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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**Assessing the effectiveness of Regulation (EC) N° 2006/2004 of the European Parliament
and of the Council of 27 October 2004 on the cooperation between national authorities
responsible for the enforcement of consumer protection laws (the Regulation on
consumer protection cooperation)**

country, only 38% feel confident about doing so from a trader located in another EU country. Strengthened cross-border enforcement and reduced consumer detriment would reinforce consumer trust, thus boosting cross-border e-commerce transactions.

Low propensity to sell cross-border online: Within retail trade, the e-commerce market share remains lower in Europe than in the USA: in 2014 it was 7.2% compared to 11.6% in the USA. In the same year⁹, only 12% of EU retailers sold online to consumers in other EU countries, while three times as many (37%) did so domestically¹⁰.

Enforcement of consumer law is primarily the responsibility of Member States. However, especially in the digital environment where transactions know no borders, it is only through cooperation that national authorities can effectively address consumer law infringements taking place in a cross-border context. The Consumer Protection Cooperation Regulation (CPC Regulation) was adopted in 2004 to create a formal cooperation framework between national enforcement authorities¹¹, to address problematic practices with a cross-border dimension.

In assessing the means of unleash growth, the Digital Single Market Strategy highlighted the *"need for more rapid, agile and consistent enforcement of consumer rules for online and digital purchases to make them fully effective"*. And the Commission undertook to *"clarify and develop the powers of enforcement authorities and improve the coordination of their market monitoring activities and alert mechanisms to detect infringements faster."* Furthermore, the Single Market Strategy stressed the importance of enforcement cooperation to address unjustified commercial discrimination based on geographical criteria: *"(those measures) must go hand in hand with strengthened enforcement in each Member State, which, as announced in the Digital Single Market Strategy, must be further enhanced through the reform of the Consumer Protection Cooperation Regulation"*¹².

The above-mentioned Strategies took on board the assessments set out in Article 21a of the CPC Regulation¹³ that began in 2012 with a view to improving the functioning of this Regulation.

Indeed, Article 21a of the CPC Regulation requires the Commission to assess in a report to the European Parliament and to the Council, 10 years after the adoption of the Regulation, its operational mechanisms, its Annex and its effectiveness. It invites the Commission to make a legislative proposal, if appropriate, to amend the Regulation. As required by this Article, the Commission carried out a thorough assessment of the functioning of the CPC Regulation, the

⁹ SWD(2015) 181 final PART 2/2, 21.9.2015, page 69,

http://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&ved=0ahUKEwjfsf_r JfMAhUG_ywKHe2UC9AQFghYMAg&url=http%3A%2F%2Fwww.europeanmemoranda.cabinetoffice.gov.uk%2Ffiles%2F2015%2F11%2F13074-15_ADD_1_.pdf.docx&usg=AFQjCNHBFewOLvpPJpubrF0rXhJqFnZKzw

¹⁰ Eurostat survey on ICT usage in households and by individuals (2014), isoc_ec_ibuy

¹¹ Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, OJ L 364, 9.12.2004, p. 1. This Regulation also applies in the EEA.

¹² Page 11, COM 2015 (550) final.

¹³ Article 21a: *"By 31 December 2014, the Commission shall submit a report to the European Parliament and to the Council which shall assess the effectiveness and operational mechanisms of this Regulation and thoroughly examine the possible inclusion in the Annex of additional laws that protect consumers' interests. The report shall be based on an external evaluation and extended consultation of all relevant stakeholders, and shall be accompanied, where appropriate, by a legislative proposal."*

outcomes of which are presented in this Report. The analytical steps of this assessment included an external evaluation (2012)¹⁴, a public consultation¹⁵ (2013-2014), a Consumer Summit dedicated to enforcement held in 2013¹⁶, two biennial reports in 2009 and 2012, the 2014 Commission Report on the functioning of the CPC Regulation¹⁷. Since the assessment pointed out the need to improve and modernise the CPC Regulation a detailed impact assessment of various possible options was performed in 2015 to assess the need for a legislative proposal to amend the CPC Regulation.

1. Assessment of the effectiveness of the CPC operational mechanisms

The CPC Regulation currently covers 20 Directives and Regulations concerning the Union consumer and marketing law *acquis*¹⁸. It aims to ensure compliance with these laws, protecting the collective economic interests of consumers, and defending legitimate businesses from rogue competitors. It ensures the smooth functioning of retail markets across the EU. It sets forth operational mechanisms for cooperation between national enforcers providing for mutual assistance requests (for information and for enforcement measures) and enabling competent authorities to coordinate their actions to tackle infringements of Union consumer laws made by businesses in a cross-border context. These mechanisms allow authorities to overcome the limitations of national jurisdictional boundaries so that they can address the problematic practices of traders established in their jurisdictions when these harm consumers in other EU countries.

The evaluation addressed the question to what extent the implementation of the CPC Regulation led to the development of effective means to safeguard consumers' collective interests across the EU¹⁹. The CPC Regulation set common minimum powers for national authorities and allowed them to stop infringements across borders. For example, since 2007, more than 4,500 e-commerce websites in various economic sectors have been screened for infringements of EU law resulting in an increased level of compliance.²⁰

¹⁴ External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012 ("Evaluation"), page 120,

http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

¹⁵ Summary of stakeholder responses to the public consultation on the Consumer Protection Cooperation (CPC) Regulation (2006/2004/EC),

http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140416_consultation_summary_report_final_en.pdf

¹⁶ http://ec.europa.eu/consumers/events/ecs_2013/report/Summitconclusions.pdf

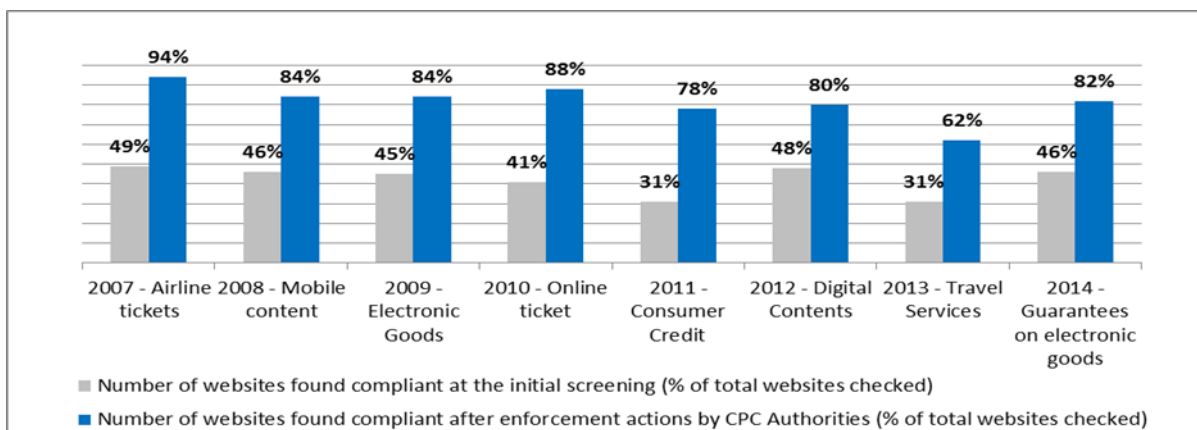
¹⁷ http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140701_commission_report_cpc_reg_en.pdf

¹⁸ The legislation to which the CPC Regulation applies is set in its Annex. This Annex is regularly updated when new relevant legislation which foresees the CPC mechanism as the enforcement tool enters into force. It currently includes, among others, horizontal consumer legislation such as the Directives on unfair contract terms and unfair commercial practices, subject to the ongoing Fitness Check of EU Consumer Law being performed by the Commission, as well as sector specific laws on subjects such as financial services, passenger rights, timeshare or , package travel. It also includes legislation on alternative dispute resolution.

¹⁹ External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012 ("Evaluation"), page 99,

http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

²⁰ The results of those sweeps can be found on: http://ec.europa.eu/consumers/enforcement/sweeps/index_en.htm



In 2014, a further step in enforcement cooperation was made with the launch of coordinated actions requiring the concerned traders to cease unfair commercial practices in areas of common interest across the EU (for example, in the field of car rental or of online games offering "in-app" purchases²¹).

Despite the positive outcomes concerning the relevance of the objectives of the Regulation, the external evaluation and public consultation pointed identified following issues hindering the efficiency of the Regulation:

- **Insufficient minimum powers of enforcers to cooperate efficiently and swiftly especially in the digital environment²².** The CPC Regulation provides competent authorities in the Member States with a list of minimum investigation and enforcement powers which are necessary to ensure cooperation and for the application of the Regulation²³. Such powers are indispensable for example to gather and exchange evidence in a legally sound manner between countries. In the assessment, a number of possible misconducts by traders were examined and it was concluded that they could not be efficiently tackled under the current CPC framework²⁴. In particular, the CPC authorities have limited powers to obtain information on the real identity of the trader behind a malpractice committed in the digital sphere²⁵ and have limited powers to seek the help of other authorities (such as financial police) or third parties (such as domain registrars).
- **Insufficient sharing of market intelligence²⁶.** The development of e-commerce has allowed for wide-ranging marketing campaigns which can reach millions of consumers instantly. This requires authorities to set up of a much speedier intelligence-gathering system than was needed in the days of offline trade and that they are able to reorganize their priorities faster and be more agile. According to the external evaluation and the

²¹ See http://ec.europa.eu/justice/newsroom/consumer-marketing/news/1401222_en.htm and IP/15/5334, http://europa.eu/rapid/press-release_IP-15-5334_en.htm

²² Page 13 of the Impact Assessment.

²³ Article 4(3): "Each competent authority shall, (...), have the investigation and enforcement powers necessary for the application of this Regulation and shall exercise them in conformity with national law".

²⁴ External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012 ("Evaluation"), pages 8, 41, 57 and 99, http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

²⁵ External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012 ("Evaluation"), page 61, http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

²⁶ Page 18 of the Impact Assessment.

Commission's impact assessment, the detection of infringements comes late due to the malfunctioning of the current CPC alert mechanism and the lack of common prioritisation²⁷. For example, alert messages are sent indiscriminately to all authorities connected to the CPC database, irrespective of relevance or priority.

- **Limitation of the mechanism to address infringements concerning several countries**²⁸. The current CPC mutual assistance mechanism (Articles 6-8) is principally geared at addressing infringements committed by a trader established in one country and targeting the consumers of another country. However, the development of the Internal Market has brought about an accelerated internationalisation of retail trade led by large companies whose local subsidiaries apply the same practices across the board. National authorities are therefore often faced with similar infringements taking place in their markets at the same time.²⁹ The CPC Regulation contains provisions for tackling such infringements. It provides that national authorities coordinate their actions so as to consistently apply the same response against the same breach of EU legislation (Article 9 of the CPC Regulation³⁰). However, the external evaluation³¹ points out that this does not permit economies of scales as each authority still has to act individually. This is a costly duplication of enforcement efforts: the impact assessment report estimates that per coordinated action, Member States' costs could be halved thanks to a streamlined EU coordination procedure. Highly coordinated approaches at the EU level are therefore needed and due to the Union dimension of such bad practices, the Commission could play an important coordination role to assist the national authorities concerned³². As highlighted in the impact assessment report, the experience gained from the two coordinated actions regarding car rental and in-app purchases have also confirmed that the existing coordination framework under Article 9 is too vague, as well as lacking in particular a well-defined and transparent coordination procedure, clarity about actors' respective roles and responsibilities and about the consequences of inaction³³.

²⁷ External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012 ("Evaluation"), pages 41, 59 and 80,

http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

²⁸ Pages 16 to 19 and points 1.3.3; 13.4.; 1.3.5; 1.3.6 and 1.37. of the Impact Assessment.

²⁹ In-app purchases, Google and Apple : Joint action by the European Commission and Member States is leading to better protection for consumers in online games. Following a large number of complaints in EU countries concerning in-app purchases in online games and in particular inadvertent purchases by children, national authorities joined forces with the European Commission to find solutions. The coordinated enforcement action in the EU on in-app purchases in online and mobile games has made real progress in delivering tangible results. Industry has made a number of engagements which seek to address consumer concerns. The action will increase consumer confidence in the fast-growing "app" sector. Press release: http://europa.eu/rapid/press-release_IP-15-5684_en.htm

³⁰ Pursuant to Article 9(2): "When competent authorities become aware that an intra-Community infringement harms the interests of consumers in more than two Member States, the competent authorities concerned shall coordinate their enforcement actions and requests for mutual assistance via the single liaison office. In particular they shall seek to conduct simultaneous investigations and enforcement measures". Further Article 9(3) provides that "The competent authorities shall inform the Commission in advance of this coordination and may invite the officials and other accompanying persons authorised by the Commission to participate".

³¹ External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012 ("Evaluation"), page 41, 99 and 106,

http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

³² 2012 external evaluation report, p. 17.

³³ Page 19 and 20 of the Impact Assessment.

2. Assessment of the Annex of the CPC Regulation

The CPC cooperation covers Directives, as transposed in the legal order of Member States, and Regulations which are listed in the Annex to the CPC Regulation. Since 2007, the scope of the Annex has been gradually extended, however, several pieces of Union legislation which lay down important consumer rights are currently outside its scope. The external evaluation concluded that a limited update could be necessary based on the following criteria³⁴: impact on the collective interests of consumers; cross-border relevance; public enforcement dimension; and consistency with the sectorial and horizontal legislation currently listed in the Annex. Based on this, the evaluation concluded that the Annex needs an update to reflect the entry into force of new Union legislation. Following the Impact Assessment, the following pieces of legislation were recommended for the inclusion in the CPC Regulation's Annex³⁵: the Mortgage Credit Directive³⁶, the Rail Passenger Rights Regulation³⁷, the Regulation on rights of disabled persons and persons with reduced mobility when travelling by air³⁸ and pricing provisions of the Air Services Regulation³⁹, and the Payment Accounts Directive⁴⁰. In addition, the 2015 Single Market Strategy concluded that Article 20 of the Services Directive⁴¹ lacked an efficient cross-border cooperation mechanism and should therefore be included in the CPC Regulation's Annex

3. The way forward: smarter enforcement solutions – the modernisation of the CPC Regulation

In view of the above, the Commission proposes to modernise the current CPC Regulation in order to improve the cross-border enforcement of EU consumer laws.

Result of the impact assessment

Main cost/benefit elements of the Commission's proposal

Consumers will benefit from better-functioning markets with fewer disputes and a higher level of protection when purchasing cross-border, especially online. It was estimated for the subset of five online markets studied that a decrease of 10 points in the non-compliance rate

³⁴ Page 6 of the External Evaluation.

³⁵ Page 30 of the External Evaluation.

³⁶ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property, OJ L 60, 28.2.2014, p. 34.

³⁷ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ L 315, 3.12.2007, p. 14.

³⁸ Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p. 1.

³⁹ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ L 293, 31.10.2008, p. 3.

⁴⁰ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, OJ L 257, 28.8.2014, p. 214.

⁴¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ 376, 27.12.2006, p. 36.

of 37% could reduce the detriment from an estimated EUR 770 million per year to about EUR 539 million, i.e. by 30%⁴². Any new single CPC action against a widespread practice could also reduce significantly the consumer detriment across the EU (e.g. by an estimated EUR 68 million in the case of the coordinated action against the misleading marketing of in-app offers in online games)⁴³.

The Commission will support the Member States in their enforcement efforts against infringements with an important EU-level dimension, thereby avoiding the duplication involved in carrying out parallel proceedings to address the same infringements. Costs for authorities will be saved thanks to the possibility to reuse evidence, avoid duplication and ensure maximum consistency of enforcement actions. Earlier detection of malpractices and an alignment of priorities will permit better targeted actions to address widespread infringements across the EU. This will result in CPC actions having a stronger deterrent effect⁴⁴.

Some Member States may need to slightly adapt their national laws so that authorities benefit from the sharing of evidence and from the extended list of powers to cooperate in a cross-border context. The main cost for Member States will cover familiarisation and training due to new powers and procedures (ca. EUR 3,000 per authority). The cost of one coordinated enforcement action initiated through a mandatory coordination procedure was estimated to be ca. EUR 174,000 for all Member States. However, it should be stressed that Member States have in any case the obligation to tackle practices contrary to EU law and, the cost this cannot therefore be considered to be a supplementary cost that would otherwise not have been incurred. Overall in the medium term, savings are expected thanks to more coordinated Union-wide actions. The Commission's additional cost for its enhanced coordination role is expected to be below EUR 300,000 per year in staff costs and should be covered by a reallocation of its human resources⁴⁵.

What is the impact on SMEs and on competitiveness?

No additional legal obligations will be imposed on the business sector. Strengthened cross-border enforcement will improve the regulatory environment for retail markets. This will allow enterprises, including SMEs, to avoid legal expertise costs when marketing their products cross-border and to be more confident that the same EU consumer law is equally enforced in the other countries in which they want to operate. More consistent cross-border enforcement will boost the competitiveness of honest, law-abiding traders, increase competition, and level the playing field in the Internal Market.

Will there be a significant impact on national budgets and administrations?

The impact on national budgets will be rather moderate compared to the savings afforded by the pooling of resources to address widespread infringements: one coordinated action that replaces 28 national actions, could result in total net savings varying from ca. EUR 180,000 (in the case of coordinated action which succeed in negotiating a settlement with the trader) to ca. EUR 815,000 (where negotiations fail and national enforcement actions have to be launched against the trader).⁴⁶

⁴² Page 9 and Annex IV of the Impact Assessment. This estimate is based on the approach designed in the UK to estimate financial consumer detriment. It is based on the screening of 2,682 e-commerce websites in 2014 in all EU countries in the sectors of: clothing and sports goods; electronic goods; package travel; recreation and culture; and financial services. The average non-compliance rate was found to be 37% in these sectors.

⁴³ Example in Box 9 of the Impact Assessment.

⁴⁴ Page 56 of the Impact Assessment.

⁴⁵ Pages 79 and 80 of the Impact Assessment.

⁴⁶ Page 3 of the Impact Assessment.

Proportionality

Benefits in terms of reduction of consumer harm and transaction costs for all operators, efficiency of public intervention, and ultimately expected economic growth thanks to increased consumer demand, considerably outweigh a limited increase in costs for public authorities and the Commission and the proposal is therefore considered to offer a proportional answer⁴⁷ to the current low level of compliance with consumer protection rules in cross-border markets⁴⁸.

The proposed amendments to the CPC Regulation concern the following aspects:

Scope: The scope of the Regulation is to be clarified to cover widespread infringements to Union consumer laws occurring simultaneously in several Member States, irrespective of the organisational structure of the trader concerned (e.g. irrespective of whether this trader has establishments in several countries or operates directly from a regional base). The Regulation is to be extended to cover infringements which may last for a relatively short time (e.g. misleading advertisement campaigns over a few days) but which have a lasting harmful impact on consumers or may be repeated in the future, if not adequately addressed⁴⁹.

Evidence:⁵⁰ To enhance the clarity, speed and efficiency of the alert mechanism⁵¹, a categorisation of alerts based on expected action is to be proposed, together with a mechanism to streamline their distribution, systematically collect data, exchange information and allow European Consumer Centres and consumers and traders associations invited to do so to post alerts about possible infringements as an information for enforcers.

Minimum powers of enforcers: The Regulation should clarify the scope of some of the existing minimum powers needed to competent enforcement authorities for cooperation. In particular, it should specify from whom information can be requested, under which conditions decisions can be published and ensure that, irrespective of the format and location of information, authorities have access to the necessary evidence. It is further proposed that commitments offered by traders to remedy breaches to Union law may be made public and that invited stakeholders, such as consumer organisations, can be consulted about the effectiveness of such commitments in solving the problems. Moreover, the Regulation should specify that the following powers are available to all authorities to cooperate more efficiently across borders, especially in digital markets: to start procedures on their own initiative (*ex officio*), to conduct test purchases and mystery shopping, to adopt interim measures, to close down a website, a social media account or a similar account, to impose fines and other pecuniary penalties, to request restitution of profits obtained through malpractices and to ensure that concerned consumers can be compensated⁵².

⁴⁷ Page 3 of the Impact Assessment.

⁴⁸ Results of consumer SWEEPS: http://ec.europa.eu/consumers/enforcement/sweeps/index_en.htm

⁴⁹ Page 21 of the Impact Assessment.

⁵⁰ Pages 3, 9, 13, 14, 17, 19 of the Impact Assessment.

⁵¹ Article 7 of the CPC Regulation: "Exchange of information without request".

⁵² Pages 13, 29, 31, 33, 38, 70, 100 of the Impact Assessment.

Prioritisation: The Regulation should establish a planning system that will allow coordination of enforcement priorities for cross-border enforcement activities and of the resources allocated to national authorities⁵³.

Procedural standards: The Regulation should foresee that enforcement and information requests have to be answered within deadlines set by implementing measures. It should also clarify that evidence can be efficiently shared across the network and seamlessly used within the various national jurisdictions, without requiring it to be in specific form or formats. The Regulation should also clarify the cooperation procedures and strengthen the coordination role of the Commission and the Single Liaison Offices⁵⁴.

Addressing widespread infringements: The Regulation should distinguish between infringements according to their possible Union-wide dimension. When there is a reasonable suspicion of a widespread infringement harming consumers in most of the EU economy (i.e. in at least 3/4 Member States, accounting together for at least 3/4 of the EU population), the need for action should be established by a Commission decision. In such cases, it should be justified to have one common procedure where the Commission should have a clear coordination responsibility. The main aim of this procedure would be establish the infringement and to stop it through cooperation with the concerned operators at the EU level, through commitments of traders to change their practices. Where companies refuse to cooperate or fail to implement their commitments, Member States should take enforcement actions in a coordinated manner and agree amongst them which Member State or Member States are best placed to take enforcement measures. Where malpractices of rogue traders, unlikely to be willing to cooperate, need to be addressed the procedure should allow quick adoption of enforcement measures. The procedure should also respect traders' rights of defence⁵⁵.

The proposed changes are numerous. Therefore, in line with its better regulation principles, the Commission proposes to replace the current CPC Regulation with a text which will consolidate all these amendments.

Conclusion: efficient enforcement of consumer law for a strong and dynamic Single Market

The proposed solutions strengthen the CPC enforcement cooperation mechanisms. It will significantly contribute to enhancing traders' compliance with Union consumer law and preventing consumer detriment that would otherwise hinder consumers' spending. Authorities will be in a better position to act faster and save costs by jointly tackling widespread infringements due to enhanced enforcement powers fit-for-purpose in the digital age, and thanks to a better focus and cooperation on EU wide priorities. The Commission will play an enhanced role in supporting the efficient enforcement coordination between national authorities when there is a clear need for action at the Union level. Enforcement of Union consumer law nonetheless remains the responsibility of Member States. This cooperation framework will overall improve the cost-efficiency of public action and the governance of the Single Market.

⁵³ Pages 3, 17, 25, 33, 35, 71 of the Impact Assessment.

⁵⁴ Pages 16, 68, 72 of the Impact Assessment.

⁵⁵ Pages 34, 56, 70, 78 of the Impact Assessment

Strengthened enforcement cooperation will enhance legal certainty and will progressively reduce compliance costs for law-abiding businesses as well as deterring rogue traders from causing harm to EU consumers. This will level the playing field and improve fairness in the Single Market, including the Digital Single Market, and will benefit the competitiveness and growth of the EU economy.