

# Ecommerce Europe's reply to the Call for Evidence on the CPC Regulation

## Introduction

Ecommerce Europe welcomes the opportunity to provide additional input for the Commission's evaluation process on the Consumer Protection Cooperation (CPC) Regulation (EU) 2017/239. We appreciate the CPC Regulation as it stimulates competent national authorities to cooperate on consumer protection actions and the enforcement of EU consumer law, especially in cross-border cases. However, considering the short period in which the Regulation has become effective and the lack of resources of national authorities, we believe the full potential of this cooperation has not yet been reached and there is room for improvement. In this short paper, you can find Ecommerce Europe's key considerations on the revision of the CPC Regulation.

## Focus on preventing non-compliance rather than on fines

The Call for Evidence document includes the question "How to ensure that CPC authorities can use the power to impose fines under Directive 2019/2161 more effectively when addressing widespread and EU-wide infringements of consumer law?" as one of the key policy options to be evaluated. Instead of focusing on fines in case of infringements, Ecommerce Europe would like to urge the Commission and enforcement authorities to focus on the steps ahead of non-compliance. We think that the goal for the CPC should be facilitating effective consumer law compliance and enforcement across the EU, ensuring legal and compliance certainty for businesses thereby enhancing consumer protection and intra-community trade, and, in doing so, ensuring that unnecessary burdens are avoided for businesses, both large and small ones.

We strongly believe that businesses, whether online or offline, have a long-term interest in building trust by protecting customers by complying with EU legislation. However, it is not always made very easy. In many areas, consumer policy being a key example, the EU is still a mosaic of different interpretations and transpositions of legislation. These differences in implementation do not help businesses, which - in the digital commerce sector - are increasingly operating cross-border, to fully understand and implement all the necessary regulatory requirements. We therefore believe there is room to expand enforcement actions to increase preventative measures aimed at avoiding non-compliance, rather than focusing too strongly on fines in case of an infringement.

This approach should be extended also to the engagement process adopted by CPC authorities. We believe that many compliance concerns are unintentional and could be easily solved by starting an initial dialogue with the trader leading to a joint agreement on the best way forward. More concretely, this process could start with issuing an initial warning to traders, allowing them some time to adjust their practices to ensure compliance. This would be prior to any formal enforcement action, which might not be necessary afterwards. In cases where the CPC has operated in this way, we believe this has been a successful approach, and should definitely be maintained.

Regarding the power of the Commission to impose fines, we consider that, as long as the actual substantive laws, as well as interpretation and enforcement are fragmented, it would be unrealistic to harmonise the imposition of fines. We believe this should be postponed until the EU and the Member States can ensure a more effective and uniform implementation of the rules. In many cases, consumer law only provides for a minimum level of fines to be imposed by Member States (with further variations on whether courts or also authorities can impose fines). We believe it would therefore be premature for the Commission to take a

substantive role in consumer law enforcement through the imposition of penalties. At this stage, this should only be considered when it concerns EU-wide infringements of consumer law.

## Transparency of priorities and stakeholder involvement

Additionally, we believe authorities could significantly improve transparency of the manner in which they set their (and Member State authorities') priority areas of compliance and on how they organise the cooperation process. We believe there could be a considerable benefit in structural dialogue between authorities and stakeholders (consumer and industry organisations and businesses) to help identify the key areas of concern with regards to consumer law compliance across the EU. For instance, as Ecommerce Europe, we have started a recurring dialogue with the ECC-net to jointly discuss relevant issues consumers and traders face, to jointly brainstorm about the best possible solutions. Ecommerce Europe would therefore like to invite the enforcement authorities to pro-actively reach out to relevant stakeholders to discuss the goals of and the reasons behind coordinated enforcement activities (for instance sweeps), so that stakeholders can play a role in preventing any future infringements.

## Interplay CPC and Member State level

Consumer law is still significantly fragmented across the EU, both as regards substantive law as well as the interpretation and enforcement. Since the new CPC Regulation has been in force, we have seen benefits of greater cooperation between Member States' enforcement authorities through the CPC in several areas. One of the strengths of the CPC is the flexibility for compliance concerns to be addressed at individual Member State level or on a much larger, coordinated scale. This flexibility is particularly valuable in some instances where the underlying law may be harmonised across the EU (and therefore potentially appropriate for coordinated action) and other instances where it is not. In those cases where consumer law is harmonised, and therefore the compliance issue may be appropriately addressed either at Member State level, or through the CPC, it would be helpful to have greater clarity on the specific circumstances when it might be appropriate (and equally importantly, when it would not be appropriate) for the CPC to invite traders to engage at a CPC level, rather than at a Member State level.

Currently, a trader can effectively decide whether to constructively engage with the CPC at a central level, or to engage with authorities on a Member State by Member State level. We believe that it is important to maintain this choice as it reduces the threshold for businesses to engage with authorities. However, improvements should be made in the scenario where investigations into the same issue from the same trader are being carried out: (i) in multiple Member States; or (ii) at the CPC level and at Member State level. Finally, the Regulation does not explicitly state its application to non-EU based businesses. Consequently, there have been divergent interpretations among Member States regarding their authorities' competence to act against non-EU based businesses on the basis of the CPC Regulation. This should be clarified.

## Conclusion

In conclusion, the following should be considered when revising the CPC Regulation:

- Further steps can be taken to focus on preventative measures that aim to avoid non-compliance.
- Enforcement actions towards traders should always start with providing traders the opportunity to adjust their practice towards compliance.
- A substantive role for the Commission on the imposition of fines is premature as long as consumer law and the rules on fines are highly fragmented.

- CPC authorities should provide greater transparency and visibility on their priority areas of compliance.
- CPC authorities should involve stakeholders more to allow them to help avoid infringements.
- It should be clarified in which cases Member State actions or CPC actions are more appropriate.