

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Review of the Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (EC) No 2006/2004		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	JUST E5	DATE	10/2015
LIKELY TYPE OF INITIATIVE	Proposal for a Regulation amending Regulation on consumer protection cooperation (EC) No 2006/2004		
INDICATIVE PLANNING	2016		
ADDITIONAL INFORMATION	<p>Review of the CPC Regulation is one of 16 the initiatives of the Commission Digital Single Market Strategy, adopted on 6 May 2015 (ref COM(2015) 192 final)</p> <p>Website of the CPC enforcement cooperation and review:</p> <p>http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/index_en.htm</p>		
<p>This Inception Impact Assessment is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p>			

A. Context, Subsidiarity Check and Objectives
<p>Context</p> <p>(1) Improving enforcement of consumer laws has been a key strand of action for the EU consumer policy. It is now identified as one of the priority initiatives for action in the Commission's Communication on a Digital Single Market Strategy¹.</p> <p>Consumer expenditure accounts for 57% of the EU's GDP. Whilst online e-commerce is growing fast and is the main driver for growth, it still has a significant untapped potential. The cross border dimension of this trade is particularly lagging behind: in 2014, only 12% of EU retailers sold online to consumers in other EU countries; while more than one third (37%)² did so domestically. Only 18% of consumers who used the Internet for private purposes in 2014 purchased online from another EU country while 55% did so domestically³. The costs associated with resolving complaints and disputes across borders were found to be among the most important barriers in particular to small firms' expansion cross-border⁴.</p> <p>The priority put on the improvement of enforcement of consumer legislation is also based on the available information on consumer conditions published in the European consumer Scoreboards⁵ which highlight that the</p>

¹ Communication from the Commission to the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "A Digital Single Market Strategy for Europe", 06.05.2015, COM(2015) 192 final http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf

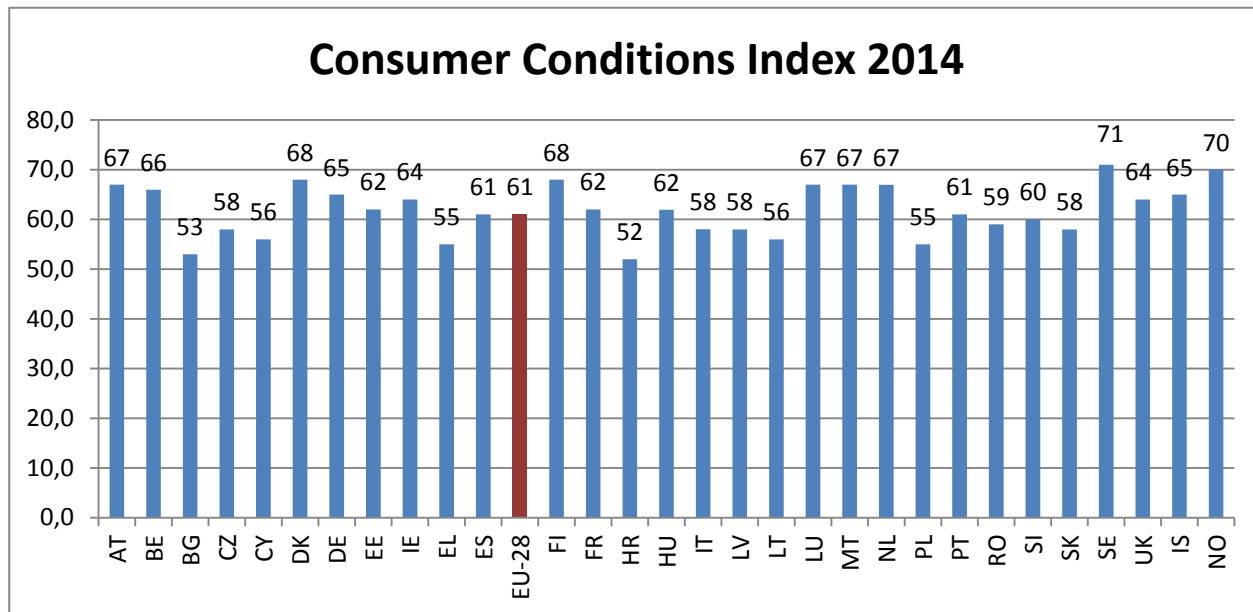
² Flash Eurobarometer 396 (2014) "Retailers' attitudes towards cross-border trade and consumer protection" (2015), p.27.

³ Eurostat survey on ICT usage in households and by individuals (2014), isoc_ec_ibuy

⁴ JRC Technical Report, Institute for Prospective Technological Studies Digital Economy Working Paper (2015-07), "Barriers to Cross-border e-Commerce in the EU Digital Single Market" (forthcoming).

⁵ See the latest 11th edition at: <https://scoreboard.atavist.com/consumer-conditions-scoreboard-2015>

prevalence of unfair practices is high: for example, 42% of consumers say they were pressurised to buy by persistent sales calls or messages⁶. The battery of indicators in the scoreboards is summarised in a composite index that show 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%.



(2) The main EU legal instrument to strengthen the enforcement of EU laws protecting the collective **economic interests of consumers** across the EU is the **Consumer Protection Cooperation (CPC) Regulation**⁷. For cases of intra-Community infringements of EU consumer rules by traders, i.e. affecting at least two countries, the CPC Regulation sets common minimum investigative and enforcement powers for national competent authorities, organises mutual assistance requests, allows for coordination of market surveillance and enforcement actions, and gives the Commission a facilitator's role. Moreover, in order to improve the application of the Regulation and to raise the standards and consistency of enforcement, the CPC Regulation provides the framework for broad enforcement and administrative cooperation (through e.g. exchange of officials, guidance and best-practices).

The CPC Regulation does not set obligations on traders nor stipulates consumer rules directly; it enables public authorities to enforce, in full cooperation, an important array of EU consumer legislation⁸, including the Unfair Commercial Practices, E-commerce, Consumer Rights Directives and the Passenger Rights Regulations. The other EU instrument dealing with consumer collective interests protected by EU consumer laws is the **Injunctions Directive**. This Directive requires Member States to provide for a Court or administrative procedure enabling consumer organisations and/or public authorities to seek an injunction to stop a trader's practice that infringes a number of EU rules on consumer protection.

To **complement public enforcement** actions private redress means are also provided within the EU. For example, assistance to help individual consumers solve cross border purchases disputes in an amicable way with traders is offered for free by the European Consumer Centres Network (ECC-net⁹). There is also **the EU small claims procedure which is a simplified judiciary procedure to solve cross-border disputes of EUR 2,000 or less**¹⁰, as well as the **Directive on Alternative Dispute Resolution and the Regulation on Online (alternative) Dispute Resolution**.

⁶ Ibid, page 32. This is a black listed unfair commercial practice, easy for consumers to recognise.

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R2006:20130708:EN:HTML>

⁸ Listed in the Annex to the CPC Regulation.

⁹ European Consumers Centres Network, http://ec.europa.eu/consumers/ecc/index_en.htm

¹⁰ On 23.06.2015, to broaden the use of this procedure while safeguarding the procedural rights of citizens, the co-legislators provisionally agreed extend the procedure to cross-border claims worth up to EUR 5,000. The provisional agreement will still need to be confirmed by the European Parliament and the Council.

The importance of the CPC Regulation and the need to strengthen public enforcement capacities throughout the EU is widely recognised:

- The Commission's Communication on A Digital Single Market Strategy for Europe acknowledges the "need for more rapid, agile and consistent enforcement of consumers rules for online and digital purchases" and announced 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"¹¹. Enhanced enforcement against rogue traders in on-line markets and better surveillance of web-shops' compliance with consumer rights help raising consumers' confidence in the Digital Single Market. "E-enforcement" in the EU is necessary to ensure a level-playing field on on-line markets and to enable businesses, including SMEs, to exploit the Single Market's growth potential.

- The Council Resolution on the Consumer Agenda¹² underlined the essential role of enforcement (online and offline) in making the Single Market a reality for consumers and businesses.

- 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 (European Parliament resolution on governance of the Single Market (2013)¹³; on completing the Digital Single Market (2012)¹⁴; on consumer protection (2010)¹⁵).

Article 21a of the CPC Regulation provides that by 31 December 2014 the Commission must submit an assessment report to the European Parliament and to the Council, accompanied, where appropriate, by a legislative proposal. An external evaluation, completed in 2012, was the first step in the Regulation's review process; this inception paper will trigger an impact assessment, exploring in particular those options for the future which could require a change to the Regulation.

(3) The external evaluation of the CPC Regulation (2012)¹⁶ concluded that "its rationale for intervention is as valid and appropriate today as it was when the Regulation was introduced in 2004 [and that it] is even more needed than before given developments in technology and consumption patterns of households (i.e. in digital and online purchasing) and the complexity of trader activity [...] have reinforced the need to provide tools to deter rogue traders and to enforce the law. [However] there also remains some ambiguity as to how [the CPC] objectives are interpreted by Member States as shown by the differing views on their obligations. [...] It would seem appropriate to improve the clarity of the text within the CPC Regulation, to ensure more uniform understanding among national actors. [...]As a whole, [the CPC] mechanism has been judged as delivering benefits in excess of the costs of the inputs required to implement its activities". Within this evaluation, the data gathered from more than 100 questionnaires as well as case studies revealed that the CPC Regulation is beneficial to enforcement authorities and consumers in the EU. What is more, the feedback from consultations suggested that, in absence of the CPC Regulation, greater fragmentation of consumer protection enforcement would exist in the EU. However the evaluation also concluded that the full potential of the Regulation has not been attained, as its specific objectives have not been fully achieved yet. The evaluation recommended a two-stranded approach: first, improvements within the existing legal framework especially in the form of guidance, monitoring, and enhanced coordination to tackle common issues spreading across the EU. Such a work undertaken since the adoption of an enforcement strategy in 2009¹⁷, is still continuing today and is also consistent with the conclusions of the events of the Belgian and Italian Presidencies of the Council of the Ministers on enforcement of consumer rights held in 2010 and 2014. In 2014, for example, the CPC network,

¹¹ p. 5 of the Commission Communication on A Digital Single Market Strategy for Europe, 6.5.2015 (COM(2015) 192 final, available: http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf

¹² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/132794.pdf, points 4e and j.

¹³ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0054&language=EN&ring=A7-2013-0019>

¹⁴ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0468&language=EN&ring=A7-2012-0341>

¹⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:349E:0001:0009:EN:PDF>

¹⁶ http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

¹⁷ http://ec.europa.eu/consumers/enforcement/docs/Communication_en.pdf

under facilitation of the European Commission, 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 bookings¹⁸.

The second avenue recommended by the evaluation concerned investigating the legal ways to remove the identified barriers to the efficient functioning of the Regulation. This concerned the areas of: 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.

It is to be noted that the recommendations accompanying the evaluation are consistent with the two biennial assessments which the Commission has published on the functioning of the CPC Regulation since its entry into force¹⁹ and with the last Commission's report of 01.07.2014 on the functioning of the CPC Regulation²⁰.

Moreover, at the European Consumer Summit in March 2013, the Commission and the Member States held a high-level strategic debate on the key challenges and opportunities for reaching an efficient EU-level enforcement capacity for the EU consumer *acquis*. Workshops on enforcement in on-line markets and on building such a capacity explored several options to improve the CPC Regulation. The Summit's results²¹ confirmed the need to step up enforcement efforts and to revisit some of the CPC mechanisms. This concerns in particular: intensified coordination for cases affecting several Member States, more robust rapid alert systems, quicker and efficient procedures, and further fine-tuning of authorities' powers. The Summit also concluded that additional structured dialogues are needed with the different categories of stakeholders to refine priorities. Similar needs regarding the CPC enforcement cooperation were also confirmed in the subsequent Consumer Summits in 2014 and 2015²².

This inception impact assessment presents the problems, which need to be addressed at EU level more effectively and efficiently than continuing with the existing status quo, and looks at possible options, which could achieve the CPC cooperation's objectives in the most optimal way. The inception assessment addresses the question of what conditions can provide evidence that there are compelling reasons to pursue one course of action, with certain objectives, means, costs and benefits, rather than alternative ones, ranging from changing EU regulation to national measures including market, competition, industry, technological or voluntary measures.

Issue

According to the evaluation results, the CPC cooperation mechanisms are on balance beneficial to consumers and authorities, but would need several improvements for the EU to remove the identified barriers to the efficient functioning of the Regulation and to get full benefit from it. As explained above, some of the improvements are underway and can be achieved within the current legal framework, such as guidance for coordinated enforcement actions, monitoring of mutual assistance requests and increased cooperation on widespread issues. Some issues however relate to the lack of clarity of certain provisions in the Regulation that prevent national authorities to undertake certain coordinated activities as they may be inconsistent with their current national procedural law. In addition, market developments, especially in the context of the Digital Single Market, would 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 on line or to request information from internet intermediaries about the traders behind websites misleading consumers. The role and duties of the Commission would also need to be clarified so that it can provide an efficient and legally acceptable assistance to national authorities when issues are of a EU-level dimension. This inception paper details the problems, which need to be addressed to achieve the CPC cooperation's objectives more effectively and efficiently than

¹⁸ http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/index_en.htm

¹⁹ COM(2009) 336 final, concerning 2007-2008; COM(2012) 100 final, concerning 2009-2010; http://ec.europa.eu/consumers/enforcement/biennial_national_reports_en.htm#biennial

²⁰ 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 (...), 01.07.2014, COM(2014) 439 final: http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140701_commission_report_cpc_reg_en.pdf

²¹ <http://www.european-consumer-summit.eu/presentations.html>

²² For example, see: http://ec.europa.eu/justice/events/european-consumer-summit/2015/files/summary_enforcement_consumer_summit.pdf

continuing with the existing status quo.

More specifically this initiative aims to address the following issues:

A. Gaps in national enforcement means and procedures which may impede enforcement action and cooperation and reduce the deterrence impact of the CPC

The external evaluation's and the Consumer Summits' discussions pointed to a number of gaps in the list of minimum investigative and enforcement powers (Article 4(6)) required ensuring that Member States can fulfil their mutual assistance obligations under the CPC Regulation. Such gaps include the lack of test purchases (mystery shopping: this gap can reduce the effectiveness of investigations as sometimes bad practices become apparent post purchase), or the possibility to recover illicitly obtained gains or a more consistent approach to naming infringing traders (publication of enforcement decisions is part of the list of minimum powers in the CPC Regulation, but the way in which enforcement decisions are made public varies strongly among Member States, reducing the visibility of enforcement action towards stakeholders and its impact for example to prevent such practices to happen again). Another gap highlighted is the fact that currently the minimum powers for cooperation are geared towards stopping on-going infringements. This may not be sufficient to cover a range of situations such as short-lived practices (e.g. an on-line advertising campaign of one month) where it may be relevant for authorities to also request measures to sanction infringements on preventive grounds). The evaluation also pointed to the advisability of looking at how one could enhance the impact of enforcement decisions resulting from the exercise of powers in the CPC framework, by facilitating redress for consumers harmed by the infringements at issue.

Last but not least, the external evaluation stressed that a further challenge is represented by the procedural law fragmentation which affects the exercise of authorities' powers in the CPC context. 58% of survey respondents in the CPC external evaluation rated divergence in national procedural rules²³ as a major barrier in the functioning of the CPC Regulation. Article 4(3) of the CPC Regulation stipulates that the designated competent authorities exercise their powers "in accordance with national law". Differences in the way authorities handle infringement cases in the CPC based on national procedural rules, such as requirements on evidence, lead to uncertainties and inefficiencies. For instance, delays in infringement case-handling occur if evidence has to be reconstituted or complemented by the authority who receives a mutual assistance request. The lack of minimum criteria or standards hampers the efficient flow of mutual assistance requests across jurisdictional boundaries. Statistics on case-handling in the CPC show that the majority of cases are handled within a time period exceeding the agreed time-frame in the operating guidelines.

B. Lack of detailed and cost-efficient mutual assistance mechanisms when infringements are spread over many markets which seriously impede an adequate response to such "EU-level relevant" infringements

Traders increasingly operate across the Single Market and potential malpractices are likely to occur simultaneously in several Member States. For example, the guarantee policies of leading ICT companies and retailers, which are presented in a misleading manner to encourage consumers to buy an extension of guarantee without presenting clearly the legal rights in the domain. Italy brought infringement cases against several concerned companies. Similar guarantee sales practices are applied in all EU markets.

Enforcement action dealt with on a Member State by Member State basis, leads to a considerable time-lag before an infringement is stopped EU-wide. For example, the misleading advertisement of guarantees addressed by Italian authorities from 2011 has also been considered illegal in other jurisdictions in the EU. Some procedures are still pending with the result that many consumers across the EU are still harmed by such a practice. Furthermore, different enforcement approaches to similar cases may create legal uncertainty, allowing traders to play on inconsistencies in the Single Market and also tend to diminish the effectiveness of enforcement. For example, it was reported to the CPC Committee that a large telecom operator argued against an enforcement position of one national authority using a position given by an authority in another country.

The evaluation of the CPC and Consumer Summits' discussions indicated that the coordination mechanisms of the CPC Regulation are principally geared to address simple bilateral cross-border infringements whereby the trader and the harmed consumers are located in two different Member States. Article 9 sets up a procedure to coordinate enforcement actions when the interests of consumers are harmed in at least two Member States. However, this procedure is very light and does not give enough legal possibilities to avoid the duplication of efforts in investigation, legal analyses and instruction of enforcement cases, for example in permitting the

²³ Rules of national procedural law having an impact on the investigation and/or enforcement action on infringements addressed in cross-border referrals within the CPC.

recognition of the investigation and enforcement approach of one national authority by others. In addition, Article 9 does not envisage the notion of "EU-level relevant infringements".

C. Lack of consistent evidence on market conditions and infringements which impedes the early detection of malpractices and the alignment of priorities

Results of yearly sweeps point to persistent compliance gaps in consumer markets (on average 60-80% of websites checked are found to be non-compliant). Surveillance of markets is made by each competent authority (more than 400 authorities are concerned by the CPC) without coordination guidelines and therefore gives a fragmented picture, little geared to monitoring and driving coordinated and prioritised enforcement action. This is particularly damageable to consumer conditions when it comes to emerging malpractices, for example, appearing in social networks. Sometimes, small to very small amounts maybe be involved but for a very large number of customers, very few of these customers will complain due to the size of their individual damage, and the practices will take a lot of time to be detected.

The potential of the alert mechanism of the CPC Regulation on suspected illegal practices (Article 7) should partly address such an issue, however it is currently little used and yearly numbers of alerts have gone down strongly (from 100 in 2008 to just around 30-40 on average in the last years). This is due to the lack of clear legal obligations for national authorities on the nature and use of alerts, it is also linked to the difficulty to judge when a practice may concern other markets and should therefore be reported.

Furthermore, there is no mechanism to use information available from other sources such as stakeholders and consumers outside the CPC network. And there is currently an insufficient coordination and structured information exchange on enforcement priorities and operations of competent authorities and on the result of their market surveillance efforts. The difference between national priorities for addressing infringements on the domestic market and at the EU-level is being blurred by the development of the internal retail trade market. In order to address in the most efficient way all infringements in the EU it is therefore important and cost-efficient to have consistency of priorities.

Who are affected by the problems?

Member States' and EEA countries' enforcement authorities directly. Indirect benefits should be expected for businesses especially those selling to consumers cross-border or intending to do so. Indeed, a more equal EU wide enforcement would reduce compliance costs and barriers to entry to new markets which is especially beneficial to SMEs that cannot afford to pay for specialists of consumer rights enforcement practices and approaches in other markets. Overall such an equal enforcement would create a level playing field for trade. Consumers also should benefit from a better enforcement of their rights wherever they reside and shop, a greater confidence in the Single Market, more transparency and competition on markets and therefore better prices and choice.

Subsidiarity check

The CPC Regulation was adopted in 2004 to provide a cooperation framework between national competent authorities and the Commission in order to enforce EU consumer rules. The cooperation covers mutual assistance requests for cross-border infringements of certain consumer laws and coordination among enforcement authorities and the Commission; it contributes to raising the standard and consistency of enforcement of most consumer economic rights in the Single Market. Such cooperation cannot be sufficiently achieved by Member States individually because they cannot set up specific mechanisms among themselves to ensure swift action cross-border and to require reciprocity from a large network of authorities across the entire EU. 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 companies established in different Member States. Thus only an initiative establishing a cooperation mechanism at the EU level can achieve a swift and cost saving response to infringements of consumer rules concerning several countries.

Since 2007 Member States have sent over 1,400 mutual assistance requests and 300 alerts. The CPC Regulation also allowed the organisation of 8 annual screenings of websites (sweeps), several workshops on legal questions, study visits to exchange best practices and coordinated enforcement actions to tackle a specific enforcement issue. The value of the CPC Regulation has been widely recognised, as mentioned above, confirming its needs and justification as regards the principle of subsidiarity.

The initiative covered by this inception impact assessment is meant to increase the effectiveness and efficiency of the coordination mechanisms set up by the CPC Regulation, including options to explore more prominent actions at the EU level directly and other alternative options. In developing the impact assessment for such options, subsidiarity will be fully considered, as the focus would remain on justifying whether coordination of

national enforcement activities (Member States are primarily responsible for the enforcement of consumer protection legislation) and on those areas where the EU can assist Member States in the way they see most fit would be the most preferable option.

The CPC Regulation is based on Article 114 TFEU. The issues under review in the impact assessment do not alter the scope of the Regulation and in principle this legal basis would remain appropriate. The issues also do not interrogate the efficiency per se of the various substantive consumer laws included in its annex which will form part of a specific fitness check of consumer legislation in 2016.

Main policy objectives

- General objectives:**
- Ensure further a high level of consumer protection in the EU through reduction of financial consumer detriment caused by cross-border and widespread infringements
 - Improve further the legal consistency of enforcement of EU consumer protection legislation across the EU and thus legal certainty for traders and consumers
 - Increase further the deterrence effect of the CPC cooperation
- Specific objectives:**
- Reduce the situations where important cross-border or widespread infringements are not addressed via the CPC framework
 - Reduce duplication of enforcement efforts of national authorities
 - Increase the detection rate of widespread infringements
 - Reduce delays in the CPC cooperation

B. Option Mapping

Baseline scenario – no EU policy change

Three factors affect the evolution of the problems:

- First, the trends in cross-border shopping (and associated consumer detriment) by consumers in the EU
- Second, the trends in business organisation and compliance behaviour across EU
- Third, the degree to which existing tools ensures effective and efficient cross-border enforcement

Cross-border consumer expenditure is growing. Consumers are increasingly purchasing goods and services cross-border, particularly in the Digital Single Market. Businesses are also expanding to operate in more countries. Online retail sales are forecasted to increase as a share of total consumer expenditure in all Member States from 2013 to 2018, with a compound annual growth rate of 12% (resulting in an online retail market that is worth ca. EUR 234bn by 2018). 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. Traders are increasingly operating in multiple Member States through branches. Consequently, an increasing proportion of domestic retail sales have a cross-border dimension.

As cross-border transactions will increase, new possibilities for unscrupulous traders to abuse consumers' trust will be found and infringements will grow. New forms of marketing practices in the digital economy raise new challenges and issues on consumer protection. 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. In 2007 online sales accounted for 54% of the total of complaints, whereas by 2014, they account for more than two thirds²⁴.

Several legislative and non-legislative developments must also be taken into account in the assessment of the

²⁴ The report of the European Consumer Centres Network "10 years serving Europe's consumers; 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

baseline scenario. Some other legislative measures in the EU will on their own ease cross-border redress and enforcement, albeit in individual cases. First, some disputes that arise from transactions are likely to benefit from out-of-court mechanisms as a result of the Directive on consumer ADR and Regulation on consumer ODR, although their number is difficult to estimate. This positive development, however, is not designed to protect collective consumer interests involving significant consumer detriment.

On the non-legislative side, issuing guidance or producing explanatory documents could help to streamline the CPC cooperation framework, improve mutual understanding of the possibilities and limitations of the different national enforcement systems. However, they might not be sufficient to achieve the set objectives.

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

In the absence of further action at EU level to reinforce enforcement of EU consumer legislation across borders, the benefits of the Digital Single Market will not be reaped as consumer protection enforcement remains fragmented in the EU and consumers continue to suffer increasing harm from traders who are not sufficiently deterred from committing infringements and are able to repeat infringements by exploiting differences in national jurisdictional boundaries.

Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation

(1) The policy options concern the formal strengthening of certain cooperation mechanisms provided for by the CPC Regulation in order to make them more effective and efficient. They should add to the actions that the Commission and the competent authorities in the Member States already implement and will continue to develop to maximise the efficiency of the current provisions of the CPC Regulation (e.g. increase work on identification of priorities and exchange of information on cases of EU-level relevance, development of enforcement guidelines in specific situations and for specific sectors, financing of joint projects and studies, development of structured dialogues with stakeholders). These on-going activities to maximise the use of the Regulation are included under options 1 (No change in the legal provisions, implementation of the Regulation to its maximum/base-line).

The specific policy options under consideration are related to the three problems identified. Policy options are designed as stand-alone, but may also be combined with one other. At this stage, all options are estimated to be viable and not disproportionate. Some additional studies are needed to assess the most appropriate ones including the eventual most appropriate mix. This will be done in the course of the impact assessment.

Any future proposal that would go beyond strengthening the cooperation framework as such and would involve changing substantial national rules (on evidence, procedures, etc.), a policy decision would need to be made by College whether such changes to substantial national rules should be made in a horizontal manner or through a sectorial specific approach (in this case consumer law).

A. Divergence among national enforcement means and procedures which may impede enforcement action and cooperation and reduce the deterrence impact of the CPC

A1- No change in the legal provisions, implementation of the Regulation to its maximum/base-line.

A2- Specification of additional minimum investigative and enforcement powers for national competent authorities needed for cooperation. Such additional powers could be e.g. test purchases ("mystery shopping"), naming, recovery of illicitly obtained gains. This could be accompanied by an extension of the mutual assistance to the application of sanctions to cover certain types of infringements situations (e.g. short-lived malpractices that have ceased before a CPC mutual assistance requests is completed) and the possible inclusion of some elements facilitating redress for consumers harmed by infringements dealt with in certain public enforcement cases.

A3- Specification of minimum procedural criteria or standards to facilitate the handling of infringement cases within the CPC framework. Practical provisions could include criteria for the evidence to be provided, standards of investigation, time limits for certain procedural steps.

A4- Specification of procedural standards for the handling of certain types of cases within the CPC framework (e.g. handling of infringements in the on-line environment where rapid intervention is required, or recurrent infringements of limited legal complexity).

B. Lack of detailed and cost efficient mutual assistance mechanisms when infringements are spread over many markets which seriously impede an adequate response to such "EU-level relevant" infringements

- B1- No change in the legal provisions, implementation of the Regulation to its maximum /base-line.
- B2- Obligation on Member States to notify and act on cases which qualify as EU-level relevant according to criteria to be defined.
- B3- Strengthening of coordination mechanisms to address such cases faster and with more efficiency. Practical provisions could include the delegation by concerned competent authorities of a pivotal function - such as investigations and consistency checks/requests addressed to a trader to correct its practices across the Single Market - to a Member State, a group of Member States and/or the Commission, or a single EU administrative fast-track procedure.
- B4- Mutual recognition of enforcement decisions of public authorities. This could include a typology of enforcement acts, of which those with EU level relevance could lead to express enforcement procedures in other Member States (e.g. for the same infringement by the same company).

C. Lack of consistent evidence on market conditions and infringements which impedes the early detection of malpractices and the alignment of priorities

- C1- No change in the legal provisions, implementation of the Regulation to its maximum /base-line.
- C2- Strengthening of the CPC cooperation requirements. This could cover: better access to case-information by the different actors in the CPC network (including the Commission), more responsibilities of the Single liaison office, better infringement definition and monitoring; stronger obligations for Member States authorities to notify, act or request action further to CPC alerts; the establishment of a possibility for the Commission to notify or request action on certain alerts.
- C3- Establishment of Member States' surveillance and surveillance sharing requirements, including the communication of enforcement action plans and the need to consolidate prioritisation of enforcement actions.
- C4- Establishment of a mechanism for relevant organisations to transmit information on emerging infringements in the Single Market.

The CPC Regulation's rationale for intervention continues to be valid. Improvements to it could be acceptable on condition that they are cost effective. On the other hand, in the absence of the CPC Regulation, the mutual assistance mechanisms and coordinated enforcement among competent national authorities would tend to disappear, with possible greater fragmentation of consumer protection enforcement as a result. Such results would be undesirable and inconsistent with the EU Consumer Agenda and Digital Single Market Strategy. The options therefore seek to improve and modernise the CPC Regulation, but not to repeal the existing cooperation framework.

(2) Most options under consideration would require the adaptation of the CPC Regulation in order to extend the enforcement powers available to national authorities in a cross-border cooperation context and to clarify and detail the cooperation mechanisms, in particular to address widespread infringements with EU dimension. The possibility to use non-binding provisions, however, should also be studied for proposals such as clarification of the current CPC cooperation mechanisms.

Alternative policy approaches

The outcome of the evaluation work so far: that benefits are in excess of costs in the CPC cooperation mechanisms and that certain improvements would be desirable, does not provide conclusive evidence to decide on the most effective policy response for addressing the cross-border enforcement challenges of the future.

The alternative option of relying on an improvement of market conditions and improved business compliance to consumer legislation through voluntary self-regulation or industry-wide measures and/or non-binding improved administrative cooperation procedures or binding clarifications in implementing measures will also be examined as alternative policy approaches.

Alternative policy instruments

The possibility to use binding time-limits for mutual assistance requests or clarification of the use of the current alert mechanism will be studied. Other policy instruments to be considered include assisting industry to develop codes of conducts, especially in relation to specific issues in online marketing such as the presentation of green claims or user reviews.

Alternative/differentiated scope

Not applicable
Options that take account of new technological developments
The review of the CPC Regulation would seek to make public enforcement of consumer rights in the EU more efficient. To address enforcement challenges in the Digital Single Market and offline, authorities need to work more across national jurisdictions, be faster and more consistent. For example, option A2 would explore the need for the extension of the current investigation and enforcement powers of national authorities for cross-border cooperation (for example, to suspend infringing websites or carry out online mystery shopping).
Preliminary proportionality check
In accordance with the proportionality principle, the options will be carefully examined and discussed with stakeholders to ensure that any revision of the CPC Regulation is proportionate and does not impose excessive regulatory burden on Member State authorities or other actors directly concerned by the Regulation's implementation.
C. Data Collection and Better Regulation Instruments
Data collection
<p>1) Existing sources of information on which the impact assessment will build are:</p> <ul style="list-style-type: none"> - European Commission's report of July 2014 on the functioning of the CPC Regulation since its entry into operation in 2006²⁵. - The external evaluation (2012)²⁶, the Commission and Member States' biennial reports on the application of the CPC Regulation (2009, 2012)²⁷, results from CPC coordinated investigation of websites (sweeps), CPC statistics and workshop reports; - Consumer Scoreboards, consumer market studies and Euro-barometer surveys related to consumer issues²⁸; and ECC-Net reports²⁹; - Results from recent impact assessments, studies and staff working papers in related policy areas will be used (e-commerce, digital agenda, consumer redress initiatives, etc.); similarly, studies into consumer problems and enforcement issues from Member State agencies or international source will be used where relevant. <p>(2) An additional study to gather legal expertise on enforcement authorities' powers and national procedural rules in the application of the CPC Regulation (the first part of the study, covering 10 Member States, was completed in July 2014; the second part will be completed by the end of 2015).</p> <p>(3) The DG SANTE (ex SANCO) framework contract has been used to provide for further impact assessment support study, to cover in particular baseline assessment and impact assessment of selected options/measures.</p> <p>(4) The European Consumer Summit (March 2013) was dedicated to enforcement, with particular visibility of the CPC Regulation and questions around its review.</p> <p>(5) In July 2014 the Italian Presidency of the Council of the Ministers of the EU dedicated one of its key conferences on consumer policy to the CPC enforcement cooperation³⁰. Speakers at the conference solidly concluded that the CPC cooperation is highly relevant today and remains the key asset for the future of the EU consumer policy. The report on this conference was presented by the Italian Presidency at the Competitiveness</p>

²⁵ COM(2014) 439 final.

²⁶ See footnote 11.

²⁷ http://ec.europa.eu/consumers/enforcement/biennial_national_reports_en.htm#biennial

²⁸ http://ec.europa.eu/consumers/consumer_research/cms_en.htm

²⁹ E.g. European on-line marketplace, http://ec.europa.eu/consumers/ecc/consumer_reports_en.htm

³⁰ Documents and key speeches available at: <http://www.agcm.it/convegni-e-seminari/7122.html>

Council in September 2014.
Consultation approach
<p>A web-based public consultation on the CPC Regulation review was launched in October 2013 and ended in February 2014. Stakeholders were invited to give their views on the key problems identified in this inception impact assessment. In total 222 responses were received from a broad range of stakeholders. Overall the public consultation showed a clear call from stakeholders that policy-makers should increase their efforts towards effective enforcement of consumer laws³¹.</p> <p>Website: http://ec.europa.eu/dgs/health_food-safety/dgs_consultations/ca/consumer_protection_cooperation_regulation_201310_en.htm</p> <p>Other consultations:</p> <ul style="list-style-type: none"> • A survey was conducted among enforcement authorities, consumer protection policy officials, consumer organisations (March-May 2012), as part of the external evaluation of the CPC Regulation, and in-depth interviews were carried out in 10 Member States³². • Member States also discussed ways to improve enforcement of consumer rights in the EU and tested broad options that could be pursued to improve the CPC framework (e.g. cases of EU relevance)³³. The European Consumer Summit in 2013 brought together Ministers from 14 Member States and some 480 stakeholders from Member State authorities, consumer and business organisations, and academia. • More specific consultations are planned on a needs basis (e.g. workshop or expert meetings as part of assessment studies). • DG JUST will use the regular meetings of the CPC Committee and its workshops, the Consumer Policy Network (CPN) and the European Consumer Consultative Group (ECCG) to inform stakeholders on progress in the CPC review process and seek feedback.
Will an Implementation plan be established?
<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>The current legal form of a Regulation for the CPC is in principle not subject to review, transposition issues are non-existent. The CPC Regulation, however, requires the adoption of certain national implementing measures (e.g. minimum powers of national enforcement bodies); the impact of adding of such powers will be examined in this respect in the impact assessment.</p>
D. Information on the Impact Assessment Process
<p>Inter-Service Group accompanies the Impact Assessment process. It meets according to need, at least 4 times during the process (at the start, on interim results and on the draft impact assessment report).</p> <p>The main departments participating in the meetings are Secretariat General; Legal Service; Communications Networks, Content and Technology; Internal Market & Industry; Mobility & Transport; Competition</p>
E. Preliminary Assessment of Expected Impacts
<p>The impact assessment will assess the detailed options in order to determine the most cost-efficient mix of options which should be retained.</p>
Likely economic impacts
<p>Costs: All the proposed options (except the "no change" ones) should contribute to the improved efficiency and effectiveness of the CPC Regulation, leading to an enhanced compliance by traders with the legislation</p>

³¹ A report summarising the results of stakeholder responses to the public consultation on the CPC Regulation is available at http://ec.europa.eu/consumers/enforcement/index_en.htm

³² http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

³³ Summit discussion paper http://www.european-consumer-summit.eu/programme_en.html; reports see footnote 14.

<p>regarding the protection of consumer's economic interests in the (Digital) Single Market and to better consumer trust. All these options should not bring additional direct costs to companies (compliance costs and administrative burden in so far as they already comply) as they are only aimed at improving and modernising cooperation mechanisms among public authorities. There should also be a better level of compliance due to the deterrence effect of such coordinated enforcement actions at the EU level that will reduce the number of infringements overall and thus the cost of action on infringements currently incurred by national authorities.</p> <p>Benefits: governance gains can be expected in each Member State and at EU level due to improved administrative cooperation, the reduction of enforcement delays and the better functioning of markets both for consumers and businesses.</p>
<p>Likely social impacts</p>
<p>Vulnerable consumers (i.e. children, elderly) are often targeted by unfair contract terms and misleading sales practices (e.g. in-app purchases and subscription services). Equally, vulnerable consumers are often the least confident to purchase cross-border and online and would benefit from improved enforcement of consumer rights across borders.</p>
<p>Likely environmental impacts</p>
<p>Not applicable</p>
<p>Likely impacts on simplification and/or administrative burden</p>
<p>The options aim to improve the effectiveness and efficiency of the work of CPC enforcement authorities and of the Commission, in relation to the cooperation mechanisms set up by the CPC Regulation. It should be noted that the assessment does not cover issues of simplification of substantive EU consumer rules contained in the Directives and Regulations listed in the CPC Regulation Annex. The envisaged options will therefore not aim at simplifying EU rules and consumer rights as ultimately applicable to traders and consumers but will focus on improving the implementation arrangements provided by the CPC.</p> <p>The CPC Regulation does not impose requirements directly on businesses. Mandatory information requirements (related to mutual assistance requests, general reporting) are placed on competent authorities, designated by the Member States on the basis of the Regulation. The impact assessment options aim to make the CPC more efficient. Therefore examination of overall costs associated with the options will be an important part of the impact assessment. As per the Commission's Impact Assessment guidance, a careful examination will be made of the expected impact on 'compliance costs' and 'administrative burden' for Member States and the Commission bearing in mind that all options evaluated should result in a better harmonisation of enforcement procedures for the EU consumer legislation and thus a decrease in such costs and burden.</p>
<p>Likely impacts on SMEs</p>
<p>The CPC Regulation does not impose requirements directly on businesses. Individual businesses will benefit from a more consistent and equally efficient enforcement across Member States.</p>
<p>Likely impacts on competitiveness and innovation</p>
<p>Individual businesses will benefit from a more consistent and equally efficient enforcement across Member States, reducing their compliance costs when operating on several markets due to decreased legal uncertainties. More visible and effective enforcement will support consumers' confidence in the Single Market and ultimately should contribute to growth through increased private consumption. Overall, a higher level of market transparency for consumer goods and services should lead to more competition and innovation, lower market prices and better external competitiveness of EU companies</p>
<p>Likely impacts on public administrations</p>
<p>Implementation costs for national authorities (e.g. investigation and handling of infringements, reporting, etc.) should in fact ultimately decrease. Indeed, thanks to a better cooperation and to the pooling of resources to tackle large size cross border infringements, there should be a reduction of overlaps in public action at the EU level (1 investigation and enforcement order could replace 28 national actions).</p>
<p>Likely impacts on third countries, international trade or investment</p>
<p>The options are unlikely to significantly affect the international cooperation provisions of the CPC Regulation (re. Articles 14 and 18) and thus impact on relations with third countries. A better coordination and increased harmonisation at EU level would however facilitate international cooperation.</p>