC Regulation is necessary.

2. Since 2007, enforcement cooperation has increased the benefits of EU consumer legislation for consumers

Since 2007, the CPC Regulation has brought substantial benefits to EU consumers thanks to the strengthening of enforcement capacities throughout Europe. Cooperation among consumer protection enforcement authorities has ensured a more uniform application of EU consumer protection laws, contributing to the better functioning of the Single Market for citizens and businesses. In particular:

- The CPC mutual assistance mechanism provided a clear and comprehensive legal framework for mutual exchanges of information and cross-border enforcement actions. The most important innovation is the possibility to enforce consumer protection law across borders (Article 8 of the CPC Regulation). This not only reduces the cost of enforcement but also permits the use of the administrative means of one country to the benefit of consumers from other countries and to prevent infringing traders from moving around.

Mutual assistance requests

The CPC Regulation enables the competent authorities to exchange investigative information upon request (Article 6) and to ask other competent authority to stop an intra-Community infringement (Article 8). These

¹⁴ Directive 2011/83/EU on consumer rights

¹⁵ Directive 2005/29/EC on unfair commercial practices

¹⁶ http://ec.europa.eu/consumers/enforcement/index_en.htm.

¹⁷ http://ec.europa.eu/smart-regulation/index_en.htm and in particular Interinstitutional Agreement on Better Law-making (2003/C 321/01)

tools permit the competent authorities to obtain evidence to stop infringements committed by traders from other Member States that harm consumers in their jurisdiction.

By the end of 2013, Member States made in total 1,454 mutual assistance requests, which comprised 699 information requests and 755 enforcement requests. The Evaluation points to numerous benefits that were obtained from the mutual assistance mechanism, such as increased effectiveness of cross-border enforcement actions, exchange of best practices, increased awareness of authorities about emerging infringements and increased administrative capacity¹⁸.

- The "sweeps" and common enforcement approaches based on Article 9 of the CPC Regulation allowed the Member States to coordinate their enforcement approaches on a larger scale. They provided effective EU-wide tools for the detection and combating of serious and widespread infringements, with a clear deterrent effect on other traders. Corrective measures taken, for instance, in the areas of electronic goods, travel services and digital content clearly led to a measurable increase of compliance and awareness about consumer rights among businesses.

"Sweeps"

The Commission, together with the Member States' competent authorities, developed an EU-specific format for websites checks (known as a "sweep"). A "sweep" is an EU-wide screening of websites to identify breaches of consumer law in a given on-line market and to subsequently ensure compliance through enforcement activities. Since 2007, sweeps have taken place on a yearly basis, coordinated by the European Commission and run simultaneously by national enforcement authorities in the participating countries. Although voluntary, nearly all Member States participated each year. In the period 2007-2013, over 3,000 websites were checked:

On-line market	Member States involved	Websites investigated	Websites with irregularities	Enforcement rate*
Airline tickets (2007)	15 + 1 EEA	447	32%	81%
Mobile phone content (2008)	27 + 2 EEA	554	54%	71%
Electronic goods (2009)	26 + 2 EEA	369	55%	71%
On-line tickets sales (2010)	27 + 2 EEA	414	59%	79%
Consumer Credit (2011)	27 + 2 EEA	565	69%	75%
Digital content (2012)	27+ 2 EEA	330	52%	80%
Travel services (2013)	27+ 2 EEA	552	69%	62%**

* Enforcement rate indicates the degree of compliance following the sweep: a proportion of compliant websites from the total number of websites that were reviewed.
 ** Results after 6 months. A minimum of 12 months after the initial investigation is usually required for national authorities to be able to report on the final results of their enforcement activities.

The Evaluation points to the sweeps' benefits, both for intra-Union infringements and for domestic cases. Sweeps provide a good indication of the sector/market compliance with consumer protection rules and give visibility to the CPC network. They contribute to the common understanding of legal and other issues among the CPC authorities.

Common enforcement approaches

The common enforcement approach is a new format of joint enforcement action developed since 2013 on the basis of Article 9 of the CPC Regulation. It allows the Member States' competent authorities, with the facilitation of the Commission, to coordinate their approach on the application of consumer protection law for a specific issue. The first such action concerns in app purchases in online games. Another example regards the car rental sector. In both cases discussions are on-going with the concerned industry to ensure compliance with consumer law.

¹⁸

- The CPC alert mechanism provided for the first time a framework for Member States to exchange information about emerging infringements and to determine infringements which may require a coordinated approach.
- Common activities and projects, workshops and other events boosted the enforcement and administrative capacity of the Member States in consumer protection and led to an increase in trust and mutual understanding among Member States' authorities involved in the CPC network.
- International cooperation allowed the exchange good practices with the EU's main trading partners.

These achievements were realised in spite of administrative resource limitations brought by the crisis. In fact they demonstrate that the CPC mechanism can provide a more resource-efficient means to address infringements across the EU. The implementation of the CPC Regulation has overall produced positive results and it has created a network-based cooperation mechanism exemplary for other areas of the Single Market.

3. Enforcement cooperation: a smarter way to address the new challenges brought by the digital economy

The CPC Regulation remains highly relevant and an asset for the future of the EU consumer policy. The Evaluation, the Commission and Member States biennial reports, as well as the outcome of the public consultation, clearly point to the need for a comprehensive guidance for the CPC network. Further development of the CPC framework, including a possible revision of CPC Regulation, in the following areas could be needed:

- The mutual assistance mechanisms, including legal and procedural issues and provisions ensuring overall cooperation (Article 9 of the CPC Regulation), may need clarification and strengthening¹⁹.
- Common enforcement activities such as sweeps or the recently launched common enforcement actions are effective and should be extended to other sectors²⁰. Further progress is needed, as experience with certain CPC cases showed, to combat fraudulent and aggressive commercial practices, which may require specific enforcement means²¹.
- The CPC market monitoring and alert mechanism may need to be developed to ensure fast identification of emerging threats to consumers that would require CPC

¹⁹ p. 14-20 of Public consultation summary and http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf.

²⁰ http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf.

²¹ Combating such practices effectively involves a close cooperation between the consumer protection authorities and criminal authorities. Given that such practices are often short-term the enforcement authorities may need to be able to act even where the practice has ceased.

action²². In particular, the possibility to associate other actors, such as consumer organisations and European Consumer Centres, should be studied²³.

- Difficulties arising from different national procedural rules and standards applicable in enforcement proceedings appear as a barrier to effective and efficient cooperation²⁴. These differences may be hindering mutual assistance and cooperation and delaying effective tackling of infringements. The toolbox of competent authorities, their minimum common powers, may also need clarifying²⁵.
- Respondents to the public consultation are generally supportive for the Commission to have a more active role in the CPC network²⁶. Steps in this direction were already taken in 2013-2014 with the launch of new coordinated enforcement activities resulting in a common enforcement approach on the issue of in-app purchases. More needs to be done in the future against widespread EU-level relevant infringements that cause significant harm to the EU economy²⁷.
- In view of increasing challenges triggered by trading practices originating from third countries in a globalised digital economy, further cooperation with international partners may be needed²⁸.

4. Supplementing bilateral assistance with more EU-wide joint actions

The Evaluation and the biennial reports show that after an initial test period in 2007-2009, national authorities used the CPC mutual assistance mechanism for the cases that could be tackled more efficiently through the CPC network, compared to other means available at the national level²⁹. In parallel, a greater retail trade internationalisation in the EU led large traders to establish local subsidiaries in their main markets and apply the same practices across these markets. National authorities are faced with the same infringements in their markets. Still, budgetary constraints

²² http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

²³ p. 14-20 and 49 of Public consultation summary

²⁴ http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

²⁵ p. 22-29 of Public Consultation summary.

²⁶ p. iii and 45-48 of Public consultation summary.

²⁷ The issue of widespread infringements has been identified already in the Communication on the enforcement of consumer acquis, July 2009 (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009DC0330&from=EN>) and confirmed by the External Evaluation (http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf). The outcome of the public consultation also confirms that such infringements are significant – p. 35 of Public Consultation Summary.

²⁸ Several Member States point in their biennial reports to enforcement challenges arising from trade with third countries. See also

http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf.

²⁹ The number of mutual assistance requests peaked in 2008-2009 at 306 per year on average with a decline in the subsequent period 2010-2013 to 162 per year on average, http://ec.europa.eu/consumers/enforcement/biennial_national_reports_en.htm#biennial and p. 76 of the 2012 External Evaluation Report.

lead Member States to focus their scarce resources on domestic cases rather than on cross-border issues³⁰.

The internationalisation of retail trade thus contributes to the spreading of the same infringements across borders in the EU. This has been addressed in the CPC network by the strengthening of joint activities such as sweeps and, since 2013, the development of new tool, the common enforcement approach. Targeting issues of common interest at the EU level allowed for an effective enforcement action.

The uneven use of the mutual assistance mechanism among Member States, identified already in the first Commission Biennial Report, confirmed by the Evaluation³¹ and observed in 2012-2013³², points to a need to increase the awareness and common understanding of the CPC Regulation among national authorities. This is also strongly supported by responses to the public consultation³³. This concerns in particular the rules for enforcement requests (such as maximum time-limits and next steps to be taken when enforcement is not possible), and procedures for handling requests. Furthermore, it appears to be appropriate to reflect about cooperation between consumer organisations and the CPC network, in particular as regards exchange of information about emerging practices that could be in breach of EU consumer law.

The Evaluation also recommends enhancing the sweeps through activities raising public awareness and through follow-up actions ensuring consistent level of compliance with consumer law in a given sector. It also suggested the setting up of "an observatory", which would systematically gather information³⁴. The results of the public consultation also point to the overall need to reinforce market monitoring mechanisms for early detection of infringements.

Apart from the sweeps, and the development of common enforcement approaches, the full potential of Article 9 has not been realised in the period 2007-2013. For instance, Article 9 was not directly used by Member States to coordinate parallel simultaneous enforcement actions. One of the reasons pointed out by the Evaluation was the need to provide further guidance for the CPC network on how to use and coordinate such actions³⁵, including the clarification of the Commission's role³⁶.

The outcome of the public consultation points to the increasing significance of widespread serious infringements to consumer law (EU-level relevant infringements)³⁷ and to the interest for strengthening Article 9 cooperation mechanisms for the effective tackling of such infringements in the future.

³⁰ p. 76 of the 2012 External Evaluation Report.

³¹ p. 98 of the 2012 External Evaluation Report.

³² Biennial reports of the Member States (2012-2013) at http://ec.europa.eu/consumers/enforcement/biennial_national_reports_en.htm#biennial

³³ p. 9-13 of Public Consultation Summary.

³⁴ p. 91-92 and 98 of 2012 External Evaluation Report.

³⁵ p. 99 of the 2012 External Evaluation Report.

³⁶ p. 17 of the 2012 External Evaluation Report. The need for better support from the Commission of Member States' enforcement work in particular in cases of parallel infringements affecting consumers in several Member States was identified also in Commission Communication on Enforcement of Consumer Acquis, 2009, p. 5 (point 2.3).

³⁷ p. 35-37 of Public Consultation Summary. Over 80% of respondents considered that such infringements were very significant or significant and 56% of respondents thought that providing for a specific enforcement procedure to handle such infringements would be very important.

5. A CPC Regulation that efficiently addresses emerging EU-level relevant infringements

The Evaluation points out that infringements occurring simultaneously in several Member States or committed by the same trader may not be fully addressed under the current CPC Regulation³⁸. Such infringements may cause significant detriment to EU consumers as transnational traders operating from multiple locations may threaten the economic interests of all EU consumers. The Evaluation suggested that in order to stop such infringements a strongly coordinated approach or a single action at EU-level is necessary.

Effective tackling of "EU-level relevant infringements" requires a clear legal basis, including a definition of EU-level relevant infringements, and firm enforcement action coordination, possibly with a stronger Commission involvement³⁹. As mentioned above, Article 9 of the CPC Regulation already provides for the possibility of enforcement coordination. Although two effective enforcement instruments have been developed based on Article 9 (sweeps and common enforcement approaches), experience has shown that the existing coordination framework is still too vague, lacking in particular a well-defined and transparent coordination procedure, clarity about actors' respective roles and responsibilities and the consequences of inaction. The coordinator's role and responsibilities are insufficiently defined. Although additional guidance and clarification could be explored as a way to contribute to a more frequent use of the Article 9 coordination mechanism, it appears unlikely to fully resolve all the problems identified, particularly when it comes to addressing widespread EU-level relevant infringements in a most efficient manner.

Given the possible widespread harm that EU-level relevant infringements could cause to consumers in several Member States, the 2013 Roadmap outlined, as an option for review, the possibility of introducing a more efficient enforcement coordination mechanism/procedure to tackle cases of EU-level relevance⁴⁰. A clear majority of stakeholders in the public consultation considered that such infringements are significant and that a specific procedure at EU-level would be needed to tackle them⁴¹.

The stakeholders considered that the following approaches to stop EU-level relevant infringements would be most effective: (i) an obligation for Member States to alert other Member States about any enforcement action taken; (ii) obligation for the Member States to notify cases corresponding to defined criteria of EU-level relevance; (iii) mandatory joint enforcement actions; and (iv) mutual recognition of enforcement decisions. Moreover, more than 75% of all stakeholders, particularly from the side of consumer associations and the European Consumer Centres, were convinced that a single EU-level procedure where the Commission or a Member State could bring evidence of an EU-level relevant infringement would be highly effective to stop or deter EU-level relevant infringements. The public authorities and governments expressed slightly more moderate views⁴².

³⁸ p. 94-95 and 122 of the External Evaluation Report.

³⁹ p. 94 of the External Evaluation Report.

⁴⁰ 2013 Roadmap for review of the CPC Regulation, 09/2013.

⁴¹ p. 35-38 of Public Consultation Summary.

⁴² p. 51-53 of Public Consultation Summary.

Under the CPC Regulation the competent authorities exchange information about suspected intra-Union infringements and about their enforcement measures. Such an early warning and mutual alert mechanism helps the CPC authorities to detect intra-Union infringements at an early stage and allows them to better coordinate their enforcement activities and use common enforcement actions under Article 9 of the CPC Regulation.

In the CPC network's first two years, the alert mechanism was used more frequently than in the subsequent period⁴³. This may also be attributed to an initial trial period and to a gradual increase in the understanding of this instrument's role among other CPC tools. In subsequent years (i.e. 2009-2013) the number of alerts per year has remained relatively stable⁴⁴.

The Evaluation identifies as possible causes for the overall decline of alerts a lack of clarity regarding the purpose, use and follow-up of the information provided through the alerts, and their confusion with information requests⁴⁵. While guidelines or implementing measures could have offered more clarity about these issues, it is unlikely that such measures would have resolved the wider problems of how to follow up on alerts or the involvement of other actors in the alert mechanism.

The results of the public consultation broadly correspond to the findings of the Evaluation. The majority of stakeholders found that the current alert system needed improvement including for instance a possibility for the Commission and other organisations to send alerts (consumer organisations and the European Consumer Centres) and for an alerts action categorisation based on expected follow-up (e.g. for action/for information only)⁴⁶. Stakeholders also supported additional measures such as mandatory coordinated surveillance actions by Member States and a mechanism to gather and analyse enforcement intelligence.

6. Clarification of the main components of the CPC Regulation

The CPC network

The CPC Regulation requires the Member States to designate public enforcement authorities ("competent authorities") in charge of enforcement of the EU consumer laws listed in the Annex to the CPC Regulation as well a single liaison office, responsible for coordinating CPC matters in each Member State. They form the CPC network. Member States must ensure that adequate resources are allocated to these authorities to perform their CPC duties.

The network of competent authorities was considerably extended over the period 2007-2013. The main reason for this was the gradual extension of the material scope of the CPC Regulation, as new EU legislation was added to its Annex.

⁴³ The number of alerts exchanged peaked in 2008, with more than 100 alerts per year, in the subsequent years the number of alerts exchanged dropped to less than a half of this figure.

⁴⁴ p. 85-88 of the 2012 External Evaluation Report.

⁴⁵ p. 85-87 of the 2012 External Evaluation Report.

⁴⁶ p. 15-21 of Public Consultation Summary.

Different approaches exist across the Member States as regards the national institutional set-up for the CPC Regulation: it can be concentrated in one or a handful of authorities or distributed among many authorities with sector-specific responsibilities and/or regional authorities in federal States. The Evaluation pointed to difficulties possibly caused by complex and diverging institutional frameworks such as long communication lines causing delays in handling of requests. It stressed the importance of the single liaison office's role, particularly in a complex institutional set-up⁴⁷. This was also supported by the replies to the public consultation⁴⁸.

The Evaluation, as well as the Commission's and Member States biennial reports, show that not all Member States use the CPC actively and frequently⁴⁹. Although the causes are likely to be multiple, the Evaluation suggests that a lack of adequate resources may be preventing some Member States from benefiting fully from the CPC cooperation mechanisms⁵⁰. The Evaluation identified notable differences in resources and enforcement capacity across the Member States⁵¹.

Diversity of national enforcement systems and barriers to cooperation

The CPC Regulation acknowledges the role that judicial authorities may play in national enforcement systems: the competent authorities may exercise their powers either under their own authority or under the supervision of the judicial authorities or by application to courts. There is great variation across Member States as regards the judicial authorities' involvement in public enforcement proceedings⁵².

The Evaluation points to obstacles caused by the discrepancy in the proceedings' nature and the competent authorities' powers among the Member States⁵³. Such obstacles may not only cause delays in cooperation and in case handling, but affect the effectiveness of EU consumer protection laws' enforcement and trust in the system. The Evaluation recommends addressing these problems by a targeted coordination of CPC relevant procedural issues⁵⁴.

A large majority of stakeholders in the public consultation agreed that the introduction of common standards to handle CPC-relevant infringements would be useful and thought that defining such standards would be a high priority in the areas of enforcement decisions' publication, naming of infringing traders, access to documents, evidence gathering and websites investigation⁵⁵.

Competent authorities' powers under the CPC Regulation

The competent authorities need to be vested with the powers necessary to fulfil their obligations under the CPC Regulation. The Regulation establishes the list of minimum

⁴⁷ p. 76-77 of the 2012 External Evaluation Report.

⁴⁸ p. 9-13 of Public Consultation Summary.

⁴⁹ p. 78 of the 2012 External Evaluation Report and

http://ec.europa.eu/consumers/enforcement/biennial_national_reports_en.htm#biennial.

⁵⁰ p. 78 of the 2012 External Evaluation Report and

http://ec.europa.eu/consumers/enforcement/biennial_national_reports_en.htm#biennial.

⁵¹ p. 76 of the 2012 External Evaluation Report.

⁵² In some Member States only the courts may issue cease and desist orders whilst in others the courts are mainly in charge of judicial review of the competent authorities' decisions.

⁵³ p. 60 of the 2012 External Evaluation Report.

⁵⁴ p. 60-61 of the 2012 External Evaluation Report.

⁵⁵ p. 27-33 of Public Consultation Summary.

powers necessary to ensure the smooth functioning of the CPC network. These powers include the ability to obtain the necessary information and evidence to address intra-Union infringements, to carry out on-site inspections, to require cessation or prohibition of intra-Union infringements, to obtain from traders undertakings and payments into the public purse. It appears that most authorities are using the set of the minimum powers established by the CPC Regulation either directly or based on national legislation that provides for similar powers⁵⁶.

Authorities are also mandated to make use, where appropriate, of other powers granted to them at national level to stop infringements. However, the lack of uniformity in the availability of certain of these additional powers across all countries has proven to be an obstacle to a more effective cooperation⁵⁷. The differences stemming from different national legal traditions and enforcement systems may to some extent be overcome by guidance and clarification, improving mutual understanding of the possibilities and limitations of the different national tools and systems. Yet, even extensive guidance cannot substitute missing powers at the national level in some Member States, which may be reducing the overall efficiency of CPC enforcement action.

Against this background, the large majority of stakeholders in the public consultation supported the introduction of additional tools for the competent authorities in the CPC Regulation, namely the power to carry out test purchases for investigative purposes, to name infringing traders, to request penalty payments to recover illicitly obtained gains and to require interim measures⁵⁸. A clear majority of stakeholders also supported measures that would make it easier for consumers to claim compensation⁵⁹.

Interaction with criminal prosecution

Under the CPC Regulation, the competent authorities should also use other powers or measures granted to them at the national level to stop intra-Union infringements, including reference for criminal prosecution. The experience so far points to a need to ensure a smoother exchange of information between the criminal prosecution authorities and the competent authorities, in particular where aggressive or fraudulent practices are at stake.

Involvement of consumer organisations and other actors in CPC cooperation

The CPC Regulation acknowledges the consumer organisations' essential role in the protection of consumer interests. It enables, in particular, Member States to designate, besides public authorities, other bodies having a legitimate interest to stop intra-Union

⁵⁶ Biennial Reports
http://ec.europa.eu/consumers/enforcement/biennial_national_reports_en.htm#biennial and the 2012 External Evaluation Report.

⁵⁷ This concerns for instance the power to conduct test purchases, the power to publicly name offending traders or to adopt interim measures. Whilst in some Member States test purchases are a usual part of the infringement procedure in others such tool is not available. This may cause problems with admissibility and availability of evidence of infringements obtained in another Member State.

⁵⁸ p. 22-26 of Public Consultation Summary.

⁵⁹ p. 26-27 of Public Consultation Summary. The objective of CPC Regulation is the protection of collective consumer interests. Individual consumer redress is addressed by other instruments such as Directive 2013/11/EU on alternative dispute resolution for consumer disputes, Regulation No 524/2013 on online dispute resolution for consumer disputes or Regulation No 861/2007 establishing a European Small Claims Procedure.

infringements. These bodies can be instructed by the CPC authorities to take necessary enforcement measures available to them under national law to stop intra-Union infringements.

In the period 2007-2013, several Member States have designated such bodies. They mostly comprise consumer associations and group interest associations acting in their own name. Also, since several years, national consumer organisations co-operate closer and coordinate enforcement activities under the Consumer Justice Enforcement Forum (COJEF) project⁶⁰. Many Member States developed cooperation with consumer associations and European Consumer Centres to obtain information about market developments and infringements.

The Evaluation underlines that consumer associations acting in the collective consumer interest play an important role in consumer rights' enforcement⁶¹ (they have a role under the Injunctions Directive⁶²). The stakeholders in the public consultation also highlighted that regular cooperation between the CPC authorities and consumer organisations is essential for early detection and effective handling of infringements. The stakeholders further suggested that a regular exchange of information with consumer organisations and European Consumer Centres, their involvement in the CPC alert mechanism and in the identification of enforcement priority areas would boost effectiveness and efficiency of EU consumer protection law enforcement.

The CPC planning and prioritisation cycle

Since 2009, the CPC network activities have been framed by Annual Enforcement Action plans⁶³. Initially, the plans identified common interest areas, such as the sweep topics and workshop themes. The 2012 Biennial Report clearly pointed to the need to pool resources and prioritise enforcement actions. A common approach to priorities was needed⁶⁴. In December 2011, the CPC planning and prioritisation process was reviewed. Five priority areas were identified in 2013 and endorsed by the CPC Committee⁶⁵, ensuring a multi-annual framework for joint actions for 2014-2016. On this basis, an annual enforcement action plan was endorsed by the CPC Committee.

This process enhanced the CPC network's efficiency and led to a more efficient use of scarce resources. The stakeholders in the public consultation however noted the need for further measures to support the knowledge base for enforcement prioritisation⁶⁶. Most respondents supported coordinated surveillance actions, an IT platform to share enforcement expertise and involvement of consumer organisations and European Consumer Centres in the identification of market trends and infringements of consumer protection laws⁶⁷.

The CPC Regulation legislation scope

⁶⁰ www.cojef-project.eu.

⁶¹ p. 81-83 of the 2012 External Evaluation Report.

⁶² Directive 2009/22/EC on injunctions for the protection of consumers' interests, OJ, L 110, 1.5.2009, p.

30.

⁶³ p. 8 of the Communication on "On enforcement of the consumer acquis", COM(2009) 330 final.

⁶⁴ p. 10 and 13 of the 2012 Biennial Report.

⁶⁵ Consumer Protection Cooperation Committee is established based on Articles 19 and 20 of the CPC Regulation.

⁶⁶ p. 11-13 and 14-18 of Public Consultation Summary.

⁶⁷ p. 15-17 of Public Consultation Summary.

The CPC cooperation covers Directives as transposed in the legal order of the Member States and Regulations which are listed in the Annex to the CPC Regulation. Since 2007, the scope of the Annex has been gradually extended and by the end of 2013 it covered 18 pieces of EU consumer protection legislation.

The Evaluation concluded that the scope of the existing CPC Regulation is broadly appropriate⁶⁸. Some areas may be less prominent in the cooperation because they are covered by EU sector-specific legislation and other existing mechanisms and/or specific bodies for cooperation at EU level⁶⁹. Where applicable, ways to ensure coordination and exchange of information between these networks and the CPC should be further examined to ensure consistency across policy fields.

The development of future sales methods and practices and the adoption or revisions of consumer protection legislation, in particular to address the digital challenges, especially price transparency, should be reflected if the scope of legislation covered were to be revisited.

The CPC database

The CPC Regulation (Article 10) mandates the Commission to maintain an electronic database where the information related to mutual assistance requests and alerts is stored and processed. To this effect, the Commission put in place the CPC-System (CPCS). Since 2007, the CPCS has been improved to allow the CPC authorities to exchange information and documents pertaining to mutual assistance requests. The Biennial reports, the Evaluation and the public consultation results indicate dissatisfaction with the CPCS⁷⁰. They point out that the lack of a well-functioning IT tool is a barrier to effective CPC cooperation.

7. Strengthening of CPC common and international activities

Common activities and exchange of officials subsidised by the EU Consumer Programme

Since 2007, CPC authorities have carried out a broad range of common activities including webinars, workshops, awareness-raising measures, projects developing common standards, methodologies and enforcement techniques and the exchange of officials that have received subsidies from the EU Consumer Programme.

⁶⁸ p. 40 of the 2012 External Evaluation.

⁶⁹ For example, in the field of electronic communications the Body of European Regulators for Electronic Communications (BEREC) established by Regulation No 1211/2009 ensures a framework for cooperation among national regulatory authorities (NRAs), and between NRAs and the Commission, with a view to achieving consistent application of the EU regulatory framework for electronic communications in order to bring the Single Market's benefits to consumers and businesses. Further enforcement mechanisms ensure protection of passenger rights' protection. In particular, Regulation No 261/2004 establishing common rules on compensation and assistance to air passengers, Regulation No 1177/2010 concerning rights of passengers when travelling by sea and inland waterway and Regulation No 181/2011 on rights of passengers in bus and coach transport set up enforcement mechanisms involving designated national enforcement bodies and covering both, cross-border and domestic infringements.

⁷⁰ p. 89-90 of the 2012 External Evaluation, p. iii and 51-52 of Public Consultation Summary.

Examples of common activities subsidised by the Consumer Programme since 2007

- A common project led by France and Portugal in 2010-2011 aimed at increasing the CPC network's visibility, with the participation of ten Member States. It resulted in the establishment of a communication cell, draft cooperation protocol between the competent authorities and the representatives of the European Consumer Centres⁷¹ and the publication of the CPC network newsletter.
- In 2012, nine Member States participated in the common project coordinated by Latvia focused on enforcement issues related to Directive 2008/48/EC on credit agreements for consumers.
- "Building a European Internet Enforcement Capability", a 2010-2011 project and follow-up action (2012-2013) led by the UK, involved eleven other Member States. It was aimed at improving the CPC network's ability to carry out online investigation and enforcement activities and sharing knowledge among enforcers on recent legal developments and challenges of website technologies. The follow-up involved fifteen Member States and established online investigation training as a long-term resource for internet investigators. It also created a common e-commerce case law database.

The last two common actions led to the establishment of a permanent e-enforcement group in April 2014 enhancing the CPC network's e-enforcement capacities. The group will pool expertise to help the CPC network to identify emerging online threats to consumers, and to better target its online enforcement actions. It will assist the national authorities with training and state-of-the-art tools in online investigations. In 2014 the group is led by the UK and Slovakia and 12 Member States participate in it. A new CPC common project on internet investigations, led by Spain between 2014 and 2015, will contribute to the training materials and Spain will host workshops stimulating mini-sweep actions of fourteen project partners.

These activities provided a framework for the continuous exchange of good practices among enforcement authorities and furthered mutual understanding and trust among the various actors. They could be further developed, while the administrative procedures for their financing, often cited by the national authorities as a barrier to extension of these activities, may need to be simplified.

International cooperation of enforcement of consumer rights

Developments in technology and household consumption patterns towards a greater use of international online purchasing have reinforced the need to deter dishonest traders from third countries and to enforce consumer protection beyond the EEA.

The CPC Regulation provides that the Union “shall cooperate with third countries and with the competent international organisations in the areas covered by this Regulation in order to enhance the protection of consumers’ economic interests”. Furthermore the Union has the possibility of seeking more structured enforcement cooperation with third countries on the basis of international agreements.

The competent authorities in the CPC network further cooperate on a regular basis in the ICPEN and the OECD or on a bilateral basis with third countries identified as priority partners for enforcement cooperation, such as the USA. This cooperation is a very important aspect of consumer policy and could be particularly useful for example in the field of data protection.

International Consumer Protection and Enforcement Network (ICPEN)

The ICPEN is an informal international network composed of consumer protection authorities from over 50 countries, which aims to prevent cross-border infringements of consumer protection laws beyond Europe and to create fair markets for consumers. Regular conferences, working groups and telephone conferences allow for an intensive exchange of experience between the participating authorities.

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http://ec.europa.eu/consumers/ecc/index_en.htm

The Commission is a liaison between the lead ICPEN members and the CPC. The CPC network welcomed the Commission initiative to be a liaison and to engage pro-actively in certain ICPEN's joint activities.

Organisation for Economic Cooperation and Development (OECD)

The European Commission participates in the OECD Committee on Consumer Policy as an observer alongside EU Member States.

Cooperation with the US Federal Trade Commission

Against the background of very intensive trade flows and a converging interest in combatting unlawful practices harming consumers' interests on both sides of the Atlantic, the CPC Network identified the USA as a priority international partner, and in particular with the Federal Trade Commission (FTC)⁷². Until a framework based on an international agreement is available, the CPC Network and the US FTC has built an informal cooperation. For instance, in April 2013 a joint seminar was held between the CPC and FTC enforcers that resulted in a fruitful exchange of information and expertise on concrete cases such as the issue of misleading practices in in-app purchases.

8. Conclusions and next steps

For the last seven years the CPC Regulation has provided effective means to safeguard consumers' collective interests across the EU. It has led to an increased compliance with EU consumer law in many sectors covered by the sweeps for the benefit of consumers and businesses. The CPC-led joint enforcement approaches showed that emerging consumer problems occurring simultaneously in a number of Member States can be best addressed through close coordination and common action of all Member States.

In the fast developing digital world a flexible and modern CPC cooperation capable of swiftly responding to new enforcement challenges is a necessity to reduce losses incurred by consumers and to maintain a level playing field for businesses in the Single Market. Better and more consistent enforcement of consumer protection rules should contribute to higher market transparency and reduce compliance cost for businesses operating across borders, boosting competition and innovation and making an important contribution to growth.

A better cooperation mechanism at EU level can achieve a swift and cost-efficient response to infringements of EU consumer rules that concern several Member States. This is particularly important in view of future resource limitations and administrative burden reduction. Governance gains can be expected in the Member States as well as at EU level due to improved administrative cooperation, reduction of enforcement delays and, ultimately, better functioning markets.

To determine the best possible way to use CPC cooperation for the benefit of the Member States and to enable all stakeholders to have positive returns, the Commission is currently carrying out impact assessment studies. These will examine the full range of options available for addressing the enforcement challenges of the future – from maintaining the current framework, to introducing new legislation – and should lay the ground for the Commission to decide on the most effective policy response.

⁷² Negotiations for an international agreement to this effect have been put on hold by mutual agreement since 2012 due to on-going processes which may have an impact on both sides' needs relevant for cooperation arrangements.