Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (Text with EEA relevance)

REGULATION (EU) 2017/2394 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 December 2017

on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of 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[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EC) No 2006/2004 of the European Parliament and of the Council[(3)] provides for harmonised rules and procedures to facilitate cooperation between the national authorities that are 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 of that Regulation and its operational mechanisms. Following such review, the Commission concluded that Regulation (EC) No 2006/2004 is not sufficient to effectively address the enforcement challenges of the Single Market, including the challenges of the Digital Single Market.

(2) The communication of the Commission of 6 May 2015, 'A Digital Single Market Strategy for Europe', identified as one of the priorities of that strategy, the need to enhance consumer trust through more rapid, agile and consistent enforcement of consumer rules. The communication of the Commission of 28 October 2015'Upgrading the Single Market Strategy: more opportunities for people and business' reiterated that the enforcement of Union consumer protection legislation should be further strengthened by the reform of Regulation (EC) No 2006/2004.

(3) The ineffective enforcement in cases of cross-border infringements, including infringements in the digital environment, enables traders to evade enforcement by relocating within the Union. It also gives rise to a distortion of competition for law-

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/2394 of the European Parliament and of the Council. (See end of Document for details)*

abiding traders operating either domestically or cross-border, online or offline, and thus directly harms consumers and undermines consumer confidence in cross-border transactions and the internal market. An increased level of harmonisation that includes effective and efficient enforcement cooperation among competent public enforcement authorities is therefore necessary to detect, to investigate and to order the cessation or prohibition of infringements covered by this Regulation.

(4) Regulation (EC) No 2006/2004 established a network of competent public enforcement authorities throughout the Union. Effective coordination among different competent authorities participating in that network is necessary, as well as effective coordination among other public authorities at the Member State level. The coordination role of the single liaison office should be entrusted to a public authority in each Member State. That authority should have sufficient powers and necessary resources to undertake that key role. Each Member State is encouraged to designate one of the competent authorities as the single liaison office pursuant to this Regulation.

(5) Consumers should also be protected against infringements covered by this Regulation that have already ceased, but the harmful effects of which may continue. Competent authorities should have the necessary minimum powers to investigate and to order the cessation of such infringements or their prohibition in the future, in order to prevent them from being repeated, and in so doing, to ensure a high level of consumer protection.

(6) Competent authorities should have a minimum set of investigation and enforcement powers in order to apply this Regulation, to cooperate with each other more quickly and more efficiently and to deter traders from committing infringements covered by this Regulation. Those powers should be sufficient to tackle the enforcement challenges of e-commerce and the digital environment effectively 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 enable Member States to ensure that necessary information and evidence can be validly exchanged among competent authorities to achieve an equal level of effective enforcement in all Member States.

(7) Each Member State should ensure that all competent authorities within its jurisdiction have all the minimum powers that are necessary to ensure the proper application of this Regulation. However, Member States should be able to decide not to confer all the powers on every competent authority, provided that each of those powers can be exercised effectively and as necessary in relation to any infringement covered by this Regulation. Member States should also be able to decide, in accordance with this Regulation, to ascribe certain tasks to designated bodies or to confer on competent authorities the power to consult consumer organisations, trader associations, designated bodies, or other persons concerned, regarding the effectiveness of the commitments proposed by a trader to cease the infringement covered by this Regulation. 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 associations, designated bodies, or other persons concerned,

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regarding the effectiveness of the proposed commitments to cease the infringement covered by this Regulation.

(8) Competent authorities should be in a position to open investigations or proceedings on their own initiative if they become aware of infringements covered by this Regulation by means other than consumer complaints.

(9) Competent authorities should have access to any relevant documents, data and information that relate to the subject matter of an investigation or concerted investigations of a consumer market ('sweeps') in order to determine whether an infringement of Union laws that protect consumers' interests has occurred or is occurring, and in particular to identify the trader responsible, irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage medium, or the place where they are stored. Competent authorities should be able to directly request that third parties in the digital value chain provide any relevant evidence, data and information in accordance with Directive 2000/31/EC of the European Parliament and of the Council[(4)] and in accordance with the legislation on personal data protection.

(10) Competent authorities should be able to request any relevant information from any public authority, body or agency within their Member State, or from any natural person or legal person, including, for example, payment service providers, internet service providers, telecommunication operators, domain registries and registrars, and hosting service providers, for the purpose of establishing whether an infringement covered by this Regulation has occurred or is occurring.

(11) Competent authorities should be able to carry out necessary on-site inspections, and should have the power to enter any premises, land or means of transport, that the trader concerned by the inspection uses for purposes related to his trade, business, craft or profession.

(12) Competent authorities should be able to request any representative or member of the staff of the trader concerned by the inspection to give explanations of facts, information, data or documents relating to the subject matter of the inspection, and should be able to record the answers given by that representative or staff member.

(13) Competent authorities should be able to verify compliance with Union laws that protect consumers' interests and to obtain evidence of infringements covered by this Regulation, including infringements that take place during or after the purchase of goods or services. Competent authorities should therefore have the power to purchase goods or services as test purchases, where necessary, under a cover identity, in order to detect infringements covered by this Regulation, such as refusals to implement the consumer right of withdrawal in the case of distance contracts, and to obtain evidence. That power should also include the power to inspect, observe, study, disassemble or test a product or service that has been purchased by the competent authority for those purposes. The power to purchase goods or services as test purchases might include the power on the part of competent authorities to ensure the return of any payment made where such return would not be disproportionate and would otherwise comply with Union and national law.

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(14) In the digital environment in particular, the competent authorities should be able to stop infringements covered by this Regulation quickly and effectively, and in particular where the trader selling goods or services conceals his identity or relocates within the Union or to a third country in order to avoid enforcement. In cases where there is a risk of serious harm to the collective interests of consumers, the competent authorities should be able to adopt interim measures in accordance with national law, including the removal of content from an online interface or ordering the explicit display of a warning to consumers when they access an online interface. Interim measures should not go beyond what is necessary to achieve their objective. Furthermore, the competent authorities should have the power to order the explicit display of a warning to consumers when they access an online interface, or to order the removal or modification of digital content if 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 bringing to an end or prohibiting the infringement covered by this Regulation.

(15) Pursuing the objective of this Regulation while stressing the importance of the traders' willingness to act in accordance with Union laws that protect consumers' interests and to remedy the consequences of their infringements covered by this Regulation, competent authorities should have the possibility to agree with traders on commitments containing steps and measures that a trader has to take regarding an infringement, and in particular the ceasing of an infringement.

(16) Because they have a direct impact on the degree to which public enforcement acts as a deterrent, penalties for infringements of consumer law represent an important part of the enforcement system. Since national penalties regimes do not always allow the cross-border dimension of an infringement to be taken into account, competent authorities should, as part of their minimum powers, have the right to impose penalties for infringements covered by this Regulation. Member States should not be required to establish a new penalty regime for infringements covered by this Regulation. Instead, they should require competent authorities to apply the applicable regime for the same domestic infringement, where possible taking into account the actual scale and scope of the infringement concerned. In view of the findings of the Commission's Report of the Fitness Check of consumer and marketing law, it might be considered to be necessary to strengthen the level of penalties for breaches of Union consumer law.

(17) Consumers should be entitled to redress for harm caused by infringements covered by this Regulation. Depending on the case, the power of the competent authorities to receive from the trader, on the trader's initiative, additional remedial commitments for the benefit of consumers that have been affected by the alleged infringement covered by this Regulation, or where appropriate to seek to obtain commitments from the trader to offer adequate remedies to the consumers that have been affected by that infringement should contribute to removing the adverse impact on consumers caused by a cross-border infringement. Those remedies might include, inter alia, repair, replacement, price reductions, the termination of contract or the reimbursement of the price paid for the goods or services, as appropriate, to mitigate the negative consequences of the infringement covered by this Regulation on the affected consumer in accordance with

the requirements of Union law. This should be 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 that they have suffered harm as a consequence of an infringement covered by this Regulation about how to seek compensation under national law.

(18) The implementation and exercise of powers in application of this Regulation should be proportionate and adequate in view of the nature and the overall actual or potential harm of the infringement of Union laws that protect consumers' interests. Competent authorities should take all facts and circumstances of the case into account and should choose the most appropriate measures which are essential to address the infringement covered by this Regulation. Those measures should be proportionate, effective and dissuasive.

(19) The implementation and exercise of powers in the application of this Regulation should also comply with other Union and national law, including 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 example, in accordance with national law, prior authorisation to enter the premises of natural persons and legal persons is required from the judicial authority of the Member State concerned, the power to enter such premises should be used only after such prior authorisation has been obtained.

(20) Member States should be able to choose whether the competent authorities exercise those powers directly, under their own authority, by recourse to other competent authorities or 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.

(21) When responding to requests submitted 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.

(22) The effectiveness and efficiency of the mutual assistance mechanism should be improved. Requested information should be provided within the time limits set out in this Regulation, and necessary investigation and enforcement measures should be adopted in a timely manner. Competent authorities should reply to information and enforcement requests within set periods, unless otherwise agreed. The obligations of the competent authority within the mutual assistance mechanism should remain intact, unless it is likely that enforcement actions and administrative decisions taken at national level outside the mutual assistance mechanism would ensure the swift and effective cessation or prohibition of the intra-Union infringement. Administrative decisions in that regard should be understood as decisions giving effect to the measures taken to bring about the cessation or the prohibition of the intra-Union infringement. In those