

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

Ref. 16-6452

1 December 2016

SUBCOMMITTEE IV ON FLANKING AND HORIZONTAL POLICIES

EEA EFTA Comment

on the proposal for a regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws

1. PREFACE

- 1.1. The EEA EFTA States have continuously and actively followed the European Union's work on consumer protection. We have submitted comments on previous initiatives by the European Commission in this field, including the current Regulation on Consumer Protection Cooperation (COM (2003) 443).¹
- 1.2. The EEA EFTA States may provide additional national comments, and this comment is without prejudice to the question of the EEA relevance of the upcoming proposal. The required thorough assessment of EEA relevance will be conducted by the EEA EFTA States when the proposal has been adopted by the EU legislator.

2. GENERAL COMMENTS

- 2.1. The EEA EFTA States welcome the Commission's initiative to develop more efficient cooperation mechanisms among national authorities enforcing EU consumer protection rules. We also welcome clarification of the Commission's role in handling widespread infringements of Community consumer law on a European level.
- 2.2. The EEA EFTA States firmly believe that consumers should be granted a high level of consumer protection. To achieve this aim, it is necessary not only to establish strong

¹ EEA EFTA Comment dated 2 March 2004 and available on the EFTA website:
http://www.efta.int/media/documents/eea/eea-efta-comments/2004/2Mar04-EEA_EFTA_Comments_on_Enforcement_Protection.pdf

consumer rights, but also to ensure effective enforcement of these rights by public authorities, both nationally and cross border. Enforcement of these rights is important in order to increase consumer confidence and create a level playing field, to the benefit of both consumers and responsible traders.

- 2.3. The EEA EFTA States share the Commission's analysis that EU consumer law is currently not sufficiently enforced in cross-border cases. At the same time, it is important to bear in mind that breaches of EU consumer law have different degrees of consumer detriment, and national enforcement authorities should not be forced to prioritise cases where the consumer detriment is minor.

3. MINIMUM POWERS OF COMPETENT AUTHORITIES

- 3.1. The EEA EFTA States believe that consumer authorities should have effective means of investigating and sanctioning breaches of consumer protection law, and that they should be similar throughout the European Economic Area. This is especially important when dealing with so-called "rogue traders", who employ scams or similar trading practices, do not respond to enforcement efforts and/or try to hide their identity.
- 3.2. At the same time, the EEA EFTA States would like to stress that some of the powers proposed, namely the closing down of websites, could have serious implications, i.e. the closing down of an entire business.
- 3.3. Consequently, the EEA EFTA States believe that the closing down of websites and other severe sanctions should be reserved for more serious breaches of consumer law, in accordance with the general administrative law principle of proportionality.
- 3.4. The EEA EFTA States would also like to highlight the importance of swift intervention by authorities when tackling a business practice that is contrary to EU consumer protection rules. According to the Unfair Commercial Practices Directive (UCPD), Article 11(2) second subparagraph, Member States must provide for an accelerated procedure to ensure effective enforcement of the provisions in that Directive. We believe that this obligation should apply to all consumer protection rules covered by the proposed Regulation on Consumer Protection Cooperation, and therefore suggest adding a provision similar to that in the UCPD.

4. COORDINATED ACTIONS

- 4.1. The EEA EFTA States support more detailed rules on cooperation between national consumer authorities and the role of the Commission in widespread infringements. In general we agree with the Commission's assumption that a coordinated action is more efficient when dealing with trading practices that have an impact on consumers in several Member States.
- 4.2. It is, however, important for national authorities to be able to prioritise trading practices that have a considerable effect on consumers. As an example, national authorities should

not be forced through a common action to take steps against traders who do not provide information on their complaints handling policy before making a purchase, cf. Consumer Rights Directive, Article 6 paragraph 1 (g), if this means having to delay work on a domestic scam.

- 4.3. For these reasons, the EEA EFTA States believe that national authorities should have the last word regarding whether or not they will participate in a common action, despite there being a Union dimension according to Article 21 of the proposal.
