



11.7.2017

# **PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS**

**Subject:** Proposal for a regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws  
(COM(2016)0283 – C8-0194/2016 – 2016/0148(COD))

The interinstitutional negotiations on the aforementioned proposal for a regulation have led to a compromise. In accordance with Rule 69f(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on the Internal Market and Consumer Protection for decision by way of a single vote.

**Proposal for a**  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on cooperation between national authorities responsible for the enforcement of**  
**consumer protection laws**  
**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 2006/2004 of the European Parliament and of the Council<sup>2</sup> provides for harmonised rules and procedures to facilitate cooperation between national authorities responsible for the enforcement of cross-border consumer protection laws. Article 21a of Regulation (EC) No 2006/2004 provides for a review of the effectiveness and operational mechanisms of that Regulation and pursuant to that Article, the Commission concluded that Regulation (EC) No 2006/2004 is not sufficient to effectively address the enforcement challenges of the Single Market, including the Digital Single Market.

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<sup>1</sup> OJ C 108, 30.4.2004, p. 86.

<sup>2</sup> Regulation (EC) 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ L 364, 9.12.2004, p. 1).

- (2) The Digital Single Market Strategy adopted by the Commission on 6 May 2015 identified as one of the priorities the need to enhance consumer trust through more rapid and consistent enforcement of consumer legislation. The Single Market Strategy adopted by the Commission on 28 October 2015 reiterated that enforcing Union consumer protection legislation should be further strengthened by the reform of Regulation (EC) No 2006/2004.
- (3) The resulting ineffective enforcement of cross-border infringements, including in the digital environment, enables traders to evade enforcement by relocating within the Union, giving rise to a distortion of competition for law-abiding traders operating (whether online or offline) either domestically or cross-border, and thus directly harming consumers and undermining consumer confidence in cross-border transactions and the Single Market. An increased level of harmonisation setting effective and efficient enforcement cooperation among competent public enforcement authorities is therefore necessary to detect, investigate and order the cessation of intra-Union infringements and widespread infringements,
- (4) Regulation (EC) No 2006/2004 of the European Parliament and of the Council established a network of competent public authorities throughout the Union. Effective coordination among different competent authorities participating in the network, as well as other public authorities at the level of Member States, is necessary. The coordination role of the single liaison office should be entrusted to a public authority in each Member State that has sufficient powers and resources to undertake this key role. Member States are encouraged to designate one of the competent authorities pursuant to this regulation as the single liaison office.
- (5) Consumers should also be protected from intra-Union infringements and widespread infringements that already ceased but whose harmful effects may continue after the infringement has stopped. Competent authorities should have the necessary powers to investigate and order a cessation of such infringements in the future, in order to avoid their repetition, so as to ensure consumer protection.

- (6) Competent authorities should have a minimum set of powers of investigation and enforcement, in order to apply this Regulation, cooperate with each other more quickly and more efficiently and deter traders from committing infringements. Those powers should be sufficient to effectively tackle the enforcement challenges of e-commerce and the digital environment and to prevent non-compliant traders from exploiting gaps in the enforcement system by relocating to Member States whose competent authorities are not equipped to tackle unlawful practices. Those powers should ensure that information and evidence can be validly exchanged among competent authorities to achieve effective enforcement at an equal level in all Member States.
- (6a) Each Member States should ensure that all competent authorities within its jurisdiction have all the minimum powers, which are necessary to ensure the proper application of this Regulation. However, provided that every power can be effectively exercised as necessary in relation to any infringement covered by this Regulation by at least one competent authority, Member States may decide not to confer all the powers to each competent authority. Member States may also decide, in accordance with the provisions of this Regulation, to confer certain tasks under this Regulation to designated bodies or to provide competent authorities with the power to consult consumer organisations, trader organisations, designated bodies, or other persons concerned about the effectiveness of the commitments proposed by a trader in ceasing the infringement. However, Member States should not be under any obligation to involve designated bodies in the application of this Regulation or to provide for consultations with consumer organisations, trader organisations, designated bodies or other persons concerned about the effectiveness of the proposed commitments in ceasing the infringement.
- (6b) The implementation and exercise of powers in application of this Regulation should be proportionate and adequate to the nature and actual or potential harm of the infringement. Competent authorities should take into account all facts and circumstances of the case and choose the most appropriate measures which are essential to address the infringement. Those measures should be proportionate, effective and deterrent.

- (6c) The implementation and exercise of powers in application of this Regulation should also be in accordance with other Union and national legislation, in particular with applicable procedural safeguards and principles of the fundamental rights. Member States should remain free to set out conditions and limits for the exercise of the powers in national law, in accordance with Union law. Where, for instance, in accordance with national law prior authorisation to enter premises of natural and legal persons is needed from the judicial authority of the Member State concerned, the power to enter such premises should be used only after having obtained such prior authorisation.
- (7) Member States may choose whether the competent authorities exercise those powers directly under their own authority, with the assistance of other public authorities, by instructing designated bodies or by application to the competent courts. Member States should ensure that those powers are exercised effectively and in a timely manner.
- (8) When responding to requests made through the mutual assistance mechanism, competent authorities should, where appropriate, also make use of other powers or measures granted to them at the national level, including the power to initiate or refer matters for criminal prosecution. It is of the utmost importance that courts and other authorities, in particular those involved in criminal prosecution, have the necessary means and powers to cooperate with competent authorities effectively and in a timely manner,
- (9) Competent authorities should be in a position to open investigations on their own initiative if they become aware of intra-Union infringements or widespread infringements by means other than consumer complaints.

- (10) Competent authorities should have access to all necessary evidence, data and information relating to the subject matter of an investigation or sweep in order to determine whether an infringement has occurred or occurs, and in particular to identify the trader responsible, irrespective of who possesses the evidence, information or data in question and regardless of where it is located and of its format. Competent authorities should be able to directly request that third parties in the digital value chain provide all the evidence, data and information necessary in accordance with Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, on condition that they consistently respect the legislation on personal data protection.
- (10a) Information exchanged between competent authorities should be subject to strict guarantees of confidentiality and professional and commercial secrecy in order to ensure investigations are not compromised or the reputation of traders is not unfairly harmed. Disclosure should always be decided on a case-by-case basis by the competent authorities and only when appropriate and necessary, in accordance with the principle of proportionality, taking into account the public interest, such as public safety, consumer protection, public health and environmental protection and proper conduct of criminal investigations.
- (10b) Competent authorities should therefore be able to request the supply of any relevant information from any public authority, body or agency within their Member State and/or any natural or legal person including for instance payment service providers, internet service providers, telecommunication operators, domain registries and registrars and hosting services providers for the purpose of establishing whether an intra-Union infringement or a widespread infringement occurs.

- (10c) Competent authorities should be able to carry out the necessary on-site inspections, and should have the power to enter any premises, land or means of transport, that the trader uses for purposes relating to his trade, business, craft or profession.
- (10d) Competent authorities should be able to request any representative or member of the staff of the trader concerned to give explanations or provide facts, information or documents relating to the subject matter of the inspection, and to record the answers given by that representative or staff member.
- (11) Competent authorities should be able to verify compliance with consumer protection legislation and to obtain evidence of intra-Union infringements or widespread infringements, including those that take place during or after the purchase of goods and services. They should therefore have the power to purchase goods or services under a cover identity to detect infringements, such as the refusal to implement the consumer right to withdraw in the case of distance contracts. That power should also include the possibility to observe, study, disassembly or test a product or object that has been purchased by the competent authority for that purpose. The power to purchase goods or services as test purchases may include the power of competent authorities to ensure the return of any payment made where such return is not disproportionate and also otherwise complies with Union and national law."
- (12) In the digital environment in particular, the competent authorities should be able to stop infringements quickly and effectively, notably where the trader selling goods or services conceals its identity or relocates within the Union or to a third country to avoid enforcement. In cases where there is a risk of serious harm to consumers, in accordance with national law, the competent authorities should be able to adopt interim measures including, the removal of content from an online interface or ordering the explicit display of a warning to consumers when accessing the online interface. Interim measures should not go beyond what is necessary to achieve the objective. Furthermore, the competent authorities should have the power to order the explicit display of a warning to consumers when accessing the online interface or order the removal or modification of digital content when there are no other effective means to stop an illegal practice. Such measures should not go beyond what is necessary to achieve the objective of ceasing or prohibiting the infringement.

- (12a) Pursuing the objective of the Regulation along with stressing the importance of the traders' will to act in accordance with the consumer protection legislation and to remedy the consequences of his infringements, competent authorities should have the possibility to agree with traders on commitments containing steps and measures the trader has to take regarding the infringement, in particular to make the infringement cease.
- (13) Penalties for infringements of consumer law represent an important part of the enforcement system as they have an impact on the degree of deterrence provided by public enforcement. This Regulation includes the power to impose penalties for intra-Union infringements among the minimum powers of competent authorities, as national penalties schemes do not always allow taking into account the Intra-Union dimension of an infringement. The implementation of this power by Member States would not require them to set out a new regime of penalties for this particular category of infringement, but only to apply the applicable regime for domestic infringement, where possible taking into account the actual scale and scope of the infringement concerned. The need to strengthen the level of penalties for breaches of EU consumer law may be addressed, as it will be deemed appropriate, in accordance with the findings of the Report of the Fitness Check on EU consumer and marketing law SWD(2017) 209 final.
- (14) Consumers should be entitled to redress for harm caused by infringements. Depending upon the nature of the case, the power to receive from the trader, on its own initiative, additional remedial commitments for consumers affected by the alleged infringement, or where appropriate to seek to obtain commitments from the trader to offer adequate remedies to the consumers concerned by the infringement should contribute to removing the adverse impact on consumers caused by a cross-border infringement. These remedies may include, inter alia, repairs, replacement, price reduction, termination of contracts or reimbursement of the price as it is appropriate to mitigate the negative consequences of the infringement for the consumer concerned, in accordance with the requirements of Union law. This is without prejudice to a consumer's right to seek redress through appropriate means. Where applicable, competent authorities should inform, by appropriate means, consumers that claim to have suffered harm as a consequence of an infringement about the means how to seek compensation provided for by national legislation;



- (15) The effectiveness and efficacy of the mutual assistance mechanism should be improved. Information requested should be provided in a timely manner and the necessary investigation and enforcement measures should be adopted in a timely manner. Competent authorities should reply to information and enforcement requests in set time periods, unless otherwise agreed. The obligations of the competent authority in the framework of mutual assistance should remain intact, unless it is likely that enforcement actions and administrative decisions taken at national level outside the framework of mutual assistance will ensure a swift and effective cessation or prohibition of the intra-Union infringement. Administrative decisions in this regard should be understood as decisions giving effect to the measures taken to cease or prohibit the infringement. In those exceptional cases, competent authorities should be entitled to refuse to comply with a request for enforcement measures within the framework of mutual assistance.
- (16) The Commission should be better able to coordinate and monitor the functioning of the mutual assistance mechanism, issue guidance, make recommendations and issue opinions to the Member States when problems arise. The Commission should also be better able to effectively and quickly assist competent authorities to resolve disputes over the interpretation of their obligations stemming from the mutual assistance mechanism.
- (17) Harmonised rules setting out the procedure for the coordination, investigation and enforcement of widespread infringements should be provided. Coordinated actions against widespread infringements should ensure that competent authorities may choose the most appropriate and efficient tools to stop widespread infringements and where appropriate, to receive or seek to obtain remedial commitments for consumers.
- (17a) The competent authorities concerned by a widespread infringement should launch a coordinated action by a common agreement. In order to establish which competent authorities are concerned by a widespread infringement all relevant aspects of the infringement should be considered, in particular the place of establishment or residence of the trader, location of the assets of the traders, location of the consumers who suffered harm by the infringement and the place of the points of sale of the trader, i. e. shops and websites.

- (17b) Competent authorities concerned should coordinate their investigation and enforcement measures in the coordinated action in order to effectively tackle the infringement and bring about its cessation or prohibition. To that end evidence and other necessary information should be exchanged between the competent authorities and the necessary assistance should be provided. Competent authorities concerned should in a coordinated way take the necessary enforcement measures to bring about the cessation or prohibition of the widespread infringement.
- (17c) The extent of participation of each competent authority in a coordinated action should be sufficient to the extent of the investigation and enforcement measures the competent authority is required to address the infringement effectively. Competent authorities concerned should be under the obligation to take only the necessary investigation and enforcement measures which are needed to obtain the necessary evidence regarding the widespread infringement and to bring about the cessation or the prohibition of the infringement. However, lack of available resources of the competent authority concerned should not be considered as a justified reason not to take part in a coordinated action.
- (17d) Competent authorities concerned which participate in a coordinated action should be able to conduct national investigation and enforcement measures in relation to the same infringement. However, at the same time, the obligation of the competent authority to coordinate its investigation and enforcement activities in the framework of the coordinated action with other competent authorities concerned should remain intact, unless it is likely that enforcement actions and administrative decisions taken at national level outside the framework of the coordinated action will ensure a swift and effective cessation or prohibition of the widespread infringement. Administrative decisions in this regard should be understood as decisions giving effect to the measures taken to cease or prohibit the infringement. In those exceptional cases, competent authorities should be entitled to decline to participate in the coordinated action.

(19) The Commission should cooperate more closely with Member States to prevent large scale infringements from occurring. Therefore, it should actively notify competent authorities of any suspicion of infringements under this Regulation. If the Commission has, for instance by monitoring the alerts submitted by competent authorities, the reasonable suspicion that a widespread infringement with a Union dimension occurs, it should notify Member States, through the competent authorities and single liaison offices concerned by the alleged infringement, as well as state the grounds justifying a possible coordinated action in the notification. Competent authorities concerned should conduct appropriate investigations based on information available or easily accessible to them. They should notify the results of their investigations to the other competent authorities, the single liaison offices concerned and the Commission. Where the competent authorities concerned come to the conclusion that such investigations reveal that an infringement may be taking place, they should start the coordinated action by taking the measures set out in Article 17 and, where appropriate Article 18 and Article 18a. A coordinated action tackling a widespread infringement with a Union dimension should always be coordinated by the Commission. If it is apparent that the Member State is concerned by that infringement, it should take part in a coordinated action in order to help to collect the necessary information and evidence related to the infringement and to bring about its cessation or prohibition. As regards the enforcement measures, criminal and judicial proceedings in Member States should not be affected by the application of this regulation. The principle of ne bis in idem should be respected. However, if the same trader reiterates the same acts or omission constituting an infringement which had already been addressed by an enforcement procedure resulting in cessation or prohibition of the infringement, it should be considered a new infringement and competent authorities should address it.

- (19a) Competent authorities concerned should take the necessary investigation measures to establish the particularities of the widespread infringement, in particular the identity of the trader, acts or omissions committed by the trader and the effects of the infringement. Enforcement measures taken should be based on the outcome of the investigation. Where appropriate, the outcome of the investigation and the assessment of the widespread infringement should be set out in a common position agreed among the competent authorities of the Member States concerned by the coordinated action and addressed to the traders concerned by the infringement. The common position should not constitute a binding decision of the competent authorities. It should, however, give the addressee the opportunity to be heard on the matters which are part of the common position.
- (20) In the context of widespread infringements, the rights of defence of the traders concerned should be respected. This requires, in particular, giving the trader the right to be heard and to use during the proceedings the official language or one of the official languages used for official purposes of the Member State of its establishment or residence. It is also essential to ensure compliance with Union legislation on the protection of undisclosed know-how and business information.
- (21) Competent authorities concerned should take within their jurisdiction the necessary investigation and enforcement measures. However, the effects of widespread infringements are not limited to a single Member State. Therefore cooperation of competent authorities is required to address widespread infringement and to bring about their cessation or prohibition.
- (21a) Concerted investigation of consumer markets (sweeps) are another form of enforcement coordination that has proven to be an effective tool against infringements that should be retained and strengthened in the future, for both, online and offline sectors. Sweeps should be conducted in particular where market trends, consumer complaints or other indications suggest that widespread infringements may have occurred, occur or may occur.

- (22) Effective detection of widespread infringements should be supported by exchanging information between competent authorities and the Commission by the means of sending alerts if there is a reasonable suspicion of such infringements. The Commission should coordinate the functioning of the exchange of information.
- (22a) In order to enhance the transparency of the cooperation network, and to raise awareness amongst consumers and the public in general, the Commission should produce every two years an overview of the information, statistics and developments in the area of consumer law enforcement, collected within the framework of the cooperation provided for by this Regulation, and make it publicly available.
- (23) Consumer organisations play an essential role in informing consumers about their rights and educating them and protecting their interests, including the settlement of disputes. Consumers should be encouraged to cooperate with the competent authorities to strengthen the application of this Regulation.
- (23a) Participation of consumer organisations, and where appropriate participation of trader associations, in the alert mechanism should be also allowed to notify competent authorities of suspected infringements and share with them information needed to detect, investigate and stop infringements, to give their opinion about investigations or infringements and to notify competent authorities of abuse of Union laws that protect consumers' interests.
- (24) Infringements which are widespread throughout the Union should be effectively and efficiently resolved. A system of biannual exchange of enforcement priorities should be put in place to achieve this.
- (25) Data related to consumer complaints may help policymakers at national and Union level to assess the functioning of consumer markets and to detect infringements. The exchange of such data at Union level should be promoted.

- (25a) To the extent necessary to contribute to achieving the objectives of this Regulation, it is essential that Member States inform each other and the Commission of their activities in protecting consumers' interests, including support for the activities of consumer representatives, support for the activities of bodies responsible for the extra-judicial settlement of consumer disputes and support for consumers' access to justice. Member States should be able, in cooperation with the Commission, to carry out joint activities with respect to the exchange of consumer policy information in the aforementioned areas.
- (26) Enforcement challenges that go beyond the frontiers of the Union, and the interests of Union consumers should be protected from rogue traders based in third countries. Hence, international agreements with third countries regarding mutual assistance in the enforcement of legislation that protects consumers' interests should be negotiated. Those international agreements should include the subject matter laid down in this Regulation and should be negotiated at Union level in order to ensure the optimum protection of Union consumers and smooth cooperation with third countries,
- (27) In order to lay down the practical and operational arrangements for the functioning of the database, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>1</sup>,
- (29) This Regulation is without prejudice to sectoral Union rules providing for cooperation among sectoral regulators and applicable sectoral Union rules on the compensation of consumers for harm resulting from infringements of those rules. This Regulation is without prejudice to other cooperation systems and networks set out in sectoral Union legislation. This Regulation furthers cooperation and coordination among the consumer protection network and the networks of regulatory bodies and authorities established by sectoral Union legislation. This Regulation should be without prejudice to the application in the Member States of measures relating to judicial cooperation.

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<sup>1</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2. 2011, p. 13-18).

- (29a) This Regulation is without prejudice to the right to claim individual or collective compensation, which is subject to the national law and does not provide for the enforcement of those claims.
- (29b) Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data and Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data should apply in the context of this Regulation.
- (30) This Regulation is without prejudice to the existing Union rules concerning the powers of national regulatory bodies established by Union sectoral legislation. Where appropriate and possible, those bodies should use the powers available to them under Union and national law to cease or prohibit intra-Union infringements or widespread infringements or to assist the competent authorities in doing so.
- (32) This Regulation is without prejudice to the role and the powers of the competent authorities and of the European Banking Authority in relation to the protection of the collective economic interests of consumers in matters concerning payment accounts services and credit agreements relating to residential immovable property under Directive 2014/17/EU of the European Parliament and of the Council and Directive 2014/92/EU of the European Parliament and of the Council.

- (33) In view of the existing cooperation mechanisms under Directive 2014/17/EU of the European Parliament and of the Council and Directive 2014/92/EU of the European Parliament and of the Council, the mutual assistance mechanism (Chapter III) shall not apply to intra-Union infringements of these Directives.
- (34a) In order to ensure the correct implementation of this Regulation, Member States should entitle designated bodies, European Consumer Centres, consumer organisations and associations and trader associations to notify the competent authorities of the Member States concerned and the Commission of suspected intra-Union infringements or widespread infringements and to provide the necessary information available to them. It is recognised that Member States may have appropriate reasons for not entitling such entities to undertake those actions. In this context, where a Member State decides not to entitle one of the aforementioned entities to carry out those tasks, it should provide an explanation containing justified reasons.
- (34b) This Regulation should be without prejudice to Regulation No 1 determining the languages to be used by the European Economic Community<sup>1</sup>.
- (35) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union<sup>2</sup> and by the constitutional traditions of the Member States. Accordingly this Regulation should be interpreted and applied in accordance with those rights and principles, including those related to the freedom of the press and the freedom of expression. When exercising the minimum powers set out in this Regulation, the competent authorities should strike an appropriate balance between the interests protected by fundamental rights such as a high level of consumer protection, the freedom to conduct business and freedom of information.

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<sup>1</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 401-402).

<sup>2</sup> OJ C 364, 18.12.2000, p. 1.



(36) Since the objective of this Regulation, namely cooperation between national authorities responsible for the enforcement of consumer protection law, cannot be sufficiently achieved by the Member States because they cannot ensure cooperation and coordination by acting alone, and this objective can therefore, by reason of its territorial and personal scope, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective. In order to ensure protection of the rights and freedoms, including appropriate safeguards for data subjects, with regard to the processing of personal data and on the free movement of such data, Regulation (EU) 2016/679 should be respected.

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

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **INTRODUCTORY PROVISIONS**

#### *Article 1*

##### **Subject matter**

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

## *Article 2*

### **Scope**

1. This Regulation applies to intra-Union infringements and widespread infringements defined in points (b), (c) and (ca) of Article 3 respectively, even if those infringements have ceased before enforcement starts or is completed.
3. This Regulation shall be without prejudice to the Union rules on private international law, in particular rules related to court jurisdiction and applicable laws.
4. This Regulation shall be without prejudice to the application in the Member States of measures relating to judicial cooperation in criminal and civil matters, in particular the operation of the European Judicial Network and to the application of legal instruments regarding judicial cooperation in criminal matters.
5. This Regulation shall be without prejudice to the fulfilment by the Member States of any additional obligations in relation to mutual assistance for the protection of the collective economic interests of consumers, including criminal matters stemming from other legal acts, including bilateral or multilateral agreements.
6. Chapter III of this Regulation shall not apply to intra-Union infringements under Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts.

8. This Regulation shall be without prejudice to Directive 2009/22/EC of the European Parliament and of the Council<sup>1</sup>.
- 8a. This Regulation shall be without prejudice to the possibility of bringing further public or private enforcement actions under national law.
- 8b. This Regulation shall be without prejudice to relevant Union law applicable to the protection of individuals with regard to the processing of personal data.
- 8c. This Regulation shall be without prejudice to national law applicable to compensation of consumers for harm caused by infringement of Union law that protects consumer interest.
- 8d. This Regulation shall not preclude competent authorities from conducting investigation and enforcement action against more than one trader committing similar infringements, as defined in this Regulation.

### *Article 3*

#### **Definitions**

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

- (a) ‘Union laws that protect consumers' interests’ means the Directives as transposed into the internal legal order of the Member States and the Regulations listed in the Annex hereto;
- (b) ‘intra-Union infringement’ means any act or omission contrary to Union laws that protect consumers' interests that harmed, harms, or is likely to harm the collective interests of consumers residing in a Member State other than the Member State where the act or omission originated or took place, or where the trader responsible for the act or omission is established, or where evidence or assets of the trader pertaining to the act or omission are to be found;

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<sup>1</sup> Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30).

- (c) 'widespread infringement' means
  - (1) any act or omission contrary to Union laws that protect consumers' interests that harmed, harms, or is likely to harm the collective interests of consumers residing in at least two Member States other than the Member State where the act or omission originated or took place, or where the trader responsible for the act or omission is established, or where evidence or assets of the trader pertaining to the act or omission are to be found; or
  - (2) any acts or omissions contrary to Union laws that protect consumers' interests that harmed, harm, or are likely to harm consumers' collective interests and that have common features, including the same unlawful practice, the same interest being infringed and that are occurring concurrently, committed by the same trader, in at least three Member States;
- (ca) 'widespread infringement with a Union dimension' means a widespread infringement that harmed, harms or is likely to harm consumer's collective interests in two thirds of Member States accounting together for two thirds of the population of the Union;
- (ca) 'competent authority' means any public authority established either at national, regional or local level which is responsible for enforcing the Union laws that protect consumers' interests and designated according to paragraph 1 of Article 5;
- (cb) 'single liaison office' means the public authority in each Member State designated as responsible for coordinating the application of this Regulation within that Member State;
- (ea) 'designated body' means a body having a legitimate interest in the cessation or prohibition of infringements of the Union laws that protect consumers' interests designated by a competent authority to gather the necessary information and to take the necessary enforcement measures available to it under national law to bring about the cessation or prohibition of the infringement acting on behalf of that competent authority,

- (d) 'applicant authority' means the competent authority that makes a request for mutual assistance;
- (e) 'requested authority' means the competent authority that receives a request for mutual assistance;
- (f) 'trader' means any natural or legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to his trade, business, craft or profession, including through any other person acting in his name or on his behalf;
- (fa) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession;
- (h) 'consumer complaint' means a statement, supported by reasonable evidence, that a trader has committed, or is likely to commit, an infringement of the laws that protect consumers' interests;
- (i) 'harm to collective interests of consumers' means actual or potential harm to the interests of a number of consumers that are concerned by intra-Union infringements, widespread infringements or widespread infringements with a Union dimension;
- (ia) 'online interface' means any software, including a website or part of a website and applications, operated by or on behalf of a trader, which serves as a means to give consumers access to the trader's goods or services.
- (ib) 'sweeps' means a concerted investigation of consumer markets through simultaneous coordinated control actions to identify infringements of Union laws that protect consumers' interests.

#### *Article 4*

### **Notification of limitation periods for infringements**

The single liaison offices shall notify the Commission of the limitation periods in place in their jurisdiction applicable to taking enforcement measures pursuant to Article 8(3). The Commission shall summarise the notified limitation periods and make the summary available to competent authorities.

## **CHAPTER II**

### **COMPETENT AUTHORITIES AND THEIR POWERS**

#### *Article 5*

### **Competent authorities and single liaison offices**

1. Each Member State shall designate the competent authorities and the single liaison office that are responsible for the application of this Regulation.
2. Competent authorities shall fulfil their obligations under this Regulation as though acting on behalf of consumers in their own Member State and on their own account.
4. Within each Member State the single liaison office shall be responsible for coordinating investigation and enforcement activities related to intra-Union infringements and widespread infringements by the competent authorities, other public authorities as set out in Article 6 and, if applicable, designated bodies as set out in Article 6a
5. Member States shall ensure that competent authorities and single liaison offices have the adequate and necessary resources for the application of this Regulation, including sufficient budgetary and other resources, expertise, procedures and other arrangements.
6. Where there is more than one competent authority on their territory, Member States shall ensure that their respective duties are clearly defined and that those authorities collaborate closely so that they can discharge their respective duties effectively.

## *Article 6*

### **Cooperation for application of this Regulation within Member States**

1. For the proper application of this Regulation each Member States shall ensure that its competent authorities, other public authorities and, if applicable, designated bodies cooperate effectively with each other.
2. Other public authorities referred to in paragraph 1 to shall take, upon request from a competent authority, all necessary measures available to them under national law in order to bring about the cessation or prohibition of intra-Union infringements and widespread infringements.
3. The Member States shall ensure that the other public authorities have the means and powers necessary to cooperate effectively with the competent authorities in the application of this Regulation. Those other public authorities shall regularly inform the competent authority about the measures taken in the application of this Regulation.

## *Article 6a*

### **Role of designated bodies**

1. Where applicable and in accordance with national law, a competent authority ('instructing authority') may instruct a designated body to gather the necessary information regarding an intra-Union infringement or widespread infringement or to take the necessary enforcement measures to bring about the cessation or prohibition of that infringement, if, after consultation with the applicant authority or the other competent authorities concerned, both applicant and requested authority or all competent authorities concerned are in agreement that by these means it is likely that the necessary information will be obtained or the cessation or the prohibition of the infringement will be brought about in at least equally efficient and effective a way as action by the instructing authority.

2. If the applicant authority or the other authorities concerned are of the opinion that the conditions set out under paragraph 1 are not fulfilled, they shall inform the instructing authority in writing without delay, setting out the grounds for their opinion. In case of disagreement, the instructing authority may refer the matter to the Commission, which shall issue an opinion without delay.
3. In the event of a failure by the designated body to obtain the necessary information or to bring about the cessation or prohibition of the infringement without delay or when the competent authorities concerned are not in agreement that the designated body may be instructed pursuant to paragraph 1, the obligations of the instructing authority to take the necessary investigation or enforcement measure shall remain.
4. The instructing authority shall take all necessary measures to prevent the disclosure of information which is subject to the rules on confidentiality and professional and commercial secrecy set out in Article 41.

### *Article 7*

#### **Information and lists**

1. Each Member State shall communicate without delay to the Commission:
  - (a) the identities and contact details of the competent authorities, of the single liaison office, of the designated bodies and of the entities participating in the alert mechanism as referred to in Article 35;
  - (b) information about the organisation, powers and responsibilities of the competent authorities; and
  - (c) any changes to the information mentioned in points (a) and (b).
2. The Commission shall maintain and update a publicly available list of single liaison offices, competent authorities, designated bodies and entities as set out in Article 35 on its website.



## *Article 8*

### **Minimum powers of competent authorities**

1. Each competent authority shall have the investigation and enforcement powers pursuant to paragraphs 2, 3, 4 and 5 necessary for the application of this Regulation and shall exercise them under the conditions set out in Article 9.
- 1a. Notwithstanding paragraph 1, Member States may decide not to confer all the powers to each competent authority provided that every power can be effectively exercised as necessary in relation to any infringement covered by this Regulation under the conditions set out in Article 9.
2. Competent authorities shall have at least the following investigation powers:
  - (a) the power to have access to any relevant document, data or information related to an infringement under this Regulation, in any form or format and irrespective of the medium on which or the place where they are stored;
  - (b) require the supply of any relevant information, data or document in any format or form and irrespective of the medium on which or the place where they are stored, from any public authority, body or agency within the Member State of the competent authority and/or any natural or legal person for the purpose of establishing whether an intra-Union infringement or a widespread infringement occurs and establishing the particularities of such infringement, including the tracing financial and data flows, or of ascertaining the identity of persons involved in financial and data flows, bank account information and ownership of websites;

- (d) the power to carry out the necessary on-site inspections, including the power to enter any premises, land or means of transport that the trader uses for purposes related to his trade, business, craft or profession, or to request other authorities to do so in order to examine, seize, take or obtain copies of information, data or documents, irrespective of the medium on which they are stored; to seize any information, data or documents for a necessary period and to the extent necessary for the inspection; to request any representative or member of the staff of the trader concerned to give explanations on facts, information or documents relating to the subject matter of the inspection and to record the answers;
  - (e) the power to purchase goods or services as test purchases, including, where necessary, under a cover identity, to inspect them and to observe, study, disassemble or test them in order to detect infringements under this Regulation and obtain evidence;
3. Competent authorities shall have at least the following enforcement powers:
- (a) adopt interim measures to prevent the risk of serious harm to the collective interest of consumers;
  - (b) seek to obtain or accept commitments from the trader responsible for the intra-Union infringement or widespread infringement to cease the infringement;
  - (ba) to receive from the trader, on its own initiative, additional remedial commitments for consumers affected by the alleged infringement, or where appropriate to seek to obtain commitments from the trader to offer adequate remedies to the consumers concerned by the infringement;

- (bb) where applicable, competent authorities shall inform, by appropriate means, consumers that claim to have suffered harm as a consequence of an infringement about the means how to seek compensation provided for by national legislation;
- (c) order in writing the cessation of the Intra-Union infringements and widespread infringements by the trader;
- (d) bring about the cessation or the prohibition of the Intra-Union infringements and widespread infringements;
- (e) where no other effective means are available to bring about the cessation or the prohibition of the infringement including by requesting a third party or other public authority to implement such measures, in order to prevent the risk of serious harm to the collective interests of consumers:
  - to remove content or restrict access to an online interface or to order the explicit display of a warning to consumers when accessing the online interface;
  - to order a hosting service provider to remove, disable or restrict the access to an online interface; or
  - where appropriate, order domain registries or registrars to delete a fully qualified domain name and allow the competent authority concerned to register it;
- (f) impose penalties, for instance fines or periodic penalty payments, for intra-Union infringements and widespread infringements and for the failure to comply with any decision, order, interim measure, commitment or other measure adopted pursuant to this Regulation. Such penalties shall be effective, proportionate and dissuasive, in accordance with the requirements of Union law that protects consumers' interests. In particular, due regard shall be given, as appropriate, to the nature, gravity and duration of the infringement.

- 3a. The power to impose penalties, for instance fines or periodic penalty payments, for intra Union and widespread infringements applies to any infringement to Union laws that protect consumers' interests where the relevant Union act listed in the Annex provides for penalties. This is without prejudice to the power for national authorities to impose penalties, for instance administrative or other fines or periodic penalty payments, under the conditions set out by national law, where Union acts listed in the Annex do not provide for penalties.
4. Competent authorities shall have the power to start investigations or procedures to bring about the cessation or prohibition of intra-Union infringements or widespread infringements of their own initiative.
5. Competent authorities may publish any final decision, trader's commitments or orders adopted pursuant to this Regulation, including the publication of the identity of the trader responsible for the intra-Union infringement or widespread infringement.
6. Competent authorities may consult, where applicable, consumer organisations, trader organisations, designated bodies and other persons concerned about the effectiveness of the proposed commitments in ceasing the infringement.

### *Article 9*

#### **Exercise of minimum powers**

1. The powers set out in Article 8 shall be exercised either:
  - (a) directly by competent authorities under their own authority;
  - (aa) where appropriate, upon recourse to other competent authorities or other public authorities for the application of the powers;
  - (ab) by instructing designated bodies if applicable; or
  - (b) by application to courts competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful.

2. The implementation and the exercise of powers set out in Article 8 in application of this Regulation shall be proportionate and in accordance with this Regulation, Union and national law, including applicable procedural safeguards and principles of the Charter of Fundamental Rights of the European Union. Investigation and enforcement measure adopted in application of this Regulation shall be adequate to the nature and the overall actual or potential harm of the infringement.

### **CHAPTER III**

#### **MUTUAL ASSISTANCE MECHANISM**

##### *Article 11*

###### **Requests for information**

1. A requested authority shall, on request from an applicant authority, supply to the applicant authority without delay, and in any event within 30 days, unless otherwise agreed, any relevant information required to establish whether an intra-Union infringement has occurred and to bring about the cessation of that infringement.
2. The requested authority shall undertake the appropriate and necessary investigations or take any other necessary or appropriate measures in order to gather the required information. If necessary, those investigations shall be carried out with the assistance of other public authorities or designated bodies.
3. On request from the applicant authority, the requested authority may allow competent officials of the applicant authority to accompany the officials of the requested authority in the course of their investigations.

## *Article 12*

### **Requests for enforcement measures**

1. A requested authority shall on request from an applicant authority, take all necessary and proportionate enforcement measures to bring about the cessation or prohibition of the intra-Union infringement by exercising powers set out under Article 8 and any additional powers granted to it under national law. The requested authority shall determine the appropriate enforcement measures needed to bring about the cessation or prohibition of the intra-Union infringement and shall take them without delay but not later than 6 months after receiving the request, unless specific reasons for the delay are provided. Where appropriate, the requested authority shall impose penalties, for instance fines or periodic penalty payments, on the trader responsible for the intra-Union infringement. The requested authority may receive from the trader, on its own initiative, additional remedial commitments for consumers affected by the alleged infringement, or where appropriate seek to obtain commitments from the trader to offer adequate remedies to consumers concerned by the infringement.
  
3. The requested authority shall regularly inform the applicant authority about the steps and measures taken and the steps and measures it intends to take. The requested authority shall notify through the database, provided for in Article 43, the applicant authority, the competent authorities of other Member States and the Commission of the measures taken and the effect thereof on the intra-Union infringement without delay, including the following:
  - (a) whether interim measures have been imposed;
  - (b) whether the infringement has ceased;
  - (c) which measures, have been adopted and whether those measures have been implemented;
  - (d) to what extent consumers have been offered remedial commitments

## *Article 14*

### **Procedure for mutual assistance requests**

1. In requests for mutual assistance, the applicant authority shall provide necessary information to enable a requested authority to fulfil the request, including any necessary evidence obtainable only in the Member State of the applicant authority.
2. Requests shall be sent by the applicant authority to the single liaison office of the Member State of the requested authority and to the single liaison office of the Member State of the applicant authority for information. The single liaison office of the Member State of the requested authority shall pass the requests on to the appropriate competent authority without delay.
3. Requests for mutual assistance and all communication linked to them shall be made in writing using standard forms and communicated electronically via the database established pursuant to Article 43.
4. The languages used for requests for mutual assistance and for all communication linked to them shall be agreed upon by the competent authorities concerned.
5. If no agreement about languages can be reached, requests shall be sent in the official language of the Member State of the applicant authority and replies in the official language of the Member State of the requested authority. In that case, each competent authority shall ensure the necessary translations of the requests, replies and other documents that it receives from another competent authority.
6. The requested authority shall reply directly to the applicant authority and to the single liaison offices of the Member States of the applicant and requested authorities.

## *Article 15*

### **Refusal to comply with a request for mutual assistance**

1. A requested authority may refuse to comply with a request for information under Article 11 if one or more of the following applies:
  - (a) following consultation with the applicant authority, it appears that the information requested is not needed by the applicant authority to establish whether an intra-Union infringement has occurred or to establish whether there is a reasonable suspicion that it may occur;
  - (b) the applicant authority does not agree that the information is subject to the provisions on confidentiality and professional and commercial secrecy set out in Article 41;
  - (c) criminal investigations or judicial proceedings have already been initiated in respect of the same intra-Union infringement and against the same trader before the judicial authorities in the Member State of the requested or applicant authority.
2. A requested authority may refuse to comply with a request for enforcement measures under Article 12 following a consultation with the applicant authority, if one or more of the following applies:
  - (a) criminal investigations or judicial proceedings have already been initiated , or there is a judgment, a court settlement or a judicial order in respect of the same intra-Union infringement and against the same trader before the judicial authorities in the Member State of the requested authority;
  - (aa) the exercise of the necessary enforcement powers have already been initiated, or an administrative decision has already been adopted in respect of the same intra-Union infringement and against the same trader in that Member State in order to bring about the swift and effective cessation or prohibition of the intra-Union infringement;



- (b) in its opinion, following appropriate investigation, no intra-Union infringement has occurred;
- (c) in its opinion, the applicant authority has not provided sufficient information in accordance with Article 14(1),
- (d) the requested authority has accepted commitments by the trader to cease the intra-Union infringement in a set time limit and that time limit has not yet passed.

However, the requested authority shall comply with the request for enforcement measures under Article 12 if the trader fails to implement commitments pursuant to point (d).

3. The requested authority shall inform the applicant authority and the Commission of the refusal to comply with a request for mutual assistance and provide grounds for the refusal.
4. In the event of a disagreement between the applicant authority and the requested authority, the applicant authority or the requested authority may refer the matter to the Commission which shall without delay issue an opinion. Where the matter is not referred to it, the Commission may of its own motion issue an opinion. For the purpose of issuing an opinion, the Commission may ask for relevant information and documents exchanged between the applicant authority and the requested authority.
5. The Commission shall monitor the functioning of the mutual assistance mechanism, the compliance of competent authorities with the procedures and the time limits for handling mutual assistance requests. The Commission shall have access to the mutual assistance requests and to the information and documents exchanged between the applicant and requested authority.
6. Where appropriate, the Commission may issue guidance and provide advice to the Member States to ensure the effective and efficient functioning of the mutual assistance mechanism.

## CHAPTER IV

### INVESTIGATION AND ENFORCEMENT MECHANISM FOR WIDESPREAD INFRINGEMENTS AND WIDESPREAD INFRINGEMENTS WITH A UNION DIMENSION

#### *Article 15a*

##### **Procedure for decisions amongst Member States**

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

#### *Article 15aa*

##### **General principles of cooperation**

1. Where there is a reasonable suspicion that a widespread infringement is taking place, competent authorities concerned and the Commission shall without delay, by sending alerts pursuant to Article 34, inform each other and the single liaison offices concerned.
2. The competent authorities concerned by the widespread infringement shall coordinate their investigation and enforcement measures to address infringements. They shall exchange all necessary information and provide each other and the Commission with any assistance needed without delay.
3. The competent authorities concerned shall ensure that necessary evidence and information are gathered and all necessary enforcement measures are taken to bring about the cessation or prohibition of the widespread infringement.
4. Without prejudice to paragraph 2, conducting of national investigation and enforcement activities in respect of the same infringement and the same trader by competent authorities concerned shall not be affected by the application of this Regulation.
5. Where appropriate, the competent authorities may invite Commission officials and other accompanying persons authorised by the Commission to participate in the coordinated investigations, enforcement actions and other measures pursuant to this Chapter.

## *Article 16*

### **Launch of coordinated action and designation of the coordinator**

1. In case of a reasonable suspicion of a widespread infringement the competent authorities concerned shall launch a coordinated action by an agreement between them. The launch of the coordinated action shall be notified to the single liaison offices concerned by the coordinated action and to the Commission, without delay.
2. The competent authorities concerned by the suspected widespread infringement shall designate one competent authority among themselves to take the role of the coordinator. If no agreement can be reached on the coordinator, the Commission shall take the role of coordinator.
3. If the Commission has the reasonable suspicion of a widespread infringement with a Union dimension, it shall notify without delay pursuant to Article 34 the competent authorities and the single liaison offices concerned by the alleged infringement. The Commission shall state in the notification the grounds justifying a possible coordinated action. Competent authorities concerned shall conduct appropriate investigations based on information available or easily accessible to them. Competent authorities concerned shall notify the results of such investigations to the other competent authorities, the single liaison offices concerned and the Commission pursuant to Article 34, within one month from the Commission's notification. Where such investigations reveal that an infringement may be taking place, competent authorities concerned by the infringement shall start with the coordinated action and take the measures set out in Article 17 and, where appropriate, Article 18 and Article 18a.
4. The coordinated action started following the Commission's notification pursuant to paragraph 3 shall be coordinated by the Commission.
5. A competent authority shall join the coordinated action, if during the coordinated action it becomes apparent that it is concerned by the widespread infringement.

## *Article 16a*

### **Reasons for declining to take part in the coordinated action**

1. A competent authority may decline to take part in a coordinated action for any of the following reasons:
  - (a) criminal investigation or judicial proceedings have already been initiated, a judgement has been given, or a court settlement was reached concerning the same infringement against the same trader in that Member State;
  - (b) the exercise of the necessary enforcement powers has already been initiated before the issuance of an alert pursuant to Article 16(3), or an administrative decision has been adopted in respect of the same infringement against the same trader in that Member State in order to bring about the swift and effective cessation or prohibition of the widespread infringement;
  - (c) following appropriate investigation it is apparent that the actual or potential impact of the alleged infringement in its Member State is negligible and no enforcement measures need to be adopted by the competent authority;
  - (ca) the relevant widespread infringement or the widespread infringement with a Union dimension has not occurred in the Member State concerned and no enforcement measures need to be adopted by the competent authority;
  - (d) the competent authority has accepted commitments by the trader to cease the widespread infringement in its Member State and those commitments have been implemented and no enforcement measures need to be adopted by the competent authority.
2. Where a competent authority declines to take part in the coordinated action, it shall without delay inform the Commission and the other competent authorities and single liaison offices concerned about its decision, state the reasons for it and provide the necessary supporting documents.

## *Article 17*

### **Investigation measures in coordinated actions**

1. The competent authorities concerned shall ensure that investigations and inspections are conducted effectively, efficiently and in a coordinated manner. They shall seek, simultaneously with one another, to conduct investigations and inspections and, to the extent that national procedural law so allows, to apply interim measures.
- 2a. The mutual assistance mechanism pursuant to Chapter III may be used, if it is needed, in particular to gather evidence and information from Member States other than the Member States concerned by the coordinated action or to ensure that the trader concerned does not circumvent enforcement measures.
3. Where appropriate, the competent authorities concerned shall set out the outcome of the investigation and the assessment of the widespread infringement or, where applicable, the widespread infringement with a Union dimension, in a common position agreed upon among themselves.
- 3a. Unless otherwise agreed between the competent authorities concerned, the coordinator shall communicate the common position to the trader responsible for the infringement, who shall be given the opportunity to be heard on the matters forming part of the common position.
4. Where appropriate and without prejudice to Article 15a and to the rules on professional and commercial secrecy set out in Article 41, the competent authorities concerned shall decide to publish the common position or parts of it on their websites and may seek the views of consumer organisations, trader organisations and other parties concerned. The Commission shall publish the common position on its website in agreement with competent authorities concerned.

## *Article 18*

### **Commitments in coordinated actions**

1. On the basis of a common position adopted pursuant to Article 17, the competent authorities concerned may invite the trader responsible for the widespread infringement or the widespread infringement with a Union dimension to propose in a set time limit commitments to cease the infringement. The trader may also, on its own initiative, propose commitments to cease the infringement or offer remedial commitments to consumers.
- 2a. Where appropriate and without prejudice to the rules on professional and commercial secrecy set out in Article 41, the competent authorities concerned may publish the commitments proposed by the trader on their websites or, as appropriate, the Commission may publish the commitments proposed on its website if requested by the competent authorities concerned. Competent authorities and the Commission may seek the views of other parties concerned, including consumer organisations and trade organisations.
3. The competent authorities concerned shall assess the proposed commitments and communicate the outcome of the assessment to the trader and, where applicable in case remedial commitments are offered shall inform consumers that claimed to have suffered harm as a consequence of the infringement of the latter. Where commitments are sufficient and proportionate to cease the infringement, the competent authorities shall accept the commitments and set a time limit within which the commitments have to be implemented.
4. The competent authorities concerned shall monitor the implementation of the commitments. They shall in particular ensure that the trader concerned regularly reports to the coordinator about the progress of the implementation of the commitments. The competent authorities may, where appropriate, seek the views of consumer organisations and experts to verify whether the steps taken by the trader are in line with the commitments.

## *Article 18a*

### **Enforcement measures in coordinated actions**

1. The competent authorities concerned shall take within their jurisdiction all necessary enforcement measures against the trader responsible for the widespread infringement to bring about the cessation or prohibition of the widespread infringement. Where appropriate they shall impose penalties, for instance fines or periodic penalty payments, on the trader responsible for the widespread infringement. The requested authority may receive from the trader, on its own initiative, additional remedial commitments for consumers affected by the alleged infringement, or where appropriate seek to obtain commitments from the trader to offer adequate remedies to consumers concerned by the infringement. Enforcement measures are particularly appropriate where:
  - (a-1) immediate enforcement action is required to bring about the swift and effective cessation or prohibition of the infringement;
  - (a) it is unlikely that the infringement will cease as a result of the commitments proposed by the trader responsible for the infringement;
  - (b) the trader responsible for the infringement does not propose commitments before the expiry of a time limit set by the competent authorities concerned;
  - (c) the trader responsible for the infringement proposes commitments which are insufficient to ensure the cessation of the infringement or, where appropriate, to remedy consumers harmed by the infringement; or
  - (d) the trader responsible for the infringement fails to implement the commitments to cease the infringement or, where appropriate, to remedy consumers harmed by the infringement, before the expiry of the time limit set out in Article 18(1);

2. Enforcement measures pursuant to paragraph 1 shall be taken in an effective, efficient and coordinated manner to bring about the cessation or prohibition of the widespread infringement. The competent authorities concerned shall seek to take enforcement measures simultaneously in Member States concerned by the widespread infringement.

### *Article 19*

#### **Closure of the coordinated actions**

1. The coordinated action shall be closed if the competent authorities concerned conclude that the widespread infringement has ceased or has been prohibited in all Member States concerned or there was no widespread infringement committed.
2. The coordinator shall notify the Commission, where applicable, the competent authorities and the single liaison offices of the Member States concerned without delay of the closure of the coordinated action.

### *Article 29*

#### **Role of the coordinator**

1. The coordinator appointed in accordance with Articles 16 or 36a shall in particular:
  - (a) ensure that all the competent authorities concerned and the Commission are duly informed in a timely manner of the progress of the enforcement action, the anticipated next steps and the measures to be adopted;
  - (b) coordinate and monitor investigation measures taken by the competent authorities concerned in accordance with Chapter IV ;
  - (c) coordinate the preparation and sharing of all necessary documents among the competent authorities concerned and the Commission;
  - (d) maintain contact with the trader and other parties concerned by the , investigation and enforcement measures, unless otherwise agreed upon by the competent authorities concerned and the coordinator;



- (e) coordinate the assessment, the consultations and the monitoring by the competent authorities concerned as well as other steps necessary to process and implement commitments proposed by the traders concerned;
  - (f) coordinate enforcement measures adopted by the competent authorities concerned;
  - (g) coordinate mutual assistance requests lodged by the competent authorities concerned pursuant to Chapter III.
2. The coordinator shall not be held responsible for the actions or the omissions of the competent authorities concerned when making use of the powers set out in Article 8.
  - 2a. Where the coordinated actions concern widespread infringements of the Union legislation pursuant to paragraph 6 of Article 2 the coordinator shall invite the European Banking Authority to take an observer role.

### *Article 30*

#### **Language arrangements**

3. The languages used by the competent authorities for notifications and for all communications linked to the coordinated actions and sweeps pursuant to this Chapter shall be agreed upon by the competent authorities concerned.
4. If no agreement can be reached between the competent authorities concerned, notifications and other communications shall be sent in the official language of the Member State making the notification or other communication. In that case, if necessary, each competent authority concerned shall ensure the translations of the notifications, communications and other documents that it receives from other competent authorities.

### *Article 31*

#### **Language arrangements for communication with traders**

For the purposes of the procedures set out in this Chapter, the trader shall be entitled to communicate in the official language or one of the official languages used for official purposes of the Member State of its establishment or residence.

## **CHAPTER V**

### **UNION-WIDE ACTIVITIES**

#### *Article 34*

##### **Alerts**

1. A competent authority shall without delay notify the Commission and other competent authorities of any reasonable suspicion that an intra-Union infringement or a widespread infringement is taking place on its territory that may affect consumers' interests in other Member States ('alert').
2. The Commission shall without delay notify the competent authorities concerned of any reasonable suspicion that an intra-Union infringement or a widespread infringement has occurred ('alert')
3. In an alert the competent authority or the Commission shall provide, where available, in particular the following information about the suspected intra-Union infringement or widespread infringement:
  - (a) a description of the act or omission that constitutes the infringement;
  - (b) the product or service concerned by the infringement;
  - (c) the Member States concerned or possibly concerned by the infringement;
  - (d) the trader responsible or suspected of being responsible for the infringement;

- (e) the legal basis for possible actions by reference to national law and the corresponding provisions of the Union acts listed in the Annex ;
  - (f) the description and status of legal proceedings, enforcement measures or other measures taken concerning the infringement and their dates and duration;
  - (h) the competent authorities conducting legal proceedings and other measures;
4. In an alert , the competent authority or the Commission may ask competent authorities and single liaison offices concerned in other Member States and the Commission to verify whether, based on information available or easily accessible to the competent authorities concerned or the Commission, similar suspected infringements are taking place in the territory of other Member States or whether any enforcement measures have already been taken against such infringements in other Member States. Those competent authorities of other Member States and the Commission shall reply to the request without delay.

### *Article 35*

#### **External alerts**

1. Member States shall, unless otherwise justified, entitle designated bodies, European Consumer Centres, consumer organisations and associations and, where appropriate, trader associations, with the necessary expertise to notify the competent authorities of the Member States concerned and the Commission of suspected intra-Union infringements or widespread infringements and to provide information available to them set out in paragraph 3 of Article 34 ('external alert'). Member States shall notify the Commission the list of those entities and any changes of it without delay.
2. The Commission, following a consultation with Member States, shall entitle associations representing consumer and, where appropriate, business interests at a Union level to make an external alert.

4. The competent authorities shall not be bound to initiate a procedure or take any other action in response to an external alert. Entities making external alerts shall ensure that the information provided is correct, up to date and accurate and shall correct the information posted without delay or withdraw it as appropriate.

### *Article 36*

#### **Exchange of other information relevant for the detection of infringements**

To the extent necessary to achieve the objectives of this Regulation, competent authorities shall, via the database referred to in Article 43, notify the Commission and competent authorities of Member States concerned without delay of any measure taken by them to address an infringement of Union laws that protect consumers' interests within their jurisdiction if they suspect that the infringement in question may affect consumers' interests in other Member States.

### *Article 36a*

#### **Sweeps**

1. The competent authorities may decide to conduct a sweep to check compliance with Union laws that protect consumers' interests and/or detect infringements. Unless otherwise agreed upon by the competent authorities involved, sweeps shall be coordinated by the Commission.
2. When conducting sweeps, the competent authorities involved may make effective use of investigation powers set out in Article 8 and other powers conferred upon them by national law.
3. The competent authorities may invite designated bodies, Commission officials and other accompanying persons authorised by the Commission to participate in sweeps.

### *Article 37*

#### **Coordination of other activities contributing to investigation and enforcement**

1. To the extent necessary to achieve the objective of this Regulation, Member States shall inform each other and the Commission of their activities in the following areas:
  - (a) the training of their officials involved in the application of this Regulation;
  - (b) the collection, classification and exchange of data on consumer complaints;
  - (c) the development of sector-specific networks of competent officials;
  - (d) the development of information and communication tools;
  - (e) Where applicable, the development of standards, methodologies and guidelines concerning the application of this Regulation.
2. To the extent necessary to achieve the objective of this Regulation, Member States may coordinate and jointly organise activities in the areas set out in paragraph 1.

### *Article 38*

#### **Exchange of officials between competent authorities**

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

## *Article 40*

### **International cooperation**

1. To the extent necessary to achieve the objective of this Regulation, the Union shall cooperate with third countries and with the competent international organisations in the areas covered by this Regulation in order to protect consumers' interests. The arrangements for cooperation, including the establishment of mutual assistance arrangements, the exchange of confidential information and exchange of staff programmes, may be subject to agreements between the Union and the third countries concerned.
2. Agreements concluded between the Union and third countries concerning cooperation and mutual assistance to protect and enhance consumers' interests shall be in accordance with the relevant data protection rules applicable to the transfer of personal data to third countries.
3. When a competent authority receives information from an authority of a third country relevant to competent authorities of other Member States it shall communicate the information to those relevant competent authorities insofar as it is permitted to do so by bilateral assistance agreements with the third country and in accordance with Union legislation regarding the protection of individuals with regard to the processing of personal data.
4. Information communicated under this Regulation may also be communicated to an authority of a third country by a competent authority under a bilateral assistance agreement with the third country, provided that the approval of the competent authority that originally communicated the information has been obtained and in accordance with Union legislation regarding the protection of individuals with regard to the processing of personal data.

**CHAPTER VII**  
**COMMON ARRANGEMENTS**

*Article 41*

**Use of information and professional and commercial secrecy**

1. Information collected by or communicated to the competent authorities and the Commission in the course of applying this Regulation shall only be used for the purposes of ensuring compliance with the Union laws that protect consumers' interests.
2. The information referred to in paragraph 1 shall be treated confidentially and shall only be used and disclosed with due regard to the commercial interests of a natural or legal person, including trade secrets and intellectual property.
3. Without prejudice to paragraph 1, the competent authorities upon prior consultation from the competent authority which provided the information may disclose the information necessary:
  - (a) to prove intra-Union infringements, widespread infringements or widespread infringements with a Union dimension;
  - (b) to bring about the cessation or prohibition of intra-Union infringements, widespread infringements or widespread infringements with a Union dimension.

*Article 42*

**Use of evidence and investigation findings**

Competent authorities may invoke as evidence any information, documents, findings, statements, certified true copies or intelligence communicated, on the same basis as similar documents obtained in their own country, irrespective of the medium on which they are stored.

## *Article 43*

### **Electronic database**

1. The Commission shall establish and maintain the necessary electronic database for all communication between competent authorities, single liaison offices and the Commission under this Regulation. Every information sent by the means of the electronic database shall be stored and processed in the electronic database. That database shall be made directly accessible for the competent authorities, single liaison offices and the Commission.
2. Information provided by entities entitled to make an external alert pursuant to paragraph 1 and 2 of Article 35 shall be stored and processed in the electronic database but those entities shall not have access to this database.
- 2a. Where a competent authority, a designated body or an entity referred to in Article 35 establishes that a notification of an infringement given by it pursuant to Articles 34 and 35 has subsequently been shown to be unfounded, it shall withdraw that notification. The Commission shall without delay remove the relevant information from the database, and shall inform the parties of the reasons for that removal.

The stored data relating to an infringement shall be stored in the database for no longer than it is necessary for the purposes for which it was collected and processed but for no longer than five years following the day on which:

- (a) a requested authority notifies the Commission pursuant to Article 12(3) that an intra- Union infringement has ceased;
  - (b) the coordinator notifies pursuant to Article 19(1) the closure of the coordinated action;
  - (d) the information has been entered in the database in all other cases.
4. The Commission shall adopt implementing acts laying down the practical and operational arrangements for the functioning of the database. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).



## *Article 44*

### **Waiver of reimbursement of expenses**

1. Member States shall waive all claims for the reimbursement of expenses incurred in applying this Regulation.
2. Notwithstanding paragraph 1, in case of acting upon request pursuant to Article 12, the Member State of the applicant authority shall remain liable to the Member State of the requested authority for any costs and any losses incurred as a result of measures dismissed and held to be unfounded by a court as far as the substance of the infringement in question is concerned.

## *Article 45*

### **Enforcement priorities**

1. By ... [two years after the date of entry into force of this Regulation] and every two years thereafter, Member States shall exchange information on their enforcement priorities for the application of this Regulation with one another and with the Commission.

That information shall include:

- (a) information concerning market trends that might affect consumers' interests in the Member State concerned and in other Member States;
- (b) an overview of actions carried out under this Regulation, in the last two years, and in particular, investigation and enforcement measures related to the widespread infringements;
- (c) statistics exchanged under the alert mechanism established pursuant to Article 34;
- (d) the tentative priority areas for the enforcement of the Union laws that protect consumers' interests for the next two years in the Member State concerned; and
- (e) the proposed priority areas for the enforcement of the Union laws that protect consumers' interests Union-wide for the next two years.

- 1a. Without prejudice to Article 41, the Commission shall, every two years, produce an overview of the information referred to in points (a), (b) and (c) of paragraph 1 and shall make it publicly available. The Commission shall inform the European Parliament thereof.
2. In cases involving substantial change of circumstances or market conditions during the two years after the submission of their last enforcement priorities, Member States shall update their enforcement priorities and shall inform other Member States and the Commission accordingly.
- 2a. The Commission shall summarise enforcement priorities submitted by the Member States in accordance with paragraph 1 and shall report annually to the Committee referred to in Article 48 in order to facilitate the prioritisation of actions under this Regulation and shall exchange best practices and benchmarking, in particular with a view of developing capacity building activities.

## **CHAPTER VIII**

### **FINAL PROVISIONS**

#### *Article 48*

##### **Committee**

1. The Commission shall be assisted by a Committee. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### *Article 49*

##### **Notifications**

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

## *Article 50*

### **Reporting**

1. By [five years after the date of entry into force of this Regulation], the Commission shall submit to the European Parliament and to the Council a report on the application of this Regulation.
- 2a. That report shall contain an evaluation of the application of the Regulation including an assessment of the effectiveness of enforcement of Union laws that protect consumers' interests under this Regulation, in particular with regard to the powers provided under Article 8, along with, inter alia, an examination of how compliance by traders with Union laws that protect consumers' interests has evolved in key consumer markets concerned by cross-border trade.
- 2b. That report shall be accompanied, where necessary, by legislative proposals.

## *Article 52*

### **Repeal**

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

## *Article 53*

### **Entry into force and application**

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

This Regulation shall apply from ... [ 24 months after the date of entry into force of this Regulation].

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

Done at Brussels,

**Directives and Regulations referred to in point (a) of Article 3**

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).
2. Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).
3. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).
4. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000 p. 1).
5. Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use: Articles 86 to 100 (OJ L 311, 28.11.2001, p. 67).
6. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications): Article 13 (OJ L 201, 31.7.2002, p. 37).
7. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).
8. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).

9. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).
10. Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1.).
11. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21): Article 1, Article 2(c) and Articles 4 to 8.
12. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12. 2006, p. 36): Article 20.
13. Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12. 2007, p. 14).
14. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).
15. Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3.): Articles 22, 23 and 24
16. Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33, 3.2.2009, p. 10).
17. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1): Articles 9, 10, 11 and Articles 19 to 26.

18. Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1.).
19. Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1.).
20. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p.64).
21. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63): Article 13.
- 21a. Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L 165, 18.3.2013, p. 1) : Article 14 of ODR no 524/2013.
22. Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34): Articles 10, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, Chapter 10 and Annexes I and II.
23. Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214): Articles 3 to 18 and Article 20(2).

24. Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).
- 24a. Regulation 2017/... of the European Parliament and of the Council of ... on ensuring the cross-border portability of online content services in the internal market (OJ L ...<sup>1</sup>).

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<sup>1</sup> OJ: Please insert the serial number, date of adoption and reference to publication of this Regulation (COD 2015/0284).