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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**

(Text with EEA relevance)

{SWD(2016) 164 final}

{SWD(2016) 165 final}

EXPLANATORY MEMORANDUM

Article 21a of Regulation 2006/2004 on cooperation between national authorities responsible for enforcement of consumer protection laws (the Regulation on consumer protection cooperation, hereinafter the "CPC Regulation")¹ provides that the Commission shall assess the effectiveness and the operational mechanisms of this Regulation and thoroughly examine the possible inclusion in the Annex of the Regulation of additional laws that protect consumers' interests. Following this assessment, the Commission shall, where appropriate, make a legislative proposal to change the Regulation.

Starting in 2012, the Commission completed an external evaluation² of the functioning of the CPC Regulation. This was followed by a public consultation³ (2013-2014), the 2013 Consumer Summit⁴, two biennial reports in 2009⁵ and 2012⁶ and the 2014 Commission Report on the functioning of the CPC Regulation⁷. An impact assessment was completed in 2015 to assess the need for a legislative proposal. The Commission also procured legal and economic studies⁸ to support the evaluation of the CPC Regulation. Originally due by the end of 2014, the conclusion of this revision was postponed to also take into account the political priorities of the current Commission.

The Digital Single Market Strategy⁹ adopted by the Commission on 6 May 2015 announced that the Commission will submit a proposal for the revision of the CPC Regulation in order to develop more efficient cooperation mechanisms among national authorities in charge of the enforcement of EU consumer legislation. The Single Market Strategy¹⁰ adopted by the Commission on 28 October 2015 further reiterated that the Commission will improve the enforcement of Union consumer law by national authorities through the reform of the CPC Regulation.

The Commission Report under Article 21a of the CPC Regulation, taking into account the impact assessment report completed in 2015, presents the results of the assessment of the effectiveness and operational mechanisms of the CPC Regulation. It concludes that the current Regulation needs to be replaced to respond to the challenges of the digital economy and the development of cross-border retail trade in the EU. This Commission Report is

¹ Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, OJ L 364, 9.12.2004, p. 1, consolidated text: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:02004R2006-20130708>

² External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012 ("Evaluation"), http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

³ Summary of stakeholder responses to the public consultation on the Consumer Protection Cooperation (CPC) Regulation (2006/2004/EC), http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140416_consultation_summary_report_final_en.pdf

⁴ http://ec.europa.eu/consumers/events/ecs_2013/report/Summitconclusions.pdf

⁵ 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, http://ec.europa.eu/consumers/enforcement/docs/Commission_report_en.pdf

⁶ Report from the Commission to the European Parliament and the Council on the application of Regulation (EC) 2006/2004, COM(2012)0100 final, 12.3.2012, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0100&from=EN>

⁷ COM (2014) 439 final http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140701_commission_report_cpc_reg_en.pdf

⁸ To be published together with the legislative proposal.

⁹ COM (2015) 192 final <http://ec.europa.eu/priorities/digital-single-market/>

¹⁰ COM (2015) 550 final http://ec.europa.eu/growth/single-market/index_en.htm

adopted together with the Commission's proposal for a Regulation that will replace the current CPC Regulation.

This proposal for a modernised Regulation is part of the Commission's 2016 Work Programme,¹¹ and is based on enforcement cooperation experience of the CPC network since 2007. This explanatory memorandum sets out the reasons for the proposal, focusing on its main elements, and in particular on the new cooperation instruments that are proposed.

1. CONTEXT OF THE PROPOSAL

1.1. Policy context: the need for a formal cross-border enforcement cooperation mechanism

The CPC Regulation harmonises the cooperation framework between national authorities in the EU¹² so that their enforcement action can cover the full dimension of the Single Market¹³. The primary aim of the CPC Regulation is to ensure legal certainty in the Single Market via coherent enforcement of key Union consumer *acquis* listed in its Annex¹⁴. Existing national arrangements for the enforcement of Union consumer laws are not sufficient in a cross-border context. Effective Union-wide cross-border enforcement cooperation among public authorities is therefore crucial to prevent non-compliant traders from exploiting gaps, territorial and other limitations in the enforcement capacity of each Member State.

This is currently done through a mechanism of alerts and mutual assistance mechanism¹⁵, complemented by a set of minimum powers¹⁶ that national authorities need for an efficient and legally sound cooperation across borders. There is also a mechanism to tackle malpractices concerning more than two countries¹⁷, whereby Member States, with the facilitation of the Commission, jointly address issues of common interest.

1.2. Evaluation of the functioning of the CPC Regulation

In 2012, the Commission hired a contractor to carry out an evaluation of the CPC Regulation¹⁸ which concluded that the CPC Regulation had been beneficial for the competent authorities, consumers and traders and confirmed the appropriateness and relevance of its objectives¹⁹. It also pointed out that these objectives had not been fully achieved and that the Regulation had not been exploited to its full potential²⁰. The main findings concern²¹:

¹¹ COM(2015) 610.

¹² Authorities in the EEA are also concerned as the CPC Regulation is of the EEA relevance.

¹³ 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.

¹⁴ 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.

¹⁵ Articles 6-8 of the CPC Regulation.

¹⁶ Article 4(6) of the CPC Regulation.

¹⁷ Article 9 of the CPC Regulation.

¹⁸ 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

¹⁹ Section 8.2 (p. 115) of the evaluation report.

²⁰ Section 8.3.4 (p. 118) of the evaluation report.

²¹ Section 9 (p. 121) of the evaluation report.

- **Scope of the CPC Regulation:** the evaluation report suggested examining the need for the update of the CPC Regulation's Annex to ensure consistency between the sectorial and horizontal legislation currently listed in the Annex, in particular, in the transport and financial services sectors²².
- **Constraints arising due to differences in national procedural laws and enforcement powers:** the evaluation report suggested examining options to include minimum procedural standards in the CPC Regulation and to expand the minimum investigative and enforcement powers of CPC authorities²³ in order to overcome certain difficulties as regards the efficiency of the cooperation²⁴.
- **Functioning of the CPC Network and common actions, and the role of the Commission and other actors:** the evaluation report pointed out that widespread infringements occurring simultaneously in several Member States may not be fully addressed under the current CPC Regulation²⁵. It identified the need to provide further guidance to the CPC Network on how to use and coordinate common enforcement actions²⁶, including the clarification of Commission's role²⁷ in these actions.

1.3. Reasons for and objectives of the proposal

The CPC Regulation has strengthened the enforcement of consumer laws across the EU²⁸. However, a high level of non-compliance with the key Union consumer rules persists in the main consumer markets. The current framework does not provide strong and equal enforcement of these laws across the Union, something which is necessary to sustain a dynamic Digital Single Market.

A high level of non-compliance with the key Union consumer rules

The current rate of business non-compliance with Union consumer acquis shows that enforcement is suboptimal. The coordinated screenings of online e-commerce websites ("sweeps") carried out by CPC authorities since 2007 show rates of non-compliance with basic consumer rules, between 32% and 69%, in the checked markets²⁹. These results are corroborated by the data from the European Consumer Centres: two thirds of the 37,000 individual complaints they received in 2014 concern cross-border purchases online³⁰. Further, a conservative estimate based on a representative sample of five online sectors (clothing, electronic goods, recreation, consumer credit and package travel) shows that 37% of EU e-

²² Section 2 (p. 40) of the evaluation report.

²³ In this text CPC authorities and competent authorities are used interchangeably and mean the same.

²⁴ Section 4 (p. 58) and section 9.4 (p. 121) of the evaluation report

²⁵ Section 5.9 (p. 94-95) and section 9.5 (p. 122) of the evaluation report.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Section 1 of the Commission report assessing the effectiveness of Regulation (EC) No 2006/2004, accompanying this proposal.

²⁹ Section 1.1 of the impact assessment report accompanying this proposal; also see a dedicated website on CPC sweep actions: http://ec.europa.eu/consumers/enforcement/sweeps/index_en.htm

³⁰ 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 The data in this report points to a wide range of issues that consumers face in a cross-border context: 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%).

commerce did not respect Union consumer law in 2014. This generates a detriment estimated to be about EUR 770 million per year for consumers shopping online cross-border in the surveyed sectors alone³¹.

A legislative proposal is therefore needed to address the identified shortcomings of the CPC Regulation. The general objective of the proposal is to develop modern, efficient and effective CPC mechanisms that will reduce the consumer detriment caused by cross-border and widespread infringements to Union consumer law. This includes in particular reducing situations where important cross-border and widespread infringements are not detected or sufficiently addressed through the CPC framework and ensuring that consumer protection authorities reach similar outcomes regarding the same malpractices.

1.4. Consistency with the existing policy provisions in the policy area

The Commission proposes to modernise the current CPC Regulation, by deepening the level of harmonisation, in order to address the above issues and to boost the cross-border enforcement of Union consumer laws in the Single Market.

The proposal develops the principles of the existing CPC Regulation further in areas that require strengthening due to the increasing scope and scale of infringements in the Single Market and in particular in its online part. One such area is the cooperation to address widespread infringements. Among other instruments, a common Union level procedure is proposed to tackle important harmful infringements which concern at least 3/4 of the Member States, accounting together for at least 3/4 of the EU population. It is proposed that the Commission will decide to launch the common procedure and will have a compulsory coordination role in this procedure. It will also be compulsory for the Member States concerned to participate in this common action.

The proposed tools are a significant step forward in enforcement cooperation as regards effective, efficient and proportionate response to widespread infringements with Union dimension and with significant harm for consumers and for the Single Market.

Given that the proposed changes are manifold, the Commission proposes, in line with the better regulation principles, to replace the existing CPC Regulation with a new Regulation which consolidates these amendments.

1.5. Consistency with other Union policies

The proposal is also fully consistent and compatible with the existing Union policies, including in the transport sector, where the specific legislation on passenger rights provides for rules on consumer compensation³². It supplements the cooperation arrangements (exchanges of information among authorities) available in the sectoral instruments covered by the CPC Regulation.

The proposal does not duplicate the existing sectoral rules in this Union legislation. The existing rules will be applied to consumer compensation in the sectors concerned also in the CPC context, in particular to calculate the amount of compensation (e.g. in air passenger

³¹ 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 mentioned sectors. For more details see Annex IV (p. 82) of the impact assessment report accompanying this proposal.

³² E.g. Article 7 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.

transport). The proposal supplements these rules by providing for powers and cooperation procedures to deal with intra-Union and widespread infringements.

The Regulation is consistent with the cross-border cooperation mechanisms under the Payment Accounts Directive and Mortgage Credit Directive, the provisions of which are covered by the CPC Regulation. In view of the existing cooperation mechanisms for intra-Union infringements under these directives Chapter III (mutual assistance mechanism) will not apply to intra-Union infringements of these directives. Chapter IV will fully apply to widespread infringements of these directives. To ensure coherence of action in the field of financial services the European Banking Authority should be informed about the coordinated and common actions under sections I and II of Chapter IV of the Regulation to the extent they concern infringements of these two directives (observer role).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

The legal basis for the proposal, as is the case for the current CPC Regulation, is Article 114 of the TFEU. The proposal aims to remove distortions of competition and eliminate Internal Market obstacles (Article 26 of the TFEU) and it seeks to preserve and increase the effectiveness and efficiency of the cross-border enforcement system for Union consumer legislation.

2.2. Subsidiarity

Consumer protection belongs to shared competences between the Union and the Member States. According to Article 169 of the TFEU, the Union 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 borderless nature of digital technologies poses challenges for the enforcement of the Union consumer rights by public authorities whose actions are constrained by their national jurisdictional boundaries. Yet, online traders implement their business models and practices throughout the Union and even globally, without any boundaries.

Therefore, to ensure consistent enforcement of consumer laws across the Union and to tackle efficiently infringements of Union consumer protection legislation spanning over several Member States, it is necessary to provide harmonised provisions to coordinate public enforcement activities. In the absence of a Union framework for cooperation, the Member States would have to rely either on a large number of bilateral agreements or on long and cumbersome judicial or consular exchanges of evidence and documents. In addition, decisions against a trader located in another Member State would not always be enforceable. This would render enforcement in cross-border cases slow and often inefficient and would cause great delays and gaps in enforcement. Moreover, such a system could encourage the relocation of traders inside the Union to avoid compliance with enforcement decisions taken in one Member State. This would in turn distort the level playing field and competition in the Single Market and reduce consumer trust in cross-border transactions.

All the measures in this proposal concern cross-border situations or widespread infringements taking place in several Member States. The cross-border aspects of Union consumer law cannot be sufficiently achieved by the Member States' individual actions. Member States alone cannot ensure efficient cooperation and coordination of their enforcement activities. Especially in matters that concern several Member States or the whole Union, coherence of enforcement outcomes needs to be ensured as these measures are based on Union consumer law, which mostly contains maximum harmonisation provisions. Therefore, particularly for

those issues that have a Union-wide impact (widespread infringements with Union dimension where a least 21 Member States are affected by the infringement), the Commission is best placed to take up the coordination role, given the scale and scope of the problem, the need to coordinate many authorities and to ensure a consistent outcome for consumers and traders. In this regard the action at the Union level would produce clear benefits (compared to Member States' individual actions) in terms of improved effectiveness and efficiency for all actors concerned.

At the same time, for the widespread infringements that do not meet the threshold for Union dimension, the proposal, in line with subsidiarity considerations, envisages that such coordinated actions would be coordinated primarily by the Member States. The involvement of the Commission in such actions as a coordinator would be optional, where appropriate, given the scale and scope of such infringements.

Furthermore, similarly to the current CPC Regulation, the proposal covers intra-Union and also, as a new element, widespread infringements that have common features and take place in several or all Member States. It does not cover domestic infringements which happen within one Member State only.

The harmonisation the powers of competent authorities stemming from this Regulation is limited to intra-Union and widespread infringements, for which the powers available to public authorities in national law mostly cannot be employed because their use is limited to domestic matters only. The proposed minimum powers to cooperate in the cross-border context cannot be introduced by each Member State individually because the jurisdictional boundaries would not allow their use across national borders, for cases which affect consumers in other Member States. Therefore, for instance, evidence collected through such individually nationally available powers could not be used in another Member State because it would not be legally obtained in that Member State. This is why the minimum powers that are to be used in the cross-border context need to stem from a Union-level instrument that surpasses national jurisdictional limitations. These jurisdictional limitations of enforcement actions of individual Member States are already recognised in the recitals 2, 5, 6, 7 and 18 of the current CPC Regulation.

2.3. Proportionality

The proposal does not affect the Member States' competences in enforcement. Some Member States may however need to adapt their national procedural laws to ensure that their CPC authorities can effectively use the updated minimum powers in the cross-border context, to cooperate and address intra-Union and widespread infringements.

The proposal, similarly to the current CPC Regulation, provides for a common set of minimum powers for all competent authorities in the Member States in the context of intra-Union and widespread infringements. The level of harmonisation chosen is necessary to achieve smooth cooperation and exchanges of evidence among competent authorities and to remedy the current situation where certain parts of Union consumer acquis cannot be enforced consistently and coherently in the Single Market because the competent authorities in some Member States lack the powers needed to investigate and stop such infringements. It does however not exceed what is necessary to attain this objective.

The proposal will therefore improve enforcement cooperation without imposing a disproportionate or excessive burden on Member States' authorities.

2.4. Choice of the instrument

Similarly to the current CPC Regulation, the only suitable instrument to achieve the above objectives is a Regulation. A Directive or a Framework Directive would not achieve the objectives as following its transposition jurisdictional boundaries and thus jurisdictional conflicts would persist.

3. RESULTS OF STAKEHOLDER CONSULTATIONS, IMPACT ASSESSMENT AND THE CPC ASSESSMENT REPORT

3.1. Stakeholder consultations

Between October 2013 and February 2014 the Commission held a web-based public consultation³³ in view of a possible reform of the CPC Regulation³⁴. 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 Union level could help to address more effectively widespread breaches of Union consumer laws harming consumers and traders across Europe.

In total 222 responses were received that were overall sufficiently representative of all stakeholders directly concerned by the revision of the CPC Regulation³⁵.

Additional minimum powers were well supported by all stakeholders (public authorities, consumer associations, ECCs, business and individual consumers), 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 group³⁶.

As regards consumer redress³⁷ the main supporters of these measures were authorities from Germany, Austria and the UK. Some other Member States (Eastern European countries, Italy, Ireland and Luxembourg) were more reluctant as they feared that such measures could be costly for the authorities, other authorities were neutral. Business associations were also less supportive of this measure³⁸. On the contrary, consumer organisations strongly supported this measure (all 34 that responded in the public consultation were unanimously in favour of the measure)³⁹.

³³ In addition to the public consultation, regular consultations of consumer organisations, networks and high level officials of national authorities took place through established networks of the Commission during 2013-2015. In addition, two workshops (2014 and 2015) were organised for experts from Member States to discuss key areas for the revision of the Regulation. Further discussions took place in the context of the European Consumer Summit (March 2013, Brussels) and conference (July 2014, Rome) dedicated to enforcement, as well as in the Competitiveness Council (September 2014).

³⁴ Report containing the summary of stakeholder responses is available:

http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140416_consultation_summary_report_final_en.pdf

³⁵ A vast majority (83%) from stakeholders familiar with the CPC Regulation, such as governments, public authorities and consumer organisations, see section 2.3 (p. 4) of the report on the stakeholder consultation.

³⁶ For a breakdown per type of respondent, see *ibid*, section 5.1 (p. 22).

³⁷ Section 5.2 (p. 26-27), *ibid*.

³⁸ *Ibid*.

³⁹ *Ibid*.

Concerning standards to handle infringements within the CPC Regulation so as to overcome existing differences in national procedural rules, 88% of respondents supported the possibility of introducing common procedural criteria/standards⁴⁰. Areas in which the introduction of standards was considered as particularly relevant and were supported by more than 55% included: the publication of enforcement decisions; access to documents; the collection of evidence; investigation of websites; and the acceptance of the results of an investigation by a partner authority⁴¹.

Almost all respondents (190 answered the question) acknowledged that widespread infringements require a specific action⁴². More than half of enforcement authorities would be interested in a single EU procedure to tackle such infringements; other authorities generally acknowledge that better coordination is necessary to tackle such infringements effectively⁴³. Business organisations support the development of coordination of enforcement at the Union level as they clearly see the benefits of one-stop shop and uniform rules for their business⁴⁴. Consumer organisations also strongly support the enforcement cooperation procedure at Union level⁴⁵.

Practically all enforcement authorities in principle supported the improvement of the surveillance mechanism⁴⁶. European Consumer Centers (83%), consumer associations (75%) and businesses (62%) have also called for more possibilities for them to influence enforcement prioritisation and to signal infringements via the alert mechanism⁴⁷. Public authorities were more cautious about involving third parties in the market surveillance mechanism, as they fear that this could negatively impact the confidentiality of their investigations⁴⁸.

These results were taken into account in the proposal to replace the CPC Regulation.

3.2. Commission Report pursuant to Article 21a of the CPC Regulation

In line with Article 21a of the CPC Regulation, together with this proposal the Commission is adopting Report assessing the effectiveness of the CPC Regulation. The Report presents the result of the review and confirms that the implementation of the CPC Regulation in 2007 led to the development of effective public means to safeguard consumers' collective interests across the EU.

The Report also identifies the challenges in the CPC cooperation. It confirms the main problems linked to the effectiveness of the CPC operational mechanisms, which were highlighted already by the external evaluation. The Report concludes that the Annex needs to be updated to extend the scope of the Regulation to important Union consumer protection legislation currently not covered by the Regulation. The following Union legislation are proposed for inclusion in the CPC Regulation's Annex: the Mortgage Credit Directive, Payment Account Directive, the Rail Passenger Rights Regulation, the Regulation on rights of disabled persons and persons with reduced mobility when travelling by air, pricing provisions of the Air Services Regulation, and Article 20 of the Services Directive⁴⁹. The Report stresses

⁴⁰ Ibid, section 5.3 (p. 27).

⁴¹ Ibid, Figure 5.7 (p. 32).

⁴² Ibid, section 6.2 (p. 37).

⁴³ Ibid, Tables 6.5 and 6.6 (p. 43-44).

⁴⁴ Ibid, Figure 6.5 (p. 38) and Table 6.5 (p. 43).

⁴⁵ Ibid, Figure 6.5 (p. 38) and Table 6.5 (p. 43).

⁴⁶ Ibid, Table 4.2 (p.15).

⁴⁷ Ibid, Table 4.5 (p. 19).

⁴⁸ Ibid, Table 4.6 (p. 20).

⁴⁹ Section 3 of the assessment report, adopted together with this proposal.

the need to increase the rapidity, agility, and consistency of CPC enforcement cooperation and thus of consumer protection, in particular in the online environment.

3.3. Impact assessment

The impact assessment report prepared by the Commission covers aspects related to this proposal. The Commission's Regulatory Scrutiny Board gave a favourable opinion in November 2015 subject to comments, which were duly taken into account⁵⁰.

Five policy options were examined. The preferred option is the option to revise the CPC Regulation by extending its scope and strengthening its efficiency⁵¹. This policy option is implemented in this proposal. Although the preferred option entails a higher cost than "no change" or "soft law" policy options (1 and 2) it will achieve all the policy objectives at a reasonable cost for national authorities and the Commission, in particular compared to policy options 4 and 5. It will improve the effectiveness of public action and the governance of the Union retail cross-border markets that will become fairer and more transparent for traders and consumers. Cost of public action and transaction cost for economic actors will decrease. This will generally improve the competitiveness of the Union economy.

The proposal does not change the Member States' competences in enforcement. Member States remain responsible for their institutional set up and designation of CPC authorities and other entities under the CPC Regulation.

Who will be affected and how

Consumers shopping for services and goods cross-borders in offline and online environment are affected by the proposal, as its main aim is to increase their protection in such markets. The proposal will partly eliminate the risk of consumer detriment, which consumers may suffer, e.g. when goods bought abroad are not delivered to them or when they are given misleading information about the payment arrangements or are being debited through default settings without their explicit consent. Consumers will benefit from a higher protection when purchasing cross-border, especially online. It was estimated for the subset of five online markets studied in the impact assessment 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%⁵². A new CPC action against a widespread infringement could reduce significantly consumer detriment across the EU. Although the actual reduction of consumer detriment in each action will depend on the individual circumstances of each case, it was estimated that for example the CPC coordinated action against the misleading marketing of in-app purchases reduced consumer detriment by EUR 68 million⁵³.

Representatives of consumer interests and European Consumer Centres (the ECC-Net) may possess valuable information and expertise, but currently do not systematically provide this data to CPC authorities. They will be invited to do so in the new Regulation. This would help the CPC authorities to identify priority areas in the Union or warn CPC authorities about emerging cross-border or widespread malpractices.

CPC authorities and single liaison offices: currently they bear higher administrative costs as a consequence of cross-border cooperation inefficiencies (such as higher investigation costs). Due to the stepped-up enforcement coordination, national authorities will avoid duplicating their efforts. In particular, pooling of resources to address widespread infringements will lead

⁵⁰ Section 9.5 of the impact assessment report.

⁵¹ Sections 4-5 of the impact assessment report.

⁵² See section 12.2, Annex IV, of the impact assessment report.

⁵³ See example in the Box 9 of the impact assessment report.

to savings: for instance, one coordinated action can replace 28 national actions, resulting in net savings varying from ca. EUR 180,000 (in case of successful coordinated action) to approximately EUR 815,000 (in case of failed action)⁵⁴. Some Member States may need to adapt their national laws to enable their competent authorities to ensure seamless use of evidence/outcome of investigations of other CPC authorities and to ensure that the additional minimum powers to cooperate in a cross-border context can be effectively used in line with national procedural rules. In the medium term, savings from coordination are estimated, which will offset the one off adaptation costs.

Economic operators: manufacturers, traders, sellers, online marketplaces, intermediaries, especially those that operate in more than one Member State offline and online, suffer from uncertainties and higher costs caused by the complexity and diversity of the existing 28 enforcement regimes in the EU. Diverging enforcement approaches among Member States require that such traders obtain legal expertise concerning each of these systems. Furthermore, all traders suffer from unfair competition from non-compliant traders, who have developed business models that allow them to evade laws and harm consumers from a different country. The proposal will increase legal certainty for businesses and more consistent and coherent cross-border enforcement will boost competitiveness of law abiding traders and improve level playing field in the Single Market. The proposal does not impose any additional legal obligations on the business sector.

Widespread infringements that affect consumers across the Union require a strong and consistent Union-level answer. The **Commission's role** in the CPC network will increase, in particular for the coordination of measures against widespread infringements that meet the Union-dimension threshold.

3.4. Fundamental rights

The proposal will have a positive impact on fundamental rights as it will permit to enhance consumer rights, in particular due to the fair and open access to products and services across the Union. In accordance with Article 52 of the Charter of Fundamental Rights, any limitation of the exercise of the fundamental rights is subject to the principles of proportionality and necessity and effective remedies that are available in national courts. The Regulation will also ensure due process, transparency and rights of defence for the businesses that may be concerned by an action of competent authorities under Chapter IV of the CPC Regulation.

4. BUDGETARY IMPLICATIONS

It is estimated that there will be approximately four common actions per year against widespread infringements with Union-dimension. This will trigger an additional workload for the Commission, estimated to require two full-time officials⁵⁵ to coordinate these common actions⁵⁶. These resources will be obtained through the redistribution and refocusing of the

⁵⁴ Annex VI of the impact assessment report.

⁵⁵ 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 previous coordinated enforcement actions on car rental and in-app purchases. The proposed threshold is high enough to ensure that the coordination at the EU level is initiated for the most serious and widespread infringements and is flexible enough to ensure that important priority cases are not missed even if the quantitative threshold is not met.

⁵⁶ Currently the cost of the coordinated enforcement action is estimated at ca. 37.8% of FTE (FTE=full time equivalent is an equivalent to one employee working full-time, 220 working days per year) = ca. EUR 50,000 per action; however, the new procedure would require greater involvement of the Commission to coordinate the action and monitor its outcome, therefore a slightly higher cost per action is estimated. The average cost of the Commission official per year is EUR 132,000 (DG BUDGET data of 26.06.2014).

existing personnel. The Commission will also incur additional costs in monitoring the functioning of the mutual assistance and alert mechanisms⁵⁷. The Commission's total additional costs for its enhanced coordination and monitoring role are estimated to be below EUR 300,000 per year and these costs will be covered by internal reallocation of resources.

The budgetary implications are hence already foreseen in the existing Consumer Programme 2014-2020⁵⁸ and are in line with the Multiannual Financial Framework. The details are set out in the financial statement attached to this proposal.

5. OTHER ELEMENTS

5.1. Entry into application and the CPC database

The proposal includes a delayed entry into application of the Regulation by one year to allow Member States, competent authorities and the European Commission to make the necessary practical arrangements and legislative changes. The existing implementing measures⁵⁹ will have to be replaced to take into account the changes brought by the proposal. The CPC database and the information exchange platform will have to be modified to take account of the changes brought by the proposal.

5.2. Explanation of the main provisions of the proposal

The proposal consists of 8 chapters comprising 53 articles and one Annex.

Chapter I – Introductory provisions

The Chapter defines the scope and the main terms used in the Regulation. Compared to the current Regulation it updates the definitions to take account the extension of the Regulation to widespread infringements and ceased infringements (infringements of short duration that ceased before enforcement measures can be taken, but which may be causing harm to consumers afterwards, such as misleading on-line advertising campaigns of short duration).

To ensure coherent and consistent enforcement for ceased infringements and legal certainty in the cross-border context the Regulation introduces a limitation period for the possibility to impose penalties (five years from the termination of such infringements) and sets rules for the calculation of the limitation period and for its suspension.

Chapter II – Competent authorities and their powers

The Chapter defines how to designate competent authorities and single liaison offices for this Regulation. It newly clarifies the roles of the single liaison offices. It calls on the Member States to ensure smooth cooperation among the members of the enforcement network in their

⁵⁷ 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, which could be covered by redistribution and refocusing of existing personnel.

⁵⁸ 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 2014-20 and repealing Decision No 1926/2006/EC, OJ L 84, 20.3.2014, p. 42–56.

⁵⁹ Commission Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 of the European Parliament and the Council on cooperation between national authorities responsible for the enforcement of consumer laws as regards mutual assistance (OJ C(2008) 987), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:089:0026:0028:EN:PDF>, amended by Commission Decision No 2011/141/EC of 1 March 2011 (OJ (2011) 1165), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011D0141&from=EN>.

territory. It requires Member States to ensure that other national authorities support the work of the competent authorities as this is essential in particular in cases where criminal measures are needed to stop the infringement.

The Chapter also establishes the minimum powers of competent authorities, needed to cooperate and to enforce the Union consumer acquis in a cross-border context. Compared to the current Regulation, further minimum powers have been added, such as the power to make test purchases and carry out mystery shopping, power to adopt interim measures, block websites and the power to impose penalties and to safeguard consumer compensation in a cross-border context. Some of the existing minimum powers have been clarified to ensure their equivalent scope and application in all Member States, for instance, the power to request information and documents or the power to conduct on-site inspections. The Member States retain the possibility to decide whether the competent authorities will exercise the minimum powers directly under their own authority or whether these powers will be exercised by application to courts.

Chapter III – Mutual Assistance Mechanism

The mutual assistance mechanism consists of two instruments: requests for information which enable competent authorities to obtain information and evidence across borders and requests for enforcement measures, which enable one competent authority to request another competent authority in a different Member State to take enforcement measures.

The mutual assistance mechanism shall be used to address intra-Union infringements, which affect consumers in one Member State but have a cross-border element (e.g. the responsible trader is located in another Member State). The Regulation newly sets out that the requested authority has an obligation to reply to a mutual assistance request within the time limit set by implementing measures. In addition to powers set out in the Regulation the requested authority may use other powers granted by national law to stop the infringement. Once a mutual assistance request is made the requested authority acts on behalf of consumers from the Member State of the applicant authority as if they were its own consumers.

To enable Member States with enforcement systems involving consumer organisations to fully profit from the mutual assistance mechanism, the Regulation defines the role of designated bodies that competent authorities may instruct to stop an infringement or to obtain the necessary evidence. The mutual assistance mechanism may be used in actions against widespread infringements (Chapter IV) in particular where evidence is located in a Member State that is not concerned by the widespread infringement.

The Regulation newly reinforces the mechanism to resolve disagreements among competent authorities in the mutual assistance mechanism. The Commission's in the mutual assistance mechanism is strengthened by systematic monitoring, guidance to competent authorities and possibility to adopt opinions upon request of competent authorities or of its own motion.

Chapter IV – Coordinated surveillance, investigation and enforcement mechanism for widespread infringements

This Chapter provides for instruments to address widespread infringements. These include coordinated actions (Section I), common actions against widespread infringements with Union-dimension (Section II) and concerted investigations of consumer markets (Article 32).

Section I

Coordinated actions to tackle widespread infringements that do not reach the thresholds for Union-dimension are a flexible instrument, allowing the competent authorities to choose the most appropriate means to tackle the widespread infringement from among those provided for

by the Regulation. These actions should in principle be coordinated by the competent authorities. The Commission may take up a coordination role only where necessary given the scope of the infringement or where the infringement is likely to cause substantial harm to collective interests of consumers.

The section sets out options for coordinated investigation and enforcement measures. Where appropriate, the outcome of the coordinated investigation and assessment of the case would be established in a common position. To ensure compliance with Union consumer law the competent authorities may empower one authority to take enforcement measures on behalf of consumers in other Member States concerned by the infringement. The competent authorities may also act simultaneously in all or some of the Member States concerned.

Whilst it is not possible to delegate participation in a coordinated action to designated bodies, these bodies may be instructed to take follow up enforcement measures in a coordinated action. This is however possible only where the other competent authorities agree and if it is ensured that professional and commercial secrecy under this Regulation are respected.

Section II

This section establishes a new instrument to address widespread infringements with Union-dimension which are likely to harm consumers in a large part of the Union. It sets out the thresholds that determine which suspected infringements have a Union-dimension. The threshold is based on two criteria, in terms of number of countries and population concerned that both need to be fulfilled.

The Commission establishes whether the thresholds for Union-dimension are fulfilled and launches the common action by decision. It has also an obligation to coordinate investigation and other measures that Member States need to take to stop the infringement. Participation in a common action is mandatory for competent authorities in Member States concerned by the infringement. The section also defines the reasons for which the competent authorities may decline to participate in the common action. The Commission closes the action by decision where the reasons for closure are met.

The main instrument of the common action is the common position of competent authorities concerned that contains the outcome of the investigation. The common position should be communicated to the trader responsible for the infringement and the trader should be given the possibility to be heard on the common position.

The primary objective of the common action is to end the infringement and ensure, where needed, consumer redress through the commitments of the trader responsible for the infringement. Where offer of commitments is unlikely (e.g. infringements involving rogue traders) the competent authorities may proceed directly to enforcement measures needed to stop the infringement. This option needs to be available to competent authorities to ensure that traders do not abuse the procedure to circumvent enforcement.

For follow up enforcement measures, the competent authorities should select one competent authority that is best placed to take enforcement measures to stop the infringement. An agreement among competent authorities empowering one competent authority to act on behalf of the others enables it to act on behalf of consumers from other Member States as if they were its own consumers. Where necessary, the competent authorities may also take enforcement measures simultaneously.

Section III

This section provides for common provisions for procedures for coordinated and common actions, such as right to be heard for traders, role of the coordinator, taking of decisions and

language regime. In addition, it newly establishes the legal basis for concerted investigations of consumer markets (sweeps).

Chapter V – Surveillance Mechanism

The new surveillance mechanism replaces the current CPC system of alerts. It combines the alerts under the current CPC Regulation with wider exchange of information that is relevant and necessary for timely detection of widespread infringements.

Other entities may participate in the alert mechanism through external alerts. Two categories of entities may be involved in the alert mechanism. The designated bodies and the European Consumer Centres are involved by virtue of the Regulation. The second category comprises the entities nominated by the Member States and by the Commission from among consumer organisations, trade associations and other entities with appropriate expertise and legitimate interest in consumer protection that may take part in the alert mechanism. The access to the alert mechanism of all those entities is limited to posting of "alerts for information". In line with the requirements of professional secrecy, they shall not have access to other information or alerts exchanged among competent authorities.

Chapter VI – Other EU-wide activities

Similarly to the existing CPC Regulation, the Chapter provides for coordination, cooperation and exchanges of information on other activities linked to enforcement cooperation.

Chapter VII – Professional and commercial secrecy and other arrangements

Professional secrecy is of utmost importance not only to protect the interests of third parties but also to ensure the effectiveness of investigation and to prevent the destruction of evidence. The Regulation ensures protection of professional and commercial secrets. It also provides that the information collected using the minimum powers under the Regulation will only be used for the purposes of ensuring compliance with the laws that protect consumers' interests. The Regulation further ensures that evidence and investigation findings obtained through the use of minimum powers can be used seamlessly across the borders, in particular where widespread infringements need to be addressed.

The Regulation replaces the biennial reporting obligation of the current Regulation with biennial national enforcement plans that should ensure the prioritisation of activities and a more efficient use of resources to combat infringements in the Single Market. Given the cross-border nature of the infringements under this Regulation, the effects of which extend beyond the jurisdictional borders of a single Member State, the Regulation establishes the principles for imposing penalties for such infringements.

Annex

The Annex containing the list of laws that protect consumers' interests determines the scope of the application of the Regulation *rationae materiae*. Compared to the existing Regulation the Annex is updated to remove legislation that is no longer in force and amended to extend the application of the Regulation to further Union consumer law instruments.

The extension of the Annex to further Union consumer law instruments should apply already before the entry into application of this Regulation.

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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁶⁰,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 2006/2004 of the European Parliament and of the Council⁶¹ provides for harmonised rules and procedures to facilitate cooperation between national authorities responsible for the enforcement of cross-border consumer protection laws. Article 21a provides for a review of the effectiveness and operational mechanisms of that Regulation and pursuant to that Article, the Commission concluded that Regulation (EC) No 2006/2004 is not sufficient to effectively address the enforcement challenges of the Single Market, and in particular the Digital Single Market,
- (2) The Digital Single Market Strategy adopted by the Commission on 6 May 2015 identified as one of the priorities the need to enhance consumer trust through more rapid, agile and consistent enforcement of consumer rules. The Single Market Strategy adopted by the Commission on 28 October 2015 reiterated that enforcing Union consumer protection legislation should be further strengthened by the Regulation on Consumer Protection Cooperation,
- (3) The resulting ineffective enforcement of cross-border infringements, in particular in the digital environment, enables traders to evade enforcement by relocating within the Union, giving rise to a distortion of competition for law-abiding traders operating either domestically or cross-border, and thus directly harming consumers and undermining consumer confidence in cross-border transactions and the Single Market. An increased level of harmonisation setting effective and efficient

⁶⁰ OJ C 108, 30.4.2004, p. 86.

⁶¹ Regulation (EC) 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ L 364, 9.12.2004, p. 1).

enforcement cooperation among competent public enforcement authorities is therefore necessary to detect, investigate and order the cessation of intra-Union infringements and widespread infringements,

- (4) Regulation (EC) No 2006/2004 of the European Parliament and of the Council established a network of competent public authorities throughout the Union. Effective coordination among different competent authorities participating in the network, as well as other public authorities at the level of Member States, is necessary. The coordination role of the single liaison office should be entrusted to a competent authority in each Member State that has sufficient powers and resources to undertake this key role in the network of competent authorities,
- (5) Consumers should also be protected from short-lived intra-Union infringements and widespread infringements that only last for a short period of time but whose harmful effects may continue long after the infringement has stopped. Competent authorities should have the necessary powers to investigate and order a cessation of such infringements in the future,
- (6) Competent authorities should have a minimum set of powers of investigation and enforcement to apply this Regulation effectively, to cooperate with each other, and to deter traders from committing intra-Union infringements and widespread infringements. Those powers should be adequate to tackle the enforcement challenges of e-commerce and the digital environment where the possibilities of a trader easily concealing its identity or changing it are of particular concern. Those powers should ensure that evidence can be validly exchanged among competent authorities to achieve effective enforcement at an equal level in all Member States,
- (7) Member States may choose whether the competent authorities exercise those powers directly under their own authority or by application to the competent courts. Where the Member States choose that competent authorities exercise their powers by application to the competent courts, Member States should ensure that those powers can be exercised effectively and in a timely manner and that the cost of exercise of those powers be proportionate and does not hamper the application of this Regulation,
- (8) When responding to requests made through the mutual assistance mechanism, competent authorities should, where appropriate, also make use of other powers or measures granted to them at the national level, including the power to initiate or refer matters for criminal prosecution. It is of the utmost importance that courts and other authorities, in particular those involved in criminal prosecution, have the necessary means and powers to cooperate with competent authorities effectively and in a timely manner,
- (9) Competent authorities should be in a position to open investigations on their own initiative if they become aware of intra-Union infringements or widespread infringements by means other than consumer complaints. This is particularly necessary to ensure effective cooperation among competent authorities when addressing widespread infringements,
- (10) Competent authorities should have access to all necessary evidence, data and information to determine whether an intra-Union infringement or widespread infringement has occurred, and in particular to identify the trader responsible, irrespective of who possesses this evidence, information or data, of where it is located and of its format. Competent authorities should be able to directly request that third

parties in the digital value chain provide all the evidence, data and information necessary,

- (11) Competent authorities should be able to verify compliance with consumer protection legislation and to obtain evidence of intra-Union infringements or widespread infringements, especially those that take place during or after the purchase of goods and services. They should therefore have the power to make test purchases and to purchase goods or services under a cover identity,
- (12) In the digital environment in particular, the competent authorities should be able to stop infringements quickly and effectively, notably where the trader selling goods or services conceals its identity or relocates within the Union or to a third country to avoid enforcement. In cases where there is a risk of serious and irreparable harm to consumers, the competent authorities should be able to adopt interim measures to prevent such harm or reduce it, including, where necessary, the suspension of a website, domain or a similar digital site, service or account. Furthermore, the competent authorities should have the power to take down or have a third party service provider take down a website, domain or a similar digital site, service or account,
- (13) In order to ensure that traders are sufficiently deterred from committing or repeating infringements and that they will not profit from those infringements, the rules on penalties which have been adopted by Member States in accordance with the requirements of Union laws that protect consumers' interests should also be applied to intra-Union infringements and widespread infringements. For those same reasons, consumers should be entitled to redress for harm caused by such infringements.
- (14) As regards consumer redress, the competent authorities should choose proportionate, just and reasonable measures that would prevent or reduce the risk of recurrence or repetition of infringements, taking into account in particular the anticipated benefits to consumers and the reasonable administrative costs likely to be associated with the implementation of those measures. Where the consumers concerned cannot be identified or where they cannot be identified without disproportionate cost to the trader responsible, the competent authority may order that the restitution of profits obtained through the infringement be paid to the public purse or to a beneficiary designated by the competent authority or under national legislation,
- (15) The effectiveness and efficacy of the mutual assistance mechanism should be improved. Information requested should be provided in a timely manner and the necessary enforcement measures should be adopted in a timely manner. The Commission should therefore set binding time periods for competent authorities to reply to information and enforcement requests, and clarify procedural and other aspects of handling information and enforcement requests, by means of implementing measures,
- (16) The Commission must be better able to coordinate and monitor the functioning of the mutual assistance mechanism, issue guidance, make recommendations and issue opinions to the Member States when problems arise. The Commission also must be better able to effectively and quickly assist competent authorities to resolve disputes over the interpretation of their obligations of the competent authorities stemming from the mutual assistance mechanism,
- (17) Harmonised rules setting out the procedure for the coordination of the surveillance, investigation and enforcement of widespread infringements should be provided. Coordinated actions against widespread infringements should ensure that competent

authorities may choose the most appropriate and efficient tools to stop widespread infringements and to ensure consumer compensation,

- (18) Coordinated screening of online e-commerce websites (sweeps) are another form of enforcement coordination that has proven to be an effective tool against infringements that should be retained and strengthened in the future,
- (19) Widespread infringements with a Union dimension may cause large scale harm to a majority of consumers in the Union. They therefore require a specific Union-level coordination procedure with the Commission as the mandatory coordinator. To ensure that the procedure is launched in a timely, coherent and effective manner and that the conditions are verified in a uniform manner, the Commission should be in charge of verifying whether the conditions for the launch of the procedure are fulfilled. Evidence and information collected during the common action should be used seamlessly in national proceedings when required,
- (20) In the context of widespread infringements and widespread infringement with a Union dimension, the rights of defence of the traders concerned should be respected. This requires, in particular, giving the trader the right to be heard and to use the language of its choice during the proceedings,
- (21) If a trader responsible for the widespread infringement or the widespread infringement with a Union dimension fails to cease the infringement voluntarily, the competent authorities of the Member States concerned should designate one competent authority in a Member State to take the enforcement action adapted to preserve the rights of consumers residing in the other Member States concerned by the infringement. That competent authority should be designated, taking into account its capacity to take effective action against the trader, for instance where the trader is established in the Member State of that authority. The designated competent authority should act as if the consumers of the other Member States were its own consumers. Where necessary, to avoid extraterritorial application of the law, several or all the Member States concerned by the infringement should be allowed to adopt enforcement measures at the same time to protect their own consumers or consumers residing in other Member States. This may be needed, for instance, to stop infringements of a similar nature by subsidiaries of a company, established in more than one Member State, which affect the consumers of those Member States only, without an apparent cross-border element (parallel infringements),
- (22) The surveillance mechanism and alert mechanism should be strengthened to ensure the timely and effective detection of widespread infringements. The information which should be exchanged and the follow up required following an exchange of information should be clarified in order to ensure that alerts that require action are duly acted upon and addressed. The Commission should coordinate the functioning of the surveillance mechanism,
- (23) Consumer organisations play an essential role in informing consumers about their rights and educating them and protecting their interests, including the settlement of disputes. Consumers should be encouraged to cooperate with the competent authorities to strengthen the application of this Regulation. Consumer organisations, in particular consumer organisations that may be delegated enforcement tasks under this Regulation and European Consumer Centres, should be in a position to notify competent authorities of suspected infringements and share information needed to detect, investigate and stop intra-Union infringements and widespread infringements with them,

- (24) Infringements which are widespread throughout the Union should be effectively and efficiently resolved. To this end, enforcement prioritisation and planning at the Member State level should be coordinated and the available resources of competent authorities should be pooled. A system of biennial rolling enforcement plans should be put in place to achieve this,
- (25) Data related to consumer complaints may help policymakers at a national and Union level to assess the functioning of consumer markets and detect infringements. With a view to facilitating the exchange of such data at a Union level, the Commission has adopted a Recommendation on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries⁶². That Recommendation should be implemented to fully support enforcement cooperation and facilitate the detection of intra-Union infringements and widespread infringements,
- (26) Enforcement challenges that go beyond the frontiers of the Union, and the interests of Union consumers should be protected from rogue traders based in third countries. Hence, international agreements with third countries regarding mutual assistance in the enforcement of legislation that protects consumers' interests should be negotiated. Those international agreements should include the subject matter laid down in this Regulation and should be negotiated at Union level in order to ensure the optimum protection of Union consumers and smooth cooperation with third countries,
- (27) In order to ensure uniform conditions for the implementation and exercise of the minimum powers of competent authorities, set time limits and set out other details of procedures to address intra-Union infringements, widespread infringements and details of the surveillance mechanism and administrative cooperation among competent authorities, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁶³,
- (28) The examination procedure should be used for the adoption of the acts pursuant to Articles 10, 11, 12, 13, 15, 20, 27, 31, 32, 34, 35, 36, 37, 39, 43 and 46 of this Regulation given that those acts are of general scope,
- (29) This Regulation complements sectoral Union rules providing for cooperation among sectoral regulators and sectoral Union rules on the compensation of consumers for harm resulting from infringements of those rules. This Regulation is without prejudice to other cooperation systems and networks set out in sectoral Union legislation. This Regulation furthers cooperation and coordination among the consumer protection network and the networks of regulatory bodies and authorities established by sectoral Union legislation,
- (30) This Regulation is without prejudice to the existing Union rules concerning the powers of national regulatory bodies established by Union sectoral legislation. Where appropriate and possible, those bodies should use the powers available to them under Union and national law to cease or prohibit intra-Union infringements or widespread infringements or to assist the competent authorities in doing so,

⁶² Commission Recommendation on the use of harmonised methodology for classifying consumer complaints and enquiries (2010/304/EU, OJ L 136, 2.6. 2010, p. 1-31).

⁶³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2. 2011, p. 13-18).

- (31) For the calculation of compensation for harm to the collective interests of consumers, the rules of Union sectoral for passengers such as Regulation (EC) No 261/2004 of the European Parliament and of the Council⁶⁴, Regulation (EC) No 1371/2007 of the European Parliament and of the Council⁶⁵, Regulation (EU) No 1177/2010 of the European Parliament and of the Council⁶⁶ and Regulation (EU) No 181/2011 of the European Parliament and of the Council⁶⁷ should apply. Where the sectoral Union legislation does not cover compensation for the harm caused by intra-Union or widespread infringements, the compensation should be established based on applicable national law,
- (32) This Regulation is without prejudice to the role and the powers of the competent authorities and of the European Banking Authority in relation to the protection of the collective economic interests of consumers in matters concerning payment accounts services and credit agreements relating to residential immovable property under Directive 2014/17/EU of the European Parliament and of the Council⁶⁸ and Directive 2014/92/EU of the European Parliament and of the Council⁶⁹.
- (33) In view of the existing cooperation mechanisms under Directive 2014/17/EU of the European Parliament and of the Council and Directive 2014/92/EU of the European Parliament and of the Council, the mutual assistance mechanism (Chapter III) shall not apply to intra-Union infringements of these Directives.
- (34) This Regulation is without prejudice to penalties laid down in sectoral Union legislation and Union consumer legislation and applied to national infringements. The competent authorities should, as appropriate, apply the provisions of national law implementing those provisions, taking into account the actual scale and scope of the infringement and the harm caused by the infringement to consumers in other Member States,
- (35) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union⁷⁰. Accordingly this Regulation should be interpreted and applied with respect to those rights and principles. When exercising the minimum powers set out in this Regulation, the competent authorities should strike an appropriate balance between the interests protected by fundamental rights such as a high level of consumer protection, the freedom to conduct business and freedom of information.

⁶⁴ 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 air passengers in the event of denied boarding and of cancellation or long delay of flights (OJ L 46, 17.2.2004, p. 1).

⁶⁵ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on railway passenger rights and obligations (OJ L 315, 3.12.2007, p. 14).

⁶⁶ Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway (OJ L 334, 17.12.2010, p. 1)

⁶⁷ Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).

⁶⁸ 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)

⁶⁹ 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)

⁷⁰ OJ C 364, 18.12.2000, p. 1.

(36) Since the objective of this Regulation, namely cooperation between national authorities responsible for the enforcement of consumer protection law, cannot be sufficiently achieved by the Member States because they cannot ensure cooperation and coordination by acting alone, and this objective can therefore, by reason of its territorial and personal scope, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective,

(37) Regulation (EC) No 2006/2004 should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Subject matter

This Regulation lays down the conditions under which the competent authorities in the Member States designated as responsible for the enforcement of the laws that protect consumers' interests cooperate with each other and with the Commission in order to ensure compliance with those laws and the smooth functioning of the internal market and in order to enhance the protection of consumers' economic interests.

Article 2

Scope

1. This Regulation applies to intra-Union infringements and widespread infringements defined in points (b) and (c) of Article 3.

2. This Regulation also applies to short-lived intra-Union infringements and widespread infringements, even if those infringements have ceased before enforcement started or could be completed.

3. This Regulation shall be without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction and applicable laws.

4. This Regulation shall be without prejudice to the application in the Member States of measures relating to judicial cooperation in criminal and civil matters, in particular the operation of the European Judicial Network.

5. This Regulation shall be without prejudice to the fulfilment by the Member States of any additional obligations in relation to mutual assistance for the protection of the collective economic interests of consumers, including criminal matters stemming from other legal acts, including bilateral or multilateral agreements.

6. This Regulation shall be without prejudice to the role and powers of competent authorities and European Banking Authority under 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 and 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.

7. Chapter III of this Regulation shall not apply to intra-Union infringements of the following legislation:

- (a) 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
- (b) 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.

8. This Regulation shall be without prejudice to Directive 2009/22/EC of the European Parliament and of the Council⁷¹.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) 'laws that protect consumers' interests' means the Directives as transposed into the internal legal order of the Member States and the Regulations listed in the Annex;
- (b) 'intra-Union infringement' means any ongoing or ceased act or omission contrary to the laws that protect consumers' interests that harmed, harms, or is likely to harm the collective interests of consumers residing in a Member State other than the Member State where the act or omission originated or took place, where the trader responsible for the act or omission is established or where evidence or assets of the trader pertaining to the act or omission are to be found;
- (c) 'widespread infringement' means:
 - (1) any act or omission contrary to the laws that protect consumers' interests that harmed, harms, or is likely to harm the collective interests of consumers residing in at least two Member States other than the Member State where the act or omission originated or took place, or where the trader responsible for the act or omission is established, or where evidence or assets pertaining to the act or omission are to be found; irrespective of whether the act or omission is ongoing or has ceased; or
 - (2) any acts or omissions contrary to the laws that protect consumers' interests that have common features, such as the same unlawful practice, the same interest being infringed or that are occurring concurrently, in at least two Member States;
- (d) 'applicant authority' means the competent authority that makes a request for mutual assistance;
- (e) 'requested authority' means the competent authority that receives a request for mutual assistance;

⁷¹ Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).

- (f) ‘trader’ means any natural or legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to his trade, business, craft or profession, including through any other person acting in his name or on his behalf;
- (g) ‘market surveillance’ means activities, actions or measures of a competent authority designed to detect whether intra-Union infringements or widespread infringements have taken or are taking place;
- (h) ‘consumer complaint’ means a statement, supported by reasonable evidence, that a trader has committed, or is likely to commit, an infringement of the laws that protect consumers' interests;
- (i) ‘harm to collective interests of consumers’ means actual or potential harm to the interests of a number of consumers that are concerned by intra-Union infringements or widespread infringements; and that shall be presumed in particular where the infringement potentially; or actually harmed, harms or is likely to harm a significant number of consumers in a similar situation.

Article 4

Limitation periods for infringements

1. The competent authorities may investigate infringements referred to in Article 2 and prohibit traders from engaging in such infringements in the future. The competent authorities may impose penalties for those infringements within five years from the cessation of the infringement.
2. The limitation period for the imposition of penalties shall begin to run on the day on which the infringement ceased.
3. Any action taken by the competent authority for the purpose of the investigation or enforcement proceedings in respect of the infringement shall suspend the limitation period for the imposition of penalties until the final decision concerning the matter is adopted. The limitation period for the imposition of penalties shall be suspended for as long as the decision, order or other action of the competent authority is the subject of proceedings pending before a court.

CHAPTER II

COMPETENT AUTHORITIES AND THEIR POWERS

Article 5

Competent authorities and single liaison offices

1. Each Member State shall designate as the competent authorities public authorities established either at national, regional or local level with specific responsibilities to enforce the laws that protect consumers' interests.
2. Competent authorities shall fulfil their obligations under this Regulation as though acting on behalf of consumers in their own Member State and on their own account.
3. Each Member State shall designate one competent authority as single liaison office.
4. The single liaison office shall be responsible for coordinating investigation and enforcement activities related to intra-Union infringements and widespread infringements by

the competent authorities, other public authorities as set out in Article 6, designated bodies as set out in Article 13 and entities participating in the alert mechanism as set out in Article 34.

5. Member States shall ensure that competent authorities and single liaison offices have the adequate resources necessary for the application of this Regulation and for the effective use of their powers pursuant to Article 8, including sufficient budgetary and other resources, expertise, procedures and other arrangements.

6. Where there is more than one competent authority on their territory, Member States shall ensure that their respective duties are clearly defined and that those authorities collaborate closely so that they can discharge their respective duties effectively.

Article 6

Cooperation with other public authorities and designated bodies

1. Each Member State may impose an obligation on other public authorities to assist competent authorities in the fulfilment of their obligations.

2. A competent authority may request the other public authorities referred to in paragraph 1 to take all necessary enforcement measures available to them under national law to bring about the cessation or prohibition of intra-Union infringements and widespread infringements.

3. The Member States shall ensure that the other public authorities have the means and powers necessary to cooperate effectively with the competent authorities in the application of this Regulation. Those other public authorities shall regularly inform the competent authority about the measures taken in the application of this Regulation.

4. Each Member State may designate bodies having a legitimate interest in the cessation or prohibition of infringements ("designated bodies") to gather the necessary information and to take the necessary enforcement measures available to them under national law on behalf of a requested competent authority.

5. Member States shall ensure cooperation between the competent authorities and designated bodies, in particular to ensure that infringements referred to in Article 2 are brought to the attention of competent authorities without delay.

Article 7

Information and lists

1. Each Member State shall communicate without delay to the Commission and the other Member States the identities of the competent authorities, of the single liaison office, of the designated bodies as set out in Article 13 and of the entities participating in the alert mechanism as set out in Article 34, as well as any changes thereto.

2. The Commission shall maintain and update a publicly available list of single liaison offices, competent authorities, designated bodies and entities on its website.

Article 8

Minimum powers of competent authorities

1. Each competent authority shall have the investigation and enforcement powers necessary for the application of this Regulation and shall exercise them in accordance with this Regulation and national law.

2. Each competent authority shall have at least the following powers and exercise them under the conditions set out in Article 9, to:

- (a) have access to any relevant document, data or information related to an infringement under this Regulation, in any form or format and irrespective of the medium on which or the place where they are stored;
- (b) require the supply by any natural or legal person, including banks, internet service providers, domain registries and registrars and hosting service providers of any relevant information, data or document in any format or form and irrespective of the medium on which or the place where they are stored, for the purpose of among others identifying and following financial and data flows, or of ascertaining the identity of persons involved in financial and data flows, bank account information and ownership of websites;
- (c) require any public authority, body or agency within the Member State of the competent authority to supply any relevant information, data or document in any format or form and irrespective of the medium on which or the place where they are stored, for the purpose among others, of identifying and following of financial and data flows, or of ascertaining the identity of persons involved in financial and data flows, bank account information and ownership of websites;
- (d) carry out the necessary on-site inspections, including in particular the power to enter any premises, land or means of transport or to request other authorities to do so in order to examine, seize, take or obtain copies of information, data or documents, irrespective of the medium on which they are stored; to seal any premises or information, data or documents for a necessary period and to the extent necessary for the inspection; to request any representative or member of the staff of the trader concerned to give explanations on facts, information or documents relating to the subject matter of the inspection and to record the answers;
- (e) purchase goods or services as test purchases in order to detect infringements under this Regulation and obtain evidence;
- (f) purchase goods or services under a cover identity in order to detect infringements and to obtain evidence;
- (g) adopt interim measures to prevent the risk of serious and irreparable harm to consumers, in particular the suspension of a website, domain or a similar digital site, service or account;
- (h) start investigations or procedures to bring about the cessation or prohibition of intra-Union infringements or widespread infringements of its own initiative and where appropriate to publish information about this;
- (i) obtain a commitment from the trader responsible for the intra-Union infringement or widespread infringement to cease the infringement and where appropriate to compensate consumers for the harm caused;
- (j) request in writing the cessation of the infringement by the trader;
- (k) bring about the cessation or the prohibition of the infringement;
- (l) close down a website, domain or similar digital site, service or account or a part of it, including by requesting a third party or other public authority to implement such measures;

- (m) impose penalties, including fines and penalty payments, for intra-Union infringements and widespread infringements and for the failure to comply with any decision, order, interim measure, commitment or other measure adopted pursuant to this Regulation;
- (n) order the trader responsible for the intra-Union infringement or widespread infringement to compensate consumers that have suffered harm as a consequence of the infringement including, among others, monetary compensation, offering consumers the option to terminate the contract or other measures ensuring redress to consumers who have been harmed as a result of the infringement;
- (o) order the restitution of profits obtained as a result of infringements, including an order that those profits are paid to the public purse or to a beneficiary designated by the competent authority or under national legislation;
- (p) publish any final decisions, interim measures or orders, including the publication of the identity of the trader responsible for the intra-Union infringement or widespread infringement;
- (q) consult consumers, consumer organisations, designated bodies and other persons concerned about the effectiveness of the proposed commitments in ceasing the infringement and removing the harm caused by it.

Article 9

Exercise of minimum powers

1. The competent authorities shall exercise the powers set out in Article 8 in accordance with this Regulation and national law either:

- (a) directly under their own authority; or
- (b) by application to courts competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful.

2. Insofar as competent authorities exercise their powers by application to courts, those courts shall have the power to grant the necessary decisions and shall act within the framework of this Regulation.

3. The Member States shall ensure that the court fees and other costs linked to the adoption of the court decisions in the proceedings initiated in application of this Regulation are proportionate and do not hamper the application of this Regulation.

Article 10

Implementing powers

The Commission may adopt implementing acts setting out the conditions for the implementation and exercise of the minimum powers of competent authorities referred to in Article 8. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

CHAPTER III

MUTUAL ASSISTANCE MECHANISM

Article 11

Requests for information

1. A requested authority shall, on request from an applicant authority, supply any relevant information required to establish whether an intra-Union infringement has occurred and to bring about the cessation of that infringement. The requested authority shall notify the Commission without delay of the request for information and of its reply.
2. The requested authority shall undertake the appropriate investigations or take any other necessary or appropriate measures in order to gather the required information. If necessary, those investigations shall be carried out with the assistance of other public authorities or designated bodies.
3. On request from the applicant authority, the requested authority may allow competent officials of the applicant authority to accompany the officials of the requested authority in the course of their investigations.
4. The requested authority shall reply to the request using the procedure for information requests and within the time limits set out by the Commission in the implementing act.
5. The Commission shall adopt implementing acts setting out the time limits, standard forms and details of the procedures for requests for information. The implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 12

Requests for enforcement measures

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-Union infringement, including imposing penalties and ordering or facilitating the compensation of consumers for harm caused by the infringement.
2. In order to fulfil its obligations laid down in paragraph 1, the requested authority shall exercise the powers set out under Article 8 and any additional powers granted to it under national law. The requested authority shall determine the enforcement measures appropriate to bring about the cessation or prohibition of the intra-Union infringement in a proportionate, efficient and effective way. If necessary, those measures shall be determined and implemented with the assistance of other public authorities.
3. The requested authority shall regularly inform and consult the applicant authority about the steps and measures taken. The requested authority shall notify through the database set out in Article 43 the applicant authority, the competent authorities of other Member States and the Commission of the measures taken and their effect on the intra-Union infringement without delay, including the following:
 - (a) whether interim measures have been imposed;
 - (b) whether the infringement has ceased;
 - (c) which penalties have been imposed;

- (d) to what extent consumers have been compensated
- (e) whether the measures taken have been implemented.

4. The requested authority shall reply to the request using the procedures for requests for enforcement measures and within the time limits set out by the Commission in the implementing act.

5. The Commission shall adopt implementing acts setting out the time limits, standard forms and details of the procedures for requests for enforcement measures. The implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 13

Role of designated bodies

1. The requested authority may instruct a designated body to gather the necessary information or take the enforcement measures necessary to bring about the cessation or prohibition of the infringement. The requested authority may only do so where that body is likely to obtain the requested information or to bring about the cessation or prohibition of the infringement as efficiently and as effectively as the requested authority.

2. The requested authority shall ensure that the instruction of the designated body does not lead to the disclosure of information which is subject to the rules on confidentiality and professional and commercial secrecy set out in Article 41.

3. Where the designated body fails to bring about the cessation or prohibition of the intra-Union infringement within the time limit set out pursuant to Article 11(4) and Article 12(4), the requested authority itself shall act upon the request pursuant to Articles 11 and 12.

4. Before instructing the designated body, the requested competent authority shall consult the applicant authority about its intention to instruct a designated body. Where the applicant authority does not agree with the instruction of a designated body, it shall inform the requested authority in writing without delay and give grounds for its objection. In that case, the requested authority shall not instruct the designated body and shall act itself on the request.

6. The Commission shall adopt implementing acts setting out the time limits, standard forms and details of the procedures involving designated bodies. The implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 14

Procedure for mutual assistance requests

1. In requests for mutual assistance, the applicant authority shall provide sufficient information to enable a requested authority to fulfil the request, including any necessary evidence obtainable only in the Member State of the applicant authority.

2. Requests shall be sent by the applicant authority to the single liaison office of the Member State of the requested authority and to the single liaison office of the Member State of the applicant authority for information. The single liaison office of the Member State of the requested authority shall pass the requests on to the appropriate competent authority without delay.

3. Requests for mutual assistance and all communication linked to them shall be made in writing using standard forms and communicated electronically via the database established pursuant to Article 43.
4. The languages used for requests for mutual assistance and for all communication linked to them shall be agreed upon by the competent authorities concerned.
5. If no agreement about languages can be reached, requests shall be sent in the official language of the Member State of the applicant authority and replies in the official language of the Member State of the requested authority. In that case, each competent authority shall ensure the necessary translations of the requests, replies and other documents that it receives from another competent authority.
6. The requested authority shall reply directly to the applicant authority and to the single liaison offices of the Member States of the applicant and requested authorities.

Article 15

Refusal to comply with a request for mutual assistance

1. A requested authority may refuse to comply with a request for information under Article 11 if one or more of the following applies:
 - (a) in its opinion, following consultation with the applicant authority, the information requested is not needed by the applicant authority to establish whether an intra-Union infringement has occurred or to establish whether there is a reasonable suspicion that it may occur;
 - (b) the applicant authority does not agree that the information is subject to the provisions on confidentiality and professional and commercial secrecy set out in Article 41;
 - (c) criminal investigations or judicial proceedings have already been initiated or final judgment has already been given in respect of the same intra-Union infringement and against the same trader before the judicial authorities in the Member State of the requested or applicant authority.
2. A requested authority may refuse to comply with a request for enforcement measures under Article 12 following a consultation with the applicant authority, if one or more of the following applies:
 - (a) criminal investigations or judicial proceedings have already been initiated or final judgment has already been given in respect of the same intra-Union infringement and against the same trader before the judicial authorities in the Member State of the requested or applicant authority;
 - (b) in its opinion, following appropriate investigation by the requested authority, no intra-Union infringement has occurred;
 - (c) in its opinion, the applicant authority has not provided sufficient information in accordance with Article 12(1),

A request for enforcement measures cannot be refused on the ground that insufficient information has been provided if a request for information on the same intra-Union infringement was refused on the grounds that criminal investigations or judicial proceedings have already been initiated or final judgment has already been given in respect of the same intra-Union infringement and against the same trader, as referred to in paragraph (1)(c).

3. The requested authority shall inform the applicant authority and the Commission of the refusal to comply with a request for mutual assistance and provide grounds for the refusal.
4. In the event of a disagreement between the applicant and the requested authority, the applicant authority or the requested authority shall without delay refer the matter to the Commission which shall issue an opinion. Where the matter is not referred to it, the Commission may of its own motion issue an opinion.
5. The Commission shall monitor the functioning of the mutual assistance mechanism, the compliance of competent authorities with the procedures and the time limits for handling mutual assistance requests. The Commission shall have access to the mutual assistance requests and to the information and documents exchanged between the applicant and requested authority.
6. Where appropriate, the Commission may issue guidance and provide advice to the Member States to ensure the effective and efficient functioning of the mutual assistance mechanism.
7. The Commission may adopt implementing acts setting out the details of the procedures to address cases of disagreement between competent authorities under paragraphs 3 and 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

CHAPTER IV

COORDINATED SURVEILLANCE, INVESTIGATION AND ENFORCEMENT MECHANISM FOR WIDESPREAD INFRINGEMENTS

SECTION I

WIDESPREAD INFRINGEMENTS

Article 16

Opening of coordinated action and designation of the coordinator

1. Where a competent authority has a reasonable suspicion that a widespread infringement is taking place, it shall notify the competent authorities of the other Member States concerned by the widespread infringement and the Commission without delay.
2. Where the Commission has a reasonable suspicion that a widespread infringement is taking place, it shall notify the competent authorities concerned by the widespread infringement.
3. After receiving the notifications referred to in paragraphs 1 and 2, the competent authorities concerned by the widespread infringement shall, acting by consensus, designate the competent authority that shall coordinate the action.
4. The competent authorities concerned may invite the Commission to take up the coordination role. The Commission shall inform the competent authorities concerned without delay whether it accepts the coordination role.
5. When notifying the competent authority pursuant to paragraph 2, the Commission may propose to take up the coordination role. The competent authorities concerned shall inform

the Commission without delay whether they accept that the Commission coordinates the action.

6. Where the Commission declines to take up the coordination role or where the competent authorities concerned do not accept that the Commission coordinates the action, the competent authorities concerned shall designate a competent authority that shall coordinate the action. Where no agreement among competent authorities is reached, the competent authority that first notified the suspected infringement to the other competent authorities shall coordinate the action.

Article 17

Investigation measures in coordinated actions

1. The competent authorities concerned shall ensure that the necessary evidence, data and information are gathered effectively and efficiently. The competent authorities concerned shall ensure that investigations and inspections are conducted simultaneously and that interim measures are applied simultaneously.

2. The competent authorities concerned may use the mutual assistance mechanism pursuant to Chapter III, in particular to gather evidence and information from Member States other than the Member States concerned by the coordinated action or to ensure that the trader concerned does not circumvent enforcement measures.

3. Where appropriate, the competent authorities concerned may set out the outcome of the investigation and the assessment of the widespread infringement in a common position agreed upon among themselves.

4. Where appropriate and without prejudice to the rules on professional and commercial secrecy set out in Article 41, the competent authorities concerned may decide to publish the common position or parts of it on their websites and on the Commission website and seek the views of other parties concerned.

Article 18

Enforcement measures in coordinated actions

1. The competent authorities concerned may invite the trader responsible for the infringement to propose commitments to cease the infringement and where appropriate to compensate or take other measures facilitating compensation of consumers that have suffered harm. The trader may also, on its own initiative, propose commitments to cease the infringement and to compensate consumers.

2. Where the trader proposes commitments, the competent authorities concerned, may, where appropriate, publish the proposed commitments on their websites or, as appropriate, on the Commission website to seek the views of other parties concerned and to verify whether the commitments are sufficient to cease the infringement and to compensate consumers.

3. The competent authorities concerned may designate one competent authority to take enforcement measures on behalf of the other competent authorities in order to bring about the cessation or to prohibit the widespread infringement, to ensure compensation of consumers or to impose penalties. When designating a competent authority to take enforcement measures the competent authorities shall take into consideration the location of the trader concerned. Once the competent authority has been designated to take enforcement measures by the other competent authorities concerned, it shall become competent to act on behalf of the consumers of each such Member State as if they were its own consumers.

4. The competent authorities may decide to take enforcement measures simultaneously in all or some Member States concerned by the widespread infringement. In such a case, the competent authorities shall ensure that those enforcement measures are launched simultaneously in all Member States concerned.

5. The instruction of a designated body to take enforcement measures pursuant to paragraphs 1 to 4 shall only be possible if the competent authorities concerned give their consent to such instruction and where such instruction does not lead to disclosure of information which is subject to the rules on professional and commercial secrecy set out in Article 41.

Article 19

Closure of the coordinated actions

The coordinating authority shall inform the Commission and competent authorities of the Member States concerned without delay when the widespread infringement has ceased or has been prohibited.

Article 20

Implementing powers

The Commission may adopt implementing acts setting out the details of the procedures for common actions for widespread infringements, in particular the standard forms for notifications and other exchanges between competent authorities and the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION II

WIDESPREAD INFRINGEMENT WITH A UNION DIMENSION

Article 21

Common actions for widespread infringements with a Union dimension

1. Where there is a reasonable suspicion that a widespread infringement harmed, harms or is likely to harm consumers in at least three quarters of the Member States accounting together for at least three quarters of the population of the Union ("widespread infringement with a Union dimension"), the Commission shall launch a common action. For that purpose the Commission may request the necessary information or documents from the competent authorities.

2. The decision to launch the common action shall be notified to the single liaison offices of the Member States concerned by the common action.

3. A competent authority may decline to take part in the common action for one of the following reasons:

- (a) judicial proceedings have already been initiated concerning the same infringement against the same trader in that Member State;
- (b) final judgment or a final administrative decision has already been passed in respect of the same infringement against the same trader in that Member State.

4. Following the notification of the decision to launch the common action pursuant to paragraph 2, where a competent authority decides not to take part in the common action, it shall without delay inform the Commission and the other competent authorities concerned about its decision, state the reasons for it pursuant to paragraph 3 and provide the necessary supporting documents.

5. The Commission shall coordinate the common action.

Article 22

Investigation measures

1. The competent authorities concerned coordinated by the Commission shall conduct simultaneous investigations to establish whether a widespread infringement with a Union dimension occurs.

2. The competent authorities concerned may use the mutual assistance mechanism pursuant to Chapter III, in particular to gather evidence and information from Member States other than the Member States concerned by the common action or to ensure that the trader concerned does not circumvent enforcement measures.

Article 23

Common position

1. The outcome of the investigation and the assessment of the widespread infringement with a Union dimension shall be set out in a common position agreed upon among the competent authorities concerned.

2. Where it is unlikely that the infringement will cease as a result of commitments from the trader responsible for the infringement, the competent authorities may take enforcement measures pursuant to Article 25 without establishing a common position and inviting the trader responsible for the infringement to propose commitments.

3. Where appropriate, and without prejudice to the rules on professional and commercial secrecy set out in Article 41, the competent authorities may decide to publish the common position or parts of it on their websites and on the Commission website or where it is appropriate to seek the views of other parties concerned.

Article 24

Commitments

1. The competent authorities concerned, coordinated by the Commission, may invite the trader responsible for the widespread infringement with a Union dimension to propose commitments to cease the infringement and to compensate consumers that have suffered harm as a result of the infringement. The trader may also, on its own initiative, propose commitments to cease the infringement and to compensate consumers.

2. Where the trader proposes commitments, the competent authorities concerned may, where appropriate, publish the proposed commitments on their websites and on the Commission website to seek the views of other parties concerned and to verify whether those commitments are sufficient to cease the infringement and to compensate consumers.

3. The competent authorities concerned shall assess the proposed commitments and communicate the outcome of the assessment to the trader in a common position. Where

commitments are sufficient to cease the infringement and where appropriate to compensate consumers, the competent authorities shall accept them and set a time limit within which the commitments have to be implemented.

4. The competent authorities concerned shall monitor the implementation of the commitments. They shall in particular ensure that the trader concerned regularly reports to the Commission about the progress of the implementation of the commitments. The competent authorities may, where appropriate, seek the views of consumer organisations, other concerned parties and experts to verify whether the steps taken by the trader are in line with the commitments.

Article 25

Enforcement measures

1. The competent authorities concerned shall agree which competent authority, or competent authorities where necessary, shall take enforcement measures against the trader on behalf of other competent authorities where one of the following applies:

- (a) it is unlikely that the infringement will cease as a result of commitments from the trader responsible for the infringement;
- (b) the trader does not propose commitments;
- (c) the trader proposes commitments which are insufficient to cease the infringement and to compensate consumers;
- (d) the trader fails to implement the commitments within the time limit set out in paragraph 3;

2. Once a competent authority is designated to take enforcement measures by the other competent authorities concerned, it shall be competent to act on behalf of the consumers of each Member State as if they were its own consumers. When designating a competent authority to take enforcement measures, the competent authorities shall take the location of the trader concerned into consideration.

3. Where the competent authorities do not proceed in accordance with paragraph 2, they shall take enforcement measures simultaneously in several or all Member States concerned by the widespread infringement with a Union dimension. The competent authorities shall ensure that those enforcement measures are launched simultaneously in all Member States concerned.

4. The instruction of a designated body to take enforcement measures pursuant to paragraphs 1 to 3 of this Article shall only be possible if the competent authorities of the Member States concerned by such measures give their consent and where such instruction does not lead to disclosure of information which is subject to the rules on professional and commercial secrecy set out in Article 41.

Article 26

Closure of common actions for widespread infringements with a Union dimension

1. The Commission shall decide to close the common action where one of the following applies:

- (a) where the conditions for the common action pursuant to Article 21(1) are not met;
- (b) the competent authorities concerned conclude that no widespread infringement with a Union dimension has occurred;

(c) the competent authorities concerned conclude that following the implementation of commitments by the trader, the infringement has ceased and, where appropriate, the consumers were compensated;

(d) the competent authorities concerned conclude that following enforcement measures pursuant to Article 25 the infringement has ceased or has been prohibited and, where appropriate, the consumers were compensated.

2. The Commission shall notify the single liaison office of the Member States concerned of the decision to close the common action.

Article 27

Implementing powers

The Commission may adopt implementing acts setting out the details of the procedures for common actions for widespread infringements with a Union dimension, in particular the standard forms for notifications and other exchanges between competent authorities and the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION III

GENERAL PROVISIONS APPLICABLE TO COORDINATED ACTIONS AND TO COMMON ACTIONS UNDER THIS CHAPTER

Article 28

Procedure for decisions amongst Member States

For matters pursuant to this Chapter, the competent authorities concerned shall act by consensus.

Article 29

Role of the coordinator

1. The coordinator appointed in accordance with Articles 16, 21 or 32 shall in particular:
 - (a) ensure that all the competent authorities concerned and the Commission are duly informed in a timely manner of the progress of the enforcement action, the anticipated next steps and the measures to be adopted;
 - (b) coordinate the investigations, the inspections and the adoption of interim measures that are decided upon by the competent authorities concerned in accordance with sections I and II, monitor investigations, inspections and interim measures, as well as other measures, pursuant to Article 8;
 - (c) coordinate the preparation and sharing of all necessary documents among the competent authorities concerned and the Commission;
 - (d) maintain contact with the traders and other parties concerned by the surveillance, investigation and enforcement measures, unless otherwise agreed upon by the competent authorities concerned and the Commission;

- (e) coordinate the assessment, the consultations and the monitoring by the competent authorities concerned as well as other steps necessary to process and implement commitments proposed by the traders concerned;
 - (f) coordinate other enforcement measures adopted by the competent authorities concerned, including applications to the courts for the necessary orders and decisions, the imposition of penalties and the adoption of measures ensuring consumer compensation;
 - (g) coordinate mutual assistance requests lodged by the competent authorities concerned pursuant to Chapter III.
2. The coordinator shall not be held responsible for the actions or the omissions of the competent authorities concerned when making use of the powers set out in Article 8.

Article 30

Duty of cooperation and language arrangements

1. The competent authorities shall coordinate their market surveillance activities and their investigation and enforcement measures to address widespread infringements pursuant to sections I and II. They shall exchange all necessary information and provide each other and the Commission with any other assistance needed without delay.
2. The competent authorities shall make available adequate resources to conduct coordinated investigations and enforcement actions. The competent authorities may invite Commission officials and other accompanying persons authorised by the Commission to participate in the coordinated investigations, enforcement actions and other measures pursuant to this Chapter.
3. The languages used by the competent authorities and the Commission for notifications and for all communications linked to the coordinated actions, common actions and concerted investigations of consumer markets pursuant to this Chapter shall be agreed upon by the competent authorities concerned and the Commission.
4. If no agreement can be reached, notifications and other communications shall be sent in the official language of the Member State making the notification or other communication. In that case, each competent authority concerned shall ensure the necessary translations of the notifications, communications and other documents that it receives from other competent authorities.
5. Where the coordinated or common actions pursuant to sections I and II concern widespread infringements of the following Union legislation the coordinator shall invite the European Banking Authority to take an observer role:
 - (a) 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;
 - (b) 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.

Article 31

Common position and hearing of traders

1. The common position referred to in Articles 17 and 23 shall be communicated to the trader responsible for the infringement. The trader responsible for the infringement shall be given the opportunity to be heard on the matters which are part of the common position.

2 The trader shall be entitled to communicate in the official language of the Member State of its establishment or residence. The trader may waive that right or request that another official language of the Union be used for communicating with the competent authorities.

3. The Commission may adopt implementing acts setting out the details of the implementation of traders' rights of defence in coordinated and common actions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 32

Concerted investigations of consumer markets

1. Where market trends, consumer complaints or other indications suggest that widespread infringements may have occurred, occur or may occur, the competent authorities concerned may decide to conduct a concerted investigation of consumer markets ("sweep"). Such a concerted investigation shall be coordinated by the Commission.

2. When conducting concerted investigations, the competent authorities concerned shall make effective use of the powers set out in Article 8 and other powers conferred upon them by national law.

3. The competent authorities may invite Commission officials and other accompanying persons authorised by the Commission to participate in sweeps.

4. The Commission may adopt implementing acts setting out the details of the procedures for sweeps. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

CHAPTER V

CONSUMER PROTECTION COOPERATION SURVEILLANCE MECHANISM

Article 33

Surveillance mechanism

1. The Commission shall maintain a surveillance mechanism for the exchange of information related to infringements or suspected infringements.

2. The surveillance mechanism shall consist of the alert mechanism pursuant to Article 34 and the exchange of other information relevant for the detection of infringements or suspected infringements pursuant to Article 36.

3. The surveillance mechanism shall be implemented through the database referred to in Article 43.

Article 34

Alert mechanism

1. A competent authority shall without delay notify the Commission and other competent authorities of any reasonable suspicion that an infringement is taking place on its territory that may affect consumers' interests in other Member States ('alert') using the standard form via the database referred to in Article 43.

2. The Commission shall without delay notify the competent authorities concerned of any reasonable suspicion that an infringement has occurred on the Union's territory ('alert') via the database referred to in Article 43.

3. In an alert the competent authority or the Commission shall provide, where available, in particular the following information about the suspected infringement:

- (a) a description of the act or omission that constitutes the infringement;
- (b) the product or service concerned by the infringement;
- (c) the Member States concerned or possibly concerned by the infringement;
- (d) the trader responsible or suspected of being responsible for the infringement;
- (e) the legal basis for possible actions by reference to national law and the corresponding provisions of the Union acts in the Annex to this Regulation;
- (f) the nature of legal proceedings, enforcement measures or other measures taken concerning the infringement and their dates and duration;
- (g) the status of legal proceedings, enforcement measure or other measures taken concerning the infringement;
- (h) the competent authority conducting legal proceedings and other measures;
- (i) whether the alert is 'for information' or 'for action'.

4. In an alert 'for action', the competent authority or the Commission may ask other competent authorities and the Commission to verify whether similar suspected infringements may be taking place in the territory of other Member States or whether any enforcement measures have already been taken against such infringements in other Member States.

5. To address the suspected infringements effectively, the competent authorities concerned shall, depending on the replies to the alert, take the necessary measures set out in Chapters III and IV.

6. The Commission shall adopt implementing acts setting out the details of the functioning of the alert mechanism, including in particular standard forms for alerts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 35

Participation of other entities in the alert mechanism

1. Designated bodies and European Consumer Centres shall participate in the alert mechanism set out in Article 34. Member States shall designate consumer organisations and associations, and other entities such as trader associations, with the appropriate expertise and legitimate interest in consumer protection that shall participate in the alert mechanism. Member States shall notify the Commission of those entities without delay.

2. The Commission may designate other entities representing consumer and business interests at a Union level that shall participate in the alert mechanism.

3. The entities described in paragraphs 1 and 2 shall be entitled to notify the competent authorities of the Member States concerned and the Commission of suspected infringements and provide the information set out in Article 34(3), using the standard form for external notifications provided by the database referred to in Article 43 ('external alert').

4. The external alerts shall only be 'for information'. The competent authorities shall not be bound to initiate a procedure or take any other action in response to the alerts and information provided by those entities. Entities making external alerts shall ensure that the information provided is correct, up to date and accurate and shall correct the information posted without delay or withdraw it as appropriate. For that purpose, they shall have access to the information they have provided, subject to the limitations referred to in Articles 41 and 43.

5. The Commission may adopt implementing acts setting out the details of the designation and participation of other entities in the alert mechanism. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 36

Exchange of other information relevant for the detection of infringements

1. Via the database referred to in Article 43, the competent authorities shall without delay notify the Commission and other competent authorities of any measure that they have taken to address an infringement of the laws which protect consumers' interests on their territory if they suspect that the infringement may affect consumers' interests in other Member States, in particular:

- (a) any notice, order, decision or similar measure of a competent authority or another authority relating to the opening of national proceedings concerning an infringement or suspected infringement;
- (b) any decision of a court or other judicial authority, judicial order, injunction or other similar measure that concerns an infringement or suspected infringement;
- (c) any other information, decision, order or act of other national authorities or designated bodies, as appropriate, that may concern an infringement or suspected infringement.

2. The Commission may adopt implementing acts setting out the details of the exchange of other information relevant for the detection of infringements under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

CHAPTER VI

OTHER UNION-WIDE ACTIVITIES

Article 37

Coordination of other activities contributing to surveillance and enforcement

1. Member States shall inform each other and the Commission of their activities in the following areas:

- (a) the training of their officials involved in enforcing consumer protection, including language training, and the organisation of training seminars;
- (b) the collection, classification and exchange of data on consumer complaints;

- (c) the development of sector-specific networks of competent officials;
- (d) the development of information and communication tools;
- (e) the development of standards, methodologies and guidelines for officials involved in enforcing consumer protection;
- (f) the exchange of their officials, including the ability to carry out activities under Chapters III and IV.

2. Member States shall coordinate and jointly organise the activities set out in paragraph 1.
3. The Commission and the Member States shall regularly share information and data concerning consumer complaints. For that purpose, the Commission shall develop and maintain a harmonised methodology for classifying and reporting consumer complaints in cooperation with Member States.
4. The Commission may adopt implementing acts necessary to develop the framework for cooperation under paragraphs 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 38

Exchange of officials between competent authorities

1. The competent authorities may participate in exchange schemes of competent officials from other Member States in order to improve cooperation. The competent authorities shall take the necessary measures to enable competent officials from other Member States to play an effective role in the activities of the competent authority. To that end, those officials shall be authorised to carry out the duties entrusted to them by the host competent authority in accordance with the laws of its Member State.
2. During the exchange, the civil and criminal liability of the competent official shall be treated in the same way as that of the officials of the host competent authority. The competent officials from other Member States shall observe professional standards and shall be subject to the appropriate internal rules of conduct of the host competent authority. Those rules of conduct shall ensure in particular the protection of individuals with regard to the processing of personal data, procedural fairness and the proper observance of the rules on confidentiality and professional and commercial secrecy pursuant to Article 41.

Article 39

Exchange of consumer policy information

1. Member States shall inform each other and the Commission of their activities in protecting consumers' interests such as:
 - (a) consumer information and advice;
 - (b) support for the activities of consumer representatives;
 - (c) support for the activities of bodies responsible for the extra-judicial settlement of consumer disputes;
 - (d) support for consumers' access to justice;
 - (e) the collection of statistics, the results of research or other information relating to consumer behaviour and attitudes.

2. Member States may, in cooperation with the Commission, carry out common activities in the areas set out in paragraph 1. The Member States shall, in cooperation with the Commission, develop a common framework for the activities set out in point (e) of paragraph 1.

3. The Commission may adopt implementing acts necessary to develop the framework for exchange of information referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 40

International cooperation

1. The Union shall cooperate with third countries and with the competent international organisations in the areas covered by this Regulation in order to protect consumers' interests. The arrangements for cooperation, including the establishment of mutual assistance arrangements, the exchange of confidential information and exchange of staff programmes, may be subject to agreements between the Union and the third countries concerned.

2. Agreements concluded between the Union and third countries concerning cooperation and mutual assistance to protect and enhance consumers' interests shall be subject to the protection of confidential information and personal data equivalent to the rules set out in Article 41.

3. When a competent authority receives information from an authority of a third country, that competent authority shall communicate the information to the relevant competent authorities of other Member States insofar as it is permitted to do so by bilateral assistance agreements with the third country and in accordance with Union legislation regarding the protection of individuals with regard to the processing of personal data.

4. Information communicated under this Regulation may also be communicated to an authority of a third country by a competent authority under a bilateral assistance agreement with the third country, provided that the consent of the competent authority that originally communicated the information has been obtained and in accordance with Union legislation regarding the protection of individuals with regard to the processing of personal data.

CHAPTER VII

PROFESSIONAL SECRECY AND OTHER ARRANGEMENTS

Article 41

Use of information and professional and commercial secrecy

1. Information collected pursuant to Article 8 which is communicated to the competent authorities and the Commission shall only be used for the purposes of ensuring compliance with the laws that protect consumers' interests.

2. Information communicated in any form to persons working for competent authorities, courts, other public authorities and the Commission, including information notified to the Commission and stored on the database referred to in Article 43, shall be confidential and shall be covered by the obligations of professional secrecy where its disclosure would undermine:

- (a) the protection of the privacy and the integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data,
- (b) the commercial interests of a natural or legal person, including intellectual property,
- (c) court proceedings and legal advice, or
- (d) the purpose of inspections or investigations.

– 3. Notwithstanding paragraph 2, the competent authorities may use and disclose the information necessary:

- (a) to prove intra-Union infringements or widespread infringements;
- (b) to bring about the cessation or prohibition of intra-Union infringements or widespread infringements.

Article 42

Use of evidence and investigation findings

1. Competent authorities may use any information, documents, findings, statements, certified true copies or intelligence communicated as evidence, irrespective of their format and medium on which they are stored.
2. Evidence, documents, information, explanations and investigation findings made by a competent authority in one Member State in accordance with Article 8 may be used for proceedings initiated in application of this Regulation by competent authorities in other Member States without further formal requirements.

Article 43

Database and system for exchange of information on infringements

1. The Commission shall establish and maintain the necessary electronic database in which it shall store and process the information received to support mutual assistance requests pursuant to Chapter III, measures pursuant to Chapter IV and the surveillance mechanism pursuant to Chapter V. The database shall be made available for consultation to the competent authorities and the Commission.
2. Information provided by other authorities, entities and designated bodies shall be stored and processed in the electronic database but those authorities, entities and designated bodies shall not have access to this database.
3. The stored data relating to an infringement shall be deleted five years after the infringement has ceased. The period of five years shall start from the date on which:
 - (a) a requested authority notifies the Commission pursuant to Article 12(3) that an intra-Union infringement has ceased;
 - (b) the coordinating authority notifies the Commission pursuant to Article 19 that the widespread infringement has ceased or has been prohibited;
 - (c) the Commission decides pursuant to Article 26 that the common action concerning a widespread infringement with a Union dimension is closed but traders' commitments shall be stored for 10 years to ensure compliance with the laws that protect consumers' interests;
 - (d) the information has been entered in the database in all other cases.

4. The Commission shall adopt implementing acts necessary to implement the database. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 44

Waiver of reimbursement of expenses

Member States shall waive all claims for the reimbursement of expenses incurred in applying this Regulation. However, the Member State of the applicant authority shall remain liable to the Member State of the requested authority for any costs and any losses incurred as a result of measures dismissed and held to be unfounded by a court as far as the substance of the infringement in question is concerned.

Article 45

National enforcement plans and prioritisation

1. Every two years from xx/xx/20xx [the date of entry into force of this Regulation], each Member State shall submit to the Commission biennial enforcement plans, using a dedicated online standard form provided by the Commission. The enforcement plans shall contain in particular:

- (a) information concerning market trends that may affect consumers' interests in their Member State, thus highlighting issues that may be likely to exist in other Member States;
- (b) where applicable, a summary of the implementation of the previous biennial enforcement plan, including overview of actions under this Regulation, consumer complaints and other complaints received, surveillance and enforcement activities and important court actions, judgments and other orders or measures and reasons why the previous biennial plan may not have been fully implemented;
- (c) information about the organisation, powers and responsibilities of the competent authorities as well as any changes or planned changes thereof;
- (d) the priority areas for the enforcement of the laws that protect consumers' interests for the next two years in the Member State;
- (e) the proposed priority areas for enforcement of the laws that protect consumers' interests Union-wide;
- (f) an overview of resources available and committed for enforcement of the laws that protect consumers' interests in the Member State for the two years;
- (g) a statement of resources committed to the implementation of this Regulation for the next two years.

2. In case of substantial change of circumstances or market conditions during the two years after the submission of the last enforcement plan, Member States may submit a revised enforcement plan.

Article 46

Monitoring and implementation of national enforcement plans

1. The Commission shall monitor the implementation of the national enforcement plans. The Commission may give advice concerning the implementation of national enforcement plans,

establish benchmarks as regards resources necessary for the implementation of this Regulation and promote best practices.

2. The Commission shall adopt implementing acts necessary to develop the online standard forms and details of the national enforcement plans referred to in Article 45. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 47

Principles for imposing penalties for intra-Union and widespread infringements

1. When imposing penalties in the context of intra-Union infringements and widespread infringements, the competent authorities shall take into account among others:

- (a) the territorial scope of the infringement;
- (b) the overall harm or likely harm caused to consumers in other Member States;
- (c) the repetition of the infringement in the same Member State or in the Union.

2. The Commission may issue recommendations on penalties for intra-Union infringements and widespread infringements and their coordination pursuant to Chapter IV.

CHAPTER VIII

FINAL PROVISIONS

Article 48

Committee

1. The Commission shall be assisted by a Committee. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 49

Notifications

Member States shall communicate to the Commission without delay the text of any provisions of national law that they adopt, or of agreements other than to deal with individual cases that they conclude, on matters covered by this Regulation.

Article 50

Evaluation

By [xx/xx/20xx at the latest, no later than within seven years from its entry into application], the Commission shall present a report to the European Parliament and the Council on the application of this Regulation.

The report shall contain an evaluation of the application of the Regulation including an assessment of the effectiveness of enforcement of the laws that protect consumers' interests

under this Regulation and an examination of, among others, how the compliance with the laws that protect consumers' interests by traders has evolved in key consumer markets concerned by cross-border trade.

Article 51

Amendment of the Annex to Regulation (EU) No 2006/2004

In the Annex to Regulation (EU) No 2006/2004 the following points are added:

"18. 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).

19. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market: Article 20 (OJ L 376, 27.12. 2006, p. 36).

20. Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on railway passenger rights and obligations (OJ L 315, 3.12. 2007, p. 14).

21. 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).

22. 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: Articles 22, 23 and 24 (OJ L 293, 31.10.2008, p. 3).

23. 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: Articles 10, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, Chapter 10 and Annexes I and II (OJ L 60, 28.2.2014, p. 34).

24. 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, Articles 4 to 18 and 20(2) (OJ L 257, 28.8.2014, p. 214)."

Article 52

Repeal

Regulation (EU) No 2006/2004 is repealed from [date of application of this Regulation].

Article 53

Entry into force and application

The Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

This Regulation shall apply from [one year after its entry into force].

However, Article 51 shall apply from [the entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council replacing 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)

1.2. Policy area(s) concerned in the ABM/ABB structure⁷²

Title 33 – Justice and Consumers - Chapter 33 04: Consumer Programme

1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**⁷³
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Digital Single Market Strategy

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No

To develop more modern, efficient and effective enforcement cooperation mechanisms in the consumer protection area and contribute to the completion of the Digital Single Market.

⁷² ABM: activity-based management; ABB: activity-based budgeting.

⁷³ As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

On consumers: With reinforced tools and procedures the new CPC Regulation will address more effectively collective consumer detriment stemming from widespread infringements occurring throughout EU.

On economic operators: The proposal will not impose any legal obligations to the business sector. Improvement of the regulatory environment for retail markets should permit enterprises, including SMEs, to avoid legal expertise costs when marketing cross-border and be more confident that the same EU consumer law is equally enforced in the other countries they want to trade. More consistent cross-border enforcement would boost competitiveness of honest, law-abiding traders, boost competition and level playing field in the Single Market.

On enforcement authorities: The proposal will clarify the legal framework, on the basis of which authorities cooperate in a cross-border context. The Commission will optimally support the Member States in their enforcement efforts against infringements with an important EU-level dimension and useless parallel proceedings will be avoided. Costs for authorities will be saved thanks to the possibility to reuse evidence, avoid duplication and ensure maximum consistency of enforcement actions. One coordinated action would replace 28 national actions, resulting in net savings varying from ca. 44% (in case of successful coordinated action) to 76% (in case of failed action).

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

- Non-compliance rate
- Number of CPC mutual assistance requests, for which the established binding time limits were not respected
- Number of CPC coordinated and common actions
- Number of alerts notified by stakeholders, including Commission "for information"
- Elaboration every two years of national enforcement plans
- Elaboration of benchmarking of resources dedicated to CPC enforcement

1.5. **Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term*

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 Strategy⁷⁴ 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 and improve the coordination of their market monitoring activities and alert

⁷⁴

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

mechanisms to detect infringements faster" thanks to the review of the CPC Regulation.

1.5.2. Added value of EU involvement

All the measures in this proposal concern cross-border situations or widespread infringements taking place in several Member States. The cross-border aspects of Union consumer law cannot be sufficiently achieved by the Member States' individual actions. Member States alone cannot ensure efficient cooperation and coordination of their enforcement activities. Therefore, particularly for those issues that have a pan-European impact, the European Commission is best placed to take up the coordination role given the scale and scope of the problem, the need to coordinate many authorities and to ensure a consistent outcome for consumers and traders. In this regard the action at the Union level would produce clear benefits (compared to Member States' individual actions) in terms of improved effectiveness and efficiency for all actors concerned.

1.5.3. Lessons learned from similar experiences in the past

In 2012, the Commission contracted an evaluation of the CPC Regulation⁷⁵ which concluded that the CPC Regulation had been beneficial for the competent authorities, consumers and traders and confirmed the appropriateness and relevance of its objectives. It also pointed out that these objectives had not been fully achieved and that the Regulation had not been exploited to its full potential. The evaluation report identified limitations in the current CPC legal framework consisting of practical and legal barriers to effective cooperation between the competent authorities, which undermine the efficiency and effectiveness of the Regulation (e.g. insufficient minimum powers of enforcement authorities; insufficient sharing of market information; limited mechanisms to address widespread infringements).

1.5.4. Compatibility and possible synergy with other appropriate instruments

The proposal is one of the initiatives under the European Commission's Digital Single Market Strategy. The proposal is also fully consistent and compatible with the existing EU policies, including in the transport sector. It supplements the cooperation arrangements (exchanges of information among authorities) available in the sectorial instruments set out in the Annex of the CPC Regulation.

⁷⁵ 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

1.6. Duration and financial impact

Proposal/initiative of **limited duration**

- Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY

Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. Management mode(s) planned⁷⁶

Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

Shared management with the Member States

Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 208 and 209 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

Implementation of the proposed Regulation should be ensured through centralised direct management by the Commission. The management of the proposed Regulation may be complemented by actions with the involvement of the Consumers, Health and Food Executive Agency (CHAFEA) that, in accordance with Council Regulation (EC) No 58/2003 of 19 December 2002⁷⁷, can be entrusted with certain tasks in the management of Community programmes. The Commission has entrusted CHAFEA with implementation tasks for the management of the Consumers Programme 2014-2020⁷⁸, which is the legal basis for procurement and grants in the field of enforcement cooperation.

⁷⁶ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:

<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

⁷⁷ OJ L 11, 16.1.2003, p.1.

⁷⁸ OJ L, 84, 20.3.2014, p. 42.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The CPC Committee under the new Regulation will provide a regular platform to discuss issues related to the implementation of the new Regulation.

The proposal suggests that the Commission should assess the effectiveness of the new Regulation and submit a report to the European Parliament and to the Council, no later than within 7 years from its entry into application.

2.2. Management and control system

2.2.1. Risk(s) identified

No risks identified.

2.2.2. Information concerning the internal control system set up

Not applicable.

2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error

Not applicable.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

Article 14 of the Regulation No 254/2014 on a multiannual consumer programme for the years 2014-2020 lays down measures to ensure the protection of the financial interests of the Union: e.g. decisions, agreements and contracts resulting from the implementation of the Consumer Programme expressly entitle the Commission, OLAF, and the Court of Auditors to conduct audits, on-the-spot checks and inspections. Further, during the evaluation phase of a call for proposals/tender, the proposers and tenderers are checked against the published exclusion criteria based on declarations and the Early Warning System (EWS). Furthermore, regular training on issues related to fraud and irregularities is given to all staff involved in contract management as well as to auditors and controllers who verify the beneficiaries' declarations on the spot.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number Chapter 33 04 Heading: Consumer Programme	Diff./Non-diff. ⁷⁹	from EFTA countries ⁸⁰	from candidate countries ⁸¹	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
No 3 Security and Citizenship	33 04 01 Consumer Programme 2014-2020	Diff	YES	NO	NO	NO

- New budget lines requested: **No new budget lines requested**

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
		Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation

⁷⁹ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

⁸⁰ EFTA: European Free Trade Association.

⁸¹ Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated impact on expenditure

[This section should be filled in using the [spreadsheet on budget data of an administrative nature](#) (second document in annex to this financial statement) and uploaded to DECIDE for interservice consultation purposes.]

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	3	Security and Citizenship
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DG:JUSTICE and CONSUMERS			Year N ⁸²	Year N+1	Year N+2	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
			2018	2019	2020				
• Operational appropriations									
Number of budget line 33 04 01	Commitments	(1)	0	0	0				0
	Payments	(2)	0	0	0				0
Number of budget line	Commitments	(1a)							
	Payments	(2a)							
Appropriations of an administrative nature financed from the envelope of specific programmes ⁸³									
Number of budget line 33 01 04 03		(3)							
TOTAL appropriations	Commitments	=1+1a +3	0	0	0				0

⁸² Year N is the year in which implementation of the proposal/initiative starts.

⁸³ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

for DG JUSTICE and CONSUMERS There is no new appropriation needed as support to CPC activities is already planned in the Consumer Programme 2014-2020	Payments	=2+2a +3	0	0	0						0

• TOTAL operational appropriations	Commitments	(4)									
	Payments	(5)									
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)									
TOTAL appropriations under HEADING 3 of the multiannual financial framework	Commitments	=4+ 6									
	Payments	=5+ 6									

If more than one heading is affected by the proposal/initiative:

• TOTAL operational appropriations	Commitments	(4)									
	Payments	(5)									
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)									
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6									
	Payments	=5+ 6									

Heading of multiannual financial framework	5	‘Administrative expenditure’
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EUR million (to three decimal places)

		Year N 2018	Year N+1 2019	Year N+2 2020			Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
DG: JUSTICE and CONSUMERS								
• Human resources		0,268	0,268	0,268				0,804
• Other administrative expenditure								
TOTAL DG JUSTICE and CONSUMERS								
There is no need for new appropriations as the work is going to be done from reorganisation of existing tasks	Appropriations	0,268	0,268	0,268				0,804

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0,268	0,268	0,268				0,804
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EUR million (to three decimal places)

		Year N ⁸⁴ 2018	Year N+1 2019	Year N+2 2020		Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
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⁸⁴ Year N is the year in which implementation of the proposal/initiative starts.

TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments								
	Payments								

3.2.2. *Estimated impact on operational appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
	Type ⁸⁵	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 ⁸⁶ ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

⁸⁵ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

⁸⁶ As described in point 1.4.2. 'Specific objective(s)...'

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N ⁸⁷ 2018	Year N+1 2019	Year N+2 2020		Enter as many years as necessary to show the duration of the impact (see point 1.6)				TOTAL
--	---------------------------------	---------------------	---------------------	--	--	--	--	--	--------------

HEADING 5 of the multiannual financial framework									
Human resources	0,268	0,268	0,268						0,804
Other administrative expenditure									
Subtotal HEADING 5 of the multiannual financial framework	0,268	0,268	0,268						0,804

Outside HEADING 5⁸⁸ of the multiannual financial framework									
Human resources									
Other expenditure of an administrative nature									
Subtotal outside HEADING 5 of the multiannual financial framework									

TOTAL	0,268	0,268	0,268						0,804
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

⁸⁷

Year N is the year in which implementation of the proposal/initiative starts.

⁸⁸

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	Year N 2018	Year N+1 2019	Year N+2 2020		Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)							
33 04 01 (Headquarters and Commission's Representation Offices)	2 FTEs	2 FTEs	2 FTEs		Permanent, however, these resources are going to be taken from the existing allocation of posts in DG JUST		
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External staff (in Full Time Equivalent unit: FTE)⁸⁹							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)							
XX 01 04 yy ⁹⁰	- at Headquarters						
	- in Delegations						
XX 01 05 02 (AC, END, INT - Indirect research)							
10 01 05 02 (AC, END, INT - Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

The resources required are indicated without taking account of the tasks which will be implemented by an executive agency. The proposal does not lead to an increase of the resources already involved in the executive agency.

Description of tasks to be carried out:

Officials and temporary staff	<p>Administrators:</p> <ul style="list-style-type: none"> • Ensure, monitor and report on the proper implementation and application of EU policies in the area of enforcement of EU consumer legislation. • Follow policy developments in the area of enforcement and information exchange between Member States.
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⁸⁹ AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

⁹⁰ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

	<ul style="list-style-type: none"> • Participate and represent the Commission in comitology meetings. • Identify, prepare, participate and follow-up initiatives within the framework of the CPC Regulation, in particular to ensure coordination of enforcement actions of national enforcement authorities. <p>Assistants:</p> <ul style="list-style-type: none"> • Ensure the administrative support with the operation of the comitology committee. • Carry out various tasks related to the interface with internal and external correspondents and stakeholders in the area of enforcement cooperation. • Ensure the administrative support with the operation of the IT tool, which supports the CPC cooperation. • Assist in launching, managing and monitoring calls for tenders and the implementation of contracts.
External staff	

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

The proposal/initiative does not provide for co-financing by third parties.

- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
 - on own resources
 - on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ¹					Enter as many years as necessary to show the duration of the impact (see point 1.6)		
		Year N	Year N+1	Year N+2	Year N+3				
Article									

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

¹ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.