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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

The overall goals of the proposed amending regulation are to ensure that Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)¹ remains efficient and continues to guarantee that there is no discrimination between intra-EU and national transactions as to the effectiveness and efficiency with which infringements are pursued by the competent national authorities. To achieve these goals, the proposed amending regulation has as its objective to update the contents of the Annex to the Regulation on consumer protection cooperation to reflect recent legislative developments in the field of consumer protection.

1.2. General context

The need for a legal instrument was first identified in the 2001 Green Paper on EU Consumer protection², which identified a gap in the enforcement of consumer protection laws relating to consumers' economic interests in the internal market. The Commission presented a communication³ on the follow-up of the Green Paper, and after further consultation of the national governments and taking into consideration the Council resolution of 2 December 2002⁴ as well as the resolutions of the European Parliament⁵, it presented a proposal for the Regulation on consumer protection cooperation⁶. The Council and the European Parliament adopted the Regulation in accordance with the procedure in Article 251 EC⁷ on 27th October 2004. The Regulation has been applicable as of 29th December 2005.

The Regulation on consumer protection cooperation aims to abolish the barriers to cross-border cooperation between public enforcement authorities to detect, investigate and bring about the cessation or prohibition of intra-EU infringements of the laws which protect consumers' interests to ensure the effective functioning of the internal market. The Regulation achieves this aim by creating an enforcement cooperation network between the public enforcement authorities and thus increasing

¹ OJ L 364, 9.12.2004, p. 1.

² COM(2001) 531 final.

³ COM(2002) 289 final.

⁴ Council Resolution of 2 December 2002 on Community consumer policy strategy 2002-2006 OJ C11 of 17.1.2003, p. 1.

⁵ European Parliament resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (COM(2001) 531 - C5-0295/2002 - 2002/2151(COS)), European Parliament resolution on prospects for legal protection of the consumer in the light of the Commission Green Paper on European Union Consumer Protection (COM(2001) 531 - C5-0294/2002 - 2002/2150(COS)), European Parliament resolution on the Commission communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on 'Consumer Policy Strategy 2002-2006' (COM(2002) 208 - C5-0329/2002 - 2002/2173(COS)).

⁶ COM(2003) 443 final.

⁷ Article 294 TFEU.

consumer confidence in taking up cross-border offers, and preventing sellers and suppliers from evading enforcement to the competitive detriment of law-abiding sellers and suppliers.

The network established by the Regulation on consumer protection cooperation monitors and enforces legislation which protects consumers' interests. The legislation which falls into the scope of the network is listed in the Annex referred to in Article 3(a) of the Regulation on consumer protection cooperation. It is therefore appropriate to ensure that the Annex reflects the developments of the EU legislative body on consumer protection.

1.3. Any existing provisions in the area of the proposal

The objective of this proposal is to amend the Annex to the Regulation on consumer protection cooperation.

1.4. Consistency with other policies and objectives of the EU

The proposed amending Regulation will update the scope of the national enforcement authorities' cross-border cooperation to reflect recent developments of the EU legislative body on consumer protection. It therefore complements existing EU law in the field of consumer protection.

2. IMPACT ASSESSMENT

Since the proposed amending Regulation does not have significant economic, social and environmental impacts, an impact assessment is not necessary.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal base

Article 95 EC⁸ was chosen as the legal base for the Regulation on consumer protection cooperation based upon the aims and objectives pursued by the Regulation. In particular its aim to efficiently and effectively tackle cross-border rogue traders which disrupt the smooth functioning of the internal market and thus make a contribution to the removal of distortions of competition and the elimination of internal market obstacles.

The proposed amending Regulation seeks to preserve the effectiveness and efficiency of the cross-border enforcement activities of the consumer protection cooperation network by amending the Annex to the Regulation on consumer protection cooperation, and thus ensure that the scope of the cross-border cooperation remains relevant. The proposed amending Regulation therefore contributes to the same aims and objectives as the Regulation on consumer protection cooperation, and Article 114 TFEU remains unchanged as the legal base.

⁸ Article 114 TFEU.

3.2. Subsidiary and proportionality principles

The proposed action entails amendment of the existing EU regulatory framework and thus concerns an area in which the EU has already exercised its competence. The proposal therefore complies with the subsidiary principle as set out in Article 5 TEU⁹.

In accordance with the principle of proportionality, as set out in Article 5 TEU, the proposed amending Regulation does not go beyond what is necessary in order to achieve its objectives.

3.3. Choice of instrument

A regulation has been chosen, as the measure essentially updates the scope of the arrangements for cooperation between public authorities of direct applicability to reflect recent developments of the EU legislative body on consumer protection.

4. BUDGETARY IMPLICATION

The proposal has no implication for the EU budget.

5. EUROPEAN ECONOMIC AREA

The proposed amending Regulation concerns an EEA matter and should therefore extend to the European Economic Area.

6. DETAILED EXPLANATION

To simplify the legislative framework in the field of consumer protection, the proposed amending Regulation will remove outdated provisions in the Annex to the Regulation on consumer protection cooperation and replace some of them with updated references to new legislation. The update of the Annex will consist of the removal from the Annex of legislation which is not relevant for consumer protection cooperation between the national enforcement authorities and the updating of references to old legislation which is no longer in force by references to the replacing legislation in the field of consumer protection.

6.1. Removal

6.1.1. *The Directive on misleading and comparative advertising*

- Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising¹⁰

Directive 84/450/EEC should be removed from the Annex to the Regulation on consumer protection cooperation because it has been repealed by Directive

⁹ Ex Article 5 EC.

¹⁰ OJ L 250, 19.9.1984, p. 17, as last amended by Directive 2005/29/EC, OJ L 149, 11.6.2005, p. 22.

2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising¹¹. Directive 2006/114/EC does not aim at protecting consumers' interests in its entirety, only with respect to comparative advertising. Therefore, only a reference to the Articles on comparative advertising of Directive 2006/114/EC should be included in the Annex to the Regulation on consumer protection cooperation.

- Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising¹²

Directive 97/55/EC is an amending Directive to the repealed Directive 84/450/EEC on misleading advertising and should therefore be removed from the Annex to the Regulation on consumer protection cooperation.

6.2. Replacements

6.2.1. The Directive on consumer credit

- Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit¹³

Directive 87/102/EEC has been repealed by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC¹⁴. It should therefore be removed from the Annex to the Regulation on consumer protection cooperation.

- Directive 2008/48/EC on credit agreements for consumers

Directive 2008/48/EC on credit agreements for consumers should be included in the Annex to the Regulation on consumer protection cooperation since it is intended to replace Directive 87/102/EEC.

6.2.2. The Directive on audiovisual media services

- Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services¹⁵

Directive 89/552/EEC has been repealed by Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services

¹¹ OJ L 376, 27.12.2006, p. 21.

¹² OJ L 290, 23.10.1997, p. 18.

¹³ OJ L 42, 12.2.1987, p. 48.

¹⁴ OJ L 133, 22.5.2008, p. 66, as corrected by Corrigendum, OJ L 207, 11.8.2009, p. 14.

¹⁵ OJ L 298, 17.10.1989, p. 23, as last amended by Directive 2007/65/EC, OJ L 332, 18.12.2007, p. 27.

(Audiovisual Media Services Directive)¹⁶. Directive 89/552/EEC should therefore be removed from the Annex to the Regulation on consumer protection cooperation.

- Directive 2010/13/EU (Audiovisual Media Services Directive)

The relevant provisions of the Audiovisual Media Services Directive should be included in the Annex to the Regulation on consumer protection cooperation since this Directive is intended to replace Directive 89/552/EEC.

6.2.3. *The Directive on timeshare*

- Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis¹⁷

Directive 94/47/EC is repealed by Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts¹⁸. Directive 94/47/EC should therefore be removed from the Annex of the Regulation on consumer protection cooperation.

- Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts

Directive 2008/122/EC should be included in the Annex to the Regulation on consumer protection cooperation since it is intended to replace Directive 94/47/EC.

6.3. **Corrections**

6.3.1. *The Directive on unfair terms in consumer contracts*

The current reference in the Annex to the Directive on unfair terms in consumer contracts reads:

"Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29). Directive as amended by Commission Decision 2002/995/EC (OJ L 353, 30.12.2002, p. 1)."

Commission Decision 2002/995/EC does not amend the Directive on unfair terms in consumer contracts and the reference should be corrected.

¹⁶ OJ L 95, 15.4.2010, p. 1.

¹⁷ OJ L 280, 29.10.1994, p. 83.

¹⁸ OJ L 33, 3.2.2009, p. 10.

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

(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 Commission¹⁹

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee²⁰,

Having regard to the opinion of the Committee of the Regions²¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 2006/2004 of the European Parliament and of the Council²² lays down the conditions under which the competent authorities in the Member States designated as responsible for the enforcement of the laws that protect consumers' interests shall cooperate with each other and with the European Commission in order to ensure compliance with those laws and the smooth functioning of the internal market and in order to enhance the protection of consumers' economic interests.
- (2) Article 3(a) of Regulation (EC) No 2006/2004 establishes that 'the laws that protect consumers' interests' means the Directives, as transposed into the Member States' legal order, and the Regulations listed in the Annex to that Regulation ('the Annex').
- (3) Several of the legislative acts listed in the Annex have meanwhile been repealed, and new legislation has been adopted.
- (4) Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising²³ has been repealed by Directive 2006/114/EC of the

¹⁹ OJ C , , p. .

²⁰ OJ C , , p. .

²¹ OJ C , , p. .

²² OJ L 364, 9.12.2004, p. 1.

²³ OJ L 250, 19.9.1984, p. 17, as last amended by Directive 2005/29/EC, OJ L 149, 11.6.2005, p. 22.

European Parliament and of the Council²⁴. The reference to Directive 84/450/EEC should therefore be removed from the Annex. It is furthermore appropriate to only include a reference to the specific Articles of Directive 2006/114/EC which aim at protecting consumers' interests in the Annex.

- (5) Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising²⁵ is an amending Directive to the repealed Directive 84/450/EEC. Hence, the reference to Directive 97/55/EC should be removed from the Annex.
- (6) Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit²⁶ has been repealed and replaced by Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC²⁷. Therefore, the reference to Directive 87/102/EEC appearing in the Annex should be replaced by a reference to Directive 2008/48/EC.
- (7) Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services²⁸ has been repealed and replaced by Directive 2010/13/EU of the European Parliament and of the Council (Audiovisual Media Services Directive)²⁹. Pursuant to Article 34 of Directive 2010/13/EU, references to Directive 89/552/EEC contained in the Annex to Regulation (EC) No 2006/2004 are to be construed as references to Directive 2010/13/EU. It is however appropriate, for the sake of readability, to replace the reference to Directive 89/552/EEC appearing in the Annex by a reference to the relevant articles of Directive 2010/13/EU.
- (8) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts was not amended by Commission Decision 2002/995/EC and the reference to that Decision should be deleted.
- (9) Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis³⁰ has been repealed and replaced by Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts³¹. Pursuant to Article 18 of Directive 2008/122/EC, references to Directive 94/47/EC contained in the Annex to Regulation (EC) No 2006/2004 are to be construed as references to Directive 2008/122/EC. It is however appropriate, for sake of readability,

²⁴ OJ L 376, 27.12.2006, p. 21.

²⁵ OJ L 290, 23.10.1997, p. 18.

²⁶ OJ L 42, 12.2.1987, p. 48.

²⁷ OJ L 133, 22.5.2008, p. 66, as corrected by Corrigendum, OJ L 207, 11.8.2009, p. 14.

²⁸ OJ L 298, 17.10.1989, p. 23, as last amended by Directive 2007/65/EC, OJ L 332, 18.12.2007, p. 27.

²⁹ OJ L 95, 15.4.2010, p. 1.

³⁰ OJ L 280, 29.10.1994, p. 83.

³¹ OJ L 33, 3.2.2009, p. 10.

to replace the reference to Directive 94/47/EC appearing in the Annex by a reference to Directive 2008/122/EC.

- (10) The Annex to Regulation (EC) No. 2006/2004 should be amended accordingly.
- (11) Directive 87/102/EEC has been replaced by Directive 2008/48/EC whereas Directive 2008/48/EC does not expressly state that references to the repealed Directive 87/102/EEC are to be construed as references to Directive 2008/48/EC. For reasons of legal certainty, this Regulation should therefore enter into force as a matter of urgency.

HAVE ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 2006/2004 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

The Annex to Regulation (EC) No 2006/2004 is amended as follows:

(1) Footnote (1) is replaced by the following:

"(1) Directives No 6, 8 and 13 contain specific provisions."

(2) Point 1 is replaced by the following:

"1. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21): Articles 1, 2 (c), 4, 5, 6, 7, 8."

(3) Point 3 is replaced by the following:

"3. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66)."

(4) Point 4 is replaced by the following:

"4. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1): Articles 9, 10, 11 and 19 – 26."

(5) Point 6 is replaced by the following:

"6. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29)."

(6) Point 7 is replaced by the following:

"7. Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33, 3.2.2009, p. 10)."

(7) Point 9 is deleted.