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NOTE

From:	Presidency
To:	Delegations
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 (Text with EEA relevance) - Presidency compromise

Please find in Annex a Presidency compromise on the recitals of the Proposal based on comments by the Member States, as an addendum to the text of the Articles sent earlier.

New text is **bold underlined** and deletions in ~~strike through~~—with respect to the Commission proposal.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 2006/2004 of the European Parliament and of the Council² provides for harmonised rules and procedures to facilitate cooperation between national authorities responsible for the enforcement of cross-border consumer protection laws. Article 21a provides for a review of the effectiveness and operational mechanisms of that Regulation and pursuant to that Article, the Commission concluded that Regulation (EC) No 2006/2004 is not sufficient to effectively address the enforcement challenges of the Single Market, and in particular the Digital Single Market.

¹ OJ C 108, 30.4.2004, p. 86.

² Regulation (EC) 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ L 364, 9.12.2004, p. 1).

- (2) The Digital Single Market Strategy adopted by the Commission on 6 May 2015 identified as one of the priorities the need to enhance consumer trust through more rapid, agile and consistent enforcement of consumer rules. The Single Market Strategy adopted by the Commission on 28 October 2015 reiterated that enforcing Union consumer protection legislation should be further strengthened by the Regulation on Consumer Protection Cooperation.
- (3) The resulting ineffective enforcement of cross-border infringements, in particular in the digital environment, enables traders to evade enforcement by relocating within the Union, giving rise to a distortion of competition for law-abiding traders operating either domestically or cross-border, and thus directly harming consumers and undermining consumer confidence in cross-border transactions and the Single Market. An increased level of harmonisation setting effective and efficient enforcement cooperation among competent public enforcement authorities is therefore necessary to detect, investigate and order the cessation of intra-Union infringements and widespread infringements.
- (4) Regulation (EC) No 2006/2004 of the European Parliament and of the Council established a network of competent public authorities throughout the Union. Effective coordination among different competent authorities participating in the network, as well as other public authorities at the level of Member States, is necessary. The coordination role of the single liaison office should be entrusted to a competent authority in each Member State that has sufficient powers and resources to undertake this key role in the network of competent authorities.
- (5) Consumers should also be protected from ~~short-lived~~ intra-Union infringements and widespread infringements that ~~only last for a short period of time~~ **already ceased** but whose harmful effects may continue ~~long~~ after the infringement has stopped. Competent authorities should have the necessary powers to investigate and order a cessation of such infringements in the future, **in order to avoid their repetition.**

(6) Competent authorities should have a ~~minimum~~ set of powers of investigation and enforcement to apply this Regulation effectively, to cooperate with each other, and to deter traders from committing intra-Union infringements and widespread infringements. Those powers should be adequate to tackle the enforcement challenges of e-commerce and the digital environment where the possibilities of a trader easily concealing its identity or changing it are of particular concern. Those powers should ensure that evidence can be validly exchanged among competent authorities to achieve effective enforcement at an equal level in all Member States.

(6a) This Regulation grants competent authorities the list of powers they could use in order to comply with the objective of consumer protection cooperation. Member States remain free to determine the most adequate distribution of powers among national authorities. Therefore this Regulation should be interpreted that not every competent authority has to have all of the powers listed in this Regulation, provided that every power can be used effectively to address any infringement. Member States may decide, in accordance with the provisions of this Regulation, to confer certain tasks under this Regulation to designated bodies. However Member States should not be under any obligation to involve designated bodies in the application of this Regulation.

(6b) The exercise of powers in application of this Regulation should be proportionate and adequate to the nature and actual or potential harm of the infringement. Competent authorities should take into account all facts and circumstances of the case and choose the most appropriate measures which are essential to address the infringement. Those measures should be proportionate, effective and deterrent.

(6c) The exercise of powers in application of this Regulation should also be in accordance with other Union and national legislation, in particular with applicable procedural safeguards and principles of the fundamental rights. Where, for instance, in accordance with national law prior authorisation to enter premises of natural and legal persons is needed from the judicial authority of the Member State concerned, the power to enter such premises should be used only after having obtained such prior authorisation.

- (7) Member States may choose whether the competent authorities exercise those powers directly under their own authority, **with the assistance of other public authorities, by instructing designated bodies** or by application to the competent courts. ~~Where the Member States choose that competent authorities exercise their powers by application to the competent courts,~~ Member States should ensure that those powers ~~can be~~ **are** exercised effectively and in a timely manner ~~and that the cost of exercise of those powers be proportionate and does not hamper the application of this Regulation.~~
- (8) When responding to requests made through the mutual assistance mechanism, competent authorities should, where appropriate, also make use of other powers or measures granted to them at the national level, including the power to initiate or refer matters for criminal prosecution. It is of the utmost importance that courts and other authorities, in particular those involved in criminal prosecution, have the necessary means and powers to cooperate with competent authorities effectively and in a timely manner.
- (9) Competent authorities should be in a position to open investigations on their own initiative if they become aware of intra-Union infringements or widespread infringements by means other than consumer complaints. This is particularly necessary to ensure effective cooperation among competent authorities when addressing widespread infringements.
- (10) Competent authorities should have access to all necessary evidence, data and information to determine whether an intra-Union infringement or widespread infringement has occurred, and in particular to identify the trader responsible, irrespective of who possesses this evidence, information or data, of where it is located and of its format. Competent authorities should be able to directly request that third parties in the digital value chain provide all the evidence, data and information necessary.
- (11) Competent authorities should be able to verify compliance with consumer protection legislation and to obtain evidence of intra-Union infringements or widespread infringements, especially **including** those that take place ~~during or~~ after the purchase of goods and services. They should therefore have the power to ~~make test purchases and to~~ purchase goods or services under a cover identity **to detect infringements, such as the refusal to implement the consumer right to withdraw in the case of distance contracts.**

(12) In the digital environment in particular, the competent authorities should be able to stop infringements quickly and effectively, notably where the trader selling goods or services conceals its identity or relocates within the Union or to a third country to avoid enforcement. In cases where there is a risk of serious and irreparable harm to consumers, the competent authorities should be able to adopt interim measures to prevent such harm or reduce it, including, where necessary, ~~the suspension of a website, domain or a similar digital site, service or account~~ **disabling or limiting the access to an online interface**. Furthermore, the competent authorities should have the power to ~~take down or have a third party service provider take down a website, domain or a similar digital site, service or account~~ **restrict or disable the access to an online interface or order the removal or modification of digital content when there are no other means to stop an illegal practice**.

(12a) Pursuing the objective of the Regulation along with stressing the importance of the traders will to act in accordance with the consumer protection legislation and to remedy the consequences of his infringements, competent authorities should have to possibility to agree with traders on commitments containing steps and measures the trader has to take regarding the infringement, in particular to make the infringement cease.

(13) In order to ensure that traders are sufficiently deterred from committing or repeating infringements and that they will not profit from those infringements, the rules on penalties which have been adopted by Member States in accordance with the requirements of Union laws that protect consumers' interests should also be applied to intra-Union infringements and widespread infringements **and competent authorities should always take into account the overall harm of the infringement in all Member States**. ~~For those same reasons, consumers should be entitled to redress for harm caused by such infringements.~~

- ~~(14) As regards consumer redress, the competent authorities should choose proportionate, just and reasonable measures that would prevent or reduce the risk of recurrence or repetition of infringements, taking into account in particular the anticipated benefits to consumers and the reasonable administrative costs likely to be associated with the implementation of those measures. Where the consumers concerned cannot be identified or where they cannot be identified without disproportionate cost to the trader responsible, the competent authority may order that the restitution of profits obtained through the infringement be paid to the public purse or to a beneficiary designated by the competent authority or under national legislation.~~
- (15) The effectiveness and efficacy of the mutual assistance mechanism should be improved. Information requested should be provided in a timely manner and the necessary enforcement measures should be adopted in a timely manner. ~~The Commission should therefore set binding time periods for~~ Competent authorities **should** to reply to information and enforcement requests **in set time periods if not agreed otherwise between the competent authorities**; and clarify procedural and other aspects of handling information and enforcement requests, by means of implementing measures.
- (16) The Commission ~~must~~ **should** be better able to coordinate and monitor the functioning of the mutual assistance mechanism, ~~issue guidance, make recommendations and issue opinions to the Member States when problems arise. The Commission also must be better able to effectively and quickly assist competent authorities to resolve disputes over the interpretation of their obligations of the competent authorities stemming from the mutual assistance mechanism.~~
- (17) Harmonised rules setting out the procedure for the coordination, ~~of the surveillance,~~ investigation and enforcement of widespread infringements should be provided. Coordinated actions against widespread infringements should ensure that competent authorities may choose the most appropriate and efficient tools to stop widespread infringements ~~and to ensure consumer compensation.~~

(17a) The competent authorities concerned by a widespread infringement should launch a coordinated action by a common agreement. In order to establish which competent authorities are concerned by a widespread infringement all aspects of the infringement should be considered, in particular the place of establishment or residence of the trader, location of the assets of the traders, location of the consumers who suffered harmed by the infringement and the place of the points of sale of the trader, i. e. shops and websites.

(17b) Competent authorities concerned should coordinate their investigation and enforcement measures in the coordinated action in order to effectively tackle the infringement and bring about its cessation. To that end evidence and other necessary information should be exchanged between the competent authorities and the necessary assistance should be provided. Competent authorities concerned should in a coordinated way take the necessary enforcement measures to bring about the cessation or prohibition the widespread infringement.

(17c) The extent of participation of each competent authority in a coordinated action should be adequate to the extent of investigation and enforcement measures the competent authority is required to take. Therefore participation to a coordinated action should not put an unreasonable burden on competent authorities. Competent authorities concerned should be under the obligation to take only the necessary investigation and enforcement measures which are needed to obtain the necessary evidence regarding the widespread infringement and to bring about the cessation or the prohibition of the infringement. However, lack of available resources of the competent authority concerned should not be considered as a justified reason not to take part in a coordinated action.

- (17d) Competent authorities concerned which participate to a coordinated action should be able to conduct national investigation and enforcement measures in relation to the same infringement. However, at the same time, the obligation of the competent authority to coordinate its investigation and enforcement activities in the framework of the coordinated action with other competent authorities concerned should remain intact. Competent authorities should only take measures outside the framework of the coordinated action if such measures will ensure a swifter and more effective remedy than measures in the coordinated action and if postponing such measures would cause additional harm to consumers. Those measures should, at the same time, have the same effect in all Member States concerned by the widespread infringement, as measures in the coordinated action. In particular it must be ensured that the national enforcement action will cease the infringement in every Member State concerned.**
- ~~(18) Coordinated screening of online e-commerce websites (sweeps) are another form of enforcement coordination that has proven to be an effective tool against infringements that should be retained and strengthened in the future,~~

(19) Widespread infringements ~~with a Union dimension~~ may cause large scale harm to a majority of consumers in the Union. **Widespread infringements which cause harm to consumers in at least three quarters of the Member States accounting together for at least three quarters of the population of the Union** They therefore require a specific Union-level coordination procedure with the Commission as the mandatory coordinator. ~~To ensure that the procedure is launched in a timely, coherent and effective manner and that the conditions are verified in a uniform manner.~~ **After the launch of the coordinated action, the competent authorities concerned should conduct the necessary initial investigation, to establish whether the conditions for the launch were met** ~~Commission should be in charge of verifying whether the conditions for the launch of the procedure are fulfilled.~~ Evidence and information collected during the ~~common~~ **coordinated** action should be used seamlessly in national proceedings when required. **Criminal and judicial proceedings in Member States should not be affected by the application of this regulation. The principle of *ne bis in idem* should be respected. However, if the same trader reiterates the same acts or omission constituting an infringement which had already been addressed by an enforcement procedure resulting in a final judgement, administrative decision or court settlement, it should be considered a new infringement and competent authorities should address it.**

(applicable if option 1 is preferred for Article 16 and 16a)

or

(19) The Commission should cooperate more closely with Member States to prevent large scale infringements from occurring. Therefore it should actively notify competent authorities any suspicion of infringements under this Regulation. If the Commission has, for instance by monitoring the alerts submitted by competent authorities, the reasonable suspicion that a widespread infringements which cause harm to consumers in at least three quarters of the Member States accounting together for at least three quarters of the population of the Union occurs, it should recommend Member States to conduct the necessary initial investigation, to establish whether the suspicion was grounded, and to subsequently launch a coordinated action. A coordinated action, coordinated by the Commission, should be launched by the competent authorities concerned if the results of the initial investigation show that a widespread infringement occurs. If it is apparent that the Member State is concerned by that infringement, it should take part in a coordinated action in order to help to collect the necessary information and evidence related to the infringement and to bring about its cessation. As regards the enforcement measures, criminal and judicial proceedings in Member States should not be affected by the application of this regulation. The principle of *ne bis in idem* should be respected. However, if the same trader reiterates the same acts or omission constituting an infringement which had already been addressed by an enforcement procedure resulting in a final judgement, administrative decision or court settlement, it should be considered a new infringement and competent authorities should address it.

(applicable if option 2 is preferred for Article 16 and 16a)

(19a) Competent authorities concerned should take the necessary investigation measures to establish the particularities of the widespread infringement, in particular the identity of the trader, acts or omissions committed by the trader and the effects of the infringement. Enforcement measures taken should be based on the outcome of the investigation. Where appropriate, the outcome of the investigation and the assessment of the widespread infringement shall be set out in a common position agreed among the competent authorities of the Member States concerned by the coordinated action and addressed to the traders concerned by the infringement. The common position does not constitute a final binding decision of the competent authorities. It shall, however, give the addressee the opportunity to be heard on the matters which are part of the common position.

(20) In the context of widespread infringements ~~and widespread infringement with a Union dimension,~~ the rights of defence of the traders concerned should be respected. This requires, in particular, giving the trader the right to be heard and to use **during the proceedings** the **official** language ~~of its choice~~ **or one of the official languages of the Member State of its establishment or residence** ~~during the proceedings.~~

(21) If a trader responsible for the widespread infringement ~~or the widespread infringement with a Union dimension~~ fails to cease the infringement voluntarily, the competent authorities of the Member States concerned should **take all necessary enforcement measures needed to bring about the cessation or prohibition of the infringement. However extraterritorial application of the Regulation should be avoided. If appropriate the competent authorities concerned with the widespread infringement may** designate one competent authority in a Member State to take the enforcement action adapted to preserve the rights of consumers residing in the other Member States concerned by the infringement. That competent authority should be designated, taking into account its capacity to take effective action against the trader, ~~for instance where the trader is established in the Member State of that authority.~~ The designated competent authority should act as if the consumers of the other Member States were its own consumers. ~~Where necessary, to avoid extraterritorial application of the law, several or all the Member States concerned by the infringement should be allowed to adopt enforcement measures at the same time to protect their own consumers or consumers residing in other Member States. This may be needed, for instance, to stop infringements of a similar nature by subsidiaries of a company, established in more than one Member State, which affect the consumers of those Member States only, without an apparent cross-border element (parallel infringements).~~

(21a) Coordinated screening of online e-commerce websites (sweeps) are another form of enforcement coordination that has proven to be an effective tool against infringements that should be retained and strengthened in the future.

(22) ~~The surveillance mechanism and alert mechanism should be strengthened to ensure the timely and~~ ~~Effective~~ detection of widespread infringements **should be supported by exchanging information between competent authorities and the Commission by the means of sending alerts if there is a reasonable suspicion of such infringements.** ~~The information which should be exchanged and the follow up required following an exchange of information should be clarified in order to ensure that~~ Alerts that require action are **should be** duly acted upon and addressed. The Commission should coordinate the functioning of the ~~surveillance mechanism~~ **exchange of information.**

- (23) Consumer organisations play an essential role in informing consumers about their rights and educating them and protecting their interests, including the settlement of disputes. Consumers should be encouraged to cooperate with the competent authorities to strengthen the application of this Regulation. Consumer organisations, in particular consumer organisations that may be delegated enforcement tasks under this Regulation and European Consumer Centres, should be in a position to notify competent authorities of suspected infringements and share information needed to detect, investigate and stop intra-Union infringements and widespread infringements with them.
- ~~(24) Infringements which are widespread throughout the Union should be effectively and efficiently resolved. To this end, enforcement prioritisation and planning at the Member State level should be coordinated and the available resources of competent authorities should be pooled. A system of biennial rolling enforcement plans should be put in place to achieve this.~~
- ~~(25) Data related to consumer complaints may help policymakers at a national and Union level to assess the functioning of consumer markets and detect infringements. With a view to facilitating the exchange of such data at a Union level, the Commission has adopted a Recommendation on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries³. That Recommendation should be implemented to fully support enforcement cooperation and facilitate the detection of intra-Union infringements and widespread infringements.~~
- (26) Enforcement challenges that go beyond the frontiers of the Union, and the interests of Union consumers should be protected from rogue traders based in third countries. Hence, international agreements with third countries regarding mutual assistance in the enforcement of legislation that protects consumers' interests should be negotiated. Those international agreements should include the subject matter laid down in this Regulation and should be negotiated at Union level in order to ensure the optimum protection of Union consumers and smooth cooperation with third countries.

³ Commission Recommendation on the use of harmonised methodology for classifying consumer complaints and enquiries (2010/304/EU, OJ L 136, 2.6. 2010, p. 1-31).

- ~~(27) In order to ensure uniform conditions for the implementation and exercise of the minimum powers of competent authorities, set time limits and set out other details of procedures to address intra-Union infringements, widespread infringements and details of the surveillance mechanism and administrative cooperation among competent authorities, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴.~~
- (28) The examination procedure should be used for the adoption of the acts pursuant to Articles 10, 11, 12, 13, 15, 20, 27, 31, 32, 34, 35, 36, 37, 39, 43 and 46 of this Regulation given that ~~those~~ **that** acts ~~are~~ **is** of general scope.
- (29) This Regulation complements sectoral Union rules providing for cooperation among sectoral regulators and sectoral Union rules on the compensation of consumers for harm resulting from infringements of those rules. This Regulation is without prejudice to other cooperation systems and networks set out in sectoral Union legislation. This Regulation furthers cooperation and coordination among the consumer protection network and the networks of regulatory bodies and authorities established by sectoral Union legislation.

(29a) This Regulation is without prejudice to the right to claim individual or collective compensation, which is subject to the national law and does not provide for the enforcement of those claims.

(29b) This Regulation is without prejudice to protection of natural persons with regard to the processing of personal data, therefore the entities exercising the powers pursuant this Regulation should always respect the data protection legislation in particular Regulation (EU) No 2016/679 of the European Parliament and of the Council⁵.

⁴ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2. 2011, p. 13-18).

⁵ **Regulation (EU) No 2016/679 of The European Parliament And Of The Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)** (OJ L 119, 4.5.2016, p. 1–88).

- (30) This Regulation is without prejudice to the existing Union rules concerning the powers of national regulatory bodies established by Union sectoral legislation. Where appropriate and possible, those bodies should use the powers available to them under Union and national law to cease or prohibit intra-Union infringements or widespread infringements or to assist the competent authorities in doing so.
- ~~(31) For the calculation of compensation for harm to the collective interests of consumers, the rules of Union sectoral for passengers such as Regulation (EC) No 261/2004 of the European Parliament and of the Council⁶, Regulation (EC) No 1371/2007 of the European Parliament and of the Council⁷, Regulation (EU) No 1177/2010 of the European Parliament and of the Council⁸ and Regulation (EU) No 181/2011 of the European Parliament and of the Council⁹ should apply. Where the sectoral Union legislation does not cover compensation for the harm caused by intra-Union or widespread infringements, the compensation should be established based on applicable national law.~~
- (32) This Regulation is without prejudice to the role and the powers of the competent authorities and of the European Banking Authority in relation to the protection of the collective economic interests of consumers in matters concerning payment accounts services and credit agreements relating to residential immovable property under Directive 2014/17/EU of the European Parliament and of the Council¹⁰ and Directive 2014/92/EU of the European Parliament and of the Council¹¹.

⁶ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights (OJ L 46, 17.2.2004, p. 1).

⁷ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on railway passenger rights and obligations (OJ L 315, 3.12.2007, p. 14).

⁸ Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway (OJ L 334, 17.12.2010, p. 1)

⁹ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

¹⁰ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property (OJ L 60, 28.2.2014, p. 34)

¹¹ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214)

- (33) In view of the existing cooperation mechanisms under Directive 2014/17/EU of the European Parliament and of the Council and Directive 2014/92/EU of the European Parliament and of the Council, the mutual assistance mechanism (Chapter III) shall not apply to intra-Union infringements of these Directives.
- ~~(34) This Regulation is without prejudice to penalties laid down in sectoral Union legislation and Union consumer legislation and applied to national infringements. The competent authorities should, as appropriate, apply the provisions of national law implementing those provisions, taking into account the actual scale and scope of the infringement and the harm caused by the infringement to consumers in other Member States.~~
- (35) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union¹² **and by the constitutional law of the Member States**. Accordingly this Regulation should be interpreted and applied with respect to those rights and principles. When exercising the ~~minimum~~ powers set out in this Regulation, the competent authorities should strike an appropriate balance between the interests protected by fundamental rights such as a high level of consumer protection, the freedom to conduct business and freedom of information.
- (36) Since the objective of this Regulation, namely cooperation between national authorities responsible for the enforcement of consumer protection law, cannot be sufficiently achieved by the Member States because they cannot ensure cooperation and coordination by acting alone, and this objective can therefore, by reason of its territorial and personal scope, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (37) Regulation (EC) No 2006/2004 should therefore be repealed.

HAVE ADOPTED THIS REGULATION:

¹² OJ C 364, 18.12.2000, p. 1.