

Translation of letter

From: Mario Lindner, Speaker of the Austrian Bundesrat

To: Jean-Claude Juncker, President of the European Commission

Date: 13 July 2016

Subject: **COM(2016) 283 final**

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

Reference: 27000.0040/26-L2.1 /2016

At its meeting on 13 July 2016, over the course of its discussions on EU document

COM(2016) 283 final

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

the EU Committee of the Bundesrat agreed on the accompanying **reasoned opinion in accordance with Article 23g(1) of the Federal Constitutional Law in conjunction with Article 6 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality.**

REASONED OPINION:

of 13 July 2016, issued by the Bundesrat Committee on EU Affairs in accordance with Article 23g(1) of the Federal Constitutional Law in conjunction with Article 6 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality

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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

A. Reasoned Opinion

As it stands, this proposal is in parts incompatible with the principle of subsidiarity.

B. Reasoning

The EU Committee of the Bundesrat shares the Commission's view that the prosecution of cross-border infringements of EU consumer protection legislation needs to be structured more effectively. The current Regulation is inadequate to address today's demands, particularly with regard to the digital economy and the development of cross-border retail trade, and therefore needs to be revised.

Effective cross-border cooperation between national competent authorities is essential to prevent the rules from being breached. The Regulation also gives the possibility of using international agreements to deal with violations committed by non-EU companies.

The Bundesrat's EU Committee would like to clarify that it is not questioning the need for the EU-wide regulation of cooperation between the national authorities responsible for implementing consumer protection legislation, but is rather raising objections to the implementing acts proposed by the Commission (Articles 10, 11, 12, 15, 20 and 27). The extensive introduction of delegated and implementing acts and the resulting erosion of Member States' powers is generally viewed critically by the Bundesrat and is diametrically opposed to the principle of subsidiarity. Furthermore, in certain justified cases, the Committee has its reservations about the Commission's monitoring of the implementation of national enforcement plans as proposed in Article 46, which also is inconsistent with the principle of subsidiarity.

After examining the proposal, the Committee further agreed that, as regards the exercising of individual minimum powers by competent authorities, the principle of proportionality should play a more prominent role in the Regulation text.

Accordingly, clarification and precision is needed on the question of whether — and, if so, in which cases — the authorities can make use of these powers, particularly those of compensation and restitution of profits.

In the view of the Bundesrat's EU Committee, parameters should also be laid down for certain far-reaching minimum powers. This would give the competent authorities factual criteria for choosing and applying sanctions in line with their domestic legal frameworks. To give authorities unchecked freedom to exercise the minimum powers set forth in Article 8, without these first being brought into proportion to the severity of the infringement in question and the outcome sought, would be to go beyond what is necessary to achieve the proposal's aims, and would therefore also conflict with the proportionality principle.