Commission Implementing Decision (EU) 2019/2213 of 20 December 2019 laying down the practical and operational arrangements for the functioning of the electronic database established pursuant to Regulation (EU) 2017/2394 of the European Parliament and of the Council as respects certain communications under that Regulation (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) 2019/2213

of 20 December 2019

laying down the practical and operational arrangements for the functioning of the electronic database established pursuant to Regulation (EU) 2017/2394 of the European Parliament and of the Council as respects certain communications under that Regulation

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular Article 35(4) thereof,

Whereas:

(1) Regulation (EU) 2017/2394 lays down provision for cooperation between competent authorities designated by Member States as responsible for the enforcement of Union laws that protect consumers' interests. The provision laid down by that Regulation includes provision for a mutual assistance mechanism, provision for coordinated actions and provision for the issue of alerts in the event of possible infringement of those laws. Member States and the Commission are also entitled to confer power on other entities to issue alerts (referred to in that case as 'external alerts').

(2) Article 35 of Regulation (EU) 2017/2394 requires the Commission to establish and maintain an electronic database for all communications between competent authorities, single liaison offices and the Commission under that Regulation. The database is to be directly accessible by the competent authorities, the single liaison offices and the Commission. Article 35 of that Regulation also requires information provided by entities issuing external alerts to be stored and processed in that same database, but such entities are not to have access to the database. Furthermore, if the European Banking Authority is invited to act as observer pursuant to Article 23(3) of that Regulation, it would need to be able to access the electronic database for that limited purpose so that it could observe the relevant communications.

(3) The multilingual Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council[(2)] could be an

effective tool in implementing the administrative cooperation provisions set out in Articles 11 to 23 (mutual assistance mechanism and coordinated actions) and Articles 26, 27 and 28 (alerts, external alerts and exchange of other information relevant for the detection of infringements) of Regulation (EU) 2017/2394. Accordingly, Commission Implementing Decision (EU) 2019/2212[(3)] has been adopted to make those administrative cooperation provisions subject to a pilot project under Article 4 of Regulation (EU) No 1024/2012. It is therefore appropriate to identify IMI as the system to be used to provide the electronic database for communications made under those provisions.

(4) IMI should not be used for any other communications between competent authorities, single liaison offices and the Commission under Regulation (EU) 2017/2394 (for example, it should not be used for communications relating to sweeps under Article 29 of that Regulation) as all other communications can be more effectively made using other technical means.

(5) In order to reduce administrative burdens and avoid unnecessary duplication, registration in IMI of a Member State's competent authorities, single liaison office and entities issuing external alerts should constitute communication by that Member State to the Commission of the information required to be communicated by it pursuant to Article 8(1)(a) and (b) of that Regulation. This does not affect the obligation on Member States to communicate to the Commission the identity and contact details of their designated bodies, or any subsequent changes to that information.

(6) Article 34 of Regulation (EU) 2017/2394 permits competent authorities to use as evidence any information, documents, findings, statements, certified true copies or intelligence communicated to them under that Regulation, on the same basis as similar documents obtained in their own Member State. For that purpose, competent authorities, single liaison offices and the Commission should be able to automatically extract from the electronic database a digitally certified summary of the communications which concern them.

(7) Article 13(2) of Regulation (EU) 2017/2394 requires that requests for mutual assistance be sent to a Member State's single liaison office and that the single liaison office is then responsible for passing the request on to the appropriate competent authority within that Member State. No such coordination rule exists for alerts and other information sent under Articles 26, 27 and 28 of that Regulation. Therefore, in order to ensure that alerts and other information sent under those Articles are only made available to the competent authorities within a Member State that are concerned or possibly concerned by the infringement in question, Member States should be required to assign either to their single liaison office or to at least one of their competent authorities the task of receiving incoming communications sent under those Articles and of then allocating them to the appropriate competent authorities within that Member State. It is not necessary to apply this task to incoming communications sent under Articles 15 to 23 of Regulation (EU) 2017/2394 since coordinated actions are only initiated on the basis of alerts issued under Article 26 of that Regulation in any event.

(8) Article 33 of Regulation (EU) 2017/2394 lays down rules regarding the use and disclosure of information communicated in the course of applying that Regulation and regarding professional and commercial secrecy. The electronic database should include functionality to allow competent authorities, single liaison offices, entities issuing external alerts and the Commission to indicate whether information provided by them is to be open for disclosure under paragraph 3 of that Article without the need for further consultation.

(9) The measures provided for in this Decision are in accordance with the opinion of the committee established by Article 38(1) of Regulation (EU) 2017/2394,

HAS ADOPTED THIS DECISION:

Article 1

Electronic database

1 The electronic database to be established and maintained pursuant to Article 35 of Regulation (EU) 2017/2394 ('the electronic database') shall, as respects communications under Articles 11 to 23, 26, 27 and 28 of that Regulation, be provided by means of the Internal Market Information System ('IMI') in accordance with Implementing Decision (EU) 2019/2212

2 Registration in IMI of a Member State's competent authorities, single liaison office and entities issuing external alerts pursuant to Article 27(1) of Regulation (EU) 2017/2394, and the updating of those registrations to reflect any relevant changes, shall constitute communication by that Member State to the Commission of the information referred to in points (a) and (b) of Article 8(1) of that Regulation as respects those authorities, single liaison offices and entities.

3 The electronic database shall include the functionality necessary to allow competent authorities, single liaison offices and the Commission to obtain, for the purposes of Article 34 of Regulation (EU) 2017/2394, a digitally certified summary of the communications falling within paragraph 1 of this Article that concern them.

Article 2

Coordination of incoming communications sent under Articles 26, 27 and 28

Each Member State shall assign either to its single liaison office or to one or more of its competent authorities the task of receiving incoming communications sent under Article 26, 27 or 28 of Regulation (EU) 2017/2394 and then allocating them without delay to the competent authorities within that Member State who are concerned or possibly concerned by the infringement in question.

Article 3

Disclosure

The electronic database shall include functionality allowing competent authorities, single liaison offices, the Commission and entities issuing external alerts pursuant to Article 27(1) or (2) of Regulation (EU) 2017/2394 to indicate whether information