

The Consumer Voice in Europe

AN UNFINISHED JOURNEY

Consumer groups' experience of CPC external alerts two years on



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Why it matters for consumers

The revised Consumer Protection Cooperation (CPC) Regulation entered into application in January 2020. It set up an 'external alert' mechanism, an important tool to step up the enforcement of consumer protection rules across Europe.

The CPC external alert mechanism was used first by BEUC and its members in July 2020 and has shown clear results for European consumers: following our alert against unfair airline practices during the early stages of the pandemic, which led to an investigation by CPC authorities, 16 airlines have since committed to comply with EU law, to reimburse consumers and to improve the transparency of their complaints-handling policies.

The CPC external alert mechanism has established a new forum for cooperation for consumer organisations and authorities, both at national and European level. It is important that the European Commission and the CPC Network now unlock the full potential of the CPC external alert mechanism.

As part of the EU Consumer Agenda, the European Commission announced its intent to evaluate the application of the CPC Regulation by 2023. Accordingly, BEUC and its members have made several recommendations to address some of the shortcomings identified in the external alert mechanisms during the past two years, which the upcoming evaluation process should carefully consider.

The objective of this report is to kick off discussions with the European Commission and the CPC-Network on ways to make the external alert mechanism more effective and, more broadly, to strengthen the collaboration between all the actors involved in the enforcement of consumer rights to the benefit of EU consumers.

Summary

The CPC external alert mechanism was established by EU Regulation 2017/2394 (the 'CPC Regulation') and has been a powerful tool to strengthen the enforcement of consumer protection rules in the EU. BEUC has used this tool already 4 times and the first results are indeed promising. Yet after two years, it also becomes clear that its full potential has not been unlocked yet. This report takes advantage of this second anniversary to take stock, and to propose several ways forward to enhance the effectiveness of the CPC external alert mechanism to the benefits of consumers.

Some of the below recommendations could already be followed under the current regulatory framework set by the CPC Regulation. Others would require a review of the CPC Regulation and are thus particularly relevant for the upcoming evaluation process:

- The transparency of the procedure following a CPC-external alert should be improved. For instance, already under the current Regulation, as a default standard or good practice, designated entities launching external alerts should be provided by the CPC-Network with regular formal updates about the status of their alerts. The detailed commitments agreed with the concerned traders should be publicly disclosed by the CPC-Network.
- In compliance with the confidentiality rules foreseen by the CPC Regulation, the designated entities should be consulted when the authorities are drawing up their common position on the infringements, when they receive commitments from traders or when traders implement those commitments.
- The processing of external alerts should be accelerated, and an emergency procedure established for specific circumstances. This is in particular important for infringements occurring in the digital sphere.
- The full enforcement toolbox available in the CPC Regulation should be further exploited by the CPC-Network in case of deliberate non-compliance or partial compliance by traders with the proposed commitments.
- The collaboration between the CPC-Network and the other EU Enforcement networks should be strengthened, where relevant. BEUC experience shows that more and more widespread infringements require the coordination of different fields of law. Therefore, the cross-sectoral cooperation between different enforcement networks should proactively be considered and enhanced.
- Beyond the CPC-External alert mechanism, a "structured dialogue" between the European Commission, the CPC-Network, BEUC and its members should be established to further exchange on enforcement priorities, emerging market trends and potential common projects.

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Introduction

The revised Consumer Protection Cooperation EU Regulation 2017/2394 (the 'CPC Regulation') entered into application on 17 January 2020. This legislation has been instrumental in stepping up the public enforcement of consumer protection rules across the EU. It strengthens the European network of enforcement authorities ('CPC-Network')¹ established to combat cross-border consumer law infringements in a coordinated manner and gives stronger enforcement powers to those public authorities to detect, investigate, and sanction infringements, particularly in online environments. The CPC Regulation also acknowledges the important role played by consumer organisations in the enforcement of rules aiming to protect consumers. The so-called 'CPC external alert' mechanism gives them a specific role in this enforcement framework.

"Consumer organisations play an essential role in informing consumers about their rights and educating them and protecting their interests, including the settlement of disputes".

(Recital 34 of the CPC Regulation)

What is a 'CPC external alert'?

Article 27 of the CPC Regulation allows designated entities to submit an external alert to the CPC-Network and the European Commission when they have a reasonable suspicion that infringements covered by the CPC-Regulation that may affect consumer protection rules has or is occurring. The designated entities can directly share the relevant information and evidence about the suspicious practices with the enforcement authorities via a dedicated digital platform.

Who can submit external alerts?

Member States² and the European Commission³ may confer on certain entities – such as consumer organisations – the power to submit external alerts. The designation of consumer organisations was a welcome development as consumer organisations are very well placed to identify infringements and detect new market patterns thanks to their daily contact with consumers. In March 2020, the European Commission appointed BEUC for the purpose of issuing external alerts for EU-wide consumer law infringements.⁴ In parallel, 22 of our national member organisations have also been designated at national level.⁵

What is the role played by consumer organisations during CPC-external alerts?

In addition to the possibility to submit external alerts, the CPC Regulation states that designated bodies can be consulted at different stages during the processing of the alert. For example, the authorities may seek the views of the consumer organisation(s) who

* This report was concluded on 17 February 2022 and therefore contains information available on that date.

1 The CPC-Network consists of authorities responsible for enforcing EU consumer protection laws to protect consumers' interests in EU and EEA countries.

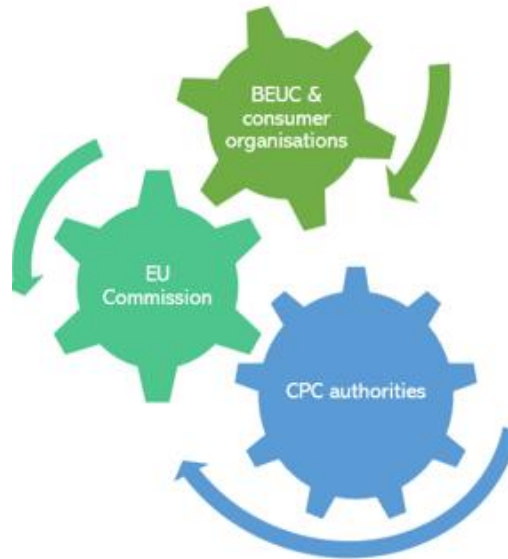
2 Article 27(1) CPC.

3 Article 27(2) CPC.

⁴https://ec.europa.eu/info/sites/default/files/live_work_travel_in_the_eu/consumers/documents/list_of_entities_that_can_issue_external_alerts_national_level.pdf

⁵https://ec.europa.eu/info/sites/default/files/2021-03-18-list_of_entities_that_can_issue_external_alerts_national_level.pdf

submitted the alert when drawing up their common position on the infringements.⁶ They also have the possibility to collect their views when the authorities receive commitments from traders⁷ or when traders implement those commitments.⁸



BEUC and its members' EU wide alerts in 2020 –2021

At the time of writing (February 2022), BEUC and its member organisations have submitted four external alerts to the CPC-Network to report on various EU-wide infringements of consumer law:

- On 22 July 2020, BEUC submitted an alert against eight airlines in the context of the COVID-19 pandemic.
- On 27 January 2021, BEUC submitted an alert against the company Nintendo.
- On 16 February 2021, BEUC submitted an alert against the social media platform TikTok.
- On 12 July 2021, BEUC submitted an alert against the messaging app WhatsApp.

To date, the four external alerts are still pending with the first alert having led to an encompassing co-ordinated action by the CPC network in the airline sector with significant improvements for consumers.

⁶ Article 19(5) CPC.

⁷ Article 20(2) CPC.

⁸ Article 20(4) CPC.

1. BEUC's experience with CPC external alerts over the past two years

1.1. Alert against several airlines during the COVID-19 pandemic

1.1.1. The alert in brief

In March 2020, the COVID-19 outbreak hit Europe. The pandemic forced Member States to issue travel bans while airlines massively cancelled flights. Very rapidly, our member organisations reported a tremendous increase in the number of consumer complaints relating to travel issues.⁹ Tourism and transport were amongst the most exposed sectors and fertile ground for unfair commercial practices¹⁰

On 22 July 2020, BEUC submitted its first external alert to the CPC-Network against eight airlines.¹¹ At national level, Altroconsumo in Italy, Test-Achats/Test-Aankoop in Belgium¹² and UFC-Que Choisir¹³ in France also submitted separate external alerts to the CPC-Network. In parallel, eight BEUC member organisations from seven Member States also reached out to their national authorities to inform them about the BEUC alert.¹⁴

BEUC alert reported on several breaches of EU Regulation 261/2004 on Air Passenger Rights¹⁵ and Directive 2005/29/EC on unfair commercial practices.¹⁶ In particular, the alert raised concerns about:

- Airlines imposing vouchers on consumers instead of offering them a choice between a cash refund, re-routing, or a voucher as provided for under EU law.
- Airlines failing to provide consumers with the necessary information about their right to a refund.
- Airlines providing consumers with misleading information about their rights (for example, airlines falsely stating that consumers only have the right to a voucher instead of a cash reimbursement).
- Airlines' massive delays in reimbursing consumers.

1.1.2. Timeline and authorities' follow-up

➤ At the EU level

In December 2020, about five months after BEUC's external alert, the European Commission itself submitted an alert to the CPC-Network in accordance with Articles 17 and 26 of the CPC Regulation.¹⁷ The European Commission's alert built, among other

⁹ For example, between February and July 2020, vzbv together with its regional branches, responded to more than 100,000 COVID-19-related queries from consumers. 65% of those dealt with travels and cancelled flights (BEUC, On the front row – consumer organisations' work to support consumers in the COVID-19 crisis and the fight against unfair practices, 19 October 2020). In 2021, vzbv reported 77,830 tourism-related complaints, which represents a 11-fold increase compared to 2020.

¹⁰ See BEUC's letter sent to Commissioner Vălean, on Enforcement of air passenger rights in the COVID-19 context – BEUC's comments, concerns and recommendations, dated on 30 March 2020.

¹¹ Aegean, Air France, EasyJet, KLM, Norwegian, Ryanair, TAP Portugal, Transavia.

¹² www.test-achats.be/action/espace-presse/communiqués-de-presse/2020/beuc-passagiersrechten-22072020

¹³ www.quechoisir.org/action-ufc-que-choisir-vols-annules-actions-concertees-europeennes-contre-les-abus-des-compagnies-n81279/

¹⁴ The members are: Adiconsum (Italy), DECO (Portugal), EKPIZO (Greece), Forbrukerrådet (Norway), KEPKA (Greece), OCU (Spain), Spoločnosť ochrany spotrebiteľov (S.O.S.) Poprad (Slovakia), Which? (UK).

¹⁵ Regulation (EC) No 261/2004 on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

¹⁶ Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.

¹⁷ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en (Consulted on 25.10.2021).

sources of information, on the information communicated by BEUC and its member organisations, in particular UFC-Que Choisir in France and Test Achats/Test Aankoop in Belgium.¹⁸

In **January 2021**, BEUC sent a letter to the European Commission to inform the CPC-Network that many Europeans were still suffering from the airlines' infringements and waiting for a monetary reimbursement for their cancelled travels.

In **March 2021**, the CPC-Network launched a coordinated investigation into the airlines' cancellation practices of airlines ongoing at the time of the launch (early 2021)¹⁹. Six national enforcement authorities²⁰, supported by the European Commission, coordinated the network's investigation targeting 16 airlines. The coordinated investigation included the dissemination of a survey to these 16 airlines. The survey intended to: (1) clarify the airlines' ongoing practices and the way they had informed consumers about their rights; (2) the way airlines had processed refund requests, and (3) how they had handled consumer complaints. The airlines had three weeks to send their responses.²¹

In **June 2021**, the CPC-Network published the main results of its investigations.²² At that stage, it is noteworthy that the names of the concerned airlines were not disclosed publicly. Building on the responses collected, the CPC-Network requested that the airlines improve their cancellation, reimbursement and information practices.²³ In particular, authorities requested the airlines to proactively inform passengers about their rights in case of cancellation, to provide them with the possibility to choose, in an easy way, between a voucher or a cash refund, to provide voluntary redeemable vouchers (meaning that airlines had to inform consumers that vouchers were refundable at any time), and to comply with the seven-day deadline for the reimbursement of new bookings. Based on the responses collected through the survey, the European Commission and the CPC-Network started dialogues with the 16 airlines to obtain commitments with a view to correcting the unfair practices. In parallel, the European Commission and the CPC-Network also urged the airlines to clear their backlogs of consumer complaints by 1 September 2021.²⁴

In **September 2021**, the dialogues with airlines were closed. Most of the airlines committed (inter alia) to better inform consumers, to reimburse them in due time for all new cancellations. Most also committed to offer refunds for vouchers imposed during the first phase of the pandemic. Finally – and for the very first time – the European Commission and the CPC-Network disclosed the names of the concerned airlines.²⁵ However, the European Commission and the CPC-Network also highlighted that one airline (Wizzair) was still refusing to reimburse consumers for vouchers that – according to the network's

¹⁸ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en (Consulted on 17.11.2021).

¹⁹ See EC Daily News: La Commission et les autorités de protection des consommateurs lancent une enquête sur les pratiques des compagnies aériennes en matière d'annulation, published on 01 March 2021.

²⁰ The Belgian Federal Public Services Economy, the German Luftfahrt-Bundesamt, the Greek Civil Aviation Authority, the Italian Competition Authority, the Spanish Ministry of Consumer Affairs and the Swedish Consumer Agency.

²¹ https://ec.europa.eu/commission/presscorner/detail/en/mex_21_962 (Consulted on 25.10.2021).

²² https://ec.europa.eu/commission/presscorner/detail/en/mex_21_3283#4 (consulted on 25.10.2021).

²³ A general overview of the main findings and measures for airlines is available on the CPC-Net webpage https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en (consulted on 25.10.2021).

²⁴ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en (Version available on 29 June 2021 – no longer available).

²⁵ Namely Aegean Airlines, Air France, Alitalia, Austrian Airlines, British Airways, Brussels Airlines, Easyjet, Eurowings, Iberia, KLM, Lufthansa, Norwegian, Ryanair, TAP, Vueling and Wizz Air

assessment – had been imposed illegally on them.²⁶ The CPC-Network also published an overview of the airlines’ commitments.²⁷

➤ **At national level**

In Norway, BEUC’s member Forbrukerrådet submitted a complaint to the Norwegian National Enforcement Body (NEB) which ordered the airline SAS to refund all passengers claims by the end of November 2020.²⁸ By 8 April 2021, SAS had refunded all consumer claims submitted in 2020, leading the Norwegian NEB to close the proceedings²⁹. In parallel, the Norwegian NEB investigated Norwegian Air Shuttle airline. The latter underwent a financial restructuring making the full refund of nearly 32,000 consumer claims ultimately impossible.^{30 31}

In Italy, Altroconsumo submitted a complaint to the Italian Competition Authority (*Autorita’ Garante della Concorrenza e del Mercato* – AGCM) against six airlines.³² On 23 October 2020, the AGCM took the view that “ghost flight”³³ practices and the imposition of vouchers by the airlines were contrary to EU law³⁴. The airlines accepted to make changes to their communication materials, assistance, and reimbursement practices³⁵ for the cancelled or rescheduled flights. On 24 May 2021, the AGCM imposed fines on Ryanair (€4.8m), Easyjet (€2.8m) and Volotea (€1.4m) for (amongst other things) providing misleading information to consumers about their passenger rights³⁶.

1.1.3. Consumer organisations’ point of view

➤ **What has been achieved for consumers**

BEUC and its members’ very first CPC external alert was launched in very peculiar circumstances due to the COVID-19 outbreak and its impact on the travel and tourism sector. It is however noteworthy that the alert led to:

- What the European Commission described as the “biggest” CPC action in the CPC-Network’s history,³⁷ with the mobilisation of six CPC authorities which coordinated the network’s investigation with the support of the European Commission.

²⁶https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en (consulted on 26 January 2022).

²⁷https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en (Consulted on 25 October 2021)

²⁸ <https://luftfartstilsynet.no/om-oss/nyheter/nyheter-2020/refusjonskravene-skall-innfris/> (Consulted on 25 October 2021).

²⁹ Non-compliance with the deadline would have exposed the airline to a fine per month of delay.

³⁰ The recent publication of the European Commission and the CPC-Network specified that “in light of applicable examinership and reconstruction schemes, the CPC-Network adapted the measures requested from Norwegian to the specific situation of that company”. (Consulted on 25 October 2021).

³¹ <https://www.lifeinnorway.net/norwegian-denies-full-refund-to-34000-customers/> (consulted on 09 February 2022).

³² Namely Ryanair, Easyjet, Vueling, Alitalia, Volotea and Blue Panorama.

³³ The airlines, after COVID-19 travel restrictions had been lifted, did not reimburse consumers for flights cancelled after 3 June 2020. According to the Authority, the airlines behaved seriously incorrectly and did not comply with the due diligence rule when - once the travel restrictions had been lifted - they proceeded to numerous cancellations of scheduled flights offered for sale, always using the reason of a public health emergency and continued to issue vouchers without proceeding instead to reimburse the price paid for cancelled tickets.

³⁴ www.agcm.it/media/comunicati-stampa/2020/10/PS11822-PS11830-PS11843-PS11865-

³⁵ www.agcm.it/dotcmsdoc/allegati-news/PS11822_non%20adozione%20Vueling.pdf

³⁶ <https://en.agcm.it/en/media/press-releases/2021/6/PS11865-PS11830-PS11821->

³⁷ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_4944

- The launch of a coordinated survey to collect information about the cancellation practices of the 16 airlines generating the highest numbers of complaints from consumers across the Union³⁸.
- A coordinated action by authorities and the European Commission that resulted in several significant improvements in the concerned airlines' practices and reimbursement of consumers across the EU. As a result of the dialogues with the CPC authorities, the concerned airlines committed to clear their backlogs, to timely reimbursement of passengers in case of flight cancellations for new bookings, to be more transparent to consumers about their rights, to proactively contact consumers forced to accept vouchers for cancelled flights and to immediately inform them of their right to reimbursement³⁹.

Ultimately, the CPC action contributed to restore trust among consumers who restarted to buy flight tickets despite the fact that the pandemic was still ongoing.

➤ **How to enhance the effectiveness of the current legal framework?**

BEUC and its members consider that this is an excellent result achieved by European Commission and the CPC authorities. It also allows us to draw several lessons and to sketch a clearer picture of how the CPC-Network functions and how the cooperation with stakeholders takes place. This first external alert also highlighted that cooperation between the European Commission, CPC authorities and consumer organisations can become even more effective and efficient. Below we make several recommendations on how such a cooperation could be improved.

➤ **Consulting the designated bodies submitting external alerts**

Whereas BEUC and its member organisations were occasionally and informally kept informed about the developments concerning the treatment of their alert, more systematic and regular updates and exchanges would have been beneficial for both actors, authorities and consumer organisations. The CPC Regulation provides several possibilities for additional exchanges between the European Commission, the CPC-Network and consumer organisations. For instance, the CPC-Regulation provides that CPC authorities and the European Commission may consult consumer organisations on the commitments proposed by traders⁴⁰ and their subsequent implementation⁴¹. During the coordinated investigations of the CPC-Network, neither BEUC nor its member organisations acting as "alerters" were consulted on the airlines' commitments and the authorities' response to them. At national level, only BEUC's Portuguese member organisation DECO – which *did not* use the CPC external alert tool – received formal feedback from the Portuguese national civil aviation authority (ANAC).

➤ **Improving transparency about the procedure**

According to Article 27(3) of the CPC Regulation, CPC authorities are not required to initiate a procedure or any other measures following an external alert, nor are they obliged to keep the "alerters" informed about the progress of the alert. However, establishing procedures for regular feedback and greater transparency remains key to enhance trust and to motivate designated entities to submit external alerts.

³⁸ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en

³⁹ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en

⁴⁰ Article 20 (2) CPC.

⁴¹ Article 20(4) CPC.

It would be useful for consumer organisations who submitted an alert to be updated from time to time about the progress of the work of the authorities regarding their alerts. A regular update for complainants by the authority is foreseen in other fields of EU law. For example, under the General Data Protection Regulation (GDPR),⁴² the authority to which the complaint has been lodged must inform the complainant of the progress and outcome of the complaint. Such information is of course to be kept in the boundaries of the required confidentiality, yet it would help consumer organisations in their communication with affected consumers and with the public in general, to demonstrate the impact of their work and to motivate consumers to provide them with their complaints and feedback on market developments.

The existing CPC Regulation provides for several opportunities to enhance transparency, but these options have not been used or fully exploited by the European Commission and the CPC-Network to date. Several examples are provided below:

- Following the dialogue with the concerned airlines previously mentioned, the European Commission and the CPC-Network only published a general overview of the commitments, without providing clear information about the detailed commitments agreed by each airline. Moreover, the Commission and the CPC-Network did not publicly provide a clear timeframe for the airlines to implement all the commitments.⁴³ Yet Article 20(2) of the CPC Regulation provides that, without prejudice to the rule on confidentiality and on commercial and professional secrecy, the CPC-Network may publish all the proposed and agreed commitments of the concerned traders targeted by the coordinated action.⁴⁴ If the detailed commitments of the concerned airlines had all been disclosed, BEUC and its members could have provided useful input to national authorities to support them in their task⁴⁵ of monitoring the correct implementation of the agreed commitments by providing observations as market watchdogs from the ground. Furthermore, a detailed publication of the traders' commitments would also have been beneficial for EU consumers. Indeed, consumer organisations could have informed consumers of the detailed commitments made by each airline, empowering them to enforce their rights more easily. For example, the CPC-network's factsheet⁴⁶ presenting the changes made by Facebook, Twitter and Google and their effective date of implementation, which accompanied its previous action against social media is a good practice which should be replicated.
- In June 2021, the CPC-Network published the preliminary findings of the responses to its coordinated survey by airlines. This communication included the detail of the main infringements as well as a list of "measures to be put in place by all airlines operating in the EU". Yet the status of this publication and whether it had to be considered as a CPC "Common Position" remained unclear. Clarity on this matter is yet important for external alerters. According to the CPC Regulation⁴⁷, a common position from the CPC-Network shall be the basis upon which authorities invite the concerned trader(s) to propose commitments. Common positions are also an important procedural step showing the status of the CPC procedure, explaining the outcome of the investigations and the assessment of the authorities on the alleged infringements⁴⁸. Finally, issuing a common position may in itself already have a deterrent effect and send a signal to other traders to correct their potential unlawful practices.

⁴² Article 77(2) GDPR.

⁴³ https://ec.europa.eu/info/sites/default/files/overview_of_measures_that_airlines_should_take.docx.pdf

⁴⁴ See for instance the CPC-Joint action on social media companies:

<https://ec.europa.eu/newsroom/just/items/614254>

⁴⁵ Article 20(4) CPC.

⁴⁶ <https://ec.europa.eu/newsroom/just/items/614254> , (consulted on 11.02.2022).

⁴⁷ Article 20(1) CPC.

⁴⁸ Article 19(3) CPC.

➤ **Considering infringements in their entirety and taking action against non-compliant traders**

BEUC and its members regret that the CPC-Network's investigations mainly focused on the airlines' ongoing practices at the time of the launch of the CPC-coordinated action (i.e., in February 2021) and did not also consider the practices reported at the time when BEUC and its members submitted the external alert (i.e., in July 2020).

Several practices had stopped between the launch of the external alert and the start of the CPC-Network's coordinated action. Although they happened in the past, these unfair practices still harmed thousands of consumers. For example, the imposition of vouchers had stopped at the launch of the CPC coordinated investigations. However, consumers who had a voucher imposed in the early phase of the pandemic were still waiting to receive their cash refund and were uncertain about if ever - and how - they could use the imposed vouchers. It is regrettable that most authorities did not fully take into account these infringements and that the implementation of commitments is not for granted: Though airlines were asked to commit to inform consumers about the possibility to be refunded at any time, it seems that at the time of writing this report to our knowledge in some countries, too many consumers remained uninformed by airlines and were waiting for the refund of their vouchers for a very long time /until the end of validity of their vouchers. This impact and the scale of the wrongdoings should also have been considered in the assessment of the authorities. The CPC Regulation states that coordinated actions may cover ongoing infringements but also those which "[...] have ceased before enforcement starts or is completed"⁴⁹ and that the competent authorities shall take all the necessary enforcement measures to bring about the cessation or the prohibition of infringements⁵⁰.

Even where imposing penalties was not considered necessary, the authorities should have made it clear that the violations during the first wave of the pandemic were also unlawful. This would have been a signal with deterrent impact on all airlines to not engage in similar practice in any future comparable crisis.

Furthermore, at the time of writing this report⁵¹ and despite the CPC-Network's warnings, Wizzair is still refusing to refund consumers forced to accept vouchers. On 29 October 2021, BEUC sent a letter asking the CPC authorities to adopt the necessary enforcement measures – through fines or periodic penalty payments – against the airline in order to ensure compliance with EU law. There was no clear information about how long the CPC-Network would tolerate such a lack of compliance before deciding to initiate enforcement measures. There is a risk that the lack of enforcement measures against traders when they refuse to correct their unlawful practices may jeopardise the deterrence effect of the CPC system and send a wrong message to traders when they infringe consumer rights.

⁴⁹ Article 2(1) CPC.

⁵⁰ Article 21(1) CPC

⁵¹ i.e. February 2022.

1.2. Alert against Nintendo



1.2.1. The alert in brief

On 27 January 2021, BEUC submitted an external alert⁵² to the CPC-Network against Nintendo of Europe GmbH for the premature obsolescence of a popular games console, 'Nintendo Switch'. This alert was the final step of a BEUC coordinated enforcement action which had started on 7 December 2020.

Ten BEUC members⁵³ participated in the action. They jointly collected approximately 25,000 consumer testimonies about the premature failure of the Joy-Con controllers. BEUC attached to its alert the summary of these complaints together with a detailed legal assessment⁵⁴ and a technical report analysing the causes of these premature product failures commissioned by its French member organisation, UFC-Que Choisir. Ultimately, BEUC also sent a letter of complaint to the European Commission.

As a reaction to this alert, BEUC received a letter from Koji Miyake, CEO of Nintendo of Europe, a copy of which was also sent to the European Commission. In this letter, the company argued, among other things, that game controller malfunctions were not a real issue, as only around 1% of consumers who bought this product in Europe contact their customer service about it. They also stressed that they have already voluntarily expanded their commercial guarantee for this product up to two years. However, they did not comment on the most important point raised in BEUC's complaint: the fact that their product, which clearly has important flaws that lead to its premature obsolescence, is still on the market even after this issue became known to the public almost five years ago.

1.2.2. Timeline and authorities' follow-up

Although no information is available on the website of the CPC-Network, it seems that the European Commission and the CPC-Network decided to follow up on the alert. No additional information is available at this stage.

⁵² www.beuc.eu/publications/beuc-launches-europe-wide-complaint-against-nintendo-premature-obsolescence/html.

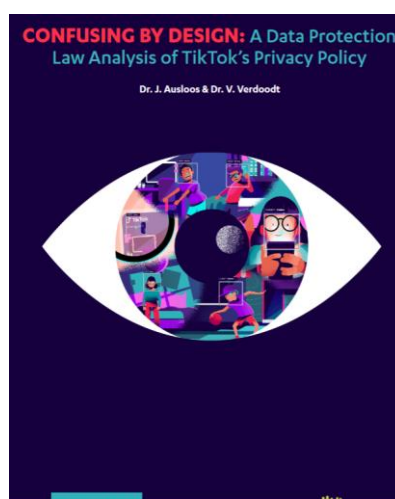
⁵³ UFC-Que Choisir, Test-Achats, Consumentenbond, DECO, Consumatori Italiani per l'Europa, Forbrukerrådet, Zveza Potrošnikov Slovenije –ZPS, Spoločnosti ochrany spotrebiteľov, KEPKA, EKPIZO.

⁵⁴ The legal basis were breaches of articles 5, 6, 7 and 9 of the Unfair Commercial Practices Directive.

1.2.3. Consumer organisations' point of view

One year after the launch of the alert, the European Commission and the CPC-Network have not yet officially commented on the alert against Nintendo. At the same time, consumer organisations are concerned that the company continues its premature obsolescence practices as their new console model, Nintendo Switch OLED, introduced only in October 2021 was already reported to experience the same problems with its game controllers⁵⁵.

1.3. Alert against TikTok



1.3.1. The alert in brief

On 16 February 2021, BEUC submitted an external alert against the video-sharing social media platform TikTok. We reported several unfair contract terms and misleading practices constituting a widespread infringement with a Union dimension of several EU consumer laws. 18 consumer organisations from 15 countries also alerted their national authorities in parallel.⁵⁶

The alert built on the reports, "*TikTok without filters*" & "*Confusing by design – a data protection law analysis of TikTok's privacy policy*," which highlighted how TikTok is responsible for multiple breaches of EU consumer rights and fails to protect children from hidden advertising and inappropriate content.⁵⁷

Given the horizontal nature of the infringement, BEUC and its member organisations also reached out to the European Data Protection Board (EDPB) and national data protection agencies to highlight misleading practices in the processing of users' personal data and to the European network of audiovisual regulators (ERGA) and national audiovisual regulators

⁵⁵ www.ifixit.com/News/51167/new-nintendo-switch-same-drifting-joy-cons

⁵⁶ Test Achats/Test Ankoop (Belgium), Kypriakos Syndesmos Katanaloton/CCA (Cyprus), dTEST (Czech Republic), Forbrugerrådet Tænk (Denmark), UFC Que Choisir (France), vzbv (Germany), EKPIZO (Greece), Altroconsumo (Italy), Consumatori Italiani per l'Europa/CIE (Italy), Consumentenbond (The Netherlands), Forbrukerradet (Norway), Spoločnosť ochrany spotrebiteľov (S.O.S.) Poprad (Slovakia), Zveza Potrošnikov Slovenije/ZPS (Slovenia), Sveriges Konsumenter (Sweden), ASUFIN (Spain), Organización de Consumidores y Usuarios/OCU (Spain) and Fédération Romande des consommateurs/FRC (Switzerland). vzbv from Germany sent a legal warning to TikTok instead of contacting the German authorities.

⁵⁷ Materials related to this action is available at: www.beuc.eu/tiktok

to voice concerns regarding TikTok's compliance with the revised Audiovisual Media Services EU Directive.

In parallel, some of our member organisations started separate actions against TikTok. Our Dutch member organisation Consumentenbond, for example, started a collective action against TikTok on behalf of young Dutch users.⁵⁸ In Spain, our member organisation OCU sent a judicial mediation request, but TikTok failed to appear before the court. In Germany, our member vzbv sent a warning letter to TikTok⁵⁹. In April 2021 TikTok signed a cease-and-desist declaration. TikTok changed the contentious provisions but only for consumers residing in Germany.

1.3.2. Timeline & authorities' follow up

➤ **At the European level**

Following the alert, the European Commission and the CPC-Network launched a dialogue with TikTok in May 2021 with, as the European Commission indicated, the intent to "support TikTok in complying with EU rules to protect consumers".⁶⁰ The CPC-Network highlighted that the specific points of concern included hidden marketing, aggressive advertising techniques targeted at children, and certain contractual terms in TikTok's policies that could be considered misleading and confusing for consumers. The Swedish Consumer Agency and the Irish Competition and Consumer Protection Commission led the coordinated action with the assistance of the European Commission. At the time of writing this report (February 2022), the outcome of the European Commission and CPC-Network's dialogue with TikTok is still unknown.

To date (i.e., February 2022), TikTok has not amended its contentious "Terms of Service" and "Virtual items policy"⁶¹.

In parallel, in October 2021, BEUC also followed up with the European Commission and ERGA concerning the lack of reaction to BEUC's report and complaint by the Broadcasting Authority of Ireland (BAI) which, according to ERGA's Memorandum of Understanding was competent to deal with the handling of the TikTok complaint, because the company has its European headquarters in Ireland. The Irish authority explained its inaction by the lack of transposition of the Regulation reviewing the Audio-Visual Services Media Directive in Ireland and thus the lack of a legal base to act. BEUC repeatedly raised concerns about a lack of enforcement leaving children exposed to harmful content on the video-sharing platform with ERGA.

➤ **At national level**

In Italy, the Italian consumer authority (AGCM) started two investigations, one into TikTok's Terms of Service and the other into TikTok's virtual items policy and possible unfair commercial practices. In early February 2022, the Italian Authority took the view that several of TikTok's terms were unfair. At the time of concluding this report, the AGCM had not yet issued its decision on TikTok's alleged unfair commercial practices.⁶²

⁵⁸ www.consumentenbond.nl/acties/tiktok

⁵⁹ vzbv raised concerns about six terms in TikTok's Terms of Service (including a term stating that users need to be able to enter into a legally binding contract with TikTok and also need to be 13 years of age, consent to the Terms of Service and undertake to comply with them, an unfair termination clause and other clauses that were incomprehensible).

⁶⁰ <https://portal.ieu-monitoring.com/editorial/eu-commission-and-national-consumer-protection-authorities-launch-dialogue-with-tiktok/>

⁶¹ For example, the latest versions of TikTok's "virtual items" policy and terms of service date respectively from December 2019 and July 2020, which means before the launch of BEUC alert.

⁶² www.agcm.it/media/comunicati-stampa/2022/2/CV224

In the Netherlands, the Dutch data protection Authority (*Autoriteit Persoonsgegevens*) imposed a fine on TikTok for the illegal processing of users' data and for violating children's privacy.⁶³

In Ireland, the Irish Data Protection Commission started its investigations into TikTok in September 2021 concerning the compliance with GDPR requirements relating to the processing of children's personal data and the transfer of data to China.⁶⁴

In Greece, as a consequence of the alert, the Greek Consumer Secretariat published in January 2022 a guidance document to the attention of parents on the use of social media platforms by children.⁶⁵

1.3.3. Consumer organisations' point of view

The European Commission and the CPC-Network followed up on the alert and looked into TikTok's practices⁶⁶. At this stage however, no additional information is available on the current status of the alert.

1.4. Alert against WhatsApp



1.4.1. The alert in brief

On 12 July 2021, BEUC submitted an external alert against the messaging app WhatsApp to report on several unfair practices constituting a widespread infringement with a Union dimension of several EU consumer laws. Eight consumer organisations from seven countries also alerted their national authorities in parallel.⁶⁷

The alert built on the report, *'What's Up With WhatsApp – an assessment of WhatsApp's practices in the light of EU consumer protection'*⁶⁸ highlighting how WhatsApp has been unduly pressuring its users to accept its new terms of use and privacy policy which are neither transparent nor comprehensible. Considering the horizontal nature of the

⁶³ Particularly the Dutch DPA in July 2021 (https://edpb.europa.eu/news/national-news/2021/dutch-dpa-tiktok-fined-violating-childrens-privacy_en)

⁶⁴ <https://www.dataprotection.ie/en/news-media/latest-news/dpc-launches-two-inquiries-tiktok-concerning-compliance-gdpr-requirements-relating-processing>

⁶⁵ www.mindev.gov.gr/wp-content/uploads/2021/12/social-media-platform.pdf

⁶⁶ https://ec.europa.eu/commission/presscorner/detail/en/mex_21_2744 (consulted on 9 February 2022).

⁶⁷ Members involved were: APC (Romania), Consumentenbond (the Netherlands), dTest (Czech Republic), Forbrukerrådet (Norway), KEPKA (Greece), EKPIZO (Greece), S.O.S. Poprad (Slovakia) and UFC-Que choisir (France).

⁶⁸ www.beuc.eu/publications/what%E2%80%99s-whatsapp-report

infringement, BEUC also informed the European Data Protection Board (EDPB) about the alert.

1.4.2. Timeline & authorities' follow-up

The European Commission and the CPC-Network acknowledged receipt of the alert in July 2021. In September 2021, BEUC sent a second letter to the European Commission and the CPC-Network after the Irish Data Protection Authority decided to impose a fine of €225m on WhatsApp.⁶⁹ In this letter, BEUC highlighted that the fine based on several GDPR infringements did not address WhatsApp's misleading commercial practices and that, three months after the launch of the alert, WhatsApp was still sending recurrent and undue notifications to its users.

On 27 January 2022, the European Commission and the CPC-Network announced the start of a dialogue with WhatsApp and sent a letter to the company requesting several clarifications about its practices. The CPC-Network gave WhatsApp until March 2022 to provide the information requested.⁷⁰

1.4.3. Consumer organisations' point of view

It is a positive development that the European Commission and the CPC-Network have started investigating WhatsApp's practices and we welcome the fact that the authorities decided to look into all the issues that BEUC identified in its alert.

2. Looking to the future: bringing the CPC external alert mechanism to the next level

As part of the EU Consumer Agenda,⁷¹ the European Commission has announced its intent to "evaluate the application of the CPC Regulation, in particular to assess the effectiveness of enforcement in addressing EU-wide practices that contravenes consumer law". BEUC and its member organisations would like to contribute to the upcoming evaluation process by formulating several propositions with the view to improve the effectiveness of the CPC external alert mechanism to the benefit of EU Consumers.

2.1. Giving a clear status and procedural rights to designated bodies such as consumer organisations

2.1.1. What is the current state of play?

The CPC Regulation already foresees a few possibilities for the European Commission and the CPC-Network to seek the views of consumer organisations. For example, the CPC-Network may consult them about CPC common positions,⁷² the effectiveness of traders' commitments⁷³, or the steps that traders take to comply with their commitments.⁷⁴

⁶⁹ www.dataprotection.ie/en/news-media/press-releases/data-protection-commission-announces-decision-whatsapp-inquiry

⁷⁰ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-and-search-engines_en

⁷¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0696>

⁷² Art. 19(5) CPC.

⁷³ Article 9(8) and Article 20(2) CPC.

⁷⁴ Article 27(1) CPC.

As highlighted above⁷⁵, the European Commission and the CPC-Network have rarely used the possibilities foreseen under the CPC Regulation. Under the existing legal framework, external “alerters” can submit alerts but have no procedural rights afterwards.

2.1.2. How could the situation be improved?

In the context of an upcoming revision of the CPC Regulation, BEUC recommends establishing specific procedural rights for designated entities, including an access to information related to the state of the investigation. This should always be done in compliance with the rules on confidential information. The CPC Regulation may draw some inspiration from EU competition law.⁷⁶ BEUC has been recognised as a complainant or a third-party in EU competition law cases several times and particularly made use of the possibility to express views during the administrative proceedings and the subsequent court instances.

In an upcoming review of the CPC Regulation the designated entities should be given the status of “complainants” when they submit CPC external alerts, with associated procedural rights.

2.2. Promoting transparency during the processing of alerts

2.2.1. What is the current state of play?

The current CPC Regulation does not include an obligation for the European Commission and the CPC-Network to provide information or updates to the entity issuing the alert, contrary to other fields of law. For example, under the GDPR⁷⁷, complainants are regularly informed about the state of play of the procedure.

In the four alerts, BEUC and its members were mainly updated informally and on a confidential basis about the investigations. Although this is a first positive step, it also makes it impossible for the alerters to keep informed all consumers who have been harmed by the traders’ practices. Yet consumer organisations communicate about the launch of these alerts to compile evidence from consumers, to raise awareness but also need to keep them regularly informed about its progresses. More transparency is also likely to strengthen the confidence of consumers in the authorities in charge of protecting and enforcing their rights.

Furthermore, submitting external alerts requires significant amounts of time and resources for designated entities, including in-depth market research and collection of evidence (e.g., consumer testimonies), which are necessary to substantiate the claim. Hence, although the confidentiality of the procedure must be respected, it is also necessary for entities issuing external alerts to be informed about the status of their alert.

⁷⁵ See Section 2 of the Report.

⁷⁶ For antitrust cases see Article 27(3) of Regulation No 1/2003, Article 13 of Regulation No 773/2004, Article 5 and Recital 12, second sentence, of Decision 2011/695/EU, which provides that “[c]onsumer associations that apply to be heard should be generally regarded as having a sufficient interest, where the proceedings concern products or services used by end consumers or products or services that constitute a direct input into such products or services.” For merger cases see Article 18(4) of Regulation No 139/2004, Articles 11(c) and 16 of Regulation No 802/2004.

⁷⁷ Article 77(2) GDPR.

Finally, the CPC Regulation provides that, “where appropriate”⁷⁸, the competent authorities concerned by a coordinated action “shall set out” in a common position agreed upon them the results of the investigations and the assessments of the widespread infringement(s) with a Union dimension. This common position may be published⁷⁹ on the European Commission website, in line with the rules on confidentiality. Under the existing rules, there is no formal requirement for the European Commission and the CPC-Network to draft and publish such a “common position” following coordinated action following an external alert. This means that dialogue with traders under investigation, which are currently the norm within the CPC-Network, may not result in a common position, as in the case of the airlines complaint.

In our view, transparency wise, the situation should be improved as common positions have important guiding and educative functions for all stakeholders (traders, consumers, designated entities etc). For example, they contribute to explaining the CPC authorities’ understanding and interpretation of key EU legislations. BEUC referred to past CPC common positions in its alert against TikTok to further understand the CPC-Network’s interpretation of the UCPD applied to (inter alia) social networks and in-app games.

2.2.2. How could the situation be improved?

The public, consumers, and in particular the designated entities who submit alerts, should have the possibility to be informed about the different steps of the procedure. This transparency is not only necessary to help the work of the “alerters” and for an efficient co-operation between authorities and “alerters”, but also to build trust into the external alert mechanism system, and to ensure their continued participation and interest in the tool.

To increase transparency, BEUC suggests that the European Commission and the CPC-Network follow the practices of some national enforcement authorities, (e.g., the AGCM in Italy)⁸⁰ regularly informing the public about the different steps achieved and the decisions taken.

Furthermore, BEUC recommends that, whenever the CPC-Network follows up on an external alert and launches a coordinated action against a trader, the CPC-Network should draw up a common position detailing its understanding of the infringements and of the applicable legislation. This common position should be published on the CPC-Network’s website.

⁷⁸ Article 19(3) CPC.

⁷⁹ Article 19(5) CPC.

⁸⁰ The Italian CPC-authority regularly publishes press releases to inform the public about the different stages of investigations (launch of the procedure, continuation or closure of the procedure, approximate date for the end of the investigations, publication of the operators’ commitments etc.).

Under the current CPC Regulation, ways for improving transparency should, inter alia, include:

- The decision of the CPC-Network to accept or to dismiss an external alert should always be communicated to the concerned designated entity submitting the alert.
- The reasons for dismissing an alert should always be communicated to the designated entity.
- As a default standard/good practice, designated entity should be provided by the CPC-Network with regular updates about the state of the treatment of the alert/following procedure.
- The detailed commitments agreed with the concerned traders, in compliance with the rules on confidentiality, should be publicly disclosed by the CPC-Network.
- As a good practice, a "common position" should be drafted and published by the CPC-Network following the launch of each coordinated action, in compliance with the rules on confidentiality.

In an upcoming review of the CPC-Regulation the European Commission should consider introducing:

- An obligation for CPC-Network, to publicly disclose the detailed commitments agreed with the concerned traders, in compliance with the rules on confidentiality, professional and commercial secrecy.
- A requirement to publish a "common position" following the launch of a coordinated action triggered by an external alert, in compliance with the rules on confidentiality, professional and commercial secrecy.

2.3. Accelerating the processing of external alerts

2.3.1. What is the current state of play?

Currently, the CPC Regulation does not set out any procedural deadlines for the European Commission or national authorities when dealing with external alerts.⁸¹ BEUC acknowledges that the processing of alerts requires some time for the authorities to review the alert and then to coordinate their action. However, infringements (particularly those taking place in the digital sphere) may harm consumers during a short period of time only and may stop before the authorities decide to start their investigations.

⁸¹ Only deadlines are provided for the mutual assistance mechanism provided for in Chapter III of the Regulation, such as the deadline for authorities to communicate to a requesting authority any relevant information to establish whether an infringement is occurring⁸¹. Another point is that a deadline is also established for the competent authorities concerned by an alleged widespread infringement with an EU dimension to conduct appropriate investigations following a notification of the Commission and to notify of such results the investigations to other authorities and the Commission⁸¹. Otherwise, the Regulation is silent on deadlines to conduct investigations, and enforcement measures. Only the vague wording "without delay" is used on several occasions⁸¹.

In theory, the CPC Regulation applies even to infringements which have “ceased before the enforcement starts or is completed”.⁸² Nevertheless, there may be a clear discrepancy between the moment the CPC-Network decides to launch an action and the moment where the harmful practice occurred. For example, WhatsApp continued to send undue notifications to its users for several months after the launch of the alert in July 2021. It seemed to stop its practice during the autumn of 2021, likely once nearly all of its users had agreed to the contentious changes. This slowness limits the effectiveness of the CPC alert mechanism and may discourage entities from bringing alerts in the future.

2.3.2. How could the situation be improved?

For certain infringements, there is a need to strike a balance between, on the one hand, the need to process alerts and to coordinate and, on the other hand, the need for authorities to react quickly. A review of the CPC Regulation should include measures that lead to swifter actions by the CPC-Network. This could be done by: (1) establishing a “fast-track” processing of alerts or “emergency procedure” similar to what exists under the General Data Protection Regulation (EU) 2016/679 (GDPR)⁸³, and (2) by setting up clear deadlines for the European Commission and the national authorities to review external alerts. Finally, the CPC network should also systematically introduce in the scope of its decisions all the reported infractions, even the ceased ones.

- In an upcoming review of the CPC Regulation, a “fast track” or “emergency procedure” should be introduced into the external alert mechanism to facilitate the processing of alerts under certain conditions (e.g., unfair practices causing the risks of immediate significant harm to consumers).
- In an upcoming review of the CPC Regulation, clear deadlines for the Commission and CPC-authorities to review CPC external alerts should be introduced.

2.4. Exploiting the full enforcement toolbox available in the CPC Regulation

2.4.1. What is the current state of play?

According to the statement of the CPC-Network⁸⁴, one airline⁸⁵ deliberately refused to comply with EU law and failed to refund vouchers that consumers had been forced to accept. As the alert against airlines also showed, the CPC-Network has often been primarily concerned with preventing problems in the future without sanctioning past infringements.

⁸² Article 2.1 CPC.

⁸³ Article 66 GDPR.

⁸⁴ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en#:~:text=In%20February%202021%2C%20the%20CPC,a%20survey%20to%20the%2016 (consulted on 31 January 2022).

⁸⁵ Wizzair.

2.4.2. How could the situation be improved?

In its 2020 Consumer Agenda, the European Commission highlighted that it “will not hesitate to make use of its powers under the Regulation to trigger coordinated enforcement actions on EU-wide issues where necessary”.⁸⁶ In this context, the CPC-Network will significantly increase its potential to act effectively where necessary due to the new rules introduced by the so-called ‘Omnibus Directive’ in May 2022.⁸⁷ CPC authorities will now have 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 the case of coordinated CPC actions for widespread or EU-wide infringements of the Consumer Rights Directive, the Unfair Contract Terms Directive and the Unfair Commercial Practices Directive. With these new provisions, the CPC authorities have been equipped with important enforcement tools granting them the power to impose deterrent fines. We hope that, where necessary, the CPC authorities will make use of these new powers.

Furthermore, it should not be considered sufficient for traders to simply cease the illegal practices. This is a question of justice for the consumers who have already been harmed by the practice and whether a proper remedy has been provided to those consumers. In addition, it is a matter of fairness towards competitors who play by the rules. Sanctions should also be possible even if the trader accepts the commitments. For example, in the external alert against airlines, continued violations should clearly lead to coordinated enforcement measures by the competent authorities in the form of fines or periodic penalty payments.

In an upcoming review of the CPC Regulation, it should be clarified that CPC-authorities can make use of sanctions even where traders are asked to propose commitments. This can be relevant for example in cases of severe infringements or/and where infringements partially already ceased. The amount of the sanctions should take into account the proposed commitments to remedy consumers' harms.

2.5. Strengthening collaboration with other EU enforcement networks

2.5.1. What is the current state-of-play ?

The CPC Regulation provides opportunities to develop cross sector enforcement cooperation. Therefore, the European Commission and the CPC-Network should promote and strengthen their collaboration with the other EU enforcement networks. We see as a very positive development the fact that the CPC-Network has started cooperating with the European network of data protection authorities (EDPB) to discuss matters of common interest. We strongly support such joint meetings and sharing of information.

In our view, such cross-enforcement network cooperation is all the more important because two alerts submitted by BEUC identified multi-faceted problems which were not limited to the area of consumer law but also touched upon other areas, such as data protection or audio-visual activities. Whereas authorities may focus on certain areas only, more infringements are cross-cutting, not limited to certain areas only, and therefore call

⁸⁶ EU Consumer Agenda, November 2020.

⁸⁷ Directive (EU) 2019/2161 regarding the better enforcement and modernisation of Union consumer protection rules.

for an 'out-of-silos' approach. For example, the TikTok alert was sent to the CPC-Network but also sent to the EPDB and ERGA, whereas WhatsApp was also relevant for the EDPB.

2.5.2. How could the situation be improved?

Exchanges between enforcement networks should become more systematic to fight infringements, which are increasingly multi-faceted and trigger issues relating to potentially many different fields. It is noteworthy that some national authorities have recently created 'taskforces' with representatives from several of their authorities to address horizontal problems. For example, in the Netherlands, the Netherlands Authority for Consumers and Markets (ACM), the Dutch Data Protection Authority (AP), the Dutch Authority for the Financial Markets (AFM), and the Dutch Media Authority (CvdM) have recently announced their intention to work together more closely to strengthen their oversight of digital and online activities and have launched a so-called 'Digital Regulation Cooperation Platform'⁸⁸. A similar taskforce gathering representatives of the CPC-Network and other relevant EU enforcement networks could be particularly useful to ensure efficient investigations, thereby minimising the risk of overlaps and ensuring that the relevant information is transmitted between authorities.

The CPC Regulation should strengthen the possibilities for cross-sectorial cooperation between different enforcement networks.⁸⁹ In particular, the CPC-Network should be requested to alert other relevant EU enforcement networks when dealing with multi-faceted infringements. This is the option notably foreseen in the EU proposal laying down harmonised rules on artificial intelligence ('AI Act'), in which Art. 63(2) states that the national supervisory authority must alert the relevant competition authorities when they identify activities that may be of potential interest for the application of competition rules. Similar bridges between the different enforcement networks should multiply to ensure a more effective enforcement of all relevant rules.

In an upcoming review of the CPC Regulation, the strengthening the possibilities for cross-sectorial cooperation between different enforcement networks should be proactively considered. In particular, the CPC-Network should be requested to alert the other relevant EU enforcement networks when addressing multi-faceted infringements relevant to other enforcement networks.

3. Beyond external alerts: towards structured dialogues

In the past years, improvements in the collaboration between the European Commission, the CPC-Network, BEUC and its members have already been made, for example, by holding a jointly organised BEUC/European Commission workshop between consumer organisations, European Consumer Centres (ECCs) and authorities about the newly adopted CPC regulation on 17 January 2019. Occasionally, BEUC has also been invited to present specific topics to the CPC-Network. For example, we had an opportunity to provide

⁸⁸ www.acm.nl/en/publications/dutch-regulators-strengthen-oversight-digital-activities-intensifying-cooperation

⁸⁹ Only recital 45 of the Regulation provides that the new CPC-Regulation promotes cooperation and coordination among the consumer protection network and the networks of regulatory bodies and authorities established by sectoral Union legislation.

input to the consultation of the CPC-Network's priorities in September 2019. Yet, although it is a good step forward, much more could be achieved.

As a starting point, because of - and regardless of - their different roles, the work of authorities and consumer organisations can be complementary and mutually re-enforcing. Due to their daily contacts with consumers, consumer organisations can contribute to and support the work of authorities. In a recent report, the French Court of Auditors⁹⁰ pointed to the lack of complementarity between the actions of the French consumer authority (DGCCRF) and those of consumer organisations. Consequently, as part of its Strategy for 2020-2025, the French Consumer Authority intends (among other things) to modernise its relations with consumer organisations with the intent to limit duplicated actions and to clarify roles.

BEUC and its member organisations take the view that a structured dialogue between the European Commission, the CPC-Network, BEUC and its member organisations could be a promising starting point to establish regular exchanges. For example, bi-annual meetings would be useful to discuss priorities, to exchange about new market trends and about possible common projects. Stepping up the enforcement of consumer rights in the EU's digital and other markets where cross-border activities and actions are the norm will be an important step to ensure a high level of consumer protection, but it will also require a well-functioning European enforcement architecture.

We propose that the European Commission and the CPC-Network members establish a "structured dialogue" with BEUC and its members, to exchange on enforcement priorities, emerging market trends and potential common projects.



Complementary documents:

BEUC, *Stepping up the enforcement of consumer protection rules*, September 2020.

BEUC, *32 recommendations for stepping up the enforcement of consumer protection rules*, September 2020.

BEUC, *On the front row - Consumer organisations' work to support consumers in the COVID-19 crisis and the fight against unfair practices*, October 2020.

BEUC, *TikTok action*, February 2021.

⁹⁰ www.ccomptes.fr/fr/publications/letat-et-les-associations-de-defense-des-consommateurs



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