

The Consumer Voice in Europe

## STRENGTHENING THE COORDINATED ENFORCEMENT OF CONSUMER PROTECTION RULES

The revision of the Consumer Protection Coordination (CPC)  
Regulation



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## Why it matters to consumers

The European Union has an important body of laws protecting the interests of consumers. These laws apply not only in national cases where consumers and traders are in the same Member State, but also in cross-border cases where consumers and traders are located in different countries. As consumers are increasingly shopping and dealing with businesses in a cross-border situation, the cross-border enforcement of EU consumer laws has become growingly relevant.

National consumer authorities throughout Europe are responsible for enforcing consumer protection rules. However, enforcement is particularly complex when it comes to cross-border cases. The CPC-Network was set up as an EU coordination mechanism on consumer protection enforcement between national authorities with a view of (among other things) addressing widespread infringements. Based on the experience gained so far, the coordination organised under the CPC Regulation needs improvements in order to stay relevant in the light of rapid market changes and new businesses practices.

## Summary

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EU Regulation 2017/2394 (the "CPC Regulation") establishes an enforcement framework coordinating the work of national authorities responsible for the enforcement of consumer protection laws. The Regulation also strengthens the investigation and enforcement powers of those authorities. Experience has shown that upgrades in the CPC framework are necessary to facilitate a swift and strong enforcement of consumer protection across Europe and to ensure that consumers are well-protected in case of widespread infringements. Changes in the rules should, in particular:

### **1. Increase the powers of the CPC-Network**

- Establishing a role for the European Commission to address widespread infringements with a Union dimension.
- Clarifying the consequences of the *ne bis in idem*<sup>1</sup> principle.
- Closing coordinated actions only once commitments are fully implemented by traders and have brought satisfactory results.
- Making the common decisions issued by the CPC-Network a useful instrument for follow-on private actions.
- Enabling enforcement against non-EU traders.
- Ensuring that the Annex of the CPC Regulation is updated.

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<sup>1</sup> The *ne bis in idem* principle provides that no one may be prosecuted or punished twice for the same facts.

## **2. Upgrading CPC procedures**

- Facilitating agreements on applicable rules when several pieces of national legislation come into play in widespread infringements.
- Establishing a common procedural framework to address widespread infringements with a Union dimension.
- Strengthening the possibility to address systemic and sector-wide problems.
- Striking the right balance between transparency and confidentiality in CPC procedures.
- Adapting the action of the CPC-Network to the speed of infringements.
- Increasing cooperation between the CPC-Network and other enforcement networks.

## **3. Strengthening national CPC Authorities for a stronger CPC-Network**

- Strengthening CPC Authorities' independence.
- Strengthening CPC Authorities' remedying powers.
- Strengthening CPC Authorities' resources and capacity.

## **4. Strengthening cooperation between CPC Authorities and consumer organisations**

- Giving procedural rights to entities submitting external alerts: towards an "EU super -complaint mechanism".
- Engaging with consumer organisations during the different steps of CPC coordinated actions.
- Continue strengthening the dialogue between BEUC, its members, the European Commission, and the CPC-Network.

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## 1. The enforcement of consumer law: the dawn of a new era?

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The European Union provides for one of the highest standards of consumer protection in the world. These rules give consumers legal rights and require professionals to comply with certain obligations when marketing their products and services. **However, the effective enforcement of those rules has historically been the EU's Achilles' heel**, leaving traders' harmful practices unpunished and depriving consumers of their rights.<sup>2</sup>

**Following the principle of procedural autonomy, the enforcement of consumer rights has been a responsibility of the Member States.** For historical reasons, Member States have followed different enforcement cultures and relied on different mixes of public and private mechanisms to enforce consumer protection rules. In recent years - and since well-functioning enforcement is essential to foster trust and to establish a levelled playing field across Europe - the topic has progressively become a key preoccupation of the European Commission and was listed as one of its priorities in its last Consumer Agenda.<sup>3</sup>

After the New Deal for Consumers, which in 2018 intended to provide "better redress opportunities for consumers, support effective enforcement and greater cooperation of public authorities in a fair and safe Single market",<sup>4</sup> the enforcement of consumer protection rules is expected to undergo important developments in the coming years. **This evolution is much welcome as the enforcement of consumer rules remains too fragmented across Europe while, as further evidenced below, it is facing an increasing number of obstacles leaving consumers still under-protected.**

Following the public consultation on *consumer protection law-cross-border enforcement*<sup>5</sup> which took place in Spring 2022, and building on several evidence-gathering exercises, the European Commission is expected to publish an evaluation of EU Regulation 2017/2394 (the "CPC Regulation") by early 2023. The European Commission has also announced its intent to make, by mid-2023, a legislative proposal with targeted changes to the existing legal framework. In parallel, still in 2023, the European Commission is expected to evaluate the consumer ADR/ODR framework and will make another legislative proposal to revise the existing rules.<sup>6</sup> Finally, EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers (the Representative Actions Directive – "RAD"),<sup>7</sup> which will give consumers the possibility to vindicate their rights collectively, will come into application in June 2023 and may contribute to strengthening the private enforcement of consumer rules.<sup>8</sup>

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<sup>2</sup> BEUC, *Stepping the enforcement of consumer protection rules*, September 2020 ([www.beuc.eu/position-papers/stepping-enforcement-consumer-protection-rules](http://www.beuc.eu/position-papers/stepping-enforcement-consumer-protection-rules)).

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0696>

<sup>4</sup> COM(2018) 183 final.

<sup>5</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13430-Functioning-of-cross-border-consumer-law-enforcement-in-the-EU/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13430-Functioning-of-cross-border-consumer-law-enforcement-in-the-EU/public-consultation_en)

<sup>6</sup> BEUC, *Alternative Dispute Resolution for consumers: Time to move up a gear*, June 2022, [www.beuc.eu/general/alternative-dispute-resolution](http://www.beuc.eu/general/alternative-dispute-resolution)

<sup>7</sup> Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers.

<sup>8</sup> [www.beuc.eu/general/collective-redress?priority=2948](http://www.beuc.eu/general/collective-redress?priority=2948)

## ENFORCEMENT OF CONSUMER PROTECTION RULES

### Public enforcement

Evaluation of the CPC Regulation + legislative proposal (Q2 2023)

### Private enforcement

Entry into application of the Representative Actions Directive (Q2 2023)

### ADR/ODR

Evaluation of the ADR Directive and ODR Regulation + legislative proposal (Q2 2023)

## 2. Public enforcement of consumer rules and coordination at the EU level

### 2.1. Public enforcement of consumer protection

The European Commission has played an instrumental role in supporting and coordinating the work of national consumer authorities to address cross-border infringements. In 2004, the European Commission highlighted that “each Member State ha(d) developed an enforcement system adapted to its own laws and institutions”, which ultimately was “not fully adapted to the challenges of the internal market”.<sup>9</sup> As a consequence, the EU adopted Regulation 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the CPC Regulation). This Regulation established a cooperation framework for structured exchanges between authorities (“CPC Authorities”), their contact points, and the European Commission, which together form the “CPC-Network”. The CPC Authorities enjoy a set of common minimum powers defined in the CPC Regulation.<sup>10</sup> The European rules also set up a mutual assistance mechanism enabling authorities to exchange information and to cooperate to stop infringements. The Regulation also enabled authorities to conduct joint actions (e.g., “sweeps”) and to adopt joint approach to apply consumer laws on specific problems.

An evaluation of the CPC Regulation was carried out in 2012<sup>11</sup> and revealed that the rules had to some extent been beneficial to authorities and consumers but also had failed to fully achieve their objectives. In particular, the evaluation of the CPC Regulation pointed out the need for a **more integrated approach to the enforcement of consumer rights to address widespread infringements**. EU Regulation 2017/2314 was therefore adopted to modernise the CPC framework. It entered into application in January 2020.

### 2.2. The CPC enforcement model and its characteristics

The amended CPC Regulation (EU Regulation 2017/2394) built on its predecessor (EU Regulation 2006/2004) and applies to **28 EU pieces of legislation** protecting consumer interests and listed in its Annex. The amended CPC Regulation also brought some important novelties. In particular, it gave designated external entities (such as consumer organisations) the possibility to issue **external alerts** to the CPC-Network when detecting infringements of consumer rules. BEUC and 16 of its member organisations have been

<sup>9</sup> COM/2003/0443 final - COD 2003/0162.

<sup>10</sup> Art.9 of Regulation 2017/2394 (hereafter “CPC Regulation”).

<sup>11</sup> Consumer Policy Evaluation Consortium, *Support study for the impact assessment on the review of the CPC Regulation*, 2012.

designated as eligible entities to submit external alerts.<sup>12</sup> Over the last two years, at the EU Level, BEUC submitted several external alerts to the CPC-Network (about airlines in the context of the COVID-19 crisis, TikTok, Nintendo, and WhatsApp). BEUC and its members took stock of the experience with the CPC external alert system and made several proposals to strengthen its effectiveness in a report published in February 2022.<sup>13</sup>

The CPC Regulation has contributed to strengthening the enforcement of consumer rules in cross-border transactions. It sets up different collaboration frameworks **depending on the geographical scope of the infringement**.

- **Mutual assistance:** the mutual assistance mechanism applies where an infringement concerns two Member States. It allows for a CPC authority to request information and enforcement measures from another CPC Authority located in another Member State.<sup>14</sup> The requested CPC Authority must respond to the request within a certain time period.
- **Coordinated actions:** in case of reasonable suspicions of widespread infringements (i.e., situations concerning at least three Member States) or widespread infringements with a Union dimension (i.e., situations concerning at least two third of the Member States and representing at least two third of the EU population), the CPC Regulation provides that the CPC Authorities concerned by the infringement and the Commission must inform each other without delay and launch a coordinated action. For widespread infringements, the CPC Authorities must by consensus appoint one CPC Authority concerned by the infringement to act as the coordinator. If the CPC Authorities are unable to reach a consensus on the identity of the coordinator or if the infringement is a widespread one with a Union dimension, the Commission acts as the coordinator.

**Compared to other EU enforcement models, the CPC model has several noteworthy characteristics:**

- **It does not expressly build on the “Country-of-Origin” principle.** The CPC Regulation does not provide that the CPC Authority(ies) coordinating the action must be the one(s) of the country where the trader is domiciled. The role of the coordinator can be endorsed by any “concerned authorities”. To identify the concerned authorities, “all relevant aspects of the infringements”<sup>15</sup> must be considered, including the place where the trader is established but also the location of the consumers harmed by the infringement. Recent examples of coordinated actions have shown that CPC Authorities have for instance opted for solutions where two CPC Authorities (or more) acted in tandem as co-coordinators. One CPC Authority may be the authority from the trader’s domicile, and it acts together with a CPC Authority from another country. For example, the action against TikTok was coordinated both by the Irish CPC Authority (TikTok’s European seat is in Ireland) and the Swedish CPC Authority. As a consequence, the CPC model differs from other EU enforcement models, such as the ones in place in the area of data protection with the European Data Protection Board (EDPB) or in the area of audiovisual media services with the European Regulators Group for Audiovisual Media Services (ERGA)<sup>16</sup>, where the leading enforcement authority is the one from the country where the trader is domiciled. The fact that the CPC framework does not follow the Country-of-Origin principle and allows for

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<sup>12</sup>[https://commission.europa.eu/document/download/19dec0ea-f288-41ff-8c53-50f0c252dc4f\\_en?filename=2022-06-08-list\\_of\\_entities\\_that\\_can\\_issue\\_external\\_alerts\\_national\\_level.pdf](https://commission.europa.eu/document/download/19dec0ea-f288-41ff-8c53-50f0c252dc4f_en?filename=2022-06-08-list_of_entities_that_can_issue_external_alerts_national_level.pdf)

<sup>13</sup> BEUC, *An unfinished journey - Consumer groups’ experience of CPC external alerts two years on*, February 2022([www.beuc.eu/position-papers/unfinished-journey-consumer-groups-experience-cpc-external-alerts-two-years](http://www.beuc.eu/position-papers/unfinished-journey-consumer-groups-experience-cpc-external-alerts-two-years)).

<sup>14</sup> The mutual assistance mechanism applies in case of “intra-union infringement”, meaning situations where the place of harm to the collective interests of consumers is different from the place where the responsible trader is located, where the act took place.

<sup>15</sup> Recital 28 CPC Regulation.

<sup>16</sup> ERGA *Memorandum of Understanding*, December 2020.

alternative solutions **is positive and must be preserved**. Several examples with the Country-Of-Origin principle have shown that the application of this principle can be a serious obstacle to an effective enforcement of rules and may cause frustration among consumers, consumer organisations and national enforcers.<sup>17</sup> It is noteworthy that some EU enforcement networks are also considering possible variations to the Country-of-Origin principle in order to circumvent these deadlocks.<sup>18</sup>

- **It is mostly a decentralised cooperation system where the European Commission has a limited role and no enforcement powers.** As such, the CPC model is different from other centralised EU enforcement models where the European Commission (or another EU body) may itself take enforcement measures, as is, for example, the case in the area of EU competition law.
- **Many substantive EU legislations in the area of consumer protection are European directives, meaning that there is still not a fully unified legal framework across Europe in many areas.** Member States have kept some leeway when transposing the rules into their national legislation and this has important consequences for the enforcement of EU rules as legislation – or its interpretation – may not be identical across all EU Member States. The CPC-Network must deal and cope with such a regulatory diversity among its members.

### 3. Enforcement challenges: enforcing rules with scarce resources in an increasingly complex digitalised world

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The enforcement of consumer protection rules faces nowadays an increasing number of obstacles. As shown in the table below, some of them result from the **nature of infringements**, some are related to the **identity of the infringers**. Others are more **systemic** and are triggered by the **diversity of the various existing enforcement cultures throughout Europe**. All of this contributes to an increasingly complex enforcement environment.

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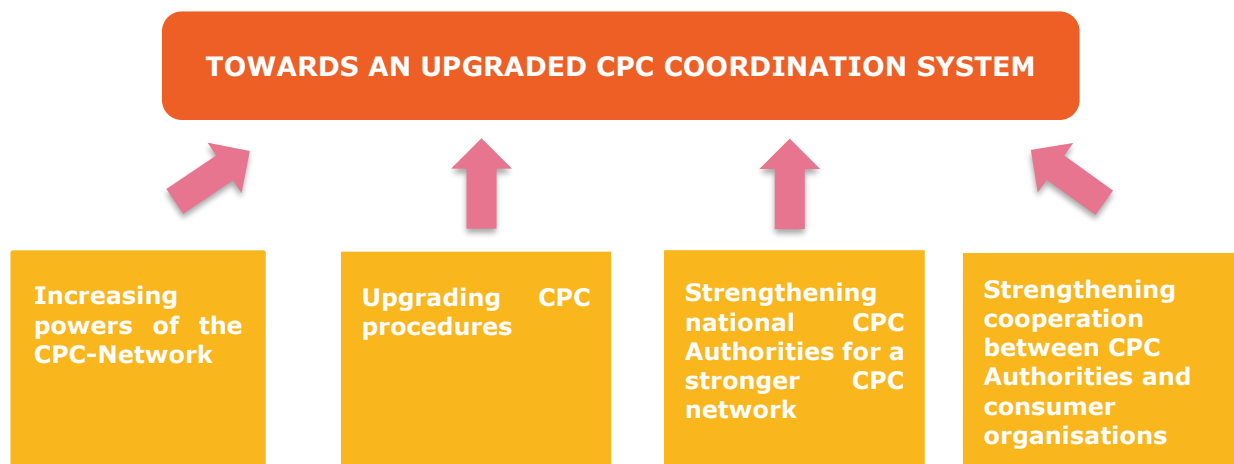
<sup>17</sup> BEUC, *The long and winding road - Two years of the GDPR: A cross-border data protection enforcement case from a consumer perspective*, 2020 ([www.beuc.eu/position-papers/two-years-gdpr-cross-border-data-protection-enforcement-case-consumer-perspective](http://www.beuc.eu/position-papers/two-years-gdpr-cross-border-data-protection-enforcement-case-consumer-perspective)). Furthermore, the German DPA told the press in 2020 that “none of the cross-border cases under new data protection rules [had] been addressed,” and that “this touche[d] largely on cases where the headquarters of the company is in Ireland – but not only ([www.irishtimes.com/business/financial-services/german-regulator-says-irish-data-protection-commission-is-being-overwhelmed-1.4159494](http://www.irishtimes.com/business/financial-services/german-regulator-says-irish-data-protection-commission-is-being-overwhelmed-1.4159494)).

<sup>18</sup> For instance, ERGA noted that (it) “could consider further in-depth discussion on possible variations to the country-of-origin approach within the course of its future works” (*Executive summary and conclusions of ERGA report on territorial jurisdiction*).



<b>Challenges to the enforcement of consumer rules</b>		
	<b>Issues</b>	<b>Consequences</b>
<b>Traders</b>		
<b>Pan-European traders</b>	Big companies with EU wide strategies and practices, particularly in the digital economy with possibilities to compartmentalize/ diversify practices throughout Europe.	Enforcers lack resources and often expertise to keep path with technological developments.  Discrimination between consumers depending on their place of domicile.
<b>Non-EU traders</b>	Traders operating outside Europe and targeting European consumers.	Lack of effective tools to force non-EU traders to comply with EU rules.
<b>Infringements</b>		
<b>Detection</b>	Consumers may not be aware that they are subject to law infringements /unfair commercial practices (in particular in the digital sphere).	Authorities or consumer organisations might not receive consumer complaints. Infringements are only detected during market studies or when the information is provided by whistle-blowers.
<b>Speed</b>	The infringement takes place within a limited time period only (e.g., a few weeks) whereas authorities need several months or years to react.	The intervention of authorities happens too late. Some enforcers may also be deterred from acting as the infringement might be seen as already belonging to the past.
<b>Multifaceted</b>	Infringements are not only relevant from a consumer law perspective but may also have relevance for other areas (data protection, financial services, etc).	Infringements may trigger the application of several pieces of legislation potentially pursuing different objectives.
<b>Enforcers</b>		
<b>Lack of capacity/ limited budgets</b>	Enforcers facing limited resources and capacity.	Necessity for authorities to enforce with scarce resources and to pick up their battles.
<b>Various enforcement cultures</b>	Consumer protection rules may be a matter of administrative, criminal, or civil law, depending on the Member States.  Some Member States may be eager to sanction traders (e.g., through fines). Conversely, others may prefer to have dialogues with traders (as imposing fines may also be seen as being risky for authorities as it entails the risks of traders challenging their decision before courts).	Difficulty in finding a common approach among authorities to address widespread infringement under the current CPC rules.
<b>Various procedural rules</b>	Depending on Member States, level of evidence and procedural rules may differ.	Difficulty in finding a common approach among authorities to address widespread infringement.
<b>Multiple enforcers</b>	(See above) infringements may be multifaceted with consequences for consumer, digital, audiovisual, financial services (and others) rules.	The case may be reviewed by several enforcers in parallel posing the risks of uncoherent decisions or of hesitation to act.

## 4. Towards stronger coordination for better law enforcement



### 4.1. Increasing the powers of the CPC-Network

#### 4.1.1. What is the issue?

In 2020, the European Commission presented the amended CPC Regulation as a way to give the EU “sharper teeth for consumer protection”.<sup>19</sup> So far, the results have been nuanced. On the one hand, in several cases, the CPC-Network has managed to reach meaningful results for consumers, for example through its action targeting several **airlines** in the context of the COVID-19 crisis.<sup>20</sup> Also, the action of the CPC-Network against Amazon Prime, which was triggered by an external alert coordinated by the Norwegian Consumer Council, led Amazon to change its cancellation practices.<sup>21</sup> On the other hand, the CPC model has also shown its limits on several occasions.<sup>22</sup> One striking example has been the Volkswagen Dieselgate scandal.<sup>23</sup> Another example has been the coordinated action against TikTok, which the European Commission and the CPC-Network closed in June 2022 while leaving some worrying issues open or unresolved.<sup>24</sup> Finally, the action against WhatsApp - made complex by a company which seems unwilling to cooperate with the CPC-Network - <sup>25</sup> has been running for more than a year and half without any clear developments.

<sup>19</sup>[https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-protection-cooperation-regulation\\_en](https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-protection-cooperation-regulation_en)

<sup>20</sup>[https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel\\_en#airline-cancellations](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en#airline-cancellations)

<sup>21</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4186](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4186)

<sup>22</sup> BEUC, *An unfinished journey - Consumer groups' experience of CPC external alerts two years on*, February 2022 ([www.beuc.eu/position-papers/unfinished-journey-consumer-groups-experience-cpc-external-alerts-two-years](http://www.beuc.eu/position-papers/unfinished-journey-consumer-groups-experience-cpc-external-alerts-two-years)).

<sup>23</sup>During the dialogue with the CPC Authorities, Volkswagen also refused to implement all the changes that the CPC Authorities had proposed. without for Volkswagen to have to face any consequences. In 2020 and 2021, the CPC-Network also sent two letters Volkswagen to request the car manufacturer to compensate all EU consumers affected by the Dieselgate scandal regardless of their location. Volkswagen however refused to make the requested move ([https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/dieselgate\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/dieselgate_en)

<sup>24</sup>[www.beuc.eu/press-releases/investigation-tiktok-closed-important-questions-unresolved-consumers-left-dark](http://www.beuc.eu/press-releases/investigation-tiktok-closed-important-questions-unresolved-consumers-left-dark)

<sup>25</sup>[https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-and-search-engines\\_en](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-and-search-engines_en)

#### 4.1.2. *The way forward*

##### ➤ **Establishing a role for the European Commission to address widespread infringements with a EU dimension**

The public enforcement of consumer rules remains essentially the responsibility of EU Member States. However, in the context of widespread infringements taking place simultaneously in several countries and affecting millions of consumers, such a fragmentation in the enforcement of consumer rules is not efficient. It creates gaps between countries and leeway for traders' opportunistic behaviour. In a previous evaluation of the CPC Regulation, several stakeholders were supportive of the Commission to play a more proactive role in the CPC coordination system, particularly with regards to widespread infringements with a Union dimension. To some extent, the amended CPC Regulation has strengthened the role of the Commission. For example, it has now the possibility to send alerts to the CPC Authorities when it has reason to believe that widespread infringements have occurred (and the Commission used this possibility in the context of the COVID-19 outbreak and airlines' infringements of passenger rights). The Commission may also itself endorse the role of coordinator in case of widespread infringement with a Union dimension<sup>26</sup>. However, despite these improvements, this is still not sufficient to ensure that widespread infringements with a Union dimension are adequately addressed.

**More centralisation in the enforcement of consumer protection rules is needed at the EU level to address widespread infringements with a Union Dimension. The CPC Regulation could establish a new role for the European Commission and build on a "variable geometry enforcement" model where national authorities and the European Commission would work in tandem depending on the seriousness and magnitude of the infringements. The Commission would intervene in specific circumstances (for widespread infringements with a Union dimension) and under strict conditions,** in particular when the size of the trader or the magnitude of the infringement make it more relevant and effective to address the problem in a centralised way at the EU level.<sup>27</sup> The CPC-network would then become the forum to decide whether the infringement should be addressed by the European Commission solely, by national authorities solely, or through a combination of the two options.

In this new framework, the European Commission would notably be entrusted with additional powers such as:

- **The possibility to launch and lead investigations** in coordination with the CPC Authorities.
- **The power to impose fines**, including when traders fail to comply in due time with the agreed commitments. This power would significantly strengthen the role of the CPC-Network when negotiating commitments with traders. Today, there is no possibility to impose fines against traders unwilling to cooperate unless the action is taken up at national level by one (or several) CPC Authority(ies). In practice however, this rarely materialises.

Importantly, this new role for the European Commission **would necessarily require giving the Commission sufficient resources and capacity** allowing it to perform its duties.

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<sup>26</sup>[https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en).

<sup>27</sup> In July 2022, the EDPB adopted a list of criteria to assess whether a cross-border case qualifies as a case of "strategic importance" for closer cooperation ([https://edpb.europa.eu/our-work-tools/our-documents/other/edpb-document-selection-cases-strategic-importance\\_en](https://edpb.europa.eu/our-work-tools/our-documents/other/edpb-document-selection-cases-strategic-importance_en)).

This new approach would contribute to ensuring coherence in the enforcement of consumer protection rules throughout Europe and would avoid high coordination costs among Member States. Here, some inspiration from other EU enforcement systems where the European Commission already plays a central role could be considered, such as the Digital Services Act (EU Regulation 2022/2065)<sup>28</sup>, the Digital Markets Act (EU Regulation 2022/1925),<sup>29</sup> or the enforcement of EU Competition rules (Articles 101 and 102 TFEU, Regulation 1/2003 and Directive 2019/1).<sup>30</sup>

### ➤ Clarifying the consequences of the *ne bis in idem* principle

According to the *ne bis in idem* principle, no one should be prosecuted or punished twice for the same unlawful act. This principle is (*inter alia*) enshrined in Art. 50 of the EU Charter of Fundamental Rights and in Art.4 of Protocol n°7 to the European Convention on Human Rights. The application of this principle has been further detailed by the case law of the Court of Justice of the European Union and the European Court of Human Rights.

The CPC Regulation provides that the *ne bis in idem* principle must be respected.<sup>31</sup> However, the CPC Regulation does not specify how it should apply within the scope of the CPC Regulation. Instead, it merely states that if a trader repeats an infringement covered by the CPC Regulation it should be considered to be a new infringement.<sup>32</sup> However, since this sentence clearly refers to repeated infringements, it does not provide any guidance whether CPC Authorities in different Member States may take enforcement measures against a trader for the *same* infringement. This uncertainty may hinder CPC Authorities in different Member States to take the necessary enforcement measures to protect consumers in their own Member State.

The Dieselgate litigation further questioned the application of this principle on the ground.<sup>33</sup> After the German authorities had imposed considerable fines on Volkswagen, several authorities in the EU suspended their investigations or prosecution against Volkswagen because they were unclear as to whether the *ne bis in idem* principle did not allow them to take any further enforcement measures against the car manufacturer. In January 2022, the Italian State Council requested the Court of Justice of the EU for a preliminary ruling on the question whether the fines imposed by German authorities against Volkswagen precluded Italian authorities from also taking enforcement measures against Volkswagen.<sup>34</sup>

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<sup>28</sup>The Digital Services Act gives the European Commission a primary role to enforce against Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSES).

<sup>29</sup> the European Commission is the sole enforcer of the DMA, in close cooperation with national authorities. The latter can launch national investigations and bring evidence to the attention of the European Commission to consider enforcement actions. The European Commission has the power to impose penalties, fines, commitments, and remedies on companies.

<sup>30</sup> The European Commission is the main body responsible for ensuring the correct application of EU competition rules and has wide-ranging inspection and enforcement powers. It has the power to investigate suspected anti-competitive conduct, to issue prohibition decisions, to impose fines, to require remedies and to accept legally binding commitments from companies to terminate suspected infringements. National competition authorities can also enforce EU competition law. With EU Directive 2019/1<sup>30</sup>, the competition enforcement model underwent an important upgrade in the system of parallel enforcement. Each competition authority can act independently, launch its own investigations, and take antitrust decisions. The European Commission and the national authorities cooperate closely through the European Competition Network (ECN) in order to determine which authority is well placed to investigate potential infringements (see Commission Notice on cooperation within the Network of Competition Authorities (2004/C 101/03), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52004XC0427%2802%29>)

<sup>31</sup> Recital 29 CPC Regulation.

<sup>32</sup> *idem*.

<sup>33</sup> BEUC, *Seven years of Dieselgate – a never-ending story*, December 2022, [www.beuc.eu/position-papers/seven-years-dieselgate-never-ending-story](http://www.beuc.eu/position-papers/seven-years-dieselgate-never-ending-story)

<sup>34</sup> Case C-27/22, Volkswagen Group Italia (lodged on 11 January 2022).

The revised CPC Regulation should clarify that the *ne bis in idem* principle does not prevent CPC Authorities in different Member States from taking enforcement measures against the same trader for the same infringement if the enforcement measures of the different CPC Authorities only aim at protecting the consumers within their national borders.

➤ **Closing coordinated actions only once commitments are fully implemented by traders and have brought satisfactory results**

The CPC Regulation provides that CPC Authorities close a coordinated action only once they conclude that the infringement has ceased or has been prohibited in all Member States concerned or that no infringement has been committed.<sup>35</sup> **However, it is not clear as of which moment an infringement is to be considered as “ceased”.** For instance, what is the relevant starting point to consider in a situation where the trader has been ordered by a common position of the CPC-Network to modify its terms and conditions: is it the moment the modified terms and conditions enter into force? Is it the moment when the CPC Authorities have reviewed the modifications made by the trader and conclude that the changes indeed bring the terms and conditions in full compliance with the law? Likewise, what would be the relevant moment if a trader must ensure remedy to individual consumers to comply with the law? Would it be the moment the trader starts, for instance, reimbursing harmed consumers? or would it be when all affected consumers have effectively obtained remedies?

The revised CPC Regulation should state that **the CPC-Network may only close a coordinated action once it has reviewed the measures taken by the concerned trader (or the commitments made) and found that these measures restore full compliance with the law.** Furthermore, the closure of a coordinated action should be made public and provide reasons why the CPC-Network considers that orders or commitments have fully been implemented.

➤ **Making CPC common positions an instrument for follow-on private actions**

Consumer rights may be enforced via public enforcement or via private enforcement, (*i.e.*, through individual court actions or representative actions as provided by the Representative Action Directive. It is commonly agreed that a sound enforcement of consumer protection rules jointly requires a mix of public and private enforcement. In order to ensure consistency, there should be bridges between the two. **CPC common positions should facilitate follow-on actions by consumer organisations.** The CPC Regulation should provide that the common positions adopted by CPC Authorities in the context of coordinated actions, or a decision issued by the European Commission in case of widespread infringements (see above), constitute **clear evidence that an infringement has taken place.**

It is noteworthy that Article 15 of the Representative Actions Directive provides that the final decision of an administrative authority can be used as evidence in the context of any other action seeking redress measures against the same trader for the same practice. A similar measure for CPC common positions would greatly facilitate follow-on consumer claims and ensure coherence in the enforcement of rules.

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<sup>35</sup> Art. 22 (1) CPC Regulation.

### Recital 64 of Representative Actions Directive

“Member States should ensure that the final decision of a court or administrative authority of any Member State concerning the existence of an infringement harming the collective interests of consumers can be used by all parties as evidence in the context of any other action seeking redress measures against the same trader for the same practice before their courts or administrative authorities. In line with the independence of the judiciary and the free evaluation of evidence, this should be without prejudice to national law on evaluation of evidence”.

### ➤ Enforcing consumer protection rules against non-EU traders

#### Stricter actions against non-compliant third-party traders

The CPC Regulation aims at facilitating cross-border enforcement within the EU. However, it provides limited means in case of infringements caused by non-EU traders. As with any EU trader, CPC Authorities may enter into a dialogue with third-country traders infringing the rules and seek commitments. If the third-country trader is unwilling to cooperate, CPC Authorities may use their enforcement powers. However, if the trader does not follow the order, there is almost nothing authorities can do. This is because authorities may only enforce their orders within their national borders. For instance, CPC Authorities will have difficulties to enforce an order imposing a fine against a third-country trader when the latter neither has an establishment nor asset in the EU that the authorities could seize.

Under the CPC Regulation, CPC Authorities may take measure to restrict access to the traders' websites.<sup>36</sup> When third-country online traders engage in unfair commercial practices, **CPC Authorities should more systematically use the enforcement powers listed under Art.9(4)g of the CPC Regulation**, as they may be particularly deterrent and effective to ensure compliance, including from non-EU traders. This is what the French CPC Authority did against the US-based online marketplace Wish.com in Winter 2021 (see below).

#### **Powers of CPC Authorities in the digital world - Art.9(4)(g) CPC Regulation**

Competent authorities shall have at least the following enforcement powers: (...)

Where no other effective means are available to bring about the cessation or the prohibition of the infringement covered by this Regulation and in order to avoid the risk of serious harm to the collective interests of consumers:

- the power to remove content or to restrict access to an online interface or to order the explicit display of a warning to consumers when they access an online interface;
- the power to order a hosting service provider to remove, disable or restrict access to an online interface; or
- where appropriate, the power to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it;

including by requesting a third party or other public authority to implement such measures.

<sup>36</sup> Art. 9(4)(g)(ii) CPC Regulation.



### **French CPC Authority orders the de-listing of products sold by Wish.com from several search engines in France**

In 2020 and 2021, [investigations led by the French consumer Authority \(DGCCRF\)](#) revealed that the US e-commerce platform Wish.com distributed many unsafe products. For example, 95% of the electrical devices analysed turned out to be non-compliant, and 90% of them were dangerous. The DGCCRF ordered Wish.com to comply with the law.

As Wish.com failed to take the requested corrective measures, the DGCCRF ordered the de-listing of the products sold by Wish.com from the online search engines in France. Wish unsuccessfully tried to challenge that order.

Before the DGCCRF's measure, Wish.com ranked 8<sup>th</sup> in the Top-15 of the most visited websites in France. Notably because of that order, Wish.com today no longer appears in the Top-20 most visited websites in France, [according](#) to the French e-commerce association.

### *Strengthening cooperation with non-EU Authorities*

Many CPC Authorities exchange information, discuss best practices and coordinate enforcement measures with their counterparts outside the EU via the International Consumer Protection and Enforcement Network (ICPEN). However, this network does not provide formal instruments to facilitate enforcement measures against third-country traders. The CPC Regulation states that the EU should cooperate with third countries in the areas covered by the CPC Regulation.<sup>37</sup> To this end, **the EU may conclude cooperation agreements with third countries, including the exchange of information and mutual assistance.**<sup>38</sup> Agreements between consumer authorities of different states exist for instance between the US and the UK<sup>39</sup> or between the US and Australia.<sup>40</sup> However, the EU has not yet concluded any such cooperation agreements with third countries. There is a cooperation dialogue between the EU and the US focusing on enforcement, but it is only informal.<sup>41</sup> **So, for the time being, the EU does not have any robust means to act against third-country traders.** BEUC as well as US consumer groups would welcome a transition from an informal dialogue to a formal cooperation agreement between the EU and the US.

The EU has already concluded cooperation agreements in other consumer protection areas such as product safety. There is a successful cooperation agreement with Canada<sup>42</sup> that resulted in concrete joint actions to protect consumers, and soon there should be an agreement with New Zealand.<sup>43</sup> Therefore, the European Commission should now conclude enforcement cooperation agreements with relevant third countries.<sup>44</sup> **In particular, it is essential that the CPC-Network continue and strengthen its collaboration with the UK Competition and Markets Authority (CMA). Consumers would benefit from such a cooperation, as the EU and UK markets remain closely intertwined.**

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<sup>37</sup> Art 32(1)1 CPC Regulation.

<sup>38</sup> Art 32(1)2 CPC Regulation.

<sup>39</sup>[www.ftc.gov/news-events/news/press-releases/2019/03/ftc-signs-memorandum-understanding-united-kingdoms-competition-markets-authority-strengthen-consumer](http://www.ftc.gov/news-events/news/press-releases/2019/03/ftc-signs-memorandum-understanding-united-kingdoms-competition-markets-authority-strengthen-consumer).

<sup>40</sup>[www.ftc.gov/news-events/news/press-releases/2000/07/united-states-australia-sign-two-agreements-enhance-cooperation-consumer-protection-matters](http://www.ftc.gov/news-events/news/press-releases/2000/07/united-states-australia-sign-two-agreements-enhance-cooperation-consumer-protection-matters).

<sup>41</sup>[https://commission.europa.eu/document/download/cd27b361-8ae3-4e02-b9a6-7be7542df55a\\_en?filename=joint\\_ftc-ec\\_statement\\_informal\\_dialogue\\_consumer\\_protection\\_issues.pdf](https://commission.europa.eu/document/download/cd27b361-8ae3-4e02-b9a6-7be7542df55a_en?filename=joint_ftc-ec_statement_informal_dialogue_consumer_protection_issues.pdf)

<sup>42</sup>[https://commission.europa.eu/document/download/8657b2bb-27c8-4338-aa18-abf69b576baf\\_en?filename=sgned\\_agreement\\_en.pdf](https://commission.europa.eu/document/download/8657b2bb-27c8-4338-aa18-abf69b576baf_en?filename=sgned_agreement_en.pdf)

<sup>43</sup>[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/agreement-explained\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/agreement-explained_en)

<sup>44</sup> Art. 32 CPC Regulation.

This cooperation should not be hindered by the tensions over the implementation of the agreements with the UK.<sup>45</sup>

### ➤ Ensuring that the Annex of the CPC Regulation is updated

The CPC Regulation applies to 28 different pieces of EU legislation listed in its Annex and protecting consumers' interests. The CPC Annex defines the scope of intervention of the CPC-Network. Since its adoption, the Annex has been updated several times to add new pieces of legislation. The CPC Annex covers "traditional" EU consumer legislation, such as EU Directive 2005/29/EC on unfair commercial practices or EU Directive 93/13/EEC on unfair contract terms, but also legislation with relevance in other areas, such as health,<sup>46</sup> financial services,<sup>47</sup> or digital topics.<sup>48</sup>

The annex of the CPC Regulation should be reviewed to respond to several needs:

First, EU acts that are relevant to consumers **in the digital area** should be added in their entirety. For example, EU Directive 2018/1808 (the Audiovisual Media Services Directive) is on the CPC Annex but only as far as some of its articles are concerned. Specifically, its articles on video-sharing platforms (Art. 28a and 28b) are still excluded from the CPC Annex. As a consequence, BEUC could not rely on these provisions for its CPC alert against TikTok, although they would have been relevant in that context.

Second, EU acts (and upcoming EU legislative proposals) protecting the interests of consumers **in the green economy** should be added to the CPC Annex. In particular, this will be the case of the **upcoming new EU legislation on Green Claims** expected in 2023.

Third, whereas there is no need to add EU legislation when there are enforcement structures already in place ensuring the application of the rules (e.g., data protection Authorities applying the General Data Protection Regulation and whose tasks are coordinated at the EU level by the EDPB), there is a need to add EU legislation into the annex of the CPC Regulation **where there is still a lack effective enforcement structure. In such cases, the CPC-Network may serve as a safety net ensuring that there are no enforcement gaps.** This is for instance the case with EU Regulation 1935/2004 on food-contact material. This EU legislation guarantees consumers the right to safe food-contact products and materials. It also grants consumers the right to have correct information (i.e., no misleading claims)<sup>49</sup> and the right to have information on how to use a product correctly.<sup>50</sup> Although clearly relevant for consumers, this EU legislation is currently absent from the CPC Annex.

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<sup>45</sup>[https://tacd.org/wp-content/uploads/2021/12/20211206-FINAL\\_TACD-recommendations-on-EUUS-cooperation-agenda-2021.pdf](https://tacd.org/wp-content/uploads/2021/12/20211206-FINAL_TACD-recommendations-on-EUUS-cooperation-agenda-2021.pdf)

<sup>46</sup> Directive 2001/83/EC on the Community code relating to medicinal products for human use.

<sup>47</sup> Directive 2002/65/EC concerning the distance marketing of consumer financial services; Directive 2014/92/EU on the comparability of fees related to payment accounts.

<sup>48</sup> Regulation 2017/1128 on cross-border portability of online content services in the internal market.

<sup>49</sup> Art. 3.2 of Regulation 1935/2004.

<sup>50</sup> Art. 15 of Regulation 1935/2004. The enforcement of the FCM Regulation is in general weak, not sufficiently effective, and considered a low priority, as documented in the 2022 REFIT evaluation. Coordinated enforcement actions usually occur following a Commission recommendation to a Member State on what to enforce. Neither the Commission nor the Member States systematically report on the outcome of such actions. The Commission is working on revising the FCM legislation, including an aim to strengthen enforcement (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022SC0163&from=EN>)



## 4.2. Upgrading CPC procedures

### 4.2.1. What is the issue?

Several problems still undermine the effectiveness of CPC procedures. There are notably high coordination costs given that CPC Authorities have to reach a consensus during their assessment of the contentious practices. In parallel, infringements – in particular those occurring in the digital space - may only take place within a short period of time.

### 4.2.2. The way forward

#### ➤ **Facilitating discussion on applicable rules when national legislation comes into play in widespread infringements**

The CPC-Network seeks to coordinate the enforcement of consumer protection rules. However, many of these rules come from European directives. As such, they have not been transposed nor are interpreted in the same way across Europe.<sup>51</sup>

The CPC Regulation does not specify the national law(s) that CPC Authorities must apply to deal with widespread infringements. Therefore, each CPC Authority assesses the practice in light of its national rules. The assessment of a same practice through the lens of different national legislations can lead to different interpretations and outcomes, and therefore considerably limit (if not undermine) CPC coordinated actions. To avoid lengthy coordination and possible disagreements on the interpretation of the rules **when dealing with widespread infringements, CPC Authorities should not engage in the burdensome task of comparing all national rules but merely establish that the “floor” of protection as provided for by the EU legislation listed in the CPC Annex has not been complied with.** This would considerably facilitate CPC-actions in the context of widespread infringements.

#### ➤ **Establishing a common procedural framework for widespread infringements with a Union dimension**

There is a need to establish procedural foundations in each Member State to facilitate coordination at the EU level for widespread infringements. This common procedural framework should also consider the new role that would be given to the European Commission to address widespread infringements with a EU dimension (see above). Establishing such a common procedural framework can significantly contribute to improve **the effectiveness of CPC actions and would facilitate coordination between CPC Authorities and the European Commission.**

#### ➤ **Strengthening the possibility to address systemic and sector-wide problems**

CPC Authorities may monitor markets via “sweeps”, which are evidence-gathering exercises conducted where market trends (or other indicators) suggest that an infringement of EU law may be taking place.<sup>52</sup> Yet the CPC procedure for coordinated actions remains essentially geared towards “the trader responsible for the widespread infringement” but does not explicitly provide for a possibility to launch coordinated actions to address problematic practices **concerning a sector as a whole.** For example, this could be the case of a specific misleading green claim that would be commonly used by

<sup>51</sup> see e.g., H.-W. Micklitz, “The full harmonization dream”, *EuCML*, 4/2022, pp.117-168.

<sup>52</sup>e.g., in 2022 the European Commission and the CPC Authorities conducted “mini sweeps” on car rental intermediaries and in 2021, a sweep on online consumer reviews [https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en)

several operators in a given sector. A noteworthy exception was the action against airlines during the COVID-19 outbreak where the CPC coordinated actions targeted several airlines for unfair commercial practices.

Facilitating sector-wide coordinated actions could start by giving the entities eligible to submit external alerts the possibility to report sectorial harmful practice on the Internal Market Information System ( "IMI Platform").<sup>53</sup> Currently, the IMI platform does not allow the entity submitting the alert to indicate that the infringement is a sector-wide problem. Instead, the external entity must each time creates separate alerts (one per trader) to report exactly the same problem. This multiplies the number of alerts and make them more difficult to process for CPC Authorities.

### ➤ **Striking the right balance between transparency and confidentiality**

#### *Making transparency the default option in CPC procedures*

It has long been recognised and documented that increasing transparency is essential for building trust. The CPC Regulation states that confidentiality is justified by the need to ensure that investigations are not compromised, and that the reputation of traders is not unfairly harmed. Yet it is equally important to improve transparency and readability on the functioning of the CPC-Network. Under the CPC Regulation, transparency is an option but not a mandatory feature. It contrasts with the practices of other national CPC Authorities (e.g., the *Autorità Garante della Concorrenza e del Mercato* - AGCM in Italy), which regularly publishes information on their websites.

#### **CMA's general approach to transparency in the UK (2020)**

"The CMA's experience of consumer enforcement cases is that there is a clear public interest in the transparency of such work. Sharing information about its consumer cases – including, where appropriate, the names of parties – can facilitate the performance of the CMA's functions by, among other things:

- encouraging business and consumers to come forward with information that can assist the CMA's investigation and protection of the public in appropriate cases;
- enhancing consumer and business understanding of when the CMA does, and does not, consider it appropriate to take enforcement action in relation to consumer law infringements;
- keeping the public informed of the progress of a case, including to make clear when businesses in a sector are not under investigation, and
- developing public confidence in consumer markets and the consumer protection regime as a whole, by demonstrating how the CMA is acting to ensure that consumer law is complied with."

Under the CPC Regulation, Authorities may publish information about some procedural steps, such as common positions,<sup>54</sup> commitments proposed by traders,<sup>55</sup> orders against traders or final decisions.<sup>56</sup> However, CPC Authorities are not under the obligation to do so. Transparency should become the default option for the CPC-Network and the CPC-Network should justify when it decides not to disclose certain information. CPC Authorities should publish relevant procedural steps, such as the decision to open investigations,

<sup>53</sup> IMI is an online tool facilitating exchanges of information between public authorities involved in the implementation of EU law. IMI helps authorities to fulfil their cross-border administrative cooperation obligations in multiple Single Market policy areas. Entities eligible to send external alerts have also access to some functionalities of the IMI platform.

<sup>54</sup> Art. 19 (5) CPC Regulation.

<sup>55</sup> Art. 20(2) CPC Regulation.

<sup>56</sup> Art. 9(7) CPC Regulation.

common positions, proposed and agreed commitments, orders against traders and decisions to close coordinated actions. In this regard, inspiration could be taken from other EU coordination networks, such as the European Data Protection Board (EDPB), which (among other things) publishes the agenda and minutes of its meetings or their responses to public letters.

#### Transparency on enforcement priorities

The CPC Regulation provides that every two years Member States should exchange information about their activities conducted in the past two years and propose common enforcement priorities for the next two years.<sup>57</sup> The European Commission must draw up an overview of the past activities and publish it.<sup>58</sup> However, the CPC Regulation does not require the European Commission to publish the upcoming priorities of the CPC-Network.<sup>59</sup>

The European Commission should publish the agreed common enforcement priorities. Inspiration here could be drawn from the practice of several CPC Authorities at national level, such as in the Netherlands where the Authority for Consumers and Markets (ACM) already publishes its yearly priorities on its website.<sup>60</sup>

#### Transparency of CPC common positions

CPC Authorities must set out the outcome of their investigations and the assessment of the infringement in a common position when they coordinate their investigations. However, this may only happen “where appropriate”.<sup>61</sup> What is deemed “appropriate” is still very unclear. The CPC Regulation also provides that the CPC Authorities may negotiate commitments with traders only on the basis of those common positions.<sup>62</sup> The CPC Regulation furthermore states that Authorities must publish common positions (or parts thereof) but again, only “where appropriate”.<sup>63</sup>

Out of the 20 coordinated actions appearing on the website of the European Commission,<sup>64</sup> common positions have been published in only a very limited number of cases.<sup>65</sup> Five common positions were published under the previous version of the CPC Regulation, which did not contain any provisions on common positions or their publication. Only two common positions (on Shopify in 2022 and COVID-19 related scams on online platforms in 2020) have been published since the entry into application of the current version of the CPC Regulation. In some coordinated actions, the CPC-Network only published the commitments agreed with the traders<sup>66</sup> or only factsheets/summaries.<sup>67</sup>

It would be beneficial for all stakeholders if the CPC Authorities could adopt and publish common positions in all coordinated actions, regardless of whether the investigations confirmed the existence of infringements or not. **This is because CPC common**

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<sup>57</sup> Art. 37(1) CPC Regulation.

<sup>58</sup> Art. 37(2) CPC Regulation.

<sup>59</sup> Art. 37(4) CPC Regulation.

<sup>60</sup> [www.acm.nl/en/about-acm/mission-vision-strategy/our-agendas](http://www.acm.nl/en/about-acm/mission-vision-strategy/our-agendas)

<sup>61</sup> Art. 19(3) CPC Regulation.

<sup>62</sup> Art. 20(1) CPC Regulation.

<sup>63</sup> Art. 19(5) CPC Regulation.

<sup>64</sup> [https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions_en).

<sup>65</sup> The CPC-Network published common positions for the following coordinated actions: in-app-purchases (2013 and 2014), social network (2016), Dieselgate (2017), AirBnB (2018), Covid-19 online scams (2020), Shopify (2022).

<sup>66</sup> See (e.g.) commitments agreed with Booking, [https://ec.europa.eu/info/sites/default/files/live\\_work\\_travel\\_in\\_the\\_eu/consumers/documents/eu-wide\\_commitments\\_proposed\\_by\\_booking.com\\_.pdf](https://ec.europa.eu/info/sites/default/files/live_work_travel_in_the_eu/consumers/documents/eu-wide_commitments_proposed_by_booking.com_.pdf), and Expedia, [https://ec.europa.eu/info/sites/default/files/expedia\\_commitments.pdf](https://ec.europa.eu/info/sites/default/files/expedia_commitments.pdf).

<sup>67</sup> See (e.g.) summaries of the commitments agreed with Parship: [https://ec.europa.eu/info/sites/default/files/parship\\_cpc\\_factsheet.pdf](https://ec.europa.eu/info/sites/default/files/parship_cpc_factsheet.pdf).

**positions have important guiding and educative functions.** For traders, courts, lawyers, consumer organisations and other interested stakeholders, it is important to know the facts the investigations have brought to light, how the CPC Authorities interpreted the applicable rules and why the investigations did or did not find an infringement. For instance, BEUC referred to past CPC common positions in the context of its external alert against TikTok to illustrate that its interpretation of the Unfair Commercial Practices Directive was in line with the view of the CPC-Network.<sup>68</sup>

### ➤ **Adapting the action of the CPC-Network to the speed of infringements**

In several cases, the CPC-Network has taken up to several months – if not years - to react to infringements. With regard to the external alert against WhatsApp, it took the CPC-Network six months after BEUC issued its alert to announce the start of a dialogue with the company. With regard to the external alert against TikTok, the date the CPC-Network started its dialogue with the trader is publicly not known but the results of this dialogue were ultimately published 16 months after BEUC issued the alert. Given that the infringements - in particular those happening in the digital area - may cause harm to millions of consumers simultaneously, the action of the CPC-Network **may come too late.**

**An accelerated procedure should be introduced to allow the swift adoption of final enforcement measures in case of urgency.** urgency could for instance be justified in situations where there are reasons for the European Commission or the CPC Authorities to believe that the infringement may cause significant harm to a large number of consumers. Here, inspiration could be drawn from the urgency procedure foreseen under Art. 66 GDPR, which allows an accelerated adoption not only of interim measures but also an accelerated adoption of final measures in case of exceptional circumstances and urgency.<sup>69</sup>

### ➤ **Strengthening cooperation with other enforcement networks**

An ever-increasing number of infringements – in particular those taking place in the digital sphere – are multi-faceted and have consequences not only from a consumer law point of view but also for other sectors. One example is the external alert against TikTok launched by BEUC and 18 of its members in February 2021, which addressed issues related to consumer law but also data protection and audiovisual laws.

The CPC Regulation does not foresee any cooperation between the CPC-Network and other EU enforcement networks. Only in case of certain infringements relating to financial services, the rules provides that the CPC-Network shall invite the European Banking Authority (EBA) to act as an observer of the proceedings.<sup>70</sup> In recent years, the CPC-Network has taken steps to progressively engage with other enforcement networks (in particular, with data protection authorities), including on specific joint projects.<sup>71</sup> Since 2017, the European Commission has also organised annual workshops for the CPC-Network and the EDPB to discuss topics of common interest.<sup>72</sup> However, from an enforcement point of view, this work should be strengthened and accelerated.

**Recent EU legislative proposals have stressed the need to overcome silo approaches.** For instance, the AI Act proposal<sup>73</sup> provides that AI supervisory authorities must report to competition authorities any information that may be of potential interest

<sup>68</sup> [www.beuc.eu/sites/default/files/publications/beuc-x-2021-012\\_tiktok\\_without\\_filters.pdf](http://www.beuc.eu/sites/default/files/publications/beuc-x-2021-012_tiktok_without_filters.pdf).

<sup>69</sup> Art. 66 GDPR.

<sup>70</sup> Art. 23(3) CPC Regulation.

<sup>71</sup> [https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/consumer-protection-cooperation-network\\_en#data-protection](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/consumer-protection-cooperation-network_en#data-protection)

<sup>72</sup> [https://edpb.europa.eu/our-work-tools/support-cooperation-and-enforcement/international-cooperation-cooperation-other\\_en](https://edpb.europa.eu/our-work-tools/support-cooperation-and-enforcement/international-cooperation-cooperation-other_en)

<sup>73</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar:e0649735-a372-11eb-9585-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:e0649735-a372-11eb-9585-01aa75ed71a1.0001.02/DOC_1&format=PDF).

for the application of competition rules.<sup>74</sup> The necessity to avoid silo approaches was also emphasised in September 2022 by Advocate General Rantos of the Court of Justice of the European Union in case C-252/21 Meta Platform. The Advocate General highlighted that “while a competition authority does not have jurisdiction to rule on an infringement of the GDPR, **it may nevertheless, in the exercise of its own powers, take account of the compatibility of a commercial practice with the GDPR**”. The Advocate General further stressed that “the compliance or non-compliance of that conduct with the provisions of the GDPR may, in the light of all the circumstances of the case, be an important indication of whether that conduct amounts to a breach of competition rules”.<sup>75</sup>

### **A cross-cutting approach to enforcement – the example of the *High-Expert Group* in the EU Digital Markets Act (*EU Regulation 2022/1925*)**

#### *Recital 93 DMA*

“In order to ensure coherence and effective complementarity in the implementation of this Regulation and of other sectoral regulations applicable to gatekeepers, the Commission should benefit from the expertise of a dedicated high-level group. It should be possible for that high-level group to also assist the Commission by means of advice, expertise and recommendations, when relevant, in general matters relating to the implementation or enforcement of this Regulation. The high-level group should be composed of the relevant European bodies and networks, and its composition should ensure a high level of expertise and a geographical balance. The members of the high-level group should regularly report to the bodies and networks they represent regarding the tasks performed in the context of the group and consult them in that regard”.

#### *Article 40 DMA -The High-Level group*

1. The Commission shall establish a high-level group for the Digital Markets Act (‘the high-level group’).
2. The high-level group shall be composed of the following European bodies and networks:
  - (a) body of the European Regulators for Electronic Communications;
  - (b) European Data Protection Supervisor and European Data Protection Board;
  - (c) European Competition Network;
  - (d) Consumer Protection Cooperation Network; and
  - (e) European Regulatory Group of Audiovisual Media Regulators.

<sup>74</sup> Art. 63(2) AI Act proposal, COM(2021) 206.

<sup>75</sup> Advocate General’s Opinion on case C-252/21 - Meta Platforms and Others (ECLI:EU:C:2022:704).  
[https://curia.europa.eu/jcms/jcms/p1\\_3863243/en/](https://curia.europa.eu/jcms/jcms/p1_3863243/en/)

As illustrated in the alert against WhatsApp, some practices can be addressed both from the angle of consumer protection (UCPD or UCTD) or from the angle of a *lex specialis* (e.g., the GDPR). The UCPD Guidance document makes it clear that “in general, the application of the UCPD is not per se excluded just because other EU legislation is in place which regulates specific aspects of unfair commercial practices”.<sup>76</sup> Too often proceedings before the different enforcement networks have taken place in parallel and have lacked mutual exchanges.

At national level, it is noteworthy that several CPC Authorities have progressively built their cooperation with other enforcers in a more or less formal way, from written cooperation agreements to taskforces and other joint projects:

Written cooperation agreements:

- In the **Netherlands**, the Dutch CPC Authority (*Autoriteit Consument & Markt – ACM*) has signed cooperation agreements with several Dutch Authorities (including the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) or the Dutch Financial Markets Authority (*Autoriteit Financiële Markten*). For example, the ACM and the Dutch Data Protection Authority have agreed to make “every effort to support and strengthen each other as much as possible by acting together in situations where cooperation enhances the effectiveness of the supervision of one or both organizations”. Among other things, the agreement organises exchanges of information and cooperation in case of concurrent powers.<sup>77</sup>
- In **France**, the consumer protection Authority (*Direction générale de la Concurrence, de la Consommation et de la Répression des fraudes - DGCCRF*) and the Data Protection Authority (*Commission nationale de l’informatique et des libertés - CNIL*) have signed a cooperation agreement to facilitate exchanges of information, to share their expertise and to conduct joint investigations. The protocol was amended in 2019 to consider new challenges and market evolutions.<sup>78</sup> In June 2022, the DGCCRF also signed a cooperation agreement with the French Authority in charge of supervising the banking and insurance sectors (*Autorité de Contrôle Prudentiel et de Résolution – APCR*).<sup>79</sup>

Ad hoc task forces:

- In the **Netherlands**, several market authorities<sup>80</sup> have set up a “Digital Regulation Cooperation Platform” to strengthen their oversight on digital topics. One of the objectives shared by the enforcers is “to invest collectively in knowledge and expertise and share these with each other”. They also collectively wish to ensure efficient and effective enforcement of compliance with rules and regulations (Dutch and European).<sup>81</sup>
- In **France**,<sup>82</sup> several French enforcement authorities have set up a task force to address COVID-19-related scams.<sup>83</sup> In 2022, the mandate of this taskforce was extended to

<sup>76</sup> Guidance on interpretation and application of Directive 2005/29/EC (2021/C 526/01), December 2021 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2805%29&qid=1640961745514>

<sup>77</sup> [www.acm.nl/en/about-acm/collaboration/national-cooperation](http://www.acm.nl/en/about-acm/collaboration/national-cooperation)

<sup>78</sup> [www.cnil.fr/fr/la-cnil-et-la-dgccrf-font-evoluer-leur-protocole-de-cooperation-pour-renforcer-la-protection-des](http://www.cnil.fr/fr/la-cnil-et-la-dgccrf-font-evoluer-leur-protocole-de-cooperation-pour-renforcer-la-protection-des)

<sup>79</sup> <https://acpr.banque-france.fr/communiquede-presse/lacpr-et-la-dgccrf-formalisent-le-cadre-de-leur-cooperation-dans-un-protocole-visant-renforcer-la>

<sup>80</sup> *i.e.*, the Dutch CPC Authority (ACM), the Dutch Authority for the Financial Markets, the Dutch Data Protection Authority, and the Dutch Media Authority

<sup>81</sup> [www.acm.nl/en/about-acm/cooperation/national-cooperation/digital-regulation-cooperation-platform-sdt](http://www.acm.nl/en/about-acm/cooperation/national-cooperation/digital-regulation-cooperation-platform-sdt)

<sup>82</sup> <https://acpr.banque-france.fr/communiquede-presse/lacpr-et-la-dgccrf-formalisent-le-cadre-de-leur-cooperation-dans-un-protocole-visant-renforcer-la>

<sup>83</sup> [www.economie.gouv.fr/dgccrf/escroqueries-financieres-le-parquet-de-paris-lamf-lacpr-et-la-dgccrf-cooperent-activement](http://www.economie.gouv.fr/dgccrf/escroqueries-financieres-le-parquet-de-paris-lamf-lacpr-et-la-dgccrf-cooperent-activement)



address all type of scams. In parallel, several enforcement authorities have also set up a joint taskforce focusing on social influencers.<sup>84</sup> Finally, in November 2022, the French DPA announced a collaboration with the French Competition Authority (*Autorité de la Concurrence*) in order to address digital topics more effectively and in a cross-cutting way.<sup>85</sup>

- In the **UK**, the Competition and Markets Authority (CMA), the Financial Conduct Authority (FCA), the Information Commissioners Office (ICO), and the Office of Communications (Ofcom) are working together and set up the Digital Regulation Cooperation Forum. They published their annual report<sup>86</sup> and their joint priorities for 2022-2023.<sup>87</sup>
- In **Norway**, the Norwegian consumer Authority, the Norwegian Data Protection Authority (*Datatilsynet*), and the Competition Authority (*Konkurransetilsynet*) have set up a “digital clearinghouse” as part of the Norwegian “AI Strategy”. The AI Strategy has highlighted that “AI affects many aspects of consumer's social life and will encompass different sectors of society. The use of AI raises legal issues under various sectoral legislation, particularly in competition, privacy and data protection, and consumer protection. It is therefore important that the relevant supervisory authorities cooperate on this issue.”<sup>88</sup>

#### Joint projects:

- In **Italy**, several authorities have worked together to better understand the functioning of markets. In May 2017, the Italian CPC Authority (*Autorità Garante della Concorrenza e del Mercato - AGCM*), the Communications Authority (*Autorità per le Garanzie nelle Comunicazioni*) and the Data Protection Authority (*Garante per la protezione dei dati personali*) launched a joint investigation in order to develop a thorough understanding of the impact of big Data on the protection of personal data, market regulation, consumer protection and antitrust law.<sup>89</sup>

Cooperation between enforcers from different areas is pivotal to ensure that no aspect of a cross-cutting infringement remains unaddressed. Beyond the exchange of information in individual cases, the revised CPC Regulation should task the European Commission to organise regular exchanges between the CPC-Network and other relevant EU enforcement networks with the aim of promoting a coordinated approach to cross-sector infringements in general.

### 4.3. Strengthening CPC Authorities for a stronger CPC-Network

#### 4.3.1. What is the issue?

The CPC-Network is a chain which is as strong as its weakest link. **As in all networks, the strength of the network is highly dependent on its component parts.** In particular, the effectiveness of the CPC Regulation depends on the ability of CPC Authorities to make use of their investigation and enforcement powers. Yet in practice and for the reasons set out below, the CPC-Network is far from being a homogenous network with authorities being all on an equal footing.

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<sup>84</sup> [www.amf-france.org/fr/actualites-publications/communiqués/communiqués-de-lamf/escroqueries-financieres-le-parquet-de-paris-lamf-lacpr-et-la-dgccrf-cooperent-activement-dans-la](http://www.amf-france.org/fr/actualites-publications/communiqués/communiqués-de-lamf/escroqueries-financieres-le-parquet-de-paris-lamf-lacpr-et-la-dgccrf-cooperent-activement-dans-la)

<sup>85</sup> [www.cnil.fr/fr/protection-des-donnees-et-droit-de-la-concurrence-marie-laure-denis-intervient-devant-le-college-de](http://www.cnil.fr/fr/protection-des-donnees-et-droit-de-la-concurrence-marie-laure-denis-intervient-devant-le-college-de)

<sup>86</sup> [www.gov.uk/government/publications/digital-regulation-cooperation-forum-annual-report-2021-to-2022](http://www.gov.uk/government/publications/digital-regulation-cooperation-forum-annual-report-2021-to-2022)

<sup>87</sup> [www.gov.uk/government/publications/digital-regulation-cooperation-forum-workplan-2022-to-2023](http://www.gov.uk/government/publications/digital-regulation-cooperation-forum-workplan-2022-to-2023)

<sup>88</sup> [www.regjeringen.no/en/dokumenter/nasjonal-strategi-for-kunstig-intelligens/id2685594/?ch=7](http://www.regjeringen.no/en/dokumenter/nasjonal-strategi-for-kunstig-intelligens/id2685594/?ch=7)

<sup>89</sup> [https://en.agcm.it/dotcmsdoc/pressrelease/Big%20Data\\_Guidelines%20and%20policy%20recommendations.pdf](https://en.agcm.it/dotcmsdoc/pressrelease/Big%20Data_Guidelines%20and%20policy%20recommendations.pdf).

- First, the financial, material, technical and human capacity of national consumer authorities diverge significantly across Europe.** Many Member States still do not finance their authorities sufficiently. In 2012, an external evaluation of the CPC Regulation pointed out problems with the availability of staff in CPC Authorities.<sup>90</sup> The average personnel per CPC authority was 4.4 persons. In most CPC Authorities less than 2 persons were employed to deal with mutual assistance issues. In 2016, the European Commission proposed that Member States include in their biennial enforcement plans a statement of the resources committed for the implementation of the CPC Regulation for the following two years,<sup>91</sup> but the EU legislator rejected this proposal. Therefore, the CPC Regulation does not provide transparency regarding the resources of CPC Authorities. Only informally some CPC Authorities have admitted to BEUC that their ability to apply the CPC Regulation can be limited due to scarce resources. Furthermore, **some authorities have developed technological tools to strengthen their surveillance of markets.** For instance, the French CPC Authority has set up an online tool allowing consumers to report scams and potential frauds to the Authority.<sup>92</sup> Yet similar online tools assisting the work of authorities **are not available in all Member States and for all authorities.** Obviously, problems relating to scarce resources are not limited to the area of consumer protection. This is a wider concern affecting enforcement as a whole both at the EU and national levels. For comparison purposes, in the area of data protection, a report published in September 2022 by the EDPB highlighted that a vast majority of national data protection Authorities take the view that they have not sufficient resources to carry out their tasks effectively. National data protection Authorities for instance highlighted insufficient resources to cope with an increasing number of complaints, to conduct on-site inspections or to develop the new necessary information systems.<sup>93</sup> Similarly, at the EU level this time, the chairs of the EDPB and the European Data Protection Supervisor (EDPS) highlighted that they were “deeply concerned that the 2023 budget, if not substantially increased, will be significantly too small to allow the EDPB and the EDPS to fulfil their tasks appropriately.”<sup>94</sup>
- Second, the Member States have established public bodies in charge of consumer protection, which all have different forms and structures.** Some bodies are fully independent (e.g., Italy, the Netherlands), some are linked to ministries (e.g., France, Belgium) and some are in-between. Unlike in the area of competition law, there is currently no obligation for Member States to establish consumer agencies with a certain level of independence.
- Third, CPC Authorities still do not have the whole panoply of powers to effectively address infringements and their effects on consumers.** The CPC Regulation lists the minimum powers that CPC Authorities must have.<sup>95</sup> This list contains, among other things, the power to order the cessation of infringements and the power to impose penalties.<sup>96</sup> Since the entry into force of EU Directive 2019/2161 on the better enforcement and modernisation of Union consumer protection rules ( the so- called “Omnibus” Directive)<sup>97</sup> in May 2022, CPC Authorities have now also the power to impose fines of up to 4% of the trader's turnover, or up to €2m where turnover information is not available, in case of coordinated actions against infringements of the Consumer Rights Directive, the Unfair Contract Terms Directive and the Unfair

<sup>90</sup> SWD(2016) 164, p.17.

<sup>91</sup> Art. 45(1)(g) proposal for a revised CPC Regulation, COM(2016) 283.

<sup>92</sup> <https://signal.conso.gouv.fr/>

<sup>93</sup> *Overview on resources made available by Member States to the Data Protection Supervisory Authorities*, 5 September 2022 [https://edpb.europa.eu/system/files/2022-09/edpb\\_overviewresourcesmade\\_availablebymemberstatestos2022\\_en.pdf](https://edpb.europa.eu/system/files/2022-09/edpb_overviewresourcesmade_availablebymemberstatestos2022_en.pdf)

<sup>94</sup> [https://edpb.europa.eu/news/news/2022/lack-resources-puts-enforcement-individuals-data-protection-rights-risk\\_en](https://edpb.europa.eu/news/news/2022/lack-resources-puts-enforcement-individuals-data-protection-rights-risk_en)

<sup>95</sup> Art. 9 CPC Regulation.

<sup>96</sup> Art. 9 (4) e, f, h CPC Regulation.

<sup>97</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L2161&qid=1662365725596>.



Commercial Practices Directive.<sup>98</sup> This increase in authorities' powers as introduced by the Omnibus Directive is welcomed and CPC Authorities should use this new possibility in the future to ensure that traders play by the rules. However, while the CPC Regulation provides the tools to stop infringements, it is still lacking **the possibility for authorities to secure redress for consumers**. In 2016, the European Commission proposed to include this possibility in the CPC Regulation,<sup>99</sup> but the provision did not make it to the final legislation. Instead, it was decided that CPC Authorities should have the power to receive remedial commitments from the concerned trader for the benefit of consumers, but only "on the trader's initiative".<sup>100</sup> Furthermore, the CPC Regulation states that CPC Authorities must have the power to inform harmed consumers about how to seek compensation under national law.<sup>101</sup> However, in practice, these two provisions do little to improve the situation of harmed consumers. The first one leaves it entirely in the hands of traders whether they want to offer remedies to consumers. As clearly shown by the Volkswagen Dieseltgate scandal, the two statements sent by the European Commission and the CPC-Network to the car manufacturer remained a dead letter with no effect on Volkswagen's behaviour. The second provision burdens the harmed consumers with the task to seek compensation via private enforcement. While already in national cases, where consumer and trader are located in the same Member State, many consumers shy away from going to court because of the costs, time and risks involved, individual redress action is even less likely to happen in case of cross border infringements covered by the CPC Regulation.

#### *4.3.2. The way forward*

##### ➤ **Strengthening CPC Authorities' independence**

Consumer authorities operate in complex environments which are at the crossroad of businesses, consumers, and public administration. Strengthening the independence of consumer authorities would strengthen their authority and their oversight of markets. The example of European competition law demonstrates the added value of having independent authorities. This includes the possibility to decide on budgets allocation to limit the risks of undue influence and to limit the risks of conflicts of interests.

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<sup>98</sup> Art. 1, 3, 4 Omnibus Directive.

<sup>99</sup> Art. 8(2)n proposal for a revised CPC Regulation, COM(2016) 283.

<sup>100</sup> Art. 9 (4) c CPC Regulation.

<sup>101</sup> Art. 9 (4) d CPC Regulation.

## Independence of enforcement authorities – the case of National Competition Authorities

### *Recital 5 of Directive 2019/1*

“(…) The lack of guarantees of independence, resources, and enforcement and fining powers for many NCAs to be able to apply Articles 101 and 102 TFEU effectively means that undertakings engaging in anti-competitive practices might face very different outcomes in proceedings, depending on the Member State in which they are active. They might be subject to no enforcement under Article 101 or 102 TFEU or they might only be subject to ineffective enforcement. For example, in some Member States, undertakings can escape liability for fines simply by restructuring”.

### *Recital 8 of Directive 2019/1*

“In order to ensure a truly common competition enforcement area in the Union that provides a more even level playing field for undertakings operating in the internal market and reduces unequal conditions for consumers, there is a need to put in place fundamental of independence, adequate financial, human, technical and technological resources and minimum enforcement and fining powers for applying Articles 101 and 102 TFEU and for applying national competition law in parallel to those Articles so that national administrative competition authorities can be fully effective.”

## ➤ Strengthening CPC Authorities' remedying powers

Some consumer protection authorities in Europe already have the power to secure redress for consumers or are currently considering this possibility. For example:

- In **Poland**, the Polish consumer protection Authority (*Urząd Ochrony Konkurencji i Konsumentów* - UoKiK) has the possibility to secure redress for consumers and has used this power several times. For example, the Polish Authority ordered several telecommunications operators to compensate consumers for the payment of undue fees relating to services added and billed automatically without the express consent of consumers.<sup>102</sup>
- in **Romania**, the President of the consumer protection Authority (*Autorităţii Naţionale pentru Protecţia Consumatorilor* - ANPC) ordered a bank to reimburse approx. 5.500 consumers who had been harmed by an unfair commercial practice for a total amount of approx. €21,7m. The order of the Authority's President was upheld by the Romania Court of Cassation in December 2022.<sup>103</sup>
- In the **United Kingdom**, discussions are taking place to strengthen the powers of the CMA. Among others, it is proposed to give the CMA the possibility to award damages to consumers.<sup>104</sup>

<sup>102</sup> [https://uokik.gov.pl/news.php?news\\_id=18471](https://uokik.gov.pl/news.php?news_id=18471)

<sup>103</sup> <https://anpc.ro/raiffeisen-bank-va-restitui-consumatorilor-in-total-in-urma-aplicarii-ordinul-presedintelui-anpc-o-suma-totata-de-aproximativ-217-milioane-de-euro-care-cuprinde-si-dobanda-legala-aferinta/>

<sup>104</sup> [www.gov.uk/government/news/new-rules-to-protect-consumers-hard-earned-cash](http://www.gov.uk/government/news/new-rules-to-protect-consumers-hard-earned-cash)

This possibility also exists in other countries worldwide. For instance, in the United States, the Consumer Financial Protection Bureau has the power to order persons or companies that have violated consumer financial protection law to compensate harmed consumers.<sup>105</sup> The CPC Regulation should include the possibility for CPC Authorities to secure redress/compensation for harmed consumers. **This step would importantly complement the system of representative actions by qualified entities as foreseen under the Representative Action Directive.**<sup>106</sup> Qualified entities only have limited capacity and may not be able to act in all cases where consumers are entitled to get redress. It is therefore important that CPC Authorities complement the work of qualified entities.

### ➤ **Strengthening CPC Authorities's resources and capacity**

The effectiveness of the CPC-Network highly depends on the ability of CPC Authorities to use their powers in practice. The CPC Regulation provides that Member States shall ensure that CPC Authorities have the necessary resources to apply the CPC Regulation.<sup>107</sup>

The European Commission should carefully monitor the national budgets allocated to CPC Authorities. For example, the European Commission could follow the example of the EDPB, which has published information several times on the resources and needs of national data protection authorities. In parallel, the European Commission should continue to invite CPC Authorities to invest more in enforcement at national levels and to map ongoing practices. For example, Luxembourg has recently upped its enforcement capacity and set up a specific structure with dedicated staff for the enforcement of consumer protection rules. The staff of this structure will evolve in the future depending on needs and priorities.

At the EU level, the European Commission has also taken welcomed steps to strengthen the technological capacity of CPC Authorities. For example, the European Commission has announced funding possibilities for capacity building activities of CPC Authorities. The Commission also announced its intent to set up an 'EU e-Lab' as a platform that will provide a common toolbox that CPC Authorities can use to carry out online investigations and monitor dangerous products sold online by deploying advanced IT solution.

At a broader level, **a reflection should urgently be launched on ways to better finance public enforcement, and to better finance the public enforcement of consumer protection rules in particular.** There is today an ongoing discussion on the financing of private enforcement (in particular, collective redress actions). These discussions should not eclipse the need to also have a proper discussion on the financing of public enforcement as this will be pivotal for well-functioning markets. Several financing options could be considered. For instance, **a percentage of the monetary fines imposed by authorities could be used to fund the budgets of authorities or specific programmes** (e.g., dedicated to market research and others).

Finally, and as stressed earlier, **the European Commission should also have sufficient resources and capacity** to be able to play the role proposed above to address widespread infringements with a Union Dimension. In that context, the Digital Services Act (EU Regulation 2022/2065) for instances provides that the Commission will charge providers of very large online platforms and of very large online search engines an annual "supervisory fee" to ensure the Commission has the necessary resources to perform adequate supervision at Union level.<sup>108</sup>

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<sup>105</sup> [www.consumerfinance.gov/enforcement/payments-harmed-consumers/](http://www.consumerfinance.gov/enforcement/payments-harmed-consumers/).

<sup>106</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020L1828>.

<sup>107</sup> Art. 4(7) CPC Regulation as adopted in 2004 and Art. 5(4) CPC Regulation as applicable today.

<sup>108</sup> Art.43

## 4.4. Strengthening the cooperation between CPC Authorities and consumer organisations

### 4.4.1. What is the issue?

The CPC Regulation provides that designated external entities (e.g., consumer organisations) may contribute to the work of the CPC-Network by submitting external alerts. However, CPC Authorities are not under the obligation to take any action to follow up on these alerts. Authorities also are not required to provide consumer organisations with any feedback whether their external alert has been taken up or not by the authorities. As a consequence, consumer organisations might not receive any information about their external alerts for an undefined period of time. Although authorities may need time to assess external alerts, the entity submitting the external alert also needs feedback. In the four external alerts BEUC issued, the CPC-Network informed BEUC informally about the progress of the proceedings. Although this informal practice is to be welcomed, it may not be fully satisfactory. Given the significant resources that consumer organisations invest to monitor markets, conduct legal analyses, collect evidence, and prepare external alerts, it is a question of good governance principles to inform consumer organisations about the status of the alerts they have submitted. In parallel, the CPC-Network and the European Commission under the current Regulation may already collect the views of consumer organisations on the commitments taken by traders and their implementation. These possibilities foreseen under the CPC Regulation are positive as consumer organisations are in daily contact with consumers and collect field evidence. Yet although this possibility exists in the law, its potential has not been unlocked yet. The last mile for better including external stakeholders is therefore today often still missing. More inclusiveness can be beneficial to the CPC-Network, and this will neither negatively impact the flexibility nor the coordination between authorities and the European Commission. Conversely, it will improve the effectiveness of CPC coordinated actions.

**An important milestone was reached in Autumn 2022, with the joint online workshop organised by BEUC, its members, the CPC-Network and the European Commission. It resulted in several operational conclusions for increasing the cooperation between the CPC-Network and consumer organisations in the context of external alerts.**<sup>109</sup> These developments were very much welcomed and may lead to improvements in the future. For example, the CPC-Network and BEUC notably agreed with the possibility for the entity submitting the external alert to present the alert and its underlying evidence directly to the CPC-Network during a hearing-like meeting. They also agreed on annual joint meetings to discuss (*inter alia*) enforcement priorities and topics of common interest where synergies between the different stakeholders could be sought.

### 4.4.2. The way forward

- **Giving procedural rights to entities submitting external alerts: towards an “EU super-complaint mechanism”**

#### Rights to be informed about the progress and outcome of CPC procedures

The CPC Regulation should establish a deadline to inform consumer organisations on the way the CPC-Network intends to follow up on their external alerts. Here, the CPC

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<sup>109</sup>[https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/cooperation-consumer-organisations\\_en](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/cooperation-consumer-organisations_en)

Regulation could draw some inspiration from the General Data Protection Regulation and the UK “**super complaints**” mechanism” as set down in the 2002 Enterprise Act:<sup>110</sup>

- **Under the GDPR**, authorities must inform complainants about the progress and the outcome of the proceedings “within a reasonable period”,<sup>111</sup> but no later than three months after a complaint has been lodged.<sup>112</sup>
- **In the UK, the “super-complaint” mechanism** allows “designated consumer bodies” (including our member organisation Which?) to make complaints to authorities when market problems are identified and significantly harm consumers’ interests. The authority is then required to investigate the complaint and to respond within 90 days. The response must state how it proposes to deal with the complaint, and whether the authority has decided to take any action (or to take no action) in response to the complaint. If it has decided to take action, the authority must explain the action it proposes to take.<sup>113</sup>

### ➤ **Engaging with consumer organisations during the different steps of CPC procedures**

The CPC Regulation states that authorities may seek the view of consumer organisations on common positions<sup>114</sup>, on commitments proposed by traders<sup>115</sup> and on whether a trader is properly implementing the commitments agreed with authorities.<sup>116</sup> However, authorities are not required to consult consumer organisations on these procedural steps. However, as highlighted above, **the CPC-Network and the BEUC network have discussed this issue in the context of a joint workshop organised in Autumn 2022 and agreed on several operational conclusions which may contribute to improving the situation in the future.**<sup>117</sup>

In the future, it will be important to give consumer organisations a right to be heard on all procedural steps where consultation under the current CPC Regulation is voluntary. This would allow consumer organisations to provide the CPC-Network with valuable insights facilitating its work. Here again, inspiration could be drawn from **EU competition law** where consumer organisations can be granted the right to be heard when the proceedings concern products or services used by consumers.<sup>118</sup> In practice, BEUC has been recognised several times as a complainant or a third-party in EU competition law cases, and has made use of this status to express views during the administrative proceedings and the subsequent court instances.

#### **Rights to be heard in EU competition law: Art.27(3) of EU Regulation 1/2003**

“If the Commission considers it necessary, it may also hear other natural or legal persons. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted. The competition authorities of the Member States may also ask the Commission to hear other natural or legal persons.”

<sup>110</sup> [www.legislation.gov.uk/ukpga/2002/40/section/11](http://www.legislation.gov.uk/ukpga/2002/40/section/11).

<sup>111</sup> Art. 57(1)(f) GDPR.

<sup>112</sup> Art. 78(2) GDPR

<sup>113</sup> Art. 11(2) UK Enterprise Act 2002.

<sup>114</sup> Art. 19(5) CPC Regulation.

<sup>115</sup> Art. 20(2) CPC Regulation.

<sup>116</sup> Art. 20(4) CPC Regulation.

<sup>117</sup> [https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/cooperation-consumer-organisations\\_en](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/cooperation-consumer-organisations_en)

<sup>118</sup> For antitrust cases, see Art. 27(3) Regulation 1/2003, Article 13 Regulation 773/2004, Art. 5 and Recital 12 Decision 2011/695. For merger cases see (inter alia) Art. 18(4) Regulation 139/2004.

The CPC-Network should be required to seek the views of consumer organisations and other relevant stakeholders on draft common positions so that their input can be considered before common positions are published. Furthermore, consumer organisations should be consulted on proposed commitments to provide feedback whether the commitments address all concerns raised in the alert. For instance, in the alert about TikTok, BEUC would have been able to draw the attention of the CPC-Network to the fact that the commitments proposed by TikTok failed to bring fully satisfactory responses to all the concerns raised in the external alert.

➤ **Continue strengthening the dialogue between BEUC, its members, the CPC-Network and the European Commission.**

As highlighted earlier, in October 2022 BEUC and the European Commission organised a joint BEUC-CPC workshop with the intent to explore ways to further improve future cooperation.<sup>119</sup> This initiative at the EU level was very much welcome and echo some initiatives also taken at national level. For instance, in a report published in 2021, the French Court of Auditors pointed out the lack of complementarity between the actions of the French consumer authority DGCCRF and those of consumer organisations.<sup>120</sup> As part of its Strategy for 2020-2025, the French consumer authority has decided to upgrade its relations with consumer organisations. Ultimately, cooperation can take many different forms and may happen in a more or less formal or structured way, for instance via cooperation agreements (as it is for instance the case between the Dutch CPC Authority and Consumentenbond or between the Greek consumer organisations and the Greek Competition Authority)<sup>121</sup>, via a set of broad principles (like those agreed between BEUC and the European Commission) or via joint ad hoc projects.

**Ultimately, regardless of its forms and how this is done, what matters is that cooperation materialises on the ground to strengthen the enforcement of consumer protection rules and to ensure that all EU consumers are well protected everywhere in Europe.**

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<sup>119</sup> [https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/cooperation-consumer-organisations\\_en](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/cooperation-consumer-organisations_en)

<sup>120</sup> [www.ccomptes.fr/fr/publications/letat-et-les-associations-de-defense-des-consommateurs](http://www.ccomptes.fr/fr/publications/letat-et-les-associations-de-defense-des-consommateurs).

<sup>121</sup> [www.epant.gr/en/enimerosi/press-releases/item/1423-press-release-memoranda-of-cooperation-between-the-hellenic-competition-commission-and-consumer-associations.html](http://www.epant.gr/en/enimerosi/press-releases/item/1423-press-release-memoranda-of-cooperation-between-the-hellenic-competition-commission-and-consumer-associations.html)

