

Consumer protection: cross-border infringements, administrative and legal cooperation (Regulation on consumer protection cooperation)

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The Commission presents its second biennial report on the application of Regulation (EC) 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws. The report covers the years 2009 and 2010.

The CPC Network: overall the Network has handled an amount of cases that is comparable to the previous reference period, i.e. roughly 540 requests for either information or to take enforcement measures in order to stop a detected infringement. The number of alerts however significantly decreased, i.e. the number of unilateral messages that are sent by one authority to other concerned authorities to warn about an infringement to consumer laws that was detected or which it has reasonable grounds to suspect.

In terms of the directives infringed, breaches to the provisions on misleading and/or other deceptive advertising practices, covered by Directive 2005/29/EC on unfair commercial practices are the most common type of breaches handled by the Network, followed by breaches to the provisions of the e-commerce Directive.

Achievements: the report states that the CPC Network has entered a phase of consolidation and stabilisation of its activities. The main achievements are as follows:

- the teething problems of the first few years (e.g. connection difficulties or other technical issues related to the use of the database) have been addressed;
- authorities have learnt to use the cooperation tools established by the CPC Regulation more effectively as they have become familiar with the IT- tool and new procedures;
- the sweeps, coordinated and monitored by the Commission, have become part of the Network's regular activities and have ensured some visibility to the network through the related press activities;
- the Network discusses and plans its concerted activities in annual enforcement activities plans;
- training courses are organised more efficiently on the basis of annual training plans and through the network of national trainers;
- a common approach to working together in the Network is slowly emerging through discussions in workshops as well as the practical experience gained during the four years of operations.;
- operating guidelines, elaborated by the Commission provide practical guidance to competent officials about how the network works and how to prepare requests for mutual assistance under the CPC Regulation.

Weaknesses: the assessment of the past two years of operations also shows that shortcomings persist and that the Network has yet to reach its full potential:

- many authorities rarely or never use the CPC cooperation mechanisms and some of the most active players of the first years have reduced their engagement, which partially explains the relative slowing down of Network activities in terms of new cases since 2010;
- the complexities of cross-border enforcement that derive from diverging national consumer legislation and differences in the procedural rules applicable in the Member States have become more apparent compared to the first years of the Network when authorities primarily focussed on learning how to use the system;
- lengthy procedures, different approaches to enforcement and levels of experience have further tested authorities readiness to work through the CPC Network.

In some instances, the difficulties encountered by the authorities could be a first indication that the legislative framework established by the CPC Regulation needs to be adapted in order to enhance cross-border enforcement. It may also suggest that national procedures need to be reviewed further in the light of the CPC cooperation framework to ensure that authorities are able to meet the Regulations objectives in full. The technical amendment of the CPC Regulations annex, adopted in 2011, brought additional legal clarity as regards the list of provisions to which the cooperation mechanisms apply. To date there is, however insufficient evidence to engage in a legislative process that would revise the Regulation more substantially. The Commission's evaluation of the years covered by the report demonstrates that many of the difficulties encountered by the Network can be addressed within the existing legal framework.

More experience and information are needed to form a better view of whether the Regulation should be reviewed and if so how. In particular the issue of the Regulation's scope needs to be evaluated in depth, including the question of the possible insertion of additional substantive laws in the Annex. Furthermore, ensuring that adequate resources are allocated to the authorities will remain a major challenge in future years as well as a factor critical to the Networks success.

The way forward: the Commission's first priority will be to work closely with Member States to address the shortcomings identified within the existing legislative framework. The Commission has identified the following areas where efforts should concentrate in the short and medium term:

- pursue efforts to consolidate the Network by enhancing the functionalities of the Networks IT-tool, securing training for competent officials through the trainers' network and ensuring that the implementing rules facilitate consistent and quicker handling of mutual assistance requests;
- maintain the funding of common activities to encourage the exchange of best practice and experience but re-evaluate the current officials exchange scheme in the light of the experience gained and comments from national authorities;

- continue working with authorities to develop a common approach to enforcement through discussions in workshops, the common activities and the sweeps. The Network could also benefit from exploring new ways of carrying out concerted enforcement and market monitoring activities. This was demonstrated by the 2009 and 2010 sweeps where a group of authorities combined the sweep with other enforcement activities to maximise the impact. A discussion on how to make the best use of alerts within the Network is also needed;
- further enhance the planning of Network activities. The annual Enforcement Action Plans constitute a first step forward to identifying areas of common interest for the Network authorities but this work needs to be taken forward;
- develop more effective ways of identifying enforcement priorities at European level, bringing together the first hand information from consumers that is available at national level and the data stemming from tools such as the Consumer Markets Scoreboard, the new complaints database or the ECC-Networks database. For the EU sweeps, a group of authorities is currently exploring how to better identify emerging threats on the internet and subsequently ensure that adequate follow-up action can be identified by the Network;
- develop efforts to raise the public profile of the CPC Network. The press activities related to the sweeps give some visibility to the Networks achievements but too little is still known about the outcome of the (generally) bilateral enforcement cooperation. The national biennial reports indicate that the work in the CPC is producing tangible results for consumers but the information provided remains limited.

In the longer term, the Commission is further assessing the cooperation framework and procedures established by the CPC Regulation with a view to evaluating whether some of the difficulties encountered by the Network may require a legislative response.

The findings of the report constitute a first step in this process and have been the basis for preparing the terms of reference of an external evaluation the Commission is about to launch and that will deliver results in 2012. One issue that needs to be examined in this context is the impact that the fairly broad scope of the CPC Regulations annex is having on the effectiveness and efficiency of the Network, especially in areas where other cooperative frameworks exist. The Commissions role in the Networks activities also needs to be appraised.