



Department  
for Business  
Innovation & Skills

**The Review of the EU Regulation on  
Consumer Protection Cooperation**

A UK Non-paper

MAY 2016

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# Introduction

**Cross-border enforcement of consumer protection plays a key role in ensuring the digital economy and the single market works well. We are keen to work with the Commission to ensure that these opportunities are realised.**

**The UK wants people to have the confidence to purchase goods and services from across the EU, safe in the knowledge that there are mechanisms in place to tackle rogue traders and unjustifiable business practices. We therefore welcome the Commission's work to review the Consumer Protection Cooperation Regulation, through the response to its consultation on the Regulation and the further work being carried out by their analytical team, in order to put forward effective and proportionate proposals.**

**The UK strongly supports the Commission's work to redefine the powers, remit, procedures and the roles of the Commission, Single Liaison Offices, Competent Authorities and Designated Bodies in the new or amended Consumer Protection Cooperation Regulation. The UK hopes that many issues raised in this paper and during the Commission's 2014 consultation on the review of the Regulation have been taken on board.**

**This paper puts forward UK proposals to ensure effective cross border enforcement which works for consumers and businesses.**

## What success will look like

We believe that a successful Digital Single Market (DSM) package on cross-border consumer protection should have:

- 1. stronger minimum powers fit for the digital world.**
- 2. redefined scope of the regulation** with new definitions of the types of infringements, clearer roles and obligations for enforcers and updated processes for large scale/joint actions.
- 3. an improved mutual assistance mechanism between Member States.**
- 4. greater ability to share alerts and information** across the EU and wider on issues that are or may cause future consumer detriment.

The benefits of these improvements will allow enforcers to better handle EU infringements, following the example of the 2015 enforcement action on short-term consumer car hire case. This case resulted in the commitment of the five major car rental businesses to improve business practices e.g. improving pre-contractual information, in just over a year. This was a successful outcome in a short space of time.

## Our assessment of the cross border consumer protection enforcement

The CPC Regulation deals with infringement cases relating to a significant number of EU Directives and Regulations, including unfair or misleading commercial practices, unfair contract terms etc. We agree that improvements are needed to the functioning of the CPC regulation e.g. making sure it is capable of tackling digital infringements and rogue business practices, through enhancements to the mechanisms for cooperation and expertise-sharing between MS national enforcement authorities. The existing CPC regulation already clearly sets out requirements for information exchange and mutual assistance but we see a need to clarify the obligations of national enforcement authorities to ensure action occurs.

A more focused and evidence based approach to priority setting is also needed, targeted on areas of proven consumer detriment. In addition, there must be better linkages with sector specific enforcement. The CPC network may not always be the sole source of infringement information and the work of other expert groups who have a specific competence, knowledge and expertise of the issues in a specific sector, should not be duplicated.

The work of the CPC network must be complementary to national strategies and prioritisation. Any changes to the CPC regulation itself should not undermine national mechanisms already in place to identify and prioritise enforcement work. Member States must retain the flexibility to allocate resources to enforcement activity as they deem appropriate.

## Our recommendations

### 1. Stronger minimum powers fit for the digital world.

The CPC Regulation as currently in force makes available to national enforcement authorities a number of minimum powers and procedures to tackle cross-border infringements of consumer legislation and to coordinate market surveillance and enforcement activities.

The current review of the CPC regulation is linked to the creation of the European Digital Single Market (DSM). Due to the increase in the use of digital tools, such as web based shops, there has resulted an increase in particular associated challenges. In particular, the rise of rogue online traders being able to open and close detrimental websites easily without sanction.

In order to increase the credibility, ability and efficiency of enforcement actions and investigations carried out through the CPC, we agree with the Commission that the toolbox provided to national enforcement authorities should be expanded. This will fill the gaps in current enforcement ability and improve effective cooperation.

To ensure there is the right level of enforcement ability the UK supports an extended mandatory set of additional minimum powers. **We believe that enforcers should in appropriate circumstances, have a new set of stronger minimum powers for**

conducting investigations and enforcement fit for the digital world. These powers would apply to appropriate enforcers of a member state or across borders where the home member state has agreed to conduct a joint enforcement action. The Commission would have a coordination role in large scale joint enforcement actions and not a direct enforcement role.

## 2. Redefinition of the scope of the Regulation

The current CPC Regulation defines what is considered a cross border infringement. Although useful, this does potentially leave gaps in enforcement. There are other types of infringements which we believe should be covered.

The current regulation also sets out the procedure for coordinating enforcement actions when the interests of consumers are harmed in at least two MS. However, this has not been focussed enough to avoid the duplication of efforts in investigation, legal analysis and instruction of enforcement cases. There are clear examples of these infringements that need to be further clarified e.g. short-lived infringements<sup>1</sup> and ceased infringements<sup>2</sup>. We know these types of infringements can and do happen; clearly defining them within the scope of the regulation will go a long way to preventing them in the future.

**The UK would like to see the Regulation updated to clearly define several types of infringement<sup>3</sup>, in order to clarify when an enforcement body needs to take action on an infringement, when an enforcement body needs to support a fellow enforcer on an infringement and/or when the Commission should become involved.** This will clarify the difference between a widespread infringement and infringements with a EU-dimension. We are also keen that MS strive for consensus about when a CPC case should be enforced –i.e. a common understanding of harm. The Commission has an important role in facilitating and brokering this understanding and may also have a role in adjudicating where MSs do not agree.

**We also see the potential for the Commission to have a distinctive role in facilitating in large scale joint actions.** In recent years it has been appropriate for the Commission to take a prominent role in facilitating joint actions (e.g. in the car hire case). This included sending letters to potentially infringing traders, and shaping the strategy for engaging with the companies. This process is not defined in the existing CPC Regulation; this is a good opportunity to reflect on and if appropriate, formalise current and future working methods—for example, we should consider whether the Commission should facilitate meetings with traders and manage the central public communication of the action. **We would also like to see the introduction of an infringement threshold which must be reached before a case is referred to the Commission.**

While there is a clear role for the Commission in facilitating large scale joint actions, **it is not consistent with the principle of subsidiarity for them to direct enforcement action.**

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<sup>1</sup> Where a trader moves to a different jurisdiction before an enforcement case is finished resulting in a new case is opened in the new jurisdiction. This process can happen multiple times.

<sup>2</sup> An infringement that has been investigated and 'stopped' but due to a change in company/domain name it may still operate.

<sup>3</sup> Examples of these are described above.

**A new procedure for widespread and large scale EU infringements, requiring joint actions, should be created. The need for the action should be clearly indicated by the results of the EU enforcer sweeps.** The new procedure should better define the role of case coordinator (either a MS enforcer or potentially the Commission), to make clear that they should lead on coordinating a binding CPC position and a clear protocol for the follow-up.

**The CPC sweeps provide useful intelligence but they should be followed by a detailed EU level Impact Assessment of results.** This will indicate the consumer harm/cost to infringements that are occurring within the single market, reinforce the legality of the reasons for launching a case, provide potential solutions and result in national enforcement authorities prioritising cases.

**We consider that Article 20 of the EU Services Directive should be added to the list of legislation that the CPC Regulation covers.** This will aid enforcement bodies to tackle issues such as unjustified geoblocking, price discrimination and other cross border infringements.

There is also potential for the new geoblocking regulation, published at the same time as this Regulation's proposal, to be added to the CPC Annex as well as Article 20. **Although discussions on this proposal are still to occur in detail, the UK would be open to and support the concept.**

### 3. An improved mutual assistance mechanism

At the moment, when responding to a mutual assistance request from a partner authority in another country, a national enforcement authority has to follow its national procedural rules. Differences in these rules between the two countries may be a barrier to smooth cooperation.

**We believe that the new mutual assistance mechanism should have a clarified request structure, newly defined functions of enforcers, clearer processes for the enforcers to follow and strengthened co-operation with designated bodies.** There should be an obligation to improve response times to requests. The Commission should be able to issue opinions in cases of diverging interpretation of mutual assistance obligations.

### 4. Greater ability to share alerts and information

**We see a need for a more systematic categorisation and dissemination of alerts and surveillance information throughout the network.** Alerts should be based on an expected action, for instance 'Alert-for action' and follow a standard format e.g. a list of information on the trader responsible, deadline for action etc. There should also be an obligation that alerts for action will require specific follow up, such as 'exchange of information'.

We would support a more efficient alert system and feedback mechanism so that it is possible to see, for instance, why the alert has not been acted upon.

There is an important role for consumer organisations, advice bodies and others to share information with enforcers and their counterparts in other MS to build an evidence base for complaints, types of infringements, sectors and legislation where infringements are prevalent. This will help to identify common priority areas and sectors where enforcement action is needed most and support further enhancements to any mechanisms that help facilitate this.

There are already extensive mutual assistance mechanisms set out under the CPC regulation which, if applied consistently across the network should provide for efficient and effective enforcement action and cooperation. **Having said this, involving national consumer organisations and other European bodies with consumer protection roles, such as the European Consumer Centres, is important to delivering successful CPC outcomes.** Such organisations can hold extremely useful intelligence and expertise, and can help with identifying priorities. Once priority areas are agreed, consideration should be given to actively involving consumer organisations in each enforcement case. **However, the UK would not support allowing organisations other than the CPC national enforcement authorities to set the enforcement agenda and post alerts through the CPC system.**

**We believe that there is a greater need to improve cooperation not just within the EU, but also with international partners.** ICPEN and other entities do good work in consumer enforcement and a closer link with them may help steer the CPC prioritisation process, as long as it is mutually agreed between MS.

## Conclusion

The UK is keen to work with the Commission and other MS to improve cross-border enforcement in the EU.

We look forward to receiving the final proposals on the 18th May, after which we will be able to conduct detailed analysis and provide a final response to the new Consumer Protection Cooperation Regulation.

We will of course work with the Commission, other Member States and the European Parliament to take these recommendations forward to deliver effective cross-border enforcement in support of the further development of the digital single market.



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