



EUROPEAN COMMISSION

*Brussels, 18.08.2016  
C(2016) 5428 final*

*Mr Urban AHLIN  
Speaker of the Riksdag  
SE – 100 12 STOCKHOLM*

*Dear President,*

*The Commission would like to thank the Riksdag for its Reasoned Opinion on the Commission's 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 {COM(2016) 283 final}.*

*In accordance with Article 114, paragraph 3, of the Treaty on the Functioning of the European Union (TFEU), the proposal is based on a high level of consumer protection. It takes into account the new developments in consumer markets such as the digitalisation and globalisation of business practices and should contribute substantially to the ambition of unleashing the Digital Single Market, which is a priority for the Union's economic growth.*

*Cross border enforcement of consumer laws has to be more agile, efficient, and able to respond to the challenges of digital markets that know no national borders. The rate of compliance with the rules is low: the Commission's estimates, which are based on enforcement findings, show that 37% of traders in key online consumer markets do not respect Union consumer laws, generating a detriment of EUR 770 million per year for consumers<sup>1</sup>. The Commission therefore values the Riksdag's support for the proposal. Sweden has always been at the forefront of consumer protection and its support is of strategic importance.*

*The Commission takes very seriously the concern expressed by the Riksdag that the new powers proposed to authorities, as well as the new procedure triggered by the Commission on common actions to counteract widespread infringements with a Union dimension, should not exceed what is necessary to achieve the objectives of this initiative.*

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<sup>1</sup> According to the impact assessment accompanying the proposal for the CPC Regulation, SWD(2016) 164 final, 25.5.2016,  
[http://ec.europa.eu/consumers/consumer\\_rights/unfair-trade/docs/cpc-revision-proposal-impact-assessment\\_en.pdf](http://ec.europa.eu/consumers/consumer_rights/unfair-trade/docs/cpc-revision-proposal-impact-assessment_en.pdf)

*It should be first clarified that the proposed measures only concern situations with a cross border dimension that Member States cannot address alone. For that reason, the Commission has carefully scrutinised the proposal and the accompanying Impact Assessment so that it fully respects the principles of subsidiarity and proportionality. The proposal builds on the existing framework adopted in 2004 to bridge the national jurisdictional limitations and to offer possibilities for national authorities to work together and address concrete issues so that consumers and traders can fully benefit from the Single Market. The novelties in this proposal are limited to the key elements that are required to modernise and adapt this cooperation framework to the digital markets as the review of the Regulation is also a key initiative for the Digital Single Market.*

*The proposal does not call into question the freedom of Member States to choose an enforcement system they deem appropriate. It retains the basic principle of the current Regulation which ensures that the minimum powers of competent authorities are in line with the national Constitutions. Today, and in the future, it will be for Member States to ensure that such powers are exercised in full respect of fundamental rights, in particular with the freedom to conduct business. This right does not prevent Member States from taking enforcement action to stop illegal business practices taking place on their territory and on that of the Union. The principles of proportionality and necessity already underpin all administrative action to tackle such illegal practices in the context of the Regulation, and the proposal will not alter this. Member States will also retain the choice of whether their authorities exercise the new powers directly under their own authority or by application to courts, depending on national traditions and the specificities of each enforcement system.*

*The proposed Commission's role to determine whether the thresholds for triggering an action to address widespread infringements with a Union dimension are met, is a practical solution at Union level, as the Commission is well placed to verify in a timely, effective and consistent manner facts concerning most or all Member States. It is also the most efficient method in terms of resource spending as it relieves Member States of having to make such calculations by centralising this effort. The conclusion that the thresholds are met would not prejudice the outcome of the eventual enforcement action that will have to be carried out by the Member States in a coordinated manner. According to the proposal, it will be for the national authorities concerned to investigate and assess whether a transnational infringement has occurred and decide on the best course of action on a case by case basis. This proposal ensures that the Commission can assist Member States' authorities within an efficient Union level procedure to fulfil their obligation under Article 291(1) TFEU to correctly implement Union law and address serious breaches of this law that span many countries. In such circumstances, the cross border dimension of infringement has to be taken into account.*

*Ensuring that facts and possible violations of Union legislation are swiftly brought to the attention of the competent authorities in each Member State concerned in no way affects the independence of the national authorities, and the decision on whether or not a practice constitutes an infringement remains fully in their hands. In formally notifying such instances to the Member States, the Commission is merely fulfilling its duties under Article 17 of the Treaty on European Union, of ensuring the application of the Treaties and of the measures adopted pursuant to them, thereby contributing to the protection of economic interests of*

*consumers as provided for in Article 169 TFEU and in Article 38 of the Charter of Fundamental Rights.*

*The Commission is pleased to have this opportunity to provide a number of further clarifications regarding its proposal in the attached Annex.*

*The Commission hopes that these clarifications provided address the issues raised by the Riksdag and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Carlos Moedas  
Member of the Commission*

## ANNEX

*The Commission has carefully considered each of the issues raised by the Riksdag in its Opinion and is pleased to offer the following clarifications.*

*Enforcement of consumer legislation across the EU lacks the adequate common grounds which are needed to face the current technological challenges. The proposal requires Member States to equip competent authorities with the minimum range of powers they need to work together faster and more efficiently to address unlawful practices, especially those taking place online. An alignment of the minimum powers between EU authorities is something which cannot be achieved through individual action at national level but has to be established at Union level, to make sure that authorities can cooperate based on powers which are consistent and compatible. Without this common ground, non-compliant traders would exploit gaps in enforcement by relocating to Member States whose authorities are not equipped to tackle unlawful practices.*

*The proposed power to suspend and close down a website is an extension of the power to stop infringements in the digital environment that is indispensable to effectively address illegal online practices which cause serious consumer harm, such as luring consumers into lengthy and costly subscription traps or never delivering the purchased goods. This power will not entail deletion of any content but merely disabling its access from the public domain in circumstances where this is necessary and proportionate to stop the harmful and illegal online practice from causing further harm to consumers, and where less invasive means would achieve this objective (for example where the trader is hiding and not cooperating with the authorities). It follows that where the trader cooperates and wishes to correct the infringement, such measures will not be needed and should not be used.*

*The proposed power to purchase goods or services under a cover identity is necessary for enforcement authorities to obtain evidence that traders do not respect consumer rights that apply during or after the purchase. Traders often attract consumers with eye-catching deals on their websites, but once consumers have placed their orders the trader charges them unjustified fees or deprives them of the withdrawal right. In line with the safeguards provided by national procedural law, this power will also be used only where necessary, proportionate and justified, for instance, where the evidence of violation of withdrawal rights cannot be obtained by other less onerous means, such as through a test purchase or a request for information.*

*The power to order consumer compensation or to request restitution of profits is essential to remove the harm caused by the transnational infringement, restore the level playing field in the market that has been distorted through the collection of unjust profits, and deter traders engaged in cross border activities from committing or repeating transnational infringements. This is particularly so where the infringement involves a relatively small harm to individual consumers yet the total consumer harm is substantial. In such cases public enforcement actions will be needed, as many consumers would not litigate to obtain compensation, even less so in the cross-border context.*