

The Consumer Voice in Europe

Additional response to the consultation on the review of Consumer Protection Cooperation (CPC) Regulation

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Strengthening of the enforcement powers

We believe it crucial that enforcement is strengthened in respect of both traditional cross-border infringements and, even more so for those of EU-level relevance.

It is important to ensure all the authorities in the CPC network have the powers (e.g. investigative and sanctioning powers) they need to tackle consumer detriment properly and ensure compliance with consumer legislation in their jurisdiction.

At the moment it is clear that the situations are very diverse in various Member States (or even within the same Member State). For example, the ability to impose fines can vary widely e.g. in the Apple case pursued by numerous consumer organisations and also some national authorities, the Italian authority investigated the practice, found the infringement and applied a $\leq 900,000$ fine to the companies involved, while in Spain the regional authorities of Madrid imposed only a $\leq 47,000$ fine (20 times less).

Even though the CPC Regulation already grants a number of powers to the CPC authorities, it seems not all of them were implemented or some authorities might lack the resources and means to apply them. This particularly affects the power to carry out onsite inspections. The implementation of powers and divergences of their application must be further looked at by the European Commission and gaps addressed.

Given the divergence of national enforcement approaches, it is also important not to cut or undermine any best practices or procedures. While the authorities must get additional powers as a minimum standard, those must not be exclusive powers. The Member States have to retain the possibility to build and organise their enforcement systems.

Effective coordination of enforcement is also key, especially in de-centralised enforcement systems. Where issues affect a whole country, it is likely that a national, centralised, approach will be needed. For localised issues however, local and regional knowledge/enforcement is important and likely to be more effective. But enhanced coordination on a national level is needed to know when an issue ceases to be a local issue and becomes a national issue. Enhanced coordination can also be important to ensure the right expertise is available (and used) in each case. As the success of the CPC network rests on the national systems, the European Commission should encourage the Member States to establish effective internal coordination on enforcement.



Redress

Also, the authorities should put a <u>greater emphasis on the need to support consumer redress</u>. This could either be (i) through actually seeking consumer redress; or (ii) making sure they proactively take steps to facilitate consumer redress for consumers/ or consumer organisations, particularly by collecting redress-related evidence and other information in their investigations, and by greater transparency of detected infringements.

It is simply not enough that decisions of enforcement authorities on infringements are made available for consumers or consumer organisations in order to make them aware of the infringement and the fact that they might be entitled to the compensation. Public authorities have to do more than this. Obtaining redress can be difficult for individual consumers, especially in legal systems where the legal advice and representation is very costly or court cases take a long time.

Therefore CPC authorities should facilitate redress and compensation for the consumers harmed by infringements:

- Consumer harm should be taken into account in the investigation.
 Authorities should be obliged to indicate in their decisions what according to the evidence consumer damages are in a specific case, and
- the authorities should have powers to order compensation from the infringing party to be paid to the victims.
- If the above is not possible, CPC authorities should facilitate access to justice for victims by making their files accessible (with appropriate safeguards) in order to allow the victims or their representatives to have evidence about the infringement and the harm caused by it.
- The fines paid to the authorities, if not re-distributed to the victims, because for example they are not known, should be made available for projects that facilitate consumer redress or benefit consumer protection in general, as it happens already in certain Member States (e.g. Italy or Portugal).

Super-complaint powers

In addition, it should be possible for consumer organisations to bring cases to their national enforcement authorities and ask for enforcement action. For instance, certain approved consumer organisations in the UK can file a 'super complaint' with the enforcer if the organisation believes that certain features of a given market are significantly harming consumers' interests. The complaint then has to be investigated by the enforcer by way of a fast-track procedure.



Europe-wide enforcement

CPCs "Joint enforcement positions"

With regard to the pan-European infringements, the Commission has recently started using a new enforcement cooperation tool of 'common enforcement positions'. These are jointly agreed opinions by the national enforcers on how to enforce the law regarding certain commercial practices or contract terms. Such enforcement positions could be useful, for example as a hook to commence a coordinated action in several Member States. But it could also be problematic, particularly when the agreed level of consumer protection is not high enough, for example does not fully reflect the level of protection available in all Member States.

Therefore, <u>criteria should be established</u> in order to identify the cases for which such positions are appropriate responses and what their legal impact will be. For example, they should not be used when stronger measures such as specific legislation is required to tackle a problem or when the EU legislation which is the basis for the enforcement position is of a very general nature and would require significant interpretation to be applied to a specific sector.

In addition, consumer organisations should be consulted on the content of those positions before they are finalised. Consumer organisations are in daily contact with consumers and their complaints, which means that they know about the problems of application and enforcement of law and in addition, they advise consumers about their rights and thus help them to enforce the law. Consequently, systematic involvement of consumer organisations would provide a win–win situation for consumers, national authorities and the European Commission.

Enforcement procedure for pan-European cases

In addition to strengthening the cross-border cooperation procedures between national authorities, broader and deeper deliberations about the best way to achieve the efficient protection of all consumers in a Single Market are necessary.

BEUC calls for the launch of a comprehensive debate about EU consumer law enforcement policy which aims to overcome the currently significant, well-identified barriers. A key question in this context is how to best tackle pan-European infringements and as a potential response to this question, the need for, and the nature and feasibility of a "European enforcement procedure" or the "lead country" principle (one country decides on an enforcement case and the decision also applies to infringements in other countries)¹.

 $^{^{1}}$ Our UK member organisation Which? does not share this view because Which? does not see a need for a centralized enforcement procedure. Which? believes resources should be focused on strengthening cross-border cooperation procedures.



Potential costs and benefits of more centralised enforcement initiatives need to be properly understood. European enforcement in the competition law area could be used as a reference system and provide inspiration for enforcement in the consumer law area too. Questions which need discussion would include: the definition and scope of a European procedure, the requirements for its launch, the applicable law for any centralised action, the discretion left to national enforcers in case of such pan-European initiative, any potential risks of precluding national standards to the detriment of consumers, etc...

Stronger EU-level enforcement, be it through better co-ordination of enforcement actions or through EU-level action would also benefit European companies, in particular SMEs. It would establish a level playing field within the Single Market by more effectively tackling EU-wide unfair commercial practices undertaken by businesses with a pan-European outreach, including from third countries.

• Structured enforcement dialogue with the European Commission

We are very keen to participate in the structured enforcement dialogue with stakeholders launched by DG SANCO at the Consumer Summit in March 2013.

Our view is that the structured dialogue would reap the most useful results if it was based on constructive participation by consumer organisations, not on unilateral information flows from consumer organisations to enforcers.

Structured dialogue should include the possibilities:

- (i) To be able to discuss the priorities of the CPC-network (not only to reply to the questionnaire, but to get feedback and have a discussion with the Commission and/or national enforcement authorities);
- (ii) To be able to post alerts about emerging consumer cases into the CPC system and to receive feedback on whether they were acted upon, as well as to participate from time to time in the CPC meetings to be able to discuss the cases we are working on;
- (iii) To clearly define the criteria for the use of and consult consumer organisations on the content of 'common enforcement positions', as described already a few paragraphs above.

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