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**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*Accompanying the document*

**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**

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## 1. WHAT IS THE PROBLEM AND WHY IS IT A PROBLEM?

### 1.1. Introduction – non-compliance with EU consumer *acquis* and consumer detriment

National consumer protection authorities strive to ensure compliance of traders' practices with EU consumer *acquis* including for cross-border transactions which are boosted by digital means. The coordinated screenings of online e-commerce websites ("sweeps"<sup>1</sup>) carried out by enforcement authorities under the **Regulation on Consumer Protection Cooperation 2006/2004**<sup>2</sup> ("CPC Regulation") demonstrate that the recent development of online trade requires further and deeper cooperation of national enforcement authorities. Since 2007, the results of websites' screening systematically show high rates of non-compliance, between 32% and 69%, with basic consumer rules in the checked markets, as illustrated in Box 1:

<b>Box 1 Online markets swept since 2007</b>	<b>Number of Websites investigated</b>	<b>Non-compliance rate</b>
Airline tickets (2007)	447	51%
Apps for Mobile phones (2008)	554	54%
Electronic goods (2009)	369	55%
Entertainment tickets (2010)	414	59%
Consumer Credit (2011)	565	69%
Digital content downloads (2012)	330	52%
Travel services (2013)	552	69%
Guarantees in the electronic goods sector (2014) <sup>3</sup>	437	54%

The malpractices identified in the screening of websites were mostly unfair practices, unfair contract terms, non-transparent price displays, lack of information on the trader's identity and, in the recent screening in 2014, lack of information on the legal guarantees in the consumer electronics sector<sup>4</sup>.

These results are confirmed by the data from the European Consumer Centres: two thirds of the 37,000 individual complaints they received in 2014 concern cross-border purchases online. This data points to a wide range of issues that consumers face: the top five grounds of complaints are: non-delivery (15% of all cases), defective products (11%), problems with contracts (10%), product or service not in conformity with the order (9%) and unfair practices (6%). The top five sectors for complaints are air passenger transport (18% of all cases), furniture and household equipment (14%), timeshare and package travel (6%), telecommunications and internet services (6%) and clothing (5%)<sup>5</sup>.

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<sup>1</sup>The "sweep" is an EU-wide screening of websites to identify breaches of consumer law in given online sectors. Subsequently authorities contact companies about suspected irregularities and ask them to take corrective action or face legal action.

<sup>2</sup>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.

<sup>3</sup>This sweep, although carried out online for easier investigation, concerns both online and offline practices.

<sup>4</sup>[http://ec.europa.eu/consumers/enforcement/sweeps/guarantees/index\\_en.htm](http://ec.europa.eu/consumers/enforcement/sweeps/guarantees/index_en.htm)

<sup>5</sup> ECC-Net's anniversary report 2005-2015: [http://ec.europa.eu/consumers/solving\\_consumer\\_disputes/non-judicial\\_redress/ecc-net/docs/ecc\\_net\\_-\\_anniversary\\_report\\_2015\\_en.pdf](http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/docs/ecc_net_-_anniversary_report_2015_en.pdf)

Further, the information on consumer conditions published in the European Consumer Scoreboards highlights that the incidence of unfair practices is high: for example, 42% of consumers say they were pressured to buy through persistent sales calls or messages<sup>6</sup>.

Moreover, these malpractices lead consumers to purchasing decisions that they would not have made otherwise, such as purchasing products or services for an overall higher price or being trapped in unwanted subscriptions<sup>7</sup>. The scale of financial detriment for individual consumers caused by the non-compliance with basic consumer rules, in a sample of five cross-border online markets, was estimated to EUR 770 million<sup>8</sup> per year. This low level of compliance is one of the indicators for poorly functioning consumer markets, such as the EU online cross-border retail market where trade is lagging behind<sup>9</sup>. Part of this malfunctioning can be attributed to a lack of efficient public enforcement of EU consumer legislation in the cross-border context (other factors include lack of traders' awareness or understanding of key consumer rules, insufficient market transparency, impact of dominant traders, etc.).

Stepping-up cross-border enforcement to improve compliance with EU consumer law can therefore contribute to a better functioning and more dynamic Single Market both for consumers and traders (e.g. costs associated with resolving complaints and disputes across borders were found to be among the most important barriers to the expansion of the Digital Single Market in particular to small firms<sup>10</sup>). This is why enforcement has been a constant priority of EU consumer policy<sup>11</sup>. Equal and efficient enforcement across the EU is geared to boost legal certainty, and thus, consumer and entrepreneurship confidence<sup>12</sup>. The latter would increase consumption and, thus, foster growth and job creation within the Single Market. Enforcement is all the more important for EU growth as the Digital Single Market has been identified with a significant untapped potential. The European Commission has set the completion of the Digital Single Market (DSM) as one of its key priorities to sustain growth in the EU, and identified in particular in its **DSM Strategy**<sup>13</sup> the importance of better access for consumers and businesses to online goods and services across Europe. It pledges to provide “*more rapid, agile and consistent enforcement of consumer rules for online and digital purchases*” and notably to “*clarify and develop the powers of enforcement authorities*

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<sup>6</sup>This is a blacklisted unfair commercial practice, easy for consumers to recognise. See p. 32 of the latest 11<sup>th</sup> edition:

[http://ec.europa.eu/consumers/consumer\\_evidence/consumer\\_scoreboards/11\\_edition/docs/ccs2015scoreboard\\_en.pdf](http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/11_edition/docs/ccs2015scoreboard_en.pdf)

<sup>7</sup>E.g. a Danish firm was offering free samples of cosmetic products through online banners. Consumers had to pay EUR 4 for shipping costs, but they were unaware that they were also subscribing to receive the cosmetics monthly, but this time not for free. Cited in the ECC-Net's anniversary report 2005-2015.

<sup>8</sup>This estimate is based on the approach designed in the UK to estimate financial consumer detriment. It is based on the screening of 2,682 e-commerce websites in 2014 in all EU countries in the sectors of: clothing and sports goods; electronic goods; package travel; recreation and culture; and financial services. The average non-compliance rate was found to be 37% in these sectors, see Annex IV.

<sup>9</sup>E.g. only 18% of consumers who used the Internet for private purposes in 2014 purchased online from another EU country while 55% did so domestically. Eurostat survey on ICT usage in households, and by individuals (2014), isoc\_ec\_ibuy

<sup>10</sup>Duch-Brown and Martens (2015) “Barriers to Cross-border e-commerce in the EU Digital Single Market”, JRC-IPTS Digital Economy working paper no 2015-07, available at <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/barriers-cross-border-e-commerce-eu-digital-single-market>

<sup>11</sup>Regulation (EU) No 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programme for the years 2014-2020, OJ L 84, 20.3.2014. Commission Communication “A European Consumer Agenda - Boosting confidence and growth”, 22.5.2012, COM(2012) 225 final.

<sup>12</sup>According to the latest Competitiveness “Check-up”, 77% of European companies believe that EU regulations are not sufficiently clear and predictable – see the summary of the Competitiveness Council of 1 October 2015: [http://www.politiekcompendium.nl/id/vjxtjx6htfz7/nieuws/competitiveness\\_council\\_competitiveness](http://www.politiekcompendium.nl/id/vjxtjx6htfz7/nieuws/competitiveness_council_competitiveness)

<sup>13</sup>Commission Communication “A Digital Single Market Strategy for Europe” COM (2015) 192 final: [http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication\\_en.pdf](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf)

*and improve the coordination of their market monitoring activities and alert mechanisms to detect infringements faster*"<sup>14</sup> thanks to the **review of the CPC Regulation**.

Stronger enforcement of consumer legislation at the EU level was also called for by the European Parliament<sup>15</sup>, as well as by all categories of stakeholders (and especially by trade and consumer associations), who responded to the public consultation on the CPC Regulation review carried out over the winter of 2013-2014<sup>16</sup>, or who participated in various events such as the EU consumer Summits in 2013, 2014 and 2015. Furthermore, in September 2015, in their contributions to the debate on the completion of the Internal Market, Business Europe and a group of 17 Ministers of Economy from different Member States stressed the importance of coordinated and stepped-up enforcement across the EU<sup>17</sup>.

## 1.2. Policy context

The CPC Regulation provides a cooperation framework between national authorities of the EU<sup>18</sup> so that their action can overcome national jurisdictional boundaries to incorporate the full dimension of the Single Market<sup>19</sup>. The primary aim of the CPC Regulation is to ensure legal certainty within the Single Market via strong and equal enforcement of key EU consumer *acquis* (listed in its Annex<sup>20</sup>). National enforcement arrangements for the consumer laws are not sufficient in a cross-border context. In particular, in the absence of an EU framework to approximate cooperation powers and procedures, Member States would need to rely on a large number of bilateral agreements among themselves (for example to recognise evidence) or on long cumbersome judicial procedures against traders established in different Member States. Such cross-border enforcement cooperation is therefore key to preventing non-compliant traders from exploiting gaps and limitations in the enforcement capacity of each Member State. This is done through a structured mechanism of alerts and bilateral mutual assistance, based on a set of minimum powers that national authorities need for an efficient and legally sound cooperation. There is also a mechanism to tackle malpractices concerning more than two countries, where Member States coordinate their actions to jointly address issues of common interest, possibly at the EU level, as well as provisions for developing exchange of best practices.

The results of the evaluation of the CPC Regulation carried out in 2012, public consultation and other support studies undertaken for this impact assessment<sup>21</sup> show that enforcement

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<sup>14</sup>Ibid, p. 5.

<sup>15</sup>The European Parliament has repeatedly underlined the need for stronger enforcement action by the Commission and Member States and consequently called for the development of the CPC network, cf. the European Parliament resolution on governance of the Single Market (2013): <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0054&language=EN&ring=A7-2013-0019>

<sup>16</sup> A summary report of the public consultation by the Consumer Policy Evaluation Consortium, 16.4.2014: [http://ec.europa.eu/consumers/enforcement/cross-border\\_enforcement\\_cooperation/docs/140416\\_consultation\\_summary\\_report\\_final\\_en.pdf](http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140416_consultation_summary_report_final_en.pdf)

<sup>17</sup>The letter of 25 September 2015 was addressed to VP Katainen and Commissioner Bienkowska and was signed by the Ministers/Vice-Ministers from CY, CZ, DK, EE, FI, HR, IE, IT, LT, LV, MT, NL, PL, PT, SI, SK and UK (the letter is not published).

<sup>18</sup>Authorities in the EEA are also concerned as the CPC Regulation is of the EEA relevance.

<sup>19</sup>The Regulation provides a legal basis to extend national procedural rules so that they can be applied in cross-border situations, i.e. when a malpractice by a trader established in one Member State targets consumers in another Member State. See Annex V for more information on the CPC Regulation and its impact on national enforcement systems.

<sup>20</sup>The annex of the CPC Regulation currently covers 18 different pieces of consumer legislation and is regularly updated when substantive laws are added, modified or repealed. The list covers large scope directives, e.g. regarding unfair commercial practices, unfair contract terms, consumer rights, guarantees, e-commerce, ADR, e-privacy or sector-specific legislation on passenger rights or consumer credit.

<sup>21</sup>See Annex I for more details.

cooperation is indispensable to address efficiently breaches of consumer legislation spreading across the Single Market and especially across the Digital Single Market. However, the evaluation has also pointed out that the effect of the CPC Regulation is incomplete and that none of the specific objectives of the CPC Regulation have been fully achieved. On 1 July 2014, the Commission adopted a report on the functioning of the CPC Regulation. It presented the activities carried out under the CPC framework, as well as a number of flaws and gaps identified in the evaluation and public consultation which do not allow maximising potential benefits of this enforcement cooperation in the future<sup>22</sup>.

On the basis of the conclusions drawn by the evaluation and problems detected, this impact assessment serves to scrutinise certain potential amendments to the CPC Regulation, which the Commission is reviewing as part of the DSM Strategy and in line with the review requirement under Article 21a of the Regulation. This impact assessment report is limited to the issues concerning the public enforcement cooperation (in the collective interest of consumers and in the realm of the CPC Regulation) and does not address individual enforcement matters (where an individual consumer aims to enforce his/her rights before courts or alternative dispute resolution entities).

### **1.3. Drivers of the inefficient cross-border enforcement cooperation**

The evaluation report and other support studies have identified the following issues which mostly concern limitation of the current CPC legal framework available for consumer protection authorities to cooperate on a sound and formal legal ground that is necessary for them to act beyond their national jurisdiction boundaries (e.g. for the interest of consumers based in another EU country). These flaws are particularly apparent in a context of rapid changes of consumer markets and the digital economy, a growing presence of operators acting on the whole EU market and a downward pressure on resources available to enforcers.

#### *1.3.1. Limited scope: certain important infringements to consumer legislation with a strong cross-border dimension are not or are not explicitly included in the scope of the CPC Regulation*

- Short-lived infringements

The digital environment allows traders to target massive numbers of consumers rapidly and makes it possible for rogue traders to discontinue or restart a detrimental practice quickly. For example, just prior to the initiation of an enforcement action against a website, deemed non-compliant with consumer rules, the trader can easily close it down escaping the legal consequences of his actions. Consequently, this trader can endlessly repeat the operation later on. Common examples of such practices are misleading advertising of "free" or "limited in time" promotional offers which then turn out to be unwanted long-term subscriptions<sup>23</sup>, or "super cheap" offers whose availability is very limited. Such practices produce a detriment to consumers which only becomes evident later as explained in Box 2.

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<sup>22</sup>Commission report 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, 1.7.2014, COM(2014) 439 final: [http://ec.europa.eu/consumers/enforcement/cross-border-enforcement-cooperation/docs/140701\\_commission\\_report\\_cpc\\_reg\\_en.pdf](http://ec.europa.eu/consumers/enforcement/cross-border-enforcement-cooperation/docs/140701_commission_report_cpc_reg_en.pdf)

<sup>23</sup>Biennial report of the UK Member State on the application of the CPC Regulation 2010-2012, March 2013: [http://ec.europa.eu/consumers/enforcement/crossborder-enforcement-cooperation/docs/cpc\\_biennial\\_2013\\_en\\_en.pdf](http://ec.europa.eu/consumers/enforcement/crossborder-enforcement-cooperation/docs/cpc_biennial_2013_en_en.pdf)

In addition, the preliminary results of an unpublished study on misleading free trials and subscription traps commissioned by the Commission shows that 1 in 5 consumers who ordered a free trial had problems (such as a subscription trap) afterwards.



**Box 2: A deceptive air carrier advertisement campaign that lasted 4 days but resulted in flight cancellations for months**

An air company, registered in country A, carried out an "instant" marketing campaign in country B from 10-14 September 2010. It was considered by the CPC authority in country B to be unfair as some of the cheap airline tickets sold were later on cancelled by the carrier due to insufficient seat availability. The CPC authority of the country B passed the case to the CPC authority of the country A to prevent repetition of such an infringement in the future. The requested authority in the country A responded that under Article 8(1) of the CPC Regulation it could only act to cease or prohibit an infringement. As the campaign in question had ended, it could no longer take an action. (*Explanation of how the preferred option could address this shortcoming and the ones in other boxes below is to be found at section 7.4.*)

The CPC authorities' responses to the public consultation indicated that short-lived infringements represent a significant and growing share of cross-border infringements. For example, competent authorities in CZ, LV and HU indicated that ca. 62-89% of cross-border infringements were short-lived<sup>24</sup>. In addition, a study procured by the Commission in 2015 found that 100 out of 320 websites selected for a mystery shopping about free trials traps were no longer accessible or the initial offer was no longer available two months later<sup>25</sup>. The CPC Regulation, however, can only be invoked to take an action to cease or prohibit "on-going" infringements<sup>26</sup>. If a malpractice takes place for only a few days, it will not be covered by the current CPC cooperation mechanisms, despite its possible lasting impact on consumers.

- Widespread infringements made simultaneously by multi-national companies in several Member States

Infringements committed simultaneously in several countries by subsidiaries of the same multinational company, or via a network of agents or franchisees are currently not explicitly regulated by the CPC Regulation<sup>27</sup> and are not systematically examined and tackled by the CPC network. In most cases, malpractices perpetrated by these traders are treated as "parallel" domestic infringements and are addressed independently by national enforcement authorities. In doing so, authorities fail to take into account the EU dimension of malpractices and the need for a coordinated EU-level action to offer a consistent approach across borders.

This issue may currently be underestimated by consumers and authorities as many e-commerce transactions have a transnational component that is not apparent as such<sup>28</sup>. At the CPC workshop of 24 June 2014, the representatives from 19 Member States confirmed that they were increasingly facing infringements by traders operating through subsidiaries or other forms of local presence. Online trade, in particular, is dominated by a few companies given

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<sup>24</sup>During the survey, the Hungarian authority for consumer protection mentioned that in most of cases it acted in matters and complaints regarding no longer on-going infringements.

<sup>25</sup>Study on misleading free trials and subscription traps by GFK (forthcoming).

<sup>26</sup>Article 3(b) of the CPC Regulation defines the intra-Community infringement as an act or omission contrary to the laws that "harms or is likely to harm" the collective interest of consumers. This article has to be read in conjunction with Article 8(1): "a requested authority shall, on request from an applicant authority, take all necessary enforcement measures to bring about the cessation or prohibition of the intra-Community infringement without delay".

<sup>27</sup>In this case the ownership structure and the links between the multinational company and its local subsidiaries is not the key element, because what counts is the same practice used in different Member States.

<sup>28</sup>The latest Consumer Scoreboard results suggests that the incidence of cross-border online purchases within the EU is considerably under-reported, since consumers are not always aware that they are buying from another EU country: "In approximately four out of ten of the cases where respondents bought cross-border from another EU country, they reported a domestic purchase.", cf. 11<sup>th</sup> Consumer Scoreboard edition, p. 58.

that the top 100 companies at the EU level represent more than half of this trade<sup>29</sup>. The problem of widespread infringements also concerns certain economic sectors with a high concentration of multinational operators, such as international passenger transport or telecommunications, which act both offline and online.

- Infringements concerning unjustified geographical discrimination

The Commission's DSM Strategy of May 2015 identified unjustified discrimination regarding access or price of a service/good based on criteria linked to the nationality or residence of consumers as a practice hindering the development of the DSM. The overall issue (often referred to as "geo-blocking") needs further consideration and therefore the Commission launched a public consultation. In its Strategy for Upgrading the Single Market adopted on 28 October 2015, the Commission announced that the outcome of this consultation will provide important insights for the Commission's forthcoming legislative action in the domain which *"must go hand in hand with strengthened enforcement in each Member State, which, as announced in the Digital Single Market Strategy, must be further enhanced through the reform of the Consumer Protection Cooperation Regulation"*<sup>30</sup>.

In fact, improving the implementation of Article 20 of the Services Directive<sup>31</sup> has been a political priority for many years<sup>32</sup>. One of the issues identified was an insufficient enforcement of this provision<sup>33</sup> as it requires a well-functioning mechanism in a cross-border context. Not a single company in any of 28 Member States has ever been fined for infringing Article 20 of the Services Directive since 2009, i.e. the year when the Services Directive should have been transposed in Member States. European Consumer Centres report that most infringements concerning unjustified geographical discrimination are not reported by consumers due to their lack of knowledge of their rights, and they estimate that the problem is growing with the development of e-commerce (74% of the complaints received by ECCs regarding price differences or other geographical discrimination relate to online cross-border purchases<sup>34</sup>). At present, Article 20 of the Services Directive is however not part of the CPC Regulation's Annex (i.e. the CPC cooperation mechanisms cannot be used to enforce it). It

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<sup>29</sup>Commission staff working document accompanying the DSM Strategy "A Digital Single Market Strategy for Europe - Analysis and Evidence", 6.5.2015, SWD(2015) 100 final, p. 8: [http://ec.europa.eu/priorities/digital-single-market/docs/dsm-swd\\_en.pdf](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-swd_en.pdf).

<sup>30</sup>COM(2015) 550 final, p.12, <http://ec.europa.eu/DocsRoom/documents?locale=en&tags=single-market-strategy-2015-communication>

<sup>31</sup>Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ 376, 27.12.2006, p. 36.

<sup>32</sup>E.g. the European Parliament has made a call for an effective implementation of Article 20(2) of the Services Directive, as well as the proper enforcement by national authorities and courts of the national provisions implementing this non-discrimination rule in the legal systems of Member States (cf. European Parliament resolution of 21 September 2010 on Completing the Internal Market for E-Commerce (2010/2012(INI)); points 31 and 32); Conclusions of Competitiveness Council on Digital Single Market and Governance of the Single Market of 30-31 May 2012, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209958%202012%20REV%201>

<sup>33</sup>Cf. Report of the European Consumer Centers' Network on Analysis of Article 20(2) and Article 21 related consumer complaints reported to ECC-Net between 2010 and 2012: [http://ec.europa.eu/consumers/ecc/docs/eccservices\\_directive\\_en.pdf](http://ec.europa.eu/consumers/ecc/docs/eccservices_directive_en.pdf); Commission Staff working document with a view to establishing guidance on the application of Article 20(2) of Directive 2006/123/EC on services in the internal market, SWD(2012) 146 final, 8.6.2012.

<sup>34</sup>Commission's DSM Strategy, p. 6: [http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication\\_en.pdf](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf)

was mentioned as one of the possible areas to be included in the scope of the CPC Regulation by the evaluation<sup>35</sup>.

### 1.3.2. *The minimum powers for national authorities to cooperate are insufficient to tackle infringements in the digital environment efficiently and swiftly*

The CPC Regulation requires Member States to implement investigation and enforcement powers necessary for the application of the CPC Regulation<sup>36</sup>. These powers are specified in Article 4(6), which serves as the common minimum denominator of all the powers available to Member States in a cross-border context. Without this minimum common denominator<sup>37</sup> the Member States would not be able to cooperate efficiently: to gather and exchange evidence in a legally sound manner (e.g. to ensure that results of an investigation based on the mystery shopping exercise can be used in both countries), to prove and stop infringements and to deter them for the future. This is why it is important that the harmonised list of minimum powers set in Article 4(6) contains all the powers necessary for an enforcement action on the concerned markets.

There are a number of misconducts<sup>38</sup> currently developing on the digital markets, which cannot be efficiently tackled under the current cooperation framework.

- Relocating and/or altering of business practices or hiding/altering of identity to escape enforcement actions

In the digital environment, it may be relatively easy for rogue traders to exploit jurisdictional boundaries and limitations and cause substantial detriment to the consumer. The trading activity of these traders may be quickly closed, only to re-appear in a slightly modified form elsewhere as demonstrated by the case in Box 3.

**Box 3: Cheap design furniture online: never delivered, but impossible to catch the responsible trader<sup>39</sup>**

In 2013 and 2014, a large number of consumer complaints (nearly 5,000) were received by the European Consumer Centres, particularly in France and Germany, regarding the late delivery or non-delivery of furniture from a certain online trader. Although the CPC network has commenced an investigation, the strategy of the company made it difficult for authorities (i.e. in IT, DE, FR, ES, UK, IE, SE, AT) to investigate and stop the infringement due to insufficient means to address effectively the problem of the trader changing its holding structure (legal

<sup>35</sup>The evaluation of the CPC Regulation looked into the appropriateness of the Annex of the CPC Regulation and considered several pieces of legislation that are currently outside its scope. It concluded that a limited update could be necessary based on the following criteria: i) impact on collective interests of consumers; ii) cross-border relevance; iii) public enforcement dimension; and iv) consistencies with the sectorial and horizontal legislation currently listed in the Annex. On this basis, several pieces of legislation were recommended for their inclusion in the CPC Regulation's Annex, see Annex VII "Technical changes to the CPC Regulation" which also includes a mapping of all sectorial legislative instruments in the Annex and the proposed additions examining the interaction of their eventual remedy mechanisms with the CPC system.

<sup>36</sup>Article 4(3): "Each competent authority shall, (...), have the investigation and enforcement powers necessary for the application of this Regulation and shall exercise them in conformity with national law".

<sup>37</sup>The powers used in the cross-border context have to stem from the EU-level instrument that surpasses national jurisdictional boundaries.

<sup>38</sup>For more practical case examples, cf. Annex IV.

<sup>39</sup> It is important to distinguish between fraud as a criminal offence and the instances of unfair commercial practices covered by consumer law. The offence of fraud is commonly defined, under national criminal law, as an intentional deception made for personal gain or to damage another person. Even though there may be deceitful elements in the mentioned cases of unfair commercial practices they often do not qualify as fraud under the relevant national criminal law rules but they can nonetheless constitute a breach of EU consumer legislation (administrative or civil offence).

entities), location and name (several websites sold the same goods but under different websites names registered in different countries), its operational structure (the company had a customer service which was relocated to a different country several times, but no fixed showroom or warehouse, which were needed to establish its legal place of establishment), and closing down and reopening its websites following enforcers request to modify its practices. It took more than three years to authorities to discover who was behind this trade. Ultimately they got partial information and evidence thanks to the intervention of a criminal prosecutor in one country that could finally be involved in this case. The possibility, e.g. to directly order the closing down of the websites and to obtain information from domain registrars, could have permitted to stop such practices much faster.

Although the total amount of consumer detriment is unknown, a UK newspaper article<sup>40</sup> on the case highlights that many consumers were “*left thousands of pounds out of pocket*”. Further, the two European Consumer Centres concerned by this infringement estimated the detriment of more than EUR 1.2 million for ca. 3,300 complaints received.

In such cases, the trader usually hides its identity behind a number of intermediaries and linked companies. Authorities have limited powers to obtain information on the real trader behind the malpractice and may need to seek the help of specific authorities (such as financial police) or third parties (such as domain registrars). The main problem in this context is the difficulty with gathering evidence, including who the real trader hiding behind many intermediaries is, and hence proving and stopping the infringement.

#### **Box 4: Example of difficult cooperation with domain registrars**

One of the CPC authorities<sup>41</sup> experienced recurring problems regarding a trader's hidden identity. The domain registrars, in response to the authority's requests to reveal the trader's identity, refused to disclose the data due to data protection legislation. There was however no sufficient evidence to initiate a criminal proceeding, which would have been the only solution to obtain the data in the country in question.

- Traders having good pre-contractual information on their websites but not respecting consumer rights during the sale or after the sale

Traders often attract consumers with nice websites but once the consumer has proceeded with an order the trader pays less attention to consumer rights and implements consumer rights infringements such as unjustified payment fees, lack of an efficient complaint service, or refusal of withdrawal right (i.e. according to Articles 11 and 14 of the Consumer Rights Directive<sup>42</sup>). These traders benefit from the difficulty that enforcers face to get evidence on these practices as enforcers need to recreate the consumers' experience (i.e. enter into the contract with the trader, buy a good, and then exercise the right of withdrawal)<sup>43</sup>. In certain cases a trader changes its behaviour *ad hoc*, knowing that its commercial practices are being investigated. Therefore, the main problems in this context are the difficulties with gathering and exchange of evidence and hence proving and stopping the infringement. For instance, the

<sup>40</sup>Guardian (2014): <http://www.theguardian.com/money/2014/may/15/infurn-fury-customers-lose-on-designer-furniture>

<sup>41</sup>The authority is not divulged for confidentiality reasons.

<sup>42</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, OJ L 304, 22.11.2011, p. 64.

<sup>43</sup> Although the scale of this problem cannot be estimated precisely, the data from the ECC-Net shows that the top five grounds of complaints concerning cross-border purchases online in 2014 were: non-delivery (15% of all cases), defective products (11%), problems with contracts (10%) and product or service not in conformity with the order (9%).

evidence collected through mystery shopping exercise (the latter power is not listed in Article 4(6) of the CPC Regulation) in one Member State (e.g. Latvia) could not be used in another Member State, where its authority does not have such a power (e.g. Italy), because it would not be obtained in line with the national law of that Member State.

- Traders repeating malpractices due to the insufficient deterrent effect of sanctions

The availability and choice of sanctions has an impact on the degree of deterrence of public enforcement. The need for sanctions is regulated as part of the substantive legislation included in the Annex of the CPC Regulation. The types of sanctions and their levels are set by national laws. They may however not be applicable in a cross-border context. As a consequence for some Member States, if the infringement is committed in a cross-border context, it may not be sanctioned or the sanction may not reflect the overall dimension of the offence (over all the markets concerned) and its deterrent effect will be limited.

In the workshops held with the representatives of the CPC authorities on the review of the CPC Regulation, there was a call to clarify the provisions of the CPC Regulation regarding the sanctioning powers of authorities. The Regulation does not mention specifically the power to impose pecuniary sanctions (fines) in the context of the enforcement cooperation, although such power exists at national level in all Member States for domestic infringements.

- Infringements remain unnoticed by consumers due to the poor awareness about their rights and/or too low sums involved

Another issue is that the CPC Regulation does not specify that investigation/enforcement actions can be initiated on "own initiative" and this is an issue as certain problems tend to be under-reported by consumers<sup>44</sup>. Consumers' awareness of some key consumer rights guaranteed by EU legislation remains limited<sup>45</sup>. Further, an infringement can generate intentionally only very small individual losses (e.g. a few euro cents for unwanted premium telecom services) but be suffered by many consumers thus producing a great collective detriment. If an authority can only start investigations once it has received a sufficient number of complaints, such infringements may remain unaddressed for a long time. Additionally, the deterrent effect of the enforcement system is low since rogue traders will know that authorities are not allowed to start investigation on an own initiative basis but need actual complaints.

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<sup>44</sup>According to the 11<sup>th</sup> Consumer Conditions Scoreboard (p. 45), the majority of consumers do not complain despite feeling they have a legitimate reason to do so. From 1,490 consumers concerned regarding this issue, four in ten said they were unlikely to get a satisfactory solution to the problem they encountered (40%) or thought it would take too long (38%), while a third (34%) said the sums involved were too small. Around one in five said they did not know how or where to complain (23%), that they had tried to complain about other problems in the past but were not successful, that they were unsure of their rights as a consumer (both 22%). Overall 80% of those who did not take any action were discouraged from complaining by the (perceived) difficulties, such as low likelihood of success, lack of information on whether and how to proceed or the expected length of the procedures.

<sup>45</sup>According to the 11<sup>th</sup> Consumer Conditions Scoreboard (p. 17-19), only a third of consumers (33%) know that they do not have to pay for or send back unsolicited products, four in ten (41%) know that they have the right to a free repair or replacement of defective goods, while slightly over half (56%) are aware of the right to a cooling-off period in relation to distance purchases. In the EU as a whole, only 9% of consumers could answer correctly all three of the questions put to them, with the youngest segment being the least knowledgeable. Further, data from airlines indicate that only between 5 and 10% of passengers entitled to compensation in case of cancellation or long delays (where financial compensation is not automatic but needs to be claimed) do actually claim it. This low "claim rate" is partly explained by the low awareness of passengers about their rights, see the Commission's impact assessment report accompanying the proposal for air passenger rights, SWD(2013) 62 final, 13.3.2013.

Besides, the CPC Regulation contains no specific mechanism for consumers to obtain redress when their rights are violated, as its main aim is to prevent and halt malpractices to protect the collective interests of consumers<sup>46</sup>. Such a mechanism would be beneficial in increasing the deterrent effect on non-compliant traders engaged in cross-border operations, as, in addition to sanctions, they would have to pay compensation to consumers in all the countries targeted by their practices.

To address these malpractices, not all authorities currently possess the necessary investigation and enforcement powers. Furthermore, even if these powers would be available in certain countries under national laws, they would need to be made available also in a cross-border context through a legally sound framework (i.e. the CPC Regulation) to produce evidence admissible in legal proceedings in other countries. There is a great disparity among the Member States as evidenced in Box 5 concerning the most commonly needed powers to tackle online infringements:

<b>Box 5: Powers</b>	<b>Not available in</b>
<b>Tackle past infringements</b>	DE, FR, LT, LV, LU
<b>Mystery shopping</b>	AT, BE, CY, DE, EE, EL, HR, IT, LT, LU, MT, PT, SE
<b>Test purchases</b>	AT, BE, EL, IE, IT, LT, LU, MT, PL, RO, SE
<b>Naming of infringing traders</b>	CZ, DE, FR, HR, PT
<b>Take down websites/domains</b>	AT, BE, BG, CZ, DE, FR, EL, HR, HU, IE, LT, LV, MT, NL, RO, SK, SI
<b>Withdraw/ suspend trade activity (interim)</b>	AT, BE, CY, DE, EE, IE, LU, NL, PL, PT, SE
<b>Order consumer compensation</b>	All Member States, except EE, ES, PT, RO, UK

Where traders fail to comply with consumer law, enforcers usually first seek to work informally with the trader to secure change of its behaviour. This approach can be very effective in cases of less severe breaches of consumer law as it is less costly than going to courts<sup>47</sup>. Yet, the CPC enforcers currently lack the flexibility to choose the most appropriate enforcement means when dealing with breaches of consumer law in a cross-border context: they cannot choose the more appropriate, cheaper, and flexible enforcement tools that could in appropriate cases remove the infringement without delay.

<sup>46</sup>Research completed by the Lincoln Law School (2008), as cited by the UK BIS in the impact assessment of the UK Consumer Rights Bill, has shown that consumers generally benefit from public enforcement through prevention of the spread of malpractice, but consumers seldom obtain compensation. Consumers wanting to obtain redress are obliged to pursue separate action through courts but they often do not do so see the footnote below), due to the perceived complexity, risk or cost of the process, [http://eprints.lincoln.ac.uk/3298/1/BERR\\_Report.pdf](http://eprints.lincoln.ac.uk/3298/1/BERR_Report.pdf)

<sup>47</sup>The average cost of court case is estimated at EUR 4,870. The average cost of case involving undertakings is ca. EUR 1,527. These estimates are based on the UK data used in the impact assessment of Consumer Rights Bill/Proposals on enhanced consumer measures, January 2014: <https://www.gov.uk/government/publications/consumer-rights-bill>. The information used in the UK impact assessment relied on the data concerning cases handled by local enforcement authorities. Cases were not complex, explaining low average costs. CPC authorities were consulted on these estimated and in principle agreed with them. See Annex IV for more information.

### 1.3.3. Divergences in procedural standards in the Member States

Under the CPC Regulation, the CPC authorities have to follow national procedural rules, which may result in substantial differences: e.g. the degree, type, quality, and admissibility of evidence required to establish infringements to consumer legislation. The information established by a requesting Member State may be insufficient for an enforcement action in another Member State. This was particularly stressed in the 2012 evaluation report<sup>48</sup> and in studies which were procured by the Commission to support this impact assessment.

The interpretation of the notions of “sufficient information” and “necessary evidence”<sup>49</sup> in the CPC Regulation therefore depends on national procedures. Where the action has to be brought by the requested authority before a court, the standard of evidence may be higher than in administrative proceedings. Some authorities may require information such as written statements of consumers, as well as the provision of readable screenshots as evidence of the infringements, containing the name of the creator and the creation date, as well as the URL of the part of the website and comprehensible booking steps. This not only creates delays in handling cases (e.g. delays in receiving relevant evidence or in evaluating its providence and reliability) but also may leave infringements unaddressed. For instance, the authority concerned may not be able to obtain the evidence required due to lacking powers or because a specific format of evidence is needed that is not recognised by its national procedural rules.

#### **Box 6: Example of divergences in the requirement for "evidence" among countries**

A CPC authority in country X received around 1,000 complaints regarding a travel services company based in a country Y. The authority X provided extensive evidence (dozens of complaints with attachments and its own investigation report). The authority Y however required written statements from consumers in the language of Y which authority X was not able to supply. No enforcement action was taken and the same online practice continued, resulting in detriment for consumers as they could not recover the money which was charged for their travel reservation.

### 1.3.4. Significant delays in handling mutual assistance requests

In addition to the lack of clarity as to what constitutes “sufficient information” and “necessary evidence”, no binding time-limits for handling CPC mutual assistance requests exist<sup>50</sup>. Since 2008 the Commission launches every year the “open cases review” exercise, which aims at ensuring that no mutual assistance request remains unresolved over a long period of time. The Commission applies the following benchmarks, which are set in the Operating Guidelines: requests for information should be handled within 3 months and requests for enforcement measures within 9-12 months. The requested authority should regularly update the applicant authority about the actions taken, at least every 3 months. By the end of 2014, almost 40% of the information requests and 50% of the enforcement requests were not treated and closed within the benchmarks set in the Operating Guidelines. 26% of all open cases were created more than two years ago. Causes for these delays are various: insufficient powers (e.g. adopt interim measures to quickly address an infringement or to obtain the evidence), divergent national procedural rules (e.g. regarding evidence, see above), insufficient resources to

<sup>48</sup>p. 12 of the 2012 external evaluation report.

<sup>49</sup>Article 12 (1) of the CPC Regulation provides “The applicant authority shall ensure that all requests for mutual assistance contain sufficient information to enable a requested authority to fulfil the request, including any necessary evidence obtainable only in the territory of the applicant authority”. Further, Article 15(2)(c) provides a ground for refusing to deal with a mutual assistance request if “insufficient information” was provided by the requesting authority.

<sup>50</sup>Section 2.1.2 of the Annex of the Commission implementing decision of 22 December 2006 provides that the time-limits for addressing requests for mutual assistance have to be agreed by the applicant and requested authorities on a case-by-case basis.

address requests in time, prioritisation of domestic infringement cases over CPC infringement cases. Delays result not only in the waste of resources, but they also contribute to prolonged detriment for consumers in cases where infringements are not quickly stopped.

#### *1.3.5. The potential contribution of the Commission to assist Member States in enforcement efforts is unclear and limited*

In the field of consumer protection – contrary, for example, to the EU competition policy – the Commission does not have investigation and enforcement powers to deal with issues that are relevant at the EU level. The current provisions of the CPC Regulation endow the Commission with a coordinating role or an opinion formulating role in cases where CPC authorities have not found a satisfactory solution. The Regulation provides that, upon request of the Member States, the Commission "may be invited"<sup>51</sup> to participate in coordinated enforcement actions, which aim to address widespread infringements concerning more than two Member States (Article 9 of the CPC Regulation). However, there is no further precision on the role of the Commission and no possibility for it to initiate an action or even participate in one if not invited. It is also unclear under which conditions the Commission could refuse to participate. Up to now, the Commission and Member States have been working together on the basis of gentlemen's agreement, but this is not sufficient: national authorities have required more legal clarity for such actions, especially to provide them with the means to act, should the negotiation with traders fail. In addition, lack of clarity and predictability lead to lower deterrence.

The 2012 evaluation report considers that there is a potential for a stronger role for the Commission in the CPC context<sup>52</sup>. All groups of stakeholders responding to the public consultation also agreed that the Commission's role is too limited in the current CPC Regulation and especially would like to see its role enhanced to assist national authorities in the detection and investigation of EU-relevant infringements and ensure the good functioning of the procedures set out to tackle these infringements. There was however, no support for direct investigation and enforcement powers of the Commission in cross-border infringements.

#### *1.3.6. Insufficient sharing of evidence*

Obtaining adequate evidence of an infringement may be costly. For example, 26 CPC authorities worked more than 730 hours in the investigation phase of the last EU-wide screening of websites on guarantees which concerned 437 websites selling electronic goods (an estimated EUR 30,295 in staff costs). Insufficient sharing of intelligence among authorities and with the Commission thus consumes unnecessarily substantial resources. Further, the detection of widespread infringements comes too late, partly because of malfunctioning of the current CPC alert mechanism.

Exchanging alerts is foreseen in the CPC Regulation but the external evaluation points to a decline in the use of alerts among CPC authorities. It identifies as possible causes an overall lack of clarity regarding the purpose, use and follow-up of the information provided through alerts, and their confusion with information requests.

Also, information exchanged is currently not always relevant to those receiving it. At present, the alert message is sent untargeted, as a blanket alert to all authorities connected to the CPC database, irrespective of its relevance or priority, and no feedback about follow-up actions is

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<sup>51</sup>Article 9(3) of the CPC Regulation.

<sup>52</sup>p. 78 of the 2012 external evaluation report.



required. Further, the alert mechanism is not open to organisations, active in consumer protection which could have relevant information. The Commission cannot post alerts either, though it can study EU-wide emerging malpractices or circulate information on specific risks provided by other parties (e.g. from non-EU authorities, consumer associations or the ECC-Net).

### *1.3.7. Insufficient resources and infrequent use of the CPC in some Member States*

In accordance with Article 4(7) of the CPC Regulation, "*Member States shall ensure that competent authorities have adequate resources necessary for the application of this Regulation*". The 2012 evaluation report however points to the shortage of personnel in single liaison offices and competent authorities working on the CPC cooperation in several Member States, noting differences in resources and enforcement capacity across the CPC authorities<sup>53</sup>. The average number of personnel per competent authority is at 4.4 and per single liaison office is at 3.42. In most competent authorities/single liaison offices, less than 2 enforcement officers are employed who deal with mutual assistance issues. Furthermore, the actual number of the personnel in charge to deal with the CPC issues might be actually lower because the personnel does not exclusively handles the CPC related matters and often deals with mixed situations. The evaluation report also identifies a preference in case of scarce resources to use them for domestic infringements.

## **1.4. Problems**

The above-identified drivers contribute to a number of problems which limit the effectiveness and efficiency of the cross-border enforcement cooperation in consumer markets. The following **three problems** are mostly linked to the limitations of the current CPC legal framework.

### *1.4.1. Problem 1: Insufficient mutual assistance cooperation mechanisms*

The 2012 evaluation report concluded that the utilisation of mutual assistance mechanisms is sub-optimal, in particular taking into account the number of domestic infringements, cross-border complaints and the extent of cross-border trade relating to the 18 legislative acts within the scope of the CPC Regulation<sup>54</sup>. The evaluation states that "*a much greater volume of cases are therefore needed if the full benefits of the CPC Network are to be realised*"<sup>55</sup>. Measures to encourage use, awareness and common understanding of the CPC framework were recommended.

In 2014, there were 297 CPC cases recorded in the database<sup>56</sup>, and this number has been stable since 2007. Statistics on the case-handling in the CPC also show that about half of cases are handled within a time period exceeding the agreed time-frame in the Operating Guidelines.

The current mutual assistance cooperation mechanisms are principally geared to address simple bilateral infringements reflecting the cross-border trade of the past (early 2000s) whereby the trader and the harmed consumers are located in two different Member States. Only this type of cases is currently recorded in the CPC database, however, such cases

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<sup>53</sup> See section 7.2 of the external evaluation report.

<sup>54</sup> p. 14-15 of the 2012 external evaluation report.

<sup>55</sup> Ibid.

<sup>56</sup> Data from the CPC System: in 2014 there were 35 alerts (under Article 7 of the CPC Regulation), 130 enforcement requests (under Article 8) and 132 information requests (under Article 6).

constitute only one fraction of the CPC network's work. There has been an increase in other CPC activities, especially those targeting widespread infringements.

Indeed, taking into account the recommendations of the 2012 evaluation report, the Commission has continued to promote and enhance the use of the existing CPC Regulation through an increased number of coordinated activities based on priority areas agreed by the CPC Committee<sup>57</sup>.

**Box 7: What initiatives have the CPC network and the Commission undertaken within the existing legal framework to address its current limitations?**

The Commission and the CPC network are continuously organizing **legal workshops** to promote the common understanding of EU consumer law and emerging threats for consumers in key priority areas: for example, seminars on misleading practices in air transport, financial services and telecommunications took place in 2013-2015.

In parallel, the Commission made efforts to develop **interpretative guidelines** to further facilitate enforcement and compliance as EU consumer protection and policy expanded. The guidelines on the application of the Consumer Rights Directive and on the Unfair Commercial Practices Directive are promoting a common understanding in the assessment of cases and thus improve enforcement of consumer law.

The Commission has also reviewed the **Operating Guidelines** of the CPC network, which provide enforcers a quick and easy reference to the main principles, best practices and key documents related to the network's operation and the best use of the IT-tool.

Further, **capacity building** and **control activities** were also undertaken. In 2014 the CPC committee endorsed the mandate and scope of activities of the CPC **e-enforcement group** which is dedicated to the training of enforcers regarding online investigations. The CPC projects and the e-enforcement group have used the new IT tool developed in 2014-2015 – the **CPC knowledge exchange platform** – to support collaborative work and to disseminate results to the wider CPC network. In 2015 the Commission developed an initiative to support an “**e-enforcement training academy**”, catering for both the CPC network and the product safety area where similar needs exist to strengthen enforcement of consumer legislation in online businesses-to-consumers trade.

Furthermore, the CPC Network, under the coordination of the Commission, has undertaken several **enforcement actions**. Every year the Commission consolidates the available market information to propose a topic for the screening of websites, prepares legal analysis and questionnaire to carry the screening phase, consolidates and publishes the results. Since 2007 more than 3,600 websites have been checked. These actions permitted for instance to correct about 700 websites in the tourism sector alone – this is the area with most cross-border complaints received by European Consumer Centres.

The CPC Network has also concluded **two coordinated enforcement actions** on the in-app purchases in online games in 2014 and on the car rental in 2015 (see Box 8). These two actions in fact **concerned many traders** (game developers selling through Google, Apple and Amazon which were the three parties in the action and local car rental companies, franchisees and brokers working with the five major car rental companies). The market share covered by CPC enforcement action, rather than a mere number of cases, counts most in the CPC context: for example, it was 65% of all private rentals in the EU in the CPC coordinated action on car rentals (i.e. one CPC case but with significant economic impacts).

The Commission has also taken different measures to address the lack of resources in the CPC authorities. Every year the Commission conducts monitoring of pending mutual assistance

<sup>57</sup> Concerning the CPC Committee, see Article 19 of the CPC Regulation.

requests and put pressure on the authorities concerned to speed up dealing with prolonged cases. The Commission has also taken measures against those authorities, which have not initiated enforcement actions against non-compliant traders based in their territory which were harming consumers in other countries: e.g. letters were sent and missions were organised to several Member States to increase their enforcement efforts and advance with the actions against those traders<sup>58</sup>.

All these measures (Box 7) have been effective to enhance the use of the CPC Regulation to a certain extent. However, it has also become apparent that there are certain barriers to the more resource-efficient enforcement cooperation which are associated with the CPC legal framework itself. This concerns in particular the scope of the Regulation and the rules and procedures for handling enforcement requests (such as maximum time-limits). In addition, market developments, especially in the context of the Digital Single Market, require more efficient cooperation mechanisms, for example to extend the powers of the national authorities needed for cooperation to be able to carry actual purchases online or to request information from internet intermediaries about the traders behind websites misleading consumers (see section 1.3 for a detailed explanation of the drivers of the problem 1). These barriers hamper the efficient flow of mutual assistance requests and further take up of enforcement activities across jurisdictional boundaries. And they cannot be removed without further clarification and development on substance of the existing instrument.

#### *1.4.2. Problem 2: No efficient response to widespread infringements across the EU, in particular to those occurring in the digital environment*

As mentioned above, the current CPC mutual assistance cooperation mechanisms are principally geared to address simple bilateral infringements reflecting the cross-border trade of the past. However, certain infringements to consumer legislation may occur widely in the EU, especially online as digital technologies permit easy development of the same marketing platform for several countries, and hence the same misleading practice can rapidly spread to consumers across the EU (see Boxes 8-9).

Widespread infringements are also seen in sectors with a strong cross-border trade such as travel services where operators have to align their practices at the EU level as online booking has considerably facilitated the consumers' research for competitive offers. Car rental is one of these sectors and the CPC action carried out in 2014 exposed the extent to which all operators were compelled to adopt the same type of practices (see Box 9)<sup>59</sup>.

The importance of widespread infringements was judged to be high by 82% of stakeholders replying to the public consultation on the CPC Regulation review. 91% indicated that a specific cooperation procedure to tackle infringements concerning the whole EU should be an important priority for the CPC network.

Such infringements represent indeed a big threat to the economic interests of consumers, and to the functioning of the Internal Market, especially when summed up at the EU level, as they may be perpetrated by traders enjoying important market shares in all countries. Small in absolute numbers, multinational companies (i.e. established in several Member States), have a high contribution to economies. In the EU, their turnover represents ca. 50% of the total business turnover<sup>60</sup>.

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<sup>58</sup>The Commission so far has not launched formal infringement proceedings pursuant to Article 258 TFEU.

<sup>59</sup>Cf. Commission's press release IP-15-5334 of 13.07.2015, [http://europa.eu/rapid/press-release\\_IP-15-5334\\_en.htm?locale=EN](http://europa.eu/rapid/press-release_IP-15-5334_en.htm?locale=EN)

<sup>60</sup>The large majority of enterprises that operate in the EU are domestically controlled (98,8%), with the percentage of EU- and non-EU-foreign-controlled enterprises being 0,7% (150,000 enterprises) and 0,4%

#### 1.4.1.1. Treating simultaneous widespread infringements in parallel and not in a coordinated manner creates an unnecessary duplication of enforcement efforts and inconsistencies in the concrete application of EU law

As potentially 28 authorities may take non-coordinated actions against the same conduct widespread across the EU, there is a risk of proliferation of diverging enforcement approaches and uneven consumer conditions, as demonstrated by the EU Consumer Conditions Scoreboards<sup>61</sup>.

The CPC Regulation contains harmonised provisions for tackling infringements occurring simultaneously in two or more countries<sup>62</sup> and provides that national authorities coordinate their actions so as to consistently apply the same response to malpractices spreading across the EU and avoid that a divergent approach is taken against the same breach of EU legislation (Article 9 of the CPC Regulation). However, the external evaluation report pointed out that the provisions requiring coordination on widespread infringements in the CPC Regulation are too loose to generate an efficient EU-level response<sup>63</sup>. The evaluation also stressed that each authority still has to act individually so that their action has legal validity. This is costly duplication of national enforcement efforts (it is estimated that per each coordinated action, Member States' costs could be halved thanks to a streamlined coordination procedure<sup>64</sup>). The external evaluation therefore determined the need for highly coordinated approaches or even a single action at the EU level for which the Commission could play an important role<sup>65</sup>. At the CPC workshops held (on 24 June 2014 and 18 March 2015), the participating representatives from the majority of Member States confirmed the need to clarify and enhance the mechanism under Article 9 to tackle widespread infringements, to ensure legal certainty for all concerned.

In addition, when CPC authorities take enforcement actions to cease an infringement that is widespread in the EU, they usually do so according to their national procedural rules, which are different and depend on the enforcement system in the country concerned. As a result, in some Member States the same infringement is ceased faster than in others, if at all, and the detriment suffered by consumers is prevented/stopped swiftly in certain countries, while in others it may continue indefinitely as demonstrated in the case regarding Apple's misleading advertising of commercial guarantees (see Box 8).

**Box 8: The misleading advertising of a commercial guarantee plan resulted in duplication of enforcement efforts, inconsistent enforcement approaches and unequal protection of consumers**

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(85,000 enterprises), respectively. Source: Eurostat data of September 2014, "Foreign affiliates statistics – FATS":

[http://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign\\_affiliates\\_statistics\\_-\\_FATS#Foreign-controlled\\_companies\\_at\\_the\\_EU\\_level](http://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign_affiliates_statistics_-_FATS#Foreign-controlled_companies_at_the_EU_level)

<sup>61</sup>The battery of indicators in the scoreboards is summarised in a composite index that shows fairly low levels for the EU average but also important disparities among Member States indicating that consumers do not enjoy the same level of protection of their rights across the EU. In 2014 this index whose maximum is 100%, ranges from 71% in Sweden to 53% in Bulgaria, with an EU 28 average at 61%, see the latest 11<sup>th</sup> edition: [http://ec.europa.eu/consumers/consumer\\_evidence/consumer\\_scoreboards/11\\_edition/docs/ccs2015scoreboard\\_en.pdf](http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/11_edition/docs/ccs2015scoreboard_en.pdf)

<sup>62</sup>Pursuant to Article 9(2): "When competent authorities become aware that an intra-Community infringement harms the interests of consumers in more than two Member States, the competent authorities concerned shall coordinate their enforcement actions and requests for mutual assistance via the single liaison office. In particular they shall seek to conduct simultaneous investigations and enforcement measures". Further Article 9(3) provides that "The competent authorities shall inform the Commission in advance of this coordination and may invite the officials and other accompanying persons authorised by the Commission to participate".

<sup>63</sup>See section 5.9 of the external evaluation report.

<sup>64</sup>See Annex VI for detailed calculations.

<sup>65</sup>2012 external evaluation report, p. 17.

In December 2011, the Italian CPC authority imposed a fine of EUR 900,000 on Apple for misleading advertising of its commercial guarantee scheme and misleading information on applicable legal guarantees<sup>66</sup> stemming from EU law. Consumers in the other EU Member States were targeted by the same practice described in a single webpage of the Apple website. Despite the European Commission's encouragement to other Member States to take appropriate action<sup>67</sup>, very few of them acted demonstrating, de facto, a lack of willingness to coordinate. Consumer associations complained that the lack of coordination of enforcement actions resulted in uneven consumer protection across EU, duplication of enforcement efforts and an uneven level playing field in the Digital Single Market<sup>68</sup>, and some of them decided to carry (costly and lengthy) actions on their own..

On their side, traders may decide to bring their business practice into compliance in some Member States and not in others according to their analysis of the risk of being subject to an enforcement action and to their litigation possibilities and resources. This not only undermines the deterrent effect of enforcement actions, as the scale of the sanction does not fully reflect the widespread nature of the infringement, but it also creates legal unpredictability in the Single Market<sup>69 70</sup>.

#### 1.4.1.2. What has the CPC network and the Commission done so far to address widespread infringements under the current legal framework?

The Commission has enhanced the use of the existing CPC Regulation through coordinated activities based on priority areas agreed by the CPC authorities, which addressed widespread infringements covering most of EU countries. The Commission also took a pivotal role in these coordinated actions (see Box 9). It provided data from its studies and databases, organised the dialogues with the concerned traders and published the results. By engaging itself strongly in these two actions it permitted to reach a consistent EU-level approach that persuaded the traders to fully cooperate.

#### **Box 9:**

##### **Case study (1): in-app purchases in online games marketed as free**

*Following the CPC screening of websites offering digital content products and consumer complaints about the misleading marketing of in-app (for a fee) offers in online games presented as "free", the CPC authorities presented a common*

<sup>66</sup>Decision of 21 December 2011, available: <http://www.agcm.it/consumatore/consumatore-delibere/open/C12560D000291394/57606ADEA5842FF6C1257981004A4E99.html>

<sup>67</sup>See the speech of 19 March 2013 of the Vice-President Viviane Reding, available at: [http://europa.eu/rapid/press-release\\_SPEECH-13-237\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-237_en.htm)

<sup>68</sup>For more information, see position papers of BEUC, available at: <http://www.beuc.eu/publications/2013-00457-01-e.pdf> and

[http://www.beuc.org/publications/beuc-x-2014-038\\_ama\\_review\\_of\\_cpc\\_regulation.pdf](http://www.beuc.org/publications/beuc-x-2014-038_ama_review_of_cpc_regulation.pdf)

<sup>69</sup>Business Europe's Strategy paper "Building a true single market for Europe – Business' priorities" of 28 September 2015, p. 4: "Inconsistent enforcement by some national authorities also fragments the single market – leaving businesses to navigate through the difficulties caused by unpredictability. It is also important that single market policy helps businesses to remain globally competitive.": <http://www.buinessurope.eu/content/default.asp?PageID=568&DocID=34378>. According to the latest Competitiveness "Check-up", 77% of European companies believe that EU regulations are not sufficiently clear and predictable (EU Competitiveness Council of 1 October 2015, the web-link provided above).

<sup>70</sup>Such practices as mentioned in Box 8 are not isolated instances and will continue occurring again without stepped-up, coordinated enforcement. The on-going issues regarding the deceitful emissions software installed by Volkswagen in its diesel cars show that up till now authorities reacted much differently, as the Italian competent authority has already launched an investigation while most other authorities do not have possibilities to act as the infringement is finished (see the section on short-lived infringements above) or as they have different views on the need to act.

*understanding of the breaches of consumer legislation in such a model to leaders of the industry directly at the EU level: namely Apple iTunes and Google Play, as well as trade associations representing game developers. By the end of 2014, all traders concerned changed their practices: they did not advertise games containing in-app purchases as free anymore and they considerably strengthened parental control on payments. It is estimated that at least EUR 68 million of detriment to European consumers had been generated by the identified breaches on the EU market<sup>71</sup>. Such an action was welcomed by the CPC authorities and traders concerned.*

### **Case study (2): unfair practices in the car rental sector**

Due to the steady increase of car rental related complaints registered by the European Consumer Centers, the CPC network opened a dialogue with major car rental companies and Leaseurope in 2013-2014 to resolve problems encountered by consumers renting a car cross-border. By July 2015 Avis/Budget, Enterprise, Europcar, Hertz and Sixt agreed to change their booking sites and rental desk practices to, among others, make rental price or fuel options more transparent, provide more information on insurance and waiver products and avoid the aggressive sale of expensive supplements, make sure that a consumer gives prior consent to any additional payment card charges (i.e. in case of a damage to the car). Implementation of agreed changes will be monitored in 2016 by the Commission, CPC authorities and the ECC-Net. Furthermore, in 2016 Leaseurope will issue guidance for its 45 member associations, referring to what was agreed in this coordinated action with the major industry players.

Despite their success, these coordinated actions have revealed several deficiencies in the CPC Regulation (Article 9) to address widespread infringements. In particular:

- The CPC Regulation is unclear regarding the scope of widespread infringements (see section 1.3.1 above) and the process (e.g. unclear time-line, insufficient due process safeguards for traders, unclear consequences if the traders do not implement the agreed undertakings). The current process is based on a voluntary negotiation with traders. The outcome of the coordination process ("common enforcement position") is not explicitly governed by the CPC Regulation and not binding on CPC authorities or businesses. Therefore, in case a trader fails to respect its voluntarily commitments, the work has to restart from scratch at national level to establish the infringement, duplicating the resources and cost.
- Further, Article 9 does not detail the roles of different actors (e.g. who decides on the final drafting, who communicates with traders, who chairs meetings, who negotiates undertakings, and who monitors the commitments of traders). The supporting role of the Commission is limited and not specified in the current CPC Regulation (see section 1.3.5 above). The Commission took a pivotal role in the coordinated actions described above (Box 9), which was recognised as essential to the success of the case but such an approach is not sustainable in the long-term and has a limited deterrent effect.
- Further, national priorities often take over the European priorities, resulting in several uncoordinated national proceedings which might end up in different outcomes (see Box 8 above) and thus unequal enforcement of the same provision of EU law

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<sup>71</sup> The estimation is calculated on the basis of the U.S. consumer detriment per capita, adjusted to the EU population and converted in EUR in line with the current exchange rate of the European Central Bank, see Box 9 in section 12.4 below.

regarding the same specific malpractices jeopardizing efforts to build a common action at EU level.

These current limitations of the CPC legal framework generate legal uncertainty. It prevents some authorities from active participation in coordinated actions and encourages others not to act. It also makes the process for the Commission and the lead authority taut and difficult to coordinate.

Estimates show that, in addition to increased legal certainty, a more streamlined procedure could lead to savings for national authorities, ca. EUR 180,000 in total per action. Especially these savings would be significant (ca. EUR 815,000 per action) should the voluntary negotiations have failed to produce a sufficient improvement in practice. The experience gained so far therefore confirms the need for a more developed, resource-efficient and clearer mechanism for a coordinated action under Article 9 of the CPC Regulation to address pan-European infringements.

#### *1.4.3. Problem 3: Difficult detection of infringements and lacking prioritisation of enforcement action*

The development of e-commerce and online booking services has allowed for wide-ranging marketing campaigns in a fast and cheap manner that can reach millions of consumers instantly. This requires the setting up of a much speedier intelligence-gathering system than for offline trade and also an increase in the agility and flexibility of authorities so that they can decide on priorities.

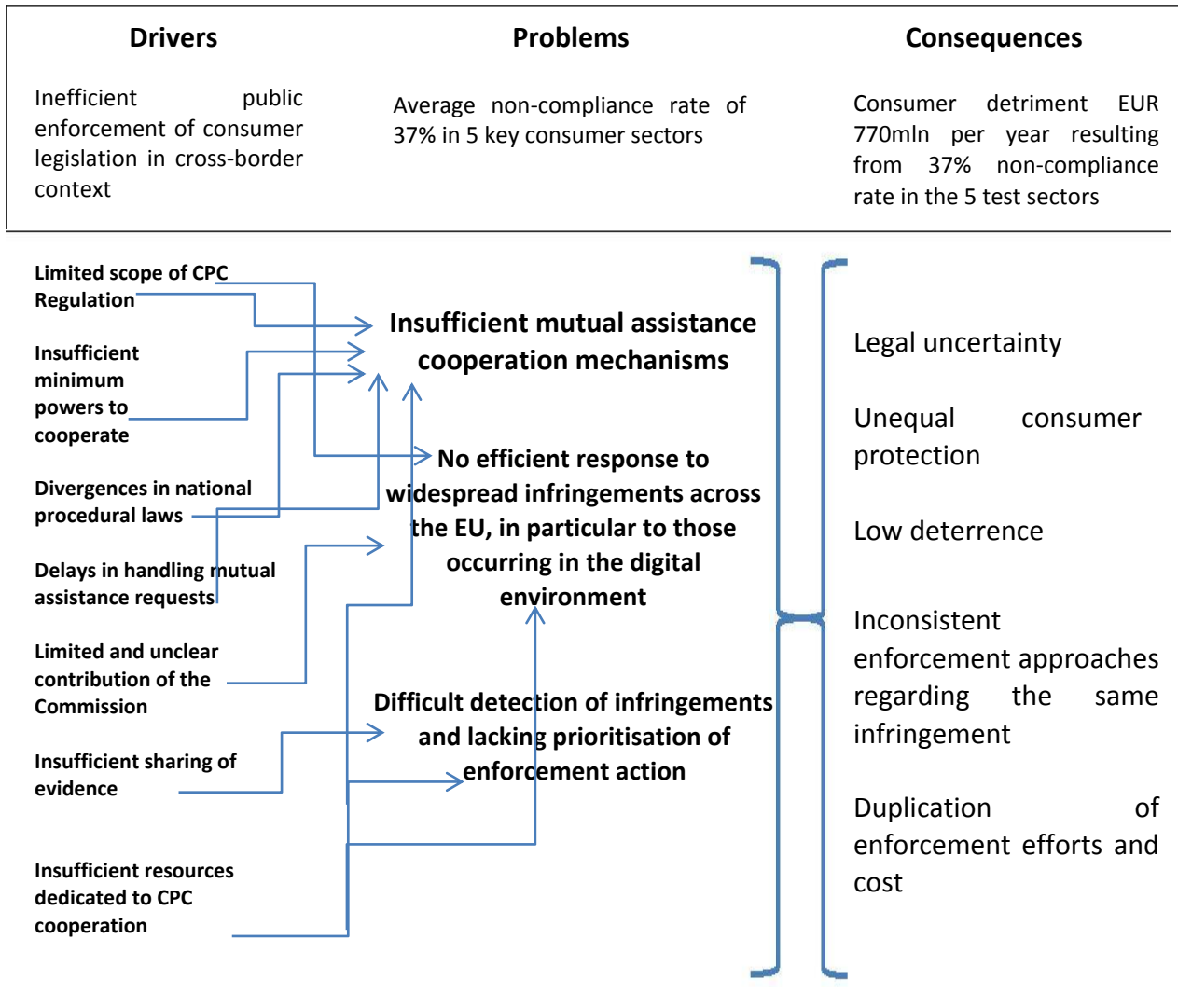
The external evaluation has exposed the lack of resources for enforcement cooperation as a serious impediment to its efficiency. This is also partly linked to the under-estimation of the importance of infringements with a cross-border dimension as explained in the section about the infringements which are not taken into account (see section 1.3.1). Further, the experience gained so far from the in-app and car rental coordinated enforcement actions has showed that pooling existing resources and expertise on priority infringement cases is feasible and leads to efficiency gains which need to be sought further.

## **1.5. Consequences**

These problems make the cross-border enforcement cooperation ineffective and inefficient, resulting in low deterrence in enforcement actions, legal uncertainty for traders, authorities and consumers and in duplication of enforcement efforts and cost.

The identified shortcomings also partly contribute to the malfunctioning of consumer markets and to a persistently high non-compliance rate (other factors include lack of traders' awareness or understanding of key consumer rules, insufficient market transparency, impact of dominant traders, etc.). In 2014 the average non-compliance rate in cross-border online trade was estimated for more than 1/3<sup>rd</sup> of websites checked (from a review of 2,600 websites in 5 key consumer markets, 37% were found in breach of consumer law). This translates into consumer detriment of EUR 770 million in these sectors only.

**Figure 1: Problem Tree**





## 1.6. Baseline scenario: how would the problem evolve?

### 1.6.1. *The level of compliance with consumer legislation is unlikely to improve without more stringent enforcement efforts*

The following factors will affect the evolution of problems, especially online:

- The expansion of cross-border online shopping in the EU

All expert sources predict a steady expansion of e-commerce in the EU, as very few markets (i.e. the UK and Nordic countries) may have reached maturity yet. Cross-border online consumer expenditure is also expected to grow in similar proportion or slightly faster. From 2013 to 2018, with a compound annual growth rate of 12%, the online retail market is expected to be worth ca. EUR 234bn by 2018<sup>72</sup>. According to the research by the European Multi-channel and Online Trade Association, 14% of online sales in 2014 were non-domestic business-to-consumer sales (including both EU and non-EU sales). This is expected to increase to 20% by 2018<sup>73</sup>. Traders are increasingly operating in multiple Member States through branches, subsidiaries, franchises or agents, offline and in the digital environment. Consequently, an increasing proportion of retail sales have a cross-border dimension<sup>74</sup>.

- The prevalence of malpractices

As cross-border transactions increase, new possibilities for unscrupulous traders to abuse consumers' trust will be found and infringements will grow. The ECC-Net's experience in handling cross-border complaints shows that complaints involving cross-border e-commerce speedily overtook complaints about other forms of cross-border shopping (for example mail order or while on holiday). In 2007 online sales accounted for 54% of the total of complaints, whereas by 2014, they account for more than two thirds.

- New technologies and business models

On one side very positive for innovation, growth and jobs, the expansion of new forms of marketing practices in the digital economy raises new challenges and issues on consumer protection. The trends to be taken into account concern the app economy which grows currently at 12% per year; big data technology and services set to grow from EUR 3 billion in 2010 to EUR 16 billion in 2015; cloud computing estimated to expand to almost five times its 2013 market size in the next years, and the uptake of entire markets by sharing economy platforms (in the fields of accommodation, car transportation, music or finance, they have grown exponentially with a global revenue of around EUR 14 billion today that could reach EUR 300 billion by 2025). The complexity of the chain of responsibility has considerably increased and raises the question of the liability of online

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<sup>72</sup>Forester Research Online Retail Forecast, 2013-2018, summary available here: <http://ecommercenews.eu/online-sales-in-europe-will-grow-to-e233-9bn-by-2018/>

<sup>73</sup><http://www.thepaypers.com/ecommerce/western-europe-cross-border-sales-to-double-by-2018-report/755903-25>

<sup>74</sup>According to an Eurobarometer study, as of 2011 approximately 10% of enterprises had outlets or subsidiaries in another EU country: Flash Eurobarometer 300 on business attitudes towards cross-border trade and consumer protection. [http://ec.europa.eu/public\\_opinion/flash/fl\\_300\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_300_en.pdf)

platforms allowing offers and demand to meet, along with the boundaries between roles (user, consumer, producer, agent, tenderer, seller).

### *1.6.2. Private enforcement systems will not replace public enforcement functions*

Other legislative measures in the EU have been designed to ease private actions to get cross-border redress through out-of-court mechanisms<sup>75</sup>. In addition, as of 10 January 2015, all judgments falling within the scope of the Brussels I Regulation (recast), regardless of their value, benefit from the abolition of intermediary procedures for recognising and enforcing a judgment and in the future, the European small claims procedure (if the revised proposal is adopted) will be updated to raise the limit on eligible claims from EUR 2,000 to EUR 10,000. Litigation costs in national procedures are also expected to decrease over the years as a result of an expected increase in the use of electronic means of communication by the courts. It is unlikely that all malpractices can be eradicated by private actions by consumers as this would require a huge change in their tendency to under-report issues, to avoid litigation when the value of the detriment is small or simply because they are generally little aware of their rights<sup>76</sup>. Therefore, in particular for tackling widespread infringements affecting the collective interests of consumers, the CPC enforcement cooperation would remain pertinent. Yet the CPC framework to address widespread infringements would remain with many deficiencies, as described in the problem section.

### *1.6.3. New policy initiatives adopted in response to the Digital Single Market Strategy will need an effective cross-border enforcement cooperation tool*

The substantive consumer legal framework is expected to be reinforced through a new directive/regulation on contract rules for online purchase of digital content and tangible goods<sup>77</sup> and an instrument addressing consumer discrimination based on place of residence or nationality. To ensure optimal enforcement across borders, these initiatives could be covered by the scope of the CPC Regulation either by an amendment of the CPC Regulation during the negotiations or by a reference to the CPC Regulation in the respective legislative initiatives. This extension of the scope of the CPC Regulation would be a positive development, providing the CPC authorities with a competence to

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<sup>75</sup>Member States had to implement the ADR/ODR rules by July 2015. The ODR platform will be operational on 9 January 2016.

<sup>76</sup>According to the 11<sup>th</sup> Consumer Conditions Scoreboard (p.5), consumers' awareness of some key consumer rights guaranteed by EU legislation remains limited. Only a third of consumers (33%) know that they do not have to pay for or send back unsolicited products, four in ten (41%) know that they have the right to a free repair or replacement of defective goods, while slightly over half (56%) are aware of the right to a cooling-off period in relation to distance purchases. In the EU as a whole, only 9% of consumers could answer correctly all three of the questions put to them, with the youngest segment being the least knowledgeable.

<sup>77</sup>Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM/2015/0634 final - 2015/0287 (COD); and Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods, COM/2015/0635 final - 2015/0288 (COD). It is proposed that the CPC framework is used to enforce the two above mentioned proposals in a cross-border context.

address cross-border and widespread infringements in the digital environment. However, without reinforced enforcement tools (in particular without "digitally fit" powers), the CPC cooperation framework would remain slow and not be able to stop infringements by fast acting traders.

*1.6.4. Enforcement tools will become increasingly challenged by innovations in the digital economy*

The system of cooperation put in place by the CPC Regulation was built at a time when e-commerce was much less important. Therefore, the CPC enforcement tools (i.e. minimum powers for cooperation) and cooperation procedures were mostly developed with a cross-border offline retail trade in mind. This is slowly fading out, as infringements are no longer just committed across two national territories: they are more and more widespread. Although expansion of the digital economy and increased choice may be construed as beneficial for consumers, this trend also involves increasing challenges for both enforcement authorities and consumers. Currently and even more in the future globalisation, technological developments and the fast spreading of e-commerce would require tools adapted to the specific enforcement challenges of the digital economy: dematerialisation of transactions, multiplication of online intermediaries, localisation of the various actors in the value chain in several countries, ease for online traders to relocate or hide their identity, rapidity of the spread of marketing practices, and constant innovation in online business models.

*1.6.5. Cost and delays in the current CPC cooperation will remain*

Without substantial improvements, the current CPC framework would not ensure the optimal pooling of resources. In particular with respect to widespread infringements, the current situation would be maintained – uncoordinated parallel enforcement actions against the same infringement would not be prevented, resulting in delays, legal uncertainty for businesses and duplication of efforts and inefficient use of scarce resources.

The cost and delays in the current mutual assistance mechanism (Problem 1), inadequacy of the current procedural mechanism to address pan-European infringements in an efficient way (Problem 2) and the current difficult detection of infringements and lacking of prioritisation of enforcement action (Problem 3) would also remain and would be even more noticeable, with possible severe consequences for consumers, including increasing consumer detriment.

Moreover, constraints to public finances in many Member States may result in further reductions in staff at enforcement bodies, which would reduce further the effectiveness of enforcement.

1.6.6. *Consumer detriment is likely to increase in the future and the business environment in the Digital Single Market will remain suboptimal*

As a result of all these trends, the number of situations where the intervention by the CPC network and coordination by the Commission is needed would increase, but if the tools for enforcement cooperation are not functioning better, consumer detriment would not be addressed better and the increase in cross-border online trade penetration would mean an overall increase in the detriment suffered by consumers. Furthermore, the existing inconsistencies in enforcement outcomes would continue preventing markets to level and compliance costs to decrease, especially for businesses active in the Digital Single Market.

## 2. WHY SHOULD THE EU ACT?

According to the principle of subsidiarity (Article 5 (3) of the Treaty on the Functioning of the European Union), action on EU level should be taken only when the objectives of the proposed action cannot be achieved sufficiently by Member States alone and thus mandate action on an EU level. Consumer protection belongs to shared competences between the EU and the Member States. As stipulated in the Article 169 of the TFEU, the EU shall contribute, *inter alia*, to protecting the economic interests of consumers as well as promoting their right to information and education in order to safeguard their interests. The CPC Regulation is based on Article 114 of the TFEU<sup>78</sup> to which Article 169 TFEU refers and it helps to achieve these objectives in the context of the proper functioning of the Internal Market.

The borderless nature of digital technologies poses challenges for the enforcement of consumer rights by public authorities whose action is constrained by their jurisdictional boundaries. On the other side, big online players implement their business models at the EU level, if not at the global level, directly. To ensure consistent enforcement of consumer rights across the EU and to tackle efficiently infringements of consumer rights legislation spanning over several Member States, it is necessary to coordinate public enforcement activities. The issue being addressed has therefore intra-EU aspects which cannot be sufficiently achieved by the Member States' individual actions because they cannot ensure cooperation and coordination by acting alone. Cooperation between national authorities responsible for the enforcement of consumer protection law can therefore be better achieved at the Union level. Furthermore, action at the EU level would produce clear benefits (compared to Member States' action) in terms of effectiveness and efficiency, as the improved Regulation could step up the use of this network-based cooperation model to ensure smarter enforcement of common consumer protection rules across the EU. There would be savings emanating from the EU-wide management of a widespread infringement (ca. EUR 180,000 in case of a successful action and EUR 815,000 in cases of a failed action) compared to individual responses by

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<sup>78</sup>Article 114 of the Treaty provides that: "the European Parliament and the Council shall [...] adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in MS which have as their object the establishment and functioning of the Internal Market."

several Member States. The initiative would also improve the functioning of the Digital Single Market by contributing to reducing the consumer detriment that results from non-complaint practices, which amount to ca. EUR 770 million in the five consumer sectors.

### 3. WHAT SHOULD BE ACHIEVED?

Based on the problems identified in section 2, the following policy objectives for the review of the CPC Regulation have been established:

#### GENERAL OBJECTIVE

- To develop more modern, efficient and effective CPC cooperation mechanisms to reduce the consumer detriment caused by cross-border and widespread infringements to consumer law in the EU and contribute to the completion of the Digital Single Market.

#### SPECIFIC OBJECTIVES

- Reduce situations where important cross-border and widespread infringements are not detected or sufficiently addressed through the CPC framework (to address the limited scope and insufficient minimum powers described in section 1.3, insufficient mutual assistance mechanisms described in problem 1 and insufficient tackling of widespread infringements described in problem 2)
- Reduce unnecessary delays and costs in the CPC cooperation (to address all the three problems)
- Reduce situations where CPC authorities reach diverging outcome concerning the same malpractice (to address all the three problems)

### 4. WHAT ARE THE VARIOUS OPTIONS TO ACHIEVE THE OBJECTIVES?

The following five policy options were considered to achieve the above policy objectives and to remedy the problems identified:

**Option 1: Baseline scenario – no policy change.** The current CPC Regulation would continue to apply and national authorities and consumers would continue benefitting from the cooperation tools and protection afforded by it.

1. **Scope.** The substantive consumer legal framework is expected to be reinforced through a new directive/regulation on contract rules for online purchase of digital content and tangible goods and a possible instrument to address consumer discrimination based on place of residence or nationality. Further, other legislative measures in the EU have been designed to ease private actions to get cross-border redress through out-of-court mechanisms. As from 15 February 2016, the Online Dispute Resolution is operational, which facilitates the online resolution of contractual disputes between EU consumers and traders over purchases made online. Thanks to this, consumers and traders will be more confident in trading online and across borders. Consumers will be encouraged to seek redress even for low-value purchases and enforce their rights. However, short-term infringements and infringements by subsidiaries of multinationals (i.e. happening in parallel in many Member States) would remain outside the scope of the CPC Regulation.
2. **Powers and mutual assistance mechanism.** The current minimum powers to cooperate would remain unchanged, as well as the CPC mutual assistance mechanism.

3. **Widespread infringements.** National authorities, with the facilitation of the Commission, would continue carrying out coordinated enforcement actions (such as screening of websites and common actions similar to the in-app purchases case) to address widespread infringements. The legal basis, procedure and the role of the Commission to address these widespread infringements would remain with deficiencies, as described in the problem section.
4. The current **alert mechanism, market surveillance, priority setting and resources dedicated to the CPC cooperation** would remain unchanged, as described in the problem section.

### **Option 2: Implementing legislation and non-legislative ("soft law") measures to improve and clarify CPC cooperation, combined with self-regulation to increase business compliance**

In 2006 the Commission adopted a decision regarding the mutual assistance mechanism of the CPC Regulation. It sets the information requirements, which include the minimum information to be included in requests for mutual assistance and in alerts, benchmarks for handling mutual assistance requests and the use of languages<sup>79</sup>. Although the implementing decision clarified the information requirements for the mutual assistance requests, it was insufficient to address the problems described in the problem section, as they mostly concern limitation of the current CPC legal framework available for consumer protection authorities to cooperate on a sound and formal legal ground that is necessary for them to act beyond their national jurisdiction boundaries.

1. **Scope** – the same outcome as under the baseline scenario. Implementing or soft law measures cannot alter the scope of the CPC Regulation, as this can be achieved only by the revision of the Regulation.
2. **Powers and mutual assistance mechanism.** Clearer, up-to-date and detailed implementing measures based on the existing CPC Regulation would clarify and streamline CPC cooperation, e.g. set time limits to answer mutual assistance requests; clarify further what information needs to be provided when an authority is making an information or enforcement request and what the content of the reply to this request should be. Through soft law measures common standards on gathering and use of evidence could be established. However, these measures would not provide for "digitally fit" powers for cooperation among enforcement authorities<sup>80</sup> (e.g. test purchases/mystery shopping, blocking of websites, sanctions in a cross-border context) and would not develop the mutual assistance mechanism and enforcement cooperation beyond the current CPC Regulation, as this can be achieved only by the revision of the Regulation in view of the need to give specific legal powers to

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<sup>79</sup>Decision 2007/76/EC of 22 December 2006 implementing 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 as regards mutual assistance, OJ L 32 of 6.2.2007. In addition to this implementing decision, Operating Guidelines were endorsed by the CPC Committee in June 2010. They cover practical aspects concerning the handling of CPC mutual assistance requests and the CPC database.

<sup>80</sup>However, no implementing measures could be adopted as regards the minimum powers to cooperate under Article 4(6) of the CPC Regulation, as there is no legal basis to adopt implementing measures concerning this article.

national authorities to enable them to act in a cross border context.

3. **Widespread infringements.** Clearer, up-to-date and detailed implementing legislation based on the existing CPC Regulation would also complement and clarify the basic framework for coordinated enforcement actions under Article 9 of the CPC Regulation. The contribution of the Commission would be clarified, but would remain limited. The Commission's role in enforcement cooperation mechanisms, especially in cases in which traders refuse to cooperate or do not comply with their commitments, can only be legally extended through the revision of the CPC Regulation.
4. The current **alert mechanism, market surveillance** and **priority-setting** would be clarified and streamlined by these measures, e.g. the use of the alert mechanism. Soft law measures (recommendations and guidelines) could encourage prioritisation and project-based thinking. **Voluntary benchmarking of resources** per Member State could be put in place with an annual comparison and peer review. Member States could on a voluntary basis submit enforcement plans.

In addition to the national and EU consumer legislation, traders could adhere to voluntary **codes of conduct, certification schemes** and **other self-regulation standards** to ensure better compliance with consumer protection legislation.

### **Option 3: Revision of the CPC Regulation to extend its scope and strengthen its efficiency**

Option 3 would be based on Article 114 TFEU, to which Article 169 TFEU refers, and would cover the following measures:

1. **Extend the scope of the CPC Regulation** to cover short-lived infringements, infringements by subsidiaries of multinationals (i.e. happening in parallel in many Member States), as well as infringements to Article 20 of the Services Directive (banning discrimination by service provider on the grounds of residence or nationality of the recipient). In addition, as mentioned under the options 1-2, the initiatives to implement the DSM Strategy would fall under the scope of the CPC Regulation.
2. Improve the enforcement cooperation tools. **Extend the harmonised list of minimum powers for CPC authorities** needed to cooperate in a cross-border context, in particular to address the misconducts described in the problem section 1.3.2. For example, to tackle infringements by traders hiding their identity – the power to adopt interim measures (e.g. to suspend a website temporarily, order suspension or retention of payments to a trader) and the power to obtain evidence irrespective of where it is stored and in which format, access to information held by other authorities and third parties. To tackle infringement by traders not respecting post sale requirements – the power to conduct test purchases/mystery shopping. To address repeated malpractices – the power to publish decisions establishing infringements and undertakings, name the trader responsible for the infringement, impose fines and other pecuniary sanctions reflecting the cross-border dimension of the infringement, take down a website, and facilitate redress for consumers. To address infringements concerning small amounts but affecting many consumers – the power to start investigation *ex officio*. The proposed powers are considered to be future-proof to cater for the effective enforcement in

the digital environment. The revised Regulation would also introduce harmonised **binding time limits**<sup>81</sup> to respond to mutual assistance requests, as well as **mutual recognition of evidence** regarding intra-Community infringements.

3. Set up a harmonised **framework for addressing widespread infringements** involving more than two Member States. The following two situations can be distinguished depending on whether the threshold is met:

a) Threshold for a mandatorily initiated enforcement coordination procedure is met

The revised Regulation would provide for a new harmonised **enforcement coordination procedure** which would be **mandatorily initiated at the EU level** where a certain threshold is met. This threshold would need to be based on objective criteria that are easy to verify without in-depth investigation and would be "a reasonable suspicion of a widespread infringement in at least 3/4 Member States accounting together for at least 3/4 of EU population"<sup>82</sup>. This procedure would have the following main elements:

- The Commission would control that the threshold is met. It would have a mandatory role to initiate the coordinated procedure and to assist CPC authorities. E.g. the Commission would establish joint investigation and surveillance plans, help conducting discussions with traders in view of obtaining undertakings to cease the infringement, help to prepare and disseminate documents among CPC authorities, and coordinate monitoring of traders' commitments (but the Commission would not have direct investigation or enforcement powers, as these powers would still remain the prerogative of national authorities).
- The obligation of CPC authorities would include: mandatory participation in the coordination procedure provided the Member States are concerned by the widespread infringement.
- The outcome of this procedure would be "a common enforcement position" agreed upon among authorities, identifying the malpractices at stake on the basis of EU consumer legislation included in the Annex of the CPC Regulation and assessing the solutions proposed by the traders concerned. This common enforcement position, as well as commitments submitted by the traders concerned on its basis would be binding, ensuring that it can be used, if need be, in subsequent national proceedings against these traders.

b) Threshold for a mandatorily initiated enforcement coordination procedure is not met

The revised Regulation would **specify and clarify the format of coordinated enforcement actions under the current Article 9 of the CPC Regulation** to tackle widespread infringements below the threshold described under the point a). In this case one authority might coordinate and/or take an enforcement action on behalf of other competent authorities against the widespread infringement or the Commission might be invited by national authorities to take up this coordination role. This procedure would allow parallel enforcement actions carried out by several competent authorities; however it would require simultaneous investigations and inspections to ensure consistency of enforcement measures adopted against the same

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<sup>81</sup>The current benchmarks contained in the Operational Guidelines would become binding time limits.

<sup>82</sup>This threshold is established on the basis of experience gained in the in-app and car rental coordinated enforcement actions.



infringement.

4. Provide for an **effective market surveillance mechanism** and **prioritisation of enforcement actions**. This measure would include the categorization of alerts (for action or for information only), which competent authorities notify to each other. Third parties (e.g. consumer and trade associations, European Consumer Centres) would be allowed to submit alerts for information only. The Commission would be allowed to submit alerts for both information and action. Instead of the current reporting requirements under Article 21 of the CPC Regulation, national authorities would submit to the Commission multi-annual enforcement plans, on the basis of which the Commission could suggest European enforcement priorities and benchmarks of best practices.

#### **Option 4: Revision of the CPC Regulation: Policy Option 3 + additional elements regarding minimum powers and monitoring of Member States' enforcement efforts**

This option would be based on Article 114 TFEU and would, in addition to Option 3, contain the following new elements:

1. **Provide for additional minimum powers** for enforcement cooperation needed to address intra-Community and widespread infringements involving deceitful commercial practices<sup>83</sup>: powers to freeze assets or ban an economic activity of a trader, disqualify the directors and managers of the company found responsible for the infringement, and publicly name traders suspected of an infringement even before a final decision was adopted.
2. **Set up an audit system**, similar to the one in the EU food area, to verify the enforcement performance of Member States<sup>84</sup>. Audits would assess based on multi-annual enforcement plans national authorities' enforcement efforts in terms of their effectiveness and allocation of resources. This additional measure would further strengthen the actions of the effective market surveillance mechanism and prioritisation of enforcement under the option 3.

#### **Option 5 – New Regulation providing the European Commission with direct powers to address widespread infringements meeting the threshold described in the option 3, combined either with option 3 or with option 4 as regards the existing CPC cooperation**

The **new Regulation** would provide for direct investigation, enforcement and sanctioning powers for the European Commission, such as those the Commission is entrusted with in EU competition law or EU merger control. Equipped with these powers the Commission

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<sup>83</sup> The criterion for the graduation of powers is based on the "*degree of intrusiveness*" of the powers vis-à-vis a trader. These powers may have more serious consequences for the trader (e.g. freeze assets, name and shame at the early stages of the investigation when a trader is suspected to have committed an infringement), yet this has to be weighed against the aggressiveness of the commercial practice and seriousness of consumer detriment involved. In any event the proposed powers would be of administrative or civil legal nature (depending on the national traditions and legal systems) and Member States would retain the choice whether they confer these powers to the courts or to administrative authorities directly, as foreseen in the current Article 4(4) of the CPC Regulation.

<sup>84</sup> For example, on the basis of biennial enforcement plan, the Commission would carry audits at ensuring that EU consumer legislation is properly implemented and enforced. A team of 28 full-time officials would conduct audits to ensure the national authorities are fulfilling their legal obligations. This could be done during on-the-spot audits, or by desk based exercises or collation of Member States data. Audit reports would be drafted which would make recommendations for the competent authorities to improve their enforcement efforts. If non-compliances were sufficiently serious, stronger actions (e.g. a legal action) could be taken by the Commission.

would address widespread infringements meeting a certain threshold ("EU dimension"); the threshold could be the same as in the option 3. National authorities would retain the competence to address infringements that fall below such threshold. The new Regulation would define competences, powers, procedures, procedural rights and obligations of third parties, similarly to Regulation 1/2003 applicable in the EU competition area.

In addition, the **current CPC Regulation would be revised** either as in option 3 or as in option 4, as regards the scope and the minimum powers of the national authorities needed for cooperation, the format of the coordinated enforcement actions under current Article 9 of the CPC Regulation and the prioritisation of enforcement action. The only difference from option 3 and option 4 would be that no enforcement coordination procedure at an EU level to tackle widespread infringements would be needed because the Commission would be acting in such cases.

### **Discarded options:**

- Mutual recognition of national enforcement decisions

Although this option could save administrative costs in the first stage of the enforcement procedure it would require substantial changes and harmonisation of national procedural rules. Because of the differences in national enforcement systems, this option would be difficult to implement<sup>85</sup>. The option could negatively impact traders' due process and other fundamental rights, as it would have to deal with an authority in another Member State (e.g. language considerations, official notification of orders, requests and decisions, etc.). The option was therefore discarded as unfeasible from both practical and legal perspectives.

- Repealing the CPC Regulation

Repealing the CPC Regulation is not considered appropriate in view of the external evaluation and public consultation results. CPC Regulation's rationale for intervention continues to be valid. Without the CPC Regulation, cross-border enforcement would not be possible: there would be no mutual assistance mechanism or coordinated enforcement among national authorities. This would result in a greater fragmentation in consumer protection and as such would be undesirable and inconsistent with the EU Consumer Agenda and Digital Single Market Strategy.

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<sup>85</sup>Mutual recognition of judicial decisions is a process by which a decision taken by a judicial authority in one EU country is recognised and, where necessary, enforced by other EU countries as if it were a decision taken by the judicial authorities of these latter countries. Mutual recognition of decisions currently exists in very specific areas, e.g. criminal justice, when it comes to obtaining evidence for use in criminal proceedings or for certain civil and commercial matter. There is currently no general system of recognition of administrative decisions in the EU. In the area of cross-border enforcement of consumer protection legislation, where one finds a great diversity in enforcement systems of Member States, mutual recognition would need to cover all decisions taken in the administrative, civil and criminal proceedings. This would be not only very complex but likely legally unfeasible.

- Repealing the CPC Regulation and replacing it with another existing horizontal instrument for cross-border cooperation among national authorities for the implementation of the Single Market *acquis*

The CPC Regulation would be replaced with an instrument permitting national authorities to cooperate when tackling infringements to consumer legislation with a cross-border dimension.

Partial or complete replacement of the CPC Regulation by the Internal Market Information (IMI) system was considered as this is currently the only relevant existing system. Article 4 of the IMI Regulation foresees a possible extension of the IMI system to other Single Market instruments provided that a specific procedure is followed<sup>86</sup>. However, the IMI Regulation does not provide for enforcement cooperation mechanisms that could achieve at least a comparable outcome to the current CPC Regulation. It does not provide for minimum investigation and enforcement powers that are needed for efficient enforcement cooperation, or for cross-border enforcement tools equivalent to the mutual assistance mechanism of the CPC Regulation, and it does not allow for coordinated enforcement actions for widespread infringements. In addition, although the IMI IT tool could cover some of the workflows foreseen in the CPC Regulation (e.g. alerts on emerging malpractices), the CPC enforcement cooperation in its current form goes much beyond the workflows currently available in the IMI system<sup>87</sup>.

For these reasons, the existing IMI Regulation cannot replace the CPC Regulation, as major elements of the current CPC cross-border border system would in effect be repealed without replacement. Therefore, this option was also discarded from an early stage.

## **5. WHAT ARE THE IMPACTS OF THE DIFFERENT POLICY OPTIONS AND WHO WILL BE AFFECTED?**

### **5.1. Option 1: Baseline scenario: no policy change**

See Section 1.5 in the problem definition.

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<sup>86</sup> Before such an extension is proposed, the Commission has to carry out a pilot project that would assess whether the IMI system would be an effective tool to implement the provisions for administrative cooperation in the given legal instrument. The outcome of this assessment has to be submitted to the European Parliament and the Council, where appropriate accompanied by a legislative proposal to amend the Annex to the IMI Regulation.

<sup>87</sup> The replacement of the database foreseen in the current Article 10 of the CPC Regulation by the IMI IT system was evaluated in 2014 as part of a feasibility study to revamp the IT system supporting the CPC database. It was concluded that the state of development of functionalities for a structured dialogue as required by the CPC cooperation mechanism was insufficient in the IMI. Conducting such an assessment again is premature as all possible combinations of the above options and of individual instruments would have to be assessed, possibly via a specific IMI pilot.

## 5.2. Option 2: Implementing legislation and non-legislative ("soft law") measures to improve and clarify CPC cooperation, combined with self-regulation to increase business compliance

<b>Specific objectives</b>
<b>Reduce situations where important cross-border and widespread infringements are not detected or sufficiently addressed through the CPC framework</b>
Neither the scope nor the minimum powers to cooperate can be extended by implementing measures or soft law. If the scope of the CPC Regulation is not extended (e.g. short-lived and infringements happening in parallel in several Member States) and reinforced powers to cooperate are not introduced, the CPC authorities would find it difficult or impossible to investigate certain cross-border/widespread infringements in the digital environment and offline, particularly where test purchases/mystery shopping exercises are required to obtain the evidence of the infringement or where the infringement can only be stopped by closing down the website or the social media account concerned (e.g. because the trader is located outside the EU).
<b>Reduce unnecessary delays and costs in the CPC cooperation</b>
<p><b>Reduce delays</b></p> <p>Binding time limits for mutual assistance requests, common standards on gathering and use of evidence established through soft law measures and the clarified purpose and use of the alert mechanism would ensure a faster and more systematic detection of infringements and their follow-up. Together with the clarification of the framework for coordinated enforcement actions under Article 9 (steps, time-limits and roles of actors involved), they would result in reduction of delays in the CPC cooperation.</p> <ul style="list-style-type: none"> <li>• Currently, mutual assistance requests are not handled within the benchmarks set in the Operating Guidelines. 40% of information requests take more than three months to handle. 50% of enforcement requests take more than one year to handle and 26% of them take even more than two years to handle. The time limits for dealing with mutual assistance requests would ensure that some requests are handled faster. However, without extended powers and mutual recognition of evidence, this measure would not result in significant reduction of delays as these are mainly caused by the two elements mentioned above.</li> </ul> <p><b>Reduce costs</b></p> <ul style="list-style-type: none"> <li>• Clarifying the framework for coordinated enforcement actions would slightly improve the effectiveness of CPC cooperation compared to the baseline. However, the mechanism to tackle widespread infringements would remain a combination of 28 national actions and no cost savings could be achieved for authorities.</li> </ul>
<b>Reduce situations where CPC authorities reach diverging outcomes concerning the same malpractice</b>
<ul style="list-style-type: none"> <li>• Compared to the baseline scenario, this option would ensure a slightly more consistent assessment of traders' practices as the need for cooperation would be clarified. Voluntary preparation and submission to the Commission of multi-annual enforcement plans, or benchmarking of resources would encourage further prioritisation and project-based thinking but would depend on Member States' participation in such voluntary activity.</li> <li>• However, as important infringements involving multinational traders would risk remaining outside the radar screen of the CPC network, different enforcement approaches regarding widespread infringements (such as the Apple guarantee case, cf. Box 8) would still occur. Multiple Member States would continue carrying out investigations, taking action at different times with possibly diverging outcomes concerning the same malpractice (without even knowing about it). Traders would still face 28 national proceedings and possibly 28 different interpretations of EU consumer protection rules that are mostly principle based.</li> </ul>

<b>General objective</b>
<b>Reduction of non-compliance rate and related consumer detriment</b>
<ul style="list-style-type: none"> <li>The non-compliance rate is likely to slightly decrease (thanks to a slightly more efficient cooperation and voluntary self-regulation – see below).</li> </ul> <p><b>Self-regulation and compliance with consumer legislation</b></p> <ul style="list-style-type: none"> <li>Traders could be encouraged to adhere to voluntary codes of conduct, certification schemes and other self-regulation standards to support compliance with EU consumer protection laws. In certain areas, it is considered to have limited long term effects on compliance with consumer protection laws<sup>88</sup>; in other areas results are mixed or positive. E.g., in the financial services sector an informal self-regulation scheme progressively turned into a self-regulation with oversight by the Securities and Investment Board, and then into direct public regulation by the Financial Services Authority, as self-regulation was not sufficient<sup>89</sup>. Another example in the consumer protection area where self-regulation is applied at national level concerns environmental claims. On the occasion of the European Consumer Summit on 29 May 2012, the Commission gathered views from stakeholders on the use of green marketing, green-washing and misleading green claims in different European markets, and views on the possible way forward. One of the key conclusions was the need to focus on enforcement, in particular in a cross-border context: i.e. further support for national enforcers to properly implement the requirements of the Unfair Commercial Practices Directive and prevent misleading environmental claims by traders including via better guidance, a more pro-active surveillance and a strengthened cooperation between self- or co-regulation and public enforcement. A recent study concluded that self-regulatory systems at national level can be considered effective in both preventing and removing misleading green claims, especially for advertising<sup>90</sup>.</li> </ul>
<b>Other impacts</b>
<b>Economic impacts (SMEs, competitiveness, functioning of the Internal Market and competition)</b>
This option is expected to have limited impact on the overall macroeconomic context as the level of non-compliance to consumer laws, and the negative consequences this has on consumers' confidence and welfare or a healthy business environment, is not expected to change significantly.
<b>Environmental impacts</b>
No significant environmental impacts are expected.
<b>Social impacts</b>
No significant impacts on employment or vulnerable consumers are expected.
<b>Impacts on Fundamental Rights (EU Charter of Fundamental Rights)</b>
No significant impacts on fundamental rights, such as freedom to conduct business (Article 16 of the Charter) or personal data protection (Articles 7 and 8), because implementing/soft law measures cannot extend the authorities' powers for cooperation to tackle cross-border and widespread infringements.
<b>Compliance costs (for the Commission, Member States and traders)</b>
<ul style="list-style-type: none"> <li>30% FTE (ca. EUR 40,000) for the Commission to implement the measures under this option,</li> </ul>

<sup>88</sup>T. Prosser "Self-regulation, Co-regulation and the Audio-Visual Media Services Directive", p.102, Springer Science + Business Media, LLC 2007.

<sup>89</sup> Ibid.

<sup>90</sup> Consumer Market Study on Environmental Claims for Non-Food Products.

<p>which could be covered by redistribution and refocusing of existing personnel.</p> <ul style="list-style-type: none"> <li>• Minimal compliance costs for Member States' authorities to get familiar with the new implementing/soft law measures: 1 day of training would cost ca. EUR 870 per authority<sup>91</sup>.</li> <li>• No costs for traders.</li> </ul>
<b>Impacts on legal systems</b>
Minor impacts and they would be felt equally among Member States.
<b>Feasibility</b>
Feasibility of this option from the legal and technical perspectives is considered to be high. However, the option would not be in line with the expectations from stakeholders (see below).
<b>Stakeholder support</b>
Stakeholders request stepped-up enforcement cooperation. Thus the option would go against the expectations of stakeholders expressed in the public consultation and in different meetings of networks dedicated to consumer protection.

### 5.3. Option 3: Revision of the CPC Regulation to extend its scope and strengthen its efficiency

<b>Specific objectives</b>
<b>Reduce situations where important cross-border and widespread infringements are not detected or sufficiently addressed through the CPC framework</b>
<ul style="list-style-type: none"> <li>• The problem definition section presents the figures which show the incidence of <u>short-lived</u> infringements in the digital environment<sup>92</sup> and the potential caseload for CPC cooperation if they were included in the scope. Inclusion of such type of infringements within the CPC Regulation's would reduce the number of situations when such infringements (e.g. regarding misleading advertising of "free" or "limited in time" promotional offers which then turn out to be unwanted long-term subscriptions, or "super cheap" offers whose availability is very limited) go undetected and unaddressed.</li> <li>• The proportion of <u>widespread infringements</u> is projected to grow in the coming years due to e-commerce and cross-border retail expansion (see the baseline in the problem section) and with more traders operating in multiple countries<sup>93</sup>. Inclusion of such infringements in the scope of the CPC Regulation would remove doubts as regards their qualification as intra-Community infringements and would be a prerequisite to effectively tackling widespread infringements (new harmonised EU-level procedure to address them). This would reduce the situations where such infringements are not addressed by CPC authorities because of doubts about their intra-Community nature. The authorities would have to take into account the EU dimension of parallel domestic malpractices and the need for a coordinated EU-level action to offer a consistent approach across borders.</li> <li>• Thanks to the <u>additional minimum powers</u>, the CPC authorities would be able to act much faster to stop harmful online practices. They would be able to carry out more regular verification of</li> </ul>

<sup>91</sup> Familiarisation/training costs= Number of staff in the CPC authorities requiring training in 28 MS (ca. 850 in ca. 323 CPC authorities) \*hours spent on training per staff (8 hours) \*staff costs per hour (hourly wage rate EUR 41.5, Eurostat data 2012).

<sup>92</sup> Further, many online infringements such as subscription traps and short-lived advertisement campaigns target the young and elderly, see, e.g. EP(2012): Report on a strategy for strengthening the rights of vulnerable consumers (2011/2272(INI)): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2012-0155+0+DOC+PDF+V0//EN>

<sup>93</sup> According to the Eurobarometer study 300 on business attitudes towards cross-border trade and consumer protection, as of 2011 ca. 10% of enterprises had outlets or subsidiaries in another EU country.

whether websites respect consumers' rights when shopping online, including the right to withdrawal for instance. They would also be able to cooperate on the basis of evidence obtained by each other through investigative tools such as mystery shopping for example. Authorities would also be in position to order interim measures so that websites with scams are taken down without waiting for the end of the investigation.

- Inclusion of **Article 20 of the Services Directive** within the scope of the CPC Regulation would provide a cross-border enforcement tool to address unjustified discrimination based on place of residence or nationality of a consumer including unjustified geo-blocking practices, which are per se cross-border. Article 20 of the Services Directive prohibits all types of unjustified geo-discrimination, but sets only general principles. This provision had been poorly implemented and enforced in the past<sup>94</sup> partly because of the absence of a cross-border enforcement tool to enforce it and partly because Article 20 provides a list of justifications that is very broad. However, while the inclusion of Article 20 within the scope of the CPC Regulation would be beneficial to ensure coordinated enforcement across the EU, it would not be sufficient on its own to resolve the geo-blocking problems, as explained in the recently adopted Single Market Strategy.
- The improved alert mechanism, where stakeholders (e.g. consumer and trade organisations, ECCs, as well the Commission) can warn enforcement authorities about emerging malpractices, as well as better prioritisation thanks to the multi-annual enforcement plan would ensure that more cross-border and widespread infringements are detected and addressed.

#### **Reduce unnecessary delays and costs in the CPC cooperation**

##### **Reduce delays**

- Most delays result from slow detection, insufficient powers, inadmissible evidence and insufficient capacity on the part of competent authority. Thus, the improved CPC alert mechanism would ensure timely detection of emerging malpractices, while binding time limits for dealing with mutual assistance requests, recognition of evidence and additional powers to cooperate among authorities (e.g. to adopt interim measures, take down websites) would substantially reduce delays. Benchmarking of resources of the CPC authorities would also provide transparency about available resources and improve prioritisation so that cross-border needs are better resourced.
- Currently mutual assistance requests are not handled within the benchmarks set in the Operating Guidelines. 40% of information requests take more than three months to handle. 50% of enforcement requests take more than one year to handle and 26% of them take more than two years to handle. The mandatory deadlines for dealing with mutual assistance requests would ensure that the cases are handled without delays i.e. for 50% cases the handling period would decrease by one or even two years, as Member States would be bound to resource their services adequately, while the improved cooperation mechanism would increase the speed of individual procedures and their cost (see below).
- For widespread infringements, a harmonised cooperation procedure at the EU level would ensure that once the threshold to initiate such a procedure were met, it would be initiated without delay

<sup>94</sup> Cf. Report of the European Consumer Centers' Network on Analysis of Article 20(2) and Article 21 related consumer complaints reported to ECC-Net between 2010 and 2012: [http://ec.europa.eu/consumers/ecc/docs/eccservices\\_directive\\_en.pdf](http://ec.europa.eu/consumers/ecc/docs/eccservices_directive_en.pdf); Commission Staff working document with a view to establishing guidance on the application of Article 20(2) of Directive 2006/123/EC on services in the internal market, SWD(2012) 146 final, 8.6.2012. The importance of correct application of the national provisions implementing Article 20(2) of the Services Directive by national authorities has also been stressed by the EU institutions. E.g. see the European Parliament's resolution of 21 September 2010 on Completing the Internal Market for E-Commerce (2010/2012(INI)); points 31 and 32; conclusions of Competitiveness Council on Digital Single Market and Governance of the Single Market of 30-31 May 2012, available at <http://www.consilium.europa.eu/press/council-meetings>

and all the efforts would be made to conclude such action within one year.

#### **Reduce costs**

- Thanks to additional minimum powers to cooperate and more remedies available to address the infringement in question, the cost per enforcement case would decrease compared to the currently estimated average of EUR 4,700, as the proportion of cases concluded with traders' undertakings (ca. EUR 1,500 per case) would increase<sup>95</sup>. It is estimated that every year this would result in efficiency gain of EUR 155,000 (or 2.5 FTEs<sup>96</sup>) for information requests and EUR 620,000 (10 FTEs) for enforcement requests for the entire CPC network, taken into account the current case load<sup>97</sup>.
- Furthermore, pooling of resources to address widespread infringements would save national authorities' resources: for instance, one coordinated enforcement action would replace 28 national actions, resulting in net savings of ca. EUR 180,000 (when negotiation is successful) and ca. EUR 815,000 (where the trader does not cooperate or does not subsequently implement the agreed commitments)<sup>98</sup>. If four coordinated enforcement actions<sup>99</sup> would take place annually, thanks to a new EU-level procedure to address widespread infringements, the savings for national authorities would be very significant, which would be a substantial benefit of the review of the CPC Regulation.

#### **Reduce situations where CPC authorities reach diverging outcomes concerning the same malpractice**

- Thanks to the timely detection of parallel malpractices (e.g. via the improved alert mechanism and legal certainty that "parallel" domestic infringements fall within the scope of the CPC Regulation), combined with the extended minimum powers to cooperate and the new framework to address widespread infringements, more consistent enforcement decisions and sanctions would be taken across Member States for the same malpractice. Businesses would benefit from uniform enforcement and legal certainty for cross-border and online operations. The cases described in the problem section (cf. case on the misleading advertising of commercial warranties) would not occur.
- In addition, an improved legal framework would increase legal certainty, transparency and access to justice for all stakeholders, in particular for traders accused of a widespread infringement.

#### **General objective**

#### **Reduction of non-compliance rate and related consumer detriment**

<sup>95</sup> Estimates are based on the UK data used in the impact assessment of Consumer Rights Bill/Proposals on enhanced consumer measures, January 2014: <https://www.gov.uk/government/publications/consumer-rights-bill>. See also Annexes IV and VI.

<sup>96</sup> FTE = full time equivalent/official during one year.

<sup>97</sup> Estimates are based on the UK data used in the impact assessment of Consumer Rights Bill/Proposals on enhanced consumer measures, January 2014: <https://www.gov.uk/government/publications/consumer-rights-bill>. See Annex IV for more information on the cost-per-enforcement case. For detailed description of the current and future costs of the CPC cooperation, see Annex VI.

<sup>98</sup> Assuming each Member State would involve 0.38 full-time official per action. For detailed calculations see Annex VI.

<sup>99</sup> At present two coordinated enforcement actions are carried out per year. E.g. in the antitrust (cartels and abuses of dominant position only) area, where the Commission has investigation, enforcement and sanctioning powers, the Commission adopts on average 12 decisions per year, covering both instruments antitrust and cartel. On this basis and taking into account the experience gained so far, it is estimated that ca. 4-6 coordinated enforcement actions per year could be initiated under this option, depending on the final threshold that would trigger the launch of the new EU coordination procedure.



- The option is expected to result in a significant reduction in consumer detriment. For example, an improvement of 10 points in the non-compliance rate<sup>100</sup> in the five screened sectors under the baseline scenario would lead to a 30% (or EUR 231 mln) decrease of the detriment.
- The reduction in consumer detriment in individual cases would differ. The in-app purchases action of the CPC network alone saved EU consumers an estimated EUR 68 mln in financial detriment<sup>101</sup>. Assuming that four coordinated enforcement actions would take place every year<sup>102</sup>, the reduction in consumer detriment is expected to be significant (up to four times EUR 68 mln).
- Thanks to better prioritization through multi-annual enforcement plans, CPC enforcement actions would be better prepared and targeted at infringements with substantial consumer detriment, ensuring that important intra-Community infringements are addressed without delay.
- Thanks to additional powers, all CPC authorities could require traders to ensure consumer redress. Individual consumers would thus be more easily compensated for the suffered detriment from cross-border and widespread infringements.
- Improved alerts, binding time-limits for mutual assistance requests and mutual recognition of evidence for intra-Community infringements would allow early detection of infringements and would substantially reduce enforcement delays. Infringements would be shorter and result in a smaller collective detriment. This is borne out by research by Parker and Lehmann<sup>103</sup> that found that increasing perception of the likelihood of detection is a powerful way to increase compliance.
- The severity of possible sanctions and the fact that a trader ultimately will not profit from an infringement importantly influences compliance too. The reinforced powers to cooperate cross-border (e.g. the power to impose sanctions (fines) and to request restitution of illicitly obtained gains) would guarantee that traders which have been found responsible cannot profit from their infringements. This would further deter traders from repeating illicit conduct (specific deterrence), or dissuade other traders from committing an infringement at all (general deterrence).

#### **Other impacts**

#### **Economic impacts (SMEs, competitiveness, functioning of the Internal Market and competition)**

This option is expected to have an overall positive impact on the business environment, especially on cross-border trade within the Single (Digital) Market. As the level of non-compliance with consumer laws would increase, consumer confidence that their rights would be respected wherever they shop would increase and their dispute resolution costs would decrease. Traders operating over several markets would benefit from equal enforcement conditions and lower litigation costs which would improve their competitiveness in an overall context of more competitive and transparent markets.

#### **Impact on traders**

- Improved enforcement cooperation would not lead to additional costs for legitimate traders, as

<sup>100</sup> The expected decrease in non-compliance is legitimate because the CPC sweeps have shown that targeted enforcement actions can lead to a significant improvement in compliance rates, i.e. from 20 to 40% at the screening phase to above 80% after a year of enforcement actions, see Annex IV.

<sup>101</sup> The estimation is calculated on the basis of the U.S. consumer detriment per capita, adjusted to the EU population and converted to EUR in line with the current exchange rate of the European Central Bank (ECB): see Annex VI for detailed explanations.

<sup>102</sup> This estimate is based on the current CPC workload and the threshold for the mandatorily initiated EU enforcement coordination procedure.

<sup>103</sup> "Deterrence and the Impact of Calculative Thinking" by Christine Parker and Vibeke Lehmann Nielsen [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1527326](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527326)

<p>the review of the CPC Regulation would not change substantive consumer protection legislation and would not impose additional obligations directly on traders complying with the existing consumer legislation.</p> <ul style="list-style-type: none"> <li>Coordinated enforcement actions, which result in negotiated undertakings at the EU level, will reduce the legal costs for non-compliant multi-national traders who would otherwise have to face these costs in each Member State. Traders would benefit from strengthened enforcement cooperation with more uniform enforcement outcomes offering legal certainty for cross-border and online operations, fairer competition, and a level playing field with competitors based in other countries as well as reduced potential litigation costs. The cost of court proceedings for traders was estimated to be an average EUR 2,208 per case<sup>104</sup>; and, without enforcement coordination, especially in case the EU level coordination procedure fails, the trader could face potentially 28 enforcement proceedings instead of one.</li> </ul>
<p><b>Environmental impacts</b></p>
<p>No significant environmental impacts are expected.</p>
<p><b>Social impacts</b></p>
<p>Increase in consumer confidence in the Digital Single Market and more economic growth, as described above, are expected to have an indirect positive effect on the levels of employment.</p>
<p><b>Impacts on Fundamental Rights (EU Charter of Fundamental Rights)</b></p>
<p><b>Consumer Protection (Article 38)</b></p>
<p>The right to a high level of consumer protection is a fundamental right of EU citizens (Article 38 of EU Charter of Fundamental Rights). This option would increase the level of consumer protection, boost legal certainty, and make EU consumer rights a reality.</p>
<p><b>Right to an effective remedy/due process (Article 47)</b></p>
<p>On one hand, this option would boost the possibilities for consumers to seek redress for financial detriment suffered from cross-border and widespread infringements. On the other hand, powers that would be newly available cross-border such as the power to conduct mystery shopping, suspend a website, name infringing traders, make public undertakings proposed by traders and request the supply of information from third parties/authorities could raise concerns as regards this right. However, in the light of Article 52 of the Charter, these limitations are justified by the objective of general interest of ensuring a high level of consumer's protection. In addition national procedural law provides for effective remedies as regards these powers (legality review through courts, appeal procedures). These concerns could be further mitigated through the CPC Regulation obliging Member States to provide for effective remedies. Also, some of the powers concerned, such as interim measures or mystery shopping would be subject to conditions such as necessity, urgency or threat of serious and irreparable harm and would only be used where no other less onerous means were available.</p>
<p><b>Presumption of innocence and rights of defence (Article 48)</b></p>
<p>Naming of infringing traders and publication of decisions could raise concerns as regards the presumption of innocence. In the light of Article 52 of the Charter, under the CPC Regulation, the limitation to the exercise of this right are justified by the objective of general interest of ensuring a high level of consumer's protection and guaranties are included so that the limitation to this</p>

<sup>104</sup>If an action in a cross-border case is taken through the courts, the following costs are likely to be involved: legal fees, court fees, administrative costs and costs of serving documents. For a "straightforward" case where a 25-page document is translated, court fees are paid in addition to lawyers' charges (assuming five hours of work), the average cost of cross-border proceedings was estimated to be an average EUR 2,208 per case, source: SME Panel survey in "Data Collection and Impact Analysis – Certain Aspects of a Possible Revision of Council Regulation No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ('Brussels I')", final report on a study undertaken by CSES for DG Justice (December 2010).

<p>fundamental right do not exceed what is needed to ensure the desired objective. The CPC Regulation provides in particular that only the publication of final decisions is allowed and public naming of traders is allowed only where the responsibility of the trader was established by a final and enforceable decision.</p>
<p><b>Property rights/Freedom to conduct business (Articles 16-17)</b></p>
<p>Some measures such as interim measures and the taking down of websites could raise concerns as regards property rights and freedom to conduct business. Given that these measures would only be used as a last resort, where no other less onerous measures were available and, in case of interim measures, only to prevent the risk of serious and irreparable harm to consumers, these concerns would largely be addressed by these safeguards. In addition, effective remedies exist under national law allowing traders concerned to challenge any enforcement measures.</p>
<p><b>Freedom of expression and information (Article 11)</b></p>
<p>Interim measures and the taking down of websites might raise concerns as regards the free flow of information. In accordance with Article 52 of the Charter, a careful balancing of the limitation to this right has to be made with the the objective of general interest of protecting consumers from harm caused by illegal practices. Given that websites could be taken down only as a last resort and that effective national remedies are available to the traders concerned, the concerns as regards these rights would be well addressed.</p>
<p><b>Personal data protection (Article 8)</b></p>
<p>The CPC Regulation already offers safeguards as regards processing of personal data in the alerts and CPCS system. These safeguards would be maintained in the future.</p>
<p><b>General consideration for fundamental rights</b></p>
<p>According to the Court of Justice<sup>105</sup>, neither the right to the protection of personal data (Articles 7-8 of the Charter of Fundamental Rights of EU), nor freedom to conduct a business (Article 16), nor the right to property (Article 17) are absolute rights. They must be considered in relation to their social function. Therefore, given the importance of consumer protection (Article 38 of the Charter and Article 169 TFEU that ensure a high level of protection for consumers in EU policies), the resulting fair balancing of rights leads to results in favour of the consumer. In accordance with Article 52 of the Charter, any limitation on the exercise of the rights would be subject to the principle of proportionality and necessity to protect consumers and subject to effective remedies in national courts.</p>
<p><b>Compliance costs (for the Commission, Member States)</b></p>
<p><b>Commission:</b></p> <ul style="list-style-type: none"> <li>Assuming that there would be four coordinated enforcement actions per year, where the threshold to initiate the mandatory EU-level procedure would be met, the Commission would need two full-time officials<sup>106</sup> to coordinate the actions (currently the cost of the coordinated enforcement action is estimated at ca. 37.8% of FTE = ca. EUR 50,000 per action<sup>107</sup>; however, the new procedure would require greater involvement of the Commission to coordinate the action and monitoring of its outcome, therefore a slightly higher cost per action is estimated). The required resources could be obtained through redistribution and refocusing of the existing personnel.</li> </ul>

<sup>105</sup>Cf. Case C-544/10, Deutsches Weintor, para. 54.

<sup>106</sup>Two full-time officials for four coordinated enforcement actions are estimated on the basis of the actual threshold set for initiating the new enforcement coordination procedure, which is established on the basis of the experience gained in the in-app and car rental coordinated enforcement actions. The proposed threshold is high enough to ensure that the coordination at the EU level is initiated for the most serious and widespread infringements.

<sup>107</sup>This estimate is based on the experience gained in coordinating the CPC action on in-app purchases. The average cost of the Commission official per year is EUR 132,000 (DG BUDGET data of 26.06.2014).

- The Commission would also incur additional costs in distributing intelligence and moderating alerts placed in the CPC System by other stakeholders. By reference to the similar RAPEX database used by the EU authorities to post product safety alerts, it is estimated that this would cost ca. 20% of FTE = ca. EUR 27,000 per year<sup>108</sup>, which could be covered by redistribution and refocusing of existing personnel.
- Therefore, the Commission's additional costs for its enhanced cooperation role are expected to be below EUR 300,000 per year.

#### **Member States:**

- One-off familiarisation/training costs concerning additional powers: EUR 2,000 per CPC authority in the first year only<sup>109</sup>. The Member States, where these additional powers are currently not available would be mostly affected (in particular, AT, BE, DE, EL, FR, HR, IE and LT). In addition, there would also be costs related to the CPC authorities' decision on what course of action/remedy to take in a specific case because of a larger array of powers available for the authorities under this option. The latter cost would be EUR 1,000 per case in the first year only.
- Regarding the cost of using the power to conduct test purchases/mystery shopping, the cost would be variable as it would depend on the item to be purchased. There would be initial (marginal) cost linked to the setting up of agreements with, e.g. bank/credit cards and/or internet/telecom operators. No additional specific equipment is needed (Internet investigation equipment is already available for the currently existing investigative and enforcement powers). In addition most purchases should be reimbursed as one of the objectives of test purchases would be to check compliance with withdrawal rights.
- Being a leading Member State in a coordinated action to address a widespread infringement which does not meet the threshold for the initiation of the mandatory enforcement coordination procedure at the EU level, and taking an enforcement action on behalf of other competent authorities against the infringement would cost ca. 37.8% of FTE per action for that Member State<sup>110</sup>.
- The cost of the coordinated enforcement action via the mandatory procedure would be ca. EUR 174,000 for all Member States per one coordinated action per year i.e. about half of what these costs are now.
- There would be no additional costs for Member States to prepare and follow up the implementation of the multi-annual enforcement plan, as Member States are already under an obligation to prepare reports under Article 21 of the CPC Regulation. Enforcement plans would merely replace the existing reporting obligations.

#### **Impacts on legal systems**

This option, which would harmonise the procedures and powers for cooperation in a cross-border context, would neither affect the Member States' competences in enforcement nor would it fully harmonise national enforcement systems. Some Member States would need to slightly adapt their national procedural laws so that authorities can use the new powers in the updated list of minimum powers to cooperate in a cross-border context and use the mutual recognition of evidence/outcome

<sup>108</sup>The latest statistics suggest the RAPEX handles on average 2,000 notifications per year, whereas the CPC currently handles on average ca. 60 alerts per year. Considering the purpose and use of the CPC alert mechanism, 3 FTE would be an overestimate of the resource implications, even taking into account the improved alert mechanism where access for stakeholders to submit alerts is granted.

<sup>109</sup>These costs were estimated by the consultant ICF International. Familiarisation/training costs= Number of staff in the CPC authorities requiring training in 28 MS (ca. 850 in ca. 323 CPC authorities) \*hours spent on training per staff (24 hours) \*staff costs per hour (hourly wage rate EUR 41.5, Eurostat data 2012).

<sup>110</sup>This estimate is based on the experience gained in coordinating the CPC action on in-app purchases.

of investigations. Greater changes would be borne by those Member States where CPC authorities do not have the proposed powers in the national context – AT, BE, DE, EL, FR, HR, IE and LT. The extent of adjustments would depend on the number of national laws and concerned authorities (see Annex V). In those countries, where substantive and procedural provisions, which are applicable to both national and intra-Community infringements, are contained in one act (e.g. UK, BE), adjustments would be minimal. However, more adjustments would be needed in those countries where several national laws will be concerned by the revised CPC Regulation (e.g. FR, LV, SK)<sup>111</sup>. Overall, in the medium term, savings are expected thanks to more coordinated EU wide actions.

#### **Special considerations concerning principles of proportionality and subsidiarity regarding additional powers of competent authorities**

- The use of the additional powers of the competent authorities would be limited to cross-border situations in which the same powers available in national law cannot be used because their use is limited to domestic matters only. At the same time, where such powers are absent in national law, the Member States would not be required to introduce them for domestic infringements (in line with the principle of proportionality as the outcome would not go beyond of what is necessary to achieve that objective).
- The additional powers cannot be introduced by each Member State individually because the jurisdictional boundaries between the Member States would not allow their use across national borders. For instance, the evidence collected through such individually introduced powers could not be used in another Member State because it would not be obtained in line with national law of that Member State. This is why the powers used in the cross-border context have to stem from the EU-level instrument that surpasses national jurisdictional boundaries (principle of subsidiarity – the outcome cannot be achieved through individual measures at the national level).
- These jurisdictional limitations of enforcement actions of individual Member States are already recognised and explained in the recitals 2, 5, 6, 7 and 18 of the current CPC Regulation.

#### **Feasibility**

Feasibility of this option is considered high. The cost of its implementation is low, while the efficiency gains are high<sup>112</sup>. Any limitation on the exercise of the fundamental rights would be subject to the principle of proportionality and necessity to protect consumers and would be mitigated by further legal safeguards. Only minimal adaptation of national procedural laws would be needed.

#### **Risks related for the Commission to take an action:**

The Commission would have a mandatory role to initiate the coordinated procedure and to assist CPC authorities. The following risks could occur:

**i) Mistakenly concluding that the threshold for the mandatory coordinated action has been met when the threshold in reality had not been met:** the effect would be that the action would be *ultra vires*, as its outcome would be invalid for the companies and for the competent authorities. As regards the companies, given that the outcome of the action would be commitments from the companies, the companies concerned could simply refuse to give commitments and the action would be remitted to national enforcement. No damages would arise to the companies concerned. As for the authorities, the common enforcement position would be invalid. This could however be easily mitigated through national enforcement measures or enforcement requests under the CPC Regulation. The costs of this error would be an additional cost incurred by the national authorities when repeating some investigation/evidence collection steps at the national level.

<sup>111</sup> See section 7 and Annex V for more information.

<sup>112</sup> See Annex VI for detailed calculation of costs and benefits.

ii) **Mistakenly concluding that the threshold for the mandatory coordinated action was not met when the threshold in reality had been met:** this could trigger an action for failure to act (Article 265 TFEU) from Member States and possibly from the companies or consumer associations (depending on their standing). This action would be stopped by the Commission reassessing the conclusion and initiating the action.

**Stakeholder support**

National consumer authorities, consumer and trade organisations, as well as the European Parliament have been consistently calling for stepped-up enforcement throughout the EU. In general measures included in this option received a high level of support based on the results of the public consultation and meetings with CPC authorities and consumer and trade associations.

**Development of EU-level actions is clearly the most controversial issue:** Member States, while agreeing there is a need to have efficient common solutions to address pan-European infringements, are keen to retain their enforcement prerogative. The retained option 3 takes this into account. More than half of enforcement authorities would be interested in a single EU procedure to tackle widespread infringements; supporters of stronger Commission role are mainly authorities in Spain, Austria, the Netherlands and France. Authorities from UK, Italy, Germany, Ireland, Czech Republic and Luxembourg are more sceptical about this measure, but do acknowledge that better coordination is needed to tackle such infringements effectively. Position of other authorities is shifting between these two groups.

**Business organizations** support the development of coordination of enforcement at the EU level as they clearly see the benefits of one-stop shop and uniform rules for their business.

**Consumer organizations also strongly support** the enforcement cooperation procedure at EU level. BEUC (comprising 41 consumer organisations from 31 countries) was particularly vocal on this. The minority view is UK consumer organisation Which? as they do not see a need for a centralized enforcement procedure. Which? believes resources should be focused on strengthening cross-border cooperation procedures.

Annex II (section 10.4) for more details concerning stakeholder consultation and their support concerning specific measures under the option 3.

**5.4. Option 4: Revision of the CPC Regulation: Policy Option 3 + additional elements regarding minimum powers and monitoring of Member States' enforcement efforts**

**Specific objectives**

**Reduce situations where important cross-border and widespread infringements are not detected or sufficiently addressed through the CPC framework**

Thanks to further enhanced powers, this option would address more effectively than option 3 deceitful commercial practices. The exact number of such cross-border cases is not known, but they often concern free trial/test situations: according to the study procured by the Commission on misleading free trials and subscription traps, 1 in 5 consumers who ordered a free trial had problems afterwards (such as a subscription trap, and the website either disappeared or the trader could not be contacted).

**Reduce unnecessary delays and costs in the CPC cooperation**

**Reduce delays**

- Thanks to powers to block a website or freeze assets, only deceitful commercial practices where the trader is deliberately hiding would be addressed faster than under option 3. Other practices would be addressed at the same speed as in option 3. The additional positive impact compared to option 3 is therefore lower.

<ul style="list-style-type: none"> <li>• Audits would provide for a systematic, in-depth and periodic review of Member States' enforcement efforts and systems. They would therefore go deeper than option 3 as they would identify and address the gaps and delays in cross-border enforcement, in the Member States' resources and enforcement capacity as well as in the Member States' enforcement systems as such.</li> <li>• Otherwise the impact of the option would be the same as for option 3.</li> </ul>
<b>Reduce costs</b>
<ul style="list-style-type: none"> <li>• The same conclusions for option 3 remain valid for this option, as no further reduction in cost is foreseen.</li> </ul>
<b>Reduce situations where CPC authorities reach diverging outcomes concerning the same malpractice</b>
<p>The new auditing system would better align national enforcement strategies and ensure that they are implemented on the ground, which would improve consistency of enforcement actions across the EU and prevent more effectively than option 3 cases such as misleading advertising of commercial guarantees by Apple (cf. the problem definition Box 8).</p>
<b>General objective</b>
<b>Reduction of non-compliance rate and related consumer detriment</b>
<ul style="list-style-type: none"> <li>• As this option provides for powers such as freezing assets, banning economic activity and disqualification/dismissal of directors for a fixed time period, it would allow the CPC authorities to address more effectively deceitful commercial practices in which the trader is deliberately hiding, such as in the case of scams and free trials with subscription traps. Compared to option 3, this option would ensure more effective tackling of the infringements mentioned in the problem section concerning online sales of cheap but not readily available design furniture (Box 3) and would better ensure that consumers do not suffer prolonged financial detriment.</li> <li>• The power to disqualify directors would reduce more effectively than option 3 repetition of infringements (recidivism), because the persons who are responsible for company management could have direct personal consequences if their company were responsible for such intentional infringement. Hence, they would be deterred from setting up a new company and repeating the infringement, hidden behind a new corporate structure.</li> <li>• Thanks to the power to name and shame traders before the final decision is taken, consumers would be warned about rogue traders' practices at an early stage. This would prevent and reduce detriment to consumers, beyond what is foreseen in option 3. This could deter traders from infringements as they would know that they would not be able to reap profit from the infringement once the public is informed about the infringement.</li> <li>• The new auditing system would ensure that authorities have sufficient resources to act effectively and fast. This would ensure that more infringements can be stopped faster, even if the trader hides his identity.</li> <li>• Other benefits, as per option 3.</li> </ul>
<b>Other impacts</b>
<b>Economic impacts (SMEs, competitiveness, functioning of the internal market and competition)</b>
<p>Thanks to the additional powers available to enforcers, the overall deterrent effect of their action would increase further. The non-compliance rate in cross-border markets would be lower, offering efficient market conditions for traders and consumers operating in these markets, in turn developing their attractiveness and growth. Removal of unfair competition in particular from rogue traders would boost competitiveness of honest, law-abiding traders, encourage entry of new players and boost competition and level the playing field in the Internal Market.</p>
<b>Impact on traders</b>
<p>The same assessment as under option 3.</p>
<b>Environmental impacts</b>

No significant impacts on environment are expected.
<b>Social impacts</b>
Given that scams and intentional infringements have a very negative impact on consumers' confidence (especially on the vulnerable consumers, i.e. the young and elderly), their timely removal would increase consumer confidence in the Digital Single Market and more economic growth, as described above, are expected to have an indirect positive effect on the levels of employment.
<b>Special considerations as regards possible use of national criminal law measures to address these intentional and deceitful infringements</b>
Although criminal law as described above means may be available in some Member States (e.g. BE, FR, HU, SK, UK) to address deceitful practices targeting consumers, these means may not be systematically employed because: <ul style="list-style-type: none"> <li>• the threshold for criminal offence may not be triggered (e.g. many Member States do not accept criminal liability of legal persons in this context); the practice remains an administrative offence, but the penal authorities (e.g. police, state prosecution) may not be competent to deal with it;</li> <li>• it may be impossible to use domestic criminal law means for cross-border cases, because the penal authorities may not have jurisdiction to act across national jurisdictional borders;</li> <li>• penal authorities may not consider addressing such practices to be their priority in view of other kinds of crime that they have to address as a priority (e.g. violent crime).</li> </ul> As criminal law means may not be always available to tackle such deceitful practices the consumer protection authorities would not be able to investigate and stop these deceitful infringements without the powers proposed in option 4 and these infringements would continue to cause harm to consumers.
<b>Impacts on Fundamental Rights (EU Charter of Fundamental Rights)</b>
<b>Consumer Protection (Article 38)</b>
The same assessment as under option 3. In addition, consumer protection would increase in particular for vulnerable consumers (elderly and children) that are often victims of scams, as the rogue traders often target such vulnerable consumer groups.
<b>Right to an effective remedy/due process (Article 47)</b>
This option would conflict more than option 3 with property ownership rights (as discussed below). These concerns would have to be mitigated through the CPC Regulation obliging Member States to provide for effective remedies similar to those available in criminal law.
<b>Presumption of innocence and rights of defence (Article 48)</b>
Naming and shaming of traders in all cases, even before a final decision is taken, would raise serious issues as regards the presumption of innocence and protection of good will and reputation of the traders concerned. The CPC Regulation would have to ensure that naming and shaming would be subject to the following conditions: serious suspicion of deceitful commercial practices, urgency and threat of serious and irreparable harm and no other less onerous means to stop the malpractice.
<b>Property rights/Freedom to conduct business (Articles 16-17)</b>
The additional powers under option 4 would go further in restricting private ownership rights than option 3. Such restrictions (freeze assets, suspend an economic activity) may be justified and needed to effectively tackle deceitful commercial practices, especially when the trader deliberately hides its identity, and to ensure that no irreparable harm to consumers occurs during the enforcement process. As above, these powers would be exercised as a last resort when no other less onerous means are available to address the malpractice.
<b>Freedom of expression and information (Article 11)</b>
The same assessment as under option 3.
<b>Personal data protection (Article 8)</b>



Additional concerns (than under option 3) may arise as regards the naming and shaming before the procedure has been concluded. As explained above this could be mitigated by imposing strict conditions for the use of this power.

#### **General consideration for fundamental rights**

The additional powers under this option would affect the balance between the two interests (respecting the fundamental right to property/freedom to conduct business on the one hand and ensuring a high level of protection for consumers on the other) to a much greater extent than under option 3. The use of such more intrusive powers could be justified only in infringements involving deception and concerning significant consumer detriment, when the other less onerous means had failed to ensure protection of consumers. These powers would be more complex to implement legally in order to ensure proportionality of action and respect for fundamental rights.

#### **Compliance costs (for the Commission, Member States)**

##### **Commission:**

- In addition to the costs mentioned under option 3, the Commission would incur significant costs with regards to the setting up and maintaining the general auditing system. In similar audit systems in the food and feed area (Regulation 882/2004) the Food and Veterinary Office carries out ca. 150 audits per year in the EU, with a team of some 180 professionals, representing ca. 3,080 days spent on the ground by auditors<sup>113</sup>. It is estimated that in the CPC context, there would be a need for at least 28 full-time officials to conduct regular audits in each Member State, draft reports, make recommendations, and follow up Member States' actions to improve the situation. It is estimated that this would cost at least ca. EUR 3.5 mln per year.

##### **Member States:**

- As the powers proposed under this option are not available for most of the CPC authorities in the domestic context (except for those who can use criminal proceedings in the consumer protection area, see the impacts on legal systems below), there would be higher costs for training/familiarisation concerning these powers and for choosing the right course of action/remedy in a particular case. These costs would however be incurred only in the initial period.
- The increased intrusiveness of powers under this option would entail higher costs as greater burden of proof and more profound scrutiny of decisions would be needed before, e.g. an economic activity is suspended/ banned or a company's director is disqualified.
- The auditing system would also entail higher costs as the Member States would have to be actively involved in the audits.

#### **Impacts on legal systems**

- The majority of powers proposed under this option are not available for the CPC authorities, except for those who can use criminal proceedings in the consumer protection area: BE, FR and UK. Further, in AT, FI, HU, DK and SK criminal proceedings can be initiated also in certain data protection cases and/or in cases related to deceitful practices, respectively.
- This means that most CPC authorities would have to adjust to the new powers. For instance, the power to freeze assets seems to be unavailable for most of CPC authorities, except UK and RO. The same applies for the power to disqualify directors and to name and shame traders before the final decision. The power to ban/suspend an economic activity of a trader seems to be unavailable for CPC authorities in AT, BE, CY, DE, EE, IE, LU, NL, PL, PT and SE.
- The powers added in this option, even though very effective in tackling deceitful commercial practices, would be more costly and complex to implement legally in order to ensure proportionality of action and respect for fundamental rights.

<sup>113</sup> [http://ec.europa.eu/food/food\\_veterinary\\_office/index\\_en.htm](http://ec.europa.eu/food/food_veterinary_office/index_en.htm) and FVO Work Programme for 2015, [http://ec.europa.eu/food/food\\_veterinary\\_office/files/prog\\_audit\\_2015\\_en.pdf](http://ec.europa.eu/food/food_veterinary_office/files/prog_audit_2015_en.pdf).

<b>Feasibility</b>
The option would be costly to implement. In particular the general auditing system would involve substantial costs which, despite its several positive impacts, would not generate the corresponding increase in benefits. Authorities would need additional staff to carry out more complex procedures. Further, the additional powers would be more complex to implement legally to ensure the respect for fundamental rights.
<b>Stakeholder support</b>
<ul style="list-style-type: none"> <li>• Acceptance by stakeholders (traders and national authorities) of this option is also likely to be lower due to higher litigation risks in relation to private ownership rights and thus possibly higher costs than under option 3. However, some authorities<sup>114</sup> wished that such powers be available in the CPC context to effectively address deceitful commercial practices.</li> <li>• There was no specific question on auditing of enforcement efforts of Member States in the public consultation. Even if this measure would likely be supported by consumer and trade organisations, who wish for stepped-up and consistent enforcement throughout the EU, it might not be supported by Member States, who might perceive it as too intrusive.</li> </ul>

**5.5. Option 5: New Regulation providing the European Commission with direct powers to address widespread infringements meeting the threshold described in option 3, combined either with option 3 or with option 4 as regards the existing CPC cooperation**

<b>Specific objectives</b>
<b>Reduce situations where important cross-border and widespread infringements are not detected or sufficiently addressed through the CPC framework</b>
Compared to other options, option 5 would ensure that widespread infringements with EU dimension (i.e. meeting the threshold) are addressed more effectively.
<b>Reduce unnecessary delays and costs in the CPC cooperation</b>
In addition to the assessment provided under options 3 and 4:
<p><b>Reduce delays</b></p> <ul style="list-style-type: none"> <li>• Thanks to a unified approach, it would take the least time to stop an EU-widespread infringement meeting the threshold, as the Commission would be able to take an immediate EU-wide action once the infringement is detected. The procedure could last between 6-9 months (based on the length of procedures in the EU merger control for two phased investigations). This would entail saving 3-6 months as compared to the mandatorily initiated enforcement coordination procedure under options 3 or 4.</li> </ul> <p><b>Reduce costs</b></p> <ul style="list-style-type: none"> <li>• This option would have the greatest impact on removing the duplication of investigation/enforcement efforts in complex multijurisdictional cases concerning widespread infringements, as the Commission would address the infringement for the entire EU (it would be the sole authority to bear the costs of investigation and enforcement of widespread infringements with EU dimension). It would go beyond options 3 and 4 in removing duplication. <ul style="list-style-type: none"> <li>▪ It would cost the Commission 0.5 FTE (ca. EUR 66,000) to handle one EU dimension infringement case within 9 months (based on the length of procedures in the EU merger</li> </ul> </li> </ul>

<sup>114</sup> These authorities wished to stay anonymous.

<p>control for two phased investigations).</p> <ul style="list-style-type: none"> <li>▪ Compared to the cost of the coordinated action initiated under the EU mandatory coordination procedure under options 3 and 4, this option would lead to significant savings (ca. EUR 160,000 (225,000-66,000)) per action per year<sup>115</sup>.</li> <li>• In EU competition policy the Commission adopts on average 12 decisions per year, covering antitrust and cartels<sup>116</sup>. If we assume that under this option the Commission would adopt an equivalent number of decisions this could save significant costs stemming from duplication and multiplication of efforts at the national level.</li> </ul>
<p><b>Reduce situations where CPC authorities reach diverging outcomes concerning the same malpractice</b></p>
<ul style="list-style-type: none"> <li>• This option would provide the clearest and the most efficient legal framework to address widespread infringements. It would ensure best consistent enforcement of consumer law in the EU as it would create a "one-stop shop" for widespread infringements with EU dimension. Similarly to the EU competition policy, the Commission would lead the interpretation of consumer law and ensure that Member States apply it consistently.</li> <li>• In addition the option would increase legal certainty, transparency and access to justice for all stakeholders, in particular for traders accused of a widespread infringement, as well as for the consumers concerned.</li> </ul>
<p><b>General objective</b></p>
<p><b>Reduction of non-compliance rate and related consumer detriment</b></p>
<ul style="list-style-type: none"> <li>• The estimated 12 decisions per year (on the basis of the number of cases handled per year in EU competition policy, see above) would concern infringements with significant financial consumer detriment, affecting consumers in many Member States. Thus the reduction in financial consumer detriment would be the highest from all the options considered. In addition, similar to the EU competition area, the Commission would have powers to carry out investigations to detect widespread infringements and take faster actions to prevent financial consumer detriment.</li> <li>• Direct powers of the Commission, uniformly applied law and financial/human resources allowing the Commission to act quickly and effectively EU-wide would deter traders from infringements in the most effective way.</li> </ul>
<p><b>Other impacts</b></p>
<p><b>Economic impacts</b></p>
<p>This option would best ensure consistent enforcement of consumer law in the EU. This would improve the functioning of the Internal Market, reduce economic transaction costs and increase consumers' trust and welfare. Thanks to the unified enforcement approach at the EU level, cross-border trade would increase and business conditions/ market entry conditions would be simplified, which would increase competition. This option would establish a level playing field within the Internal Market by more effectively tackling malpractices committed by traders operating either throughout the EU or from third countries. Stronger and fairer competition in the EU would encourage businesses to innovate and improve the quality of their products and services and/or reduce prices to stay competitive.</p>
<p><b>Impact on traders</b></p>
<p>The new Regulation would create a "one-stop-shop" with simple and transparent procedures for</p>

<sup>115</sup>See Annex VI for the current and future cost and saving (covering option 3) of the CPC cooperation.

<sup>116</sup>Cf. Commission staff working document of 4.6.2015 accompanying the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Competition Policy 2014, SWD(2015) 113 final. On page 24 the report mentions: "since May 2004, the Commission has investigated potential antitrust infringements across almost all sectors of the economy and has adopted over 130 decisions, many of which landmark precedents".

<p>handling widespread infringements meeting the threshold, ensuring due process and rights of defence similarly to the Regulations 1/2003 and 139/2004 in the EU competition policy field. Administrative burden on businesses would decrease as it would no longer be necessary to face parallel procedures in several Member States for the same infringement. An infringement would be resolved in a single procedure with one set of remedies applicable throughout the EU. The impact of this option on businesses would be similar to the introduction of the EU-level merger control mechanism in 1989 for mergers with EU dimension: considerable reduction of administrative costs for businesses thanks to the removal of multijurisdictional procedures.</p>
<p><b>Environmental impacts</b></p>
<p>No significant impacts are expected.</p>
<p><b>Social impacts</b></p>
<p>Higher levels of economic activity, as described above, are expected to have a positive effect on the levels of employment in the EU.</p>
<p><b>Impacts on Fundamental Rights (EU Charter of Fundamental Rights)</b></p>
<p>In addition to the assessment provided under options 3 and 4: Option 5 would require procedural rules to respect due process rights of traders (hearings, access to files, professional secrecy), similar to Council Regulation 1/2003 on the implementation of the rules on competition or to the Council Regulation 139/2004 on the control of concentrations between undertakings and the related implementing rules.</p>
<p><b>Compliance costs (for the Commission, Member States)</b></p>
<p><b>Commission:</b></p> <ul style="list-style-type: none"> <li>• In the EU competition area (antitrust, cartels and general services of DG Competition) the Commission employs ca. 225 full time officials. The Commission adopts in this field on average 12 decisions per year and conducts other activities such as sector inquiries, leniency requests and complaint handling. Consumer protection infringements would typically be less complex than major competition cases handled by the Commission. On this basis it is assumed that for a similar number of decisions in consumer protection 2/3 of the human resources currently used in DG Competition would be needed (ca. 150 FTEs per year). The consumer directorate currently employs ca. 100 FTEs. This would mean an estimated net increase by 50 FTEs (EUR. 6.6 mln) per year compared to the baseline. Further, the operating cost of EU courts would increase because they would be in charge of the review of the Commission decisions.</li> <li>• The Commission would also incur one-off training costs concerning the new powers, procedures, case-handling and decision-making of ca. EUR 270,000 (assuming 150 full-time officials would be trained for 3 days at the hourly wage rate of EUR 75).</li> <li>• In addition, IT systems would have to be replaced at an estimated cost of EUR 0.8mln through extending the existing IT systems from DG Competition.</li> <li>• The cost of option 5 + option 3 would be ca. EUR 6.9 mln.</li> <li>• The cost of option 5 + option 4 would be at least ca. EUR 10 mln per year.</li> </ul> <p><b>Member States:</b> The same compliance costs as per option 3 or option 4.</p>
<p><b>Impacts on legal systems</b></p>
<p>In addition to the assessment provided under options 3 and 4: All Member States would be affected in the same manner due to the application of one threshold for widespread infringements and direct powers of the Commission to address them. Some national procedural adjustments would be needed in particular, as regards, for instance, possible referrals of cases between the Member States and the Commission and implementation of the non bis in idem principle. Stronger impacts could be felt in countries with many enforcement authorities as various procedural rules would have to be adjusted (e.g. DE and CZ) and in countries with enforcement through civil courts (e.g. UK, LU, DK etc.).</p>

### Feasibility

Compared to the other options, feasibility of this option is the lowest, because:

At this point of time, the Commission could only enforce EU consumer acquis that is directly applicable in the Member States, i.e. contained in regulations. Horizontal consumer legislation, e.g. the Unfair Contract Terms Directive, the Unfair Commercial Practices Directive and the Directive on Consumer Rights, consists of directives that must be transposed into national law and hence are not directly applicable. At present the Commission could therefore only effectively enforce passenger rights legislation. Should, however, the new instruments, e.g. stemming from the REFIT of consumer acquis or from the on-going initiatives of the Digital Agenda, become directly applicable (i.e. take the form of regulations) it would be hypothetically possible to extend the Commission enforcement powers to these new directly applicable instruments.

### Stakeholder support

- In the public consultation more than half (52%) of the CPC authorities stated that the Commission should not carry out case investigations (including the power to do on-site investigations or request information from traders)<sup>117</sup>. Since this option encompasses a Union action in the enforcement of consumer protection laws (which has so far been the task of the Member States), political reluctance from Member States regarding this option is expected to be substantial. Even more so given that the possible legal basis for this action could be Article 352 TFEU requiring decision by unanimity in the Council.
- Consumer and trade organisations would be more supportive of a centralised enforcement to tackle widespread infringements. Multinational traders in particular would appreciate stronger EU-level enforcement (be it through better co-ordination of enforcement actions or through EU-level action).

## 6. HOW DO THE OPTIONS COMPARE?

### 6.1. Comparison of options

The policy options are compared based on the rating of their impacts as well as in terms of their contribution to the policy objectives set out in section 3.

**Option 1 (Baseline Scenario)** would not entail additional cost or obligations but would not contribute to achieving the policy objectives. The non-compliance rate to consumer legislation would remain high and consumers would continue suffering detriment because of ineffective enforcement. Enforcement authorities would have increasing difficulties to stop dishonest traders who explore jurisdictional boundaries to the detriment of consumers as they would employ new technological developments to spread their malpractices more swiftly. This would further erode the capacity of national authorities and the Commission to stop infringements from taking place online. National authorities would find it difficult or impossible to investigate certain types of cross-border infringements both in the digital space and offline, particularly where test purchases/mystery shopping exercises are required to obtain evidence of the infringement. Short-term infringements and parallel domestic infringements would remain outside the scope of the CPC Regulation. Inconsistent enforcement would remain

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<sup>117</sup> 54 stakeholders answered these questions.

and possibly increase. Although coordinated enforcement actions would continue, they would not reach their full potential as regards enforcement consistency, scope and speed, and would be lagging behind market developments. Consumer detriment is likely to increase in the future and the digital business environment would remain suboptimal. The option would not be in line with stakeholders' expectations and the Commission's Digital Single Market Strategy, where it is said that: "*The Commission will submit a proposal to review the Regulation on Consumer Protection Cooperation that will clarify and develop the powers of enforcement authorities and improve the coordination of their market monitoring activities and alert mechanisms to detect infringements faster*".

**Option 2 (Implementing legislation and non-legislative ("soft law") measures to improve and clarify CPC cooperation, combined with self-regulation to increase business compliance).** Although the costs of this option would be negligible, it would only partially achieve the objectives. Even though these measures could clarify to some extent the mutual assistance mechanism and the framework for coordinated enforcement actions, they would not provide a sound legal basis so that national authorities could cooperate on cross-border issues with "digitally fit" powers (test purchases/mystery shopping, blocking of websites, sanctions in a cross-border context, etc.). This would thus not allow for the development of enforcement cooperation beyond the current Regulation. Short-term infringements and infringements happening in parallel in multiple Member States would remain outside the scope of the CPC Regulation. However, national authorities would benefit from clarified procedures (e.g., binding time limits, use of the alert mechanism, clarified framework to address widespread infringements) that could reduce the cost of enforcement and speed up their actions. Voluntary preparation and submission to the Commission of multi-annual enforcement plans and resources benchmarking would encourage prioritisation but not ensure that more adequate resources are attributed to cross-border enforcement cooperation. The consumer detriment would be at a risk of remaining high as the proposed measures would have a limited impact. Self-regulation has not yet proven to be a sustainable solution in the long term. This option would not be in line with stakeholders' expectations and the ambition of the Digital Single Market Strategy.

**Option 3 (Revision of the CPC Regulation to extend its scope and strengthen its efficiency)** would entail higher costs than options 1-2, but would achieve all the policy objectives at a reasonable cost for national authorities and the Commission. It would improve the effectiveness of public action and the governance of EU retail markets, which would become fairer and more transparent for traders and consumers. Costs for public action and transaction costs for economic actors would decrease. This would generally improve competitiveness of EU economy.

Consumers would benefit from a higher level of protection when purchasing cross-border, especially online. It was estimated, for the subset of five online markets sampled, that a decrease of 10 points in the non-compliance rate of 37% could reduce the detriment from an estimated EUR 770 million per year to about EUR 539 million, i.e. by 30%. A single action against a widespread practice would further reduce consumer

detriment across the EU by estimated EUR 68 million (e.g. as estimated in the in-app purchases case).

The new harmonised EU procedure to address widespread infringements would allow the Commission to optimally support the Member States in their enforcement efforts. Improved coordination would allow national authorities to avoid parallel proceedings (it was estimated that ca. EUR 180,000 (in case the action is successful) and ca. EUR 815,000 (in case the action is not successful) could be saved annually in total. Optimised evidence gathering in the new mandatorily initiated coordination procedure would allow reuse of evidence in national proceedings and thus save costs and time for enforcement authorities and ensure maximum consistency of enforcement actions. Sharing evidence on market conditions would allow early detection of malpractices and an alignment of priorities, resulting in targeted actions addressing widespread infringements across the EU. This would result in a stronger deterrence of infringements. The option is strongly supported by stakeholders and is feasible.

**Option 4 (Revision of the CPC Regulation: Policy Option 3 + additional elements regarding minimum powers and monitoring of Member States' enforcement efforts)** would achieve all the policy objectives, yet at higher cost than option 3.

On top of the additional powers, a general auditing system would verify the overall quality of enforcement of the consumer protection legislation in Member States. Auditing would be the strongest means to verify how Member States comply with their obligations under the CPC Regulation. However, evidence from similar audit systems in the food and feed area suggests the resources necessary to carry out audits are substantial. Therefore the general auditing system, despite its several positive impacts, would not generate an increase in benefits that would correspond to its cost. In contrast, option 3 would provide sufficient means for the Commission to monitor enforcement efforts of Member States via their multi-annual enforcement plans and benchmarking. Further, the powers added in option 4, even though very effective for tackling deceitful commercial practices, would be more costly and complex to implement legally to ensure proportionality of action and respect for fundamental rights. Lastly, compared to option 3, option 4 would be only partially supported by stakeholders.

**Option 5 (New Regulation providing the European Commission with direct powers to address widespread infringements meeting the threshold, combined either with option 3 or with option 4 as regards the review of the existing CPC cooperation)** would entail the highest cost compared to other options but would contribute the most to the achievement of the policy objectives and, if combined with option 3, would display the most positive impacts. It would ensure the most consistent enforcement of EU consumer law in the Single Market as it would create a "one-stop-shop" for widespread infringements meeting the threshold. Assuming that the Commission adopted 12 decisions per year, as it does on average in EU competition policy (antitrust and cartels

only<sup>118</sup>), the reduction in consumer detriment would be significant (e.g. in the in-app purchases case alone, the estimated consumer detriment was EUR 68 million).

At present this option would however not be feasible, because the bulk of EU consumer law consists of directives, which are not directly applicable. It is also not supported by most stakeholders, in particular by the Member States. In addition, the likely legal basis for this action, Article 352 TFEU, requires unanimity in the Council.

### **Outcome of the comparison:**

The option that currently contributes most to the achievement of the policy objectives and at the same time displays the most positive impacts is **Option 3: Revision of the CPC Regulation to extend its scope and strengthen its efficiency**, combined with the soft law measures from the option 2 regarding voluntary benchmarking of resources dedicated by Member States to the CPC cooperation.

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<sup>118</sup> Cf. Commission staff working document of 4.6.2015 accompanying the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Competition Policy 2014, SWD(2015) 113 final. On page 24 the report mentions: "since May 2004, the Commission has investigated potential antitrust infringements across almost all sectors of the economy and has adopted over 130 decisions, many of which landmark precedents".



Summary table 1 – Assessment of impacts

Impacts	Baseline Option 1	Option 2: Implementing/soft law measures	Option 3: Revision of the CPC Regulation	Option 4: PO3 +additional powers to address deceitful practices and auditing system	Option 5 direct enforcement powers for the Commission	
					+ PO3	+ PO4
<b>Economic</b>	<b>0</b>	<b>Minor positive</b>	<b>Positive</b>	<b>Highly positive</b>	<b>Highly positive</b>	<b>Highly positive</b>
<b>Fundamental Rights (FR)</b>	<b>0</b>	<b>Positive impact on consumer protection, no negative impact on other FRs</b>	<b>Highly positive impact on consumer protection, no negative impact on other FRs</b>	<b>Positive impact on consumer protection but negative impact on other FRs</b>	<b>Highly positive impact on consumer protection, no negative impact on other FRs</b>	<b>Positive impact on consumer protection but negative impact on other FRs</b>
<b>Compliance costs (MS, Commission)</b>	<b>0</b>	<b>Negligible EU: ca. €40,000 per year; MS: ca.€870 per authority (one-off familiarisation costs);</b>	<b>Low EU: ca. € 300,000 per year MS: ca. €3,000 per authority (one-off familiarisation costs); ca. € 23,600 (0.378 FTE) per one authority per coordinated action per year if the authority is leading the action; ca. €174,000 for all MSs per one coordinated action (mandatory procedure) per year</b>	<b>High EU: ca. €3.5 mln per year MS: as per PO3</b>	<b>Very high EU: ca. €7 mln per year MS: as per PO3</b>	<b>Highest EU: ca. €10 mln per year MS: as per PO4</b>
<b>Feasibility</b>	<b>0</b>	<b>High, but would be below stakeholders' expectations</b>	<b>High and supported well by stakeholders</b>	<b>Low and not supported by all stakeholders</b>	<b>Low and not supported by stakeholders</b>	<b>Low and not supported by stakeholders</b>

## **7. THE PREFERRED OPTION**

The option which contributes most to the achievement of the policy objectives and has the most positive overall impact is Option 3. In addition to what has been said above, the benefits and costs of the preferred option's measures are presented in detail in Annex VI.

### **7.1. Legal basis**

Article 169(2) TFUE provides that the Union shall contribute to the promotion of consumers' interests and ensure a high level of consumers' protection by adopting measures pursuant to Article 114 TFUE in the context of completion of the Internal Market. Former Article 95 EC (now Article 114 TFEU) is the legal basis for the CPC Regulation, based upon the aims of Article 26 TFEU and objectives pursued by this Regulation. Its aim, to efficiently and effectively tackle cross-border traders' practices which disrupt the smooth functioning of the Internal Market, contributes to the removal of distortions of competition and the elimination of Internal Market obstacles (Article 26 TFEU). The proposed initiative seeks to improve the effectiveness and efficiency of the CPC cross-border enforcement system by deepening the level of harmonisation of the CPC Regulation. As such it contributes to the same aims and objectives, and Article 114 TFEU would therefore remain the legal basis for the proposed initiative.

### **7.2. Consistency of the preferred option with other EU policies**

The preferred option would be fully consistent and compatible with existing EU policies, including in the transport sector, where the specific legislation on passenger rights provides for rules on consumer compensation, assistance and care<sup>119</sup>. The preferred option would not duplicate the existing rules in this legislation, which as *lex specialis* should be applied first to address compensation issues in the given sector (e.g. to calculate the compensation). It would merely supplement them by providing *lex generalis* that would apply where such provisions are not applicable.

### **7.3. Impact of the preferred option on national enforcement systems and laws**

The preferred option would neither affect the Member States' competences in enforcement, nor would it fully harmonise national enforcement systems. It would not affect internal division of competences among authorities at national level, as Member States would remain responsible for their institutional set up and designation of competent authorities under the CPC Regulation.

As is the case in the current CPC Regulation, the scope of the preferred option would be limited to intra-Community infringements (it would be clarified, however, that short-lived infringements and widespread infringements with a cross-border dimension committed by multinationals in several countries or by operators in certain markets where cross-border competition is important would fall within the scope of the CPC

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<sup>119</sup> E.g. Article 7, 8 and 9 of the 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 passengers in the event of denied boarding and of cancellation or long delay of flights, OJ L 46, 17.2.2004, p. 1.

Regulation). Therefore the Member States would not be required to change their powers, procedures and other arrangements for domestic infringements.

The introduction of additional powers for cross-border cooperation in the list of minimum powers may have to be reflected in national procedural laws according to the current availability of such powers in the Member States. However, as explained in Annex V, this would be a limited burden as the necessary framework already exists in all Member States with the entry into force of the CPC Regulation in 2006, and this framework would only have to be updated.

## 7.4. How would the option 3 solve the underlying problems mentioned in the section 1?

### 7.4.1. *Improved CPC mutual assistance mechanism*

**Example in Box 2: A deceptive air carrier advertisement campaign that lasted 4 days but resulted in flight cancellations for months.** The revised CPC Regulation would include short-lived intra-Community infringements in the scope of the CPC Regulation. The requested CPC authority would be able to take an action under Article 8 of the CPC Regulation even after the air carrier advertisement campaign had ended: e.g. sanction the trader concerned and prevent the infringement to be repeated in the future.

**Example in Box 3: Cheap design furniture online never delivered, but impossible to catch the responsible trader.** The option 3 foresees an additional package of minimum powers necessary for the CPC authorities to effectively cease and prohibit intra-Community infringements, in particular which occur in the digital environment. E.g., thanks to the additional power to follow the financial flows by obtaining the information from police, financial authorities banks and/or from domain registries would permit the authorities establishing the identity, location and operational structure of the trader and stopping such practices much faster than now (it took more than three years for the CPC authorities to discover who was behind the trade mentioned in the example in Box 3). Further, the CPC authorities would also be able to take interim measures and close down the websites concerned by preventing further detriment for consumers from this widespread infringement.

**Example in Box 4: Difficult cooperation with domain registrars.** Thanks to the additional powers to cooperate under the option 3, the authorities would have the power to request information from domain registrars to reveal the trader's identity and take an enforcement action (e.g. close down its website, take an interim measure to stop its infringing practice) against the trader concerned.

**Example in Box 6: divergence in the requirements for "evidence" among countries.** Option 3 foresees mutual recognition of evidence (outcome of investigation) regarding intra-Community infringements. The evidence gathered by the country X submitted in a specifically required format (e.g. established by the implementing legislation) would therefore be recognised by the country Y without any validation or similar legal process even if the national law of the country Y provides for different rules on the collection of such evidence. The evidence, which was lawfully obtained in the country X, would be admissible by a fact finder (competent authority/court) in all other Member States, unless its admission would adversely affect the fairness of the procedure or the rights of defence as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the EU. This would ensure that no intra-Community infringement is left unaddressed and would reduce delays in handling of cases under the CPC mutual assistance mechanism.

7.4.2. *A streamlined procedure for a coordinated enforcement action to address a widespread infringement*

**Examples in Boxes 8-9: widespread infringements**

The revised CPC Regulation would introduce a new EU-level coordination procedure for widespread infringements meeting the EU-dimension threshold. New elements would be:

- threshold defining what a widespread infringement with EU-dimension is;
- mandatory coordination by the Commission. The proposed threshold is high enough to ensure that the Commission would only be involved in serious widespread infringements;
- mandatory cooperation by the Member States concerned by the infringement;
- single procedure, common enforcement position as a basis for the action, and this procedure would only result in undertakings from traders. Where traders offer no undertakings or fail to implement them, the CPC authorities would coordinate mutual assistance requests (they would choose who is best placed to enforce on behalf of the others);
- basic procedural steps including respect of rights of defence of traders.

This procedure would ensure consistent responses to common problems and legal certainty for traders wishing to implement a single commercial strategy for the entire European market but who have to face and cope with plural regulatory and enforcement systems. So in case of the Apple guarantee case (**Box 8**), such a procedure would be launched (as the threshold would be fulfilled) with the aim to achieve one common enforcement position at the EU level with the trader concerned. The enforcement outcome would be consistent across the EU and all consumers would benefit from an equivalent protection in concrete terms.

In case of examples in **Box 9** (CPC coordinated actions in the in-app and car rental cases), the procedure would be streamlined, resulting in ca. EUR 180,000 savings emanating from the less time devoted to the action in each Member State thanks to more streamlined pooling of national resources and the increased coordination role of the Commission. In addition, such a large scope action would have a stronger deterrent effect as back by a strong legal basis.

**8. MONITORING AND EVALUATION**

To assess the effectiveness in achieving the objectives of the option introduced, the following core progress indicators have been identified in line with the objectives of the policy action. These indicators can serve as the basis for its evaluation, as well as possible targets to be achieved seven years after the entry into application of the revised Regulation.

Objectives	Core indicators	Baseline	Target in 5 years
<b>Reduction in the non-compliance rate and in the related consumer detriment (ca. EUR 770mln)</b>	<ul style="list-style-type: none"> <li>• Non-compliance rate</li> <li>• Screening of at least 2,500 websites in the 5 online consumer sectors against key consumer rules to</li> </ul>	The non-compliance rate in the 5 online sectors was 37% in 2014.	-10 points in non-compliance rate in these sectors

	gauge compliance with EU consumer law in the 7 <sup>th</sup> year since the application of the CPC Regulation		
<b>Improved CPC cooperation to address intra-Community infringements</b>	Number of CPC mutual assistance requests, for which the established binding time limits were not respected	Currently there are no binding time limits for handling CPC mutual assistance requests. By the end of 2014, almost 40% of the information requests and 50% of the enforcement requests were not treated and closed within the benchmarks set in the Operating Guidelines. 26% of all open cases were created more than two years ago.	halving of these %
<b>Effectiveness of the CPC cooperation in tackling widespread infringements</b>	Number of CPC coordinated enforcement actions	Ca. 1-2 actions per year.	3-4 actions per year on average
<b>Improved market surveillance</b>	Number of alerts notified by stakeholders, including Commission "for information"	Currently this is 0, as the Regulation does not permit this.	At least 10 per year
<b>Improve priorities setting, strategy and dedicated resources for enforcement cooperation at EU level</b>	Elaboration every two years of national enforcement plans  Elaboration of benchmarking of resources, dedicated to CPC enforcement	Currently not existing –only biennial reports (Article 21 of the CPC Regulation).	Existence of national enforcement plans, benchmarking of resources dedicated to CPC enforcement

## 9. Annex I: Procedural information

Lead DG: Directorate General Justice and Consumers.

Agenda Planning

Reference AP N°	Short title	Foreseen adoption
2015/JUST/014	Review of the CPC Regulation	First half of 2016

### 9.1. Article 21a of the CPC Regulation ("review clause")

Article 21a of the CPC Regulation ("review clause") requires the Commission to assess the effectiveness and operational mechanisms of the Regulation and thoroughly examine the possible inclusion in the Annex of additional laws that protect collective economic consumers' interests. It requires submitting a report to the European Parliament and to the Council, which has to be based on an external evaluation and extended consultation of all relevant stakeholders, and can be accompanied, if appropriate, by a legislative proposal.

### 9.2. External evaluation of the CPC Regulation

In 2012, the European Commission contracted an external evaluation of the CPC Regulation by ICF International. The first external evaluation<sup>120</sup> concluded that the CPC Regulation had been beneficial for the competent authorities, consumers and traders, thereby confirming the appropriateness and relevance of its objectives. It however also pointed out that these objectives had not been fully achieved and that the CPC Regulation had not been exploited to its full potential.

Specifically, the external evaluation found that there remained **a number of practical and legal barriers to effective cooperation** between CPC authorities, which ultimately undermined the efficiency and effectiveness of the CPC Regulation, most notably:

- differences between CPC competent authorities in terms of their capabilities, capacities and understanding of the CPC Regulation and the tools available;
- tendency among CPC competent authorities to prioritise domestic over cross-border cases;

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<sup>120</sup> External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012: [http://ec.europa.eu/consumers/enforcement/docs/cpc\\_regulation\\_inception\\_report\\_revised290212\\_en.pdf](http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf)

- no formalised systems for recording, storing and exchanging intelligence, and organising cooperation;
- insufficient minimum investigative and enforcement powers mandated by the CPC Regulation under Article 4(6);
- differences in national judicial systems and procedural rules causing delays and difficulties in cross-border cooperation; and
- lack of recognition of the notion of “EU relevant” infringements.

Furthermore, the external evaluation **recommended two courses of actions** to resolve these issues:

- Non-legislative actions such as provision of better guidance, monitoring, communication etc.; and
- Legislative action i.e. strengthening of the CPC Regulation to address the issues relating to investigative and enforcement powers of national competent authorities; procedural law fragmentation affecting the handling of cross-border infringement cases; enhanced coordination; alert and intelligence sharing; and the role of the Commission. The external evaluation also issued recommendations regarding the scope of the CPC Regulation and the legal acts to be included in its Annex.

### **9.3. Commission report of 2014 on the functioning of the CPC Regulation**

In July 2014, the European Commission adopted a Report on the functioning of the CPC Regulation since its entry into operation in 2006<sup>121</sup>.

The report highlighted its **positive results** to improve the level of compliance of businesses to consumer legislation. For instance, more than 3,300 websites have been corrected since 2007 thanks to the annual exercises of coordinated screening of e-commerce websites ("sweeps"). The report also stressed the value of coordinated enforcement actions, facilitated by the Commission that required the operators concerned to change these practices. In 2014, for example, the CPC network tackled the misleading marketing of online games as "free" when in fact they included in-app offers, and in 2015 it addressed the lack of transparency in car rental online bookings<sup>122</sup>. These actions resulted in a significant change of practices by major market players and were considered as an efficient and pragmatic model by the multinational traders concerned and by national authorities.

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<sup>121</sup> 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), 1.7.2014, COM(2014) 439 final.

<sup>122</sup> [http://ec.europa.eu/justice/newsroom/consumer-marketing/news/150713\\_en.htm](http://ec.europa.eu/justice/newsroom/consumer-marketing/news/150713_en.htm)



However, the report also identified **challenges and difficulties**. It stressed the need to increase the rapidity, agility, and consistency of CPC enforcement cooperation and consumer protection, in particular in relation to online purchases and to ensure adequate consumer protection in the digital sphere and across borders.

In line with the principles of better regulation, the report also confirmed the commitment of the Commission to study the possible improvements to the CPC Regulation on the basis of a thorough impact assessment. This would allow the Commission to complete the review called for in Article 21a of the CPC Regulation and to prepare grounds for a decision whether a legislative proposal for the amendment of the CPC Regulation is necessary.

#### **9.4. Inter-Service Steering Group**

An Inter-Service Steering Group was set up in 2013. In total, seven meetings were organised: on 26 June 2013, on 5 May and 18 September in 2014, on 25 February, 16 July, 14 October 2015 and 20 January 2016. The following directorates and services were consulted: CNECT, COMP, FISMA, GROW, MOVE, SANTE, SJ, SG, JRC and the executive agency CHAFAEA. The feedback received from these directorates and services has been taken into account in the report.

The ISSG approved the Inception Impact Assessment that was published twice (in September 2013<sup>123</sup> and republished to comply with the new Better Regulation Guidelines in October 2015<sup>124</sup>) and the Impact Assessment Report.

Pursuant to the requirements of the better regulation guidelines, the minutes of the meeting of 14 October 2015 were submitted to the Regulatory Scrutiny Board.

#### **9.5. Consultation of the Regulatory Scrutiny Board**

The Impact Assessment Report was examined by the Regulatory Scrutiny Board on 25 November 2015. The Board gave an overall positive opinion provided the impact assessment report is improved with special attention to the following aspects:

<b>Board's Recommendations</b>	<b>Implementation of the recommendations into the revised IA Report</b>
<i>1. Clarify the problem section by underlying when the inefficiencies of the CPC Regulation are due to a lack of clarity of the current legal</i>	<i>1. The problem section 1 was clarified in this respect. Additional examples were provided and the structure was revised to illustrate better that the current shortcomings of the</i>

<sup>123</sup> [http://ec.europa.eu/smart-regulation/impact/planned\\_ia/docs/2014\\_sanco\\_001\\_consumer\\_protection\\_cooperation\\_review\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2014_sanco_001_consumer_protection_cooperation_review_en.pdf)

<sup>124</sup> [http://ec.europa.eu/smart-regulation/roadmaps/docs/2015\\_just\\_014\\_review\\_cpc\\_regulation\\_2006\\_2004\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_014_review_cpc_regulation_2006_2004_en.pdf)

<p>framework or a lack of commitment of the Member States to comply with their obligations and linking clearly problems to solutions.</p> <p>2. Reinforce the intervention logic by illustrating with concrete examples how the proposed amendments would solve the underlying problems.</p> <p>3. Reinforce the argumentation why an increased role of the Commission in consumer law enforcement to address pan-European infringements is needed and explain more in detail the related legal and implementation issues for Member States and their views in this respect (if known).</p> <p>4. Clarify the interaction of the CPC Regulation with sectorial instruments listed in its annex (as some of them already include remedies such as compensation mechanisms for passenger rights).</p>	<p>CPC cooperation are mostly due to the limitations of the legal framework. The revised report summarises more clearly the initiatives undertaken since the CPC Regulation came into force to address its current limitations (Box 7) and explains better why they are not sufficient for the future. The problem section was restructured in a clearer manner (drivers-problems-consequences) so that the intervention logic is more coherent. The problem tree was also included in the report.</p> <p>2. The problem section and objectives were clarified to ensure more coherence in the intervention logic. Examples were provided to illustrate how the proposed amendments would solve the underlying problems (section 7.4).</p> <p>3. The revised report emphasises successes obtained notably through the coordinated actions on in-app purchases and car rental and the pivotal role the Commission played to complete these actions successfully (section 1.4.2.2). The report points more clearly to the future opportunities that could be generated with the proposed amendments (section 7.4). Member States' views on a single EU level procedure are provided in the assessment of the option 3 and Annex II.</p> <p>4. All sectorial legislation in the current annex and proposed to be further included were screened to review their existing remedies and explain the interaction with the CPC system, this screening is to be found in Annex VII</p>
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## **9.6. Studies to support the impact assessment**

To obtain research and to strengthen the evidence basis of the problem description for this impact assessment, the Commission contracted an external impact assessment study by **ICF International**. The Commission also contracted **Grimaldi Studio Legale** to deliver an additional study providing an in-depth assessment of the implementation of the current investigative and enforcement powers of national enforcement authorities and a typology of relevant national procedural law rules that might impact cross-border enforcement in the CPC network. Extracts of these studies will be published together with the Commission's proposal on the review of the CPC Regulation.

## **10. Annex II: Stakeholder consultation**

Several consultations to gather information about the current application of the CPC Regulation as well as of the possible elements for its revision were carried out, respecting the minimum European Commission's standards. The results gave useful indication of the positions of different stakeholders and were taken into account throughout the impact assessment process. In particular:

### **10.1. Regular consultations of our consumer organisations, networks and high level officials of national enforcers**

Through 2013-2015 regular consultations on enforcement of consumer organisations, networks and high level officials of national enforcers took place through the established networks of DG JUST which meet regularly: the CPC Committee (CPC authorities); ECCG (the European Consumer Consultative Group is the main forum to consult national and European consumer organisations), and Consumer Protection Network (a forum of high level officials from the consumer protection authorities).

### **10.2. European Consumer Summit dedicated to enforcement in March 2013**

Taking stock of the 2012 external evaluation's results, some 480 stakeholders at the European Consumer Summit in March 2013 discussed ways to make enforcement more effective and efficient. The conclusions<sup>125</sup> show that the CPC Regulation is generally beneficial to consumers and authorities, but it would need several improvements to obtain the full benefits of the Regulation. The discussions during the summit also stressed that a more integrated approach to enforcement of consumer rights at an EU level was necessary especially to address widespread infringements.

### **10.3. Public consultation in winter 2013-2014**

A web-based public consultation was launched in October 2013 and ended in February 2014. The Commission proactively promoted this public consultation through different networks such as the Consumer Policy Network (CPN), European Consumer Consultative Group (ECCG), and the European Consumer Centers Network (ECC-Net). Stakeholders were invited to give their views on how to improve the functioning and effectiveness of the CPC Regulation focusing on three areas: **(i)** methods for identifying markets trends and infringements; **(ii)** need for additional powers to cooperate and common procedural standards for enforcement authorities; and **(iii)**, given the constrained public budgets, whether and how coordinated enforcement at the EU level could help to combat more effectively widespread breaches of consumer laws harming consumers and traders across Europe.

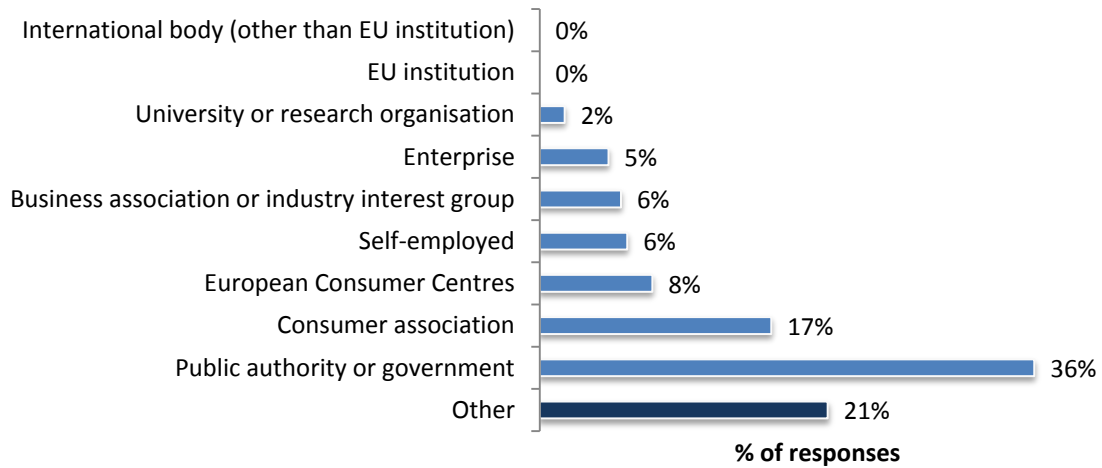
In total 222 responses were received from a broad range of stakeholders. In terms of Member States, the stakeholders from Italy and Spain were the most represented among

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<sup>125</sup> [http://ec.europa.eu/consumers/events/ecs\\_2013/report/Summitconclusions.pdf](http://ec.europa.eu/consumers/events/ecs_2013/report/Summitconclusions.pdf)

all participants, accounting for 18% and 10.9% of all responses, respectively. France and Bulgaria accounted each for 7.6%, while Germany for 5.7% of all responses. In terms of profile, 36% of respondents were public authorities (CPC enforcers, sectorial regulators as well as the ministries concerned), followed by consumer associations and business associations. The public consultation was overall sufficiently representative by the stakeholders directly concerned by the CPC Regulation's review.

**Stakeholder representation profile (number of replies = 222)**



#### 10.4. Stakeholders' support regarding the key elements of the option 3

With regard to the main areas addressed in the online public consultation, the following results could be highlighted:

##### 1) Additional minimum powers for CPC authorities to cooperate

**Additional powers were well supported** by all stakeholders groups (public authorities, consumer associations, ECCs, business and individual consumers = 159 replies were received on this question), in particular the powers to carry out test purchases for investigative purposes'; 'an explicit power (under defined conditions) to name infringing traders'; 'the power to request penalty payments to recover illicitly obtained gains'; and 'the power to require interim measures, awaiting the completion of full proceedings'. These powers received more than 50% support by each stakeholder group.

Public authorities, businesses and ECCs **were less supportive** of the introduction of minimum powers to impose sanctions for ceased ('short-lived') infringements and application of more stringent sanctions to cross-border infringements (on average support of 30%). In particular respondents from **Germany were less supporting** of granting additional interventions tools to enforcers. Conversely, **consumer organisations strongly supported these powers**: 57% supported stringent sanctions and 70% supported sanctions for ceased infringements.

It can be concluded from the regular contacts and missions to Member States that:

- Majority of enforcement authorities would also support stronger powers (such as tracing of financial flows, freezing assets and block websites). There are however some authorities that would be more **cautious** about stronger powers, namely authorities from **Sweden, Germany, Czech Republic, Luxembourg and Ireland**.
- As regards facilitation of consumer redress the **main supporters** of these measures seem to be authorities from **Germany, Austria and the UK**. Some other Member States (**Eastern Europe, Italy, Ireland and Luxembourg**) are **more reluctant** as they fear that such measures could be costly for the competent authorities, other authorities are neutral. **Business associations are also less supportive** of this measure. On contrary, **consumer organizations strongly support** this measure (34 who responded in the public consultation were unanimously in favour).

##### 2) Commission's involvement in addressing widespread infringements

Almost all respondents (190 answered this question) acknowledged that widespread infringements require a specific action. Only 6% did not see importance of specific enforcement cooperation to handle EU-level infringements.

However, stakeholders differ as regards concrete measures they would support:

- More than half of **enforcement authorities** would be interested in a single EU procedure to tackle such infringements; **supporters of stronger Commission role are mainly authorities in Spain, Austria, the Netherlands and France.**
- **UK, Italy, Germany, Ireland, Czech Republic and Luxembourg are more skeptical** about this measure, but do acknowledge that better coordination is needed to tackle such infringements effectively.
- Position of other authorities is shifting between these two groups.

**Development of EU-level actions is clearly the most controversial issue:** Member States, while agreeing there is a need to have efficient common solutions, are keen to retain their enforcement prerogative. The retained option 3 takes this into account.

- **Business organizations** support the development of coordination of enforcement at the EU level as they clearly see the benefits of one-stop shop and uniform rules for their business.
- **Consumer organizations also strongly support** the enforcement cooperation procedure at EU level. BEUC (comprising 41 consumer organisations from 31 countries) was particularly vocal on this. The minority view is UK consumer organisation Which? as they do not see a need for a centralized enforcement procedure. Which? believes resources should be focused on strengthening cross-border cooperation procedures.

### **3) Strengthened market surveillance (e.g. alert mechanism)**

Practically **all enforcement authorities support** in principle the improvement of the surveillance mechanism.

In particular **ECCs (83%), consumer associations (75%) and business (62%)** have called for more possibilities for them to influence enforcement prioritisation and to signal infringements via the alert mechanism. Public authorities were more cautious about involving third parties in the market surveillance mechanism, as they fear that this would negatively impact the confidentiality of their investigations (25% of 69 authorities considered this measure as a low priority; 39% as a medium and 36% as a high priority).

## **10.5. More detailed public consultation results**

Summary of all stakeholders' views in the public consultation

- Overall, there was a clear call from stakeholders to increase efforts towards effective enforcement of consumer laws.
- Stakeholders<sup>126</sup> support **additional powers to cooperate** for the national authorities to deal with infringements, with a particular focus on powers needed to address infringements in the digital environment: the power to carry out test purchases/mystery shopping for investigative purposes (66% fully agrees); the power

<sup>126</sup> 189 respondents answered the questions on additional powers.

to name infringing traders (60%); the power to request penalty payments from the traders to recover illicitly obtained gains (60%), and the power to require interim measures (51%).

- A clear majority of stakeholders (88%)<sup>127</sup> consider useful to introduce common procedural standards/criteria in the CPC Regulation to overcome procedural differences between national legal systems when tackling cross-border infringements. A few respondents (in particular from DE and UK), however, expressed some reservations regarding the idea of introducing common procedural standards in the CPC Regulation, stating that national procedural law falls within national competence<sup>128</sup>.
- According to 87% of stakeholders<sup>129</sup>, it is necessary to include new elements into the CPC Regulation that would make the process of claiming compensation by individual consumers more user-friendly.
- A clear majority of stakeholders (91%)<sup>130</sup> call for an enhanced EU-level coordination mechanism to tackle widespread infringements. According to stakeholders<sup>131</sup>, the Commission should play a stronger coordination role in addressing these infringements; including a possibility to request Member States to impose sanctions on non-compliant undertakings (71%) and define evidence based priority sectors where consumer conditions are the poorest (72%). A large share of stakeholders also support the Commission's direct involvement in carrying out preparatory prima facie investigations (58% support the Commission's role), on-site investigations (54%), requesting a trader to cease an infringement (53%) or establishing an undertaking with the trader (49%).

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<sup>127</sup> 193 respondents answered the question on common procedural standards.

<sup>128</sup> 3 of the 12 respondents in Germany and 3 of the 7 respondents in the UK stated 'no' it would not be useful to introduce common standards or criteria in the CPC Regulation.

<sup>129</sup> 196 respondents answered the question on making it easier for consumers to claim compensation.

<sup>130</sup> 190 respondents answered this question.

<sup>131</sup> 178 respondents answered the relevant questions.

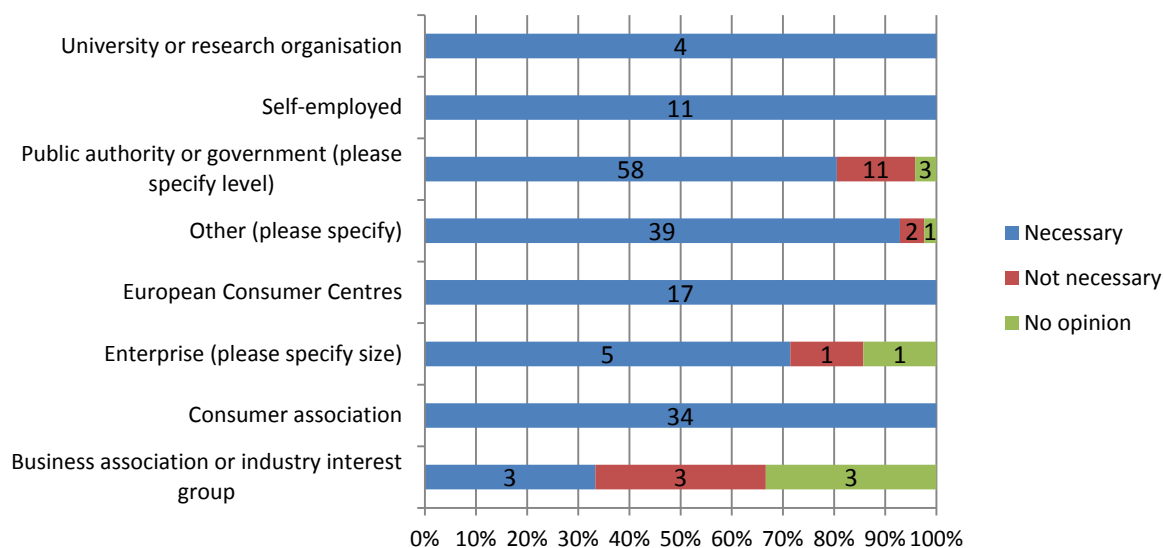


**Degree of support for the inclusion of following powers/procedures in the CPC Regulation, Number of replies (N) =159<sup>132</sup>**

	Fully agree	Somewhat agree	Somewhat disagree	Fully disagree	No opinion
<b>The power to carry out test purchases for investigative purposes</b>					
<i>Consumer associations</i>	74%	16%	3%	0%	6%
<i>Public authorities and governments</i>	75%	13%	3%	3%	7%
<i>Other</i>	55%	31%	7%	0%	7%
<i>ECC</i>	59%	35%	6%	0%	0%
<b>An explicit power (under defined conditions) to name infringing traders</b>					
<i>Consumer associations</i>	77%	13%	0%	0%	10%
<i>Public authorities and governments</i>	62%	23%	6%	6%	4%
<i>Other</i>	49%	41%	7%	0%	2%
<i>ECC</i>	72%	28%	0%	0%	0%
<b>The power to request penalty payments to recover illicitly obtained gains</b>					
<i>Consumer associations</i>	73%	17%	0%	0%	10%
<i>Public authorities and governments</i>	49%	21%	11%	8%	10%
<i>Other</i>	67%	26%	5%	2%	0%
<i>ECC</i>	61%	39%	0%	0%	0%
<b>The power to require interim measures, awaiting the completion of full proceedings</b>					
<i>Consumer associations</i>	73%	17%	3%	0%	7%
<i>Public authorities and governments</i>	49%	35%	6%	7%	4%
<i>Other</i>	44%	41%	10%	2%	2%
<i>ECC</i>	78%	17%	0%	0%	6%
<b>The power to apply more stringent sanctions due to the cross-border nature of the infringement</b>					
<i>Consumer associations</i>	57%	13%	13%	7%	10%
<i>Public authorities and governments</i>	24%	26%	14%	29%	7%
<i>Other</i>	51%	32%	10%	2%	5%
<i>ECC</i>	18%	47%	24%	12%	0%
<b>The possibility to request the application of sanctions, regardless of whether the infringement has ceased or not</b>					
<i>Consumer associations</i>	70%	20%	0%	0%	10%
<i>Public authorities and governments</i>	30%	35%	10%	18%	7%
<i>Other</i>	43%	43%	10%	2%	2%
<i>ECC</i>	28%	50%	11%	6%	6%

<sup>132</sup> N = 76 for Public authorities and governments, N = 34 for Consumer associations, N = 44 for Other (business, trade associations, individuals) and N = 18 for ECCs.

**Variations in the views between different stakeholders as regards the necessity of inclusion of new elements into CPC Regulation that would make the process of claiming compensation by individual consumers more user friendly, Number of replies (N)=196**



**Variations in the views of stakeholders as regards to key conditions for an effective alert system<sup>133</sup>**

		Action categorisation of alerts (e.g. with an obligation to act/for information only)	Possibility for the European Commission to post alerts	Possibility for other organisations (e.g. consumer and trade associations, self-regulatory bodies, European Consumer Centres) to post alerts	Possibility for alerts to be made public
Consumer associations	Top, highest priority	32%	45%	75%	68%
	Medium priority	52%	52%	22%	32%
	Low priority	16%	3%	3%	0%
ECC	Top, highest priority	78%	78%	83%	47%
	Medium priority	22%	17%	11%	35%
	Low priority	0%	6%	6%	18%
Other	Top, highest priority	38%	40%	62%	43%
	Medium priority	55%	52%	33%	48%
	Low priority	7%	7%	5%	10%
Public authorities	Top, highest priority	49%	32%	36%	46%
	Medium priority	32%	50%	39%	18%

<sup>133</sup> Consumer associations N = 36, Other (business, trade associations, individuals) N = 38, ECC = 14, Public authorities and governments N = 69.

	<b>Action categorisation of alerts (e.g. with an obligation to act/for information only)</b>	<b>Possibility for the European Commission to post alerts</b>	<b>Possibility for other organisations (e.g. consumer and trade associations, self-regulatory bodies, European Consumer Centres) to post alerts</b>	<b>Possibility for alerts to be made public</b>
Low priority	19%	18%	25%	37%

**Most effective approaches to stop or defer widespread infringements, Number of replies (N) =148<sup>134</sup>**

	Very effective	Highly effective	Not so effective	Not effective	No opinion
<b>A mechanism of mutual recognition of enforcement decisions</b>					
<i>Consumer associations</i>	45%	27%	18%	0%	9%
<i>Public authorities and governments</i>	40%	37%	7%	6%	9%
<i>Other</i>	46%	37%	0%	3%	14%
<i>ECC</i>	44%	44%	6%	0%	6%
<b>A single EU level procedure, where the Commission or any Member State can bring the evidence of an EU-level infringement</b>					
<i>Consumer associations</i>	59%	13%	9%	3%	16%
<i>Public authorities and governments</i>	40%	28%	13%	7%	10%
<i>Other</i>	54%	32%	8%	0%	5%
<i>ECC</i>	56%	28%	6%	0%	11%
<b>An obligation for Member States to alert other enforcement authorities on an enforcement action when it is suspected that similar practices by the same company or its branches are done in other markets, so as to trigger a joint enforcement action</b>					
<i>Consumer associations</i>	59%	29%	9%	0%	3%
<i>Public authorities and governments</i>	48%	30%	13%	7%	1%
<i>Other</i>	47%	42%	8%	0%	3%
<i>ECC</i>	61%	33%	6%	0%	0%
<b>Following sufficient evidence on a case of EU-level relevance, brought by the Commission, an obligation for the concerned Member States to conduct a joint enforcement action</b>					
<i>Consumer associations</i>	61%	30%	3%	0%	6%
<i>Public authorities and governments</i>	34%	36%	12%	10%	7%
<i>Other</i>	49%	35%	8%	0%	8%
<i>ECC</i>	44%	39%	11%	0%	6%
<b>An obligation for Member States to notify cases corresponding to defined criteria for EU-level relevance so as to trigger a joint enforcement action</b>					
<i>Consumer associations</i>	61%	30%	3%	0%	6%
<i>Public authorities and governments</i>	34%	36%	12%	10%	7%
<i>Other</i>	49%	35%	8%	0%	8%
<i>ECC</i>	44%	39%	11%	0%	6%

<sup>134</sup> N = 76 for Public authorities and governments, N = 34 for Consumer associations, N = 44 for Other (business, trade associations, individuals) and N = 18 for ECCs.

**Degree of agreement with the leading role of the European Commission in specific actions while tackling widespread infringements,  
Number of replies (N) =148<sup>135</sup>**

	Yes	No	No opinion
<b>Request Member States to enforce and/or impose a sanction in case of non-compliance with the undertaking</b>			
<i>Consumer associations</i>	76%	0%	12%
<i>Public authorities and governments</i>	53%	34%	3%
<i>Other</i>	70%	0%	11%
<i>ECC</i>	61%	17%	17%
<b>Establish an undertaking with the trader(s) and ensure follow-up monitoring</b>	47%	15%	15%
<i>Consumer associations</i>	37%	43%	8%
<i>Public authorities and governments</i>	48%	23%	11%
<i>Other</i>	39%	39%	22%
<i>ECC</i>			
<b>Request trader(s) to cease an infringement</b>			
<i>Consumer associations</i>	62%	6%	15%
<i>Public authorities and governments</i>	38%	45%	5%
<i>Other</i>	50%	18%	14%
<i>ECC</i>	50%	28%	22%
<b>Determine the existence and nature of an infringement</b>			
<i>Consumer associations</i>	56%	9%	12%
<i>Public authorities and governments</i>	37%	42%	9%
<i>Other</i>	57%	14%	9%
<i>ECC</i>	44%	39%	17%
<b>Carry out case investigations (including the power to do on-site investigations, request information from traders) on the basis of complaints</b>	65%	6%	12%
<i>Consumer associations</i>	37%	46%	7%
<i>Public authorities and governments</i>	50%	18%	14%
<i>Other</i>	56%	22%	22%
<i>ECC</i>			

<sup>135</sup> N = 69 for Public authorities and governments, N = 36 for 'Other' (business, trade associations, individuals), N = 29 for Consumer associations and N = 14 for ECCs.

	Yes	No	No opinion
<b>Carry out preparatory prima facie investigations (e.g. based on website studies, complaint data)</b>			
<i>Consumer associations</i>	56%	9%	21%
<i>Public authorities and governments</i>	58%	25%	7%
<i>Other</i>	48%	18%	16%
<i>ECC</i>	61%	22%	17%
<b>Define evidence based priority sectors where consumer conditions are the poorest</b>			
<i>Consumer associations</i>	65%	3%	12%
<i>Public authorities and governments</i>	61%	20%	8%
<i>Other</i>	59%	7%	14%
<i>ECC</i>	72%	11%	11%

## **10.6. Conference dedicated to enforcement cooperation and Competitiveness Council in 2014**

On 7-8 July 2014, in Rome, the Italian Presidency of the Council of the Ministers of the EU dedicated one of its main conferences on consumer policy to the CPC enforcement cooperation<sup>136</sup>. The Conference gathered high representatives of the European Commission, national Governments and CPC authorities, consumer organizations, European networks (e.g. CPC, CPN, ECC-Net, ECCG), relevant stakeholders, scholars, and Non-Governmental advisors. It focused on the European and national political perspectives, the possibilities and opportunities arising from the CPC Regulation and on e-commerce issues and challenges. The speakers concluded that the CPC cooperation is highly relevant today and remains a key asset for the future of the EU consumer policy. There was a unanimous consent to improve the CPC cooperation so that it effectively addresses enforcement challenges of the future. The report on this conference was presented by the Italian Presidency at the Competitiveness Council in September 2014<sup>137</sup>.

## **10.7. Workshops**

Two workshops with experts from Member States and EEA countries were organised in June 2014 (19 Member States participated and representatives from Norway) and March 2015 (25 Member States participated and representatives from Norway and Iceland) to discuss the key areas identified for the review of the CPC Regulation, namely key definitions of the CPC Regulation (e.g. 'intra-Community infringement'), powers needed for enforcement authorities to tackle infringements in the digital markets, improvement of market surveillance mechanism and addressing widespread infringements. The CPC authorities were consulted in these expert group meetings, showed a particular interest to make national authorities' powers fitter to digital challenges. A positive feedback was also given on the need to clarify and strengthen the role of the Commission in common enforcement actions under Article 9 of the CPC Regulation.

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<sup>136</sup> Documents and key speeches available at: <http://www.agcm.it/convegni-e-seminari/7122.html> It is important to note that other Presidencies of the Council of EU also organised high level events to discuss equal enforcement of consumer laws throughout the Internal Market and the functioning of the CPC Regulation 2006/2004: cf. High Level Event of the Belgian Presidency of the EU on 22 September 2010: <http://www.eutrio.be/european-consumer-protection-enforcement-day-high-level-meeting>

<sup>137</sup> Information from the Presidency on the outcome of the Conference "The European Union Cooperation for Consumer Rights" (Rome, 7-8 July 2014), 13206/14, available: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2013206%202014%20INIT>

## 11. Annex III: Who is affected by the initiative and how

Stakeholders who would be affected by the initiative as contained in the preferred policy option (PO3):

- **Consumers** shopping for services and goods cross-border offline and in the digital environment. The initiative would eliminate partly the risk of financial consumer detriment, which consumers might experience, e.g. from the goods bought abroad and not delivered or misleading information about the payment arrangements for purchases and being debited through default settings without the explicit consent. With reinforced tools and procedures the CPC network will address more effectively collective consumer detriment stemming from widespread infringements occurring throughout EU. Thanks to the strengthened enforcement cooperation, a decrease of, for example, 10 points in the average non-compliance rate of 37%, would reduce this detriment to EUR 539 million, a reduction by 30% or EUR 231 million, which would be a very significant result compared to the baseline situation. The expected decrease is legitimate because the CPC sweeps have shown that targeted enforcement actions can lead to a significant improvement in compliance rates, i.e. from 20 to 40% at the screening phase to above 80% after a year of enforcement actions. This would in turn increase consumers' trust and engagement in cross-border e-commerce.
- **Representatives of consumer interests** (ECC-Net and consumer associations). These organisations can hold extremely useful intelligence and expertise, but currently they cannot input data to help identify the CPC enforcement priority areas or warn about emerging mal-practices in a regular way. The CPC competent authorities also do not profit systematically from their knowledge of the markets and particular problems consumers might face. Thanks to the improved alert mechanism and enforcement plans, the initiative will allow closer cooperation and the project-oriented structured dialogue between CPC authorities, the European Commission and these representative organisations
- **CPC competent authorities and CPC focal points** (single liaison offices): currently they suffer from higher administrative costs as a consequence of cross-border cooperation inefficiencies and higher investigation costs if the trader cannot be found or is not cooperative with the enforcement authority. This results in duplication of investigative efforts, devotion of disproportionate enforcement resources, and loss in time, divergent outcome and widespread consumer detriment. Rather than fragmented national enforcement efforts, the CPC can bring EU-wide enforcement solutions. Increased cooperation among national enforcement authorities will enhance their capacity to act across borders on online markets and address infringements consistently. Thanks to the stepped-up enforcement coordination, national administrations will avoid duplicating their efforts. In particular pooling of resources to address widespread infringements would save resources as 1 coordinated action would replace 28 national actions, resulting in net savings varying from ca. EUR 180,000 (in case of successful coordinated action) to ca. EUR 815,000 (in case of failed action).

The preferred option will neither affect the Member States' competences in enforcement nor will harmonise national enforcement systems. Some Member States may need to slightly adapt their national laws so that authorities benefit from the mutual recognition of evidence/outcome of investigations and from the additional



powers to cooperate in a cross-border context (mostly AT, BE, DE, EL, FR, HR, IE and LT). Main cost for Member States will cover familiarisation/training due to new powers and procedures (ca. EUR 3,000 per authority) and ca. EUR 174,000 for all Member States per one coordinated enforcement action per year initiated through mandatory coordination procedure. The extent of adjustments will depend on the number of national laws which will need to be changed. In those countries, where substantive and procedural provisions, which are applicable to both national and intra-Community infringements, are contained in one act (e.g. UK, BE), adjustments will be minimal. However, more adjustments will need to be made in those countries where several national laws will be concerned by the revised CPC Regulation (e.g. FR, LV, SK)<sup>138</sup>. Overall in the medium term, savings are expected thanks to more coordinated EU wide actions.

- **Economic operators:** manufacturers, traders, sellers, on line marketplaces, intermediaries, who especially operate in more than two Member States and/or in the digital environment, suffer from uncertainty and higher (e.g. compliance and litigation) costs caused by the complexity of 28 enforcement regimes (+ Iceland, Lichtenstein and Norway) and diverging enforcement approaches amongst Member States, as well as from an unfair competition from non-compliant traders, who thanks to the expansion of e-commerce and technology, have developed business models and strategies with a view to evading laws. The initiative will increase legal certainty for business. More consistent cross-border enforcement would boost competitiveness of honest law abiding traders and improve competition and level playing field in the Internal Market. The initiative will not impose any legal obligations to the business sector.
- Widespread infringements that affect consumers across the EU need a strong and consistent EU-level answer. The **European Commission's** role and involvement in the CPC network will increase in particular with regards to the coordination of certain widespread infringements (meeting a certain threshold), where a common enforcement approach will be agreed with the traders concerned at the EU level to ensure equal protection of consumers across borders and level playing field for businesses. The Commission's additional cost for its enhanced coordination role is expected to be below EUR 300,000 per year.

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<sup>138</sup> See Annex V for more information.

## 12. Annex IV: Data and case studies supporting this impact assessment

### 12.1. Non-compliance rate and consumer detriment

#### 12.1.1. Screening of 2,682 websites in five consumer sectors

The current caseload dealt under the CPC Regulation's framework (140 enforcement requests on average per year) is sub-optimal and does not reflect reality<sup>139</sup>.

Although there are some data on the CPC relevant infringements (e.g., intra-Community infringements recorded in the CPC database and complaints data collected by the ECC-Net), the **exact caseload (a number of CPC relevant infringements) cannot be established**. This is because infringements are not recorded and reported systematically for different reasons. Not all Member States keep detailed recording systems; further, consumers do not always complain about infringements. Apart from the annual CPC sweeps, the Commission lacks a coherent, EU-wide dataset looking specifically into the levels of compliance with consumer rules to underpin the need for enforcement action. A further complexity of this task is a focus on those infringements with a cross-border dimension.

Therefore, to gauge the state of compliance with key consumer laws and identify possible variations in compliance rates by Member State and market sector, more than 2,680 websites selling to consumers were investigated by the ICF International on behalf of the Commission.

In spring 2014, a total of 2,682 websites covering all EU 28 Member States, were screened in five market sectors against five key consumer rules (contact details of a trader; information about a product; information about a price; information on delivery and payment; and information on the right to withdraw)<sup>140</sup>. The sectors were chosen on the basis of their popularity for online shopping, size and economic importance, as well as frequency of non-compliance in previous sweeps of the CPC network and complaint data from European Consumer Centers. On this basis, **clothing and sports goods** (sport shoes), **electronic goods** (tablets), **package travel** (flight and hotel package holiday), **recreation and culture** (tickets for events), and **financial services** (short term consumer credit for 6-24 months) sectors and specific products were selected. This entailed a screening of an average of 18 websites per sector (90 in total) per Member State.

The websites were screened against key consumer rules concerning (not all the rules were relevant for all the sectors):

- Provision of address, telephone number, e-mail;
- Provision of product information;
- Presentation of the price including taxes as well as all additional freight, delivery or postal charges;

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<sup>139</sup>Data extracted from the CPCS database. To be noted that 140 enforcement requests do not equal 140 cross-border infringement cases, as one enforcement request could concern 1 or several infringements. Note that the infringement in the CPC context concerns **collective interests** of consumers, although the Regulation does not define how many people should be affected by the infringement concerned.

<sup>140</sup>Websites were screened by qualified people, holding a university degree or higher, in each Member State.

- Information on terms and conditions;
- Information on delivery and payment arrangements, and
- Information on the right to withdraw.

The results are summarised in the table<sup>141</sup> below, which visualises the results through use of a colour coding of the percentage of surveyed websites on which indicated information was not available. While greenish colours indicate low percentages of websites lacking relevant information, reddish colours indicate increasing percentages of such websites. The colour "bright red" indicates that more than 20% of surveyed websites in the specific sector and Member State do not provide the indicated information.

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<sup>141</sup> Source: ICF International's support study for the impact assessment on the review of the CPC Regulation (publication forthcoming).



	Clothes and sports goods									Electronic goods									Package travel						Recreation and culture (tickets for events)						Consumer credit									
	Address	Telephone	Email	Product information	Final price matches initial price	Information on delivery costs	Information on payment methods	Information on expected delivery time	Terms and conditions	Information on right to withdraw	Address	Telephone	Email	Product information	Final price matches initial price	Information on delivery costs	Information on payment methods	Information on expected delivery time	Terms and conditions	Information on right to withdraw	Address	Telephone	Email	Product information	Terms and conditions	Final price matches initial price	Address	Telephone	Email	Product information	Final price matches initial price	Information on delivery costs	Information on payment methods	Terms and conditions	Information on expected delivery time	Address	Telephone	Email	Terms and conditions	Product information
AT	0%	0%	5%	0%	29%	0%	0%	10%	5%	0%	0%	0%	0%	8%	0%	0%	33%	0%	4%	0%	0%	5%	0%	0%	57%	0%	0%	0%	0%	40%	0%	5%	0%	5%	0%	13%	0%	6%	44%	
BE	0%	6%	19%	0%	38%	0%	0%	0%	0%	0%	0%	0%	32%	5%	27%	0%	0%	36%	0%	27%	0%	19%	63%	0%	6%	44%	0%	0%	27%	0%	40%	67%	7%	6%	13%	0%	0%	36%	18%	23%
BG	13%	4%	13%	4%	78%	0%	4%	13%	13%	35%	13%	0%	8%	0%	42%	13%	13%	29%	21%	17%	5%	5%	0%	0%	32%	10%	25%	25%	0%	25%	25%	17%	8%	17%	0%	0%	20%	0%	0%	
CY	14%	14%	0%	0%	0%	0%	0%	0%	14%	0%	0%	8%	25%	0%	25%	0%	0%	33%	25%	25%	0%	0%	0%	0%	40%	18%	0%	0%	0%	67%	33%	0%	67%	0%	0%	0%	0%	20%	17%	20%
CZ	0%	0%	0%	0%	24%	0%	0%	29%	0%	0%	0%	0%	8%	0%	8%	0%	0%	27%	0%	0%	0%	0%	6%	0%	6%	24%	0%	4%	4%	0%	17%	0%	0%	57%	0%	0%	10%	30%	14%	
DE	0%	0%	0%	0%	19%	0%	0%	27%	0%	0%	0%	0%	4%	4%	8%	0%	0%	46%	4%	0%	0%	0%	0%	0%	85%	0%	0%	0%	0%	64%	0%	0%	4%	0%	0%	0%	0%	0%	4%	
DK	0%	10%	5%	0%	29%	0%	0%	0%	0%	0%	0%	10%	0%	10%	0%	0%	10%	0%	0%	6%	0%	18%	0%	6%	65%	5%	0%	11%	0%	32%	11%	0%	16%	0%	0%	0%	6%	6%	19%	
EE	6%	6%	0%	0%	38%	0%	0%	31%	38%	19%	4%	0%	4%	0%	24%	8%	8%	16%	36%	20%	0%	0%	0%	19%	19%	0%	0%	0%	0%	25%	13%	50%	63%	0%	0%	0%	21%	42%		
EL	5%	0%	19%	0%	19%	10%	0%	10%	30%	29%	5%	9%	23%	0%	23%	0%	0%	5%	41%	50%	0%	0%	7%	0%	7%	47%	7%	0%	13%	0%	40%	20%	7%	27%	7%	0%	0%	17%	17%	33%
ES	4%	8%	33%	0%	29%	0%	0%	4%	12%	4%	4%	17%	17%	0%	58%	0%	0%	0%	0%	8%	0%	0%	24%	0%	14%	52%	5%	20%	20%	0%	30%	15%	0%	0%	5%	5%	5%	27%	23%	50%
FI	0%	13%	17%	0%	17%	0%	0%	0%	25%	0%	0%	14%	9%	5%	27%	0%	0%	0%	5%	5%	5%	5%	0%	5%	57%	0%	5%	10%	0%	35%	45%	0%	30%	10%	0%	4%	21%	0%	8%	
FR	0%	0%	54%	0%	31%	4%	0%	4%	0%	4%	8%	12%	42%	4%	31%	4%	4%	15%	0%	4%	4%	0%	44%	0%	0%	96%	5%	19%	29%	0%	52%	33%	0%	0%	5%	81%	0%	0%		
HR	0%	0%	0%	0%	35%	18%	0%	18%	29%	47%	0%	0%	0%	0%	27%	0%	0%	13%	13%	60%	0%	0%	0%	0%	14%	0%	0%	0%	0%	13%	0%	0%	27%	0%	0%	0%	5%	5%	0%	
HU	10%	10%	0%	0%	48%	0%	5%	5%	5%	10%	0%	5%	5%	0%	19%	5%	5%	5%	0%	10%	5%	5%	0%	9%	68%	0%	0%	6%	0%	59%	0%	0%	29%	0%	0%	7%	36%	0%	0%	
IE	0%	0%	5%	0%	15%	0%	0%	40%	20%	5%	0%	6%	22%	0%	33%	6%	6%	6%	6%	11%	0%	0%	5%	0%	5%	65%	5%	10%	20%	0%	55%	10%	0%	10%	10%	0%	0%	11%	21%	0%
IT	0%	4%	21%	0%	50%	0%	0%	4%	4%	8%	0%	8%	29%	0%	71%	0%	0%	8%	4%	4%	4%	0%	8%	0%	8%	75%	8%	23%	12%	0%	65%	4%	0%	22%	0%	0%	8%	16%	16%	28%
LT	14%	0%	10%	0%	38%	5%	10%	10%	20%	0%	4%	0%	0%	8%	4%	4%	4%	8%	33%	13%	11%	0%	6%	0%	72%	39%	8%	38%	0%	23%	38%	15%	31%	31%	0%	0%	5%	32%	11%	
LU	17%	0%	17%	0%	33%	0%	0%	0%	17%	17%	0%	0%	33%	0%	50%	0%	0%	50%	0%	0%	25%	0%	0%	0%	75%	0%	0%	0%	0%	50%	50%	0%	25%	25%	14%	0%	29%	57%	29%	
LV	0%	5%	14%	0%	14%	0%	5%	9%	14%	14%	0%	0%	0%	4%	33%	0%	0%	13%	38%	13%	0%	0%	5%	5%	42%	16%	0%	27%	7%	0%	33%	7%	0%	0%	0%	0%	0%	0%	42%	25%
MT	20%	10%	10%	0%	20%	0%	0%	30%	20%	20%	8%	0%	0%	0%	8%	17%	17%	33%	42%	42%	13%	0%	13%	0%	38%	13%	0%	13%	25%	0%	13%	38%	13%	50%	50%	0%	0%	25%	25%	75%
NL	0%	0%	8%	0%	40%	8%	0%	4%	0%	0%	0%	0%	28%	0%	12%	0%	0%	0%	0%	0%	0%	0%	20%	4%	0%	100%	8%	16%	16%	0%	60%	8%	4%	4%	0%	0%	0%	18%	18%	23%
PL	0%	0%	12%	0%	35%	0%	0%	8%	4%	0%	0%	4%	19%	0%	31%	0%	0%	4%	8%	12%	4%	0%	15%	0%	8%	31%	13%	13%	17%	0%	54%	17%	0%	0%	0%	0%	0%	54%	23%	19%
PT	0%	9%	35%	0%	52%	0%	0%	4%	22%	4%	9%	9%	4%	0%	52%	0%	0%	13%	17%	4%	9%	17%	39%	0%	13%	30%	5%	11%	11%	0%	47%	58%	0%	16%	21%	0%	5%	45%	55%	18%
RO	10%	5%	5%	0%	30%	0%	0%	15%	0%	15%	17%	0%	11%	0%	44%	0%	0%	17%	11%	22%	10%	0%	15%	5%	43%	20%	7%	13%	7%	0%	40%	53%	0%	13%	0%	11%	6%	22%	11%	22%
SE	0%	13%	4%	0%	26%	0%	0%	4%	0%	0%	0%	8%	12%	0%	20%	0%	0%	0%	0%	0%	0%	0%	0%	0%	88%	10%	0%	10%	0%	38%	5%	0%	5%	5%	0%	0%	4%	12%	0%	
SI	0%	0%	9%	0%	82%	0%	0%	45%	10%	0%	0%	0%	17%	0%	11%	0%	0%	22%	0%	0%	0%	0%	0%	0%	12%	0%	0%	0%	0%	17%	83%	0%	75%	67%	0%	0%	0%	12%	13%	
SK	0%	0%	8%	0%	33%	0%	4%	8%	4%	0%	0%	0%	5%	0%	5%	0%	0%	18%	0%	5%	0%	0%	0%	14%	67%	0%	8%	0%	8%	31%	0%	15%	31%	5%	5%	21%	18%	16%		
UK	0%	4%	29%	0%	21%	0%	4%	0%	0%	4%	0%	0%	39%	0%	22%	0%	0%	9%	0%	9%	0%	5%	30%	0%	0%	70%	0%	11%	33%	0%	48%	19%	4%	7%	11%	0%	0%	16%	8%	0%
EU	4%	4%	13%	0%	33%	2%	1%	12%	10%	8%	3%	4%	14%	1%	26%	2%	2%	17%	10%	13%	4%	2%	13%	1%	13%	48%	4%	9%	11%	0%	38%	25%	3%	17%	13%	1%	2%	19%	17%	19%

The screening of more than 2,682 websites in the five sectors found that:

- **Contact information:** Both business address and telephone number contact information was provided frequently across all sectors. In contrast, the number of instances where more than 20% of websites did not provide an e-mail address was much higher.
- **Relevant product information** was available in most sectors and countries, the exception being the consumer credit sector, where in a number of Member States (11 in total) more than 20% of surveyed websites did not provide relevant information. In a further seven Member States 12%-20% of websites were found not to provide this information.
- Researchers also looked for **information on price and payment methods**, and compared the initial advertised price with the final price displayed before it was necessary to enter payment details. For all of the four sectors where this comparison applied (i.e. all, except the consumer credit sector), there was a high rate of inconsistency between the initially stated price and final price the consumer was requested to pay. This inconsistency was observed in 33% of websites in the clothes and sports goods sector, in 26% of websites in the electronic goods sector, in 48% of websites in the package travel sector, and in 19% of websites in the recreation and culture sector.
- Information concerning **the right of withdrawal** was also absent in a significant number of cases: In the sector of electronic goods, in six countries<sup>142</sup> more than 20% of surveyed websites did not provide clearly worded information on the right to withdraw, in the sector of clothes and sports goods, this was the case in 3 countries<sup>143</sup>.
- **Information on delivery** was also found to be absent in over 20% of websites selling electronic goods and tickets for entertainment events (where the option to print the e-ticket was not available) in a significant number of Member States.

The second table below presents the percentage of surveyed websites where one, two or more pieces of consumer information were missing per sector.

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<sup>142</sup> Belgium, Cyprus, Greece, Croatia, Malta and Romania.

<sup>143</sup> Bulgaria, Greece, and Croatia.

No.	Clothes and sports goods				Electronic goods					Package travel				Recreation and culture (tickets for events)					Consumer credit		
	1	2	3	4	1	2	3	4	5	1	2	3	4	1	2	3	4	5	1	2	3
AT	33%	5%	0%	0%	38%	0%	0%	0%	0%	52%	5%	0%	0%	50%	0%	0%	0%	0%	31%	13%	0%
BE	25%	19%	0%	0%	41%	18%	14%	0%	0%	31%	38%	6%	0%	40%	47%	7%	0%	0%	41%	9%	0%
BG	35%	39%	9%	4%	38%	17%	8%	0%	4%	11%	5%	0%	0%	25%	42%	17%	0%	0%	20%	0%	0%
CY	0%	14%	0%	0%	42%	8%	8%	8%	0%	18%	0%	0%	0%	33%	33%	0%	0%	0%	40%	0%	0%
CZ	33%	10%	0%	0%	31%	4%	0%	0%	0%	29%	0%	0%	0%	13%	4%	0%	0%	0%	24%	0%	0%
DE	27%	8%	0%	0%	42%	8%	0%	0%	0%	69%	0%	0%	0%	60%	0%	0%	0%	0%	4%	0%	0%
DK	33%	5%	0%	0%	19%	5%	0%	0%	0%	53%	18%	0%	0%	47%	5%	0%	0%	0%	25%	0%	0%
EE	44%	19%	6%	0%	28%	4%	4%	8%	0%	19%	0%	0%	0%	25%	38%	0%	0%	0%	42%	0%	0%
EL	43%	14%	0%	5%	50%	9%	9%	5%	0%	40%	7%	0%	0%	33%	20%	7%	0%	0%	50%	0%	0%
ES	54%	8%	0%	0%	38%	13%	8%	0%	0%	57%	10%	0%	0%	50%	15%	5%	0%	0%	41%	14%	5%
FI	33%	4%	0%	0%	45%	0%	5%	0%	0%	67%	10%	0%	0%	75%	5%	0%	5%	0%	25%	4%	0%
FR	54%	15%	0%	0%	27%	19%	0%	8%	0%	48%	32%	4%	0%	48%	24%	10%	5%	0%	76%	5%	0%
HR	29%	18%	18%	0%	47%	27%	0%	0%	0%	14%	0%	0%	0%	13%	0%	0%	0%	0%	5%	0%	0%
HU	29%	29%	0%	0%	33%	10%	0%	0%	0%	59%	9%	0%	0%	53%	6%	0%	0%	0%	43%	0%	0%
IE	35%	15%	0%	0%	44%	11%	0%	6%	0%	60%	5%	0%	0%	40%	10%	10%	5%	0%	11%	0%	0%
IT	42%	13%	4%	0%	58%	25%	0%	0%	0%	63%	4%	4%	0%	35%	23%	4%	0%	0%	32%	4%	4%
LT	43%	14%	5%	0%	17%	8%	0%	0%	0%	44%	6%	0%	0%	31%	38%	15%	0%	0%	5%	5%	0%
LU	50%	17%	0%	0%	33%	50%	0%	0%	0%	75%	25%	0%	0%	25%	50%	0%	0%	0%	29%	0%	14%
LV	27%	9%	5%	0%	33%	13%	0%	0%	0%	16%	5%	0%	0%	60%	7%	0%	0%	0%	25%	0%	0%
MT	30%	10%	20%	0%	25%	17%	8%	0%	8%	13%	13%	0%	0%	25%	25%	25%	0%	0%	100%	0%	0%
NL	36%	4%	0%	0%	32%	4%	0%	0%	0%	64%	20%	0%	0%	36%	12%	4%	0%	4%	41%	0%	0%
PL	27%	4%	0%	0%	42%	4%	0%	0%	0%	23%	8%	0%	0%	46%	17%	4%	0%	0%	50%	4%	0%
PT	43%	26%	0%	0%	48%	13%	0%	0%	0%	26%	26%	0%	4%	53%	26%	16%	0%	0%	59%	5%	0%
RO	35%	15%	5%	0%	28%	33%	6%	0%	0%	30%	10%	0%	0%	40%	40%	0%	0%	0%	22%	11%	6%
SE	17%	13%	0%	0%	36%	0%	0%	0%	0%	75%	0%	0%	0%	48%	10%	0%	0%	0%	4%	0%	0%
SI	55%	27%	9%	0%	28%	11%	0%	0%	0%	12%	0%	0%	0%	33%	67%	0%	0%	0%	13%	0%	0%
SK	25%	13%	0%	0%	32%	0%	0%	0%	0%	67%	0%	0%	0%	23%	15%	8%	0%	0%	37%	5%	0%
UK	38%	8%	0%	0%	43%	9%	0%	4%	0%	45%	30%	0%	0%	22%	26%	0%	4%	0%	12%	0%	0%
EU	35%	14%	3%	0%	36%	12%	3%	1%	0%	42%	10%	1%	0%	39%	22%	5%	1%	0%	32%	3%	1%

■ More than 20%  
■ 12-20%  
■ 8-12%  
■ 4-8%  
■ Less than 4%

### 12.1.2. Estimating the non-compliance rate

The third table below presents the results of the website screening per sector and displays different non-compliance rates, which could be estimated on the basis of the screening.

For example, a non-compliance rate could be established taking into account the websites which were rated by qualified researchers as "very poor" on the basis of how easy the relevant pre-contractual information could be found on a particular website. Other non-compliance rates could be established taking into account websites which were found by researchers not to implement one specific consumer rule, i.e. websites where the final price to pay did not match the initial offer. The last column of the table shows that, taking into account the EU total, the proportion of websites not implementing one consumer rule ranges from 32% to 42%, average being ca. 37%.

Sector	Websites rated as 'very poor' by qualified researchers in terms of informing consumers about their rights	Websites which did not provide a possibility to retain terms and conditions	Websites where the final price to pay was not the same as the initial price offer	CPC Network sweeps (1 <sup>st</sup> phase results indicating the percentage of websites containing irregularities)	Proportion of websites where at least <u>one piece of consumer information</u> was <u>missing</u> (EU total)  Average is 37%
Clothing and sportswear	3%	10%	33%	N/A	35%
Electronic goods	5%	10%	26%	55% (2009) 54% (2014) <sup>144</sup>	36%
Recreation and culture tickets	8%	17%	38%	59%	39%
Consumer credit	11%	17%	N/A	69%	32%
Package travel	8%	13%	48%	N/A	42%

The established non-compliance rates in the last column of the table could be paralleled with the CPC network's 1st phase screening results in the sweep actions (if the sweep in the specific sector was conducted). The results cannot be compared downright, because the CPC sweep actions are conducted by national authorities, who are in charge of enforcement and are well-acquainted with consumer law. Further, the questionnaire for the sweeps is much more detailed than what was used for the 2,682 websites' screening. Therefore, one could conclude that a more sophisticated review of 2,682 websites would

<sup>144</sup> The electronic goods sector was subject to two sweeps: in 2009 (verifying general compliance of websites selling electronic goods with EU consumer rules) and in 2014 (verifying compliance of websites selling light electronic goods with the EU rules on legal and commercial guarantees).

result in much higher non-compliance rates. Furthermore, the **average non-compliance rate of 37%** of the screening of the websites **represents a conservative approach**, as the screening was conducted in March 2014 when the EU Consumer Rights Directive<sup>145</sup>, which increases the level of protection for consumers when they shop online, was not yet in force. With stronger pre-contractual information requirements applicable today, the non-compliance level resulting from the screening of the 2,682 websites would also be possibly higher<sup>146</sup>.

The average non-compliance rate of 37% is also confirmed by the latest EU Consumer Scoreboard, which highlights the high prevalence of unfair practices: for example, 42% of consumers say they were pressurised to buy by persistent sales calls or messages<sup>147</sup>.

### *12.1.3. Estimating the online cross-border consumer expenditure affected by the non-compliance rate and consumer detriment*

The consumption expenditure, which is generated online in the five sectors, in which the screening of websites was conducted, equals around EUR 51bn<sup>148</sup>. The consumption expenditure online affected by the average non-compliance rate of 37% equals around EUR 19bn in the five sectors<sup>149</sup>. Taking into account that, in 2014, 14% of online sales was cross-border<sup>150</sup>, around **EUR 2.7bn** is cross-border online consumption expenditure in the five sectors affected by the non-compliance rate of 37%<sup>151</sup>.

To calculate the consumer detriment, the approach designed in the UK OFT's (now – CMA<sup>152</sup>) research project (2008) "*Consumer detriment: Assessing the frequency and impact of consumer problems with goods and services*"<sup>153</sup> was followed<sup>154</sup>. Following this methodology, the **overall consumer detriment** resulting from the non-compliance

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<sup>145</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, p. 64.

<sup>146</sup> The independent experts, who were consulted by ICF International, considered the non-compliance levels as appropriate, with the true level of non-compliance lying between the last column of the table and the sweep results. The expert panel involved Professor Geraint Howells (Expert in European and consumer law), Professor Stephen Davies (Expert in the evaluation of competition and consumer economics), Anabela de Brito and Jacques Pelkmans from the Centre for European Policy Studies (Experts in EU consumer policy in the single market).

<sup>147</sup> See p. 32 of the latest 11<sup>th</sup> edition:

[http://ec.europa.eu/consumers/consumer\\_evidence/consumer\\_scoreboards/11\\_edition/docs/ccs2015scoreboard\\_en.pdf](http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/11_edition/docs/ccs2015scoreboard_en.pdf)

<sup>148</sup> The total consumer expenditure in the five sectors (EUR 1028 bn, Eurostat 2012 data EU-28) is multiplied by the 5% (expenditure generated online). 5% \* EUR 1028 bn = EUR 51 bn.

<sup>149</sup> The average non-compliance rate 37% \* consumption expenditure online EUR 51bn; 37%\*EUR 51bn = EUR 19bn.

<sup>150</sup> According to research by the European Multi-channel and Online Trade Association, 14% of online sales in 2014 were non-domestic business-to-consumer sales. This is expected to increase to 20% by 2018.

<sup>151</sup> 14%\*EUR 19bn = EUR 2.7bn.

<sup>152</sup> CMA: Competition and Markets Authority in the UK.

<sup>153</sup> [http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared\\_offt/reports/consumer\\_protection/oft992.pdf](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft992.pdf)

<sup>154</sup> Limited studies have systematically attempted to quantify consumer detriment from enforcement actions. The UK OFT's methodology to measure consumer detriment was considered as the most suitable to apply for the purpose of this IA report. The Commission has recently procured a study on measuring consumer detriment across a broad array of markets (the study is undertaken by Civic Consulting and is expected to be completed in 2016).



as established by the 2,682 screening of websites **in the five sectors** would be around **EUR 770 million**<sup>155</sup>.

## **12.2. Method used to estimate key positive impacts of the preferred option**

The absence of detailed and systematic statistics on cross-border and widespread infringements makes it difficult to make quantitative estimates of the scale of the positive impacts on compliance with the EU consumer protection legislation that the Policy Option 3 is expected to generate. There is, nevertheless, evidence that the proposed option can give rise to significant reduction in consumer detriment. This is based on the following reasoning:

- Due to its wide scope<sup>156</sup>, the CPC Regulation is deemed to address infringements to EU consumer legislation which take place in all cross-border retail trade inside the EU, which is at least 14% of the total retail trade<sup>157</sup>.
- As the screening of websites in the five online sectors has demonstrated, on average, 37% of this trade is potentially affected by the non-compliant behaviour of traders<sup>158</sup>.
- Any improvements in the enforcement performance would therefore produce a significant impact in terms of the reduction of the consumer detriment.
- For example, in the five online sectors, which were screened for compliance, the consumer detriment was estimated to be ca. EUR 770 million per year.
- Thanks to the strengthened enforcement cooperation, a decrease of, for example, 10 points in the average non-compliance rate of 37% would reduce this detriment to EUR 539 million, a reduction by 30% or EUR 231 million, which would be a very significant result compared to the baseline situation. The expected decrease is legitimate because the CPC sweeps have shown that targeted enforcement actions can lead to a significant improvement in compliance rates, i.e. from 20 to 40% at the screening phase to above 80% after a year of enforcement actions.
- Such improvement in the compliance rate and in the reduction of consumer detriment has to be examined taking into account the additional costs and potential benefits generated by Policy Option 3 for national authorities and for the Commission only as the measures retained should not lead to any additional costs for legitimate traders which already comply to consumer legislation. In fact these operators should even benefit from the improvement of their business environment with more uniform enforcement approaches presented to them, offering legal certainty for cross-border operations, a level playing field with competitors based in other countries and reduced potential litigation costs.

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<sup>155</sup>The consumer detriment = EUR 72 per transaction (assuming EUR 250 is spent on average per transaction in the five sectors and applying the UK OFT's formula). Overall consumer detriment in the five sectors = EUR 770 million (72/250 \* EUR 2.7 bn).

<sup>156</sup> Cf. Annex of the CPC Regulation which covers ca. 18 pieces of EU consumer legislation.

<sup>157</sup> According to research by the European Multi-channel and Online Trade Association, 14% of online sales in 2014 were non-domestic business-to-consumer sales. This is expected to increase to 20% by 2018.

<sup>158</sup> As mentioned above, this is a conservative scenario, because in the CPC annual sweeps, the non-compliance rate varies from 55-80% at the first screening phase.

- Additional costs for national authorities have been estimated to be limited since strengthened enforcement cooperation would lead to more efficiency gains that would largely offsetting the needed adaptation costs in the medium term.

### 12.3. Estimated average costs of the enforcement case

<b>Enforcement action</b>	<b>% of cases when the action was used</b>	<b>Unit cost, £</b>	<b>Unit cost EUR</b>	<b>2015 value, EUR</b>
Average costs of court case involving <b>criminal proceedings</b>	95%	4,050	4,770	4,870
Average costs of case involving <b>undertakings</b>	5%	1,270	1,495	1,527
<b>Average costs per one 'non-complex case' = EUR 4,700<sup>159</sup></b> <b>On average, ca. 2,000 cases are dealt per year = EUR 9,4 mln</b>				

The costs in the table above were calculated on the basis of the UK enforcement experience<sup>160</sup> and were not questioned by the representatives from the CPC authorities in the webinar held in July 2015.

The average cost per enforcement case is EUR 4,700. However, the unit cost of enforcement varies widely per case and Member State. For example, labour costs of authorities differ among Member States. The length, complexity of investigation and legal resources required to tackle an infringement also differs per infringement and per enforcement system.

So in reality in some Member States, the average cost per enforcement might be lower, in particular, in the systems which are characterised by the "self-managed administrative proceedings" where the national competent authority starts and conducts the investigation and takes enforcement measures without involvement of the courts (e.g. Italy). However, other national authorities were not able to confirm this because of lack of data concerning costs per enforcement case.

<sup>159</sup> Calculations:  $95 \times 4,870 + 5 \times 1,527 = 4,700$ .

<sup>160</sup> Estimates are based on the UK data used in the impact assessment of Consumer Rights Bill/Proposals on enhanced consumer measures, January 2014: <https://www.gov.uk/government/publications/consumer-rights-bill>. The information used in the UK impact assessment relied on the data concerning cases handled by local enforcement authorities. Cases were not complex, explaining low average costs.

## 12.4. Additional calculations of consumer detriment

### **Box 9: consumer detriment prevented by the CPC in-app purchases action**

Any new single CPC action against a widespread practice could reduce significantly the consumer detriment across the EU. For instance, on the basis of the U.S. Federal Trade Commission action on in-app purchases against Apple in March 2014<sup>161</sup> and against Google in September 2014<sup>162</sup>, it was estimated that the corresponding CPC action prevented consumer detriment within the EU of EUR 68 mln.

The estimation is calculated on the basis of the U.S. consumer detriment per capita, adjusted to the EU population and converted in EUR in line with the current exchange rate of the European Central Bank (ECB): The U.S. FTC estimated the consumer detriment in the Apple case of \$ 32.5 mln. This means that the detriment per capita is \$ 0.1 (\$ 32.5 detriment divided by 320 million consumers). Adjusted to the EU population, Norway and Iceland, the detriment of the EU market would be \$ 51 mln (\$ 0.1 multiplied by 513 million consumers). Using the UCB exchange rate on 1 October 2015, 1.3758, the consumer detriment on the EU market would be EUR 46 mln. The same reasoning applies to the Google case where the FTC estimated the U.S. consumer detriment of \$ 19 mln, resulting in EUR 22 mln for the EU consumers. Thus, the cumulated EU consumer detriment amounts to the sum of EUR 68 mln per both actions.

In our view, this figure should even be further upgraded in the EU context since the room for manoeuvre while negotiating to determine the amount of detriment on behalf of 513 million consumers is bigger than when you are representing 320 million consumers. Moreover, it has to be born in mind that the notion of consumer detriment includes the detriment of the other economic operators and the detriment of consumer trust.

### **Box 10: Case study - what is the impact of insufficient enforcement cooperation in the EU?**

According to information published on the website store early September 2015, you can buy an insurance package in 17 EU Member States. It cost EUR 99 for a phone purchased in France and covers various services and especially an extension of the commercial assistance and warranty plan of 1 to 2 years. Two material incidents (e.g. resulting from a shock and not from a default) are also covered but in such a case the consumer would have to pay EUR 69 each time in addition. On the store website, the reminder of the statutory legal guarantee rights of French consumers is recalled in full detail. They can estimate if this additional commercial warranty is worth paying for.

This is however not the case for most of the other Member States covered by the plan, the website contains only very succinct information and send consumers on national legislation websites for further information (e.g. in Denmark, Austria, Greece, the Netherlands, Ireland, UK). As explained in the problem statement, the lack of coordination of national enforcement actions on such a case, has led to an uneven situation where consumers in several Member States of the EU are likely to pay for an additional guarantee protection that they do not need. Estimating that about half of the insurance package or EUR 50 represents the amount that is supposed to provide for the additional year of protection for defects (providing in all likelihood the same rights as the statutory guarantee), it could be estimated that many consumers in these Member States have been led to purchase something they may have not purchased should their information be more complete. The detriment can therefore be estimated to EUR 50 per consumer concerned. In a country like UK, when the new phone was released, 10 million units were sold. If 100,000 consumers (or 1% of these buyers) purchased in addition to their phone the

<sup>161</sup> <https://www.ftc.gov/news-events/press-releases/2014/03/ftc-approves-final-order-case-about-apple-inc-charging-kids-app>.

<sup>162</sup> <https://www.ftc.gov/news-events/press-releases/2014/09/google-refund-consumers-least-19-million-settle-ftc-complaint-it>.

insurance based on a wrong assessment of the advantages for them, this would mean a detriment of EUR 5 million in total in UK only.

As the conduct continues, new consumers across the EU will continue to purchase a scheme without possibly being sufficiently informed about what it brings in addition to statutory guarantees provided by EU law.

The Commission's only means to address this issue currently is to carry out lengthy infringements proceedings against the Member States which it estimates are not attending to their obligations in terms of implementation of the EU consumer acquis.

## 12.5. Additional case examples to support this impact assessment

### **Example of a short-lived infringement: Multimedia content for mobile phones**

A trader based in country A provided multimedia content for mobile phones using a service provider in country B. The paying service was directed at the young and it was advertised through media (newspapers, website, and SMS directly to consumers' phones). The infringement (e.g. misleading information was provided regarding the number of ringtones supplied at the advertised price) was committed in winter 2007-2008, but the first complaint was received by the CPC authority in country B only in spring 2008. On the basis of complaints, the CPC authority in country B opened an investigation and requested the assistance of the CPC authority in country A. However, the authority in country A informed that it could not take an enforcement action against the trader based on CPC Regulation because the infringement had ceased (the advertisement had been removed).

*This example illustrates how the current limitation of the CPC Regulation's scope to ongoing infringements does not allow CPC authorities to enforce across-borders in such cases. This limits the deterrent effect of the CPC enforcement system and motivates traders to repeat their infringements (so-called "hit and run" strategies escape enforcement).*

### **Example of a complex case involving a deceitful infringement: Internet fraudster cheated 100,000 victims**

A total of nine people were arrested in Austria and Germany in relation to a web-shop fraud<sup>163</sup>. The fraudsters operated throughout the German-speaking area through web-shops offering goods such as cars, branded goods and electric appliances at a very low price. The payments were taken from the victims in advance but the goods were then never delivered. The group operated around 800 web-shops in total in two years. The web-shops were available from different free webhosting spaces from all around the world. The web-shops were taken off after four to six weeks. It is estimated that around 100,000 people were harmed as a result of their actions. Due to the disguised moves estimating the total harm caused is challenging, however it is believed that it reached at least EUR 20 million.

Officials (Cartel Attorney of Austria) were able to track down the fraudsters thanks to the power to follow cash-flows, although the fraudsters used various methods to hide their location and identity. They were moving the money across different accounts world-wide having used accounts of over 1,000 individuals.

*This example illustrates that when sufficient powers are available, even complex cases involving deceitful behaviour can be addressed effectively. If this case occurred in Member States where consumer enforcement authorities do not have powers to track down cash flows, the detriment for consumers would have been very significant and the conduct would have likely continued for much longer.*

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<sup>163</sup>Die Presse (2011): Internetbetrüger prellten 100.000 Opfer, at: <http://diepresse.com/home/panorama/oesterreich/662710/Internetbetrueger-prellten-100000-Opfer>

### **Example of case involving hidden trader's identity (sale of medical products)**

Marketing and sale of medical products on Internet is prohibited in Greece but not in many other Member States. Insufficient powers in some enforcement regimes create difficulties in handling these cases because the traders operating these websites use international phone numbers and other digital means of communication. This makes it difficult to identify who the trader is and where it is actually based. There are also cases of individuals who appear to trade via commercial websites selling medical products but indicate phone numbers or other contact details in Greece.

*The limited powers of the competent authority in Greece to trace the trader responsible, to take down websites and to request police and banks to provide information allowing to determine trader's identity hampered effective investigation and cessation of these infringements.*

### **Example of case where the power to adopt interim orders/take down websites was key for effective enforcement**

In 2013 the Italian Competition Authority – acting in close co-operation with the Italian Tax Police – brought down more than 160 websites selling counterfeited goods (most of these websites were hosted in China and the goods originated from China as well)<sup>164</sup>. This was done via **interim orders or final decisions to take down the websites**. These actions made these websites inaccessible from the Italian territory.

*These cases illustrate that the power to adopt interim orders (and take down the websites) can be very effective to tackle infringements in the digital environment. However, this power is not available to all CPC competent authorities (see above). This means that some CPC competent authorities cannot provide the requested enforcement assistance. This reduces the effectiveness of an enforcement action in the CPC context. Italy is one of the 11 Member States whose authorities have the **power to take down websites**. The example above shows a successful action thanks to the fact that Italian authorities can **adopt interim measures** and take down websites. However, if this case occurred in Member States where enforcement authorities do not have powers to adopt interim measures/ suspend trade activity (see Box 5) and to take down websites, the infringement would not have been stopped fast enough to prevent substantial consumer detriment.*

### **Example of how insufficient powers affect the functioning of the CPC mutual assistance mechanism**

CPC authority in country X asked CPC authority in country Y to take enforcement measures against a trader who based in country Y but was selling electronic components online to consumers in the country X. CPC authority X claims to have provided the authority Y with sufficient evidence (screen shots, complaint data, and the IP address of the trader). However, CPC authority Y did not take any enforcement action, claiming that it did not have sufficient powers to locate the trader operating online. CPC authority Y also refused to transmit the file to the police for eventual criminal investigation.

*This example illustrates that where the necessary powers are not available to all CPC authorities this may hamper cooperation and reduce the effectiveness of an enforcement action*

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<sup>164</sup> See, for example, AGCM' s press releases: <http://www.agcm.it/en/newsroom/press-releases/2047-ps8757-ps8758-made-in-italy-antitrust-in-collaboration-with-the-special-market-protection-unit-of-the-guardia-di-finanza-italian-tax-police-orders-the-closure-of-two-websites-that-sell-counterfeit-gucci-and-prada-merchandise.html> and <http://www.agcm.it/en/newsroom/press-releases/2069-made-in-italy-the-antitrust-authority-in-collaboration-with-the-special-market-protection-unit-of-the-guardia-di-finanza-italian-tax-police-shuts-down-15-websites-selling-counterfeit-products-branded-tods-and-roger-vivier.html> See also the speech of Mr Salvatore Rebecchini, Commissioner, Italian Competition Authority delivered at the Italian Presidency of the EU Council conference “EU Cooperation for enforcement of consumer legislation”, on 7 July in Rome: [http://www.agcm.it/trasp-statistiche/doc\\_download/4392-rebecchini.html](http://www.agcm.it/trasp-statistiche/doc_download/4392-rebecchini.html)

**Example of how "forgotten" mutual assistance requests cause delays in enforcement**

An information request was sent by CPC authority in country X to country Y (to its single liaison office, where such requests should be sent under the CPC Regulation). The SLO of country Y did not forward the request to the competent CPC authority in its country. The request was left untreated for several months. The requesting authority withdrew its request, because it was too late to take an action to stop an infringement.

*This example illustrates the need for clear and binding rules concerning handling of enforcement and information requests as well the need to ensure that all requests are handled in a timely manner. It also demonstrates the need for better coordination of the mutual assistance mechanism.*

## 13. Annex V: Legal framework

### 13.1. Existing EU instruments to improve enforcement of consumer laws across borders

There are two instruments that have been put in place to improve the enforcement of consumer laws across borders within the EU. These instruments are complementary.

#### 13.1.1. CPC Regulation 2006/2004

The objectives of the Regulation 2006/2004, which is subject to this impact assessment report, are cooperation among Member States enforcement authorities (with each other and the Commission) in order to ensure compliance with the laws that protect collective economic interests of consumers and the smooth functioning of the Single Market. All horizontal consumer laws are covered by this enforcement cooperation mechanism (e.g. directives concerning unfair commercial practices, unfair terms and consumer rights), as well as some sectorial legislation, such as passenger rights, consumer credit, e-commerce (listed in the Annex of the CPC Regulation).

The European Commission actively coordinated the operation of the CPC network, maintains its database ("CPCS") and supports coordinated projects and enforcement capacity of national authorities with grants under the Consumer Programme.

To achieve these objectives, the CPC Regulation provides legal basis for public enforcers to share information, assist each other in investigations and equips them with minimum investigation and enforcement powers to address cross-border infringements. While national enforcement authorities are the major users of the present Regulation as it stands, the CPC Regulation is also beneficial for both consumers and traders who are involved in cross-border transactions as it aims to ensure that consumers' rights are upheld across borders.

The CPC Regulation's core is the **mutual assistance mechanism** consisting of:

- Mutual assistance requests (**information and enforcement requests**, Articles 6 and 8 of the CPC Regulation)<sup>165</sup>,
- **Alert mechanism** (Article 7 of the CPC Regulation), and
- **Coordinated monitoring and enforcement activities**: such as EU-wide screening of websites, known as "sweeps"; or presenting common enforcement requirements to the industry to cease unfair commercial practices in areas of common interest across the EU (Article 9 of the CPC Regulation).

**Enforcement requests (Article 8)**: a national authority in one Member State can request its counterpart in another Member State to take enforcement measures to cease or prohibit the intra-Community infringement without delay. This tool permits the competent authorities to obtain evidence and information from another Member State and

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<sup>165</sup> The CPC Regulation enables the competent authorities to exchange investigative information upon request ("information request") and to ask other competent authority to stop an intra-Community infringement ("enforcement request").

to stop infringements committed by traders from other Member States.

In 2006 the Commission adopted a decision regarding the mutual assistance mechanism of the CPC Regulation. It sets the information requirements, which include the minimum information to be included in requests for mutual assistance and in alerts, benchmarks for handling mutual assistance requests and the use of languages<sup>166</sup>.

In practice, when issuing a request for enforcement measures to be taken to cease an infringement, the applicant authority will provide the requested authority with **the minimum required information and evidence**, on the basis of which the requested authority will be able to possibly initiate an enforcement action under its national enforcement system: name of the trader; details of the infringing practices; legal qualification of the intra-Community infringement under the law; evidence of harm to the collective interests of consumers.

Both authorities agree the time-line for the action. The requested authority has to notify the Commission and other CPC authorities concerned of the enforcement measures taken in the case.

Over the past 9 years, thanks to the annual enforcement action known as "sweeps", the CPC network obtained the correction of some 3,300 e-Commerce websites infringing consumer protection rules in different sectors such as air transport, hotel booking or digital content products. In addition to the yearly sweeps, since 2013, the CPC network has been working on coordinated enforcement actions that address widespread infringements to the EU consumer legislation directly with the industry concerned: the action on in-app purchases in online games is the first example, which was followed by the CPC action on car rental<sup>167</sup>. Thanks to these actions, traders changed their practices to bring them in line with consumer law. This saved not only time and litigation costs but also improved legal certainty.

### *13.1.2. Directive 2009/22/EC on Injunctions for the Protection of Consumers' Interests*<sup>168</sup>

Under this directive consumer organisations or public enforcement authorities in all Member States can take legal action to stop an illegal practice by a trader who has breached a consumer protection rule. The Commission Report of 2008<sup>169</sup> concerning the application of this directive shows that the mechanism which enables qualified entities<sup>170</sup>

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<sup>166</sup> Decision 2007/76/EC of 22 December 2006 implementing 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 as regards mutual assistance, OJ L 32 of 6.2.2007. In addition to this implementing decision, Operating Guidelines were endorsed by the CPC Committee in June 2010. They cover practical aspects concerning the handling of CPC mutual assistance requests and the CPC database.

<sup>167</sup> See [http://ec.europa.eu/justice/newsroom/consumer-marketing/news/1401222\\_en.htm](http://ec.europa.eu/justice/newsroom/consumer-marketing/news/1401222_en.htm) and IP/15/5334, [http://europa.eu/rapid/press-release\\_IP-15-5334\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5334_en.htm)

<sup>168</sup> The directive was adopted in 1998 (Directive 98/27/EC), and it was codified in 2009: Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Codified version), OJ L 110, 1.5.2009.

<sup>169</sup> Report from the Commission concerning the application of Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interest, 2008, COM(2008) 756 final.

<sup>170</sup> As listed in the Commission Communication concerning Article 4(3) of Directive 2009/22/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests, which



of one Member State to act in another Member State has clearly not been as successful as it was hoped. However, whilst injunctive actions are rarely used for cross-border infringements, several Member States and consumer associations stated that these actions are used fairly successfully by consumer associations for domestic infringements, such as misleading advertising or unfair contract terms.

Directive 2009/22/EC does not fall within the scope of this impact assessment report.

### 13.2. Impact of the current CPC Regulation on national enforcement systems

#### 13.2.1. CPC competent authorities

The CPC Regulation obliges Member States to designate single liaison offices and public authorities with specific responsibilities to enforce consumer protection legislation mentioned in its Annex<sup>171</sup>. It also specifies which powers these authorities must possess for the application of the CPC Regulation<sup>172</sup>.

The CPC Regulation leaves a **considerable flexibility for Member States to design their competent authorities**, for instance, it enables Member States to designate, besides public authorities, bodies (e.g. consumer organisations) having a legitimate interest to stop intra-Community infringements<sup>173</sup>. The competent authorities may instruct these bodies to take all necessary enforcement measures available to them under national law to stop intra-Community infringements. These bodies may therefore play a role in the CPC mutual assistance mechanism. On the other hand, the responsibility for fulfilling the mutual assistance obligations rests with the competent public authority and the CPC Regulation provides for safeguards in this respect<sup>174</sup>. These powers have to be exercised in conformity with national law.

Pursuant to the CPC Regulation, all Member States have designated their competent authorities and single liaison offices. Whilst for some Member States this meant only a limited modification of their existing system of public enforcement, other Member States had to adapt their national enforcement systems and in some cases set up new enforcement authorities (e.g. The Netherlands, Germany). The network of competent authorities was considerably extended over time. 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. The list of competent authorities notified to the Commission by Member States is regularly published in the Official Journal of the EU, and currently there are approximately 323 CPC competent authorities in EU-28 and 15 competent authorities in EEA countries.

Different approaches exist across the Member States as regards the national institutional set-up for the CPC Regulation. In some Member States enforcement of EU consumer protection laws is concentrated in very few authorities (e.g. BE, FR, HU, PL) whilst in

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codifies Directive 98/27/EC, concerning the entities qualified to bring an action under Article 2 of this Directive, OJ C, 31.3.2012.

<sup>171</sup> Article 4(1) of the CPC Regulation.

<sup>172</sup> Article 4(3) of the CPC Regulation.

<sup>173</sup> Article 8(3) and (4) of the CPC Regulation.

<sup>174</sup> In the period 2007-2013 four Member States have designated such bodies (Austria, Croatia, Germany and the United Kingdom). They mostly comprise consumer associations (e.g. in Germany and Austria) and group interests associations (e.g. in Austria) acting in their own name. The national laws entitle them to take enforcement action and bring cases, including intra-Community infringements, before national courts. Occasionally they may seek redress for individual consumers before courts.

others the enforcement powers are distributed among many authorities with sector-specific responsibilities (e.g. HR, CZ, SK, PT, RO). In the initial two years of the application of the CPC Regulation the Commission invited two Member States to reconsider the notified institutional framework involving a large number of competent authorities. In both cases the Member States simplified their national institutional frameworks<sup>175</sup>.

In Member States with federal (e.g. DE, ES) or decentralised systems regional authorities have also been designated as competent authorities under the CPC Regulation. In some Member States the single liaison office is also a competent authority under the CPC Regulation. In other Member States different authorities exercise the competent authorities' and single liaison office's functions.

The external evaluation of the CPC Regulation mentions difficulties that may be caused by complex and diverging national institutional frameworks. This in particular concerns long communication lines which could cause in handling mutual assistance requests. The external evaluation there points to the importance of the single liaison office's role, in particular, in national systems with complex institutional set-up<sup>176</sup>.

The preferred option 3 does not envisage changing the current provisions of the CPC Regulation regarding the designation of competent authorities under the CPC Regulation, as this would not be in line with the principle of subsidiarity. The only technical amendment would be to clarify that the single liaison office should be part of an authority in charge of horizontal consumer legislation (such as the Consumer Rights Directive or unfair Commercial Practices Directive).

### 13.2.2. *Diversity of national enforcement systems*

The CPC Regulation leaves Member States flexibility for the design of their enforcement regimes and the Member States have taken different approaches towards enforcement. Under Article 4(4) of the CPC Regulation, the competent authorities may exercise the mandated powers in conformity with national law either: (a) directly under their own authority or under the supervision of the judicial authorities; or (b) by application to courts competent to grant the necessary decision.

**Diversity of enforcement systems** has affected the effectiveness and efficiency of the enforcement cooperation under the CPC Regulation. However, the review of the CPC Regulation is not aiming to harmonise enforcement systems as this would not be in line with the principles of subsidiarity and proportionality. The information presented in this section is useful for a reader it provides information (i) why organising coherent effective and efficient enforcement cooperation has been and will continue to be an exceptional challenge because of different enforcement systems and (ii) this information is relevant for the analysis of the proposed options in particular regarding the assessment of the impacts on the legal systems.

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<sup>175</sup> Report from the Commission to the European Parliament and to the Council on the application of Regulation (EC) No 2006/2004, COM(2009) 336 final, 7.7. 2009 ("2009 Biennial Report"), p. 4. [http://ec.europa.eu/consumers/enforcement/docs/Commission\\_report\\_en.pdf](http://ec.europa.eu/consumers/enforcement/docs/Commission_report_en.pdf).

<sup>176</sup> p. 76-77 of the 2012 external evaluation report.

The study carried out on behalf of the Commission<sup>177</sup> identifies three main types of **public enforcement regimes**<sup>178</sup> (in terms of procedural enforcement models) existing in the Member States:

- **Self-managed administrative proceedings:** the national competent authority starts and conducts the investigation, can take enforcement measures such as banning certain types of practices or imposing penalties;
- **Civil proceedings:** the national competent authority starts and conducts the investigation; based on the investigation's outcome it requests a civil court to issue an injunction or a cease and desist order; and
- **Criminal proceedings:** the national competent authority starts and conducts the investigation and, where the infringement constitutes a criminal offence or where the trader refuses to comply with a previous court or administrative decision (cease and desist order), refers the case to the prosecutor/investigating judge for action under criminal law. Criminal sanctions may include imprisonment, ban of activities for a specified period of time or fines.

The specificities of each enforcement system have immediate repercussions on the means for enforcement (e.g. powers and procedures).

The diversity of institutional design among Member States across EU is based on country specific institutional and legal traditions.

- About half of Member States rely primarily on **public enforcement in the form of self-managed administrative proceedings** (although this does not preclude the parallel possibility of civil or criminal proceedings), i.e. BG, CY, CZ, EE, FR, HU, IE, IT, LV, LT, MT, PL, PT, RO, SK, ES.
- Member States relying **primarily on civil proceedings for public enforcement** (although this does not preclude the possibility of parallel administrative and criminal proceedings) are BE, DK, EL, FI, HR, LU, SE and the UK.
- In BE, FR, and the UK **criminal proceedings** can be used to sanction violations of consumer legislation. In these Member States the enforcement of the law on unfair commercial practices has traditionally been done through criminal sanctions. In AT, FI, HU, DK and SK criminal proceedings can be initiated also in certain data protection cases and/or in cases related to deception respectively.
- Member States relying **primarily on private enforcement** for domestic and some cross-border infringements are AT and DE, and to some extent CZ. In these jurisdictions it is up to the consumers (aided by voluntary or publicly funded consumer associations) to enforce their consumer rights in national courts. As mentioned above, this possibility is also foreseen in the CPC Regulation<sup>179</sup>.

<sup>177</sup> Study on enforcement of authorities' powers and national procedural rules in the application of CPC Regulation by Grimaldi Studio Legale, publication forthcoming.

<sup>178</sup> The described enforcement regimes are not mutually exclusive; and all three public enforcement regimes may coexist in one Member State.

<sup>179</sup> According to Article 8(3), competent authorities may instruct bodies having a legitimate interest in the protection of consumer rights to take all necessary enforcement measures available to them under national law to stop intra-Community infringements

The table below presents an illustrative summary of different enforcement systems:

Decentralisation	Type of public enforcement			Private enforcement
	Admin	Civil	Criminal	
AT, BE, DE, ES, UK	BG, CY, CZ, EE, ES, FR, HU, IE, IT, LT, LV, MT, NL PL, PT, RO, SK, SI	AT, BE, DK, EL, FI HR, LU, SE, UK	AT, BE, DK, FI, FR, HU, UK	AT, CZ, DE

### 13.3. Investigation and enforcement powers of CPC authorities

#### 13.3.1. State of play of minimum powers of competent enforcement authorities

The CPC Regulation vests the national authorities with a set of minimum investigation and enforcement powers to combat transnational infringements, which are listed in Article 4(6) of the CPC Regulation:

Minimum investigation powers currently available for the CPC authorities:

- to have access to any relevant document, in any form, related to the intra-Community infringement;
- to require the supply by any person of relevant information related to the intra-Community infringement; and
- to carry out necessary on-site inspections.

Minimum enforcement powers currently available for the CPC authorities:

- to request in writing that the seller or supplier concerned cease the intra-Community infringement;
- to obtain from the seller or supplier responsible for intra-Community infringements an undertaking to cease the intra-Community infringement; and, where appropriate, to publish the resulting undertaking;
- to require the cessation or prohibition of any intra-Community infringement and, where appropriate, to publish resulting decisions; and
- to require the losing defendant to make payments into the public purse or to any beneficiary designated in or under national legislation, in the event of failure to comply with the decision.

Article 4 spells out what competent authorities must be able to do. Depending on the enforcement system in place, the competent authorities either exercise these powers directly (possible subject to judicial supervision) or indirectly by applying to competent courts to seek the necessary judicial orders.

Member States either introduced these powers following the entry into force of the CPC Regulation or extended the existing national enforcement powers in consumer protection to intra-Community infringements. Moreover, recent Belgian, French, Polish, and UK reforms have made new powers available to their enforcers of consumer legislation.

In general, there are no differences between domestic enforcement powers and those applied to intra-Community infringements. The legal study<sup>180</sup> procured by the Commission mentions Germany as the only exception, where the enforcement powers provided by the CPC Regulation have been introduced for the competent national administrative authority, while domestic infringements are dealt with by consumer associations within the context of private enforcement.

#### 13.3.2. Inter-action 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-Community infringements, including the power to refer matters for criminal prosecution<sup>181</sup>. As highlighted above,

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<sup>180</sup> Study on enforcement of authorities' powers and national procedural rules in the application of CPC Regulation by Grimaldi Studio Legale, publication forthcoming.

<sup>181</sup> Recital 8 and Article 8(2) of the CPC Regulation.

some Member States (e.g. AT, FR, UK) can refer intra-Community infringements to their criminal prosecution authorities.

### 13.3.3. Mapping additional powers available for competent authorities

As already mentioned above, the CPC Regulation requires the competent authorities to make use of other powers or measures granted to them at national level to cease or prohibit intra-Community infringements<sup>182</sup>. 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 cooperation.

The tables below map main additional powers, which are necessary for competent authorities to address infringements effectively and which are available for some competent authorities at national level:

Availability of the power	Power to conduct mystery shopping	Power to make test purchases
YES	BG, CZ, DK, ES, FI, FR, HU, IE, LV, NL, PL, RO, SK, SI, UK	BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, LV, NL, PT, SK, SI, UK
NO	AT, BE, CY, DE, EE, EL, HR, IT, LT, LU, MT, PT, SE	AT, BE, EL, IE, IT, LT, LU, MT, PL, RO, SE

	Naming of infringing traders	Take down websites/domains	Freeze assets	Withdraw/suspend trade activity (interim)	Order consumer compensation
YES	AT, BE, BG, CY, DK, EE, ES, FI, EL, HU, IE, IT, LT, LU, LV, MT, NL, PL, RO, SE, SK, SL, UK	CY, DK, EE, ES, FI, IT, LU, PL, PT, SE, UK	UK, RO	BG, CZ, DK, ES, FI, FR, EL, HR, HU, IT, LT, LV, MT, RO, SK, SI, UK	EE, ES, PT, RO, UK

<sup>182</sup> Ibid.

NO	CZ, DE, FR, HR, PT	AT, BE, BG, CZ, DE, FR, EL, HR, HU, IE, LT, LV, MT, NL, RO, SK, SI	All MS except UK and RO	AT, BE, CY, DE, EE, IE, LU, NL, PL, PT, SE	AT, BE, BG, CY, CZ, DE, DK, IT, FI, FR, EL, HR, HU, IE, LT, LU, MT, NL, PL, SE, SK, SI
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### 13.4. Impact of the preferred option on national enforcement systems and laws

The preferred option would neither affect the Member States' competences in enforcement, nor would it harmonise national enforcement systems. It would not affect internal division of competences among authorities at national level, as Member States would remain responsible for their institutional set up and designation of competent authorities under the CPC Regulation.

The preferred option (PO3) would have impact on national laws as follows:

#### 13.4.1. *Additional investigation and enforcement powers for CPC competent authorities necessary for the application of the CPC Regulation would continue being exercised in conformity with national procedural law*

In several Member States the powers proposed under the Option 3 are already entrusted to the enforcement authorities to address domestic infringements. In these countries minimal adjustments would be needed to ensure that the powers in the revised CPC Regulation can rely on the national procedural provisions that apply to the same powers existing in the domestic context. Depending on the enforcement system, such rules would be laid down in the civil procedure code for courts/or in the administrative procedural law or in a specific legislation dedicated to consumer protection or to powers of the consumer protection authorities<sup>183</sup>.

<sup>183</sup> For example, in **Belgium** substantive and procedural provisions, which are applicable to both national and intra-Community infringements are contained in the Code of Economic Law. In **France**, powers for the competent body ("DGCCRF") are provided in a specific law on consumer protection, while procedural rules are included in the Consumer Code, which for the investigative powers refers to the Code of Commerce. In **Germany**, the CPC Regulation is implemented through the specific EC Consumer Protection Enforcement Act. In Czech Republic, the CPC Regulation has been implemented with Act No. 160/2007 amending certain laws in the field of consumer protection. Under this law, the necessary changes were made to several laws in order to allow the numerous competent authorities to proceed in accordance with the CPC Regulation. In **Latvia**, the powers necessary to investigate and enforce intra-Community infringements are implemented mainly in the Consumer Rights Protection Law and its supplementing Regulations. The Unfair Commercial Practice Prohibition Law also contains provisions stating the duties and powers of the competent body for consumer protection ("CRPC"). Competent authorities in Latvia act within the framework of the Administrative Procedure Law and other applicable laws. In **UK**, the Enterprise Act 2002 makes express reference to the powers of a "CPC enforcer". In **Slovakia**, Act No 250/2007 on Consumer protection contains the general principles. This Act also delegates the main powers of the relevant bodies of consumer protection control, stating that unless mentioned otherwise, the relevant body is the Slovak Trade Inspection. The procedural aspects of inspection carried out by the Slovak Trade Inspection are contained in Act No 128/2002 Coll. on State control of the internal market in matters of consumer protection. The control of commercial advertising is regulated by several laws and 5 different agencies are concerned, depending on the sector concerned (e.g. foodstuff, drugs, cosmetics, tobacco products etc.).

Member States where the enforcement authorities do not have such powers in the domestic context would have to introduce adjustments to their national procedural laws to ensure that the powers in the revised CPC Regulation can be exercised by their authorities. Such adjustments would provide for procedural rules for the exercise of these powers and ensure that other domestic laws do not contravene the exercise of such powers (e.g. for mystery shopping/test purchases it would have to be ensured that the national financial regulations allow for the use of public monies to purchase goods and adequate mechanism to obtain the return of such money to the public budget or other similar solutions).

In this context it should be noted that as opposed to Directives the provisions of the CPC Regulation are directly applicable in the Member States. Duplication of the powers stemming from the CPC Regulation for purely domestic infringements is not required as these powers would apply only in the context of Intra-Community infringements.

As already mentioned, greater familiarisation (one-off) costs would be borne by those Member States where CPC authorities do not have several of the proposed powers under the preferred option in the national context: AT, BE, DE, EL, FR, HR, IE and LT.

Further, the extent of adjustments would depend on the internal division of competencies in a Member State and on whether the powers and related procedural provisions are contained in a specific act dedicated to consumer protection or in a general procedural code<sup>184</sup>. More adjustments would be needed in those Member States, where enforcement of consumer law is entrusted to several sectorial authorities. In this regard the Member State which would be most concerned would be the Czech Republic, where there are at least 18 CPC authorities, and thus the change of the laws governing the powers of 18 authorities involved in the CPC network might be needed. Similar situation would be in Member States which have vertical distribution of competences (federal systems, such DE and ES).

In this context, it should be noted that the extent of changes in individual Member States primarily depends on the Member States' choices of the structure of their enforcement systems (as per the above example of the Czech Republic), which is neither determined by the current CPC Regulation nor by the measures proposed in the preferred option.

#### *13.4.2. Introduction of the provision for mutual recognition of evidence*

There are no specific procedural rules that apply to intra-Community infringements. The CPC Regulation requires that competent authorities exercise their powers mandated by the Regulation in conformity with national procedural law. The preferred option would not change this and does not aim to harmonise national procedural laws. The preferred option would clarify what is already required under the mutual assistance mechanism: the evidence gathered by the applicant authority should be recognised as valid by the requested authority unless proven to the contrary by the trader(s) concerned. This clarification might require changes to the national procedural laws to make sure that all authorities concerned and in particular the courts abide by this principle. The extent of the adjustment would depend on how many national laws enable the provisions of the CPC Regulation (see examples below) and on the degree of involvement of civil courts in the enforcement of consumer legislation.

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<sup>184</sup> Ibid.



*13.4.3. Mandatory coordinated procedure initiated by the Commission to address widespread infringements meeting the threshold*

The new cooperation procedure would provide for "common enforcement position" regarding traders' compliance with EU consumer legislation, which would be binding on the national authorities who were concerned by the widespread infringement. In this regard national laws might need to be amended to give to this instrument effects in the national legal order. Again, the extent of adjustments would depend on the number of national laws which would need to be changed in this regard. In those countries, where substantive and procedural provisions, which are applicable to both national and intra-Community infringements, are contained in one act (e.g. UK, BE), adjustments would be minimal. However, more adjustment would need to be made in those countries where several national laws would be concerned by the revised CPC Regulation (e.g. FR, LV, SK)<sup>185</sup>.

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<sup>185</sup> Ibid.

#### 14. Annex VI: Current and future cost and saving (covering option 3) of the CPC cooperation

Simulation of the cost of 1 coordinated action to tackle 1 widespread infringement

Legend: FTE = full time equivalent staff for one year; staff costs are calculated on the basis of Eurostat data on average staff cost for administrations in each Member State, and on DG BUDG average staff cost for Commission officials.

Scenario 1: the Trader(s) agree to a negotiated outcome and comply with it

	1) Present framework	2) Future framework widespread infringement below the threshold	3) Future framework widespread infringement meeting the threshold		
Time devoted to the action in each Member State	0.2 FTE	0.15 FTE	0.1 FTE		
Time devoted by the lead Member State	0.1 FTE	0.38 FTE for one Member State or for the Commission	None		
Time devoted by the Commission	0.38 FTE		0.38 FTE	<b>Saving 2) - 1)</b>	<b>Saving 3) - 1)</b>
<b>Total staff costs at EU level, EUR thousands</b>	404.7	Max 311.7	224.9	-93	-178.9

Scenario 2: the Trader(s) do(es) not agree to a negotiated outcome and more action is needed to get compliance, Member States have to pursue the action another year and possibly litigate

	1) Present framework	2) Future framework widespread infringement below the threshold	3) Future framework widespread infringement meeting the threshold		
Time devoted to the action in each Member State	Scenario1 + 0.2 FTE	Scenario1 + 0.15 FTE	Scenario1 +		
Time devoted by the lead Member State	none	none	0.38 FTE		
Time devoted by the Commission	none	none	none	<b>Saving 2) - 1)</b>	<b>Saving 3) - 1)</b>
<b>Total staff costs at EU level, EUR thousands</b>	1063.0	572.1	248.4	-490.9	-815.0

**For memory** if Member States do not coordinate their action, certain Member States may succeed in getting a negotiated outcome, others will have to litigate, the estimated time needed could be on average 0.5 FTE, which would represent EUR 868,000 in total at the EU level.

I. CURRENT COST		
Cost of cross-border enforcement under the <u>current</u> Regulation (assuming that Member States respect the current benchmarks for handling of mutual assistance requests, as laid down in the Operational Guidelines)		
Supervision (coordination inside Member States)	<p>Per year:            Large MS 1 full time official (DE, ES, FR, IT, PL, RO, UK) = 7 full time officials            Medium MS 0.5 full time officials (AT, BE, BG, CZ, DK, EL, HR, HU, NL, PT, SE) = 5.5 full time officials            Small MS 0.25 full time official (EE, CY, FI, IE, LT, LV, LU, MT, SI, SK)=2.5 full time official</p> <p>Total all Member States: 15 full time officials = <b>EUR 930,000</b></p>	Average annual cost of full time official in Member States = EUR 62,000 (Eurostat 2012)
Mutual assistance system	<p><u>Information requests</u> (3 months): 110 requests per year: 4 requests per Member State per year = 0.25 full time official per Member State per year = EUR 15,500 per Member State            Total per year for all Member States: <b>EUR 434,000</b></p> <p><u>Enforcement requests</u> (12 months): 140 requests per year = 5 requests per Member State            Assume cost per 5 requests 1 full time official per year = 62,000 EUR            Total cost 140 requests = 28 full time officials = <b>EUR 1,736,000 per year</b></p> <p>Total cost of CPC mutual assistance system:            Per Member State (average): EUR 77,500  <b>Total: EUR 2,170,000</b></p>	<p>Average annual cost of full time official in Member States = EUR 62,000 (Eurostat 2012)</p> <p>Benchmarks:            3 months for information request handling            9-12 months for enforcement request handling (assumed 12 months)</p>
Alerts	<p>60 alerts per year per 28 Member State            0.05 full time official per year =1.4 full time official per year</p>	

	<b>Costs: total for all Member States per year: EUR 86,800</b>	
Sweeps (1 action per year)	2014 sweep (437 websites) Investigation phase: 730 hours = <b>EUR 30,295 = EUR 1,165 per Member State on average</b> Enforcement phase (assume the same amount as per investigation phase, conservative) = EUR 30,295 Total cost: <b>EUR 60,590 = EUR 2,330 per Member State</b>	Based on the 2014 sweep on guarantees, checked 437 websites, 26 Member States participated  Assumed the same time allowance for the enforcement phase as for the investigation phase.

<b>II. FUTURE SITUATION (after CPC review/implementation of policy option 3)</b>		
<b>Costs linked to the change of the CPC Regulation</b>		
<b>Implementation costs</b>		
Familiarisation costs (1 year only)	EUR 2,000 per authority 1 year only	Familiarisation with the new powers and the new legal framework
Learning costs: decision on best course of action (1 year)	EUR 1,000 per case	
<b>Change in operational costs because of the changed CPC Regulation</b>		
Supervision (coordination inside Member States)	No change.	
Mutual assistance system	Reduction in cost of handling of mutual assistance requests: <u>Information requests</u> (currently: 110 requests on average per year): Based on UK data we assume that each full time official will be able to handle 50% more requests: under the new system either 168 requests can be handled (58 requests more) with the existing 7 full time officials instead of the current 110 or only 4.5 full time officials will be needed handle 110 requests <b>Net saving: 2.5 full time officials = EUR 155,000 (efficiency gains)</b>	New: additional powers, mutual recognition of evidence, binding time limits.  Based on UK calculation of reduction of costs of case handling following an introduction of new powers. UK concluded that the costs of case handling will decrease up to 75% per case because more cases will be closed faster. The average cost of non-complex case = EUR 4,700, average costs of case with undertakings is

	<p><u>Enforcement requests</u> (currently: 140 requests on average per year): Based on UK data we assume that each full time official will be able to handle 50% more requests = 7.5 requests instead of 5 requests. The existing 28 full time officials will be able to handle 210 requests (70 requests more than that they handle currently) or only 18 full time officials will be needed to handle 140 requests instead of 28 full time officials. <b>Net saving 10 full time officials = EUR 620,000 (efficiency gains)</b></p>	<p>EUR 1,500 (i.e. trader accepts responsibility for the infringement). It is assumed that there will be more cases that will be concluded with trader's undertakings (75% of cases will be concluded with undertakings).</p> <p><b>Other gains: increased deterrence effect in the long term as the number of infringements and case handling time will decrease.</b></p>
Alerts	<p>Member States: no change Commission: additional cost for alert monitoring + posting of alerts of 0.2 full time official = EUR 27,000 per year</p>	
Sweeps (1 action per year)	<p>Investigation phase (detection of infringements): No change.</p> <p>Enforcement phase: based on the UK example we assume 50% efficiency gain: Example: 2014 sweep (437 websites) 730 hours of enforcement phase =&gt; 50% saving 365 hours = EUR 15,147 =&gt; saving of EUR 583 per Member State <b>Net saving: EUR 15,147 per sweep.</b></p>	As per mutual assistance requests.

### EU hourly wage average; average annual salary and part time work in a CPC action

MS	ISCO 1 Legislators, senior officials and managers (Hourly Earnings adjusted to 2010 + Non-wage Labour Costs + 25% Overhead) Eurostat 2012, in EUR	Annual Salary in EUR (220 working days*8h per day*hourly wage costs), in EUR	37.8% FTE (0.378)  Part time work of one official (37.8%) FTE in a coordinated enforcement project in EUR ('000)	20% FTE (0.2)  Part time work of one official (20%) FTE in a coordinated enforcement project in EUR ('000)
BE	63.1	111,056	41.98	22.21
BG	5.8	10,208	3.86	2.04
CZ	17.8	31,328	11.84	6.27
DK	58.1	102,256	38.65	20.45
DE	57.5	101,200	38.25	20.24
ET	12.3	21,648	8.18	4.33
EI	39.1	68,816	26.01	13.76
EL	33.7	59,312	22.42	11.86
ES	41.8	73,568	27.81	14.71
FR	48.5	85,360	32.27	17.07
IT	59.2	104,192	39.38	20.84
CY	45.6	80,256	30.34	16.05
LV	7.8	13,728	5.19	2.75
LT	8.5	14,960	5.65	2.9
LU	76.2	134,112	50.69	26.82
HU	11.6	20,416	7.72	4.08
MT	20.0	35,200	13.31	7.04
NL	41.3	72,688	27.48	14.54
AT	57.1	100,496	37.99	20.1
PL	18.3	32,208	12.17	6.44
PO	31.6	55,616	21.02	11.12
RO	10.7	18,832	7.12	3.77
SI	29.2	51,392	19.43	10.3
SK	17.4	30,624	22.92	6.12
FI	52.2	91,872	34.73	18.37
SE	51.6	90,816	34.33	18.16
UK	40.7	71,632	27.07	14.33
HR	29.2	51,392	19.43	10.3
<b>EU</b>	<b>41.5 (average)</b>	<b>61,971 (average)</b>	<b>667.24 (total sum)</b>	<b>346.97 (total sum)</b>

2006 Mean Hourly Earnings By Main Economic Activity And Occupation\* + adjustment to 2010 Prices + Non wage Labour Costs + 25% Overhead  
ESTAT: Structure of Earnings Survey - NACE rev 1.1: C to O not L. For full breakdown of calculations, contact SG C1

2008 Total Number of Hours worked and paid in each MS per Yr.  
ESTAT: Number of employees, hours actually worked and paid - Nace Rev. 2 (Source LCS 2008)

Averages: by occupation\*\*, by country

Core hourly earnings data extracted, January 2012 and last updated, 20/10/10. Some 2006 data is missing and replaced by 2002 figures. In such cases a higher (02-10) wage development rate added.

In order to generate a reliable EU hourly wage average for each occupation it is necessary to factor in the relative number of hours worked in each MS, rather than adding all earnings and then dividing by the number of the MS. The table first calculates the fraction of EU production taken up by each MS. This fraction then determines the level at which each MS is represented in the final average i.e. the higher the fraction, the more the average will be dependent on that MS's typical earnings.

## **15. Annex VII: Technical changes to the CPC Regulation (including updating of its annex and of its database)**

Apart from the main changes subject to this impact assessment, there will be a few technical amendments aimed at clarifying existing provisions or ensuring coherence with other instruments, which do not have significant impacts or which are aimed at introducing changes which would be undertaken anyway to improve the functioning of the current CPC Regulation (e.g. revamping of the CPC database) and/or to update the list of consumer legislation contained in the Annex of the CPC Regulation. In addition, the Commission Decision implementing the CPC Regulation<sup>186</sup> will be updated or replaced to reflect the changes introduced in the revised proposal.

### **15.1. Clarifying existing provisions**

Clarifications will be proposed, e.g. for Articles 2-3, 5, 6, 8, 10, 14, 18, 19 and 20. Amendments to definitions and terminology used to take into account the entry into force of the Lisbon Treaty (Article 3), as well as new legislation (e.g. reference to the new committee legislation and amendment of Article 19 in this respect).

### **15.2. Changes to 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 tool has been duly notified to the data protection authorities and to the European Data Protection Supervisor (EDPS). The recommendations of the EDPS and the Article 29 working party have been duly implemented.

The biennial reports, the 2012 external evaluation and contacts with CPC authorities indicate a growing dissatisfaction with the CPCS database, in particular users emphasise that the CPCS is not user-friendly and report problems with access rights, quality of access and speed of the tool. Almost all CPC authorities have called for substantial improvements to be made to the CPCS or for its replacement, pointing that the lack of well-functioning IT tool is also a technical barrier to effective and efficient CPC cooperation.

The Commission plans to undertake a substantial revamp of the CPC System because it has reached the end of its lifespan, also taking into account the changes which would be introduced in the CPC Regulation (e.g. categorisation of the alert mechanism and granting access to third parties to post alerts for information; new EU level procedure to tackle widespread infringements).

### **15.3. Update and consolidation of the Annex of the CPC Regulation**

The CPC Regulation's Annex has been progressively updated to reflect the evolution of EU consumer protection legislation. The evaluation of the CPC Regulation looked into

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<sup>186</sup> Commission Decision of 22 December 2006 implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance, OJ L 132, 6.2.2007, p. 192.

the appropriateness of the Annex of the CPC Regulation. Among other matters, it also looked at the possible extension of the CPC cooperation to Business-to-Business (B2B) legislation<sup>187</sup>. B2B provisions are laid down in acts like the misleading and comparative advertising legislation<sup>188</sup>, where it is acknowledged that micro and small businesses face the same difficulties as consumers when trading cross-border. The evaluation concluded that while there was some rationale for the inclusion, there was little support from the CPC stakeholders as B2B was not their main responsibility. Further, changes to substantive consumer laws concerned would be necessary to extend the protection to B2B relations and only subsequently enable responsible national competent authorities to enforce these aspects. The inclusion of B2B aspects was therefore not recommended<sup>189</sup>.

Regarding consumer relevant legislation, several pieces of legislation which lay down important consumer rights are currently outside its scope. The external evaluation therefore concluded that a limited update could be necessary based on the following criteria: impact on the collective interests of consumers; cross-border relevance; public enforcement dimension; and consistency with the sectorial and horizontal legislation currently listed in the Annex.

The Commission has taken into account the external evaluation's findings and examined the relevant pieces of legislation. The Annex therefore should be updated to offer a consolidated view for consistency purpose: clarify the inclusion of the Consumer Rights Directive<sup>190</sup> and include the Mortgage Credit Directive<sup>191</sup>, the Rail Passenger Rights Regulation<sup>192</sup>, the Regulation on rights of disabled persons and persons with reduced mobility when travelling by air<sup>193</sup> and pricing provisions of the Air Services Regulation<sup>194</sup>. In view of the development of e-commerce within the Single Market and the need to ensure maximum access to and proper use of distance payment means, inclusion of the Payment Services Directive<sup>195</sup> and the Payment Accounts Directive<sup>196</sup>

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<sup>187</sup> P. 9 of the evaluation report.

<sup>188</sup> Directive 2006/114/EC concerning misleading and comparative advertising, OJ L 376, 27.12.2006, p. 21.

<sup>189</sup> In January 2016, the Commission published a roadmap on the REFIT Fitness check of consumer law ([http://ec.europa.eu/smart-regulation/roadmaps/docs/2016\\_just\\_023\\_evaluation\\_consumer\\_law\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_just_023_evaluation_consumer_law_en.pdf)). Next to their application in the business-to-consumer (B2C) relations, the Fitness Check will analyse the need and potential for the application of the existing consumer rules also in business-to-business (B2B) transactions, in particular the transactions with the SMEs, by taking account of the B2B rules already laid down in the Misleading and Comparative Advertising Directive, and in transactions between businesses and non-for-profit entities that do not qualify as consumers under the current rules. The Fitness Check will also analyse the issues arising in consumer-to-consumer (C2C) transactions (increasingly relevant due to the rise of the sharing economy) and in consumer-to-business (C2B) relations.

<sup>190</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, OJ L 304, 22.11.2011, p. 64.

<sup>191</sup> 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.

<sup>192</sup> Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ L 315, 3.12.2007, p. 14.

<sup>193</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p. 1.

<sup>194</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ L 293, 31.10.2008, p. 3.

<sup>195</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, OJ L 319, 5.12.2007, p. 1.

<sup>196</sup> 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.



should be also proposed. In addition, the 2015 Single Market Strategy concluded that Article 20 of the Services Directive<sup>197</sup> lacked an efficient cross-border cooperation mechanism and should therefore be included in the CPC Regulation's Annex.

The interaction between the CPC system and the cooperation and specific remedy systems in the sectorial legislation already included or to be added to the Annex of the Regulation have also been examined in order to ensure that there is no duplication of remedies and that the hierarchy of actions is clear. The CPC Regulation applies when collective economic interests of consumers are concerned and provides for general enforcement tools used in a cross-border context (*lex generalis*). Therefore, the specific mechanisms under sectorial legislation (i.e. in the transport sector) have to be used first (*lex specialis*) e.g. for consumer compensation, assistance and care.

Specifically, the Regulation on air passenger rights provides for the appointment of national enforcement authorities (referred as 'NEBs'), and in most Member States the NEBs were also designated as enforcement authorities under the CPC system (e.g. Sweden, Romania, Hungary, Malta, Latvia, UK). There is an informal network of the NEBs who share information and discuss enforcement issues. Currently, NEBs act mainly with regard to incidents under their jurisdiction (by airlines of any nationality). It would not have a legal mandate to address an incident that occurred in another State even if it concerned its own consumers and may not have a mandate under national law to assist with enforcement in another State. Most of these enforcement tools are therefore focused on domestic enforcement and do not take into account the specific needs of cross-border enforcement.

The CPC Regulation is without prejudice to the existing EU rules concerning the powers of national regulatory bodies established by EU sectorial legislation. Where appropriate and possible these bodies should use the powers available to them under EU and national law to cease or prohibit infringements under the CPC Regulation.

Further, the sectorial rules on compensation for infringements, such as the rules in the air transport sector fully apply to the calculation of compensation for harm from infringements of such sectorial rules. Where the EU sectorial legislation does not apply to the compensation for the harm caused by infringement, the compensation should be established based on applicable national law (CPC Regulation does not contain provisions on calculation of compensation).

Regarding cross-border cooperation among national authorities, certain sectorial legislation also foresees a formal exchange of information and/or assistance (see the table below). However, the CPC cooperation mechanism goes further than the latter cooperation as it imposes a duty on competent authorities to efficiently address malpractices. Therefore the CPC cooperation is complementary and would be used when a mere exchange of information is not sufficient to stop malpractices with a cross-border dimension. In addition, when enforcement actions are undertaken under the CPC Regulation, the competent authorities have to apply the provisions, e.g. on sanctions and remedies, of the substantive law which is listed in the Annex of the CPC Regulation, or of national law.

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<sup>197</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ 376, 27.12.2006, p. 36.

Therefore, the CPC Regulation complements EU sectorial rules on cooperation among sectorial regulators and EU sectorial rules on compensation of consumers for harm from infringements of these rules, in cross-border context. The CPC Regulation plays a safety net role in case of repeated breaches by one or several operators. The CPC Regulation is without prejudice to other cooperation systems and networks set by EU sectorial legislation. In fact it furthers cooperation and coordination among networks of regulatory bodies established by EU sectorial legislation and CPC competent authorities.

Sectorial legislation	Existence of a formal cooperation mechanism	Existence of a specific remedy mechanism for individuals	Comment/Possible overlap/interaction
<b>Passenger rights</b>			
<ul style="list-style-type: none"> <li>Air (Regulation 261/2004)</li> </ul>	<p>The Regulation provides for the appointment of national enforcement authorities (referred as 'NEBs'), and in most Member States the NEBs have been also designated as enforcement authorities under the CPC system. There is an informal network of the NEBs who share information and discuss enforcement issues.</p>	<p>Article 7 sets substantive rules for calculation of compensation. Articles 4, 5 and 6 set events in which compensation is due. Articles 8 and 9 provide other obligations of care and assistance for the carriers.</p>	<p>Currently, NEBs act mainly with regards to individual complaints concerning incidents under their jurisdiction (by airlines of any nationality). It would not have a legal mandate to address an incident that occurred in another State, even if it concerned its own consumers, and may not have a mandate under national law to assist with enforcement in another State. Most of these enforcement cooperation tools are therefore focused on domestic enforcement and do not take into account the specific needs of cross-border enforcement.</p> <p>Thanks to the CPC mechanism, when the collective interest of consumers is at stake, NEBs and otherwise CPC competent authorities would formally cooperate within the CPC system on the basis of the residence of affected consumers.</p>
<ul style="list-style-type: none"> <li>Sea and inland waterways (Regulation 1177/2010)</li> </ul>	<p>Similar mechanisms as for air transport</p>	<p>Article 8 sets out remedies for disabled consumers who have been refused boarding (reimbursement, re-routing, alternative transport). Articles 15-19 establish rules for compensation, reimbursement, assistance, and information due to various events. Article 21 clarifies that the Regulation does not preclude passengers from seeking damages with respect to loss due to cancellation or delay.</p>	<p>idem</p>

<ul style="list-style-type: none"> <li>• Bus and coach (Regulation 181/2011)</li> </ul>	Similar mechanisms as for air transport	Articles 7 and 8 establish compensation for personal injury, death, or loss of luggage, and set remedies for assistance in case of accident. Article 10 sets out remedies for disabled consumers who have been refused boarding (reimbursement, re-routing, alternative transport). Articles 17 and 19-21 establish rules for compensation, reimbursement, assistance, and information due to various circumstances. Article 22 clarifies that this regulation does not preclude passengers from seeking damages with respect to loss due to cancellation or delay.	idem
<ul style="list-style-type: none"> <li>• Rail (Regulation 1371/2007 - new entry into the CPC Annex)</li> </ul>	Similar mechanisms as for air transport	Articles 13 and 16-18 address compensation payments, reimbursements, and re-routing and assistance remedies. Article 25 addresses compensation for mobility equipment. Article 27 requires undertakings to have a complaint handling mechanism.	idem
<ul style="list-style-type: none"> <li>• Rights of disabled persons travelling by air (Regulation 1107/2006 - new entry into the CPC Annex)</li> </ul>	Similar as for air transport: Article 14 establishes an enforcement body in each MS. Article 15 requires complaints received by one MS' enforcement body about an infringement in another MS to be forwarded to that other MS's enforcement body. An informal network of NEBs.	Article 4 requires that passengers refused boarding are offered an alternative, reimbursement, or re-routing. Article 12 establishes that compensation shall be made for lost or damaged mobility equipment.	idem
<b>Travel services</b>			
<ul style="list-style-type: none"> <li>• Regulation 1008/2008 on common rules for air services (Chapter IV pricing provisions) (new entry into CPC Annex)</li> </ul>	Article 26 requires that MS and the Commission cooperate in applying and monitoring of the Regulation, and allows the Commission to obtain all necessary information from MS. No formal cooperation network.	None	The CPC cooperation would be the key mechanism for formal cross-border cooperation on specific malpractices in this area.

<ul style="list-style-type: none"> <li>• Council Directive 90/314/EEC on package travel, package holidays and package tours</li> </ul>	None	Article 4 sets forth remedies including compensation, withdrawal without penalty, suitable alternative arrangements, equivalent transport back	The new 2015 directive on package travel (2015/230/EU) clarifies that the CPC Regulation applies to infringements of the package travel directive. Articles 10, 11, 13, and 14 set out more detailed remedies than 90/314/EC (price reduction, refund, compensation for damages, termination without fee). Article 21 establishes trader liability for booking system errors.
<ul style="list-style-type: none"> <li>• Directive 2008/122/EC on timeshare, long-term holiday product, resale and exchange contracts</li> </ul>	None	Article 6 provides for the right of withdrawal.	The CPC cooperation is the mechanism for formal cooperation on specific malpractices in this area.
<b>Financial services</b>			
<ul style="list-style-type: none"> <li>• Directive 2008/48/EC on credit agreements for consumers</li> </ul>	An informal expert group.	Article 14 sets forth right of withdrawal from the contract without penalty and without giving any reason. Article 16 sets substantive rules for early repayment. Article 17 assigns obligations in event of assignment of third party to creditor's rights.	The CPC cooperation is the mechanism for formal cooperation on specific malpractices in this area.
<ul style="list-style-type: none"> <li>• Directive 2002/65/EC concerning the distance marketing of consumer financial services</li> </ul>	No	Article 6 requires right of withdrawal from the contract without penalty and without giving any reason.	The CPC cooperation is the mechanism for formal cooperation on specific malpractices in this area.
<ul style="list-style-type: none"> <li>• Directive 2007/64 on Payment Services (new entry into CPC Annex)</li> </ul>	Article 82 requires Member States to ensure that the complaints procedures and penalties provided for in Articles 80(1) and 81(1) respectively are administered by the authorities empowered to ensure compliance with the provisions of national law adopted pursuant to the requirements laid down in the Directive. Some	The Directive protects consumer rights in the event of unauthorised debits from an account under certain conditions. There are three types of refund rights: <ul style="list-style-type: none"> <li>• <b>Unauthorised debits:</b> If a consumer realises that an unauthorised debit has been made from his/her account, s/he has the right to an immediate refund provided that the payment service provider has been notified no later than 13 months after the debit date.</li> </ul>	Article 24 of the Directive provides for cooperation and information exchange obligations (not clear whether these obligations also apply to competent authorities designated for handling complaints under Article 80). However, the CPC cooperation could still however be complementary in certain cases to cover

	competent authorities designated for handling complaints under Article 80 of the Payment Services Directive are also CPC authorities, e.g. DK, EE, FR, LV, LT, RO, FI.	<ul style="list-style-type: none"> <li>• <b>Overcharging:</b> If a consumer has authorised payment without stating the amount, e.g. through a direct debit or a card payment for hotel or car bookings, and the amount debited is not what s/he could reasonably have expected, the consumer is entitled to challenge it by contacting the payment service provider within eight weeks. The payment service provider then has to reimburse the consumer within ten days or justify its refusal.</li> <li>• <b>Incorrect processing:</b> If a consumer authorised the transaction but the payment service provider made a mistake in processing the payment, e.g. failed to pay, debited the wrong amount, paid late or paid twice, the consumer is allowed to challenge the error within 13 months and obtain proper rectification.</li> </ul>	infringements of provisions provided in the Title III and IV of the Directive, e.g. in particular when coordinated enforcement action is needed to address a pan-European infringement in the area.
<ul style="list-style-type: none"> <li>• Directive 2014/17/EU on mortgage credit (new entry into CPC Annex)</li> </ul>	Chapter 13 spells out obligatory cooperation between competent authorities, including exchange of information, cooperation in investigation or supervision activities, establishment of one contact point for purposes of this directive, and European Banking Authority's assistance in resolving disputes.	The Directive requires clearer and more understandable information on mortgage loans by means of an improved European Standardised Information Sheet, better assessments of consumers' ability to repay the loans and more reliable advice. The Directive contains safeguards before entering into the credit agreement: e.g. Article 14 ensures that the consumer has sufficient time before being bound by the credit agreement (via a reflection period or a right of withdrawal or both). In addition, the consumer has the right under Article 25 to repay the credit early and is entitled, subject to conditions, to a reduction in the total cost of the credit.	The Directive lays down an elaborate cooperation mechanism among authorities going beyond information exchange. The CPC cooperation could still however be complementary in certain cases, e.g. when coordinated enforcement action is needed to address a pan-European infringement in the area.
<ul style="list-style-type: none"> <li>• Directive 2014/92/EU on payment accounts (comparability of fees switching and access - new entry into the CPC Annex)</li> </ul>	Similar to the provisions of the Directive on mortgage credit, Chapter V spells out obligatory cooperation between competent authorities, including exchange of information, cooperation in investigation or supervision activities. For the purposes of cooperation, information exchange and dispute resolution between competent authorities, the competent authorities should be those acting under the auspices of European	The Directive creates a right for all consumers to access basic payment account services irrespective of their financial situation. It is for the Member States to decide whether payment accounts with basic features are offered to consumers by all credit institutions or by a sufficient number of credit institutions. However Member States will have to guarantee easy access to basic accounts for all consumers in their country.	idem

	Banking Authority, as set out in Regulation 1093/2010, or other national authorities provided that they cooperate with the authorities acting under the auspices of EBA in order to carry out their duties under this Directive.		
Directive 2001/83/EC on the Community code relating to medicinal products for human use: Articles 86 to 100	None	None	The CPC provides the mechanism for formal cooperation on specific malpractices.