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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
- General approach

I. INTRODUCTION

1. On 25 May 2016, the Commission submitted a proposal accompanied by an impact assesment¹, for a Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws. The text, which is based on Article 114 of the Treaty, was presented as part of the "e-commerce package" containing also legislative proposals on cross-border parcel delivery services² and geo-blocking and other forms of discrimination³.

¹ See doc. 9565 +ADD 1+ ADD2 + ADD3.

² See doc. 9706/16.

³ See doc. 9611/16.

This proposal will replace Regulation (EC) No 2006/2004⁴ and aims to develop more efficient cooperation mechanisms among national authorities in charge of the enforcement of European Union (EU) consumer legislation, in particular in response to the challenges of the digital economy and the development of cross-border retail trade in the EU.

2. This revision of the Consumer Protection Cooperation (CPC) framework will give more powers to national authorities which may for example check if websites geo-block consumers, order the immediate take-down of websites hosting scams or 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, in particular in cases of widespread infringements with Union-dimension which are likely to harm consumers in a large part of the EU.

3. On 10 June 2016, the Council decided to consult the Economic and Social Committee which adopted its opinion on 19 October 2016⁵.
4. In the European Parliament, this proposal was referred to the Internal Market and Consumer Protection (IMCO) Committee which appointed on 17 June 2016 Ms. Olga Sehnalova (S&D/CZ) as rapporteur. The IMCO Committee is expected to vote its report in March 2017.

II. WORK CONDUCTED WITHIN THE COUNCIL

5. The examination of the proposal started in June 2016 with a discussion of the Commission's impact assessment by the Consumer Protection and Information Working Party. The in-depth examination of the entire text was completed in September following seven Working Party meetings.

⁴ 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>

⁵ Opinion of the European Economic and Social Committee (rapporteur Mr Bernardo Hernandez Bataller (ES/Group III)) - INT/798 of 19/10/2016.

All delegations acknowledged the challenges and importance of consumer protection in the Single Market, in particular in the digital area by strengthening the existing CPC framework. On this basis, they globally welcomed the proposal stressing:

- the necessity to build on existing national legislation (civil or criminal) and enforcement mechanisms when strengthening the powers for competent authorities, taking account of the principle of proportionality while observing national procedural safeguards,
 - that the sensitive question of an increase of resources has to be carefully evaluated in the light of the costs of reforming the existing systems, especially as concerns the proposed compensation/profit restitution mechanisms, in the present context of budget constraints.
6. On the basis of above comments the Working Party has examined the text with a view to clarifying and simplifying the proposed framework. The main aim has been to streamline the cooperation measures and ensure consistency with existing national and EU legislation, notably regarding the functioning of the proposed electronic database and the General Data Protection Regulation.
7. At the Competitiveness Council on 28 November 2016, the Presidency presented an information note⁶ under "Other Business". In this context, some delegations called for the adoption of a general approach at the Competitiveness Council in February 2017.
8. The Presidency compromise text as set out in document 5870/17 +COR 1 was discussed at the Permanent Representatives Committee (COREPER) on 8 February 2017. From this examination it emerged that a majority of delegations can now accept the Presidency compromise, and at the end of the debate the Chair concluded that the compromise would be submitted to the Competitiveness Council on 20 February 2017, with a view to reaching a general approach.

The revised Presidency compromise text as it stands following the COREPER on 8 February 2017, is set out in document 6190/17.

⁶ See 14604/16+COR1.

III. MAIN CHANGES TO THE PROPOSAL MADE BY THE COUNCIL

9. The Presidency compromise text reflects the continuous efforts of the Presidency and Member States to find the right balance between the different interests and objectives, following eighteen Working Party meetings. Hence, the Presidency considers this compromise text as a solid basis for reaching a general approach at the forthcoming Competitiveness Council on 20 February 2017. In the light of above, the Presidency compromise addresses the main concerns by Member States by modifying the Commission's proposal as follows:

(i) Reorganisation of the powers of competent authorities and of their exercise (Articles 8 and 9):

In particular, it was clarified that not all competent authorities need to possess all powers. Whilst Member States should have all the powers where possible, Member States are free to organise powers as they deem fit, provided that they can ensure that these powers can be effectively exercised in relation to any infringement covered by the Regulation.

(ii) Clarification of general cooperation/mutual assistance (Articles 5, 6a, 11, 12 and 15), cooperation for widespread infringements (Articles 15a, 15aa, 16, 16a, 17, 18, 18a, 19, 29, 30 and 31), concerted investigations (Article 36a replacing Article 32) and alerts (in Articles 34 and 35):

In particular the interplay between the Commission and competent authorities in launching a coordinated action under Chapter IV has been clarified. The participation of each competent authority in a coordinated action should be adequate and proportionate to the extent of the investigation and enforcement measures the competent authority has to apply. Furthermore, it has been specified that in addition to judicial/criminal proceedings Member States relying only on administrative systems could decline to take part in a coordinated action, provided they have already taken concrete action through exercising investigation or enforcement measures in respect of the same infringement against the same trader.

(iii) Simplification of the enforcement mechanisms:

In order to simplify and streamline procedures, section II on widespread infringement with a Union dimension (Articles 21 to 27), the use of implementing acts (except in Article 43), the surveillance mechanism (Article 33) as well as the application of penalties (Articles 4, 8 and 47) or compensation (Articles 8, 10, 18 and 29) -under this Regulation- have been deleted.

(iv) Simplification of Member States' obligations:

In order to cut administrative burden for competent authorities, the obligations to exchange of other information relevant for the detection of infringements and consumer policy information (Articles 36 and 39) as well as the exchange of enforcement plans (Article 46) have been deleted.

IV. CONCLUSION

10. The Presidency considers that the text, as set out in document 6190/17, represents a balanced and fair compromise between the views expressed by delegations. The Council is invited to agree to reach a general approach on this basis at the Competitiveness Council on 20 February 2017.