



Brussels, 21 November 2016
(OR. en)

14604/16

Interinstitutional File:
2016/0148 (COD)

CONSOM 286
MI 736
COMPET 602
TELECOM 243
JUSTCIV 303
DIGIT 135
IND 248
CODEC 1693

NOTE

From: Presidency
To: Council

Subject: Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws **(First reading)**
- Information from the Presidency

Delegations will find attached information from the Presidency on the above-mentioned subject with a view to the AOB item on the agenda of the Competitiveness Council on 28 November 2016.

INTRODUCTION

Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for enforcement of consumer protection laws (the Regulation on consumer protection cooperation, hereinafter the "CPC Regulation")¹ provides that the Commission shall in particular assess the effectiveness and the operational mechanisms of this Regulation and thoroughly examine the possible inclusion in the Annex of the Regulation of additional laws that protect consumers' interests. Since the entry into force of the Regulation in 2005, several legal acts were added to the Annex.

The Commission completed from 2012 an external evaluation² of the functioning of the CPC Regulation, on the basis of biennial reports (of 2009 and 2012). In addition the Commission in 2014 presented a Report on the functioning of the CPC Regulation³. The Commission Report concludes that the current Regulation needs to be replaced to respond to the challenges of the digital economy and the development of cross-border retail trade in the EU.

¹ 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, consolidated text: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:02004R2006-20130708>

² 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

³ COM (2014) 439 final http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140701_commission_report_cpc_reg_en.pdf

The Digital Single Market Strategy⁴ adopted by the Commission on 6 May 2015 announced that the Commission will submit a proposal for the revision of the CPC Regulation in order to develop more efficient cooperation mechanisms among national authorities in charge of the enforcement of European Union (EU) consumer legislation. The Single Market Strategy⁵ adopted by the Commission on 28 October 2015 further reiterated that the Commission will improve the enforcement of Union consumer law by national authorities through the reform of the CPC Regulation.

THE COMMISSION PROPOSAL

Against this background and based also on the enforcement cooperation experience of the CPC network since 2007, the Commission proposal was adopted on 25 May 2016⁶. This was accompanied by an Impact Assessment.

The proposed revision of the Consumer Protection Cooperation Regulation will give more powers to national authorities to better enforce consumer rights. They will notably be able to:

- check if websites geo-block consumers or offer after-sales conditions not respecting EU rules (e.g. withdrawal rights);
- order the immediate take-down of websites hosting scams;
- request information from domain registrars and banks to detect the identity of the responsible trader.

In case of EU-wide breaches of consumer rights, the Commission will be able to coordinate common actions with national enforcement authorities to stop these practices. It will ensure a swifter protection of consumers, aiming at reducing the consumer detriment caused by cross-border and widespread infringements to Union consumer law, while saving time and resources for Member States and businesses. To that purpose, the proposal addresses in particular widespread infringements with Union-dimension which are likely to harm consumers in a large part of the Union.

⁴ See doc. 8672/15 - COM (2015) 192 final <http://ec.europa.eu/priorities/digital-single-market/>

⁵ See doc. 13370/15- COM (2015) 550 final <http://ec.europa.eu/growth/single-market/>

⁶ See doc. 9565 +ADD 1+ ADD2 + ADD3.

On 17 June 2016, Ms Olga Sehnalova (S&D/CZ) was appointed rapporteur by the European Parliament Internal Market and Consumer Protection (IMCO) Committee. It is expected that IMCO will adopt a report by the end of March 2017. Other Committees (Budgets; Industry, Research and Energy; Culture and Education; Legal affairs) will also deliver an opinion.

WORK IN THE COUNCIL

The work on the examination of the Proposal started promptly and, after a comprehensive discussion of the Commission impact assessment in June, a first in-depth examination of the text was completed in September following seven Consumer Protection and Information Working Party (WP) meetings.

On 13 and 14 October, notably on the basis of the examination of a Presidency non-paper listing several identified issues, a general discussion was organised at WP level.

As all delegations support the need to respond to the challenges of the Single Market in particular in the digital area and therefore modernise the existing cooperation framework, taking account also of the experience of the CPC network functioning, the Commission proposal was welcomed by delegations which also made the following comments:

- it is preferable to build on the national enforcement mechanisms and civil/criminal legislations when increasing the powers for competent authorities (in particular in Art. 8), taking account in particular of the principle of proportionality while observing national procedural safeguards;
- the sensitive question of possible increase of resources has to be carefully evaluated, due to the costs of reforming the existing systems, especially on the proposed compensation/profit restitution mechanisms, in the present context of budget constraints;

Two Presidency compromise texts (doc. 13493/16 on Art. 1-32 and doc. 13961/16 on Art. 33 to 53) were examined by the WP on 27-28 October and 11 November 2016. They aim at clarifying and simplifying the proposed framework, taking account of the above comments.

The Presidency merged the two actions targeted at widespread infringements into one, thus simplifying Chapter IV. Several provisions creating unnecessary burden for competent authorities without clear benefits were deleted from the proposal. Some parts of the text were reorganised and new articles were introduced to follow a sound logical order in the text.

Delegations broadly welcomed the modifications proposed by the Presidency, pointing out that further technical work is needed mostly in order to simplify the cooperation measures and ensure consistency with the existing national and EU legislation as follows:

- Member States do not support the idea of competent authorities equipped with every single power listed in Article 8 and consider that freedom to organise powers inside national administration is a preferred option. Further work on Articles 8 and 9 is therefore necessary. The role of the Commission in a coordinated action under Chapter IV is also not yet clarified.
- As the proposal touches upon data protection, notably in relation to the electronic database, delegations are of the opinion that the link with the General Data Protection Regulation needs to be clarified.

CONCLUSION

On this basis, the Presidency will do its utmost to progress on this file which is so important for enhancing consumer protection in the digital economy and in a cross-border environment, with a view to pave the way for an agreement with the European Parliament and the Commission as soon as possible in 2018 on this proposal.