

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)

CHAPTER II

COMPETENT AUTHORITIES AND THEIR POWERS

Article 5

Competent authorities and single liaison offices

- 1 Each Member State shall designate one or more competent authorities and the single liaison office that are responsible for the application of this Regulation.
- 2 Competent authorities shall fulfil their obligations under this Regulation as though acting on behalf of consumers in their own Member State and on their own account.
- 3 Within each Member State, the single liaison office shall be responsible for coordinating the investigation and enforcement activities of the competent authorities, other public authorities referred to in Article 6 and, if applicable, designated bodies, in relation to infringements covered by this Regulation.
- 4 Member States shall ensure that competent authorities and single liaison offices have the necessary resources for the application of this Regulation, including sufficient budgetary and other resources, expertise, procedures and other arrangements.
- 5 Where there is more than one competent authority in their territory, Member States shall ensure that the respective duties of those competent authorities are clearly defined and that they collaborate closely in order to discharge those duties effectively.

Article 6

Cooperation for the application of this Regulation within Member States

- 1 For the purpose of the proper application of this Regulation each Member State shall ensure that its competent authorities, other public authorities and, if applicable, designated bodies cooperate effectively with one another.
- 2 Other public authorities referred to in paragraph 1 shall, at the request of a competent authority, take all necessary measures available to them under national law in order to bring about the cessation or prohibition of infringements covered by this Regulation.
- 3 The Member States shall ensure that the other public authorities referred to in paragraph 1 have the means and powers necessary to cooperate effectively with the competent authorities in the application of this Regulation. Those other public authorities shall regularly inform the competent authorities about the measures taken in the application of this Regulation.

Article 7

Role of designated bodies

1 Where applicable, a competent authority ('instructing authority') may, in accordance with its national law, instruct a designated body to gather the necessary information regarding an infringement covered by this Regulation or to take the necessary enforcement measures available to it under national law, in order to bring about the cessation or prohibition of that infringement. The instructing authority shall only instruct a designated body if, after consulting the applicant authority or the other competent authorities concerned by the infringement covered by this Regulation, both the applicant authority and requested authority, or all competent authorities concerned, agree that the designated body is likely to obtain the necessary information or to bring about the cessation or the prohibition of the infringement in a manner that is at least as efficient and effective as the instructing authority would have done.

2 If the applicant authority or the other competent authorities concerned by an infringement covered by this Regulation are of the view that the conditions set out in paragraph 1 have not been fulfilled, they shall inform the instructing authority in writing without delay, setting out the reasons justifying that view. If the instructing authority does not share that view, it may refer the matter to the Commission, which shall issue an opinion on the matter without delay.

3 The instructing authority shall continue to be obliged to gather the necessary information or to take the necessary enforcement measures if:

- a the designated body fails to obtain the necessary information or to bring about the cessation or prohibition of the infringement covered by this Regulation without delay; or
- b the competent authorities concerned by an infringement covered by this Regulation do not agree that the designated body may be instructed pursuant to paragraph 1.

4 The instructing authority shall take all necessary measures to prevent the disclosure of information which is subject to the rules on confidentiality and on professional and commercial secrecy laid down in Article 33.

Article 8

Information and lists

1 Each Member State shall, without delay, communicate to the Commission the following information and any changes thereto:

- a the identities and contact details of the competent authorities, of the single liaison office, of the designated bodies and of the entities issuing external alerts pursuant to Article 27(1); and
- b information about the organisation, powers and responsibilities of the competent authorities.

2 The Commission shall maintain and update on its website a publicly available list of competent authorities, single liaison offices, designated bodies and entities issuing external alerts pursuant to Article 27(1) or (2).

Article 9

Minimum powers of competent authorities

1 Each competent authority shall have the minimum investigation and enforcement powers set out in paragraphs 3, 4, 6 and 7 of this Article that are necessary for the application of this Regulation and shall exercise those powers in accordance with Article 10.

2 Notwithstanding paragraph 1, Member States may 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 in accordance with Article 10.

3 Competent authorities shall have at least the following investigation powers:

- a the power of access to any relevant documents, data or information related to an infringement covered by this Regulation, in any form or format and irrespective of their storage medium, or the place where, they are stored;
- b the power to require any public authority, body or agency within their Member State or any natural person or legal person to provide any relevant information, data or documents, in any form or format and irrespective of their storage medium, or the place where they are stored, for the purposes of establishing whether an infringement covered by this Regulation has occurred or is occurring, and for the purposes of establishing the details of such infringement, including tracing financial and data flows, ascertaining the identity of persons involved in financial and data flows, and ascertaining bank account information and ownership of websites;
- c the power to carry out necessary on-site inspections, including 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, or to request other public authorities to do so, in order to examine, seize, take or obtain copies of information, data or documents, irrespective of their storage medium; the power to seize any information, data or documents for a necessary period and to the extent necessary for the inspection; the power 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 to record the answers;
- d 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 and to obtain evidence, including the power to inspect, observe, study, disassemble or test goods or services.

4 Competent authorities shall have at least the following enforcement powers:

- a the power to adopt interim measures to avoid the risk of serious harm to the collective interests of consumers;
- b the power to seek to obtain or to accept commitments from the trader responsible for the infringement covered by this Regulation to cease that infringement;
- c the power 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;

- d where applicable, the power to 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;
- e the power to order in writing the cessation of infringements covered by this Regulation by the trader;
- f the power to bring about the cessation or the prohibition of infringements covered by this Regulation;
- g where no other effective means are available to bring about the cessation or the prohibition of the infringement covered by this Regulation and in order to avoid the risk of serious harm to the collective interests of consumers:
 - (i) the power to remove content or to restrict access to an online interface or to order the explicit display of a warning to consumers when they access an online interface;
 - (ii) the power to order a hosting service provider to remove, disable or restrict access to an online interface; or
 - (iii) where appropriate, the power to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it;including by requesting a third party or other public authority to implement such measures;
- h the power to impose penalties, such as fines or periodic penalty payments, for infringements covered by this Regulation and for the failure to comply with any decision, order, interim measure, trader's commitment or other measure adopted pursuant to this Regulation.

The penalties referred to in point (h) shall be effective, proportionate and dissuasive, in accordance with the requirements of Union laws that protect consumers' interests. In particular, due regard shall be given, as appropriate, to the nature, gravity and duration of the infringement in question.

5 The power to impose penalties, such as fines or periodic penalty payments, for infringements covered by this Regulation applies to any infringement of Union laws that protect consumers' interests, where the relevant Union legal act listed in the Annex provides for penalties. This is without prejudice to the power of national authorities under national law to impose penalties, such as administrative or other fines, or periodic penalty payments, in cases where the Union legal acts listed in the Annex do not provide for penalties.

6 Competent authorities shall have the power to start investigations or proceedings on their own initiative to bring about the cessation or prohibition of infringements covered by this Regulation.

7 Competent authorities may publish any final decision, trader's commitments or orders adopted pursuant to this Regulation, including the publication of the identity of the trader responsible for an infringement covered by this Regulation.

8 Where applicable, competent authorities may consult consumer organisations, trader associations, designated bodies or other persons concerned, regarding the effectiveness of the proposed commitments in bringing the infringement covered by this Regulation to an end.

Article 10

Exercise of minimum powers

- 1 The powers set out in Article 9 shall be exercised either:
 - a directly by competent authorities under their own authority;
 - b where appropriate, by recourse to other competent authorities or other public authorities;
 - c by instructing designated bodies, if applicable; or
 - d by application to courts competent to grant the necessary decision, including, where appropriate, by appeal, if the application to grant the necessary decision is not successful.

- 2 The implementation and the exercise of powers set out in Article 9 in application of this Regulation shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted in application of this Regulation shall be appropriate to the nature and the overall actual or potential harm of the infringement of Union laws that protect consumers' interests.