



Support study for the impact assessment on the review of the CPC Regulation 2006/2004/EC

European Commission DG Health and Consumers (SANCO)

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European Commission DG Health and Consumers (SANCO)
A report submitted by [ICF Consulting Services](#)
in association with

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Glossary of terms

Alert	Information exchange without a request through the CPC System between competent authorities as defined in Article 7 of the CPC Regulation 2006/2004. If a competent authority is warned or suspects that intra-Community infringement is occurring (or may occur), it shall inform the competent authorities in other Member State(s) and the European Commission via the CPC System.
Complaint	Statement, supported by reasonable evidence submitted by the consumer indicating that a seller or supplier has committed, or is likely to commit an infringement of consumer protection law.
CPC	Consumer Protection Cooperation Regulation 2006/2004/EC providing a cooperation framework for enforcement authorities in EU and EEA
CPCS	CPC-System is the common IT-tool used by competent authorities for the exchange of information for the performance of their mutual assistance obligation under the CPC Regulation. System is maintained by the European Commission.
Criminal sanctions	Severe sanctions imposed by courts of a non-pecuniary nature with the expressed aim of deterrence. Imprisonment is the most common criminal sanction relevant to consumer protection law.
Cross-border	Transactions related to a sales or service contract between consumers and traders located in different EU Member States.
Detriment	Harm or damage suffered by consumers from an infringement which can be financial, physical or psychological in nature. For the purposes of this study financial detriment is considered structural (ex ante) posing the risk of potential harm to consumers, opposed to materialised (ex post) harm.
Domestic	Transactions between consumers and traders located in the same Member State
ECC-Net	European Consumer Centres Network is an EU-wide network of 30 European Consumer Centres (ECCs) which offer help and advice to consumers where they may have a problem with a good or service purchased in another Member State or a dispute with a supplier located in another Member State.
E-commerce	Electronic commerce, transactions conducted online
Enforcement	Consists of a range of remedies that can be used if a trader fails to comply with a law. This can be achieved by private and public enforcement means.
Enforcement request	A national competent authority in the EU Member State where the consumers interests are harmed can call on their counterpart in another Member State (usually where the trader is located) and ask for the cessation or prohibition of the infringement without delay. Such requests must be made through the CPC System, in line with Article 8 of the CPC Regulation 2006/2004.
Information request	A national competent authority is requested to provide information to establish whether an intra-Community infringement has occurred or whether there is a reasonable suspicion it may occur by a competent authority in another Member State (Article 6 of the CPC Regulation). Such requests are made through the CPC System.
Infringement	A violation of consumer protection law covered by the CPC Regulation in business-to-consumer transactions.

Intra-Community	Transactions between consumers and traders located in different EU Member States, including domestic transactions where the consumer is purchasing from a subsidiary, branch, franchise or agent of a trader based in another EU Member State.
M-commerce	Mobile commerce, transactions conducted using mobile devices including tablets and smartphones
Parallel Domestic	Consumer transaction with a domestic agent, branch or subsidiary of a foreign trader. Often invisible to the consumer, due to the organisation of the business, the transaction has a cross-border element.
Private enforcement	Legal action brought by one private party against another party before a national court or before alternative dispute resolution bodies. Dealing principally with enforcing the consumers' individual interests (even though claims may be brought through grouped actions, such as in the case of collective redress actions), private enforcement proceedings can be initiated by consumer associations representing consumers' collective interests.
Public enforcement	Enforcement action in the public interest that is usually taken by public authorities and/or courts with a primary purpose to cease the infringement and to punish the infringer for violation of laws protecting such public interest.
Sanctions	Any type of legal consequence for breaching a law, typically a penalty imposed on the infringing trader. We refer to pecuniary (monetary) and non-pecuniary sanctions (i.e. closure of a website or a business).
Settlement	Is reached when a solution to a legal dispute is agreed upon among the parties as opposed to being decided (e.g. by a judge). In this context settlement refers to the power of the authority to reach an extrajudicial agreement whereby the trader admits responsibility for an infringement and accepts a penalty for the infringement, thereby avoiding the full legal procedure.
SWEEP	EU-wide screening of websites to identify breaches of consumer law in a given on-line market and to subsequently ensure compliance through enforcement activities
Undertaking	A promise made to the competent authority by infringing trader to cease the infringement within a specified time period and/or not to repeat the infringement. Failure to comply with the promise is treated as misconduct, resulting in possible civil, administrative or criminal proceedings being brought against the trader.

List of acronyms

ADR	Alternative Dispute Resolution
CPC	Consumer Protection Cooperation
CPCS	CPC System
DAE	Digital Agenda Europe
DSM	Digital Single Market
EC	European Commission
ECC	European Consumer Centre(s)
EU	European Union
GDP	Gross Domestic Product
IMF	International Monetary Fund
MS	Member State(s)
NCA	National Competent Authority(s)
OECD	Organisation for Economic Co-operation and Development
OFT	(Former) UK Office for Fair Trading
SLO	Single Liaison Office(s)
UCPD	Unfair Commercial Practices Directive
UCTD	Unfair Contract Terms Directive

Executive summary

Introduction

Ensuring a high level of consumer protection in the Single Market requires effective and efficient enforcement of consumer protection laws across EU Member States, particularly in the Digital Single Market (DSM). Due to a significant and growing number of cross-border transactions, there is now an even greater need for cross-border enforcement cooperation and coordination between Member States' competent authorities to detect, prevent, cease and sanction intra-Community infringements.

The Consumer Protection Cooperation (CPC) Regulation adopted in 2004 establishes a framework in which enforcement authorities from different Member States can cooperate to ensure compliance with EU consumer protection legislation in the Single Market. The framework includes procedures for information exchange, cross-border enforcement requests and coordinated actions, to prevent infringing traders from exploiting differences in national jurisdictional boundaries.

It is recognised that although the CPC Regulation has been beneficial for the competent authorities and for consumers, it has partially achieved its original objectives¹ due to the existence of a number of practical and legal barriers that prevent effective cooperation between national competent authorities. Moreover, there is much more the CPC Regulation could do to strengthen cross-border enforcement, particularly in the digital environment. The anonymity website owners can enjoy in the digital environment, the blurring of jurisdictional boundaries and the evolution of new business practices presents many new enforcement challenges, which did not exist in 2004 when the CPC Regulation was adopted. Only by ensuring EU consumers feel adequately protected in the digital environment, will they effectively engage in the DSM and realise the full scale of the benefits that it offers.

A well-functioning DSM also requires that businesses are willing to offer products cross-border, to embrace its opportunities and compete on a level playing field. Effective enforcement across Member State boundaries is essential to establish these conditions.

Recent reports by the European Parliament indicate that the DSM could contribute around € 520 billion to EU-28 GDP by 2020² of which around half could be achieved in the coming years by introducing the right blend of policies, including improved enforcement of consumer protection laws. Removing regulatory barriers on their own are estimated to contribute to €415 billion per year to EU28 economy³. However, the Digital Single Market Strategy acknowledges that having a common set of rules is not enough. There is also a need for more rapid, agile and consistent enforcement of consumer rules for online and digital purchases to make them fully effective. Moreover, final consumption expenditure of households in the EU-28 accounts for over half of the EU's GDP⁴. Consumers thus, have an important role to play in generating growth and jobs.

Aims and approach

This study has been undertaken by the Consumer Policy Evaluation Consortium (CPEC) led by ICF Consulting Services on behalf of the European Commission DG Justice, Consumer Affairs Directorate (EC) to provide a preparatory impact assessment of possible options for the revision of the CPC Regulation. The analyses will support DG Justice in assessing whether legislative and non-legislative changes to the system for mutual assistance cooperation and enforcement coordination are necessary.

¹ EC (2012): External evaluation of the CPC Regulation, by CPEC, December 2012, available at: http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

² Mapping the Cost of Non-Europe, 2014-2019, study prepared for Parliament, 2014, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/510983/IPOL-EAVA_ET\(2014\)510983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/510983/IPOL-EAVA_ET(2014)510983_EN.pdf)

³ EC (2015): A Digital Single Market Strategy for Europe - COM(2015) 192 final, May 2015, available at: http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf

⁴ Eurostat, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/National_accounts_and_GDP#Main_GDP_aggregates

The findings of the report are based on evidence collected and analysed throughout the duration of the study, including

- **Desk research:** including Member States' Biennial reports for 2007, 2009 and 2012, the Commission's external evaluation, and positions papers of consumer associations, legal studies on the enforcement systems of Member States, and reports and presentations from CPC workshops/events arranged by the Commission. Statistical evidence from ECCs, CPCS statistics and national complaints data.
- **Consultation with Member State authorities** through a short online survey.
- **Workshops:** organised by the Commission, to gauge understanding and the scale of the problems faced by Member State authorities in cross-border enforcement, and to explore possible solutions.
- **External Panels:** two expert panels⁵ took place in February and June of 2014 to review the methodological approach to the study and validate the baseline exercise, specifically the assumptions and approach taken to quantify of consumer financial detriment.
- **Website review:** a review of 2,682 websites in five consumer sectors (clothing and sports goods, electronic goods (mobile phones/tablets), travel (package holidays), recreation and culture (tickets for sports, entertainment and cultural events), and financial services (consumer credit)) was undertaken in March 2014 to assess whether website traders had correctly implemented the most important measurable consumers rules of consumer protection legislation covered by the CPC Regulation.
- **Estimated caseload baseline 2014-2025:** a forecasting model was developed for five product sectors (clothing and sports goods, electronic goods, financial services⁶, tickets for sports/entertainment and cultural events, and food supplements⁷) in eight Member States (Germany; United Kingdom; Spain; Hungary; France; Poland; Sweden; and Latvia) to quantify the anticipated caseload of the infringements (domestic, cross-border, parallel domestic and international), the number of consumers affected, and the associated (potential) structural⁸ financial detriment suffered by consumers for each year 2014-2025. These estimates were scaled up to EU28 totals by sector, based on each EU Member State's share of total GDP. To account for uncertainty, lower bound and upper bound estimates were calculated, the average of which is used in this study, regarded as a 'best guess'
- **Regulatory baseline:** differences in national legal systems, enforcement regimes and procedural rules, result in variations in the regulatory (baseline) situation between Member States and as such, the potential (incremental) impact the proposed policy option is likely to vary by Member State. Baseline characteristics of each Member State's regulatory regime were described and differences identified. Implications of the baseline for the adaptability of each national system to possible legislative changes were assessed.
- **Analytical model:** An economic model was developed and applied to assess the economic and financial impacts of the policy options, based on data obtained from desk research of Member State submissions, and taking account of the estimated caseload and the regulatory baseline. Sensitivity analysis was carried out to test the robustness of results.

⁵ Expert panels involved the inputs of Professor Geraint Howells – Expert in European and consumer law, Professor Stephen Davies – Expert in the evaluation of competition and consumer economics; Anabela de Brito and Jacques Pelkmans from the Centre for European Policy Studies (CEPS) - experts in EU consumer policy in the Single Market.

⁶ The focus of financial services was consumer credit products (i.e. unsecured loans and credit cards).

⁷ Food supplements are taken to include products which consumers use to complement their diets or to maintain health. This includes vitamins, herbal and dietary supplements. Specialist supplements can also be targeted at specific user groups or developed with specific properties in mind (i.e. sports supplements and products for gym users). Food supplements can be consumed orally in the form of pills, powders, liquids or intravenously by injection.

⁸ http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/study_consumer_detriment.pdf

- **Meetings with the Commission:** meetings with the client took place following the submission of the inception report, the interim reports and the draft final report in order to discuss the deliverables and progress.

The study faced a number of challenges specifically in relation to the baseline. As far as the researchers are aware this is the first study of its type to systematically map the legal and enforcement systems of the Member States in the EU-28, and to quantify the number of infringements and associated potential financial detriment for selected consumer markets. Systematic data was often not recorded on infringements in the Member States and there is a paucity of research and applied methods on the quantification of detriment from violations of consumer protection legislation.

The study has therefore relied on the approaches and assumptions used in analogous policy areas to provide reasoned estimates of infringements and consumer detriment. Expert input to the study has been valuable to fill relevant gaps in the available data and to test the judgement of the researchers.

The problem – uneven, inefficient and ineffective cross-border enforcement

Current cross-border enforcement activity using the CPC System (CPCS)

Of the 120,000 intra-Community infringements estimated to be committed by traders in the five sectors analysed in the baseline in 2014, it is known that <1% of cross-border infringements in each Member State are investigated and enforced using the CPCS. For some Member States the number of cases tackled each year is in single figures. Reasons for this can include:

- Infringements are not detected by competent authorities.
- Infringement are resolved without using the CPCS, either through informal action by the competent authority concerned (i.e. issuing a warning or letter) which does not involve contacting authorities in other Member States, or through informal contact between competent authorities outside of the CPCS (i.e. by email or telephone).
- Cross-border infringements are not tackled due to insufficient enforcement resources and/or prioritisation of domestic infringements by authorities which are often less complex and quicker to resolve.
- Cross-border infringements are not tackled where the detriment is considered trivial, such that the costs of enforcement are considered to exceed the harm to consumers. Where enforcement resources are limited, it is rational for authorities to focus on tackling infringements of higher consumer detriment.

Each of these causes are addressed by the options proposed in this assessment by altering one or more of the following factors:

- Market surveillance and intelligence sharing practices;
- The capabilities and capacity of competent authorities, including resources;
- The incentives to investigate and enforce cross-border infringements by realising the benefits
- Competent authority understanding of emerging enforcement challenges and practices of rogue traders;
- The effectiveness and efficiency of the CPC Regulation;
- The obligations placed on Member State authorities in the CPC Regulation, and
- The costs of investigation and enforcement action.

Legislation protecting the economic interests of consumers is largely ineffective without proper enforcement. Enforcement encourages business compliance with consumer protection legislation through prevention, timely detection, cessation and sanctioning of infringements. Effective enforcement action translates into strong deterrent effects, which positively affects the level of compliance among traders and consumer trust in their rights.

Despite establishing a framework for tackling intra-Community infringements in the Single Market, the external evaluation⁹ concluded that the objectives of the CPC Regulation have not yet been fully achieved, indicating that there is scope for improvement. The evaluation found that the current level of cross-border cooperation is insufficient to realise the full benefits of even, effective and efficient

⁹ EC (2012): External evaluation of the Consumer Protection Cooperation Regulation, by CPEC for the European Commission, December 2012, available at: http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

enforcement in the Single Market. Further, it suggests that some elements of the CPC framework are not fit for purpose or sufficient to tackle infringements effectively in the new digital economy and the Commission has the potential to play a more substantive role in the CPC framework, adding value to the actions of individual Member States.

Because of these deficiencies in the current CPC Regulation, consumers are suffering more harm than they would otherwise do in a more effective cross-border enforcement system. Consumer and business confidence in the Single Market is undermined when decisions and sanctions are inconsistent. Moreover, scarce resources are wasted through duplication of investigation and enforcement activities, when some cases could be more efficiently resolved by working together through coordinated enforcement actions.

The problems identified as contributing to **uneven, inefficient and ineffective cross-border enforcement** are:

■ **Problem 1: Deficiencies in the current design and operation of the CPC Regulation**

- *Certain types of cross-border infringements are not being addressed as it is not clear whether they are covered by the CPC Regulation:*
 - **Short-lived (predominately online) infringements:** *these infringements last for a relatively short period of time (a few weeks) and when they cease, the consumer usually continues to suffer harm, because the effects of the infringement continues to cause harm*
 - **Parallel domestic infringements**
- *Some infringements currently covered by the CPC Regulation are not tackled efficiently for the following reasons:*
 - Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities, including in the digital environment. For example, competent authorities in some Member States do not have the power to close the websites of traders committing infringements and have limited powers to investigate infringements in the digital environment. This is problematic where the trader is making concerted efforts to conceal its identify and location, hindering effective enforcement. The Infurn¹⁰ and Austrian online lotteries¹¹ cases are examples where additional powers to track and trace the financial flows from websites to the company responsible for the infringement proved invaluable. This required access to digital data including bank records and the cooperation of third parties to track the digital footprint of the trader. In other cases, authorities in some Member States have been able to impose interim measures (e.g. interim powers to withdraw the license of the infringing trader or to temporarily ban its activities) to protect consumers while a legal proceeding is ongoing, reducing the number consumers suffering harm. However this power is not universal as the powers of CPC competent authorities remain fragmented, shaped by the enforcement regime and legal system of each Member State.
 - **Insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation.** Lack of procedural standards (e.g. time limits for taking action, specification of minimum information to be provided etc.) results in delays in mutual assistance cooperation between Member States, variation in the quality and quantity of evidence collected and exchanged. Differences in Member State understanding of their obligations under the CPC Regulation also contributes to insufficient cross border enforcement cooperation and damages undermines confidence in the CPC Network. At present, a little over 300 mutual assistance requests are processed through the CPCs per annum, yet analysis of five consumer sectors estimates that over 100,000 intra-Community infringements are actually potentially occurring annually.

¹⁰ <http://www.konsumenteuropa.se/en/news-and-press-releases/pressmeddelanden/press-releases-2015/infurn-bottennappet-nar-2014-summeras/>

¹¹ <http://europakonsument.at/en/news/friedrich-m%C3%BCller-four-years-imprisonment>

- **Problem 2: Insufficient tools for tackling EU-relevant infringements**
 - **Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities (and the Commission) to address widespread infringements, including in the digital environment.** Powers to tackle more complex infringements offline and in the digital environment are lacking. The recent Apple extended guarantee case¹² is an example of slow and inconsistent enforcement by CPC competent authorities in different Member States as each authority took action individually and did not take into account the decisions in other Member States. Additional powers are therefore, needed to more effectively address infringements of a pan-European nature and ensure their scope is taken into account in sanctioning decisions. This particularly affects the ability to tackle EU-relevant infringements i.e. infringements which occur concurrently in multiple Member States.
 - **Inadequate procedural mechanism to address widespread infringements, including in the digital environment.** While the CPC Regulation contains a legal basis for joint enforcement (Article 9 of the CPC Regulation), it lacks clarity with respect to the roles and obligations placed on Member States and the Commission as clear procedure for such actions. The external evaluations also noted that the procedure would benefit from increased Commission participation to better coordinate and streamline the investigation and enforcement of EU-widespread infringements.
- **Problem 3: No consistent evidence on emerging infringements and market conditions which impedes effective prevention and early detection of malpractices, especially those which are spread EU-wide in the digital environment; coupled with a lack of common EU-wide cross-border enforcement strategy and priorities to achieve the objectives of the CPC Regulation; inadequate financial and human resources dedicated to the cross-border enforcement**
 - **Currently all alerts are given equal attention regardless their potential importance and they are not systematically followed up.** Blanket distribution of alerts without requested follow-up action or targeting specific CPC competent authorities, means that the alert mechanism is often ineffective as infringements are not detected from alerts, intelligence is not shared and authorities do not identify parallel or widespread infringements where joint action could be beneficial.
 - **Currently access to the CPC alert mechanism is limited to the national authorities only, which limits the available information.** Lack of access to CPC alerts mechanism prevents the stakeholders that possess valuable information from sharing it systematically with competent authorities (e.g. trade and consumer associations, ECCs). This reduces the effectiveness of this enforcement tool as infringements get detected later or not at all.
 - **Insufficient resources dedicated to the enforcement cooperation under the CPC Regulation in some Member States; no adequate monitoring of Member States' enforcement efforts.** Lack of benchmarking among the CPC authorities regarding their resources to meet the obligations under the CPC Regulation results in less enforcement and reduces the efficiency and effectiveness of the CPC cooperation.
 - **No systematic and common/coordinated prioritisation of national and cross-border enforcement actions across the EU;** Priorities of CPC competent authorities are often not aligned in a coherent way. This reduces the effectiveness of market surveillance and sharing of intelligence, resulting in reduced detection and prevention of infringements.

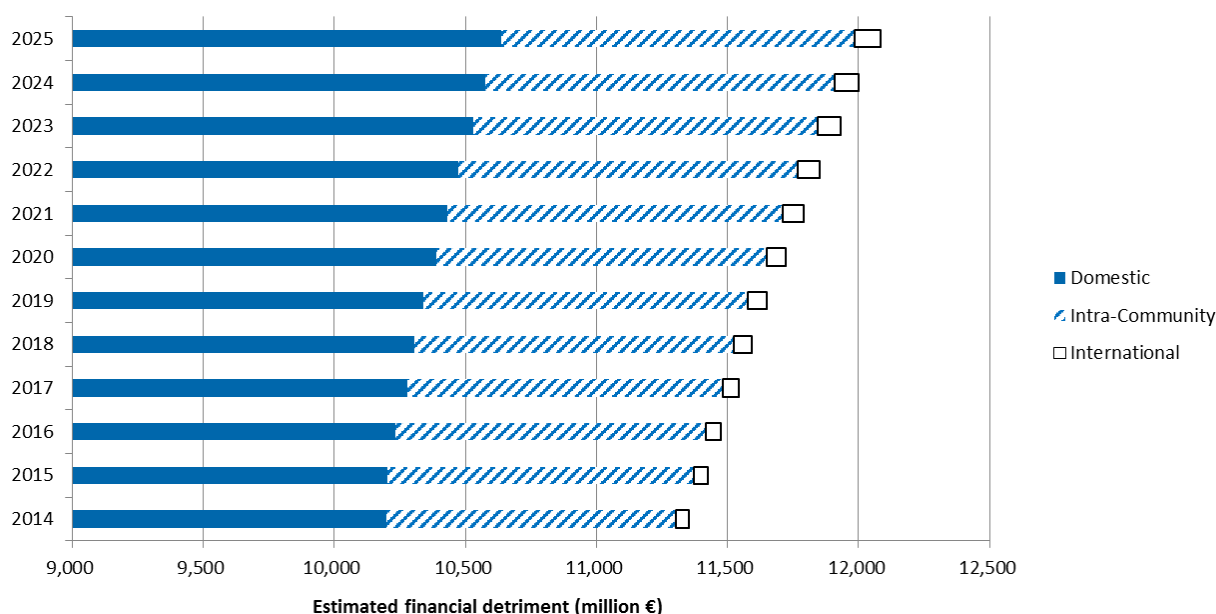
The **consequences of the problem** of uneven, inefficient and ineffective cross-border enforcement are a high non-compliance rate with EU consumer protection rules resulting in high financial consumer detriment and uneven level playing field for businesses; as well as duplication of resources to tackle infringements occurring cross borders.

¹² http://www.cojef-project.eu/IMG/pdf/BEUC_PR_Apple.pdf

Quantifying the scale of the problem

For the five consumer sectors used to quantify consumer financial detriment from all type of infringements, the total detriment suffered by EU consumers is estimated to increase from €11.4 billion to €12.1 billion (a 6% increase) between 2014 and 2025, shown in Figure ES1. Of this total, **intra-Community infringements** (cross-border and parallel domestic) are forecast to account for a growing proportion of financial detriment, increasing from €1.1bn in 2014 to €1.3bn by 2025 (an 18% increase from 2014) in the five consumer sectors concerned. This reflects the growth in e- and m-commerce and the new businesses practices created by the digital environment. An increase proportion consumer expenditure is also conducted online (7% in 2014 increasing from 3.4% in 2011) where there are no borders. The growth intra-Community infringements and detriment is also a product of increasing numbers of businesses operating in more than one Member State, through networks of branches, subsidiaries or agents. This creates conditions for infringing commercial practices to be repeated in other Member States, therefore with a cross-border dimension.

Figure ES1: Forecast consumer detriment in the baseline (assuming no change to the CPC Regulation), by type of infringement 2014-25 for five selected product groups, EU28



Source: ICFI own analysis

Scaling up the estimates of consumer financial detriment for five product sectors to **the whole economy**¹³, total **intra-Community** detriment which could be reduced by this initiative is estimated to be in the order of €11bn to €13bn respectively in 2014 and 2025. The deterrent of the initiative is however likely to affect all infringements, not just those which are CPC relevant, hence the potential benefits could be much higher¹⁴.

¹³ Assumes the five consumer sectors assessed in the baseline account for around 10% of total consumer expenditure and associated detriment, based on Eurostat COIOP data on consumer expenditure by sector.

¹⁴ Including domestic and international infringements, total detriment suffered by consumers is estimated to be in the region of €114bn and €121bn in 2014 and 2025 respectively, based on baseline estimates for the five sectors of €11.4bn and €12.1bn. (See Figure ES1)

Trends in consumer retail expenditure and business organisation

Online retail sales are forecasted to increase as a share of total consumer expenditure in all Member States between 2013 and 2018¹⁵. According to research by the European Multi-channel and Online Trade Association¹⁶ 14% of online sales in 2014 were non-domestic business-to-consumer sales (including both EU and non-EU cross border sales). This is expected to increase to 20% by 2018.

According to a Eurobarometer study¹⁷ as of 2011 approximately 10% of enterprises had outlets or subsidiaries in another EU country; 4% in one other country, 2% in 2-3 other countries and 4% in 4 or more countries¹⁸. Traders are increasingly operating in multiple Member States through branches, subsidiaries, franchises or agents. Consequently, an increasing proportion of domestic retail sales have a cross-border dimension

The basis for intervention

Consumer protection belongs to a shared competence between the EU and the Member States. A new legal instrument establishing a revised CPC Regulation might be based on Article 114 of the TFEU¹⁹ (Article 95 of the TEC):

“The European Parliament and the Council shall [...], adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market”.

Any revision of the CPC Regulation or initiative to support enforcement could also be based on Article 169 (Article 153 of the TEC) which states that:

“In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers [...], through:

- (a) measures adopted pursuant to Article 114 in the context of the completion of the internal market;*
- (b) measures which support, supplement and monitor the policy pursued by the Member States.”*

In both articles, there is clear justification for action to support the functioning of the single market, by protecting the economic interests of consumers. Proposed measure should also adhere to better regulation principles to reduce the administrative burden on businesses and administrations and ensure the conditions of proportionality and subsidiarity are met. The assessment therefore ensures that the expected benefits exceed the costs of implementing each measure and that the Member State would not be better placed to take action.

The policy objectives

The general objectives of a future CPC Regulation would be to:

1. Ensure a high level of consumer protection in the EU through enhanced protection of consumers economic interests in the Single Market
2. Improve consistency of enforcement of EU consumer protection legislation across the EU and thus legal certainty for traders and consumers
3. Increase the deterrence effect of the CPC cooperation

¹⁵ Forester Research Online Retail Forecast, 2013-2018, summary available here: <http://ecommercenews.eu/online-sales-in-europe-will-grow-to-e233-9bn-by-2018/>

¹⁶ <http://www.thepayers.com/ecommerce/western-europe-cross-border-sales-to-double-by-2018-report/755903-25>

¹⁷ Flash Eurobarometer 300 on business attitudes towards cross-border trade and consumer protection. http://ec.europa.eu/consumers/archive/strategy/docs/retailers_eurobarometer_2011_en.pdf

¹⁸ EU27 data was used and it was not possible to disaggregate by sector.

¹⁹ The “Treaty of the European Union”, or “Lisbon Treaty”



The specific (i.e. what the intervention should achieve) and operational (deliverable) objectives are provided in Table ES1 mapped to the problems.

Table ES1 Specific and operational objectives of a revised CPC Regulation linked to the identified problems

Problem	Specific objectives	Operational objectives
Certain types of cross-border infringements are not being addressed as they are not covered by the CPC Regulation, namely Short-lived, predominantly online infringements.	Reduce the number of short lived/ parallel domestic infringements	<ul style="list-style-type: none"> ■ Bring short-lived intra-Community infringements and parallel domestic infringements under the scope of the CPC Regulation ■ Increase the number of situations where the CPC enforcement cooperation framework is invoked (number of enforcement and information requests and number of common enforcement actions, number of instances when CPC coordination occurs)
	Reduce the number of situations where infringements are not duly investigated and stopped	
	Reduce time/cost of addressing (short lived) infringements	
	Reduce consumer detriment	
Certain types of cross-border infringements are not being addressed as they are not covered by the CPC Regulation, namely Parallel domestic infringements	Reduce the number of short lived/ parallel domestic infringements	
	Reduce the number of situations where infringements are not duly investigated and stopped	
	Reduce duplication of investigation and enforcement effort (parallel domestic infringements)	
	Save litigation costs for traders who operate across EU(parallel domestic infringements)	
	Reduce consumer detriment	
Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities, including in the digital environment.	Reduce the number of infringements currently not stopped due to insufficient powers	<ul style="list-style-type: none"> ■ Introduce additional common minimum investigation and enforcement powers for competent authorities (e.g. to carry out test purchases/mystery shopping, obtain information from other authorities or third parties to track down the flow of money, to adopt interim measures, to facilitate consumer redress for intra-Community infringements) ■ Amend/Clarify the provisions of the CPC Regulation which currently negatively affect the operation of the CPC network (e.g. introduce binding time-limits to respond to mutual assistance requests; monitoring powers for the Commission to verify how competent
	Reduce the number of situations where the CPC enforcement cooperation is ineffective due to insufficient powers	
	Reduce delays in the CPC Regulation's mutual assistance mechanism (reduce the time needed to handle mutual assistance requests) which are due to insufficient powers	
	Increase the number of possibilities/channels through which consumers may obtain redress for intra-Community and EU level/widespread infringements	
	Increase the deterrent effect of CPC enforcement mechanism	

Problem	Specific objectives	Operational objectives
<p>Insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation, which impede stopping of infringements through the CPC framework or create delays.</p>	Reduce consumer detriment	<p>authorities comply with obligations under the mutual assistance mechanism)</p> <ul style="list-style-type: none"> ■ Introduce minimum procedural standards for the mutual assistance mechanism under the CPC Regulation (e.g. introduce a mechanism for mutual recognition of evidence and/or the outcome of investigation regarding intra-Community infringements)
	Reduce the number of infringements not stopped or where enforcement is ineffective due to insufficient standards	
	Reduce delays in the CPC Regulation's mutual assistance mechanism (reduce the time needed to handle mutual assistance requests) which are due to insufficient powers or standards	
	Increase the deterrent effect of CPC enforcement mechanism	
	Reduce consumer detriment	<ul style="list-style-type: none"> ■ Clarify the existing procedure for CPC enforcement coordination, in particular regarding common enforcement actions addressing widespread infringements and for coordinated surveillance actions (sweeps) ■ Introduce additional common minimum investigation and enforcement powers for competent authorities (e.g. to carry out test purchases/mystery shopping, obtain information from other authorities or third parties to track down the flow of money, to adopt interim measures, to facilitate consumer redress for intra-Community infringements; to stop a website) to effectively tackle widespread infringements, in particular in the digital environment ■ Provide an appropriate procedure (a one-stop-contact/shop at the EU level) with clear steps, time-limits and roles to tackle more efficiently widespread infringements committed by a trader(s) in several or all Member States or affecting entire sectors of economy
<p>Inadequate procedural mechanism to address widespread infringements, including in the digital environment:</p>	Reduce the number of widespread infringements due to inadequate procedures	<ul style="list-style-type: none"> ■ Provide an appropriate procedure (a one-stop-contact/shop at the EU level) with clear steps, time-limits and roles to tackle more efficiently widespread infringements committed by a trader(s) in several or all Member States or affecting entire sectors of economy
	Reduce the number of situations of ineffective enforcement due to inadequate procedures	
	Remove duplication/ multiplication of investigative efforts, use of disproportionate enforcement resources and divergent enforcement outcomes	
	Reduce the time needed to stop a widespread infringement	
	Save litigation costs for traders who operate across EU	
	Reduce consumer detriment	
<p>Currently all alerts are given equal attention regardless their potential importance and they are not followed up</p>	Reduce the number of situations where important alerts were not followed	<ul style="list-style-type: none"> ■ Clarify the purpose, use and follow up of the CPC alert mechanism within the CPC Regulation ■ Improve the follow-up to the CPC alerts by their categorisation in terms of priority and expected action
	Reduce the number of undetected infringements, in particular for parallel domestic investigations regarding the same infringement by the	

Problem	Specific objectives	Operational objectives
	<p>same trader (s) due to the fact that all alerts are given equal attentions regardless of their potential importance and that access to the alerts mechanism is limited</p>	<ul style="list-style-type: none"> ■ Extend the access to the CPC alert mechanism to consumer and trade organisations, and ECCs for information only. Introduce the possibility for the Commission to raise an objection to an alert posted by these stakeholders ■ Introduce mutual recognition of evidence and outcome of investigations ■ Introduce a possibility for the European Commission to post alerts for action or for information ■ Increase the frequency and quality of information exchanges among competent authorities, the Commission and other stakeholders (e.g. consumer organisations) on emerging malpractices
<p>Currently access to alert mechanism is limited to the national authorities only, which limits the available information</p>	<p>Reduce consumer detriment</p>	
	<p>Improve the availability of information on emerging malpractice</p>	
	<p>Reduce the cost of evidence gathering phase of the case handling</p>	
	<p>Reduce the number of undetected infringements, in particular for parallel domestic investigations regarding the same infringement by the same trader(s) due to the fact that all alerts are given equal attention regardless of their potential importance and that access to the alert mechanism is limited</p>	
<p>Insufficient resources dedicated to the enforcement cooperation under the CPC Regulation in some Member States.</p>	<p>Ensure proper allocation of resources to the CPC cooperation</p>	<ul style="list-style-type: none"> ■ Increase the frequency of monitoring by the Commission of Member States' resources devoted for the application of the CPC Regulation and Member States' activities under the mutual assistance mechanism ■ Clarify Article 4(7) of the CPC Regulation which requires Member States to ensure that competent authorities have adequate resources necessary for the application of the CPC Regulation ■ Elaborate a multi-annual EU level enforcement action plan and its benchmarking method to ensure proper allocation of resources to the CPC cooperation ■ Introduce more frequent and vigorous monitoring by the Commission of Member States' activities under the mutual assistance mechanism (via, e.g. auditing of Member States enforcement capacities and resources and compliance with the obligations under the mutual assistance mechanism) ■ Introduce a requirement for the competent authorities to prepare a single integrated multi-annual enforcement plan/strategy to ensure the effective
<p>No systematic and common/coordinated prioritisation of national and cross-border enforcement actions across the EU; no adequate monitoring of Member States' enforcement efforts.</p>	<p>Reduce consumer detriment</p>	
	<p>Reduce the number of situations where objectives and priorities of enforcement are inconsistent</p>	

Problem	Specific objectives	Operational objectives
		implementation of the CPC Regulation, especially regarding priority criteria relevant for the DSM

Policy measures and their assessment

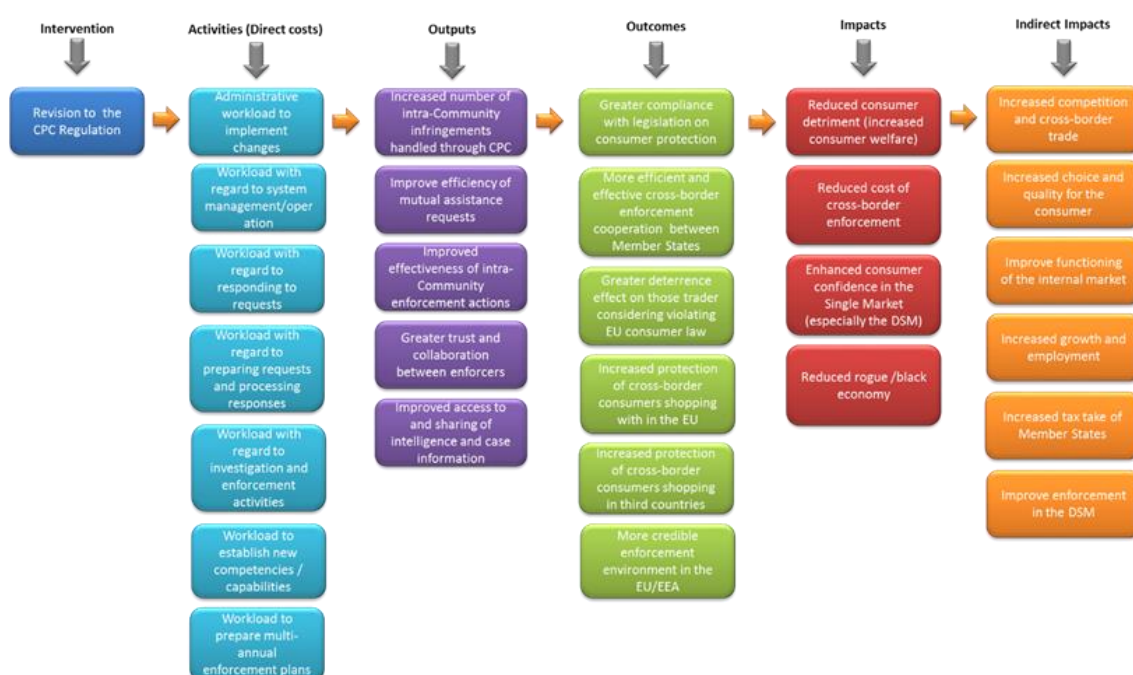
Method

The study followed a two-stage approach to impact assessment. The first stage was to identify alternative measures which would address one or more of the identified problems, and to quantitatively (where feasible) and qualitatively assess their individual impacts. In the second stage, based on the assessment of individual measures, a preferred ‘package’ of measures was identified giving consideration to the synergies and interdependencies which exist between measures. For example, enhancing the investigation and enforcement powers of competent authorities only achieve maximum benefit if more infringements are detected and authorities have the resources and capability to implement these powers. Equally, new joint enforcement procedures for tackling EU widespread and parallel domestic infringements can only work if such infringements are clearly covered by the scope the CPC Regulation and authorities have the necessary powers to investigate, enforce and impose sanctions following these procedures. Some measures like revising the scope of the CPC Regulation are therefore prerequisites for other measures, while others are standalone to support an improved enforcement framework. Both legislative and non-legislative measures were included in this process.

The impact assessment considered the effectiveness (specific and general objectives) of each measure, its direct (compliance costs for Member States, the Commission and businesses) and wider economic impacts (consumer confidence, competitiveness, SMEs and employment), social impacts (consumer vulnerability), feasibility (impact on legal systems and fundamental rights) and stakeholder acceptance (based on the Commission’s public consultation results).

Impacts were compared to the ‘do nothing’ or baseline situation, representing the continuation of the CPC Regulation in its current form and related EU initiatives unchanged. Figure ES2 provides a logical framework illustrating the chain of effects expected from the revision of the CPC Regulation which was followed by the researchers. This logical framework underpins the coherence of the assessment, by providing an understanding of why the behaviour of competent authorities and traders (and hence of the wider economy and community) should change as a consequence of further policy intervention.

Figure ES2 Logical framework for the assessment of changes in the CPC Regulation



Source: ICF own analysis

The preferred option

The preferred option package includes all four non-legislative measures²⁰ which were found to have positive net benefits-cost ratio and contribute to more effective enforcement. The legislative measures included in the preferred option (indicated in blue font) by problem addressed (indicated in bold font) are:

Certain types of cross-border infringements are not being addressed as they are not covered by the CPC Regulation, namely:

- **Short lived predominantly online infringements**

Measure 1.A: Include short-lived (predominately online) infringements in the scope of the CPC Regulation

- **Parallel domestic infringements**

Measure 1.B: Include parallel domestic infringements in the scope of the CPC Regulation

Some infringements currently covered by the CPC Regulation are not tackled efficiently due to insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities, including in the digital environment

Measure 1.C.2 + Measure 1.C.1: Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)

Some infringements currently covered by the CPC Regulation are not tackled efficiently due to insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation which impede stopping of infringements through the CPC framework or create delays

Measure 1.D.2 + Measure 1.D.1: Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation and set binding time-limits to respond to mutual assistance requests. The Commission would monitor compliance within these time-limits.

Insufficient tools to tackle widespread infringements, namely:

- **Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities (and the Commission) to address widespread infringements, including in the digital environment**

Measure 2.A.2+ Measure 2.A.1 Introduce additional powers for competent authorities (and the Commission) to tackle EU-level/widespread infringements in the digital environment (medium sub-option)

- **Inadequate procedural mechanism to address widespread infringements, including in the digital environment**

Measure 2.B.2 + Measure 2.B.1: Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission/lead Member States

The current CPC information exchange via the alert mechanism is insufficient, emerging problems are being detected too late and detriment to consumers is prolonged:

- **Currently all alerts are given equal attention regardless of their potential importance and they are not followed up**

²⁰ The four non-legislative measures were: i) Clarification of Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities; ii) Clarification of Member State obligations to provide “adequate resources” (Article 4(7)) to handle mutual assistance requests; iii) Clarification of the obligation on CPC competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision; and iv) Clarification of Member State obligations concerning the use of the alerts mechanism specified in Article 7.

Measure 3.A.1: Introduce alerts categorisation based on type of follow-up (for compulsory action within a deadline or for information only)

- **Currently access to the alerts mechanism is limited to national authorities only, which limits the available information**

Measure 3.B.1: Introduce a possibility to have access to the alert mechanism for other actors

Diverging enforcement priorities among Member States, limited resources in some Member States focused on domestic issues, lack of common strategy and insufficient prioritisation of enforcement:

- **Insufficient resources dedicated to the enforcement cooperation under the CPC Regulation in some Member States**

Measure 3.C.1: Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation and corresponding powers of the Commission to monitor these resources.

- **No systematic and common/coordinated prioritisation of national and cross-border enforcement actions across the EU; no adequate monitoring of Member States' enforcement efforts**

Measure 3.D.1: Introduce a requirement for the competent authorities to prepare a single integrated multi-annual enforcement plan/strategy to ensure the effective implementation of the CPC Regulation, especially regarding priority criteria relevant for the DSM.

Summary comparison of the preferred policy option against the do nothing situation

We summarise in the Table ES2 the overall performance of the preferred option, compared with the do nothing situation.

Table ES2 Comparison of the preferred option against the do nothing situation

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
Reducing consumer financial detriment	0	High (+++)	The preferred option is expected to result in a significant reduction in financial detriment being suffered by consumers. The potential overall reduction in consumer detriment in the EU28 is estimated to be around €9mn-€10mn per annum assuming no deterrence effect (1% of infringements are tackled and stopped compared to the do nothing situation of 0.03% handled by the current CPC Regulation). The estimated reduction in consumer detriment is €1.2bn-€3.6bn including a deterrent effect of 3%. For the 1% of infringements tackled 3% are actually prevented ²¹ .

²¹ A survey commissioned by the UK OFT on consumer law and business practice (OFT(2010) Factors affecting compliance with consumer law and the deterrent effect of consumer enforcement – OFT Paper 1228 by IFF, available at: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/OFT1228.pdf) found that “In the last 12 months, some three to four per cent of changes to respondents’ advertising campaigns or product descriptions, contract terms, goods and the selling of goods or services by distance means, was undertaken because of the perceived risk of investigation by the OFT”. This would imply that changes to the perceived risk of investigation and enforcement results in a 3%-4% reduction in non-compliance. Conservatively the researchers have assumed 3%.

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
			<p>EU widespread infringements: The reduction in consumer detriment per individual case, which tackles a widespread infringement via the improved mechanisms, will depend on a case-by-case basis. The in-app purchases action of the CPC network was estimated to have saved consumers €68mn in financial detriment alone. With a minimum 4 or more common enforcement actions are forecast to be conducted per year, the reduction in consumer detriment is expected to be significant.</p> <p>Furthermore, the revision would introduce binding time limits for CPC authorities to respond to mutual assistance requests and mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community/widespread infringements, thus speeding up the exchange of information, the efficiency of enforcement proceedings and thereby preventing and reducing financial detriment suffered by consumers.</p> <p>Facilitating redress for consumers: all the authorities would have at their disposal the power to require traders to facilitate consumer redress, which would ensure that the benefits of improved CPC enforcement cooperation (which is designed to protect collective interests) will also be realised for individual consumers.</p> <p>Improve consistency of enforcement actions/approaches across EU: the revision would significantly align the enforcement approaches among consumer protection authorities in different Member States. First, it would achieve convergence among minimum powers indispensable to tackle infringements in the digital sphere, ensuring that all the authorities have the powers, e.g., to adopt interim measures swiftly, take down temporarily websites, sanction past (short-lived infringements). Second, the revision would result in more infringements being tackled collectively (and for widespread infringements – at the EU level), through a coordinated Member States' enforcement action under the CPC. Thanks to the timely detection of national investigations running in parallel via the improved alert mechanism and to streamlined mechanism to address widespread infringements, more consistent enforcement in terms of the decisions reached and sanctions imposed across Member States on the same trader would be ensured. Such cases as described in the problem section (cf. case on the misleading advertising of commercial guarantees by Apple) would therefore be prevented from occurring.</p>
Reduce delays in handling of mutual assistance requests and intra-Community/wide spread infringements		High (+++)	Reduced delays in handling mutual assistance requests would occur because of reinforced and new procedures (i.e. a centralised procedure to tackle EU-wide infringements) and the introduction of mutual recognition of evidence and investigations. Benchmarking resourcing of CPC activities by competent authorities would also contribute to reduced delays in handling and stopping of infringements. As most delays (see problem Section 2) can be considered a result of multiple factors from slow detection, low

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
			<p>quality of evidence, competent authority capacity and differing legal procedures and practices in the Member States, these collective measures address many of these causes.</p> <p>Specifically in relation to widespread infringement, new procedures are proposed alongside increased investigation and enforcement powers and mutual recognition of evidence to ensure those infringements detected are pursued in the most efficient way possible. The “open cases review” exercise conducted by the Commission aims to ensure that no mutual assistance request remains unresolved over a long period of time. The benchmarks set out in the Operating guidelines are that requests for information should be handled within 3 months and requests for enforcement measures within 9-12 months. The requested authority should regularly update the applicant authority about the actions taken, at least every 3 months. By the end of 2014, almost 40% of the information requests and 50% of the enforcement requests were not treated and closed within the above benchmarks. 26% of all open cases were created more than two years ago. The preferred option by reinforcing powers and procedures to handle mutual assistance requests would drastically improve this performance, reducing delays in completing the investigation and legal proceedings against infringing traders.</p>
Compliance costs	0	Low (-)	<p>Compliance costs for Member States mainly concern the one-off of costs of familiarisation and training needed to adapt to the proposed changes in year 1. Annual costs include the increased caseload of competent authorities and of using the enhanced powers. Other costs include the FTE time taken to prepare multi-annual enforcement plans.</p> <p>Total costs per annum are estimated to be in the region of €0.3-€0.5 million per annum for all EU28 Member States, reducing from the first year as one-off costs are removed. No costs are assumed for those Member State authorities which already have the proposed investigation and enforcement powers</p> <p>Compliance costs for the Commission: Measures increasing the obligations of the Commission (centralised enforcement procedure, moderation of increased alerts categorisation, and evaluating multi-annual enforcement plans) all imply additional costs form the do nothing situation).</p> <p>Annually these costs are estimated at €0.1mn-€0.3mn per annum. Given the current freeze on new recruitments, it is assumed that resources are made available through redeployment from other activities.</p>
Savings	0	High (+++)	<p>Saving enforcement costs for CPC authorities: thanks to the reinforced minimum powers, the revision would permit more 'cheaper' enforcement solutions than</p>

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
			<p>currently available, which would decrease the costs per case, e.g. enforcers would experience savings from spending less time and resource preparing for cases (the costs per case would therefore be lower than the currently estimated average of €2,299)²². More cases, of enforcement undertakings will occur, where a trader agrees to work with the CPC authority to remedy its compliance and provide redress to consumers, without proceeding to the courts (the average costs of such a case involving undertakings is estimated to be around €1,500²³). It is assumed that with the reinforcement of powers, ca. 75% of cases would be settled without the need for court proceedings (which are more expensive, ca €4,800 per case).</p> <p>Duplication of enforcement efforts: by alerting authorities to the fact that an infringement may be widespread through alerts categorisation and tackling infringements more efficiently through centralised cooperation procedures, mutual recognition of evidence and use on enhanced powers, there are savings for traders. The legal costs associated with uncertainty when trading cross border and costs to defend oneself in multiple jurisdictions is reduced. In the in apps case, the providers engaged with Commission and not 28 separate authorities and legal procedures.</p>
Impact on national legal systems	0	Low (-)	The measures in the preferred option were selected to ensure they have a minimal negative impact on the legal systems of Member States. In other words, many of the additional investigation and enforcement powers proposed such as mystery shopping, test purchasing, pecuniary sanctions, interim measure are already available in many Member States. Therefore, the impact is expected to be low. Other measures are largely procedural and not expected to create any problems for national legal systems (i.e. change in scope of the CPC Regulation to include short lived infringements or establishing resource benchmarks).
Wider economic impact	0	Medium (++)	Consumer trust in the Digital Single Market: More efficient regulatory measures will have a significant impact on the consumer Digital Single Market. Reinforced, better coordinated at the EU level, where relevant, enforcement actions are expected to have significant impacts due to the "open nature" of the Digital Single Market. By decreasing certain economic transaction costs (e.g. litigation costs, legal uncertainty, costs linked to non-transparency or non-competitive behaviour, inefficient administration, inefficient capacities to fight fraud, insufficient deterrent effect of public enforcement action) supply side levers would be activated, and, consequently, the demand side would automatically benefit leading to more economic growth.

²² Weighted average cost of enforcement per case account for the fact that in the baseline 75% of cases are high cost, which falls to 25% with greater powers.

²³ Undertaking are the lowest costs enforcement action – Estimate based on effort involved in the enforcement action (number of staff involved and hours per staff per action) and hourly wage costs.

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
			Competitiveness: removal of unscrupulous traders would reduce the perceived numbers of "free riders", who exploit enforcement gaps by relocating their non-compliant business practices from one Member State to another and thus benefit commercially from the current lack of adequate market surveillance and enforcement, and will encourage new market entrants
Fundamental rights	0	Low (-)	There are concerns that powers to name infringing traders, make public undertakings, request the supply of sensitive and often personal data to competent authorities and its use and storage by such authorities to investigate infringements (particularly in the DSM) may violate fundamental rights. This can be mitigated by establishing secure procedures and putting systems in place to ensure data is handled correctly for the purposes it was intended and disposed of with equal care. Naming must also be limited to when the trader is found guilty of the infringement so not affect fair justice and prevent businesses taking libellous action against the authority concerned.
Feasibility	0	High (+++)	Stakeholder acceptance: All the measures included in the preferred option received a high level of support based on the results of the public consultation. Therefore feasibility is considered high

Cost benefit analysis of the preferred option

While the above table presents the annual estimated impacts of the preferred option, the table below provides the present value of costs and benefits associated with implementation of the preferred option over the full period 2015-2025, discounted at the agreed social discount rate of 4%²⁴.

Table ES3 Net present value of the preferred option 2015-2025 (€MN - 2015 prices)²⁵

	Including deterrent effect of CPC enforcement		Without deterrent effect of CPC enforcement	
	Lower bound estimates	Upper bound estimates	Lower bound estimates	Upper bound estimates
Costs				
Member States	9	15	9	15
European Commission	2	3	2	3
Total costs	11	18	11	18
Benefits	1,222	3,636	92	97
<i>Benefit-Cost ratio</i>	<i>116</i>	<i>202</i>	<i>9</i>	<i>5</i>

Source: ICF own analysis

²⁴ European Commission (2015) Better Regulation toolkit

²⁵ The number of infringements tackled by competent authorities is the same with or without deterrent effects, as the capacity and powers of authorities have not changed. It is therefore only the benefits which change as the deterrent determines the propensity of traders to commit infringements.

Monitoring and evaluation

The policy objectives provide the starting point for the assessment of the progress and impact of the preferred option. The report indicates the criteria that are useful for assessing progress and potential impact, and methods that could be applied to gather relevant information for monitoring and evaluation. One key criteria would measure the non-compliance rate of websites in five online consumer sectors, against key consumer rules to gauge compliance with EU consumer law five years after the application of the new reinforced CPC Regulation. Compared to a non-compliance rate of 37% in 2014, it would then be possible to see whether the new Regulation had contributed to a positive changes in compliance. The website review conducted as part of this study, covering 2,500 websites in five online consumer sectors could be repeated for this purpose. Five years after application of the reinforced CPC Regulation, a 10 percentage point reduction in non-compliance in the selected sectors is the target.

1 Introduction

This is the Final Report of the “*Support study for the impact assessment on the review of the CPC Regulation 2006/2004/EC*”. The study has been undertaken by the Consumer Policy Evaluation Consortium (CPEC) led by ICF Consulting Services on behalf of the European Commission DG Justice, Consumer Affairs Directorate (EC).

The report provides: the findings of the study on the problem assessment; the policy objectives; an elaboration of the policy options; an analysis of the baseline scenario, and an assessment of the policy options. The report takes into account the results of the Commission’s public consultation²⁶, two expert panel²⁷ meetings held in February and June 2014, additional consultation with Member State enforcement authorities, extensive desk research and analysis. ECC statistics, CPC biennial reports, CPC Committee workshops and the Commission’s legal study were all key inputs to the desk research. Section 1.3 provides more details on the methods and data sources used in this study.

1.1 The study

The purpose of the study was to support DG Justice in preparing an impact assessment of potential legislative and non-legislative options for enhancing the system for mutual assistance, cooperation and enforcement coordination relevant to intra-Community infringements. The scope covers the legislative provisions found in the annex to the CPC Regulation²⁸.

The approach to the assignment and reporting of the results follows the Commission’s impact assessment and better regulation guidelines²⁹.

Following problem definition and specification of policy objectives, the policy options have considered the existing competencies of Member State enforcement systems, including the practices and procedures of each enforcement regime. The practical and legal feasibility of possible changes has then been assessed, in addition to the governance, distributional and economic impacts of doing so. The economic assessment has quantified the monetary costs and benefits of each proposed measure by measuring the scale of change required from the regulatory baseline for each Member State enforcement system. Impacts on the European Commission are assessed in the same way using financial data on current resources.

The benefits for consumers are quantified based on the reduced financial harm consumers suffer from infringements due to improvement in enforcement and an associated reduction in the scale of infringements committed by traders. Baseline estimates of consumer detriment and scale of corresponding infringements were provided in a separate baseline report for five consumer sectors (namely consumer credit, clothing and sports goods, electronic goods, culture and recreation (tickets) and food supplements).

²⁶ ICF (2014): Summary of stakeholder responses to the public consultation reviewing the Consumer Protection Cooperation (CPC) Regulation (2006/2004/EC), produced for DG SANCO of the European Commission, available at: http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140416_consultation_summary_report_final_en.pdf

²⁷ Experts panels involved the input of Professor Geraint Howells – Expert in European and consumer law, Professor Stephen Davies – Expert in the evaluation of competition and consumer economics; Anabela de Brito and Jacques Pelkmans from the Centre for European Policy Studies (CEPS) - experts in EU consumer policy in the internal market.

²⁸ List of legal acts to which the CPC Regulation applies as of 18 December 2014. Available at: http://ec.europa.eu/consumers/enforcement/docs/simplified_annex_2013_en.pdf

²⁹ EC(2015): Better Regulation Guidelines – Commission Staff Working Document: SWD(2015) 111 final, COM(2015) 215 final, available at: http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

Impact assessment guidelines, available at: http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf

Administrative impacts are estimated using the Commission's Standard Cost Model (SCM)³⁰ when assessing the impacts on the European Commission. The SCM was also used to calculate the unit costs of mutual assistance activities by Member State competent authorities and compliance costs (i.e. training). Each measure has also been assessed individually in terms of its effectiveness in addressing the identified problems with the present CPC Regulation. Stakeholder acceptability of each measure is based on the results of the Commission's public consultation. A comparison of the annualised and discounted costs and benefits is provided in the final analysis by measure and collectively as a preferred package of measure (the preferred policy option).

1.2 Background and context for the Impact Assessment

The adoption of the CPC Regulation in 2004 made significant progress to strengthen enforcement of consumer's economic interests in the EU internal market. The primary aim of the CPC Regulation is to ensure the cessation and prohibition of cross-border infringements by establishing procedures for information exchange, cross-border enforcement requests and coordinated actions.

While the CPC Regulation has provided valuable support to competent authorities³¹ in tackling conventional 'bilateral' infringements, it has proven less effective and efficient in tackling infringements involving more than two Member States, particularly those occurring in the digital environment. It can be difficult to gather evidence of an infringement in the fast changing digital environment and to locate the businesses responsible. Rogue traders exploit these difficulties by operating through complex networks of registered companies, websites, and legal identities to target EU consumers. The main reasons for the Commission's review of the CPC Regulation and for conducting this impact assessment study are to address these new enforcement challenges and to take stock of the performance of the existing legal framework.

The present study takes into account the findings and results of several pieces of work examining the functioning of the CPC Regulation:

- Biennial reports³² in 2009 and 2012, which assessed the functioning of the CPC Regulation and identified possible measures to improve enforcement cooperation under the existing legislative framework;
- An external evaluation³³ of the CPC Regulation concluded in 2012, which confirmed the appropriateness and relevance of the CPC objectives, noting they have not yet been fully achieved;
- The 2013 EU Consumer Summit, which discussed the needs for a more efficient enforcement of EU Consumer Rights with stakeholders, concluding that a more integrated approach is required;
- A Commission produced Roadmap,³⁴ which provided an overview of the main possible improvement areas and a way forward;

³⁰ The SCM quantifies the financial impacts on enforcement authorities and the Commission based to the time taken to complete a required task, the frequency with which the task is undertaken in a given year, and the full-time equivalent (FTE) staff costs of those involved in carrying out each task, accounting for differences in the grade of staff. See: http://ec.europa.eu/smart-regulation/refit/admin_burden/scm_en.htm

³¹ ICF(2012): External evaluation of the CPC Regulation, by ICF for the DG SANCO of the European Commission, available at: http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

³² COM (2009) 336 and COM (2012) 100; http://ec.europa.eu/consumers/enforcement/biennial_national_reports_en.htm#biennial

³³ External Evaluation of the Consumer Protection Regulation, Final Report by the Consumer Policy Evaluation Consortium, 17 December 2012 ("Evaluation"), http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

³⁴ http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2014_sanco_001_consumer_protection_cooperation_review_en.pdf

- A public consultation conducted between October 2013 and February 2014, which tested the Commission's views expressed in the Roadmap, and confirmed that these are the correct areas for improvement, and
- A Commission report of 1 July 2014 on the functioning of the CPC Regulation, which addressed the results of the public consultation and further reflected on how to improve the enforcement cooperation among national authorities.

1.2.1 The CPC Regulation

The key provisions of the CPC Regulation 2006/2004/EC are summarised in Table 1.1.

Table 1.1 Key provisions of the CPC Regulation

Article	Key provisions
Chapter I: Introductory Provisions	
Article 1	Objective : <i>'This Regulation 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 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'.</i>
Article 3	Definitions (See Section 1.2.3 below)
Article 4(4)	Competent authorities may exercise their powers: <ul style="list-style-type: none"> ■ directly under their own authority or under the supervision of the judicial authorities; or ■ by application to courts competent to grant the necessary decision, including, where appropriate, by appeal.
Article 4(6)	Sets out the minimum investigation and enforcement powers of Member States Minimum investigation powers: <ul style="list-style-type: none"> ■ to have access to any document related to an intra-Community infringement; ■ to require the supply by any person of relevant information related to an intra-Community infringement; and ■ to carry out necessary on-site inspections. Minimum enforcement powers: <ul style="list-style-type: none"> ■ to request in writing that the seller or supplier concerned cease the intra-Community infringement; ■ to obtain from the seller or supplier responsible for intra-Community infringements an undertaking to cease the infringement and where appropriate to publish the resulting undertaking; ■ to require the cessation or prohibition of any intra-Community infringement, and where appropriate to publish resulting decisions; and ■ to require the losing defendant to make relevant payments, in the event of failure to comply with the decision.
Chapter II: Mutual Assistance	
Article 6	Defines the scope and conditions of exchange of information on request A requested authority shall without delay supply any information required to establish whether an intra-Community infringement has occurred or to establish whether there is a reasonable suspicion it may occur and /or the appropriate investigations or any other necessary or appropriate measures
Article 7	Defines the scope and conditions of exchange of information on request (alerts)

Article	Key provisions
	When a competent authority becomes aware of an intra- Community infringement, or reasonably suspects that such an infringement may occur, it shall notify the competent authorities of other Member States and the Commission, supplying all necessary information, without delay
Article 8	<p>Enforcement measures</p> <p>A requested authority shall, on request from an applicant authority, take all necessary enforcement measures to bring about the cessation or prohibition of the intra-Community infringement without delay.</p>
Article 9	<p>Coordination of market surveillance and enforcement activities</p> <p>Competent authorities shall coordinate their market surveillance and enforcement activities. They shall exchange all information necessary to achieve this. Specifically, 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.</p>
Chapter III: Conditions governing mutual assistance	
Article 12	<p>Mutual assistance and information exchange procedures</p> <p>Mutual request assistance to:</p> <ul style="list-style-type: none"> ▪ Contain sufficient information ▪ Sent to the single liaison office ▪ Made in writing using a standard form and communicated electronically via the database
Chapter IV: Community Activities	
Articles 16 and 17	<p>Community activities: enforcement coordination and administrative cooperation</p> <p>Member States shall inform each other and the Commission of their activities of Community interest in relevant areas.</p> <p>Member States may, in cooperation with the Commission, carry out common activities in these areas.</p>
Chapter V: Final Provisions	
Articles 19 and 20	Establishes a CPC Committee to support the Commission. Its function is to evaluate how the arrangements for cooperation provided for by the CPC Regulation are working. It also considers issues raised by Member States regarding application of the Regulation.
Article 21	Requests that Member State submit and make public, reports on the application of CPC Regulation every two years including information of changes to organisations, powers, resources, trends, laws and statistics relevant to the Regulation. On the basis of these "biennial reports", the Commission is required to submit a report to the European Parliament and Council
Article 21a	Review of the CPC Regulation. Requests that the Commission shall submit a report to the European Parliament, where appropriate accompanied by a legislative proposal reviewing and proposing revisions to the CPC Regulation.

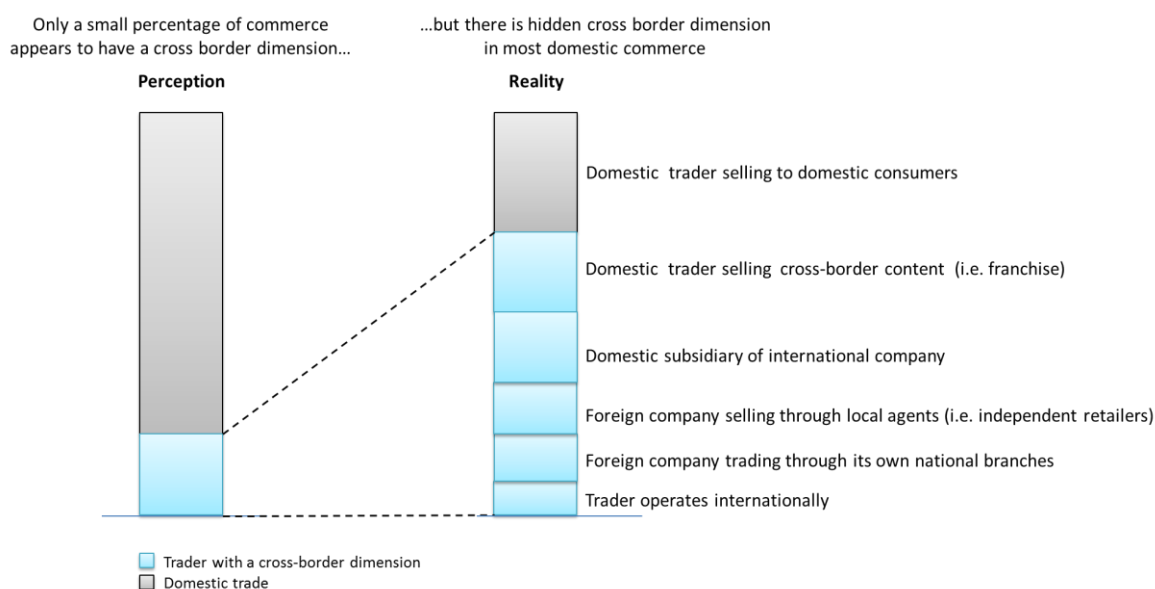
1.2.2 Key definitions

The glossary to this report contains many of the key definitions used in this study. However, it is important to reiterate the following definitions which have implications for the rest of this assessment:

- **Intra-Community infringement** according to Article 3(b) of the CPC Regulation means any act or omission by a trader which is contrary to the laws that protect consumers' interests as specified in the CPC annex. We consider intra-Community to refer to infringements with a cross-border dimension occurring between the trader and the consumer in the EU28. This includes situations where the trader and consumer are located in different Member States (directly resulting in a cross-border transaction) and where the trader operates through a subsidiary, branch or agent in another Member State where the consumer (and competent authority) may consider the transaction to be domestic. For clarity, we refer to these domestic transactions with an indirect cross-border dimension as parallel domestic infringements reflecting the fact that the trading practices of one trader could be repeated across multiple Member States.
- **Domestic infringement** means any act or omission contrary to the laws that protect consumers, where the transaction between consumer and trader occurs in the same Member State.
- **Parallel domestic infringement** means any act or omission contrary to the laws that protect consumers, where the consumer transacts with a domestic agent, branch or subsidiary of a foreign trader. Without further investigation the cross-border element of the transaction is not apparent to the consumer or to the competent authority.
- **Cross-border infringement** means any act or omission contrary to the laws that protect consumers, where the consumer and trader transact from different Member States to one another or where the transaction has any other apparent cross-border element.
- **International infringement** means any act or omission contrary to the laws that protect consumers, where the EU consumer transacts with a trader located outside the European Economic Area (EEA).

The distinction between different types of infringements mentioned above is important as perceptions and realities regarding domestic vs. cross-border infringement can differ. Figure 1.1 shows that although there is often a perception that most transactions (and therefore infringements) are domestic, in reality many have a cross-border element, reflecting our understanding of “intra-Community” under Article (3(b)) of the CPC Regulation.

Figure 1.1 Most domestic commerce has a non-domestic component



Source: Adapted from BCG (2014): *Cross-border E-commerce makes the world flatter*

Figure 1.1 is nevertheless an over simplification of what proportion of commerce can be regarded as EU cross-border as the true proportion of commerce which is domestic or cross border is likely to vary by product sector and Member State. For example, it is anticipated

that construction and financial services exhibit relatively high levels of domestic trade, while sales of music downloads and electronics are associated with a greater cross-border dimension.

1.2.3 Legal and policy context

This sub-section summarises the legal foundations for the CPC Regulation and how possible revision of the CPC Regulation can support EU policy objectives in the fields of consumer protection and the internal market.

Treaty on the Functioning of the European Union

Consumer protection belongs to a shared competence between the EU and the Member States. The CPC Regulation is based on Article 114 of the TFEU³⁵ (Article 95 EC):

“The European Parliament and the Council shall [...], adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market”.

The overarching objective of the CPC Regulation (as laid out in Article 1 of the CPC Regulation) is to protect consumers' economic interests by ensuring compliance with consumer protection legislation across the EU, thus ensuring a smooth functioning of the internal market. The general objectives of the current CPC Regulation can be articulated as follows:

- to provide for cooperation between enforcement authorities in dealing with intra-Community infringements that disrupt the internal market;
- to contribute to improving the quality and consistency of enforcement of consumer protection laws, and
- to enhance and monitor the protection of consumers' economic interests.

Any revision of the CPC Regulation or initiative to support enforcement could be based on Article 169 (Article 153 EC) which states that:

“In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers [...], through:

- (a) measures adopted pursuant to Article 114 in the context of the completion of the internal market;*
- (b) measures which support, supplement and monitor the policy pursued by the Member States.”*

The above TFEU articles provide justification for action necessary to improve the functioning of the internal market, first by establishing the internal market and then upholding the rights of consumers in that market providing them with a high level of protection. As the general objectives of the CPC Regulation have at least partially been achieved according to the external evaluation, there is scope for revision of some, if not all of the current general objectives to better reflect new enforcement challenges (See Section 3)

The Digital Single Market (DSM)

“We must make much better use of the great opportunities offered by digital technologies, which know no borders. [...] By creating a connected digital single market, we can generate up to €250 billion of additional growth in Europe in the course of the next Commission”.

³⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

*Jean –Claude Juncker, Extract from Political guidelines for the next Commission – A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic change (15 July 2014)*³⁶.

The Digital Single Market Strategy for Europe³⁷ sets out the legislative steps the Commission is to take during the first six months of the new presidency to bring about the DSM. Composed of three pillars, the first concerns better online access to digital goods and services for consumers and businesses. Within this pillar, legislative measures have been taken or are ongoing to: improve parcel delivery; simplify contract law to make cross-border e-commerce easier; tackle geo-blocking; modernise copyright law and simplify VAT rules. The DSM Strategy pays a particular attention to enforcement of consumer protection laws and to the CPC enforcement cooperation. Ensuring a high level of protection for consumers and improving the effectiveness and efficiency of enforcement when making purchases cross-border and online is central to ensuring consumers and businesses have the confidence to trade in the DSM, but also that businesses compete on a level playing field.

In practice, the establishment of a DSM requires the removal of national barriers to transactions that take place online. It is therefore concerned with extending the already established internal market for goods and services to the digital economy (including e- and m-commerce). The cross border dimension of the DSM is stronger than the one found in many other markets. This can be because websites and digital content are hosted by servers in another country or because the trader operates cross-border directly from another country or indirectly through subsidiaries and websites in the language or brands familiar to a particular market. The benefits of operating online and cross-border are that traders benefit from larger markets and consumers benefit from lower prices, greater choice and higher quality products. Traders also benefit from scale economies, higher incentives to innovate and from the level playing field that an enlarged and well-functioning market can provide.

However, a consumer-driven DSM has not yet been achieved, because there are currently many bottlenecks preventing consumers from making the best of their opportunities and contributing to the growth of Europe's digital economy. As the digital economy has evolved rapidly in the last ten years, so different national approaches to enforcement of consumer protection legislation have developed resulting in legislative fragmentation and inconsistency across the Single Market. This in turn has led to an uneven enforcement of consumer protection laws and to divergent enforcement approaches.

Consequently, despite an increasing number of consumers engaging in online shopping, there remain several barriers that prevent consumers from reaping the full benefits of the Single Market. For example, a lack of harmonised rules for the on-line purchase of digital content/services and **inadequate enforcement of existing legislation**. Some Member States' enforcement authorities are also ill equipped to cease infringements in the DSM, creating an uneven level of protection between online and offline trade. This uneven enforcement platform give rogue traders competitive advantage and gaps in enforcement to exploit through short-lived and widespread infringement which are common in the digital environment. Consumers also become less confident to transact cross-border or to try new products, diminishing the benefits which could be attained from a fully functioning single market.

Consolidation of the DSM is therefore an essential target for the Commission to stimulate economic growth and job creation within the EU. Recent mapping of the Costs of Non-Europe (CoNE) has indicated that the DSM could contribute around € 520 billion to the GDP of the EU-28; around half of this benefit can be achieved in the coming years with the right

³⁶ <http://www.eesc.europa.eu/resources/docs/jean-claude-juncker---political-guidelines.pdf>

³⁷ EC (2015): A Digital Single Market Strategy for Europe COM(2015) 192 final, available at: http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf

blend of policies in place³⁸. The establishment of the DSM is therefore one of the most significant EU policy areas for generating economic benefits. Other studies have reached similar conclusions³⁹.

A well-functioning DSM has long been a policy priority for the EU. Europe 2020: A strategy for smart, sustainable and inclusive growth⁴⁰, included seven flagship initiatives to turn Europe into a smart, sustainable and inclusive economy, one of which was the Digital Agenda (DAE). The DAE established a number of targets including a headline target for 20% of the EU population to make purchases online cross-border by 2015, from 12% of the population in 2013. The eCommerce Action Plan also establishes a target to double the share of eCommerce in retail sales as a share of EU GDP by 2015⁴¹. The CPC Regulation is the main EU legal instrument to enforce consumer laws across the EU, including in the online environment. A revised CPC Regulation can not only contribute to these objectives and make the DSM more effective but is also needed to support other DSM initiatives which require effective cross-border enforcement.

Better Regulation

The European Commission is determined to ensure that its proposals meet policy goals at minimum cost and deliver maximum benefits to citizens, businesses and workers while avoiding unnecessary regulatory burdens. This is key to supporting growth and job creation – allowing the EU to ensure its competitiveness in the global economy - while maintaining social and environmental sustainability.

This commitment to Better Regulation⁴² covers the entire policy cycle from policy design and preparation, to adoption, implementation, application, evaluation and revision. The tools supporting this process are ex-post (or interim) evaluations, fitness checks of regulatory performance, forward looking impact assessment, implementation support and monitoring.

Evaluations and fitness checks are used to implement the Regulatory Fitness and Performance Programme (REFIT). Launched in December 2012 by the Commission, REFIT is a rolling programme aimed at simplifying EU law and making it less costly both for citizens and companies, with the aim of fostering economic growth⁴³. Sitting within the Better Regulation framework, evaluations on how specific interventions have performed and comprehensive reviews of the policy area (fitness checks) help determine whether EU intervention is still justified, whether the intervention brought unintended effects, created overlaps or generated excessive burdens on stakeholders. Drawing on these findings, improves the quality of legislation, repeals legislation which is ineffective, eliminates excessive burdens and proposes alternatives to legislation where appropriate to do so (i.e. voluntary, self-regulation). The CPC Regulation Review process has adhered to these principles, which are reflected in this impact assessment and monitoring and evaluation criteria set out in Section 6 of this document.

The measures proposed in this study reflect this earlier work by seeking to improve the quality of legislation and considering non-legislative proposals where feasible.

³⁸ Mapping the Cost of Non-Europe, 2014-2019, study prepared for Parliament, 2014, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/510983/IPOL-EAVA_ET\(2014\)510983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/510983/IPOL-EAVA_ET(2014)510983_EN.pdf)

³⁹ Copenhagen Economics (2010): The economic impact of the a European Digital Single Market , March 2010, available at: http://www.epc.eu/dsm/2/Study_by_Copenhagen.pdf

⁴⁰ COM(2010) 2020 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

⁴¹ The share of e-commerce in retail sales is currently 7% in 2014 on average in the EU. This hides large variation between the UK (14%) and Italy 2.1%) . The internet economy currently accounts for 4% of EU GDP.

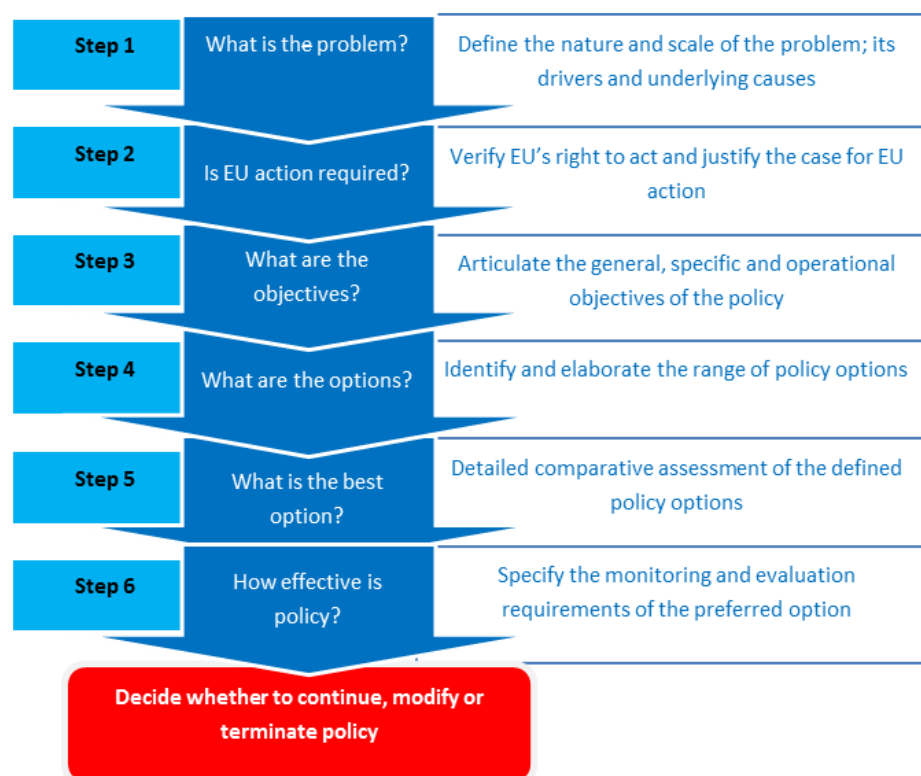
⁴² EC(2015): Better Regulation Guidelines – Commission Staff Working Document: SWD(2015) 111 final, COM(2015) 215 final, available at: http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

⁴³ Idem.

1.3 Method of approach

The approach to this study closely follows the Commission’s Impact Assessment Guidelines, and is also reflected in the structure of this report. Figure 1.2 summarises the key steps involved in an Impact Assessment and followed by this study

Figure 1.2 Key steps in impact assessment



Source: ICF

The findings included in this report are based on the following:

1. **Desk research:** A review of relevant documentation was undertaken, including Member State Biennial reports for 2007, 2009 and 2012, the external evaluation, positions papers of consumer associations, case law, legal studies on the enforcement systems of Member States, approaches to enforcement cooperation in analogous policy areas (i.e. food and competition law), and reports and presentations from CPC workshops/events arranged by the Commission. Statistical evidence also formed part of this review, including complaint data from ECCs, CPCS statistics and national complaints data. A list of documents is provided in Annex 1.
2. **Consultation with Member State authorities:** A short survey questionnaire was sent to national enforcement authorities to supplement information gathered from the literature on the exact scale of infringements handled by authorities per annum and the proportion which could be understood to be cross-border or intra-Community in nature. Responses were received from nine Member States including: Czech Republic, Denmark, Germany, Hungary, Ireland, Latvia, Lithuania, Slovenia and Sweden.
3. **Workshops:** the contractors attended CPC workshops organised by the Commission, to gauge understanding and the scale of the problems faced by Member State authorities in cross-border enforcement, and to explore possible solutions.
4. **External Panels:** two expert panels were organised. The first in February 2014 was used to introduce the study, its purpose, and review the overall methodological approach. The second was held in June 2014 to review and validate the baseline

exercise, specifically the assumptions and approach taken to quantification of consumer detriment from intra-Community infringements.

5. **Website review:** a review of 2,682 websites in five consumer sectors (clothing and sports goods, electronic goods (mobile phones/tablets), travel (package holidays), recreation and culture (tickets for sports, entertainment and cultural events), and financial services (consumer credit)) was undertaken in March 2014 to assess whether website traders had correctly implemented the most important measurable consumers rules of consumer protection legislation covered by the CPC Regulation. Covering all Member States (large Member States were slightly over sampled and visa-versa), the review provided a representative picture of legislative implementation by consumer, broken down by Member State and sector.
6. **Estimated caseload baseline 2014-2025:** a forecasting model was developed for five representative product sectors (clothing and sports goods, electronic goods, financial services⁴⁴, tickets for sports/ entertainment and cultural events, and food supplements⁴⁵) in eight Member States (Germany; United Kingdom; Spain; Hungary; France; Poland; Sweden; and Latvia) to quantify the anticipated caseload of the infringements (domestic, cross-border, parallel domestic and international), the number of consumers affected, and the associated structural potential financial detriment suffered by consumers as a result for each year 2014-2025. These estimates were scaled up to EU28 totals by sector, based each EU Member States share of total GDP. To account for uncertainty, lower bound, upper bound and best guess scenarios were estimated and used in the subsequent analysis.
7. **Regulatory baseline:** From a regulatory perspective, differences in national legal systems, enforcement regimes and procedural rules, result in an uneven baseline situation between Member States and as such, the potential (incremental) impact of the proposed policy options is likely to vary by Member State. To capture these differences in the impact assessment, the characteristics of each Member State's regulatory regime are mapped to highlight where differences are the most significant in terms of the 'gap' that may exist between Member States and the adaptability of each national system to respond to future changes proposed in this impact assessment.
8. **Analytical model:** An economic model was developed and applied to assess the economic and financial impacts of the policy options, based on data obtained from desk research of Member State submissions, and taking account of the caseload and regulatory baseline estimated earlier in the study. A summary of the approach and key assumptions are provided in Section 5.
9. **Meetings with the Commission:** meetings with the client took place following the submission of the inception report, the interim reports and the draft final report in order to discuss the deliverables and progress.

A detailed summary of the methodological approach to the website review, caseload baseline and regulatory baseline, including the assumptions and data sources used is provided in the earlier baseline report. Calculations undertaken in this report are detailed in Annex 4 and 5.

1.4 Problems encountered and resolved

The study presented a number of unique challenges for the contractors, as this is the first study that attempts to quantify the scale of infringements occurring in five sectors of study

⁴⁴ The focus of financial services was consumer credit products (i.e. unsecured loans and credit cards).

⁴⁵ Food supplements are taken to include products which consumers use to complement their diets or to maintain health. This includes vitamins, herbal and dietary supplements. Specialist supplements can also be targeted at specific user groups or developed with specific properties in mind (i.e. sports supplements and products for gym users). Food supplements can be consumed orally in the form of pills, powders, liquids or intravenously by injection.

across the EU and potential consumer detriment arising from these infringements. Specific challenges and how they were resolved are outlined below.

1.4.1 Website review

The website review encountered no specific problems, largely due to the efforts of the contractor in piloting the review questionnaire before refining the methodology and conducting the review.

Efforts were made to include a representative number⁴⁶ of websites selling cross-border to consumers in other Member States in the selected sample. This was based on the data obtained from web indices and directories from which the sample was extracted. While a check was made to ensure that the largest web retailers (by turnover) of each Member State were captured in the sample, it is not possible to provide a breakdown by enterprise turnover size, as this information was not reported in the relevant directories.

1.4.2 Estimating the baseline caseload of the CPC over the period 2015-2025

Considerable effort went into collecting data from a variety of primary sources, to limited success as many stakeholders contacted did not collect data on cross-border and non-EU infringements. Table 1.2 presents the overview of the inquiries made and their result.

Table 1.2 Types of inquiries and their outcomes

Data requirement	Data source	Result of inquiries
Number of Infringements	Survey of NCAs	Limited number of responses was provided by the NCAs for multiple reasons including lack of market monitoring and data collection mechanisms. In a few cases, where some responses were received, the data was often incomplete and did not allow disaggregation per sector.
Consumer detriment/ Complaints/ Nature of detriment	Survey of NCAs	As above
Industry trends/ Demand/ Cross-border sales/ Average consumer spend	Industry associations	Although industry associations were able to identify some generic trends, in the vast majority of cases, they did not possess any data that went beyond information which was collected during desk research. An exception was data provided by <i>Eurofinas</i> for the consumer credit sector. <i>Business Europe</i> and <i>Eurocommerce</i> for electronics sector as well as <i>International Alliance of Dietary/Food Supplement Association</i> and <i>Food Supplements Europe</i> offered to request the data from their members. No completed responses were received. Overall, industry associations did not possess data and were sceptical about the availability of any comprehensive cross-border data.
Number of Infringements/ Complaints/ Industry trends/ Cross-border	Grey literature/ Industry reports	A fairly good level of domestic data was obtained (except for the ticketing and food supplement sectors). However, there is a chronic lack of cross-border data.

⁴⁶ To ensure representative sample of traders in each country and market sector, researchers identified websites through a four stage approach: (1) using relevant words to find websites; (2) using country-specific google searches; (3) use of price comparison websites for their respective countries; and, (4) using their own country-specific knowledge. On average 18 websites were selected per sector, per Member State. Larger Member States were oversampled to make up for the variance in market sizes across the 28 Member States.

Data requirement	Data source	Result of inquiries
sales/ Average spend/ other		An exception is recent publications by London Economics and Ipsos ⁴⁷ on functioning of the consumer credit market in Europe.

The Consultant faced a number of problems in estimating the future CPC caseload. A short description of the issues and how they were addressed is provided as follows:

- **Sector classification:** while some sectors selected for analysis aligned perfectly with statistical classifications used by Eurostat, national statistical authorities and industry publications, for other sectors it was impossible to find consistent data on which to build the modelling approach on. In response, the sector definitions were revised to make best use of the available data.
- **Granularity of the data:** to complete the modelling exercise, data at the level of the sector or Member State was often needed to reflect differences in consumer spending, online purchasing trends and cross-border sales volumes. In many cases this information could not be found in the literature. In response, consumer and trade associations were contacted for the data or to provide informed 'guesstimates'. Some gaps still remained for which assumptions had to be made and these were subject to sensitivity analysis to ensure robustness of results.
- **Infringement volumes handled by competent authorities:** the main information needed was historical trend data on the number of domestic, cross-border EU and cross-border international infringements handled by competent authorities. A short survey was designed to collect this information from competent authorities. However, only a handful of national competent authorities were able to provide a breakdown of infringement cases which could be used to calibrate the model. No data was provided on international infringements.
- **Measuring consumer detriment:** limited studies have systematically attempted to quantify consumer detriment from enforcement action, developing the methods and assumptions to complete this task. The consultants have heavily relied on the research of the UK Competition and Markets Authority (former OFT) in this area. The robustness of the analysis would benefit from more work being carried out in this area, specifically in Member States other than the UK and Ireland⁴⁸. The Commission is currently conducting research on the level of consumer detriment in the EU, through surveys in Estonia, Czech Republic, France, Italy and the UK.

1.4.3 Regulatory baseline

Due to lack of resources to conduct primary evidence gathering, the mapping of the regulatory baseline was limited to secondary data sources. The study, carried out by Grimaldi Studio Legale on behalf of the Commission, on enforcement authorities' powers and national procedural rules in the application of CPC Regulation was relied upon to provide the most up to date evidence on Member State enforcement systems in Belgium, Czech Republic, France, Germany, Italy, Latvia and the United Kingdom. For other Member States the available evidence was less comprehensive, requiring website searches and reviews of national legal cases and reports. While complete for the majority of Member States, it is acknowledged that legal systems are constantly evolving and as such some systems and procedures may have changed since the relevant literature was published.

⁴⁷ London Economics and Ipsos, (2013): Consumer credit market study- final report, for the European Commission, available at: http://ec.europa.eu/consumers/archive/rights/docs/consumer_credit_market_study_en.pdf

⁴⁸ Competition and Consumer Protection Commission (2014): Consumer Detriment Survey 2014, IPSOS MRBI, available at: http://corporate.nca.ie/eng/Research_Zone/Consumer-Detriment-Survey-2014-Report.pdf

1.4.4 Cost and benefit assessment of the policy options

Evaluations by the UK Competition and Markets Authority (former OFT) and National Audit Office (NAO) have attempted to monetise the benefits of enforcement in competition and consumer protection law to provide value for money estimates. Based on the number of cases tackled each year and the average cost of infringements to the UK economy, the results provide orders of magnitude estimates which can be compared to the administrative costs of the competent authorities or caseloads concerned. Impacts are also more frequently reported for competition opposed to consumer enforcement cases, resulting in a significant gap in our understanding of the costs and benefits of consumer enforcement. A significant gap in the evidence concerns the benefits from improvements to enforcement either from its intensity (i.e. more inspections) or strengthening of legal provisions (i.e. introduction of new obligations or powers). The high level nature of the above approaches are therefore not sufficiently granular for this study. The cost-benefit estimates produced in the context of this study take into account all available evidence and methodological approaches, both of which are currently under-developed. We developed a framework based on the OFT's consumer detriment study⁴⁹ and the UK's impact assessment on the consumer rights bill⁵⁰ to scale possible changes in compliance by Member State competent authorities due to the policy options, including any deterrent effects of those changes. This is an area which would benefit from additional research. Distinct from competition law enforcement which can employ game theoretic approaches to predict business behaviour where pay-offs are known and decisions are intentional, analysis of consumer protection law enforcement requires a tailored approach which considers the factors leading traders to commit malpractice. Many consumer protection infringements are negligent/unintended (resulting from a lack of understanding of responsibilities and requirements) and the pay-offs are not known to traders, therefore further research is needed to confirm the estimates provided in this assessment.

A commitment to research excellence, the estimates provided in this study were produced to the best knowledge of the researchers, taking into account all available evidence.

1.5 Structure of report

The remainder of this report is structured as follows:

- Section 2: the problem definition;
- Section 3: summarises the policy objectives;
- Section 4: develops and analyse the policy options;
- Section 5: compares the preferred policy option against the do nothing situation, and
- Section 6: introduces the approach to future monitoring and evaluation.

The following technical annexes are also provided:

- Annex 1: List of documents reviewed in this study;
- Annex 2: Methodology for estimating the costs and benefits of the proposed policy options;
- Annex 3: Screening of the possible policy measures;
- Annex 4: Quantification of the costs and benefits;

⁴⁹ OFT(2009): Trading Standards impact - An evaluation of the impact of the fair trading work of local authority Trading Standards Services in the UK, OFT Paper 1085, available at: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/about_of/oft1085.pdf

⁵⁰ BIS(2014): Consumer Rights Bill: Proposal on enhanced consumer measures – Impact assessment final, January 2014, by the UK Department for Business Innovation and Skills (BIS), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/280858/bis-13-1357-consumer-rights-bill-proposals-on-enhanced-consumer-measures-impact-final.pdf

- Annex 5: Assessment of the costs for the Commission, and
- Annex 6: Detailed assessment of synergies and interdependencies between measures in the preferred policy option.

2 Problem definition

This section defines the nature and scale of the problem to be addressed, its consequences and underlying causes. It also describes how the problem is anticipated to evolve in the absence of EU intervention.

2.1 The value of cross-border enforcement cooperation

Legislation protecting the economic interests of consumers is largely ineffective without enforcement. Enforcement encourages business compliance with consumer protection legislation through prevention, timely detection, cessation and punishment of infringements. The success of enforcement action by competent authorities is determined by business knowledge of the relevant legislation and its application; the frequency and depth of inspection and surveillance; and the speed of action in response to perceived risks of infringement, so that fewer consumers are harmed by the infringement. Effective enforcement action translates to strong deterrent effects, which positively affects the level of compliance among traders and consumer trust in their rights. Effectiveness of enforcement in the area of consumer policy is thus, measured by the levels of compliance and the scale of consumer harm prevented.

With many consumers unfamiliar with the risks of the digital environment and the new business practices it generates, effective regulation and enforcement play an important role in giving consumer's confidence and shaping trader behaviour. Strong deterrence effects require competent authorities to have adequate powers, resources and market intelligence to take timely and decisive actions to protect consumers, while minimising the resource demands on Member State enforcement authorities.

Despite establishing a framework for tackling intra-Community infringements in the EU internal market, the external evaluation⁵¹ concluded that the objectives of the CPC Regulation have not yet been fully achieved, indicating that there is scope for improvement, particularly as the digital economy has evolved and grown tremendously in scale since the inception of the CPC Regulation in 2004. The evaluation found that the current level of cross-border cooperation is insufficient to realise the full benefits of even, effective and efficient enforcement in the internal market. Further, it suggests that elements of the CPC framework are not fit for purpose or sufficient to tackle infringements effectively in the new digital economy. The Commission also has the potential to play a more substantial role in the CPC framework, adding value to the actions of individual Member States.

Because these deficiencies in the current CPC Regulation are not addressed, consumers are suffering more harm than they would otherwise do in a more effective cross-border enforcement system. Consumers and traders also lose confidence in the internal market if a level playing is not established and competent authorities squander scarce resources by duplicating investigation and enforcement activities, when some cases could be more efficiently resolved by working together through coordinated enforcement actions.

The potential savings in consumer detriment and enforcement resources can be realised by addressing the sub-problems and drivers elaborated in section 2.2. The scale of the benefits attainable are substantial. The baseline analysis based on five consumer products estimated that EU consumers suffered around €1.1bn in gross financial detriment in 2014 as a result of infringements which are intra-Community in nature (and therefore covered by the CPC Regulation). The growth of e- and m-commerce and new business practices suggests that the scale of financial detriment will increase over time if action is not taken, reaching an

⁵¹ EC (2012): External evaluation of the Consumer Protection Cooperation Regulation, by CPEC for the European Commission, December 2012, available at: http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

estimated €1.3bn by 2025, an 18% increase from 2014. Scaling up to the whole economy⁵², consumer detriment which could in part be reduced by this initiative is estimated to be in the order of €11bn to €13bn respectively in 2014 and 2025⁵³.

In addition, improvements to the efficiency of the mutual assistance mechanism and the surveillance activities of Member States are anticipated to generate further cost savings in tackling intra-Community infringements. As costs can be duplicated across all EU28 Member States when competent authorities act individually to resolve parallel domestic and widespread infringements, the savings from adopting an EU-wide approach to enforcement would be substantial. For example, if each authority took an enforcement action involving 0.38 part time work of one official⁵⁴ to address a widespread infringement individually, the total cost for EU-28 would be ca. €670,000. This cost would be avoided if the infringement was addressed in a coordinated manner: i.e. if one authority would take an action on behalf of other authorities; or if the undertaking were negotiated with the trader concerned at EU level, with the European Commission's facilitation. The saving per one coordinated action would be ca. €265,000⁵⁵. Other savings can also be made by reducing costs of case-handling (thanks to enhanced investigation and enforcement powers), better coordinating market surveillance and investigation and by sharing intelligence and evidence, reducing the amount needed to be gathered by individual authorities.

2.2 The main problem, its causes and effects

Current cross-border enforcement activity using the CPC System (CPCS)

Of the 120,000 intra-Community infringements estimated to be committed by traders in the five sectors analysed in the baseline in 2014, it is known that only <1% of cross-border infringements in each Member State are investigated and enforced using the CPCS. For some Member States the number of cases tackled each year is in single figures. Reasons for this can include:

- Infringements are not detected by competent authorities.
- Infringement are resolved without using the CPCS, either through informal action by the competent authority concerned (i.e. issuing a warning or letter) which does not involve contacting authorities in other Member States, or through informal contact between competent authorities outside of the CPCS (i.e. by email or telephone).
- Cross-border infringements are not tackled due to insufficient enforcement resources and/or prioritisation of domestic infringements by authorities which are often less complex and quicker to resolve.
- Cross-border infringements are not tackled where the detriment is considered trivial, such that the costs of enforcement are considered to exceed the harm to consumers. Where enforcement resources are limited, it is rational for authorities to focus on tackling infringements of higher consumer detriment.

Each of these causes are addressed by the options proposed in this assessment by altering one or more of the following factors:

- Market surveillance and intelligence sharing practices;
- The capabilities and capacity of competent authorities, including resources;

⁵² Assumes the five consumer sectors assessed in the baseline account for around 10% of total consumer expenditure and associated detriment.

⁵³ Including domestic and international infringements, total detriment suffered by consumers is estimated to be in the region of €114bn and €121bn in 2014 and 2025 respectively, based on baseline analysis estimates of €11.4bn and €12.1bn.

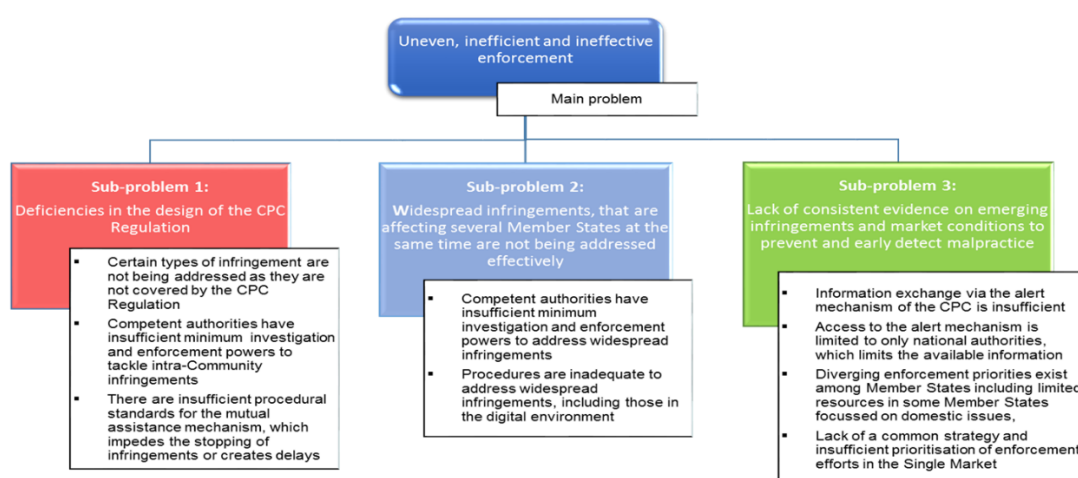
⁵⁴ Calculation is based on the CPC coordinated action in the in-app purchases case, which cost the Commission 0.38 full time official.

⁵⁵ Difference between the cost of coordinated action and cost of parallel actions of Member States: € 670,000-405,000 = 265,000

- The incentives to investigate and enforce cross-border infringements by realising the benefits
- Competent authority understanding of emerging enforcement challenges and practices of rogue traders;
- The effectiveness and efficiency of the CPC Regulation;
- The obligations placed on Member State authorities in the CPC Regulation, and
- The costs of investigation and enforcement action.

The main problem is that enforcement is inefficient and ineffective resulting in the sub-optimal use of the cooperation and coordination mechanisms of the CPC Regulation by Member State competent authorities. Consumers suffer greater harm as a result. A number of sub-problems and drivers are identified which cause this problem, shown in Figure 2.1. The deeper shaded boxes represent the sub-problems and the clear boxes the drivers of these problems.

Figure 2.1 Problem tree



Source: ICF Analysis

The policy option(s) considered in this IA study address one or more of the causes of each problem. Each sub-problem and its drivers are elaborated below.

2.3 Sub-problem 1: Deficiencies in the design of the CPC Regulation

The first sub-problem considers the deficiencies in the current design of the CPC Regulation, whether because provisions are missing or are insufficient to ensure effective and efficient cross-border enforcement. Identified drivers of the problem are:

- It is not clear whether the scope of the CPC Regulation covers:
 - short-lived infringements, and
 - parallel domestic infringements.
- Some intra-Community infringements currently covered by the CPC Regulation are not tackled as efficiently as they could be due to:
 - insufficient minimum investigation and enforcement powers provided by the CPC Regulation for competent authorities, and
 - insufficient procedural standards for the handling of cases through the mutual assistance mechanism.

Each driver is elaborated below, describing its impacts and including supporting evidence gathered from Member State biennial reports, the Commission’s legal study, public consultation responses and the results of a short survey conducted by the contractors with competent authorities in June 2014.

2.3.1 It is not clear whether the CPC Regulation covers short lived infringements

The current CPC Regulation places an obligation on Member State competent authorities to ensure the cessation and prohibition of intra-Community infringements when requested by an authority in another Member State (Article 8). The terms cessation and prohibition imply that the infringement must be on-going for the requested authority to take enforcement action. Therefore, the CPC Regulation does not currently clearly oblige authorities to take enforcement action once the infringement has ceased, although it may be beneficial to deter future malpractice or to punish the infringing trader. Some authorities may take action, however without the clear obligation to do so in the CPC Regulation.

Short-lived infringements last for a relatively short period of time (a few weeks) and when they cease, the consumer usually continues to suffer harm (as the consumer continues to be charged for the product or misled), because the infringement continues to cause harm. There is also the risk that if not punished, the infringement is repeated by the same or other traders. So called “hit and run” tactics by traders involve targeting consumers for a short time before ceasing the activity to avoid detection. The trader then targets other groups of consumers or moves to other Member States, repeating the same infringement. Misleading advertising practices are used in this way by infringing traders, particularly in the digital environment as websites can be created, amended and closed at short notice. New commercial practices in the digital environment also enable traders to more effectively target consumers online through mobile communication and social media. The UK’s biennial report⁵⁶ reflects the view of many competent authorities when it highlights areas such as repeat payments (subscriptions), behavioural advertising and pricing, and the use of mobile applications as leading enforcement challenges for competent authorities in the digital environment. Many of the infringements associated with these practices could be considered short-lived.

Short-lived infringements are also identifiable where a long time gap exists between the consumer making the purchase and receipt or use of the product which causes harm. For example, subscription services often require limited upfront payment (i.e. a nominal shipping charge). It is only later that the infringement becomes apparent to the consumer when unexpected repeat periodic payments begin 4-5 weeks after the first purchase. In other situations the consumer may only realise some time after the purchase that their right to withdrawal has been unlawfully reduced by the trader. Infringements of two legislative acts are frequently regarded as short-lived:

- **Advertising** - Infringements relating to misleading and deceptive advertising practices, regulated under the certain consumer provisions of the Misleading and Comparative Advertising Directive 2006/114/EC, and the Unfair Commercial Practices Directive 2005/29/EC. New forms of advertising through websites, SMS and subscription services, in addition to more traditional in store advertising enables traders to launch and revise promotional offers at very short notice. The opportunity exists for traders to infringe consumer law for a short period of time (before the infringement can be stopped) and/or adopt repetitive hit-and-run tactics. The consumer is often harmed despite cessation of the infringement as consumers continue to purchase products even after the advertising campaign is over.
- **Contractual terms** - Infringements relating to Directive 93/13/EEC on contractual terms can also be regarded as short term where the consumer is unaware of unfair contract terms such as automatic subscription renewals or where they have agreed to make subsequent additional purchases to which they were not aware when entering the contract. In this example, the consumer is often harmed a long time after the

⁵⁶ EC(2013): Biennial report of the UK Member State on the application of the Regulation on Consumer Protection Cooperation (EC) 2006/2004: December 2010 – December 2012, published March 2013, available at: http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/cpc_biennial_2013_en_en.pdf

infringement has occurred. Linked to 'free' promotional offers, or offers available for a 'limited time only' the infringement is typically short-lived.

Where the infringement is genuinely unintentional and is rectified immediately by the trader, there may be limited need to take enforcement action, other than to ensure redress for consumers that were harmed. According to CPC competent authorities⁵⁷, informal warnings, letters, and telephone calls are the preferred approaches to dealing with short-lived infringements, which in most cases results in the voluntary commitments by the trader. However, competent authority responses indicate that short-lived infringements represent a significant and growing share of cross-border infringements due to increasing consumer expenditure online. For example, a competent authority in the Czech Republic indicated that around 80% of cross-border infringements are short-lived, however the number of cross border infringements tackled is very small for this single authority. Authorities in Latvia and Hungary reporting higher numbers of cross-border infringements, with short-lived account for 8-10% of cases. On the basis of the earlier estimate of total intra-Community consumer detriment in 2014 for the whole economy (€11bn), it is estimated that short lived infringements conservatively account for €0.9-€1.1bn of the harm suffered by consumers.

The number of cases where informal enforcement is inadequate to tackle this type of infringement is expected to increase over time as traders exploit the weaknesses in current enforcement system. Where competent authorities try to take enforcement action, each within their own national legal system, the procedures and practices followed are likely to differ and are likely to be unknown to the competent authorities in other Member States. Without uniform practices and procedures to follow in such cases, the risk that information provided in response to a mutual assistance request is insufficient and/or requires follow-up requests is increased.

For example, Danish authorities indicated that they would consider initiating criminal proceedings, even if the malpractice, which violates marketing practice law, has ceased. Not knowing this, competent authorities in other Member States providing evidence of the infringement, believing the proceeding to be a civil action, would find that the Danish authority is unable to take action as a higher burden of proof is required in criminal as opposed to civil proceedings. In other cases where a provision in national law does not exist for Member State competent authorities to take action in cross-border short-lived cases, the infringement goes unpunished.

The AGCM vs BVL case (See Box 1) highlights the inefficiency with which short-lived infringements are resolved, if at all, particularly where the competencies of competent authorities differ. Although in this particular case, the infringement was eventually stopped and trader punished, it took until 1 October 2012 (4 years) for the case to be resolved (including appeal), three years after the infringement had ceased. The main delay was the appeal process which may not have been necessary if it was clear that the CPC Regulation could be used in such cases and Member States are obliged to take enforcement action.

Another example of short-lived infringements is provided in Box 2. The case concerns a violation of unfair commercial practices legislation provided by Belgian authorities in response to consultation undertaken as part of the Grimaldi's legal study, procured by the Commission. Although not identified as short-lived, the infringement could be considered short-lived as consumer harm is suffered some time after the initial purchase and the prize was available for only a short period of time.

⁵⁷ Responses from competent authorities in Czech Republic, Denmark, Hungary Latvia, Lithuania, and Spain to the contractors short survey

Box 1 AGCM vs BVL : Tackling short-lived infringements

Description

The case concerns a German provider of multimedia content for mobile phones that sells through an Italian service provider to Italian consumers. The paying service was targeted at consumers of at least 18 years of age with a mobile phone contract, and was advertised through various media (newspapers, website and SMS directly to the mobile phone of consumers). One of the advertisements was placed in a magazine directed specifically at young and under age consumers.

The infringement (advertising campaign) was committed between November 2007 and March 2008 but the first complaint was sent to the Italian Competition authority (*Autorità garante della concorrenza e del mercato*, AGCM) only in April 2008.

Enforcement action taken

On receipt of complaints from consumers, the Italian competent authority (AGCM) investigated the advertisement and requested the assistance of the German competent authority at that time (*Bundesamt für Verbraucherschutz und Lebensmittelsicherheit*, BVL) through the CPC mutual assistance mechanism to take enforcement action. Two requests for assistance were sent, yet BVL informed AGCM that they did not intend to take action against the German company because the infringement had ceased (the advert has been removed). BVL's interpretation of the CPC Regulation was that a cease and desist order may only be used against an "on-going infringement", and that as its powers are strictly limited to the scope of the CPC Regulation, it did not have competence to intervene.

As the Italian service provider and mobile phone operator were providing the multimedia content of the German company to Italian consumers for a fee in which the revenue received from the subscription contract was shared, it was deemed that the service was only made possible by the combined actions of the multimedia, service and mobile phone providers in the supply chain. Consequently, AGCM considered that each provider was responsible for the infringement and decided to take enforcement action by itself against all parties.

The decision of AGCM was based on the definition in Article 2 of Directive 2005/29/EC, implemented in the Italian Consumer Code, that the trader is "*any natural or legal person who, in commercial practices covered by this directive, is acting for the purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of the trader*". On this basis, the operators linked by the contract were considered responsible for the unfair commercial practices.

Acknowledging that the unfair commercial practice was no longer in place when the decision to pursue the case was made, it was nevertheless considered that the practice had resulted in considerable harm to consumers, having been in place for more than three months and that it was targeted at a large number of consumers, many of whom could be considered vulnerable due to their young age. The AGCM decided to impose an administrative fine (in total €705,000) on the companies involved to deter them from repeating such practices in the future.

Outcome of the case

The service provider appealed the decision of AGCM in the Italian courts on the basis that it should not be considered responsible for the infringement. The court found in AGCM's favour and stated that the authority had acted correctly⁵⁸. However the excessive length of proceedings was noted as a problem by the parties involved, as it took over a year to resolve the case.

The court did not question that a cease and desist order was used to condemn a past behaviour and to prevent the trader committing future infringements. Inclusion of short-lived infringements in the CPC would however enable the case to be resolved more quickly and efficiently by providing a

⁵⁸ Decision No 19888 of 20 May 2009, *Netsize Italy*, in AGCM Bulletin 21/2009; Judgment of the Administrative Regional Court of Lazio (TAR Lazio) No 08230/2012 of 1 October 2012, *Netsize/AGCM*.

consistent framework for resolving the case, and ensuring the competent authority taking action following a mutual assistance request has jurisdiction to punish the infringing trader. The appeal to the court may then have been avoided and the case resolved in a much shorter of time.

Source: Grimaldi Studio Legale (2014): Legal study procured by the Commission to support the impact assessment

Box 2 Short-lived unfair commercial practices

Example of a short-lived infringement

The case concerns a Belgian company selling health and cosmetic products via mail order. The company in question was accused in its advertising campaign of sending unfair and misleading mails to consumers telling them that they were winners of a large cash prize. However, if one read the advert carefully, one would find out that the customer would have to respond to the advert by placing an order within a short period of time to be entered into a random draw which would give the customer a chance of winning the prize.

Authorities in France and the UK, where consumers were targeted, considered the advert to be unfair and misleading as the 'prize' obliged consumers to make a payment with no guarantee of receiving an actual prize. In addition, the probability of winning that prize was not made clear to the consumer.

Although not reported as an issue in the case notes received from the Belgian authorities, this case has many of the characteristics of a short-lived infringement. First, the offer of entering the prize draw was only valid for a very short period of time; and second the consumer would have been harmed when they failed to receive a prize after the infringement had ceased. The enforcement need to prevent the company repeating the infringement is also strong in this case.

Source: Grimaldi Studio Legale (2014): Legal study procured by the Commission to support the impact assessment

2.3.2 It is not clear whether the CPC Regulation covers infringements happening in parallel in several Member States ("parallel domestic infringements")

The scope of the CPC Regulation is defined as covering 'intra-Community infringements' according to Article 3(b) of the Regulation. Competent authorities do not consider that parallel domestic infringements are within the scope of the CPC Regulation. In other words, it is not clear from this definition whether the same infringement committed in several Member States by subsidiaries or agents of a foreign trader (referred to as "parallel domestic infringements") are included within scope. This is consistent with the perceived notion of intra-Community described in Figure 1.1 and the misconception that the transaction between business and consumer must be cross-border to be within scope of the CPC Regulation. The digital economy has also contributed to a blurring of such a distinction, as foreign traders increasingly operate websites which trade domestically. For example, there are large internet retailers who are US owned and registered in Luxembourg, from where they conduct operations in the EU market. However, the internet retailer does not operate a single website from Luxembourg, but rather it operates a series of websites in each national EU market. What is of relevance for enforcement is that the decisions and assets of the trader committing the infringement are located cross-border (i.e. in Luxembourg), not that the transaction between trader and consumer is necessarily cross-border (i.e. the product is sold by a French website to a French consumer).

By missing the cross-border dimension to parallel domestic infringements, competent authorities may be tackling the infringement in a less efficient manner. This is apparent

where the infringement occurs in multiple Member States at the same time resulting in the duplication of investigation and enforcement actions if tackled individually by competent authorities of each affected Member State, believing the infringement to be domestic in scope. For example, in the Apple warranty case (See Box 6 for summary on pg.30), the Italian Competition Authority was first to detect and investigate the infringement, before ceasing the practice and imposing a fine on the trader believing the infringement to be domestic in nature. In fact, as the retailer operated EU-wide, the misleading nature of its commercial strategy was repeated in other Member States. Realising this, five other Member States conducted their own investigations and took enforcement action individually in 2012. In total, this meant that the same evidence may have been gathered six times and resulted in six legal proceedings being followed. The opportunity to undertake a coordinated Article 9 common enforcement procedure in such cases through the CPCS was therefore missed and the benefits of doing so forgone (See Section 2.3.4 below). The other disadvantage of not including parallel domestic infringements in the scope of the CPC Regulation is that by taking action individually and independently, competent authorities can reach different decisions, over different timescales and impose different sanctions. This was also apparent in the Apple warrantee cases, as a further six Member States decided the retailer's Care Protection Plan did not violate consumer law. Furthermore, due to differences in national legal systems, the time taken for a decision to be made in each Member State differed, as did the sanction imposed. For the traders, this creates legal uncertainty and higher legal costs when defending itself. The end result is that consumer legislation is inconsistently enforced across the EU in parallel domestic cases.

Based on a Eurobarometer study⁵⁹, approximately 10% of enterprises were found to have outlets or subsidiaries in another EU Member State in 2011. The number of parallel domestic traders has increased since 2011 with subsidiaries and franchises of businesses increasingly operating in multiple Member States. Affecting a high number of consumers, infringements of this type are also associated with high levels of consumer detriment.

2.3.3 Some intra-Community infringements are not being tackled efficiently or effectively as competent authorities have insufficient minimum investigation and enforcement powers

For an increasing number of infringements, the current minimum powers established in the CPC Regulation have proven to be insufficient to ensure effective enforcement of consumer legislation according to respondents to the public consultation:

“One of the big challenges to a coherent enforcement of consumer rights in the EU is the diverging national enforcement approaches and systems. This encompasses [...], their statutory powers, the level of fines or other sanctions” (Consumer association, Portugal)

“Reasons [for lack or swift cessation of misconduct] include [...] the inability to take action”. (Public authority or government, UK)

“As the [enforcement] proceedings can take up to many months or even years, the CPC should have the power to require interim measures” (ECC, Finland)

The feedback received suggests that investigation and enforcement powers are fragmented across Member States; uneven between competent authorities; distributed among many actors in a Member State (courts and administrative authorities), and are too weak to ensure effective enforcement, particularly in the digital economy. The views expressed are reinforced by the findings of the CPC workshops held with competent authorities, the European Consumer Summit 2013⁶⁰ and the Commission's report on the functioning of the

⁵⁹ Flash Eurobarometer 300 on business attitudes to cross-border trade and consumer protection, available at: http://ec.europa.eu/consumers/archive/strategy/docs/retailers_eurobarometer_2011_en.pdf

⁶⁰ EC (2013): European Consumer Summit 2013: Towards a more efficient enforcement of EU Consumer Rights – discussion paper, available at: http://ec.europa.eu/consumers/enforcement/docs/07032013_consumer_summit_discussion_paper_en.pdf

CPC Regulation⁶¹ which all call for a strengthening of enforcement and cross-border cooperation, including "digitally fit" powers for enforcement authorities, in the consumer protection field.

The following describes the specific gaps in the investigation and enforcement powers of CPC competent authorities and consequences for effective and efficient enforcement.

2.3.3.1 Investigation powers

Gathering evidence of digital infringements

Infringements in the digital economy, as already discussed, are often short-lived. It is therefore difficult to gather sufficient evidence of the malpractice of the trader before websites are amended, temporarily closed down or revitalised. It is also difficult to identify the business behind the malpractice when concealed through a network of websites, mail box addresses, company registrations and shell businesses. The time period over which the infringement took place and number of consumers affected is also difficult to determine as the digital economy remains borderless and authorities rely only on complaints that they receive to gauge the scale of the infringement before deciding what action to take. Successful enforcement action, detection of the infringement and the business responsible requires that competent authorities have access to the necessary information.

Evidence can include screenshots, website data held by IP providers and website hosts, as well as information which helps locate the business responsible by tracking the flow of illicitly obtained payments from the consumer to the business responsible. Information is therefore needed from a variety of sources, including intermediaries who help to operate and host the website. The current CPC Regulation does not mandate that competent authorities have these necessary powers. Under Article 4(6), only relevant documents, in any form, related to the intra-Community infringement must be accessed by authorities and information supplied to the requesting authority. In the digital economy, competent authorities rarely have this information as rather than documents which can be collected through on-site inspections, electronic evidence is physically and technically more complex to gather and decipher.

The biennial report of France⁶² identifies the following intermediaries who may hold the relevant information required, but where competent authorities currently have limited explicit powers to gather and request the supply of information relevant to an infringement investigation:

- the IT service provider responsible for the functioning of the website
- the website designer, would could be responsible for the daily management of the website;
- the website host, who rents space on its servers to traders;
- the registration office;
- the service-provider who has registered the name of the domain on behalf of a third party; and
- cache services.

Other information requirements may include the need to obtain bank account and tax records to trace the flow of funds from multiple shell companies and websites to the business ultimately responsible for the infringement. For this, authorities require the e-Crime expertise and access to electronic data available to police authorities, customs and intelligence bodies.

⁶¹ COM(2014) 439 final – Report on the functioning of 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 (the Regulation on consumer protection cooperation), available at: http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140701_commission_report_cpc_reg_en.pdf

⁶² Biennial report for France 2011-2013, pp.7

The problem can be illustrated by the experience of the Greek authorities responding to mutual assistance requests described in the biennial report⁶³. The cases relate to the marketing and sale of medicinal products over the internet which is prohibited in Greece but not in many other Member States. Difference in legal regimes creates difficulties in handling these cases because the businesses operating these websites use international phone numbers and other digital means of communication which makes it difficult to track down where the trader is actually based. There are also cases of individuals who appear to trade via commercial websites selling medicinal products which do not have web pages but indicate phone numbers or other contact details in Greece. The limited powers of the competent authority in these cases, prevented the investigation of these infringements as they require access to confidential personal data to track and trace the business responsible. The authority concerned was therefore forced to contact other authorities within its Member State to access the data. In case the other authority does not cooperate or does not see a priority to handle the case, the infringement risks being left unaddressed.

An example of where enhanced powers to gather information on digital infringements proved invaluable is in relation to a web shop fraud described in Box 3. In this example, the companies involved operated multiple websites and concealed their identity by using web hosts and contact address in third countries. In the end, the businesses responsible were located in Germany and Austria by following the cash-flow generated by the fraud. The consumer detriment generated by the fraud was estimated to be around €20mn, which was stopped in part due to the ability to access digital data. In many other Member States the power to track down financial flows is not available, in both domestic and cross border context. The authorities in these Member States would not be able to investigate and stop such infringements, especially if the fraudsters acted across borders.

It is unknown how many infringements are not stopped due to insufficient investigation and/or enforcement powers as this information is not recorded by authorities. However, the external evaluation⁶⁴ did note that a handful of cases appear to stagnate or progress slowly through the CPCs which would indicate in some circumstances that powers are insufficient for competent authorities to respond to information and enforcement requests. Considering the current low caseload of the CPC, the potential to investigate and stop a higher number of infringements is significant which the increased capacity and capability of authorities can help to address. The need for additional powers is likely to be greatest for gathering digital evidence of the infringement to identify the trader concerned and its location. For many websites, as shown by the website review conducted by the consultants, this can be determined from the website itself or by checking company registration and ownership details. Only for the most evasive of traders is the power to track financial information needed. However, it these evasive rogue traders who are more likely to repeat infringements if not stopped and operate in multiple Member States. The benefits of enforcement are likely to be greatest in such cases. The Infurn furniture case (see below Box 5) is a good example, where failure to identify and locate the infringing trader, continued to lead to consumers suffering considerable detriment.

Box 3 Internet fraudster cheated 100,000 victims

A total of nine people were arrested in Austria and Germany in relation to a web shop fraud. The fraudsters operated throughout the German-speaking area. It is estimated that around 100,000 people were harmed as a result of their actions.

⁶³ Biennial report for Greece 2007-2009 pp.4-5

⁶⁴ http://ec.europa.eu/consumers/enforcement/docs/cpc_regulation_inception_report_revised290212_en.pdf

The fraudsters created web shops offering goods such as cars, branded goods and electric appliances at a very low price. The payments were taken from the victims in advance but the goods were then never received.

The group operated around 800 web shops in total in two years. At each time they had between five to 10 active web shops. The web shops were made available from different free webhosting spaces from all around the world. The web shops were taken offline after four to six weeks.

Officials were able to track down the fraudsters through following the cash-flows, although the group used various methods to hide their identity. They were moving the money across different accounts world-wide and used the accounts of over 1000 individuals.

Due to these disguised moves estimating the total harm caused is challenging, however it is believed to be at least € 20 million.

Source: Die Presse (2011): Internetbetrüger prellten 100.000 Opfer, available at: <http://diepresse.com/home/panorama/oesterreich/662710/Internetbetrueger-prellten-100000-Opfer>

Test purchases and mystery shopping

Compliance with certain consumer rules, such as rights to withdrawal and guarantee rights under the Consumer Rights Directive, can only be assessed by purchasing the product from the trader (“test purchase”). Sometimes it is required that the competent officials act under covert identity when purchasing goods or services to avoid that the knowledge of the identity of the authority alters traders' behaviour (“mystery shopping”). Mystery shopping can also be conducted at distance, such as when checking the compliance of a website with consumer law.

The availability of these powers to all CPC competent authorities is important for the effective and efficient response to mutual assistance requests. Authorities suspecting an infringement by a trader operating in another Member State must be confident that the required evidence of non-compliance can be obtained in that Member State and is consistent with its own legal system for subsequent use in any legal proceedings. Ensuring that authorities have the same powers of investigation and can collect the same evidence and market surveillance information contributes to more even, effective and efficient enforcement.

At present, differences in the availability of these powers mean that some authorities may find it difficult to participate in EU-wide coordinated market surveillance activities (Sweeps). The lack of these powers also contributes to differences in the quality and format of responses to mutual assistance requests. Ultimately, where evidence of the infringement is of low quality or insufficient (i.e. a test purchase/mystery shopping has not been carried out) and where follow-up requests or translation are required, this delays the legal proceedings and the cessation of the infringement. Procedural issues also contribute to this problem and are discussed in Section 2.3.4. On the basis of consultation responses, the scale of delays caused by differences in the evidence provided is substantial and a leading reason why some have lost confidence in the CPCs and reduced its use. Although no binding time-limits for handling CPC mutual assistance requests exist, since 2008 the Commission launches every year the "open cases review" exercise, which aims at ensuring that no mutual assistance request remains unresolved over a long period of time. The Commission applies the following benchmarks, which are set in the Operating Guidelines: requests for information should be handled within 3 months and requests for enforcement measures within 9-12 months. The requested authority should regularly update the applicant authority about the actions taken, at least every 3 months. By the end of 2014, almost 40% of the information requests and 50% of the enforcement requests were not treated and closed within the benchmarks set in the Operating Guidelines. 26% of all open cases were created more than two years ago.

Also, the deterrent to potential infringing traders is diminished as infringing traders know that in some Member States they are more difficult to detect than in others.

Box 5- Powers	Available only in
Mystery shopping	BG, CZ, DK, ES, FI, FR, HU, IE, LV, NL, PL, RO, SK, SI, UK
Test purchases	BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, LV, NL, PT, SK, SI, UK
Naming of infringing traders	AT, BE, BG, CY, DK, EE, ES, FI, EL, HU, IE, IT, LT, LU, LV, MT, NL, PL, RO, SE, SK, SL, UK
Take down websites/domains	CY, DK, EE, ES, FI, IT, LU, PL, PT, SE, UK
Withdraw/ suspend trade activity (interim)	BG, CZ, DK, ES, FI, FR, EL, HR, HU, IT, LT, LV, MT, RO, SK, SI, UK
Order consumer compensation	EE, ES, PT, RO, UK

Both test purchases and mystery shopping powers were found to be available to CPC competent authorities in Bulgaria, Czech Republic, Denmark, Spain, Finland, France, Hungary, Latvia, Netherlands, Slovenia and the UK based on the findings of the regulatory baseline. Ireland, Poland, and Romania are found only to have mystery shopping powers

Test purchase powers were found not to be available to CPC competent authorities in Austria, Belgium, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland and Sweden. Infringements relating to distance contract legislative provisions, covered by the Consumer Rights Directive are most relevant to this power (i.e. the right to withdrawal), which accounts for 13% of information and enforcement requests made through the CPCs to date.

In Slovakia, authorities have the power to conduct mystery shopping and test purchases but they are cannot use this power in practice due to constraints imposed by budgetary rules⁶⁵. Mystery shopping powers are particularly relevant when identifying misleading advertising, unfair commercial practices and unfair terms in consumer contracts legislation where it is not possible to assess compliance by reviewing pre-contractual information, promotional offer and adverts presented to the consumer prior to purchase in store or online. Information and enforcement requests relating to these legislative acts account for 3%, 10% and 45% respectively of the current CPC caseload.

2.3.3.2 Enforcement powers

Following investigation of an infringement, the applicant authority can request the cessation of the infringement through the CPC mutual assistance mechanism. The CPC Regulation does not specify which power the requested competent authority must use to cease the infringement, only that it must use those minimum powers made available under Article 4(6) of the CPC Regulation and “any additional powers granted to it under national law” (Article 8). This naturally leads to a wide variation in the enforcement powers used by competent authorities as each has evolved a different set of powers within the constitutional framework of their Member State. Indeed, 30% of respondents to the public consultation cited inconsistency of enforcement powers across Member States as the leading barrier to effective enforcement. This was the most cited barrier causing the fragmentation of enforcement in the EU.

⁶⁵ See CPC baseline report

Interim measures

Consumers continue to be harmed by infringements when mutual assistance requests are being processed and legal proceedings are ongoing. As the length of legal proceedings and responses to mutual assistance requests vary by Member State (see Section 2.3.4), so the length of time consumers are exposed to the risk of harm differs widely. More effective enforcement is possible by stopping the infringing trader from continuing malpractice, e.g. through adoption of interim measures, while legal processes and procedures are ongoing.

According to the regulatory baseline, interim powers to withdraw the license of the infringing trader or to temporarily ban its activities to prevent consumers suffering harm are currently available to authorities in 17 Member States⁶⁶. Romania and the UK confirmed that they also have the power to freeze the assets of traders as an interim measure. However, as Belgium and France can also initiate criminal proceedings in the consumer policy area (i.e. to sanction violations of unfair commercial practices), it is understood they also have the power to freeze assets. In Austria, Finland, Hungary, Denmark and Slovakia criminal proceedings can also be initiated in certain data protection cases and/or in cases related to deception and/or fraud respectively.. The freezing of assets is required in some situations to guarantee that cessation of harm to consumers. Where the trader operates through multiple websites or trading entities, not all may have been identified by competent authorities. Freezing the assets of the trader ensures that those websites or entities which were not identified as associated with the infringing trader are also stopped, preventing consumer harm

An interim power is effective where there is a risk that the trader can continue to harm consumers. There are circumstances where the trader can relocate its business activities, launch duplicate websites or change its identity while proceedings are ongoing to circumvent enforcement and to cause further harm to consumers. Interim measures prevent this. An interim measure normally ceases once legal proceedings have been completed.

To illustrate the benefits of interim measures and the harm suffered by consumers by not having interim measures available to competent authorities, two enforcement cases are provided below. Box 4 provides an example where UK authorities used an interim order to successfully protect consumers from unauthorised sellers of London 2012 Olympic tickets, and Box 5 summarises the Infurn case, where interim measures could have prevented a large consumer harm if authorities had the power to temporarily close down the website, freeze assets of the trader.

Box 4 OFT investigation of Olympic ticket selling to consumers

In 2012, Police in the UK were investigating internet websites under the control of a trader who was not an authorised ticket seller for the London Olympic Games in 2012. The OFT (now CMA) was approached to assist in tackling the infringement as it transpired that around 20,000 tickets had been sold. However the trader had only sourced 5,000 tickets to supply.

To prevent more consumers suffering harm, the OFT secured an interim enforcement order under Section 218 of the Enterprise Act 2002. The terms of the interim order included that the internet websites would stop offering for sale London Olympic Games tickets and the companies would provide a full refund to any consumer who either did not receive the tickets or were refused entry to an event as the tickets supplied were invalid. The contact details of the companies were also made available on their websites so that consumers could contact the defendants.

⁶⁶ The power to withdraw a trade license or temporarily ban the activities of a trader currently only exist in Bulgaria, Czech Republic, Denmark, Spain, Finland, France, Greece, Croatia, Hungary, Italy, Lithuania, Latvia, Malta, Romania, Slovakia and Slovenia and the UK

In total, the case concerned 12 websites run by four companies operating out of Norway. The OFT were unable to put a figure on the value of the 15,000 tickets which were sold but which the companies could not deliver. Conservatively, assuming the average ticket price was €100, the action taken by UK authorities prevented €1.5mn of potential consumer detriment.

Source:

<http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-current/olympic-ticket-selling/>

Box 5 Infurn Case

Background

Infurn manufactures and sells designer furniture online, with the website available in 12 languages⁶⁷. The company is composed of one holding business called Infurn HOLDINGS PLC, located in the United Kingdom. However, as of November 2013 the holding company changed its name to Infurn VENTURES Ltd. The holding company is composed of several companies (both in Europe and worldwide). As part of its European business, Infurn Design Europe SL is based in Spain, with customer service managed from its United Kingdom headquarters.

The infringement

A large number of consumer complaints were received by the European Consumer Centres ('ECCs'), particularly in France and Germany, in particular regarding late delivery or non-delivery of purchased furniture items. Since 2011 ECC France has registered a total of 1,485 complaints with a value of disputes over €0.5mn, and ECC Germany has registered in the same period 2,327 complaints with a value of disputes of €0.8mn. In addition, ECCs in eight other EEA countries received complaints.

Numerous issues have been raised by consumers, including:

- **Confusing identity (trading name) and location of the company in question:**
 - In late 2011, the activities of the company appear to have been transferred from Spain to the United Kingdom, under the company name Z Design Ltd.
 - As of January 2014, the company is still registered in the UK although has changed its name to Z Trading Ltd.
 - In early 2013 the company appears to have created a subsidiary in Spain under Z Design Europe SL with a registered address in Madrid.
 - Through Amazon sales the company is registered under another name in the United Kingdom.
 - According to the Spanish Consumer Centre, the continuous mutation of the company indicates pursuit of a strategy to conceal its real headquarters, making prosecution very difficult.
- **Non-delivery, partial delivery, non-conformity of the furniture delivered:** the general terms and conditions on the website indicate a delivery time of 10 - 18 weeks. However, a number of consumer complaints have been received indicating consumers are waiting several weeks beyond this date without explanation. Throughout the ordering process, the consumer receives no other reliable information regarding delivery times. Furthermore, in several cases purchased goods were not delivered at all.
- **Right of withdrawal:** Z.com has no indication of the terms and conditions regarding information on conditions and procedures for exercising the right of withdrawal. They do however outline a "right of return" policy within 14 days of delivery, although consumer complaints indicate repayment is not received within a 30 day period. Additionally, consumers who have exercised their right to withdraw within 7 days have also not received their repayment within a 30 day period

⁶⁷ Danish, English, French, German, Spanish, Italian, Norwegian, Dutch, Swedish, Portuguese, Polish and Finnish.

- **No mention of warranty:** there is no explicit mention of warranty although it is stated that if the product is damaged upon delivery, consumers are to take photos and return the good for an exchange or refund. Complaints were received regarding exchange and receiving a refund within the 30 day period.
- **General terms and conditions** were not in the language of the consumers on country specific websites (in those countries, where it is a legal requirement, like in France, Germany), they are incoherent, confusion between cancellations, withdrawal, legal warranty (see above). Initially, almost all the complaints received by the European Consumer Centres across Europe were amicably settled as authorities had contact with customer services of Infurn. However, not all complaints were referred to ECCs and contact with Infurn was lost leaving many disputes unresolved.

Enforcement action taken

Authorities in France and Germany who were informed of the breaches of consumer laws by Infurn decided to take action under the CPC Regulation framework. France launched an Article 9 procedure through the CPCS, which Belgium, Sweden, Spain, Germany, Italy and Austria joined.

Although the CPC network has commenced an investigation, the strategy of the company made it difficult for Member States to investigate and deal with the case. The power to trace financial flows, currently inexistent in the CPC Regulation, would have available enabled authorities to follow the cash-flow to the business controlling Infurn and take appropriate enforcement action. The case also highlights a situation where if the authorities had the power to impose interim measures, they could have temporarily closed down the website of Infurn, preventing further consumer harm.

Although the total amount of consumer detriment is unknown, a UK newspaper article⁶⁸ on the case highlights that many consumers were: “*left thousands of pounds out of pocket*” indicating the benefits of providing additional minimum powers both in investigation and enforcement of the infringement could be substantial. Consumers also continued to make orders online from the Infurn website even though its office in the UK has closed down and the company was under investigation. Interim measures suspending the website would therefore have prevented consumers from entering the website or making a purchase.

2.3.3.3 Closure of websites

In the digital environment, the Infurn case has also shown how a trader detected and investigated in one Member State can continue to operate from subsidiaries and websites in other Member States and third countries, thus continuing to harm consumers.

The difficulty in ceasing on-line infringements is illustrated by the experience of the Greek competent authority for medicines which “*found that it was not prepared for just how different the new generation of infringements of pharmaceuticals legislation are. Due to the ubiquity of the internet, many opportunities for its use and abuse have emerged. e-Crime is constantly developing and cross-border infringements are taking new forms all the time.*” (Biannual report of Greece, 2009).

Authorities therefore need to cease trader’s activity online if they are concerned that consumers are at risk of harm. Many of these infringements may also be considered short-lived as websites and website content may only exist for a short time.

It was found this power is available to competent authorities in Cyprus, Denmark, Estonia, Spain, Finland, Italy, Luxembourg, Poland, Portugal, Sweden and the UK. 17 Member States do not have this power but may adopt other enforcement measures which may be less effective in the digital environment. For example, requesting cessation of an infringement is less effective in a borderless environment where the trader may be operating from a third country. It is more effective to be able to request the website host or internet providers to

⁶⁸ Guardian (2014): “Fury as customers 'lose thousands of pounds' on designer furniture site”, article published 15/05/2014, available at: <http://www.theguardian.com/money/2014/may/15/infurn-fury-customers-lose-on-designer-furniture>

close the website or prevent consumers' access to it and to publish warnings for consumers accessing such website. It is therefore important that authorities have the right tools available to them to cease infringements, the use of which can be tailored to the relevant situation. This flexibility does not currently exist in many Member States where powers are limited to those prescribed under Article 4(6) and other powers under national law cannot be used in the cross-border context.

2.3.3.4 Sanctions

The regulatory baseline found considerable variation in the sanctions Member State authorities can impose on infringing traders. This includes the minimum and maximum fines which different authorities can impose and the type of fine which could be imposed (lump-sum, turnover-based, and periodic). The implication is that the strength of the deterrent effect varies widely by Member State. While many authorities can impose lump sum fines, only authorities in Cyprus, Spain, Hungary, Poland, Italy and the UK were found to be able to impose turnover based fines on infringing traders.

The Apple extended guarantee case (Box 6) demonstrates how the differences in Member States' approach to sanctions contribute to uneven and ineffective enforcement, where the same infringement was committed in all the Member States.

Box 6 Insufficient enforcement in the case of the Apple's Care Protection Plan

This case concerns Apple's Consumer Care Protection Plan which includes an extended guarantee in addition to other aftersales services, such as online customer assistance and tutorials. The details of this case can be found in a speech by the previous European Commission's Justice Commissioner⁶⁹, and in a BEUC position paper⁷⁰. The case is summarised here as an example of a widespread infringement where not only were enforcement decisions inconsistent across Member States, but also the level and timing of sanctions imposed. The case therefore illustrates many of the problems raised in this section.

Case Description

In December 2011, the Italian Competition Authority fined Apple for misleading practices and information regarding the guarantee on its hardware products. The matter concerned two aspects of retailer's commercial strategy:

- The advertising of a 1 year limited 'manufacturer's warranty' which was found to mislead consumers about the minimum 2 year legal guarantee established by Directive 99/44/EC on consumer sales;
- The promotion of the extension of the 1 year limited 'manufacturer's warranty' through the sale of the Care Protection Plan. Consumers pay a considerable amount of money for this protection plan for the protection components for which they are already entitled for free under the law.

The national authority fined Apple confirming the misleading nature of the company's commercial strategy. With the retailer operating EU-wide it was suspected that the infringement affected consumers in other Member States.

This case is an example of a parallel domestic infringement for which simultaneous action would be required in multiple Member States.

⁶⁹ Reding, V. (2013): Towards a more coherent enforcement of EU consumer

Rules, speech available at: http://europa.eu/rapid/press-release_SPEECH-13-237_en.htm

⁷⁰ <http://www.beuc.eu/publications/2013-00457-01-e.pdf>

Enforcement action taken

Following the Italian case, a formal notice was issued by the European Consumers' Organisation requesting that the company no longer sells products with a one-year warranty, requesting Member States to enforce the two year minimum guarantee as provided in EU legislation. In September 2012, the EU's Justice Commissioner at a time wrote to consumer ministers in all Member States urging that consumer rights should be enforced equally across the EU.

Outcome of the case

Despite requests to take the same enforcement approach across Europe, little was done as *"approaches to enforcement turned out to be very diversified and inconsistent at a national level"*⁷¹. A consumer website suggested only 5 Member States took action against the retailer in 2012, responding to the original case brought by consumer authorities in Italy⁷². Other Member States did not consider the extended warranty package to be an infringement even though the same terms and conditions applied in their Member State. Consequently, consumers in the Member States were not afforded the same level of protection throughout the EU due to differences in the implementation of EU consumer protection law. Enforcement in this case was clearly inconsistent and ineffective. Ideally, Member States would reach a common enforcement decision at the same time to remove uncertainty for the trader and consumers. If found in violation of the law, the trader would be sanctioned centrally accounting of the scale of the infringement in multiple Member State to deter repeat infringements, or set at a consistent level in each Member State (i.e. based on number of consumer affected) for similar effect.

However, the resulting deterrent was weak and varied widely sending an inconsistent message to the trader. When comparing the actions of Italy and Spain the sanctions imposed were firstly of a different scale. Further, legal proceedings took differing amounts of time to complete, so it was not possible to take into account the decisions made in other Member States in the level of the sanction. Sanctions were therefore insufficient in deterring future infringements and it could be argued in punishing the trader for illicit gains.

If a joint enforcement action would have been used it would have improved consistency and reduced the cost of enforcement and the legal costs for the business concerned.

Estimated consumer detriment from the infringement

When purchasing a new domestic electrical appliance or similar electronic product, the consumer is entitled by EU law to a two year guarantee free of charge. The purpose of the guarantee is to provide free maintenance and repair should the product fail to work during the first two years of intended use. However, due to the differences in legislative implementation described above, some consumers have paid for an extended warranty of one year to which they were already entitled by law. The consumer detriment can be measured by estimating the additional cost (financial loss) for these consumers.

Guarantees of this type are typically purchased with domestic electrical appliances, digital and telephony electrical products. Finaccord⁷³ estimates the total European extended warranty market to be worth some €7.12bn in 2014. Of this, 61 per cent (€4.35bn) relates to digital and telephony equipment including computers, laptops, and mobile phones. The remaining 39 per cent (€2.76bn) relates to white, grey and brown domestic appliances such as vacuum cleaners, washing machines, dishwashers, coffee makers, etc.

The extended warranty market in the UK was investigated by the Office of Fair Trading (OFT) in 2012. The report on the OFT's investigation⁷⁴ found that the costs of a warranty do not differ significantly between the UK and similar sized European countries. Further, it was found that the average cost of a warranty for a year is typically around 10 per cent of the original price of the electrical product purchased.

Based on Gartner data (See below), if approximately 288 million digital and telephony electrical devices are sold in the EU and 18 per cent are sold with an extended warranty⁷⁵ and knowing the EU extended warranty market for digital and telephony products is valued at €4.35 billion, the estimated average price of a one year warranty per product is around €8076.

Digital and telephony electrical products sold in the EU 2013

Electrical device	Total world device shipments 2013 (million units)	EU shipments as a percentage of total	Estimate of digital and telephony electrical products sold in the EU (million units)
PC	303	25% ⁷⁷	76
Ultramobile (laptop)	19	25%	5
Tablet	184	14% ⁷⁸	26
Mobile phone	1,810	10% ⁷⁹	181
EU Total			288 million

Source: Gartner (2013)

The number of extended warranties purchased unnecessarily because of the infringement is unknown. On the known assumption that retailer maintains a market share of 10 per cent in PCs and ultra-mobiles, and 20 per cent in tablets and mobile phones in Europe⁸⁰, some 49 million consumers⁸¹ could have been misled by the infringement. However, many consumers may have purchased the Care Protection Plan for other reasons than to obtain an extended warranty for one additional year (a 1 year warranty is provided free of charge by the retailer). Of the 18 per cent of consumers from the OFT research who do purchase an extended warranty, it is conservatively assumed that 2 per cent are misled into purchasing the Care Protection Plan that was at the heart of the infringement. This is considered to be a highly conservative estimate, yet a useful proxy to illustrate the scale of potential consumer detriment where only a small proportion of sales are affected by the infringement.

Based on these assumptions, 176,400 consumers⁸² were overcharged for unnecessary warranty when purchasing digital and telephony goods. The financial loss is however not equivalent to consumer detriment as the consumer does receive some utility from the Care Protection Plan. The OFT formula calculating financial detriment has been applied, which estimates the total detriment at €6.3 million per annum⁸³. This estimate is based on a single year, however, in reality it is known that

⁷¹ http://europa.eu/rapid/press-release_SPEECH-13-237_en.doc

⁷² Whittaker, Z. (2012): "Apple warranty ads should be examined, says EU justice chief", writing for Between the Lines, October 1, 2012, available at: <http://www.zdnet.com/apple-warranty-ads-should-be-examined-says-eu-justice-chief-700005028/>

⁷³ Finaccord (2011): Extended warranties and insurance for mobile and non-mobile consumer products in Europe – press releases 22/07/2011, available at: http://www.finaccord.com/press-release_2011_extended-warranties-and-insurance-for-mobile-and-non-mobile-consumer-products-in-europe.htm

⁷⁴ OFT (2012): Extended Warranties on Domestic Electrical Goods - An OFT market study and notice of the OFT's intention to accept Undertakings in Lieu of a Market Investigation Reference, OFT 1403, available at: http://www.of.gov.uk/shared_of/markets-work/OFT1403.pdf

⁷⁵ Ibid

⁷⁶ €4,350 million/(288 million x 18%) = €83.91

⁷⁷ Gartner (2012): Per cent of computers sold to Europe, available at: <http://www.statisticbrain.com/computer-sales-statistics/>

⁷⁸ Based on EU share of world of smartphone shipments (Q1 2013) taken from Gartner (2013). i.e. (31,600,000/225,326,200 = 14%)

⁷⁹ Based on EU share of world of mobile phone shipments (Q1 2013) taken from Gartner (2013). i.e. (43,600,000/435,158,400 = 10%)

⁸⁰ 8.9 per cent market share is reported for desk and mobile PCs (See <http://www.gartner.com/newsroom/id/2662915>) and 20% for mobile and tablet phones.

⁸¹ (81,000,000X10%)+(207,000,000X20%) = 49,000,000

⁸² 2% x (49,000,000 x 18%) = 176,400

⁸³ 176,400 x €35.6 OFT formula calculated unit detriment = €6.3million

the infringement was protracted in length; hence the true financial detriment is likely to be a multiple of this figure, minus a reduction in the utility received from the protection plan.

The impact of sanctions on deterrence is three fold. Firstly, legal proceedings take different amounts of time to complete in each Member State, therefore sanctions are imposed at different points in time. Sanctions imposed on the same trader in multiple Member States are therefore less effective than a coordinated sanction. Secondly, different sanctions may mean some Member States are perceived tougher/weaker than others in tackling cross-border infringements. Infringing traders may therefore choose to locate, register or operate where the likelihood of enforcement and its severity is lowest. Regulatory forum shopping is therefore possible where a trader settles in a Member State, where enforcement is not effective, from which it harms consumers across the EU. There is no evidence of this happening at present, however it is rational that some businesses relocate to Member States with the lowest corporate tax rate, least stringent gambling laws and that rogue traders (particularly operating online) are equally rationale in deciding to locate where enforcement is weakest.

Thirdly, as each Member State imposes sanctions individually, each is unable to take account of the full scale and scope of the infringement and its EU-wide nature. Deterrence is consequently weakened.

Conversely, in competition law enforcement sanctions can be imposed at EU level or collectively by groups of countries affected by an infringement. These sanctions are often more severe as they take into account the full EU-wide scale of the infringement. As such they are sending a much stronger message to traders who may consider committing infringements in the future. The main rules concerning Commission involvement in competition law enforcement under Articles 101 and 102 of the TFEU are set out in Council Regulation (EC) 1/2003⁸⁴.

Equipping the CPC authorities with the power to impose sanctions in cross-border context would ensure more even enforcement in the EU and boost its deterrent effect. It would also allow the authorities to take into account the real scale and scope of the infringement when imposing sanctions.

To increase their effectiveness sanctions may be accompanied by other measures taking away from the trader illicit gains from the infringement. Such measure can be very effective to dissuade traders from infringements. This may include not only direct confiscation of illicit profits (to public purse) but also powers forcing traders to establish compensation schemes or refund consumers can be highly effective in enhancing consumer confidence, raising the profile of competent authorities and making the malpractice of the trader public.

The OFT London 2012 Olympic ticketing case (Box 3) is an example where the interim order required the companies involved to refund customers who found their ticket to be invalid. Other recent consumer protection cases in the UK in relation to financial services and energy utilities have required companies to compensate consumers⁸⁵ by setting up their own compensation schemes to refund consumers affected by the malpractice directly. As opposed to fines which end up in the public purse these measures are aimed at direct reduction of consumer detriment through restitution of financial losses incurred by the consumers.

Extending this power to all CPC competent authorities as a complement to cross-border power to impose sanctions and to take into account the scale and scope of the infringement

⁸⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0001&from=EN>

⁸⁵ See the FCA decision in relation the miss selling of payment protection insurance (<http://www.fca.org.uk/static/documents/thematic-reviews/tr14-14.pdf>) and Ofgem order to EDF to compensate consumers (<https://www.ofgem.gov.uk/sites/default/files/investigation-edf-energy-plc-pursuant-part-8-enterprise-act-2002-potential-breach.pdf>)

could therefore be considered as an effective complement to sanctions that not only boosts their effectiveness but also directly reduces consumer detriment.

2.3.3.5 Naming of infringing traders

Article 4(6) of the CPC Regulation requires that where appropriate, competent authorities publish resulting decisions and undertakings resulting from enforcement action. However, it is unclear whether this extends to the naming of non-compliant traders or what is meant by 'where appropriate' leading to ambiguity in interpretation and differences in approaches across Member States.

Legal restraints, diverging national procedures and powers currently prevent some CPC competent authorities from publishing the names of non-complaint traders which are subject to mutual assistance requests or identified through coordinated market surveillance activities (Sweeps). The Member States which currently prevent the naming of infringing traders are the Czech Republic, Germany, France, Croatia, and Portugal.

The reason this is a problem is that naming can be an effective enforcement tool that reduces consumer detriment by informing consumers of where and which traders to watch out for. Different practices pursued by CPC competent authorities mean that some traders are exposed to public scrutiny and 'shaming' while others do not have to answer for their infringements in public. This currently creates an uneven level of enforcement, particularly in the DSM as consumers may be better informed in some Member States than others when using the same website.

2.3.3.6 Consumer redress

The CPC Regulation contains no mechanism for consumers to seek redress when their consumer rights are violated. This is a particular problem in the digital environment as seeking compensation for an infringement can be highly burdensome for consumers when the trader benefits from anonymity in a borderless environment. The burden relates to the search costs in finding the identity and address of the trader, which may be concealed or just difficult to find on a website. In some cases where the trader operates through multiple identities the consumer may not know which entity to contact to seek redress. Consumers are therefore discouraged from seeking redress cross-border and may not pursue compensation due to these barriers. The trader is therefore not sufficiently deterred from repeating the infringement again in the future as considerable profits can be obtained from such infringements.

For consumers to play a more active role in protecting their economic interests, tools should be available to support them and their representatives (e.g. consumer associations) in seeking redress. Requesting traders to provide redress can also be a complementary measure boosting the effectiveness of a sanction.

There is widespread consensus that CPC Regulation could be made more user-friendly for individual consumers attempting to claim compensation. In total, 87% of respondents to the public consultation stated that it is necessary to include new elements into the CPC Regulation which would facilitate compensation claims. One stakeholder highlighted that: *"the lack of effective mechanisms for private and collective redress has become a clear barrier to the effective enforcement of European consumer rights."* (Legal services & consumer protection firm, UK).

2.3.4 There are insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation, which impedes the cessation of infringements or creates delays.

The CPC Regulation and the implementing decision⁸⁶ establish a number of obligations on Member State competent authorities relating to mutual assistance mechanism, including:

- to supply relevant information and any documents relating to an intra-Community infringement (Article 4(6)) that would help determine the guilt of the trader or scope of the infringement;
- to cease the infringement through minimum enforcement powers specified in Article 4(6);
- to notify other competent authorities and the Commission of suspected infringements (Article 7);
- to request that exchanges contain “sufficient information” (Article 12), and
- to respond to an enforcement (Article 8) or information (Article 6) request “without delay”, adhering to the guidance provided in Annex 2 of the implementing decision.

As mentioned in the previous section, differences in procedures followed by competent authorities in handling mutual assistance requests results in a wide variation in processing times and the quality of mutual assistance exchanges. The following views expressed by CPC competent authorities reflect these deficiencies:

“Cooperation within the CPC network will not always guarantee that problems caused by actors in different countries will be resolved, at least in a timely fashion. The Finnish Consumer Ombudsman has recently submitted a request for action to the Swedish Consumer Agency and Konsumenteuropa (EEC Sweden) regarding the firstdate.fi online dating service, which has caused problems for Swedish consumers. While waiting for the Swedish authority to take action, more and more consumers might run into the same problems” (Finnish competent Authority).⁸⁷

“the quality of incoming requests is still very variable and information essential for the efficient processing of mutual assistance requests is sometimes missing. Cases in point are failure to provide a complete and comprehensive description of the case, to identify the relevant European and national legal bases, to quote the text of the national legal bases or provide supporting documentation - in particular, evidence of the alleged infringement. The resulting requests for the information/evidence needed are sometime dealt with very slowly, thereby delaying the overall processing of the case. Translation of important texts into English would be helpful in many cases, even although there is no obligation to do so...[also]...time limits for responding to requests, are widely ignored”(CPC Biennial report from Germany).

In addition, Latvian authorities highlighted a case where the enforcement request sent to an SLO in another Member State was not transmitted from the SLO to the relevant competent authority after more than one year⁸⁸. In that case the infringement continued because of ineffective cooperation.

Although the Latvian experience may be a less frequent one, delays in responding to mutual assistance requests, lengthy processing times before enforcement action is taken and /or the incompatibility of evidence provided to requesting authorities due to its poor quality or its format/content all contribute to less effective and efficient enforcement through the CPCs. The views expressed by stakeholders reflect the real presence of these problems but not

⁸⁶ EC (2006): Commission implementing decision of 22 December 2006 implementing 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 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007D0076&from=EN>

laws as regards mutual assistance

⁸⁷ Finnish Competition and Consumer Authority (2014): Consumer rights monitored across borders – editorial, current issues in consumer law, 1/14, 12 March 2014. Available at: <http://www.kuluttajaoikeus.fi>

⁸⁸ Biennial report of Latvia pp. 9. Case No. LV-2011.03.25-001

their scale. Consequently it has not been possible gauge the number of infringements affected or the length of individual delays to be addressed by this initiative.

The leading drivers of this problem are as follows.

2.3.4.1 Fragmentation of national legal systems and procedures

Differences in the procedures, practices and the efficiency of enforcement systems are contributing factors to delays in the timely cessation and prevention of infringements. Stakeholders responding to the public consultation stated that lengthy procedures and the inability to cease infringements quickly are two of the main challenges preventing effective enforcement and a loss of confidence among competent authorities in the CPC mutual assistance mechanism.

Differences in Member State understanding of their obligations under the CPC Regulation and in the procedures they adopt may be small, but the impact is often cumulative. A delay in one part of the mutual assistance process is likely to lead to a delay elsewhere and in any legal action which may follow. These differences are inherent to the public enforcement means that exist in a Member State and therefore cannot be addressed by this initiative alone. Changes to the CPC Regulation can reduce delays by tightening the obligations on competent authorities to share information and follow common procedures to minimise the problem, but it does not address the causes of the problem. Eliminating the problem would involve harmonising national legal systems which is not the objective of the CPC Regulation and possibly would not be in line with the principles of subsidiarity and proportionality.

Public enforcement may take place through different means (such as civil law, administrative law, criminal law) and through different bodies (administrative authorities, civil, administrative and penal courts, penal authorities, individuals and associations). Besides the three enforcement regimes described above are not mutually exclusive. The Commission's 2014 legal study shows that all three public enforcement regimes may coexist in one Member State. Delays are noted to be significant where the applicant and requested authority apply different enforcement regimes, as standards of evidence and burden of proof required vary by the enforcement regime followed and may not be familiar to the competent authority in another Member State responding to a mutual assistance request.

Differing standards for establishing evidence may lead to problems and delays when responding to CPC mutual assistance requests as:

- evidence provided by the applicant authority to the requested authority being insufficient to follow up a CPC request in another Member State;
- the applicant authority uses significant resources in collecting evidence, which the requested authority does not require to take an action; and
- evidence collected by the requested authority is inadmissible in another Member State due to its form.

Inadmissibility of evidence is a particular problem in Germany where there is an established system of private enforcement through local courts, which many competent authorities in other Member States are not familiar. Similar issues arise in local court systems where translation of documents has been requested and which is not a requirement of the CPC Regulation. For example this could include details of how the evidence has been obtained, by whom, the level of detail it contains and its format. According to biennial reports, the external evaluation and comments received in the public consultation inadmissibility of evidence is a common problem. This does not mean that enforcement is stopped, but rather it is delayed in most cases. This reduces the effectiveness of the CPC mutual assistance mechanism, but also generates additional and avoidable costs for competent authorities.

An added complication is that as decisions are reached and evidence is gathered in different public enforcement regimes, so recognition of the evidence and decision is not assured cross-border. The elements of national systems which make recognition difficult include: different burdens/standards of proof in legal proceedings; differences in how evidence is

gathered (investigation powers are often tailored to national enforcement regimes); and different statutes of limitation.

The CPC Regulation requires that sufficient information must be provided, but there is no unique standard for this due to different enforcement proceedings (administrative, civil and criminal) in different Member States. The burden/standard of proof is particularly high when enforcement is carried out through criminal proceedings and may be difficult to meet due to the fact that the majority of the infringement proceedings are based on consumer complaints. Furthermore, especially for the infringements committed through electronic means, the correct format of evidence may not be available⁸⁹. This may be exacerbated by the investigation powers – which are usually tailored to the required standard of proof – granted to the competent authorities in the context of different national enforcement systems where the burden of proof is lower. Ultimately, due to the differences in enforcement systems, one authority may not be able to collect evidence that meets the burden/standard of proof and requirements in another Member State.

These variations and differences in the choice of enforcement regime and means among Member States are reflected in the current CPC Regulation. For instance, when a national competent authority is requested by another Member State's competent authority to take enforcement measures under Article 8 of the CPC Regulation, **it acts within the framework of its national procedural rules**. This implies that depending on the country's enforcement regime, provisions of national law on civil, administrative or criminal proceedings may apply to such requests. Despite recognising national differences, the experience of authorities using the CPC mutual assistance mechanism is that the procedural standards are not sufficient to ensure effective and efficient enforcement without delays and/or misunderstanding, to the extent that authorities lose confidence in the mutual assistance mechanism.

Competent authorities in biennial reports have noted that they act outside the CPC framework. For example: *“in the air transport sector, in order to obtain results more quickly, a number of Member States have preferred to take action directly with representative of airline companies on their own territory, rather than notifying the competent authorities responsible for these companies via the CPC Network”*.

For authorities to realise the benefits of the CPC Regulation, a better general understanding should exist regarding Member States' obligations and that efforts are made to improve the functioning the CPC network so that authorities have confidence and realise its benefits.

Differences are particularly acute in the DSM, where standards and procedures for enforcement in the digital environment have been developed at different times and to differing degrees by the Member States and remain largely fragmented. As a result the problem of different enforcement practices and procedures is more pervasive, leading to much less effective and efficient protection for consumers in the digital economy.

For example, France, the UK, Latvia and Poland are the only Member States to recently introduce legislation with a “digital fit”, i.e. clarifying consumer rights in the digital economy, providing mechanisms for consumer redress and enhancing the powers of authorities to adequately protect consumers in the digital environment⁹⁰. However this update to authority powers is not universal and is much less developed in other Member States.

⁸⁹ The Commission Legal Study (2014) suggests that inconsistencies on the standard of proof may be overcome through the reference to the extensive jurisprudence of EU courts, which have clarified that the authority needs to only gather information which is sufficiently complete to enable it to meet the relevant standard of proof. Moreover, some Member States have inverted the burden of proof for the national competent authorities. The results of their investigation are considered to be correct until the contrary is proven (rebuttable presumption of correctness). A similar rule (rebuttable presumption of correctness of the applicant authority's investigation results), introduced at the EU level, may help to overcome the procedural hurdles linked to the burden/standard of proof.

⁹⁰ See UK Consumer Bill of Right 2015, available at: <http://discuss.bis.gov.uk/consumerrightsbill/>

An added problem associated with different legal systems is that as each competent authority takes action within its own national law and jurisdiction, it can be difficult for courts to account for the harm suffered by consumers in other Member States when taking decisions. In many cases, the court is unaware that the same infringement is repeated in other Member States. In others, taking action solely on behalf of consumers in other Member States is difficult due to the limited jurisdiction of the court or body designated as competent under Article 4(2) of the CPC Regulation. To address this issue, Spanish regional competent authorities have established administrative structures for consumer protection and passed laws to ensure infringements of a cross-border nature are investigated and stopped in an autonomous and decentralised institutional framework. In Germany, the BVL (now Ministry of Justice) works to ensure public and private enforcement systems coexist and that local courts have jurisdiction to take action and sanction cross-border infringing traders. The external evaluation mentions situations where jurisdiction has been a problem for effective enforcement, particularly due to questions of applicable law regarding who should take action. Despite clarification of the applicable law question by the Commission it can still be difficult to impose a sanction which takes account of the extra-territorial harm caused by the infringement. Absence of strict deadlines regarding mutual assistance requests/responses and obligations to notify cases within the CPC network contribute to this problem, as authorities and courts are not made aware of the extra-territorial dimension of cases or that the infringement is a repeat offence by the same trader.

Articles 6 and 8 of the CPC Regulation oblige authorities to respond to an enforcement or information request “without delay”. Further, the CPC implementing decision sets benchmarks for responding to these requests. Despite this, the response of competent authorities to the public consultation and biennial report findings suggest there is still huge variation in the time it takes different authorities to respond to mutual assistance requests, causing delays to legal proceedings and ultimately the cessation of infringements. In the example provided by Latvian authorities above, where the delay in transmitting the request between SLO and designated competent authority lasted more than a year, no enforcement was effectively possible. As a result, fewer cross-border infringements are tackled through the CPCS and informal contact between authorities is likely to increase. The scale of the problem is demonstrated in consultation undertaken in the external evaluation which found that stakeholders rated a slow response to information/enforcement requests as the most important⁹¹ practical barrier to mutual assistance cooperation. The evaluation also found that a small number of infringement cases were held up in the CPCS due to delays in responding to requests, resulting in no enforcement action in some cases. Evidence obtained from interviews with competent authorities is provided in Box 7.

Box 7 Competent authority comments on the timescale of CPC procedures

“The length of the whole procedure takes too long. It would be useful if the whole procedure would be quicker, less formal, and more informative”

“One of the main weaknesses is the systematic delay in the procedure. Most of the time, actions are taken with such delay that the effectiveness of the process is lost. Member States should respect the deadlines established in the CPC Regulation.”

Source: Interviews with Member State competent authorities, taken from the external evaluation

⁹¹ 61% of stakeholders rated the barrier either extremely important (47%) or highly important (14%)

2.4 Sub-problem 2: Widespread infringements are not being addressed effectively by the CPC Regulation

This sub-problem concerns a group of deficiencies within the current CPC Regulation related to widespread EU infringements (i.e. infringements affecting several Member States at the same time). These infringements are currently not being tackled efficiently or effectively because:

- widespread infringements made simultaneously by companies in several Member States are not in the scope of the CPC
- competent authorities (and the Commission) have insufficient enforcement powers to efficiently and effectively cease EU-relevant infringements, and
- procedures and the coordination role of the European Commission in joint enforcement actions under Article 9 of the CPC Regulation is unclear.

In the public consultation, 82% of respondents judged EU widespread infringements to be highly important for improving the effectiveness of enforcement. Each of the above drivers of the problem are now discussed below.

2.4.1 Widespread infringements made simultaneously by companies in several Member States are not in the scope of the CPC

Infringements, made simultaneously in several countries by related companies (i.e. subsidiaries of the same multinational company, franchisees) or unrelated companies which are however obliged to align to competition (i.e. air travel, online booking of travel services) are currently not explicitly tackled through the CPC Regulation. In most of the cases malpractices perpetrated in such a ways are treated as "parallel" domestic infringements and are addressed independently by national enforcement authorities. In doing so, authorities fail to take into account the across the EU dimension of malpractices and the need for a coordinated EU level action to offer a consistent approach across borders.

2.4.2 Widespread infringements are not being tackled efficiently or effectively as competent authorities (and the Commission) have insufficient minimum investigation and enforcement powers

The minimum enforcement powers of authorities are limited to those defined in Article 4(6) of the CPC Regulation. In practice this means that when competent authorities take action to cease an EU widespread infringement, each does so in parallel or separately, at a different time to each other depending on the length of the legal proceedings pursued in each Member State. As such, authorities do not systematically take into account the decisions taken in other Member States or the EU wide scope of the infringement. In certain cases, because of poor market surveillance and limited information sharing via the alert mechanism, national authorities are not even aware of the enforcement actions taken by other national authorities regarding the past and current infringements committed by the same trader. Unaware, the infringements of the trader in a given Member State may go undetected or could be detected quicker if the market intelligence from other Member States is available. Competent authorities also duplicate resources by taking enforcement action possibly in all 28 Member States, when a single Member State (acting on behalf of others), the Commission or a group of Member States could feasibly lead an enforcement action which would reduce the costs to a single legal proceeding and imposition of a single EU-wide sanction. The Apple case presented earlier (Box 6) is an example where resources were duplicated and where a more coordinated and uniform approach to enforcement would have been more effective and efficient.

The result is that decisions taken in different Member States can be inconsistent where some Member States consider the law to be violated while others conclude that no law has been violated even where they concern the same infringement. The sanctions imposed can also differ. This not only reduces the deterrent as the scale of the infringement is not fully

captured in the sanction, but it also distorts the level playing field in the internal market. Both these issues are exemplified by the Apple case, In this case, the variation in sanctions was particularly stark between Spain and Italy, with no enforcement action taken in other Member States.

In such complex cases, enforcement would benefit from more coordinated action by the authorities concerned. This could include following an Article 9 procedure to ensure the outcome of legal proceedings are consistent or the ability of a Member State or the Commission to impose EU-wide sanctions which fully reflect the scale and scope of the infringement.

The need to act EU wide is particularly important in the DSM as major players in the online/digital economy implement identical business models and practices at a global level. Enforcement action in contract is typically national taken on a Member State by Member State basis, leading to a considerable time-lag before an infringement is stopped EU-wide. Enforcement is often not equal for the reasons described. Digital players are therefore left with uncertainty whether their practices are compliant in all Member States, generating legal costs and they are prevented from realising the benefits of operating in a larger internal market. SMEs operating in the DSM are particularly affected as they may be discouraged from trading cross-border due to the costs in resolving this legal uncertainty.

This is also linked to the problem of insufficient means for investigation discussed earlier as the problems in gathering digital evidence, conducting test purchases and mystery shopping are all relevant to tackling EU widespread infringements. Without enhanced and more uniform powers, it would be difficult to gather sufficient evidence of the scale or scope of a trader's infringement to justify an EU level enforcement procedure.

In terms of scale, a short survey of competent authorities⁹² conducted by the contractor indicates that authorities estimated between 6-8% of infringement tackled can be considered EU widespread, involving three or more Member States. Further, they indicate this number has increased over the last five years, a trend which is expected to continue.

2.4.3 The procedure and the coordination role of the European Commission in common enforcement actions under Article 9 of the CPC Regulation is unclear

Article 9 of the CPC Regulation establishes a procedure for the coordination of market surveillance and enforcement activities conducted between Member States. Common enforcement actions can be initiated by one or more Member States, the Commission can be invited to participate in the common enforcement action. In practice, this role is limited to observation or administrative support to facilitate coordination (i.e. by facilitating meetings, organising workshops). The Commission Decision of 1 March 2011 defines the Commission role as⁹³: *"The Commission shall facilitate the coordination of activities pursuant to Article 9(1) and (2) of Regulation (EC) No 2006/2004 if invited"*.

Further, the Commissions access to data is limited *"to what is required under Regulation (EC) No 2006/2004. This includes access to alerts pursuant to Article 7(1), to notifications pursuant to Articles 7(2) and 8(6), and to information relating to the coordination of market surveillance and enforcement activities pursuant to Article 9 and to conditions pursuant to Article 15(5) of Regulation (EC) No 2006/2004"*.

Article 15(5) allows the Commission to have an opinion formulating role where national competent authorities have not found a satisfactory solution to certain infringement cases. However, the precise role of the Commission is unclear which can hinder its involvement in cases where its active coordination could be beneficial. If the Commission were involved more in the functioning of the CPC mutual assistance mechanism and in coordinated

⁹² Responses were received from competent authorities in Czech Republic, Denmark, Hungary Latvia, Lithuania, and Spain..

⁹³ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011D0141&from=EN>

enforcement actions under Article 9, it could manage the inputs of Member State authorities, ensure requested actions are completed in a timely manner, provide guidance to authorities based on previous case experience and disseminate information among the actors. An enhanced role could result in the Commission preparing the coordinated enforcement actions, summarising the evidence and providing legal interpretation of the EU law, scoping the action and agreeing on the action plan and timeline with the national enforcement authorities concerned. The Commission could be the sole contact point for the traders concerned and would organise and chair the meetings.

Without a more systematic approach to tackling widespread infringements which leverages the role of the Commission to facilitate better cooperation and coordination of Member States enforcement actions, and allows the dissemination of lessons learned, infringements can take longer to investigate and stop. The Infun and Apple cases have shown how legal proceedings are duplicated and conducted at different times, while investigations remain drawn out and uncoordinated. Each Member State following different leads or gathering the same evidence. In contrast, the benefit the Commission can bring to such cases is demonstrated in Box 8 where the Commission coordinated a common action on in app purchases in on-line and mobile games. The Commission together with the Member States was able to leverage its influence to achieve a successful outcome which Member State acting on its own may have found difficult to achieve.

The scale of widespread infringements is uncertain, however as mentioned in the previous sub-section, consultation responses indicatively show that 6-8% of infringements are EU widespread and the number is increasing. Detriment is typically higher than average per EU widespread infringement as the number of consumer affected is also higher.

Box 8 In-app purchases: Joint action by the European Commission and Member States is leading to better protection for consumers in online and mobile games

Numerous consumer complaints were received by competent authorities about in-app purchases in online games, especially those targeting children.

This triggered a joint enforcement action, whereby the national authorities and the Commission were working together to solve the issue.

As a result a common position was agreed within the CPC network on the following:

- games advertised as "free" should not mislead consumers in terms of the real costs;
- games should not persuade children to buy items in a game;
- consumers should be informed about payment arrangements, and payments cannot be collected through default settings, without the consumers' explicit consent; and
- traders should provide an email address for consumer contact.

These conclusions were communicated to Apple, Google and the Interactive Software Federation of Europe⁹⁴. They were asked to propose changes to address the concerns raised. Google decided on a number of changes. Implementation was completed by the end of September 2014. These changes include not using the word "free" at all when games contain in-app purchases, developing targeted guidelines for its app developers to prevent direct exhortation to children as defined under EU law and time-framed measures to help monitor apparent breaches of EU consumer laws. It has also adapted its default

⁹⁴ The European Games Developer Federation (EGDF) and International Social Games Association (ISGA), also representing game developers and platforms, became aware of the CPC common position at the beginning of 2014 and asked to be part of the ongoing discussions with the CPC authorities.

settings, so that payments are authorised prior to every in-app purchase, unless the consumer actively chooses to modify these settings. Since July 2014, Apple and Google have made a number of engagements to better inform consumers about the true costs involved in certain on-line games and to strengthen the payment authorisation settings. Following the recommendations of national authorities, Apple has made further proposals which national authorities considered to be a positive step, especially with regard to the withdrawing of the use of the word "free" when games offer in-app purchases and to the preparation of a change of default payment settings..

It was concluded that coordinated enforcement action made a real impact leading to enhanced consumer confidence in the app-sector. Regarding the procedure, a practical lesson is that cooperation can lead to better result in enforcement.

Taking into account the amounts that Apple and Google agreed to refund consumers in US settlements on the same issue, it could be estimated the CPC action ceasing the infringement potentially saved consumers €68 million in detriment.

The national authorities may take further enforcement actions, including legal actions and the Member States and the Commission will continue to monitor the issue.

Source: European Commission (2014): In-app purchases: Joint action by the European Commission and Member States is leading to better protection for consumers in online games, available at: http://europa.eu/rapid/press-release_IP-14-847_en.htm and updated press release at: http://ec.europa.eu/justice/newsroom/consumer-marketing/news/1401222_en.htm

2.5 Sub-problem 3: Differences in market surveillance and enforcement priorities across Member States

There exist differences in how Member States use the CPC Network to provide an early warning of potential infringements, share experience and disseminate intelligence from market surveillance activities. There are differences in how authorities obtain this information, with some making use of information available from consumer associations and other relevant stakeholders. Equally, there is limited alignment of enforcement priorities among Member States, which can result in the duplication of enforcement efforts and ineffective use of resources or insufficient information exchange (volume and/or quality) that does not permit competent authorities to take effective enforcement action (i.e. to alert consumer of possible harm or cease the infringement).

Differences in market surveillance priorities and lack of consistency in some Member States practices include:

- Limited scope of the CPC alert mechanism under Article 7 of the CPC Regulation;
- No mechanism to efficiently use information gathered from outside the CPC Network;
- Differences in the capabilities, capacities and engagement levels of competent authorities.
- Absence of formalised systems for recording and disseminating information from market surveillance, and
- Limited alignment of enforcement priorities among Member States.

2.5.1 Limited scope of the CPC alert mechanism

Over 44% of respondents to the public consultation considered the current system of surveillance and alerts under the CPC Regulation to be insufficient. The view was most keenly expressed by public authorities or governments, ECCs and consumer associations. There was also common consensus among stakeholders of the importance of EU measures supporting information exchange.

The current scope of the alert system (Article 7) allows competent authorities to circulate early warning messages when they become aware of suspected intra-Community infringements. The exchange is typically limited to a short description of the product/supplier concerned and the violation of consumer rights suspected or taking place. SLOs and NCAs have access to this information and the Commission is notified but has no access to the information exchanged. The message is sent untargeted as a blanket alert to all authorities connected to the CPCS, irrespective of its relevance or priority.

To have the maximum impact, the information exchanged must be relevant to those receiving the information. At present, the blanket nature of alert distribution reduces its impact as authorities may disregard alerts which appear not to be of immediate interest, lose confidence in its purpose and therefore fail to act upon the information provided.

The CPCS is also a closed system, so the information transmitted between competent authorities is not disseminated to those organisations who can potentially do the most to protect consumers by informing them of the commercial practices of concern and the sectors in which rogue traders are most active. Due to the often confidential and sensitive information contained in alerts there is good reason why alert information is not shared more widely. However, by not allowing European Consumer Centres, consumer associations, advocacy groups and ombudsmen to post alerts on the CPCS, competent authorities cannot benefit from the market intelligence and trends in consumer complaints that these sources of information can provide. The information contained in these alerts can be used to better allocate resources to enforcement and to take preventative actions, such as posting warning notices in the media or the targeting of consumer awareness campaigns to educate consumers. Detection, prevention and enforcement of infringements would be more effective where alerts are more targeted. There may also be a role for the Commission to identify and disseminate information on EU-wide risks, where identification has been made by other parties (i.e. non-EU authorities, consumer associations, etc.). This problem is confirmed by the public consultation, which concluded that an effective alert system must contain the possibility for alerts to be made public (49% of respondents) with the possibility for the European Commission (40%) and other organisations with an interest in enforcement of consumer rights (54%) to post alerts. Many Member States already work to develop closer cooperation and coordination with consumer associations and European Consumer Centres to obtain information about market developments and infringements through the Consumer Justice Enforcement Forum (COJEF) project⁹⁵. However, as the public consultation shows, there is desire to formalise the role of outside organisations in the CPCS to strengthen enforcement cooperation.

2.5.2 No mechanism to efficiently use information gathered from outside the CPC Network

The current alert mechanism does not make the best use of the information available on the potential risks to consumers from unlawful business practices. Based on limited information available within the CPC Network, enforcement is less effective than it could otherwise be if it took into account market intelligence, trends in consumer expenditure and business conduct available from consumer associations; ECCs; consumer ombudsmen; the European Commission (i.e. digital economy indicators); Consumers Executive Agency (CHAFEA), and national consumer advocacy groups (e.g. VZBV, Which?).

The impact of the problem is that large number of intra-Community infringements are not detected by competent authorities, reflected in the present low caseload of the CPCS. Indeed, the current caseload suggests some 99% of infringements are not detected or enforced.

⁹⁵ <http://www.cojef-project.eu/>

2.5.3 Differences in the capabilities, capacities and engagement levels of competent authorities

The administrative capacity to exercise the powers granted to enforcement authorities is important for effective and efficient cross-border cooperation. Variation between Member States capability, capacity and willingness to make use of the mutual assistance mechanisms is a contributing factor to uneven enforcement.

While every effort is made to record resources as full-time equivalent (FTE) it is unclear how consistently Member States provided this information in the external evaluation, therefore the reliability of submitted data is often questionable. Recent updated information provided by Member States in their biennial reports indicates the following:

- About 1-2 FTE are responsible for CPC Regulation in each Austrian competent authority;
- In Denmark, 14 FTE are responsible for consumer protection, of which 1.5 FTE are responsible for CPC Regulation related activities;
- In Estonia, 61 FTE are employed by the national consumer protection authority, of which 2 FTE are responsible for CPC Regulation;
- In Hungary, up to 11 FTE are responsible for CPC Regulation across all authorities;
- In Italy, 2.5 FTE work full time in relation to CPC Regulation, but can be supported by 45 other employees in the SLO/NCA;
- France devotes 2.3 FTE to CPC Regulation activities;
- 13 FTE in all national authorities are responsible for CPC Regulation in Romania;
- There are 21 potential authority users of CPC Regulation in Slovakia; and
- In the UK there are 1,077 staff working on consumer protection all of which could potentially assist in CPC Regulation activities, the exact number is unknown.

There is clearly a wide divergence in the resources available to Member States and hence their ability to efficiently and effectively tackle intra-Community infringements, particularly those which are EU-relevant and require a Member State to take the lead in joint enforcement activities. The picture above suggests only a limited number of Member States have the dedicated resources with the understanding of the CPC Regulation to take on such a role.

There is also competition for scarce resources in enforcement authorities, with the tendency for less complex and quicker to resolve domestic cases to be given priority over cross-border infringements, adversely affecting the functioning of the mutual assistance mechanism. Limited awareness of the wider benefits of cross-border enforcement, as many more consumers are potentially protected, is also considered a driver of this preference for domestic case handling.

2.5.4 Absence of formalised systems for recording and disseminating information from market surveillance

A review of systems at national and EU level in the consumer field found that there are no systems established for the collection, storage and dissemination of market intelligence for economic consumer protection purposes. Systems for cooperation exist in Spain and Germany to enable local/regional authorities to coordinate responses to mutual assistance requests which are received at national level by SLOs.

For maximum effect, the market information gathered by competent authorities and other organisations should be recorded for future use and disseminated to those who can act to protect the economic interests of consumers.

The external evaluation highlighted that the absence of a depository for market surveillance information and a structured approach to sharing this information means that enforcement lessons often have to be relearned repeatedly in each Member State where the infringing trader is present and there is limited knowledge of how business practices evolve in different consumer sectors. Equally, this information is not structured and disseminated in such a way that authorities can efficiently find and extract the information they need to take effective action.

The exchange of information and intelligence between Member States is often limited and fragmented in the current CPC Network. Best practices in alerts and intelligence sharing practices provided in the public consultation highlighted RAPEX and RASFF, the EU's rapid alert systems health and consumer safety, and food and feedstuff respectively as successful and potentially feasible EU-level models for resolving these problems.

2.5.5 Limited alignment of enforcement priorities among Member States

Different enforcement priorities of Member States are a feature of different consumption patterns (and sources of harm) in Member States and the compliance behaviour of businesses. It is therefore expected that national authorities set and follow national enforcement priorities.

However, the notion of intra-Community infringements highlights that an increasing proportion of infringements have a cross-border element or takes place in parallel in several Member States. In response to this, alongside the CPC planning and prioritisation process which identified five priority areas in 2013 and integrated them in the multi-annual framework for joint actions for 2014-2016, a permanent e-enforcement group was established in April 2014⁹⁶. The purpose is to enhance the CPC network's e-enforcement capacities by pooling expertise to help the CPC network to identify emerging online threats to consumers, and to better target its online enforcement actions. It will also assist the national authorities with training and state-of-the-art tools in online investigations

The problem is that these priorities are not only very divergent but are also not sufficiently disseminated or acted up to achieve optimal results. Coordinated market surveillance (Sweeps) have proven highly valuable in identifying non-compliance and raising awareness of enforcement challenges. However, as the external evaluation noted there is limited follow-up to build on these successes.

Better aligned enforcement priorities would allow authorities to allocate resources more effectively and efficiently by sharing information and reducing the duplication of effort where enforcement authorities investigate the same trader in multiple Member States, when this could be done in a single Member State where the head office of the trader is located. In other cases, evidence gathered in one Member State could be used in another, avoiding the need for additional investigation.

2.6 Baseline scenario

The problem assessment has shown several deficiencies with respect to the current approach to CPC framework cooperation and coordination. These deficiencies undermine the effective and efficient enforcement of consumer rights, contributing to increasing detriment suffered by consumers, costs of enforcement for competent authorities, and the absence of level playing field for EU businesses when trading cross-border.

Three factors will affect the evolution of the problems that the policy options are designed to address and hence the scale of the benefits that could accrue. **Firstly**, the underlying trends in cross border shopping (and infringements) by consumers in the EU. **Secondly**, the compliance behaviour of businesses trading cross-border. **Thirdly**, the degree to which existing initiatives may lead to improvements in the effectiveness and efficiency of cross-border enforcement in the EU.

⁹⁶ COM(2014)429 – Report on the functioning of 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 (the Regulation on consumer protection cooperation) 1//14 available at: http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/140701_commission_report_cpc_reg_en.pdf

Each of these factors was elaborated and taken in to account when estimating the future caseload baseline of the CPC for five consumer products in the EU28. The number of consumers affected and the financial harm suffered was also estimated

2.6.1 Trends in intra-Community consumer expenditure

Intra-Community consumer expenditure is growing. Consumers are increasing purchasing goods and services cross-border, particularly in the DSM. Businesses are expanding to operate in more Member States.

The trends in cross border shopping can be illustrated by the developments in cross-border online sales. Online retail sales are forecasted to increase as a share of consumer expenditure in all Member States between 2013 and 2018⁹⁷. According to research by the European Multi-channel and Online Trade Association⁹⁸ 14% of online sales in 2014 were non-domestic business-to-consumer sales (including both EU and non-EU cross border sales). This is expected to increase to 20% by 2018.

According to a Eurobarometer study⁹⁹ as of 2011 approximately 10% of enterprises had outlets or subsidiaries in another EU country; 4% in one other country, 2% in 2-3 other countries and 4% in 4 or more countries¹⁰⁰. Traders are increasingly operating in multiple Member States through branches, subsidiaries, franchises or agents. Consequently, an increasing proportion of domestic retail sales have a cross-border dimension (i.e. parallel domestic sales).

2.6.2 Number of expected infringements

Figure 2.2 summarises the number of infringements forecast for five consumer products, broken down by type of infringement.

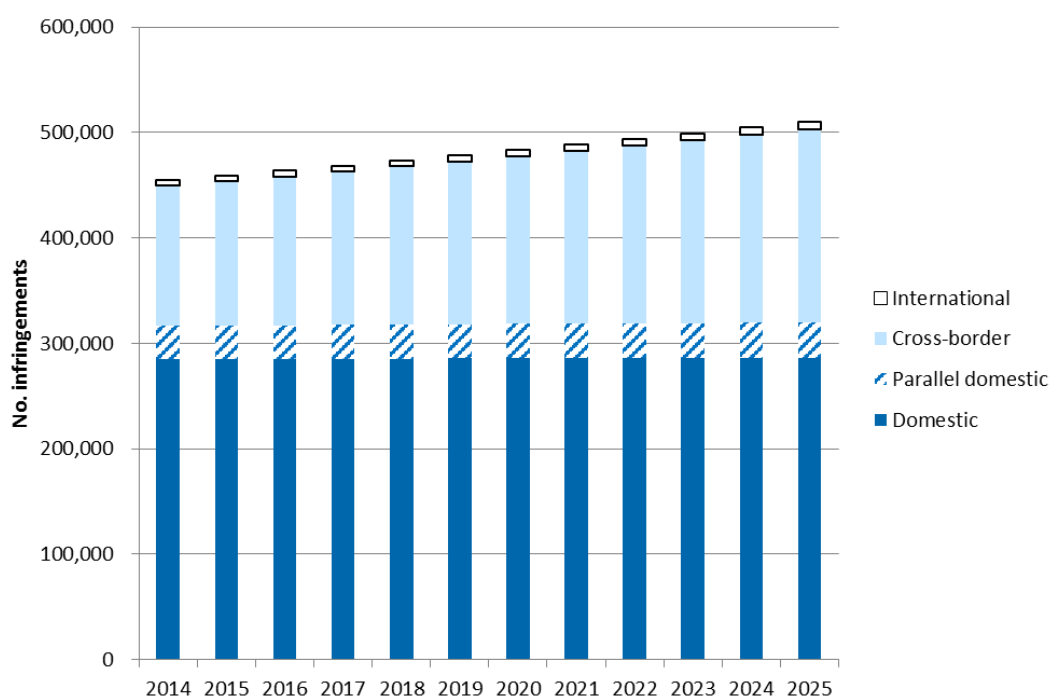
⁹⁷ Forester Research Online Retail Forecast, 2013-2018, summary available here: <http://ecommercenews.eu/online-sales-in-europe-will-grow-to-e233-9bn-by-2018/>

⁹⁸ <http://www.thepayers.com/ecommerce/western-europe-cross-border-sales-to-double-by-2018-report/755903-25>

⁹⁹ Flash Eurobarometer 300 on business attitudes towards cross-border trade and consumer protection. http://ec.europa.eu/consumers/archive/strategy/docs/retailers_eurobarometer_2011_en.pdf

¹⁰⁰ EU27 data was used and it was not possible to disaggregate by sector.

Figure 2.2 Forecast number of infringements in the baseline, by type 2014-25



Source: ICF Baseline report

An increasing proportion of infringements are forecasted to involve a cross-border dimension (i.e. parallel domestic, EU cross-border or international), while the number of domestic infringements is expected to diminish slightly over time. Overall infringements with a cross-border dimension (as share of the total infringements) are estimated to increase from 30% in 2014 to 36% in 2025. The growth reflects the trends in consumer expenditure and business organisation noted above.

Differences exist in the proportion of infringements which can be considered intra-Community by consumer product market. The baseline is based on five product markets and therefore only provides a snapshot of the typical breakdown between domestic infringements and those with a cross-border dimension. Figure 1.1 illustrates what total proportion is likely to be in other consumer markets.

In the baseline the number of intra-Community infringements varied between a high of 100,000 infringements related to electronic goods and only 233 related to consumer credit in 2014. As the number of consumers affected by each infringement also differs, this does not mean that associated consumer detriment is lower in the consumer credit market than in the electronic goods sector. In fact, the number of the consumers affected by each infringement in the consumer credit market is much greater, as is the harm financial harm suffered.

Short lived and EU-relevant infringements

There is a lack of data in respect of short-lived cross-border infringements. Based on data made available by the competent authorities of the Member States it can be established that around 8-10% of cases (per year) are short-lived. There is no reliable evidence to suggest this proportion will change over time, although the number of infringements will increase as the number of intra-Community infringements increases and as on-line trade increases given that many of them happen online.

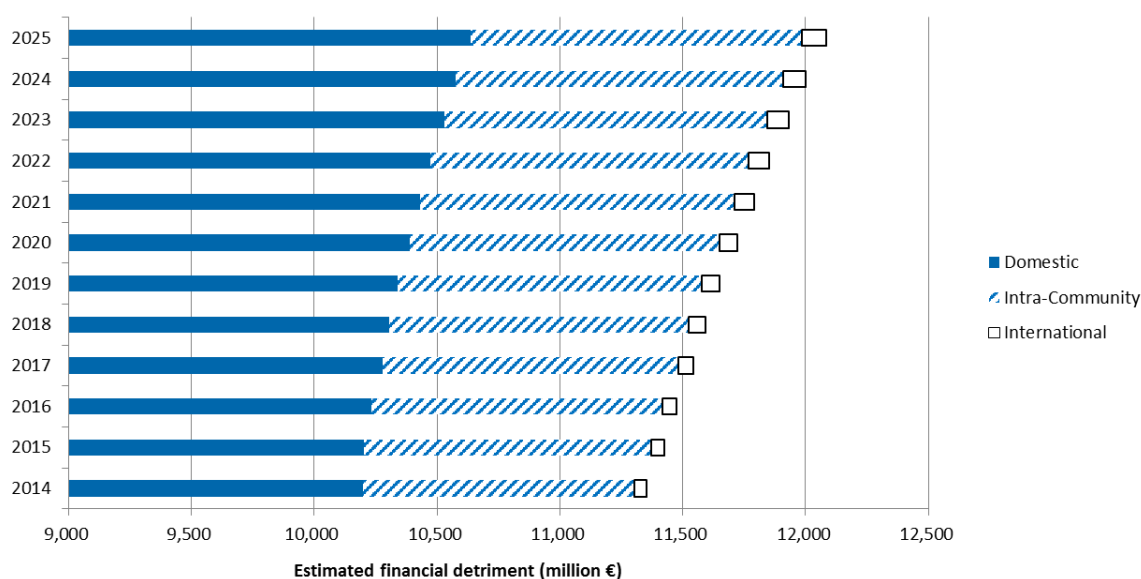
Limited data from Member State authorities also provides an indication of the proportion of intra-Community infringements handled each year that can be considered EU-relevant, as they concern more than two Member States. Conservatively, around 3.5% of the total

caseload is considered EU-relevant infringements, with authorities reporting increases of up to 19% per annum in some Member States. In-app purchases, online furniture sales and extended warranties of electrical products are all recent examples of such infringements in the digital economy.

2.6.3 Consumer detriment

The total detriment suffered by consumers from all type of infringements in the baseline is estimated to increase from €11.4 billion to € 12.1 billion (a six per cent increase) between 2014 and 2025, shown in Figure 2.3, based on the estimates for the detriment for the five representative consumer sectors, scaled up to the whole economy.

Figure 2.3 Forecast consumer detriment in the baseline, by type of infringement 2014-25



Intra-Community infringements are expected to generate financial detriment equivalent of €1.1bn in 2014, increasing to €1.3bn by 2025 for the sectors assessed. International infringements account for a further €50 to €100m over the same period. The high value of electronic and consumer credit are in part drivers of this result, affecting large numbers of consumers (50 million by 2025). For the five consumer markets covered in the baseline, intra-Community consumer detriment is the highest in clothing (€ 467 million) and the lowest in food supplements (€ 131 million). Other sectors associated with higher levels of detriment not covered in the baseline includes those selling high value products cross border such as furniture, vehicle rental, car sales and holidays. The Infurn furniture case illustrates how many consumers suffered extensive detriment.

The five consumer products on which this analysis is based is found to account for approximately 10% of total consumer expenditure on consumer goods and services, based on Eurostat COIOP data on each sector's share of total consumer expenditure. Scaling up the baseline estimates by multiplying by ten provides an estimate of detriment from intra-Community infringements affecting the whole consumer economy, addressed by the options proposed in this study. The total consumer detriment estimated for intra-Community infringements (cross-border and parallel domestic) is €11bn in 2014, increasing to €13bn by 2025 (an X18% increase) in the baseline.

2.6.4 Other legislative initiatives supporting cross-border enforcement

There are a number of parallel EU legislative initiatives which affect the scale of the baseline which should be taken into account before determining the projected scale of the problem.

Alternative Dispute Resolution (ADR)¹⁰¹ and Online Dispute Resolution (ODR)¹⁰² legislation allows consumers and traders to solve their disputes through quick, low cost and simple procedures, avoiding the high costs of court proceedings. The introduction of these tools is intended to support greater private enforcement of consumer rights by empowering consumers to monitor trader compliance with the law and seeking redress as appropriate. The legislation supports the mutual objectives of the CPC Regulation by enhancing consumer protection, particularly in the DSM, and supporting the establishment and well-functioning of the internal market. ADR/ODR relies on private action by individual consumers, as such the amount of detriment compensated for is likely to be low. In contrast, the CPC Regulation is concerned with public enforcement, tackling infringements which affect the collective interests of consumers and therefore the amount of the detriment involved is much greater. Compensation or punishment imposed is therefore of greater value. This distinction suggests the legislation is complementary rather than overlapping as each tackles different types of harm by different means. Any reduction in projected baseline consumer detriment from ADR/ODR is consequently judged to be small.

In addition to the review of the CPC Regulation, other legislation contained in the Commission's DSM strategy share the same objectives and will affect the baseline. This includes legislation proposed under Pillar 1 of the strategy to: a) update the e-commerce directive; b) harmonise the rights, obligations and remedies in sales contract law between the digital and traditional economy, c) launch an antitrust competition enquiry in to e-commerce to identify potential competition concerns, and d) establish an EU-wide online dispute resolution platform, as mentioned under the paragraph on ADR/ODR above. Without any changes to the current CPC Regulation, the above package can be expected to reduce consumer detriment by improving business compliance with consumer law. For example, a competition investigation would identify possible unfair commercial practices leading to enforcement action and/or other remedies to improve the performance of the market for consumers. Simplification and clarification of consumer rights would improve business understanding of their obligations and consumer's understanding of their rights to exercise them in the Single Market. However, many of the initiatives are ultimately not going to reach their potential without effective cross-border enforcement. Hence, the reduction in consumer detriment is considered small, particularly cross-border and in the digital economy for the reasons described in the problem section relating to the enforcement challenges in the digital economy that a modified CPC Regulation can address.

2.7 The EU's right to act

The rationale for the CPC Regulation was clearly demonstrated in Section 1: to provide a cooperation framework between national competent authorities and the Commission to enforce EU consumer rules.

Any revision of the CPC Regulation must however adhere to principles of subsidiarity and proportionality which provide the rationale for the Commission to act on behalf of Member States. The EU's right to act is introduced below and should be considered when developing possible intervention measures and designing the policy options.

2.7.1 Subsidiarity principle

Left to Member States, cooperation between national authorities responsible for the enforcement of consumer protection law would not be sufficient to ensure the protection of consumers economic interests. Acting individually to resolve domestic infringements, Member States may not be aware of the infringing activities of the same trader in another

¹⁰¹ Directive 2013/11/EU on alternative dispute resolution for consumer disputes: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

¹⁰² Regulation EU No 324/2013 on online dispute resolution for consumer disputes: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>

Member State, and where it is aware, the Member State does not have the jurisdiction and enforcement powers to take action. Consequently cross-border infringements and particularly those of parallel domestic nature cannot be stopped without acting beyond its jurisdiction or by cooperating with authorities in the Member State concerned. The Union is best placed to ensure equal protection in all Member States by ensuring competent authorities cooperate to enforce the law in another Member State to where the consumer is located or where the same trader is active in multiple Member States. In addition, as the Regulation protects the “collective” economic interests of consumers, this can only be achieved at Community level, as Member States cannot take unilateral EU-level action to protect its own consumers, without considering the interests of all other EU consumers, requiring the cooperation of other Member States.

Adherence to Article 5 of the TFEU ensures that this Regulation does not go beyond what is necessary in order to achieve that objective, Article 5(3) states:

“the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

2.7.2 Proportionality principle

Article 5(4) of the TFEU sets out the conditions of proportionality:

“Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”.

Any measure or option considered for revision to the CPC Regulation must therefore be proportionate to its objectives and impose minimal additional costs on Member States and business. In the CPC Regulation this means that no measure should be considered where its costs exceed the expected benefits or where disproportionate to the number of infringements or detriment reduced by the measure.

Each measure and option should also adhere to better regulation requirements by simplifying and reducing the costs and burdens of legislation. Revision of the CPC Regulation would achieve this by clarifying Member State understanding of their obligations, and improving the efficiency of the CPC mutual assistance mechanism.

3 Policy objectives

This section outlines the policy objectives any proposed policy options should aim to achieve.

3.1 General objectives

In impact assessment it is common to distinguish between general, specific and operational objectives. General objectives refer to the policy goals of an intervention, expressed in terms of its ultimate impact and measured in terms of global indicators.

The general objectives of a future CPC Regulation are:

1. Ensure a high level of consumer protection in the EU through enhanced protection of consumers economic interests in the Single Market
2. Improve consistency of enforcement of EU consumer protection legislation across the EU and thus legal certainty for traders and consumers
3. Increase the deterrence effect of the CPC cooperation

3.2 Specific and operational objectives

Specific objectives take into account the nature of the policy intervention, setting out what each intervention should achieve and form the indicators which can be used to evaluate the success of the intervention. Operational objectives are defined in terms of the deliverables of the intervention and are linked to output indicators.

Table 3.1 Specific and operational objectives of a revised CPC Regulation linked to identified problems

Problems	Specific objectives	Operational objectives
Certain types of cross-border infringements are not being addressed as they are not covered by the CPC Regulation, namely Short-lived, predominantly online infringements.	Reduce the number of short lived/ parallel domestic infringements	<ul style="list-style-type: none"> ■ Bring short-lived intra-Community infringements and parallel domestic infringements under the scope of the CPC Regulation ■ Increase the number of situations where the CPC enforcement cooperation framework is invoked (number of enforcement and information requests and number of common enforcement actions, number of instances when CPC coordination occurs)
	Reduce the number of situations where infringements are not duly investigated and stopped	
	Reduce time/cost of addressing (short lived) infringements	
	Reduce consumer detriment	
Certain types of cross-border infringements are not being addressed as they are not covered by the CPC Regulation, namely Parallel domestic infringements	Reduce the number of short lived/ parallel domestic infringements	
	Reduce the number of situations where infringements are not duly investigated and stopped	
	Reduce duplication of investigation and enforcement effort (parallel domestic infringements)	
	Save litigation costs for traders who operate across EU(parallel domestic infringements)	
	Reduce consumer detriment	
Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities, including in the digital environment.	Reduce the number of infringements currently not stopped due to insufficient powers	<ul style="list-style-type: none"> ■ Introduce additional common minimum investigation and enforcement powers for competent authorities (e.g. to carry out test purchases/mystery shopping, obtain information from other authorities or third parties to track down the flow of money, to adopt interim measures, to facilitate consumer redress for intra-Community infringements) ■ Amend/Clarify the provisions of the CPC Regulation which currently negatively affect the operation of the
	Reduce the number of situations where the CPC enforcement cooperation is ineffective due to insufficient powers	
	Reduce delays in the CPC Regulation's mutual assistance mechanism (reduce the time needed to handle mutual assistance requests) which are due to insufficient powers	

Problems	Specific objectives	Operational objectives
	<p>Increase the number of possibilities/channels through which consumers may obtain redress for intra-Community and EU level/widespread infringements</p> <p>Increase the deterrent effect of CPC enforcement mechanism</p> <p>Reduce consumer detriment</p>	<p>CPC network (e.g. introduce binding time-limits to respond to mutual assistance requests; monitoring powers for the Commission to verify how competent authorities comply with obligations under the mutual assistance mechanism)</p> <ul style="list-style-type: none"> ■ Introduce minimum procedural standards for the mutual assistance mechanism under the CPC Regulation (e.g. introduce a mechanism for mutual recognition of evidence and/or the outcome of investigation regarding intra-Community infringements)
<p>Insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation, which impede stopping of infringements through the CPC framework or create delays.</p>	<p>Reduce the number of infringements not stopped or where enforcement is ineffective due to insufficient standards</p> <p>Reduce delays in the CPC Regulation's mutual assistance mechanism (reduce the time needed to handle mutual assistance requests) which are due to insufficient powers or standards</p> <p>Increase the deterrent effect of CPC enforcement mechanism</p> <p>Reduce consumer detriment</p>	
		<ul style="list-style-type: none"> ■ Clarify the existing procedure for CPC enforcement coordination, in particular regarding common enforcement actions addressing widespread infringements and for coordinated surveillance actions (sweeps) ■ Introduce additional common minimum investigation and enforcement powers for competent authorities (e.g. to carry out test purchases/mystery shopping, obtain information from other authorities or third parties to track down the flow of money, to adopt interim measures, to facilitate consumer redress for intra-Community infringements; to stop a website) to
<p>Inadequate procedural mechanism to address widespread infringements, including in the digital environment:</p>	<p>Reduce the number of widespread infringements due to inadequate procedures</p> <p>Reduce the number of situations of ineffective enforcement due to inadequate procedures</p>	

Problems	Specific objectives	Operational objectives
	<p>Remove duplication/ multiplication of investigative efforts, use of disproportionate enforcement resources and divergent enforcement outcomes</p> <p>Reduce the time needed to stop a widespread infringement</p> <p>Save litigation costs for traders who operate across EU</p> <p>Reduce consumer detriment</p>	<p>effective tackle widespread infringements, in particular in the digital environment</p> <ul style="list-style-type: none"> ■ Provide an appropriate procedure (a one-stop-contact/shop at the EU level) with clear steps, time-limits and roles to tackle more efficiently widespread infringements committed by a trader(s) in several or all Member States or affecting entire sectors of economy
<p>Currently all alerts are given equal attention regardless their potential importance and they are not followed up</p>	<p>Reduce the number of situations where important alerts were not followed</p> <p>Reduce the number of undetected infringements, in particular for parallel domestic investigations regarding the same infringement by the same trader (s) due to the fact that all alerts are given equal attentions regardless of their potential importance and that access to the alerts mechanism is limited</p> <p>Reduce consumer detriment</p>	<ul style="list-style-type: none"> ■ Clarify the purpose, use and follow up of the CPC alert mechanism within the CPC Regulation ■ Improve the follow-up to the CPC alerts by their categorisation in terms of priority and expected action ■ Extend the access to the CPC alert mechanism to consumer and trade organisations, and ECCs for information only. Introduce the possibility for the Commission to raise an objection to an alert posted by these stakeholders
<p>Currently access to alert mechanism is limited to the national authorities only, which limits the available information</p>	<p>Improve the availability of information on emerging malpractice</p> <p>Reduce the cost of evidence gathering phase of the case handling</p> <p>Reduce the number of undetected infringements, in particular for parallel domestic investigations regarding the same infringement by the same trader(s) due to the fact that all alerts are given equal attention regardless of their potential importance and that access to the alert mechanism is limited</p> <p>Reduce consumer detriment</p>	<ul style="list-style-type: none"> ■ Introduce mutual recognition of evidence and outcome of investigations ■ Introduce a possibility for the European Commission to post alerts for action or for information ■ Increase the frequency and quality of information exchanges among competent authorities, the Commission and other stakeholders (e.g. consumer organisations) on emerging malpractices

Problems	Specific objectives	Operational objectives
Insufficient resources dedicated to the enforcement cooperation under the CPC Regulation in some Member States.	<p>Ensure sufficient level of financial and human resources dedicated to the CPC cooperation</p> <p>Reduce consumer detriment</p>	<ul style="list-style-type: none"> ■ Set-up objective benchmarks to assess Member States' enforcement efforts, financial and human resources under the CPC Regulation ■ Introduce a requirement for the competent authorities to prepare a single integrated multi-annual enforcement plan/strategy to ensure the effective implementation of the CPC Regulation, especially regarding priority criteria relevant for the DSM
No systematic and common/coordinated prioritisation of national and cross-border enforcement actions across the EU; no adequate monitoring of Member States' enforcement efforts.	<p>Reduce the number of situations where objectives and priorities of enforcement are inconsistent</p> <p>Reduce consumer detriment</p>	

4 Development and analysis of the policy options

4.1 Introduction

This text explains how policy options were constructed and their impact assessed. Policy options are internally coherent packages of measures. Measures are individual actions that address one or more problems.

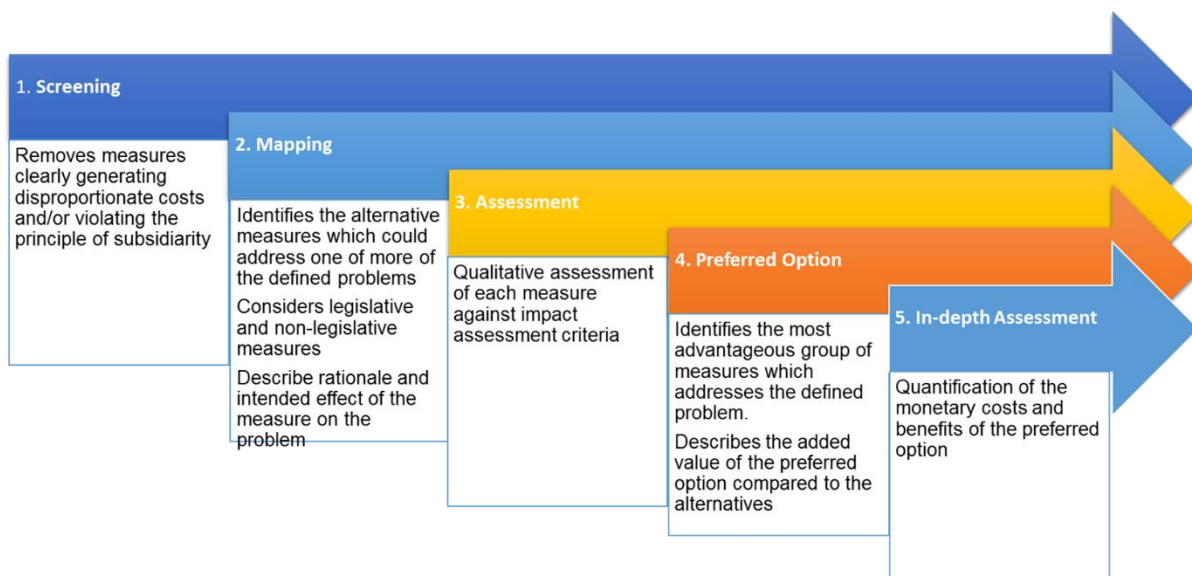
A two stage approach to the impact assessment was followed to firstly break down the problem into manageable components. Alternative measures are then assessed to individually to identify the preferred package of measures. The second stage then assesses this preferred option taking into account any synergies and trade-offs which may exist within the package of measures.

The two-stage process involved:

- **Step 1: Preliminary screening** to identify a short-list of measures;
- **Step 2: Mapping measures against problems** to identify the problem(s) addressed by each measure;
- **Step 3: Assessment of the measures** considers the impact of each measure on the assessment criteria;
- **Step 4: The preferred option(s)** identifies the most advantageous group of measures to address the defined problem(s), and
- **Step 5: In-depth assessment of the preferred option, including quantification of the monetary costs and benefits.**

The process is summarised in Figure 4.1.

Figure 4.1 Two-stage impact assessment process



Source: ICF

4.2 Step 1 - Preliminary screening

Prior to screening, a list of possible solutions to the main identified problems was developed, comprising of 29 measures. These possible measures were suggested by the European Commission, by stakeholders' responses to the public consultation and by Member States in earlier consultation exercises (e.g. CPC workshops).

The list of measures was screened to remove those measures which would clearly incur disproportionate costs (i.e. that generate a negative benefit-cost ratio) and which do not

meet the condition of subsidiarity (i.e. where the Member States are better placed than the EU to take action to address the problem). Annex 3 details the screening process. The solutions screened out at this stage were:

- Repealing of the CPC Regulation;
- Introducing an EU complaint system directly accessible online to EU citizens
- Introducing the harmonisation of national administrative and judicial procedural rules;
- Introducing a centralised alert system where the European Commission would filter alerts before they are disseminated to the competent authorities;
- Introducing the possibility for certain alerts to be made public, and
- Introducing a specific EU surveillance body to monitor digital markets and enforcement of consumer rights in the online environment, to collect, analyse and disseminate enforcement intelligence information and propose recommendations to policy makers.

A total of 22 possible measures for revision of the CPC Regulation were retained after the screening and were placed on a short-list.

4.3 Step 2 - Mapping of measures to problems

Mapping of each measure to the problem(s) it addresses enables a bottom-up approach to the analysis which considers the impact of each measure in isolation before considering the collective impact of measures grouped together in to policy options.

It also provides a basis for thinking about the scale of impacts, whether they can be monetised and identifies the stakeholders affected by each measure.

Table 4.1 and 4.2 provide a mapping of the proposed measures to address one or more of the identified problems. The study considers three types of measures:

- **Do nothing** or Business-as-Usual (BAU) in which no further intervention is considered beyond that which is already planned or is ongoing.
- **Non-legislative** interventions, which are measures that require no change to the CPC Regulation and to the implementing decision. These include "soft law measures". for example, the provision of guidance, working definitions which clarify the existing obligations of CPC competent authorities, and
- **Legislative intervention –Revision** of the CPC Regulation. Legislative change could involve:
 - Changes to the scope of the CPC Regulation;
 - Changes to the investigative and/or enforcement powers available to CPC competent authorities;
 - Changes to enforcement cooperation procedures (e.g. by proving binding time-limits to respond to mutual assistance requests; by providing mutual recognition of evidence);
 - Changes to the obligations of Member States' authorities;
 - Changes to the Commission's obligations;
 - Changes to the current Article 9 provision to streamline a framework to address widespread infringements concerning more than two Member States.
 - Changes to the current reporting requirements (e.g. replacing the current obligation to provide reports (Article 21(2) of the CPC Regulation) with a requirement to prepare a multi-annual enforcement strategy);

Table 4.1 summarises the more detailed mapping presented in Annex 2. It is clear from the table that non-legislative action on its own cannot address the problems of the CPC Regulation identified in Section 2. In addition, as guidance is non-binding on Member State competent authorities, the effectiveness of non-legislative measures is highly uncertain which would allow many problems to persist. Legislative modification to the CPC Regulation is therefore needed and is the focus of the next steps to identify which legislative measures would best address the relevant problems.

Table 4.1 Summary mapping of measures and problems – Legislative measures

Problem	Sub-problem	Measure(s) addressing the problem/ sub-problem	Changes in scope	Changes in powers	Changes in procedures	Changes in Member	Changes in Commission
1. Deficiencies in the current design of the CPC Regulation	Certain types of cross-border infringements are not being addressed as they are not covered by the CPC Regulation, namely:						
	A. Short-lived, predominantly online infringements.	Measure 1.A.0: Do nothing Measure 1.A.1: Include short-lived (predominately online infringements) in the scope of the CPC Regulation.	✓				
	B. Parallel domestic infringements.	Measure 1.B.0: Do Nothing Measure 1.B.1: Include parallel domestic infringements in the scope of the CPC Regulation	✓				
	Some infringements currently covered by the CPC Regulation are not tackled efficiently for the following reasons						
	C Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities, including in the digital environment.	Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities Measure 1.C.0: Do nothing Measure 1.C.1: Reinforcement of the current provisions of the CPC Regulation on minimum powers concerning investigation and enforcement (sanctioning) powers. Investigation powers <ul style="list-style-type: none"> ■ to start investigations on own initiative (ex officio) ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored Enforcement powers <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found responsible for the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 			✓	✓	
		Measure 1.C.2: Measure 1.C.1 + Enhanced reinforcement of the current provisions of the CPC Regulation on minimum powers concerning investigation and enforcement (sanctioning) powers Investigation powers <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains (i.e. bank, tax and police records) Enforcement powers <ul style="list-style-type: none"> ■ to adopt interim measures (e.g. suspend website, order suspension or retention of payment to trader) 	✓		✓		

Problem	Sub-problem	Measure(s) addressing the problem/ sub-problem	Changes in scope	Changes in powers	Changes in procedures	Changes in Member	Changes in Commission
		<ul style="list-style-type: none"> ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions <p>Measure 1.C.3: Measure 1.C.2 + Maximum reinforcement of the current provisions of the CPC Regulation on powers concerning enforcement (sanctioning) powers</p> <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze the assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to close down a website, publish all decisions relating to the case) 		✓		✓	
	D. Insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation, which impede stopping of infringements through the CPC framework or create delays.	<p>Non-legislative: Guidance clarifying the obligation on CPC competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision and operational guidelines of the CPC cooperation</p> <p>Measure 1.D.0: Do nothing</p> <p>Measure 1.D.1: Introduce binding time-limits to respond to mutual assistance requests and corresponding powers for the Commission to monitor how competent authorities handle bilateral cross-border infringements cases and comply with these binding time-limits. For this purpose the Commission’s access to information concerning the mutual assistance requests and its ability to deal with diverging approach to mutual assistance requests would need to be extended.</p> <p>Measure 1.D.2: Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community infringements between Member States</p> <p>Measure 1.D.3: Introduce in certain defined cases mutual recognition/cross-border enforcement of extraterritorial enforcement decisions regarding the intra-Community infringements</p>				✓	
					✓	✓	✓
					✓		
2. Insufficient tools for tackling EU-	Insufficient tools to tackle widespread infringements, namely:						
		Measure 2.A.0: Do nothing					

Problem	Sub-problem	Measure(s) addressing the problem/ sub-problem	Changes in scope	Changes in powers	Changes in procedures	Changes in Member	Changes in Commission
relevant/widespread infringements	2.A Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities (and the Commission) to address widespread infringements, including in the digital environment	<p>Measure 2.A.1: Reinforcement of the current provisions of the CPC Regulation on minimum powers concerning investigation and enforcement (sanctioning) powers.</p> <p>Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative (ex officio) ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 		✓		✓	
		<p>Measure 2.A.2: Enhanced reinforcement of the current provisions of the CPC Regulation on minimum powers concerning investigation and enforcement (sanctioning) powers</p> <p>Investigation powers</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains (i.e. bank, tax and police records) <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to adopt interim measures (e.g. suspend website, order suspension or retention of payment to trader) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 		✓		✓	
		<p>Measure 2.A.3: Maximum reinforcement of the current provisions of the CPC Regulation on powers concerning enforcement (sanctioning) powers</p> <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze the assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to close down a website, publish all decisions relating to the case) 		✓		✓	✓
		<p>Measure 2.B.0: Do nothing</p>					

Problem	Sub-problem	Measure(s) addressing the problem/ sub-problem	Changes in scope	Changes in powers	Changes in procedures	Changes in Member	Changes in Commission
	B. Inadequate procedural mechanism to address widespread infringements, including in the digital environment:	<p>Measure 2.B.1: Specify and clarify the format of common enforcement action under Article 9 of the CPC Regulation with stronger coordination role of the European Commission; set out minimum requirements to ensure consistency among national actions and their outcomes.</p> <p>Measure 2.B.2: Setting up a new specific EU (centralised) cooperation procedure to handle EU-relevant infringements, including in the digital environment, with a greater role for the European Commission and/or the initiating (lead) Member State in a group of Member States.</p> <p>Measure 2.B.3: Provide for direct investigation, enforcement and sanctioning powers of the European Commission to tackle defined EU-level relevant infringements of consumer legislation set out in regulations, in particular in the DSM.</p>			✓		✓
3. No consistent evidence on emerging infringements and market conditions which impedes effective prevention and early detection of malpractices, especially those which are spread EU-wide in the digital environment	<p>The current CPC information exchange via the alert mechanism is insufficient, emerging problems being detected too late and detriment to consumers is prolonged</p> <p>A. Currently all alerts are given equal attention regardless their potential importance and they are not followed up.</p> <p>B. Currently access to alert mechanism is limited to the national authorities only, which limits the available information.</p> <p>C. Insufficient resources dedicated to the enforcement cooperation under the CPC Regulation</p>	<p>Non-legislative: Non-binding guidance clarifying Member State obligations concerning the use of the alerts mechanism specified in Article 7</p> <p>Measure 3.A.0: Do Nothing</p> <p>Measure 3.A.1: Introduce the alerts' action categorisation based on a type of follow-up (for compulsory action within a deadline or for information only)</p> <p>Measure 3.B.0: Do Nothing</p> <p>Measure 3.B.1: Introduce a possibility to have access to the alert mechanism for other actors and for the European Commission to post alerts for action or for information</p> <p>Non-legislative: Guidance clarifying Member State obligations to provide “adequate resources” (Article 4(7)) to handle mutual assistance requests in the form of guidance</p> <p>Measure 3.C.0: Do Nothing</p>				✓	
No common EU-wide cross-border enforcement strategy and priorities to achieve the objectives of the CPC Regulation; inadequate financial and human resources dedicated to the cross-border enforcement cooperation	<p>Diverging enforcement priorities among Member States, limited resources in some Member States focused on domestic issues, lack of common strategy and insufficient prioritisation of enforcement</p>				✓		✓

Problem	Sub-problem	Measure(s) addressing the problem/ sub-problem	Changes in scope	Changes in powers	Changes in procedures	Changes in Member	Changes in Commission
	in some Member States.	Measure 3.C.1: Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation and corresponding powers for the Commission to audit these resources			✓	✓	
	D. No systematic and common/coordinated prioritisation of national and cross-border enforcement actions across the EU; no adequate monitoring of Member States' enforcement efforts.	Measure 3.D.0: Do Nothing					
		Measure 3.D.1: Introduce a requirement for the competent authorities to prepare a single integrated multi-annual enforcement plan/strategy to ensure the effective implementation of the CPC Regulation, especially regarding priority criteria relevant for the DSM.				✓	
		Measure 3.D.2: Set up a general auditing system. The auditing system would verify that the overall enforcement of the consumer protection legislation takes place in Member States in accordance with the multi-annual enforcement plan and would assess the national market surveillance frameworks in terms of the effectiveness of the enforcement actions, allocation of resources and coordination between SLOs and competent authorities within a Member State.				✓	✓

Source: ICF analysis

4.4 Step 3: Assessment of the measures

4.4.1 Approach

Each measure is assessed qualitatively and quantitatively (where feasible) against the criteria defined by the Commission's impact assessment guidelines.

The impact assessment process requires that the economic impacts of the policy options are assessed, including the administrative and financial costs of the EU, Member States and businesses in implementing the measures, and the benefits to consumers, businesses and Member States from more effective and efficient enforcement of consumer protection legislation. The following impacts were identified:

- **Direct impacts:** the inputs required to implement the measures (i.e. the administrative and financial costs of compliance for the EU, Member States and businesses);
- **Indirect impacts:** the consequences for actors affected by the outcomes and impacts of the proposed measures (i.e. changes to enforcement that affect legal proceedings and therefore the judiciary);
- **Societal or wider economic impacts** triggered by the measures (i.e. competitiveness, employment, SMEs and vulnerable consumers).

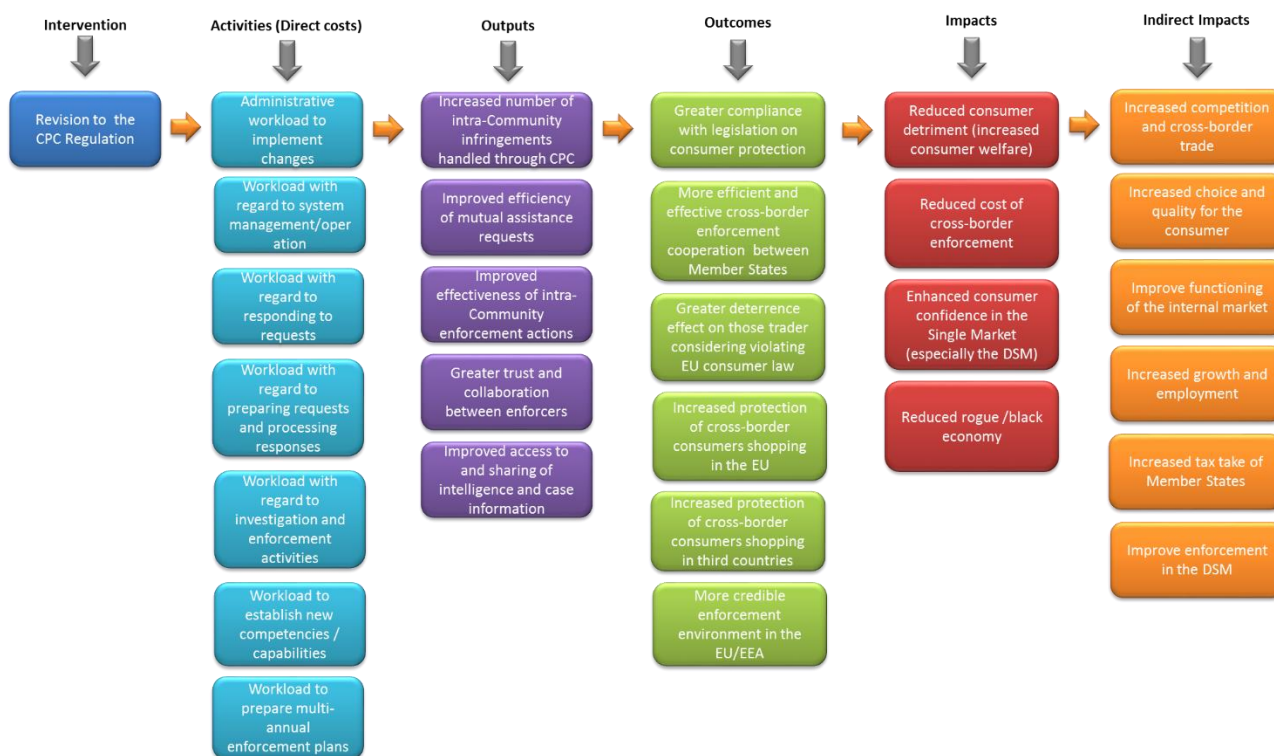
The criteria used are:

- Effectiveness criteria:
 - Specific and general objectives defined in Section 3.
- Economic criteria:
 - Compliance costs on the Member States to implement the proposed measure (includes impacts on competent authorities, consumer and trade associations)
 - Compliance costs for the European Commission to implement the proposed measure
 - Compliance costs for businesses
 - Impact on consumer confidence and the internal market
 - Impact on competitiveness
 - Impact on SMEs
 - Distributional effects relating to how impacts vary by geographic region or consumer sector
 - Impact on the non-compliance rate by traders and on consumer detriment suffered by EU consumers from infringements of EU consumer protection law
- Social criteria:
 - Impact on consumer vulnerability
- Feasibility:
 - Impact on legal systems
 - Impact on fundamental rights
 - Stakeholder acceptance of the measure

Each proposed measure is assessed against the "do nothing" scenario where no action is taken, and where the problem evolves as predicted by the baseline. Due to a distinct lack of available and reliable data, the impact of each measure is assessed mainly in qualitative terms. The contractors considered providing 'guessimates' of the scale of relevant impacts in percentage terms. However, without evidence to support many assumptions that would have to be made to arrive at such estimates, they would be unreliable. Hence it was decided to keep the analysis mostly qualitative.

To support the assessment, Figure 4.2 provides a logical framework illustrating the chain of effects expected from the revision of the CPC Regulation. This logical framework underpins the coherence of the assessment, by providing an understanding of why behaviour of enforcement authorities and traders (and hence of the wider economy and community) would change as a consequence of policy action.

Figure 4.2 Logical framework for the assessment of changes in the CPC Regulation



Source: ICF own analysis

4.4.2 Analysis of impacts

The alternative measures which could be implemented to address one or more of the identified problems are assessed in the following tables. Each table relates to a specific problem and assesses the proposed measures against the assessment criteria described above.

Details on how the quantified figures were estimated is provided in Annex 4 and 5, concerning Member State and European Commission costs respectively. Annex 4 also includes details of the benefits calculations.

Table 4.2 Assessment of Sub-problem 1.A: It is not clear whether the CPC Regulation covers short-lived infringements

Assessment criteria	Measure 1.A: Include short-lived (predominately online) infringements in the scope of the CPC Regulation.
Effectiveness	
Reduce the number of short lived infringements	Data obtained from a short survey of the CPC competent authorities indicates that as few as 6-8% or as high as 62-89% of infringements are considered short-lived, depending on the Member State and sector concerned ¹⁰³ . Most of these infringements in cross-border context concern online transactions, as this is a means to rapidly reach out to large number of consumers, benefit from undue advantages and stop the practice before enforcement authorities have had time to act. It is conservatively estimated that at least 10% more

¹⁰³ The sample of data obtained is insufficient to reach robust conclusions as to their true scale. It is also reported that 10% of information and enforcement requests notified in the CPC System relate to unfair terms in consumer contracts legislation and 3% to misleading advertising legislation which are both associated with short-lived infringements. On the basis of CPC data 10% of total infringements can conservatively be considered short-lived.

Assessment criteria	Measure 1.A: Include short-lived (predominately online) infringements in the scope of the CPC Regulation.
	<p>infringements will be tackled with this measure reducing consumer detriment at least in the same proportion as there are no indications that short-lived infringements would produce lesser levels of consumer detriment.</p> <p>The deterrent effect on rogue traders will be higher from this measure as the absence of short-lived infringements from scope was exploited in the current CPC Regulation. The deterrence effect would be particularly efficient for the Digital Single Market and could help eliminate practices such as scams attracting consumers to cheap products that are never delivered or subscription traps where consumers agree to receive a free trial for which they give their credit card number to pay postage costs and then find out that they are billed monthly deliveries they never agreed to.</p> <p>Overall, the reduction in the number of short lived infringements is small for the reasons described, but could be much greater if measures to strengthen the powers of authorities, prioritise the tackling of cross-border infringements, and increase the capabilities and resources of competent authorities were introduced in parallel.</p>
Reduce consumer detriment	<p>On the basis that ~1% of short-lived cross-border infringements are addressed by implementing this measure, savings in consumer detriment are estimated to be in the region of €220,000 per annum (See Annex 4). Including the deterrent effect this could increase €1.3 million per annum. The estimate is deliberately conservative as the harm caused by short-lived infringements is typically of lower value than average harm caused, often because the infringing practice involved a 'free' component or the subscription was for a small amount (i.e. €5 per month for mobile ringtones).</p>
Economic impacts	
Compliance costs – Member States	<p>Including short-lived infringements in the CPC Regulation would increase the caseload of CPC competent authorities by an amount equivalent to the number of short-lived cross-border infringements addressed i.e. 0.1% (1% X 10%) of their caseload under the current CPC Regulation. The cost of handling this additional caseload is estimated at around €50,000 per annum for all EU-28 Member State authorities (except for Member States with a well-resourced authority, e.g. BE, UK. that might be able to integrate the related workload without additional costs). Costs of familiarisation and training to inform enforcement officers of the changes and make necessary adjustments to national procedures are assumed to be met by existing resources as periodic training of staff is assumed in the do nothing option.</p>
Compliance costs – Commission	<p>No compliance costs are foreseen for the Commission from this measure as its roles and responsibilities remain unchanged from the current (do nothing) situation.</p>
Compliance costs – Businesses	<p>No change in compliance costs is foreseen for businesses from this measure.</p>
Consumer confidence and the internal market	<p>Providing a uniform basis to tackle these infringements will contribute to strengthen consumers and traders confidence as they will be less exposed to rogue traders' practices and scams which take place online and often have a short duration.</p>
Competitiveness impacts	<p>The competitiveness effects are likely to be important as the measure would target rogue traders which are benefiting from undue competitive advantage.</p>
SMEs	<p>No significant impacts on SMEs are anticipated from this measure</p>
Employment	<p>No significant impacts on employment are anticipated from this measure</p>
Distributional effects	<p>Due to the prevalence of short lived infringements in the digital environment, consumer sectors and businesses using the online environment are likely to benefit most. Taking this logic further, Member States where a greater share of consumer expenditure is spent online and cross-border (i.e. UK, Ireland and Scandinavian countries) are likely to benefit most. However the potential benefits may be greater in less developed digital economies where improved enforcement would contribute to increased consumer confidence and engagement in the DSM.</p>

Assessment criteria	Measure 1.A: Include short-lived (predominately online) infringements in the scope of the CPC Regulation.
	In terms of costs, Member States with better resourced competent authorities (such as UK, DE, HU, BE) may be able to integrate the increased caseload of short-lived infringements implied by this measure. Member States with more limited resources (those with less than 10 FTE include AT, CY, DK, FI, EL, EE, IT, FR and ES) may find this more difficult to accommodate within current resources, implying higher compliance costs.
Social impact	
Consumer vulnerability	Vulnerable consumers (i.e. children, elderly) are often targeted by unfair contract terms and misleading sales practices ¹⁰⁴ and advertising (e.g. in-app purchases and subscription services) associated with short-lived infringements.
Feasibility	
Impact on national legal systems	No significant impact on national legal systems is expected.
fundamental rights)	Consumer rights would be better protected. Under the CPC system, traders' rights are protected by national procedural rules and prescription periods as these may diverge from country to country. In order to ensure legal certainty for traders, a uniform statute of limitations will be part of the measure.
Stakeholder acceptance	39% of respondents fully agreed and 37% somewhat agreed that the possibility to request the application of sanctions, regardless of whether the infringement has ceased or not should be included in the CPC Regulation according to the public consultation. For stakeholders representing the CPC authorities, 28% fully agreed and 43% somewhat agreed to the possibility to request the application of sanctions, regardless of whether the infringement had ceased or not.
Conclusion: Measure 1.A should be included in the preferred option as without this change in scope an increasing number of infringements occurring online would not be addressed with short-lived features. The compliance costs are also expected to be low compared to the expected benefits.	

Table 4.3 Assessment of Sub-problem 1.B: It is uncertain to what extent parallel domestic infringements are covered by the current Regulation

Assessment criteria	Measure 1.B: Include parallel domestic infringements in the scope of the CPC Regulation
Effectiveness	
Reduce the number of parallel domestic infringements	At present, at least 10% of the overall infringements are estimated to be parallel domestic infringements which are not currently covered by the CPC Regulation ¹⁰⁵ . With the expansion of e-Commerce and cross-border retail and with more traders operating in multiple countries through branches, the proportion is projected to be much higher in the coming years (this is also validated by the results of the public consultation where 82% of stakeholders found these infringements significant). The reduction of the consumer detriment obtained through any individual enforcement action could be massive. For example, it is estimated that the CPC in-app purchases action potentially saved consumers EUR 68mIn. Carrying several of such actions per year would

¹⁰⁴ See for example EP(2012): Report on a strategy for strengthening the rights of vulnerable consumers (2011/2272(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2012-0155+0+DOC+PDF+V0//EN>

¹⁰⁵ According to the Eurobarometer study 300 on business attitudes towards cross-border trade and consumer protection, as of 2011 ca. 10% of enterprises had outlets or subsidiaries in another EU country. Further, according to the Eurostat data, within the retail trade sector only, the percentage of EU-28 enterprises making online sales to other EU countries is 8.1% (the figure refers to enterprises with at least 10 persons employed. Eurostat, Enterprises selling via internet and/or networks other than internet (NACE Rev. 2 activity), isoc_ec_eseln2, data for 2013).

Assessment criteria	Measure 1.B: Include parallel domestic infringements in the scope of the CPC Regulation
	<p>therefore permit to substantially reduce the consumer detriment and to ensure that entire market sectors across the EU become compliant.</p> <p>As this measure is aimed at facilitating coordinated actions against widespread infringements it would result to a fully consistent approach to the practices targeted by such actions via the adoption of CPC common positions. Cases as described in the problem section (cf. case on misleading advertising of commercial guarantees by Apple) would therefore not occur any longer.</p> <p>The deterrence effect resulting from this measure would be very significant due to its large geographical scope and the important market shares potentially concerned by each individual large scope action (for example, 65% of the EU market for car rental was concerned by the action in the domain (see IP-15 -5334¹⁰⁶).</p>
Reduce duplication of investigation and enforcement effort	<p>This measure would also reduce the risk of enforcement effort duplication, improve the sharing of intelligence, and increase the quality of evidence. An example of a parallel domestic infringement successfully stopped through joint action was in-app purchases. Action was coordinated by the Commission and Denmark working with competent authorities to reach a common position which was communicated to traders. The costs for the Commission were estimated to be under €52,000 (See Annex A5.2 for calculation), avoiding the need for 27 other authorities duplicate the action taken. The cost saving is therefore in the order of ca. €1.4mn (€51,300 X 27).</p>
Save litigation costs for traders who operate across EU	<p>More consistent enforcement would reduce legal uncertainty for businesses trading in more than one Member State and reduce legal costs they would incur to cope with diverging approaches to the same commercial practice across Member States.</p> <p>For example, knowing that its commercial practices are compliant in one Member State, the trader would not need to seek legal advice on its practices with consumer legislation when trading cross-border. Equally, traders found to infringe consumer laws do not need to defend themselves in all 28 Member States, avoiding duplication of these legal costs.</p>
Reduce consumer detriment	<p>By improving the effectiveness of enforcement, consumer detriment is estimated to reduce from the do nothing situation by around €3.2mn, or €9.6mn per annum including the deterrent effect (i.e. fewer traders attempting infringements). See Annex 4 for how this was estimated. Due to the EU-wide scope of the infringement and large number of consumers affected, the in-apps purchase joint action is estimated to reduce consumer detriment by €68 million (annual revenues of the app industry in Europe are estimated at €10 billion).</p>
Economic impacts	
Compliance costs – Member States	<p>The total cost of enforcement for Member State authorities is not anticipated to significantly change as the caseload does not change (Member States are already responsible for enforcement against such infringements). Estimated costs of €80,000 per annum are therefore rather a transfer than a net additional cost for Member State competent authorities. Costs of familiarisation and training to inform enforcement officers of the changes and make necessary adjustments to national procedures are assumed to be met by existing resources as periodic training of staff is assumed in the do nothing situation.</p>
Compliance costs – Commission	<p>No costs are anticipated under this measure, as the roles and responsibilities of the Commission remain unchanged from the do nothing situation. Further, the Commission already has an obligation to assist Member States in the cooperation efforts to address such widespread infringements.</p>
Compliance costs – Businesses	<p>No costs, as traders should already be compliant with consumer legislation.</p>
Consumer confidence and	<p>Because of the large market segments (especially online) that could be concerned with such widespread infringements, an important impact on consumers' trust is expected as they would know their rights are equally protected regardless of the Member State or sales</p>

¹⁰⁶ http://europa.eu/rapid/press-release_IP-15-5334_en.htm

Assessment criteria	Measure 1.B: Include parallel domestic infringements in the scope of the CPC Regulation
the internal market	channel they are purchasing from. In the baseline situation enforcement is fragmented because the parallel cross-border dimension of infringements is not taken into account by enforcement authorities.
Competitiveness impacts	<p>The CPC competent authorities would be encouraged to reach common enforcement positions, where possible and appropriate. Improving the consistency of consumer protection and clarity regarding traders' obligations would permit enhanced competition and reaching a level playing field with fairer practices applied across the EU. Businesses operating across the EU would benefit from lower compliance costs thanks to improved legal certainty, resulting in their increased competitiveness.</p> <p>Costs for governments would also decrease as one coordinated action could replace 28 parallel national actions, this would benefit the overall economy of the EU.</p>
SMEs	As parallel domestic infringements occur in multiple Member States at the same time, e.g. through branches, subsidiaries or agents of the business concerned, they more frequently concern larger businesses than SMEs. SMEs would benefit from improved level playing field between large businesses and SMEs and from a reduction in unfair competition from rogue traders.
Employment	No significant impacts on employment are expected from this measure.
Distributional effects	. As none of the competent authorities explicitly considers parallel domestic infringements falling within the scope of the current CPC Regulation, the impact of the measure is anticipated to be equal across all Member States. No distributional effects are therefore expected. The same applies to consumer sectors.
Social impact	
Consumer vulnerability	Positive impacts would be generated from tackling parallel domestic infringements via the CPC Regulation when they directly concern vulnerable consumers. For example, one of the key issues in the in-app purchases joint enforcement action was the direct exhortations to children to buy items in a game. This issue was addressed in the CPC enforcement action, which was directly beneficial to these vulnerable consumers.
Feasibility	
Impact on national legal systems.	There will be no substantial impact on national legal systems as the Member States are already responsible for tackling of these infringements.
fundamental rights	Improved protection of consumer rights and legal certainty for businesses
Stakeholder acceptance	<p>At the CPC workshop held on 24 June 2014, the representatives from 19 Member States confirmed that they were increasingly facing infringements that occurred in several national markets where a multinational trader had established its presence and applied the same unfair commercial practices. They also agreed that it was unclear whether the current definition of the intra-Community infringement covered parallel national infringements. There was a far-reaching consensus that this needed to be clarified in the CPC Regulation.</p> <p>Parallel domestic infringements are a type of widespread (i.e. EU-level relevant) infringements. In the public consultation the importance of EU-relevant infringements was judged to be high for effective enforcement by 82% of stakeholders.</p>
<p>Conclusion: The measure is a prerequisite for further changes to the CPC Regulation as it is first necessary for authorities to be competent in the CPC context to deal with EU widespread infringements to enable effective and efficient enforcement. Measure 1.B also possibly implies a transfer of resources from domestic to intra-Community case handling, rather than an additional cost, consequently the measure is expected to generate a positive benefit-cost ratio. The legal feasibility of the measure is high and is well supported by stakeholders.</p>	

Table 4.4 Assessment of sub-problem 1.C: Insufficient enforcement and investigation powers to efficiently and effectively cease infringements, especially in the on-line environment

Assessment criteria	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
Effectiveness				
<p>Reduce the number of infringements currently not stopped and related financial detriment due to insufficient powers</p>	<p>Non-legislative guidance will reduce a small number of infringements currently not stopped due to insufficient powers by ensuring competent authorities use the existing powers as intended, reducing cases of misunderstanding between authorities and gaps in implementation which prevent effectively tackling infringements.</p>	<p>Thanks to:</p> <ul style="list-style-type: none"> ■ interim measures, infringements would be stopped faster and the consumer detriment would be less prolonged; ■ investigations on own initiative would permit to uncover more infringements as it is not sufficient to base actions on complaints only due to the low tendency of consumers to complain. This power would also allow the authorities to act before a 	<p>In addition to the measure 1.C.1:</p> <ul style="list-style-type: none"> ■ facilitating redress for consumers would result in a compensation of consumer detriment and would have a high deterrent effect on traders that would not be able to keep gains from illegal practices; ■ requesting other parties to provide information would be very effective to tackle infringements in the digital environment as it would improve access to evidence 	<p>Only a small proportion of total infringements are expected not to be addressed or deterred by the additional powers introduced in the Measure 1.C.2. However, although small in number, the additional infringements addressed under this measure are likely to be the most complex cross-border cases (involving fraud) in which the collective financial consumer detriment is high (very serious fraud and scam cases).</p>

Assessment criteria	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company's director, publish all decisions relating to the case)
		<p>considerable consumer detriment has been accumulated;</p> <ul style="list-style-type: none"> ■ test purchases/ mystery shopping would ensure that infringements post purchase (guarantees, withdrawal rights, conformity of offers) would be better detected and addressed; ■ wide access to information would improve the quality of evidence and get information at present difficult to obtain in the digital environment where traders are increasingly concealing their identity and location. <p>It is estimated that these powers would significantly improve the</p>	<p>and make it more difficult for infringing traders to evade enforcement by concealing their identity and location, including when outside the EU;</p> <ul style="list-style-type: none"> ■ to take down websites (temporarily) would have a very important impact as the infringement would cease immediately and no consumers would incur a financial detriment further. This measure would also be very effective against online infringements originating from third countries <p>Overall, this measure should permit to tackle swiftly most</p>	<p>This set of powers would, for example, ensure that cases such as one regarding the online sale of design furniture (cf. the problem definition, the Infurn case) are dealt with more effectively as the additional powers could be used to freeze the assets of the trader, ban the economic activity of the trader concerned, ensuring that consumers are no longer targeted by rogue practices.</p>

Assessment criteria	Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities	Measure 1.C.1 Investigation powers <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored Enforcement powers <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	Measure 1.C.2 Measure 1.C.1 + Investigation powers: <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains Enforcement powers: <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	Measure 1.C.3 Measure 1.C.2 + Enforcement powers: <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
		scope and rapidity of enforcement actions. The measure however would not address the lack of consumer redress under the CPC enforcement cooperation framework.	infringements and would greatly improve enforcement in the online world by giving digitally fit powers to enforcement authorities across the EU.	
Reduce the number of situations where the CPC enforcement cooperation is ineffective due to insufficient powers	Ineffective cooperation due to misunderstanding of current obligations and powers would be resolved by this measure. The number of situations where this is the case is however considered to be small.	More uniform powers of investigation would improve the acceptance and speed with which digital evidence is gathered and used in cross-border legal proceedings, and improve the quality of evidence gathered resulting from mystery shopping/test purchases. Powers to start investigation on own initiative and requiring the	The ability to track infringing traders who may otherwise remain anonymous online and the ability to adopt interim measures would help combat ‘hit-and-run’ tactics of rogue traders online and significantly reduce the illicit gains from malpractice by ceasing the malpractice faster and/or requesting them to provide redress to the consumers to compensate for the harm	Introducing the maximum number of additional powers, Measure 1.C.3 would likely have the most significant positive impact on effectiveness of CPC enforcement cooperation. However, compared to the move from Measure 1.C.1 to 1.C.2 the marginal improvement is likely to be reduced as the measures proposed under these other

<p>Assessment criteria</p>	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
		<p>supply of information will also improve the speed of investigation and enforcement. Cooperation is therefore likely to be more effective.</p> <p>Additional enforcement powers will contribute to more effective enforcement, therefore indirectly reducing the number of situations where cooperation is ineffective.</p> <p>In short, the measure is expected to significantly improve the effectiveness of CPC cooperation by ensuring each authority can carry out the same activity, improving the quality and acceptability of investigation.</p>	<p>suffered. Together, enforcement cooperation would become much more effective.</p> <p>Specifically in relation to EU-wide infringements, the measure would support much closer coordination by imposing EU-wide sanctions so enforcement is more consistent between Member States. Effectiveness of tackling such infringement is therefore enhanced significantly.</p> <p>Together with Measure 1.C.1, these measures would be expected to substantially improve CPC enforcement cooperation both in investigation and enforcement.</p>	<p>measures will generate the majority of the improvement in effectiveness (for example Measure 1.C.3 if implemented on its own – not additive – would not enhance investigation cooperation).</p>

Assessment criteria	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
<p>Reduce delays in the CPC Regulation's mutual assistance mechanism (reduce the time needed to handle mutual assistance requests) which are due to insufficient powers</p>	<p>By resolving some of the problems associated with current powers and their uniform implementation across Member States, the measure would facilitate some reduction in delays associated with the mutual assistance mechanism.</p>	<p>The measure contributes to reduced delays in the mutual assistance mechanism by allowing CPC authorities to start an action by themselves and by improving the timely supply of information to enforcement authorities, particularly digital evidence. Less time should consequently be required in the gathering, recording and validation of information for use in legal proceedings. This impact is considered significant although difficult to quantify in the absence of data. A 10%-15% reduction in the time taken to handle requests is conserved sensible given that the time taken to enter a request, to</p>	<p>The power to request information from other authorities and third parties in more complex cases would have a significant impact on speeding up the investigation process and agreeing an undertaking with the traders concerned (see the Austrian online lotteries case in the problem section). Affecting more complex cases which involve more resources (and time) the unit savings are therefore likely to be larger than under Measure 1.C.1 but are relevant to a small number of requests.</p>	<p>Measure does not enhance investigation or the quality of mutual assistance requests beyond Measure 1.C.2.</p>

Assessment criteria	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
		<p>read, disseminate and respond to a request is unlikely to change. What changes is the time taken to gather information to be included in the response to a request and a reduced risk of follow-up/further action.</p> <p>Savings/ reduced delays in legal proceedings should also occur, particularly in more complex cases where, in the absence of these powers, investigations can become protracted as the infringing trader conceals its activities.</p>		
<p>Reduce the number of situations where consumers face problems</p>	<p>The measure does not address the problem regarding redress.</p>	<p>The measure does not fully address the lack of consumer redress in the CPC cooperation.</p>	<p>Measure 1.C.2 directly reduces problems with redress from intra-Community and widespread</p>	<p>Measure 1.C.3 does not address consumer redress any further than Measure 1.C.2.</p>

Assessment criteria	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
with redress for intra-Community infringements		<p>The measure requests the restitution of trader’s illicit gains from the infringement as it gives authorities the power to impose pecuniary sanctions (to compensate the public purse). This however does not amount to a direct compensation of consumers for their losses, although it would provide some indirect redress.</p>	<p>infringements as it allows the competent authorities to order traders to compensate consumers. The positive effect of this measure is therefore considerable.</p>	
Increase the deterrent effect of CPC enforcement mechanism	<p>Minor increase in the deterrent effect from more effective and efficient use of existing powers.</p>	<p>Powers to impose pecuniary sanctions commensurate to the overall consumer detriment (including the cross-border dimension) and to publish decisions establishing infringements including naming traders would all contribute to a stronger deterrent</p>	<p>Additional enforcement powers, such as to make public a trader’s proposed undertaking and to adopt coordinated EU-wide sanctions, would contribute to stronger deterrence than the Measure 1.C.1.</p>	<p>The additional powers would have a very important impact on deterring online fraudulent activities and preventing rogue traders to restart these activities (thanks to powers such as withdrawal of licenses, banning economic activity and</p>

<p>Assessment criteria</p>	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
		<p>effect of the CPC enforcement cooperation on traders than is currently the case under the baseline situation.</p>	<p>The power to request restitution of illicitly obtained gains would also guarantee the recovery of excess infringement profits and would deter the addressees from engaging in the same illicit conduct in the future (i.e. specific deterrence), as well as to dissuade other potential infringers from committing an infringement (i.e. general deterrence).</p>	<p>disqualification/dismissal of directors).</p>
<p>Economic impacts</p>				
<p>Compliance costs - Member States</p>	<p>No significant costs for Member States are expected for this measure.</p>	<p>Additional resources are needed to conduct test purchases and mystery shopping where the Member State does not already</p>	<p>Taking down websites is regarded as relatively cost intensive. They would require additional financial and human</p>	<p>As Measure 1.C.2 additional costs to implement powers are expected, however the savings generated are expected to be</p>

Assessment criteria	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
		<p>have such powers, in the following MS: AT, BE, CY, DE, EE, EL, HR, IT, LU, LT, MT, PT, and SE for mystery shopping; and AT, BE, EL, IE, IT, LT, LU, MT, PL, and SE for test purchasing.</p> <p>The other investigation powers introduced by the measure are largely procedural in nature and imply no additional costs to competent authorities other than training in the use of the new powers. In particular, the training costs would be incurred in the below mentioned Member States. The power to name infringing traders seems unavailable for the CPC authorities in CZ, DE,</p>	<p>(e.g. IT experts) resources. The power to take down websites seems unavailable for the CPC authorities in AT, BE, BG, CZ, DE, FR, EL, HR, HU, IE, LT, MT, NL, RO, SK and SI.</p> <p>Further additional powers covered by the Measure 1.C.2 are largely procedural in nature and imply no additional costs to the CPC competent authorities other than initial familiarisation/training in the use of the new powers.</p> <p>In particular, the training costs would be incurred in the below mentioned Member States. The</p>	<p>higher. However, the increased severity of powers from the previous measure may incur higher costs as greater scrutiny of the case may be needed before a website is closed down or economic activity is suspended.</p> <p>Decision costs for authorities when deciding what action to take may also be higher the more powers available that have to be considered, however they are anticipated to be minor.</p> <p>The majority of powers proposed under this Measure are not available for the CPC authorities.</p>

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		<p>FR, HR and PT. The power to impose pecuniary sanctions seems to be unavailable for the CPC authorities in AT and DE.</p> <p>Instead, it is anticipated that the measure would make investigations and the gathering of evidence quicker to initiate and more efficient resulting in cost savings at both investigation and enforcement phases.</p>	<p>power to require traders to adopt measures to facilitate redress for consumers seems to be available for the CPC authorities only in the following Member States: EE, ES, PT, RO and UK (and not available in all the others).</p> <p>The power to impose, coordinate and monitor "EU wide" type of pecuniary sanctions (taking into account effects of the infringement committed in several Member States) is currently not available in any Member State (yet the general power to impose pecuniary sanctions is available in all Member States for domestic infringements, except in AT and DE).</p>	<p>The power to freeze assets seems to be unavailable for most of the CPC authorities, except UK and RO. The same applies for the power to disqualify directors and to publish all decisions in all cases.</p> <p>The power to ban/suspend the economic activity of a trader; seems to be unavailable for the CPC authorities in AT, BE, CY, DE, EE, IE, LU, NL, PL, PT and SE.</p>

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			<p>In addition to the training costs, the consultant/experts estimate that there will be costs related to the CPC authorities decision what action/remedy to take in a specific case. These costs are relevant for this Measure, because of a larger array of powers available for the authorities under this Measure.</p> <p>Time taken to assess the most appropriate remedy is estimated to 1-3 days.</p> <p>Stronger powers would also encourage more traders to plead guilty, therefore enabling out of</p>	

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			court solutions (undertakings) to be used in an increasing number of cases at lower cost to enforcement authorities.	
Compliance costs - Commission	No additional costs to the Commission are assumed by the consultants as the preparation of guidance falls under current administrative responsibilities and budget assigned to the Commission for the CPCS, common activities, CPC Committee and workshops meetings and reporting.	No costs are foreseen for the Commission as the measure does not change its roles or responsibilities	No costs are foreseen for the Commission as the measure does not change its roles or responsibilities	No costs are foreseen for the Commission as the measure does not change its roles or responsibilities
Compliance costs – Businesses	No additional costs for businesses are expected from this measure.	No additional costs for businesses are expected from this measure, as traders should already be compliant and sanctions for law violations	No additional costs for businesses are expected from this measure, as traders should already be compliant and sanctions for law violations (e.g.	No additional costs for businesses are expected from this measure, as traders should already be compliant and sanctions for law violations

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		<p>cannot be taken into account as a compliance cost for traders.</p>	<p>to compensate consumers for suffered detriment) cannot be taken into account as a compliance cost for traders.</p>	<p>cannot be taken into account as a compliance cost for traders.</p>
<p>Consumer confidence and the internal market</p>	<p>Consumer confidence will improve marginally as the CPC mutual assistance will function more smoothly thanks to soft law measures.</p>	<p>Increased and faster cessation of infringements, thanks to reinforced powers, would have a positive impact on consumers' experience in the Single Market and confidence to engage in cross-border transactions. Naming infringing traders is considered particularly beneficial as it would improve consumers' awareness about the market and its functioning and reinforce their ability to claim redress. For example, recent negative publicity for banks and energy utilities in the UK has resulted in increased consumer switching, with many looking for alternative providers¹⁰⁷. Further, thanks to the power to facilitate redress for consumers, consumers would feel confident when purchasing online as they would be able to recover their money in case of disputes.</p>		

¹⁰⁷ <http://www.economist.com/news/britain/21635042-increasing-competition-shaking-up-moribund-energy-market-big-switch> provides evidence of increased switching which: Ofgem/CMA (2014): State of the Market Assessment, available at: <https://www.ofgem.gov.uk/ofgem-publications/86804/assessmentdocumentpublished.pdf> partly puts down to negative publicity and poor reputation for large incumbents

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Competitiveness	Competitiveness will improve marginally as the CPC mutual assistance will function more smoothly, supporting a level playing field.	Improved enforcement and sanctions would not imply higher costs for law abiding traders. Infringing traders would lose illicit profits gained thanks to infringements. Law-abiding traders would benefit from improved level playing field and competitiveness and gain an incentive to innovate and provide more consumer friendly services. As consumers become more knowledgeable about traders who infringe the law, switching to law-abiding traders is likely to occur.		
SMEs	No specific impacts expected on SMEs.	No significant impacts expected.	No significant impacts expected.	No significant impacts expected.
Employment	No specific impacts expected on employment	No significant impacts expected.	No significant impacts expected.	No significant impacts expected.
Distributional effects	No specific distributional impacts expected	Greater costs will be born in those Member States where authorities currently do not have such powers as identified under the cost section while consumers in these same countries should benefit most from the development of powers of their authorities.	The scale is considered greater as no Member State currently has a full set of such powers. The following countries would be most affected: AT, BE, DE, EL, FR, HR, IE and LT.	Just a few Member States have the powers added in this measure (UK, RO), therefore, most of Member States would be equally concerned.

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Social impacts				
Consumer vulnerability	No specific impacts are foreseen with regards vulnerable consumers	No specific impacts are foreseen with regards to vulnerable consumers. However, with reinforced more 'digitally fit' powers, the CPC authorities would in particular be able to better address infringements in the digital environment, affecting the young and the elderly.		
Feasibility				
Fundamental rights	The measure has no impact on fundamental rights.	The power to conduct mystery shopping might affect fundamental rights because enforcers would use covert identity and the trader would not know that the consumer is in fact an enforcer and that the collected evidence could be used against him/her.	The power to request information from third parties (e.g. banks, domain registers) to track down the flow of money, bank accounts' information or owners of websites can be problematic. Protections regarding individual privacy and bank secrecy (bank privacy) may limit the circumstances where information	The powers added in this measure would go further in restricting private ownership rights. It is clear some procedural guarantees and protection would need to be implemented alongside such powers ¹⁰⁹ .

¹⁰⁹ See some of the discussion on asset freezing and compatibility with fundamental rights at: https://www.baselgovernance.org/sites/collective.localhost/files/publications/08_seeking_to_balance_fundamental_human_rights_eng.pdf

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		<p>The potential negative impact of this measure would be mitigated by ensuring that this power is used only when necessary and when no other means are available to check the trader’s compliance with the law. The best legal practices in implementing these powers (and ensuring their compatibility with fundamental rights) would be taken from the Member States where these powers are already available and used.</p> <p>The power to name infringing traders already exists in the</p>	<p>can be provided. Unless infringements are subject to the criminal proceedings, removing the protection may not be justified. This issue may be especially problematic in Member States with high protection in bank secrecy, such as Luxembourg.</p> <p>The right to take down a website may affect the fundamental right to conduct a business or the right to property.</p> <p>According to the Court of Justice¹⁰⁸, neither the right to the</p>	<p>Such restrictions (freeze assets, suspend an economic activity) may be justified to ensure that no irreparable harm occurs during the enforcement process.</p> <p>Extending the powers may affect the balance between the two aforementioned interests (respect the fundamental right to property/freedom to conduct business on the one hand and ensuring a high level of protection for consumers on the other). The use of such more severe powers would be justified for fraud cases when other</p>

¹⁰⁸ Cf. Case C-544/10, Deutsches Weintor, para. 54.

<p>Assessment criteria</p>	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
		<p>majority of Member States, except CZ, DE, FR, HR and PT. No impact on fundamental rights has been identified when revealing traders who were found in breach of law. Besides the measure increases transparency for consumers and enables them to obtain redress and a better implementation of their rights</p>	<p>protection of personal data (Article 8 of the Charter of Fundamental Rights of EU), nor freedom to conduct a business (Article 16 of the Charter), nor the right to property (Article 17 of the Charter) are absolute rights. They must be considered in relation to their social function and their scope is to be determined in accordance with Article 52(1) of the Charter.</p> <p>It is also necessary to take account Article 38 of the Charter, which, like Article 169 TFEU, seeks to ensure a high level of protection for consumers in EU policies.</p>	<p>means failed to ensure protection for fraud cases when other means failed to ensure protection of consumers.</p>

<p>Assessment criteria</p>	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
			<p>Therefore, given the importance of consumer protection, the resulting fair balancing of rights leads to results in favour of the consumer. Any limitation on the exercise of the rights will be subject to the principle of proportionality and necessity to protect consumers.</p>	
<p>Stakeholder acceptance</p>	<p>Involving no additional legislation and recognising the desire for a better functioning CPC</p>	<p>CPC authorities in the public consultation support¹¹⁰ the introduction of powers for:</p>	<p>CPC authorities in the public consultation support:</p>	<p>Acceptance by stakeholders of this measure is likely to be lower due to high litigation risks in</p>

Assessment criteria	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
	<p>Regulation, acceptance of the measure is considered high.</p>	<ul style="list-style-type: none"> - Test purchases (86%); - Name infringing traders (83%), - Interim measures (82%) <p>Extensive support was expressed by representatives from the 25 Member States present in the CPC workshop in March 2015.</p> <p>Acceptance of this Measure is therefore considered to be very high.</p>	<ul style="list-style-type: none"> - Making the process of claiming compensation by individual consumers more user-friendly (84%) - Recovery of illicit gains (78%) <p>The powers to take down a website and to obtain information about the identity of persons running websites that infringe laws were not explored in individual questions in the public consultation, yet 70% of stakeholders expressed their support for such powers in their general remarks on additional tools needed for CPC authorities.</p> <p>More stringent sanctions because of cross-border nature</p>	<p>relation to private ownership rights. These powers were not explored in individual questions in the public consultation. The acceptance of this Measure is considered medium.</p>

Assessment criteria	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
			<p>of infringements were supported by 39% of CPC authorities but 43% did not express their support.</p> <p>Extensive support for powers under this Measure was also expressed by the representatives from the 25 Member States participating in the CPC workshop in March 2015.</p> <p>Acceptance of this Measure is therefore considered high.</p>	
<p>Conclusion: Given the above, Measure 1.C.2 is clearly the preferred option as it provides enough additional powers to tackle most of the possible infringements faster and in a more efficient way than in the baseline scenario or with non-legislative measure or Measure 1.C.1. In particular it provides very important additional powers for enforcement in the digital era. The additional costs for authorities are limited with regards to the expected reduction in the consumer detriment as, for example, an improvement in the compliance rate of businesses in the five sectors examined under the baseline scenario of 10 points would generate a decrease</p>				

<p>Assessment criteria</p>	<p>Non-legislative: Guidance clarifying Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities</p>	<p>Measure 1.C.1 Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	<p>Measure 1.C.2 Measure 1.C.1 + Investigation powers:</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt interim measures (suspend website, order suspension/retention of payment) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Measure 1.C.3 Measure 1.C.2 + Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to ban the economic activity, disqualify the company’s director, publish all decisions relating to the case)
<p>of the detriment by 30% or EUR 223 million¹¹¹. The powers proposed are also widely supported by respondents to the public consultation and in particular by enforcement authorities themselves. On the other hand, the powers added in the Measure 1.C.3, even though very effective on fraudulent practices would be more costly and legally complex to implement so as to mitigate the fundamental rights issues they raise.</p>				

¹¹¹ The expected decrease in the non-compliance is legitimate because the CPC sweeps have shown that targeted enforcement actions can lead to a significant improvement in compliance rates, i.e. from 20 to 40% at the screening phase to above 80% after a year of enforcement actions

Table 4.5 Assessment of measures addressing sub-problem 1.D: Insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation, which impede ceasing of infringements through the CPC framework or create delays

Assessment criteria	Non-legislative: Guidance clarifying the obligation on CPC competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision	Measure 1.D.1: Introduce binding time-limits to respond to mutual assistance requests and corresponding powers for the Commission to monitor how competent authorities handle bilateral cross-border infringements cases and comply with these binding time-limits.	Measure 1.D.2: Measure 1.D.1 + Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community infringements between Member States	Measure 1.D.3: Measure 1.D.2 + Introduce in certain defined cases mutual recognition/cross-border enforcement of extraterritorial enforcement decisions regarding the intra-Community infringements
Effectiveness				
Reduce the number of infringements not stopped or where enforcement is considered ineffective due to insufficient standards	<p>Guidance would go some way to encouraging competent authorities to adhere to their existing obligations under the CPC Regulation which would mean more infringements are stopped by reducing delays in exchange and processing requests.</p> <p>However, without the Commission monitoring compliance with these obligations, the positive impact is expected to be limited as while some competent authorities improve, others may not, undermining the effectiveness of the measure.</p>	<p>Setting binding targets would go a long way to resolving this problem by providing certainty that requesting authority that information will be received and/or the infringement will be stopped within a specified time period. Delays would be managed and thus cooperation facilitated and consumer detriment tackled faster.</p> <p>However, stopping an infringement also requires that national legal systems are equally efficient and the information exchanged is of sufficient quality for decisions to be made in legal proceedings. These factors are not addressed by the measure.</p> <p>As a result the measure would reduce the number of infringements not currently stopped in most cases. However, the measure on</p>	<p>Evidence would be automatically recognised saving a lot of time in the procedure and therefore permit to tackle infringement faster and ensure that the detriment suffered by consumers is not prolonged.</p> <p>Currently, differences in the type of enforcement system (i.e. administrative, civil and/or criminal), the burden of proof required in legal proceedings and admissibility of evidence obtained) has prevented rapid cessation of infringements or has prolonged the length of legal proceedings (as the requested authority might have to redo the investigation and collect evidence in accordance with its national law).</p> <p>The benefit of this measure in terms of easing the process of cooperation is estimated to be substantial.</p>	<p>This measure would further reduce the number of infringements not stopped due to insufficient standards compared to Measure 1.D.1 and 1.D.2.</p> <p>However, as the assessment of Measure 1.D.2 shows, mutual recognition of evidence and the outcome of investigations is expected to contribute to more uniform enforcement decisions in the majority of cases. Therefore, the added value of introducing mutual recognition/cross-border enforcement of extraterritorial enforcement decisions is considered limited. The number of infringements stopped by this measure, which are already resolved by the Measure 1.D.2 is therefore small.</p>

Assessment criteria	Non-legislative: Guidance clarifying the obligation on CPC competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision	Measure 1.D.1: Introduce binding time-limits to respond to mutual assistance requests and corresponding powers for the Commission to monitor how competent authorities handle bilateral cross-border infringements cases and comply with these binding time-limits.	Measure 1.D.2: Measure 1.D.1 + Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community infringements between Member States	Measure 1.D.3: Measure 1.D.2 + Introduce in certain defined cases mutual recognition/cross-border enforcement of extraterritorial enforcement decisions regarding the intra-Community infringements
		its own is unlikely to eliminate the problem.		
Reduce delays in the CPC Regulation's mutual assistance mechanism (reduce the time needed to handle mutual assistance requests) which are due to insufficient powers or standards	<p>Guidance setting out the obligations on Member States would go some way to reducing the average time taken to handle mutual assistance requests by resolving delays caused by a misunderstanding or use of existing powers.</p> <p>Where insufficient powers are the problem (in a larger number of cases shown in Section 2) the measure does not reduce delays, hence the expected impact is low</p>	<p>The CPC evaluation found that the average time spent on a task by NCAs ranged from 0.75 hours to 15 hours for creation of an information request, 0.75-35 hours for creation of an enforcement request, 0.75-75 hours for case handling upon a receipt of information or enforcement request, and 0.75-150 hours for case handling.</p> <p>In terms of case handling (the most time spent), it was found that the average time spent could be reduced from 150 to 93 hours from more efficient cooperation. This measure would contribute substantially to this reduction on its own by making exchanges more seamless and increasing the certainty of the timescale involved, reducing the time taken to prepare an enforcement case and for follow-up action.</p>	<p>The introduction of mutual recognition removes some of the time taken by competent authorities to collect evidence, follow-up requests, translate documentary evidence and/or checking of how the information was obtained in another Member State for submission in their own legal system. Recognition of the evidence gathered by the other authorities is therefore likely to have a substantial impact on reducing delays and the time taken to handle mutual assistance requests.</p>	<p>This measure would contribute to moderate additional benefits overall to Measure 1.D.2 as the measure expands mutual recognition to enforcement decisions. This would reduce the time taken to respond to requests for enforcement action where a legal proceeding has already been completed in another Member State (i.e. EU widespread infringements).</p> <p>From consultation with CPC competent authorities, we estimate that this concerns 7-8% of intra-Community infringements, a proportion which is increasing over time. A reduction in the time taken is significant in such cases.</p>
Increase the deterrent effect of CPC enforcement mechanism	As the measure reduces delays, deterrent would be greater as the likelihood of investigation and enforcement for infringing traders	Faster procedures contribute to the reputation of efficiency of authorities which is an importance factor for deterrence effects.	The same argument as under Measure 1.D.1	The deterrence effect under this Measure would be the strongest. Traders would be prevented from exploring jurisdictions and

Assessment criteria	Non-legislative: Guidance clarifying the obligation on CPC competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision	Measure 1.D.1: Introduce binding time-limits to respond to mutual assistance requests and corresponding powers for the Commission to monitor how competent authorities handle bilateral cross-border infringements cases and comply with these binding time-limits.	Measure 1.D.2: Measure 1.D.1 + Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community infringements between Member States	Measure 1.D.3: Measure 1.D.2 + Introduce in certain defined cases mutual recognition/cross-border enforcement of extraterritorial enforcement decisions regarding the intra-Community infringements
	increases. However, the scale of impact is expected to be small as procedural changes are needed to make enforcement much more effective.			escaping an enforcement action. Decision would be recognised and enforced across the EU.
Reduce consumer detriment	Consistent with the above assessment, reductions in consumer detriment are expected to be small from this measure	By improving the efficiency of the CPC mutual assistance mechanism, the measure is expected to have a positive impact on reducing consumer detriment by reducing delays in investigation and enforcement.	By improving the efficiency of the CPC mutual assistance mechanism, the measure is expected to have substantial impact on reducing consumer detriment by reducing delays in legal proceeding, ensuring infringements are stopped as soon as possible.	The additional reduction in consumer detriment concerns mainly EU widespread infringements which typically affect higher numbers of consumers. For this reason the added reduction in consumer detriment from Measure 1.D.2 could be substantial, despite this affecting only a small number of cases.
Economic impacts				
Compliance costs – Member States	No costs for Member States are expected for this measure. Any costs should be considered under the do nothing measure.	No additional costs would result from this Measure as the benchmarks for handling of mutual assistance requests are already applicable and the mechanism for resolution of differences in the mutual assistance mechanism is already in place. The Measure would turn these benchmarks into binding time-limits allowing closer monitoring of open cases by the Commission and more vigorous respect of the obligations under the	The changes introduced are procedural for which no additional compliance costs for Member State authorities are anticipated. Training costs would be covered by the current resources. Savings could be possible since the recognition of evidence would reduce administrative costs and eliminate unnecessary validations or even the need to collect again evidence.	The Measure would introduce procedural changes fairly costly to implement as procedural laws may need to be adapted and civil courts need to be trained and translations to be performed. However substantial enforcement costs could be saved for widespread infringements, but those represent only a minority of cases dealt with by the CPC network every year.

Assessment criteria	Non-legislative: Guidance clarifying the obligation on CPC competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision	Measure 1.D.1: Introduce binding time-limits to respond to mutual assistance requests and corresponding powers for the Commission to monitor how competent authorities handle bilateral cross-border infringements cases and comply with these binding time-limits.	Measure 1.D.2: Measure 1.D.1 + Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community infringements between Member States	Measure 1.D.3: Measure 1.D.2 + Introduce in certain defined cases mutual recognition/cross-border enforcement of extraterritorial enforcement decisions regarding the intra-Community infringements
		CPC Regulation by the CPC authorities.		
Compliance costs – Commission	No additional costs to the Commission is assumed by the consultants as the preparation of guidance falls under current administrative responsibilities and budget assigned to the Commission for the CPCS, common activities, CPC Committee and workshops meetings and reporting.	The increased access of the Commission to mutual assistance requests and the monitoring of requests are assumed to be conducted with current resources. There are no compliance costs.	No compliance costs are expected for the Commission as its roles and responsibilities remain unchanged under this measure	No compliance costs are expected for the Commission as its roles and responsibilities remain unchanged under this measure
Compliance costs – Businesses	No costs for businesses are expected from this measure	No impacts on businesses is anticipated from this option	No impacts on businesses is anticipated from this option	No impacts on businesses is anticipated from this option
Consumer confidence and the internal market	Consumer confidence will improve marginally as existing procedures are more effective and efficient.	The Measures would contribute to improvements in the effectiveness and efficiency of mutual assistance requests to cease intra-Community/widespread infringements and sanction unscrupulous traders. Indirectly this would have a positive impact on consumer confidence in the Single Market.		
Competitiveness	Consumer confidence will improve marginally as existing procedures would be more effective and efficient. They should also be more uniform, contributing to a leveller playing field for businesses.	Limited impact linked to faster enforcement procedures	Enforcement standards of evidence would be more even contributing to legal certainty, and, hence, lower costs for businesses.	The Measure would improve the level playing for traders by ensuring that consistent decisions are taken and enforced across borders. This would enhance legal certainty and competitiveness of lawful traders to a greater extent than the other two measures.



Assessment criteria	Non-legislative: Guidance clarifying the obligation on CPC competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision	Measure 1.D.1: Introduce binding time-limits to respond to mutual assistance requests and corresponding powers for the Commission to monitor how competent authorities handle bilateral cross-border infringements cases and comply with these binding time-limits.	Measure 1.D.2: Measure 1.D.1 + Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community infringements between Member States	Measure 1.D.3: Measure 1.D.2 + Introduce in certain defined cases mutual recognition/cross-border enforcement of extraterritorial enforcement decisions regarding the intra-Community infringements
SMEs	No specific impacts expected on SMEs	No specific impacts anticipated in relation to SMEs	No specific impacts anticipated in relation to SMEs	No specific impacts anticipated in relation to SMEs
Employment	No specific impacts expected on employment	No significant impacts expected on employment	No significant impacts expected on employment	No significant impacts expected on employment
Distributional effects (impact on national legal systems)	No specific distributional impacts expected.	Measure would have a significant cost impact on those Member States which currently have more limited resources allocated to CPC enforcement (those with less than 10 FTE include AT, CY,DK, FI,EL, EE, IT, FR and ES). In those Member States which already have substantive CPC resources (such as UK, BE, DE, PL, SE), there might be no cost impact.	The impact of the Measure to introduce a mechanism for mutual recognition of evidence would be felt equally across all Member States. The Measure would have medium impacts on national procedural laws, as it would require recognition of evidence/outcome of investigation without any validation or similar legal process even if the national law of the Member State who has to admit the evidence provides for different rules on the collection of such evidence. Once the evidence is accepted, the competence of the authority/courts to assess freely the evidence obtained by the authority in another Member State would not be affected.	<p>The impact of this Measure would be felt equally across all Member States. The Measure would have significant impacts on national procedural laws, as it would provide that a decision given by the CPC authority in one Member State should be recognised and enforced in the other Member States without any special procedure being required.</p> <p>The executing State would be required to take a decision adopting any measure that would be available under its national law in a similar case in order to ensure the execution of the enforcement decision, unless it would decide to invoke one of the grounds for non-recognition or non-execution. The executing State would apply, in accordance with its national law, criminal, administrative or civil measures.</p> <p>Monies obtained from the enforcement of decisions would</p>

Assessment criteria	Non-legislative: Guidance clarifying the obligation on CPC competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision	Measure 1.D.1: Introduce binding time-limits to respond to mutual assistance requests and corresponding powers for the Commission to monitor how competent authorities handle bilateral cross-border infringements cases and comply with these binding time-limits.	Measure 1.D.2: Measure 1.D.1 + Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community infringements between Member States	Measure 1.D.3: Measure 1.D.2 + Introduce in certain defined cases mutual recognition/cross-border enforcement of extraterritorial enforcement decisions regarding the intra-Community infringements
				accrue to the executing State, unless otherwise agreed by the respective Member States.
Social impact				
Consumer vulnerability	No specific impacts expected on consumer vulnerability	No impact on consumer vulnerability foreseen from this measure	No impact on consumer vulnerability foreseen from this measure	No impact on consumer vulnerability foreseen from this measure
Feasibility				
Fundamental rights	Better implementation of consumers' rights.	Better implementation of consumers' rights	<p>The Measure would need to foresee that evidence lawfully obtained in one Member State should be accepted as evidence in all other Member States, unless it was obtained contrary to any of the Member State's fundamental principles of law.</p> <p>Evidence obtained in another Member State would be admissible by a fact finder (competent authority/court) unless there its admission would adversely affect the fairness of the procedure or the rights of defence as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of EU. This should however be balanced by the results obtained in terms of</p>	<p>The Measure would need to take into account the so-called “<i>non bis in idem</i>” principle, which demands that once certain persons have been subject to a decision on certain facts and legal norms to be applied, they should not be the subject of further decisions on the same matter. In regard to the better implementation of consumer rights that could be improved, the measure may seem somewhat disproportionate and difficult to implement.</p>

Assessment criteria	Non-legislative: Guidance clarifying the obligation on CPC competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision	Measure 1.D.1: Introduce binding time-limits to respond to mutual assistance requests and corresponding powers for the Commission to monitor how competent authorities handle bilateral cross-border infringements cases and comply with these binding time-limits.	Measure 1.D.2: Measure 1.D.1 + Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community infringements between Member States	Measure 1.D.3: Measure 1.D.2 + Introduce in certain defined cases mutual recognition/cross-border enforcement of extraterritorial enforcement decisions regarding the intra-Community infringements
			better implementation of consumer rights.	
Stakeholder acceptance	Consumer acceptance is considered high as reflected in feedback presented in the measures, with stakeholders requesting action to reduce processing times and reduce delays in the mutual assistance mechanism.	In open responses to the stakeholder consultation a large number respondents highlighted that lengthy procedures should be a priority for action, as processing times are long and consumers suffer harm while the authorities are awaiting a response from other authorities through the mutual assistance mechanism. Therefore although this Measure was not explicitly consulted in the public consultation, support for it is high.	A large majority of the CPC authorities (83%) in the public consultation agreed that the introduction of common standards to handle infringements within the CPC Regulation would be useful. The following areas were assigned a high priority: - "investigation of websites" (78%), - "collection of evidence" (67%), and - "acceptance of the results of a partner authority's investigation" (60%).	76% of CPC authorities in the public consultation indicated that a mechanism of mutual recognition of enforcement decisions would be effective in tackling widespread infringements (and 13% indicated that this Measure would not be effective). Acceptance is therefore considered as high.
<p>Conclusion: Including binding time-limits and mutual recognition of evidence would be supported by stakeholders, could substantially reduce enforcement delays without additional costs for Member States and the Commission. This would benefit consumers as infringements would last shorter and consumer detriment would be tackled faster. Faster procedures would also contribute to the reputation of efficiency of CPC authorities, increasing deterrence effects. Efficiency across legal systems would be assured and certain legal barriers related to the acceptance of evidence in another Member State would be overcome. Mutual recognition of enforcement decisions would be the most efficient solution in terms of saving of administration costs and provision of legal certainty for traders. However, it would be rather costly and complex to implement due to the necessary changes in procedural laws and would be mostly beneficial in case of widespread infringements, which may be disproportionate, as these infringements represent a minority of cases dealt with by the CPC network every year.</p>				

Table 4.6 Assessment of measures addressing sub-problem 2B: Inadequate procedural mechanism to address widespread infringements, including the digital environment

Assessment criteria	Measure 2.B.1: Specify and clarify the format of common enforcement action under Article 9 of the CPC Regulation with stronger coordination role of the European Commission; set out minimum requirements to ensure consistency among national actions and their outcomes.	Measure 2.B.2: Measure 2.B.1 + Setting up a new specific EU (centralised) cooperation procedure to handle EU-relevant infringements, including in the digital environment, with a greater role for the European Commission and/or the initiating (lead) Member State or the group of Member States.	Measure 2.B.3: Measure 2.B.2 + Provide for direct investigation, enforcement and sanctioning powers of the European Commission to tackle defined EU-level relevant infringements of consumer legislation set out in regulations, in particular in the DSM.
Effectiveness			
Reduce the number of widespread infringements due to inadequate mechanism	<p>Coordinated enforcement actions under Article 9 of the CPC Regulation have proven to be a useful tool to address widespread infringements (see the in-app purchases action in the problem section). The proposed Measure to specify and clarify further the format for coordinated enforcement actions would reduce the number of situations where enforcement is ineffective, as many concerns raised by CPC authorities were about the clarity of obligations and roles of the Commission and competent authorities in the procedure under Article 9.</p> <p>A more streamlined procedure, which sets up minimum requirements (e.g. to ensure minimum consistency among parallel national actions and transparency for the traders involved) and a stronger role for the Commission to coordinate and monitor the procedure, would make the coordination of such actions more effective than currently (e.g. by providing a clear legal basis for such actions, ensuring transparency and clarity about the process and its outcome to CPC authorities, Commission, consumers and traders concerned).</p> <p>Currently CPC network deals with ca. 2 joint enforcement actions per year. Although the Measure would streamline the process, it is not expected that more enforcement actions than</p>	<p>This Measure would achieve better the objective to reduce the number of situations of ineffective enforcement than Measure 2.B.1 by setting up a new formalised procedure with procedural steps, time-limits, and clear roles for CPC authorities and the Commission.</p> <p>The effect would be greater as a centralised procedure would be quicker to initiate (based on objective thresholds/criteria). It is estimated that ca. 4-6 joint enforcement actions per year would be initiated using this procedure (on the basis of the Commission's experience in the antitrust area and with previous CPC actions); hence, more than under Measure 2.B.1.</p> <p>It is anticipated that this Measure would therefore address all the remaining issues (mentioned in the problem definition), which are hindering effective investigation, enforcement and sanctioning of widespread infringements.</p>	<p>This measure would introduce a unitary approach to tackling EU-level infringements and therefore have the greatest impact on the reducing the number of widespread infringements, because all such situations (which are brought to the attention of the Commission) would be addressed.</p> <p>It is estimated that on average the Commission would take about 12 decisions per year (on the basis of the Commission's experience in the antitrust area).</p>

Assessment criteria	Measure 2.B.1: Specify and clarify the format of common enforcement action under Article 9 of the CPC Regulation with stronger coordination role of the European Commission; set out minimum requirements to ensure consistency among national actions and their outcomes.	Measure 2.B.2: Measure 2.B.1 + Setting up a new specific EU (centralised) cooperation procedure to handle EU-relevant infringements, including in the digital environment, with a greater role for the European Commission and/or the initiating (lead) Member State or the group of Member States.	Measure 2.B.3: Measure 2.B.2 + Provide for direct investigation, enforcement and sanctioning powers of the European Commission to tackle defined EU-level relevant infringements of consumer legislation set out in regulations, in particular in the DSM.
	currently would be undertaken.		
Remove duplication/multiplication of investigative efforts, use of disproportionate enforcement resources and divergent enforcement outcomes	<p>Clarification of roles and obligations under Article 9 would improve the allocation of resources, avoiding duplication and disproportionate use of resources. The Measure would reduce the total costs of enforcement.</p> <p>The measure improves coordination and the potential to reduce Member State duplication of enforcement efforts. Based on the in-apps case (see Annex 5.2) the costs of the action for the Commission was under €52,000. If 27 MS had to take action the cost would be higher (the cost would be ca. €630,000).</p> <p>However, different enforcement approaches may still take place under this Measure, because multiple Member States may be carrying out the same investigations/enforcement actions in parallel (and duplicating costs).</p>	Measure 2.B.2 would go further than Measure 2.B.1 by creating a new procedure allowing for a higher degree of pooling resources, knowledge and coordination between authorities.	A unitary and direct approach should in theory have the greatest impact at reducing duplication and ensure consistent enforcement outcomes (i.e. a single authority leads investigation and enforcement)
Reduce the time needed to stop a widespread infringement	From the do nothing situation, this measure would be a first step to reduce the time taken to cease infringements by removing some sources of delay in the current procedure. For example ensuring that Member States requested to share information do so within a set timescale and coordination of	A new procedures offers greater streamlining of the enforcement procedure and simplification of processes, with a greater role for the Commission where it adds value. With Commission involvement the measure has the opportunity to take action more decisively across all Member States and do so	A unitary approach would take the least time to stop an EU widespread infringement as the Commission can take immediate action once the infringement is detected.

Assessment criteria	Measure 2.B.1: Specify and clarify the format of common enforcement action under Article 9 of the CPC Regulation with stronger coordination role of the European Commission; set out minimum requirements to ensure consistency among national actions and their outcomes.	Measure 2.B.2: Measure 2.B.1 + Setting up a new specific EU (centralised) cooperation procedure to handle EU-relevant infringements, including in the digital environment, with a greater role for the European Commission and/or the initiating (lead) Member State or the group of Member States.	Measure 2.B.3: Measure 2.B.2 + Provide for direct investigation, enforcement and sanctioning powers of the European Commission to tackle defined EU-level relevant infringements of consumer legislation set out in regulations, in particular in the DSM.
	efforts means a decision is reached in unison.	more efficiently than 28 individual Member States. This would ultimately reduce the time needed to stop an infringement.	
Save litigation costs for traders who operate across EU	This measure would save some litigation costs for traders as the consistency in enforcement would improve. However, cases where Article 9 is not used to address widespread infringements would still remain. This would result in traders incurring litigation costs in more than one Member State.	Setting up a single cooperation procedure would provide a sort of one-stop shop at the EU level, therefore, it would better achieve the objective of reducing legal uncertainty, saving time and litigation costs, which traders would incur to cope with diverging approaches to the same commercial practice across Member States.	The trader would only face a single legal proceeding under this measure. Hence this measure would be the best at achieving the objective of reducing litigation costs.
Reduce consumer detriment	<p>Widespread infringements are relatively low in number, but high in the number of consumers affected and thus they result in a high financial consumer detriment.</p> <p>On this basis, the reduction in consumer detriment resulting from this Measure is considered to be important. For example, it is estimated that the in-app purchases action of the CPC network potentially saved consumers EUR 68mIn in estimated financial detriment.</p> <p>Currently the CPC network conducts ca. 2 joint enforcement actions per year. The Measure would streamline the process for these actions, however, it is not expected that many more enforcement actions (and thus a more substantial reduction in financial consumer detriment) than</p>	<p>The reduction in financial consumer detriment from this Measure would exceed Measure 2.B.1.</p> <p>Thanks to a central cooperation procedure and a stronger role of the Commission, more actions would be initiated. For example, in the antitrust (cartels and abuses of dominant position only) area, where the Commission has investigation, enforcement and sanctioning powers, the Commission adopts on average 12 decisions per year, covering both instruments antitrust and cartel. On this basis it is estimated that ca. 4-6 common actions per year would be initiated using this procedure, depending on the thresholds that would trigger the use of this procedure.</p>	The reduction in consumer detriment from this Measure would be the highest. In the antitrust area the Commission adopts on average 12 decisions per year. A similar number could also be estimated under this Measure. These decisions would concern significant financial consumer detriment, as they would cover serious infringements concerning significant consumer markets and affecting consumers in many Member States.

Assessment criteria	Measure 2.B.1: Specify and clarify the format of common enforcement action under Article 9 of the CPC Regulation with stronger coordination role of the European Commission; set out minimum requirements to ensure consistency among national actions and their outcomes.	Measure 2.B.2: Measure 2.B.1 + Setting up a new specific EU (centralised) cooperation procedure to handle EU-relevant infringements, including in the digital environment, with a greater role for the European Commission and/or the initiating (lead) Member State or the group of Member States.	Measure 2.B.3: Measure 2.B.2 + Provide for direct investigation, enforcement and sanctioning powers of the European Commission to tackle defined EU-level relevant infringements of consumer legislation set out in regulations, in particular in the DSM.
	under the baseline scenario would be undertaken.	The in-app purchases action of the CPC network potentially saved consumers EUR 68m in detriment. The overall savings from this Measure (and the estimated 4 joint enforcement actions) cannot be estimated, as it would depend on the widespread infringements in question.	
Economic impacts			
Compliance costs - Member States	There are some costs for authorities to adapt to the revised Art.9 procedure, but these are considered small.	Cost savings are anticipated to be greater than Measure 2.B.1 due to implementing a much more formalised procedure, therefore reducing the collective inputs of individual Member States and reducing the time taken to cease infringements. Not relevant here	This measure would have the greatest impact on reducing the costs of enforcement Not relevant here
Compliance costs - Commission	Compliance costs are assumed, similar to those incurred by the Commission in supporting the recent in-apps purchasing joint enforcement action, involving around 0.2-0.38 FTE of resources. Depending on the case (See Annex 5.2)	A new procedure is likely to increasingly involve a direct role for the Commission (e.g. where it obtains a mandate to negotiate undertakings with traders). Resources are therefore considered as multiples of those estimated in Measure 2.B.1. We conservatively estimate 4 cases a year.	The direct enforcement role for the Commission would increase its level of involvement in procedures, similar to the role DG COMP has in supporting case handling in the ECN. Similar cost are expected in excess of those in in Measure 2.B.2. Indeed, based on ECN experience of case handling 9-18 FTE resources are estimated at a costs of €1.2mn-€2.3mn (see Annex 5.3 for detail calculations)
Compliance costs - Businesses	No compliance costs for business expected from this measure	No compliance costs for business expected from this measure	No compliance costs for business expected from this measure
Consumer confidence and the internal market	Ensuring enforcement is more consistent across the Member States and more rapid enforcement should improve consumer confidence and the functioning the internal market to a moderate extent	Ensuring enforcement is more consistent across the Member States and more rapid enforcement should improve consumer confidence and the functioning the internal market to a moderate extent	Ensuring enforcement is more consistent across the Member States and more rapid enforcement should improve consumer confidence and the functioning the internal market to a high extent

Assessment criteria	Measure 2.B.1: Specify and clarify the format of common enforcement action under Article 9 of the CPC Regulation with stronger coordination role of the European Commission; set out minimum requirements to ensure consistency among national actions and their outcomes.	Measure 2.B.2: Measure 2.B.1 + Setting up a new specific EU (centralised) cooperation procedure to handle EU-relevant infringements, including in the digital environment, with a greater role for the European Commission and/or the initiating (lead) Member State or the group of Member States.	Measure 2.B.3: Measure 2.B.2 + Provide for direct investigation, enforcement and sanctioning powers of the European Commission to tackle defined EU-level relevant infringements of consumer legislation set out in regulations, in particular in the DSM.
Competitiveness	Rogue traders have a competitive advantage when enforcement is insufficient, hence this measure helps to reduce that advantage and creates a leveller playing field with more consistent enforcement	Similar impacts to Measure 2.B.1 but of higher magnitude to higher number of cases using a new procedure	Eliminated rogue trader advantages is operating EU wide.
SMEs	No specific impacts anticipated in relation to SMEs	No specific impacts anticipated in relation to SMEs	No specific impacts anticipated in relation to SMEs
Employment	No significant impacts expected on employment	No significant impacts expected on employment	No significant impacts expected on employment
Distributional effects	Impacts of this measure would be felt equally across all Member States as the baseline is consistent	Impacts of this measure would be felt equally across all Member States as the baseline is consistent	Impacts of this measure would be felt equally across all Member States as the baseline is consistent
Social impact			
Consumer vulnerability	The in-apps common enforcement action did contribute to improvements in the consumer vulnerability. How this is a feature of the case and not the measures used.	No specific impacts anticipated in relation to consumer vulnerability	No specific impacts anticipated in relation to consumer vulnerability
Feasibility			
Impact on national legal systems	Subsidiarity is strong as this measure only requires Commission support when requested and adds value. Hence the impact on legal systems is considered minimal. Change would only be needed in the CPC Regulation.	Moderate impact on legal systems: e.g. once the central cooperation procedure is initiated, as a general principle, parallel national proceeding concerning the same infringement would have to be suspended awaiting the outcome of the EU-level procedure.	Impacts on the national legal systems will be significant. The Commission, similarly to the EU competition policy, would have an exclusive jurisdiction where an infringement has an "EU dimension". Such a measure could be based on Article 352 TFEU, in conjunction with Article 103 TFEU: it would require the unanimity at the Council and the consent of the European Parliament to adopt such a measure. However, the direct investigation, enforcement and sanctioning powers of

Assessment criteria	Measure 2.B.1: Specify and clarify the format of common enforcement action under Article 9 of the CPC Regulation with stronger coordination role of the European Commission; set out minimum requirements to ensure consistency among national actions and their outcomes.	Measure 2.B.2: Measure 2.B.1 + Setting up a new specific EU (centralised) cooperation procedure to handle EU-relevant infringements, including in the digital environment, with a greater role for the European Commission and/or the initiating (lead) Member State or the group of Member States.	Measure 2.B.3: Measure 2.B.2 + Provide for direct investigation, enforcement and sanctioning powers of the European Commission to tackle defined EU-level relevant infringements of consumer legislation set out in regulations, in particular in the DSM.
			the Commission could only be invoked to enforce EU consumer <i>acquis</i> which is contained in directly effective measures - Regulations (at present this would only cover sectorial air passenger rights legislation), as horizontal legislation, e.g. on consumer rights and unfair commercial practices, is laid down in directives. At present the possible scope of the measure would therefore be limited only to this sectorial directly effective legislation.
Fundamental rights	No impacts on fundamental rights are expected	The new procedure would have to ensure that due process and defence rights of traders, who are subject to this procedure, are respected. Traders' defence rights in any proceedings before national authorities or before the Commission are part of their fundamental right to a due process which is guaranteed by Article 6 of the European Convention on Fundamental Rights of EU (right to a fair trial).	Elaborate provisions would have to be drawn up to take into account due process rights for traders (hearings, access to file, professional secrecy), similar to the Council Regulation 1/2003 on the implementation of the rules on competition or to the Council Regulation 139/2004 on the control of concentrations between undertakings.
Stakeholder acceptance	Very high acceptance by stakeholders: The majority of CPC authorities (54%) indicated that a specific cooperation procedure to tackle EU-level relevant infringements is very important. Further 38% stated it is important. There was also a broad consensus among the CPC authorities on the effectiveness of the proposed possible approaches to deter EU-level relevant infringements:	High acceptance by stakeholders as regards a single EU level procedure: 70% of the CPC authorities supported the single EU level procedure, where the Commission or any Member State can bring the evidence of an EU-level infringement. The CPC authorities also supported the Commission's role - to 'define the evidence based priority sectors where consumer conditions are the	Low acceptance by stakeholders: Slightly more than half (52%) of the CPC authorities stated that the Commission should not play a leadership role while "carrying out case investigations (including the power to do on-site investigations, request information from traders)". Since this sub-option encompasses a Union action in the enforcement of consumer protection laws (which has so far been the

Assessment criteria	Measure 2.B.1: Specify and clarify the format of common enforcement action under Article 9 of the CPC Regulation with stronger coordination role of the European Commission; set out minimum requirements to ensure consistency among national actions and their outcomes.	Measure 2.B.2: Measure 2.B.1 + Setting up a new specific EU (centralised) cooperation procedure to handle EU-relevant infringements, including in the digital environment, with a greater role for the European Commission and/or the initiating (lead) Member State or the group of Member States.	Measure 2.B.3: Measure 2.B.2 + Provide for direct investigation, enforcement and sanctioning powers of the European Commission to tackle defined EU-level relevant infringements of consumer legislation set out in regulations, in particular in the DSM.
	<p>- 86% supported an obligation for Member States to notify cases corresponding to defined criteria for EU-level relevance so as to trigger a joint enforcement action</p> <p>-69% also supported an obligation for the concerned Member States to conduct a joint enforcement action, following sufficient evidence on a case of EU-level relevance, brought by the Commission.</p>	<p>poorest' (71% were in favour),</p> <ul style="list-style-type: none"> - to 'carry out preparatory prima facie investigations (e.g. based on website studies, complaint data)' (65% were in favour), - to 'request Member States to enforce and/or impose a sanction in case of non-compliance with the undertaking' (56% in favour), - to request trader(s) to cease an infringement (47% supported and 47% did not support). <p>In contrast, slightly more than half (52%) of the CPC authorities stated that the Commission should not play a leadership role while 'carrying out case investigations (including the power to do on-site investigations, request information from traders)'.</p>	<p>prerogative of Member States), it should be borne in mind that political reluctance from Member States regarding this sub-option is to be expected.</p>
<p>Conclusion: Measure 2.B.2 is considered proportionate as Member State can set the conditions under which the Commission leads enforcement action. Powers also remain with Member States and the measure is considered acceptable by stakeholders and achieves new benefits. The costs of Measure 2.B.3 could also be considered disproportionate due the resources required for the Commission to fulfil such a function. Further, the feasibility of the Measure 2.B.3 is doubtful. 2. B.1 is similar to the status quo and therefore does not provide sufficient net benefits compared to 2.B.2.</p>			

Table 4.7 Assessment of measures addressing sub-problem 3.A: Currently all alerts are given equal attention regardless of their potential importance and they are not followed up

Assessment criteria	Non-legislative: Non-binding guidance clarifying Member State obligations concerning the use of the alerts mechanism specified in Article 7	Measure 3.A.1: Introduce the alerts' action categorisation based on a type of follow-up (for compulsory action within a deadline or for information only)
Effectiveness		
Reduce the number of situations where important alerts were not followed	<p>Measure would ensure more notifications of infringements are placed on the alert mechanism, but they would still be blanket in distribution and provide little incentive for competent authorities to follow up with appropriate action.</p> <p>Some reduction is therefore expected, but the impact would be limited in ensuring important alerts are followed up.</p>	<p>Assigning each alert a categorisation would ensure that the information contained in the alert is targeted to and reaches the correct person/authority in each Member State. In turn, this ensures the market intelligence contained in the alert is acted upon to detect, prevent or cease an infringement. This is in contrast to the do nothing situation where authorities are reluctant to issue or respond to alerts knowing they are unlikely to be read and blanket spamming of alert messages is the CPCS discourages competent authority engagement.</p> <p>Consequently there are a large number of infringements which could have been investigated if intelligence were more effectively and efficiently shared.</p> <p>The measure is therefore expected to result in a significant reduction in the number of situations where alerts were not followed. As categorisation ensure that even in blanket requests authorities know to and do view priority alerts (many may choose to ignore information only). Conservatively, it can be assumed that 50-60% of these alerts are followed up. This order of magnitude is based on the thoughts of experts as not available data is available.</p>
Reduce the number of undetected infringements, in particular for parallel domestic investigations regarding the same infringement by the same trader (s) due to the fact that all alerts are given equal attentions regardless of their potential importance and that access to the alerts mechanism is limited	Some reduction is expected, but as the guidance is non-binding as does not prioritise the alerts to mitigate the blanket dissemination, the impact is small in scale.	<p>In the do nothing situation, the lack of alerts use and follow-up results in the late or non-detection of infringements. Infringements which could have been stopped or investigated earlier are not as a result. In particular this applies to parallel domestic infringements where authorities are not aware the same trader is committing the same infringement in other Member States without correct alerts notification would resolve this. Prioritisation and targeting of this information to the correct competent authorities in each Member State under this measure would reduce the number of undetected infringements significantly from the do nothing situation, including parallel domestic cases.</p> <p>Access to the alerts mechanism however remains unchanged under this measure, reducing the number of stakeholders who might benefit from the alerts intelligence</p>

Assessment criteria	Non-legislative: Non-binding guidance clarifying Member State obligations concerning the use of the alerts mechanism specified in Article 7	Measure 3.A.1: Introduce the alerts' action categorisation based on a type of follow-up (for compulsory action within a deadline or for information only)
Reduce consumer detriment	A small reduction in detriment is anticipated, consistent with the above assessment.	<p>For the additional infringements detected due to this measure, and then investigated and enforced, there is proportionate reduction in consumer detriment. On its own, the measure would increase the number of infringements detected (specific those classified as parallel domestic), but the proportion duly investigated and enforcement does not change as the resources of competent authorities remain unchanged from the do nothing situation. Assessed in isolation, the measure needs effective enforcement procedure and sufficient resources in competent authorities devoted to CPC-relevant infringements to pursue those detected infringements and maximise the reduction in consumer detriment. The reduction in consumer detriment is therefore anticipated to be limited if this measure is implemented independently from measure to strengthen powers, improve the efficiency of procedures, resources and scope to tackle parallel domestic infringements (a type of EU level infringement).</p> <p>Indirectly, the increasing detection of infringements would increase the deterrent to rogue traders and therefore contribute to a small reduction in the number infringements committed by traders. However, there is no evidence to suggest what the scale of this reduction might be.</p>
Economic impacts		
Compliance costs – Member States	No costs for Member States are expected for this measure. Any costs should be considered under the do nothing measure.	Additional compliance costs are assumed negligible for this measure as the major change would be the addition of options for completion on the CPCS when submitting an alert, for example to select the sector(s) of priority (i.e. from a pull-down menu) and the action follow-up required from responding authorities (i.e. by ticking a relevant box). This would amount to little more than 1-2 minutes per alert which is consider minor and not quantified in this assessment.
Compliance costs – Commission	No additional costs to the Commission are assumed by the consultants as the preparation of guidance falls under current administrative responsibilities and budget assigned to the Commission for the CPCS, common activities, CPC Committee and workshops meetings and reporting.	Changes to the CPC System are anticipated to be minimal, requiring the addition of a categorisation and/or prioritisation field to the message. The change to IT systems is considered feasible within the current budget for maintaining and administering the CPC Network. No additional costs are foreseen from this measure.
Compliance costs – businesses	This measure is anticipated to have no impact on the compliance costs of businesses.	This measure is anticipated to have no impact on the compliance costs of businesses.

Assessment criteria	Non-legislative: Non-binding guidance clarifying Member State obligations concerning the use of the alerts mechanism specified in Article 7	Measure 3.A.1: Introduce the alerts' action categorisation based on a type of follow-up (for compulsory action within a deadline or for information only)
Consumer confidence and the internal market	Negligible impact on consumer confidence expected as although detection increases, the number of infringements stopped is not expected to change significantly due to this measure	Increasing the detection of infringements would strengthen the deterrent effect, giving consumer and compliant traders more confidence in the internal market. As the measure specifically assists the detection of parallel domestic infringements, it also contributes to more consistent enforcement across the EU, building trader confidence in the internal market.
Competitiveness impacts	Negligible impact on competitiveness expected as improvement to level playing field for detecting a small number of infringements is small	By improving the detection of parallel domestic infringements, the measure contributes to more consistent enforcement and therefore a levelled playing field for traders in the EU. More effective enforcement also increases the competitiveness of compliant traders, by increasing the costs/risks for rogue traders operating in the EU.
SMEs	No specific impacts on SMEs expected	No specific impacts on SMEs are anticipated from this measure.
Employment	No employment impacts expected	No specific impacts on employment are anticipated from this measure.
Distributional effects	No distributional impacts expected	Impacts are anticipated to be equally relevant across all Member States and sectors, proportional to the compliance rates of traders. Distributional effects are therefore considered negligible from this measure as these differences exist in the do nothing situation.
Social impacts		
Consumer vulnerability	No impact on consumer vulnerability expected	Targeting of alerts and subsequent cross border enforcement actions at those infringements of greatest benefit (including malpractices targeting vulnerable consumers) would enhance protection for vulnerable consumer more so than other groups of consumers.
Feasibility		
Impact on national legal systems	Measure does not affect the legal systems of Member States	.Measure concerns changes to the procedures within the CPCs and are therefore not expected to have any impact on the legal systems of Member States
Fundamental rights	No impacts on fundamental rights expected	No impacts on fundamental rights expected
Stakeholder acceptance	The public consultation identified improving alerts as a top priority for many stakeholders (See Measure 3.A.1). As a first prerequisite step, it is sensible to conclude this measure is well supported on this basis.	Action categorisation of alerts was identified as a top priority for 44% of respondents and a medium priority by a further 40% of respondents to the public consultation when asked what key conditions for an effective alert system. Strongest support was shown from ECCs (77% top priority) and public authorities (49%), with least support from consumer association (32%).

Assessment criteria	Non-legislative: Non-binding guidance clarifying Member State obligations concerning the use of the alerts mechanism specified in Article 7	Measure 3.A.1: Introduce the alerts' action categorisation based on a type of follow-up (for compulsory action within a deadline or for information only)
<p>Conclusion: Measure on its own is expected to generate moderate benefits at negligible additional cost to competent authorities, creating a positive net benefit. Acceptance of the measure by stakeholders is also high. There are no legal difficulties identified which would hinder its implementation in Member States. Recommended that the measure is taken forward in the preferred option.</p>		

Table 4.8 Assessment of measures addressing sub-problem 3.B: Currently access to the alert mechanism is limited to national authorities only, which limits the availability of information

Assessment criteria	Measure 3.B.1: Introduce a possibility to have access to the alert mechanism for other actors
Effectiveness	
Improve the availability of information on emerging malpractice	This measure provides an opportunity for organisations outside the CPC System (Commission, ECCs and consumer associations/ombudsmen) to play a more active role in market surveillance and enforcement. They are able to share intelligence and consumer complaint data which may indicate the presence of infringements or trends in business practices which may be a concern to competent authorities. For example, a consumer association might notify competent authorities that a trader is subject to a large number of complaints or has adopted a controversial new business practice, and is active in 5 other Member States. Using this information competent authorities can respond quickly to initiate a coordinated enforcement procedure or joint investigation in those five Member State already in the position of some evidence and the ability to target resources accordingly. The next phase requires effective and efficient EU-level procedures, but this measure does support the first phase of enforcement – detection and investigation – by improving the availability of information.
Reduce the cost of evidence gathering phase of the case handling and of enforcement	By receiving a greater volume of market intelligence from multiple sources the measure should ensure competent authorities are able to gather sufficient evidence for investigation and enforcement purposes more quickly, easily and of higher quality. Better quality evidence support quicker legal proceedings and therefore lowers the costs of evidence gathering and enforcement. The scale of the benefits is considered substantial in the order of 10% saving by reducing the search time and amount of evidence to be gathered. This is an approximate estimate assumed by the consultants in the absence of available data.
Reduce the number of undetected infringements, in particular for parallel domestic investigations regarding the same infringement by the same trader(s) due to the fact that all alerts are given equal attention regardless of their potential importance and that access to the alert mechanism is limited	Improved access to the alerts mechanism on its own would reduce the number of infringements which would otherwise go undetected due to lack of market intelligence and/or the sharing of that intelligence. However, without other measures (e.g. alerts prioritisation) its impact would be limited as competent authorities would still give alerts equal attention in blanket dissemination, follow-up would not be systematic and therefore infringements would go undetected or be tackled too slowly to prevent consumers suffering harm.

Assessment criteria	Measure 3.B.1: Introduce a possibility to have access to the alert mechanism for other actors
Reduce consumer detriment	By detecting, investigating and ceasing an increased number of infringements there is expected to be moderate reduction in consumer detriment, however the scale of reduction is limited as without other measures competent authorities may not prioritise the case of most benefit and lack confidence in the alert mechanism. For this reason, the deterrent effect is unlikely to change from the do nothing situation.
Economic impacts	
Compliance costs – Member States	Providing access to the alert mechanism for other users imposes not additional costs on CPC competent authorities as they are not responsible for the administration or technical functioning of the CPC System. For new stakeholders added to the system there is likely to be some training and learning costs to familiarise themselves with the functioning of the CPC System. This is difficult to quantify as it is unknown what number of stakeholders given the opportunity would request access.
Compliance costs – Commission	As owners of the CPC System, the Commission would incur some costs to connect additional users to the system and to provide training to those stakeholders gaining access to the system. These resources are also needed to moderate input from stakeholders and provide a helpdesk function where technical difficulties arise. Some of these activities are already provided by the Commission in the current CPC Regulation and should not be included in these additional costs. For the similar RAPEX database used by the EU authorities to post product health and safety alerts, 2 FTE are currently employed to administer the system with the Commission. The latest statistics ¹¹² suggest the RAPEX handles on average 200-300 reactions per month, whereas the CPC currently handles fewer alerts in a 12 month period. Consider that the Commission already has some resources devoted to the administration of CPC, the consultants suggest 2 additional FTE to be an over estimate of the resource implications. For this assessment we conservatively estimate 20% of FTE is assigned to this task within the Commission, following Commission advice.
Compliance costs – Businesses	No compliance costs are foreseen for businesses under this measure.
Consumer confidence and the internal market	Improvements in detection of infringements and reductions in consumer detriment would improve consumer confidence in the internal market. Lawful traders would also gain confidence knowing that national stakeholders are playing a more active role in seeking out and warning consumers of rogue traders.
Competitiveness impacts	Negligible impact on business competitive are foreseen in relation to this measure.
SMEs	No specific impacts on SMEs are anticipated from this measure.
Employment	No specific impacts on employment are anticipated from this measure.
Distributional effects	Impacts are anticipated to be equally relevant across all Member States and sectors, proportional to the compliance rates of traders. Distributional effects are therefore considered negligible from this measure as these differences exist in the do nothing situation.
Social impacts	
Consumer vulnerability	Evidence suggests that vulnerable consumers are often the least likely to engage in markets and be aware of their consumer rights, increasing susceptibility to rogue traders. Therefore, improved access to alerts by interested stakeholders would mean this group of consumer can be protected more so than other groups and be targeted with warnings, consumer association market monitoring and support by ECCs in seeking redress.
Feasibility	
Impact on national legal systems	Measure concerns changes to the procedures within the CPC System and are therefore not expected to have any impact on the legal systems of Member States

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http://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/reports/docs/rapex_reactions_201502_en.pdf

Assessment criteria	Measure 3.B.1: Introduce a possibility to have access to the alert mechanism for other actors
Fundamental rights	Extending the circle of actors that have access to the alert mechanism may lead to data protection issues, depending on the extent of the extension i.e. which actors would have access. This extends to whether these additional actors can only place alerts on the system or also view alerts placed by others. Furthermore, providing information at the investigative (or pre-investigative stage) about companies may harm their right to corporate reputation. To mitigate the risk of sensitive and commercially confidential data being made public or data shared where corporate reputation is concerned, the measure should only permit the placing of alerts on the system, moderated by the Commission.
Stakeholder acceptance	44% of stakeholders responding to the public consultation indicated that the efficiency of the current system of surveillance and alerts is insufficient (41% sufficient or fully sufficient). When asked to specify the conditions for an effective alert system the need for the alerts to be made public (49% of respondents), possibility of other organisations with an interest in enforcement of consumer right to post alerts (54%) and the possibility for the Commission to post alerts (44%) were highlighted as priorities, Acceptance was highest among consumer associations and ECCs responding to the survey, but much less strongly supported by public authorities and governments. Consensus supporting the measure was strongest for consumer associations and ECCs to have access alerts (over 60% across all stakeholders accept public authorities).
<p>Conclusion: Increasing access to the alerts mechanism would generate net benefits, although the Commission would incur some additional costs to set-up, train users and moderate inputs. There are concerns regarding how the information disseminated is used by non-competent authorities, however they are consider minimal relative to the potential benefit and provided inputs are moderated. Recommend measure is included in the preferred option.</p>	

Table 4.9 Assessment of measures addressing sub-problem 3.C.1: Insufficient resources dedicated to enforcement cooperation under the CPC Regulation in some Member States

Assessment criteria	Non-legislative: Guidance clarifying Member State obligations to provide “adequate resources” (Article 4(7)) to handle mutual assistance requests in the form of guidance	Measure 3.C.1: Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation and corresponding powers for the Commission to audit these resources
Effectiveness		
Ensure a sufficient level of financial and human resources dedicated to the CPC cooperation	Guidance would help Member States determine what level of resources is sufficient CPC cooperation. However better to have a clearly defined level or benchmark. Measure therefore improve things, but not to the same extent as Measure 3.C.1.	Establishing benchmarks would encourage Member States to allocate adequate resources to tackling CPC relevant infringements, taking into account the relative caseload of each Member State and allowing comparison between Member States with similar enforcement systems. It is expected this measure will go a long way to ensuring adequate resources are available and used to handle mutual assistance requests in the Member States.
Reduce consumer detriment	Improved financial and human resources would ensure more CPC relevant infringements are stopped, reducing the associated consumer detriment.	The measure would ensure Member States have adequate resources to meet their obligations under the CPC Regulation and as such, authorities should have improved capacity to increase the caseload detected and investigated. Further, authorities would respond quicker and without delay to information and enforcement delays. A

Assessment criteria	Non-legislative: Guidance clarifying Member State obligations to provide “adequate resources” (Article 4(7)) to handle mutual assistance requests in the form of guidance	Measure 3.C.1: Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation and corresponding powers for the Commission to audit these resources
		substantial reduction in consumer detriment is anticipated from this measure on its own.
Economic impacts		
Compliance costs – Member States	No costs from the measure are expected as the guidance only clarifies existing Member State obligations. Any costs incurred to increase resources should therefore be considered under the do nothing measure.	From the do nothing situation, some Member States would be expected to increase their resources devoted to CPC activities. This is likely to affect those Member State with low resources relative to populations such as Greece, Germany, and Portugal. The scale of change depends on the legal systems and institutional framework of the Member States. In other Member States resources are likely to remain unchanged as they already meet the benchmark.
Compliance costs – Commission	No additional costs to the Commission are assumed by the consultants as the preparation of guidance falls under current administrative responsibilities and budget assigned to the Commission for the CPCs, common activities, CPC Committee and workshops meetings and reporting.	The Commission would have the power to audit the resources allocated by Member States to CPC activities against the benchmark under this measure. In part, Member States are already required to submit details of resources for review by the Commission in biennial reporting (Article 20). As such, the consultants have assumed the no additional resources are required by the Commission, to exercise this new power.
Compliance costs – Businesses	No costs for businesses are foreseen from this measure	No costs for businesses are foreseen from this measure
Consumer confidence and the internal market	Improved resourcing and therefore enforcement would have a positive impact on consumer confidence. However, as small changes in resources are expected, so minor changes in consumer confidence is expected.	Ensuring competent authorities in the Member States have the necessary resources to meet their obligation in the CPC Regulation will ensure more infringements are detected, investigated and sanctioned resulting in improved consumer confidence.
Competitiveness impacts	No impact on competitiveness expected	Minor impact on competitiveness expected other than improved enforcement helps create a leveller playing field. As resources continue to differ by competent authority and Member State, impact is expected to be minimal
SMEs	No impact on SMEs expected	No impacts on SMEs are anticipated from the measure

Assessment criteria	Non-legislative: Guidance clarifying Member State obligations to provide “adequate resources” (Article 4(7)) to handle mutual assistance requests in the form of guidance	Measure 3.C.1: Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation and corresponding powers for the Commission to audit these resources
Employment	No significant impacts on employment are expected.	No significant impacts on employment are expected as Member State authorities may reallocate staff from domestic to cross-border enforcement rather than employ more enforcers.
Distributional effects	No distributional impacts expected as guidance clarifies what Member States should be doing already under the current CPC Regulations	Member States with lower than average resources relative to population (such as Greece, Germany, Slovakia, and Portugal) are likely to be affected to a greater extent by this measure than those with high levels of resources as the distance to the policy frontier is greater.
Consumer vulnerability	No impacts on consumer vulnerability are anticipated from the measure	No impacts on consumer vulnerability are anticipated from the measure
Feasibility		
Impact on national legal systems	The measure does not affect the national legal systems, on Member States	The measure does not affect the national legal systems, on Member States
Fundamental rights	No impacts on fundamental rights are expected from this measure.	No impacts on fundamental rights are expected from this measure.
Stakeholder acceptance	Consistent with Measure 3.C.1, support for this measure is considered equally high as it is in part the ambiguity of Art 4(7) which leads to inefficient of the current system which many stakeholder have highlighted as a problem. A low cost solution is can be assumed to be well supported.	44% of stakeholders responding to the public consultation indicated that the efficiency of the current system of surveillance and alerts is insufficient (41% sufficient or fully sufficient). When asked to specify the conditions for an effective alert system the need for the alerts to be made public (49% of respondents), possibility of other organisations with an interest in enforcement of consumer right to post alerts (54%) and the possibility for the Commission to post alerts (44%) were highlighted as priorities, Acceptance was highest among consumer associations and ECCs responding to the survey, but much less strongly supported by public authorities and governments. Consensus supporting the measure was strongest for consumer associations and ECCs to have access alerts (over 60% across all stakeholders accept public authorities).
Conclusion: As the resource capacity of CPC competent authorities is enhanced by this measure and is a leading determinant of authorities meeting their obligations, Measure 3.C.1 should be taken forward to the preferred option.		

Table 4.10 Assessment of measures addressing sub-problem 3B: Insufficient resources dedicated to the enforcement cooperation under the CPC Regulation in some Member States

Assessment criteria	Measure 3.D.1 Introduce a requirement for the competent authorities to prepare a single integrated multi-annual enforcement plan/strategy to ensure the effective implementation of the CPC Regulation, especially regarding priority criteria relevant for the DSM.	Measure 3.D.2 Set up a general auditing system. The auditing system would verify that the overall enforcement of the consumer protection legislation takes place in Member States in accordance with the multi-annual enforcement plan and would assess the national market surveillance frameworks in terms of the effectiveness of the enforcement actions, allocation of resources and coordination between SLOs and competent authorities within a Member State.
Effectiveness		
Reduce the number of situations where objectives and priorities of enforcement are inconsistent	Multi annual enforcement plans would ensure that a core set of objectives and priorities evolve across Member States which are consistent. This would take time as competent authorities in each Member State learn from each other and identify common challenges, particularly in the DSM. Specifically this would avoid divergent priorities and actions, instead focussing on more joint market surveillance such as Sweeps which have comprehensive EU coverage and through coordination reduce investigation costs.	Auditing would provide an opportunity to align or realign enforcement strategies to ensure their consistency and ensure priorities and objectives are followed in practice. For example, the audit would identify where resources could be prioritised, where coordination has proven less effective than anticipated or where communication may have broken down between NCA and SLO. Auditing therefore provides valuable feedback on the performance of the CPC Regulation and suggest remedies/solutions to support more effective enforcement.
Reduce consumer detriment	Establishing multi annual enforcement plans will improve the coordination of market surveillance and enforcement between Member States, with an indirect benefit of reducing consumer detriment as more infringements are detected, prevented and stopped. However, the measure has no direct impact on reducing consumer detriment.	Audits provide the opportunity for a periodic review of enforcement frameworks and activities in the Member States. They therefore help identify gaps in intelligence and information sharing between national authorities which potentially hinders early detection and effective enforcement through the CPC mechanism. Resolving these issues indirectly reduces consumer detriment.
Economic impacts		
Compliance costs – Member States	There are resources implications for Member States of this measure to prepare a multi-annual enforcement plan. However, as much of the information is already gathered for biennial reporting (resources, powers, and review of cases) supplemented with national strategy documents and more in-depth assessment of enforcement threats in the digital environment the costs are considered moderate. Conservatively 5-10 days of staff time is assumed per Member State to produce this strategy. This was considered sensible in light no other available information ¹¹³ .	Audits would be performed by the Commission so no additional costs from Measure 3.D.1 are anticipated in relation to this measure.

¹¹³ Effort involved in the preparation of plans = 5 to 10 days per Member State

1 day = 7.5 hours

Hourly wage rate = €20 + overheads

Assessment criteria	Measure 3.D.1 Introduce a requirement for the competent authorities to prepare a single integrated multi-annual enforcement plan/strategy to ensure the effective implementation of the CPC Regulation, especially regarding priority criteria relevant for the DSM.	Measure 3.D.2 Set up a general auditing system. The auditing system would verify that the overall enforcement of the consumer protection legislation takes place in Member States in accordance with the multi-annual enforcement plan and would assess the national market surveillance frameworks in terms of the effectiveness of the enforcement actions, allocation of resources and coordination between SLOs and competent authorities within a Member State.
Compliance costs – Commission	Existing resources are assumed sufficient to review multi-annual plans and disseminate findings to other Member States. No cost is therefore expected	Evidence from similar audit functions in food and feed, and in telecom regulation suggest the resources necessary to carry out audits are substantial.
Compliance costs – businesses	No compliance costs are foreseen for businesses under this measure.	No compliance costs are foreseen for businesses under this measure.
Consumer confidence and internal market	Minor if any improvement in consumer confidence is expected under this measure	Minor if any improvement in consumer confidence is expected under this measure
Competitiveness impacts	Negligible impact on business competitive are foreseen in relation to this measure.	Negligible impact on business competitive are foreseen in relation to this measure.
SMEs	No specific impacts on SMEs are anticipated from this measure.	No specific impacts on SMEs are anticipated from this measure.
Employment	No specific impacts on employment are anticipated from this measure other than additional resource requirements of the Commission and Member States	No specific impacts on employment are anticipated from this measure other than additional resource requirements of the Commission and Member States
Distributional effects	No significant distribution effects are anticipated under this measure	No significant distribution effects are anticipated under this measure
Social impacts		
Consumer vulnerability	No impacts expected	No impacts expected
Feasibility		
Impact on legal systems	The measure does not affect the legal systems of Member States	The measure does not affect the legal systems of Member States
Fundamental rights	No impacts on fundamental rights are expected from this measure.	No impacts on fundamental rights are expected from this measure.
Stakeholder acceptance	This measure was not consulted on in the public consultation, therefore it is unclear where it is accepted	This measure was not consulted on in the public consultation, therefore it is unclear where it is accepted
Conclusion: Measure 3.D.1 is preferred as it is unclear whether the additional costs associated with auditing in Measure 3.D.2 generate benefits of a greater magnitude. In short Measure 3.D.1 could be self-regulating as other authorities and the CPC committee would know if an annual enforcement plan is working and propose improvements. The problem of resources is already addressed by Measure 3.C.1.		

The quantification of the monetary impacts supporting the above analysis considered each measure in isolation. The methodological approach to quantification of the costs and benefits, including the results are provided in Annex 4 for Member States and consumers. Annex 5 provides details of the calculations used to quantify the costs for the European Commission.

4.4.3 Deterrent effects

Highlighted at the start of Section 3 on the problem definition, successful enforcement requires a strong deterrent effect. That is by tackling a sufficient number of infringements and punishing infringing traders for their illicit gains, increasing numbers of traders will not commit infringements in the first place or not repeat them in the future, improving business compliance behaviour.

The deterrence effect would be particularly efficient for the Digital Single Market and could help eliminate practices such as scams attracting consumers to cheap products that are never delivered or subscription traps where consumers agree to receive a free trial for which they give their credit card number to pay postage costs and then find out that they are billed monthly deliveries they never agreed to.

Experts within the study team all agreed that a deterrent effect exists, however there is a paucity of data available on its potential scale, particularly in relation to consumer enforcement. A study by commissioned by the UK OFT in 2010 on consumer law and business practice¹¹⁴ did however investigate the drivers of compliance and non-compliance. One of the findings of this study which surveyed 482 businesses in the UK was that:

“In the last 12 months, some three to four per cent of changes to respondents’ advertising campaigns or product descriptions, contract terms, goods and the selling of goods or services by distance means, was undertaken because of the perceived risk of investigation by the OFT”.

This would imply that deterrence results in a 3%-4% reduction in non-compliance. Communication from competent authorities, compliance practices within businesses, adverse publicity or reputational risks were however identified as more significant drivers of business compliance in the survey. Nevertheless it is shown that public enforcement on its own does deter non-compliance at ratio greater than 1:1. Adopting a conservative approach, this analysis has assumed a 3% deterrent effect when estimating consumer detriment benefits. Details of the approach followed is provided in Annex 4.

4.4.4 Synergies and interdependencies in the preferred option

The preferred option is identified from the above analysis giving due consideration to the synergies which exist between combinations of measures. A detailed assessment can be found in Annex 6, a summary of which is provided in Table 4.11.

The achievement of certain objectives will depend to a large extent on these synergies, as each implemented individually would be insufficient to trigger the expected results. For example, recognising parallel domestic infringements as within the scope of the CPC Regulation is an enabling condition for the setting up an EU centralised cooperation procedure to handle EU-level relevant infringements (parallel domestic infringements being a type of the EU-level relevant infringement). Another example is that to tackle an increasing number of short-lived infringements requires that competent authorities have the necessary capabilities and capacity to address the increasing scope of infringements. Interdependence of measures is also important as successful enforcement is composed of a number of phases, each of which is addressed by different measures. Tackling widespread infringements consists of different phases, starting from the detection of the widespread infringement (e.g. via alerts from consumer organisations on parallel domestic investigations taking place in different Member States) to stopping the EU-level relevant infringement (i.e. using the additional powers to gather evidence and accepting the outcome of the investigation irrespective of the type of the enforcement system) and eventually reaching a common enforcement position via the EU enforcement cooperation procedure. Setting

¹¹⁴ OFT(2010) Factors affecting compliance with consumer law and the deterrent effect of consumer enforcement – OFT Paper 1228 by IFF, available at: http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/OFT1228.pdf

specific benchmarks regarding adequate resources devoted to the CPC cooperation, would also appear a key enabling factor for the implementation of almost all the assessed measures. In contrast, a requirement to prepare a single multiannual enforcement plan has limited synergies with other measures.

This interdependence is also important for considering the impacts of the measures in combination. Savings can therefore be cumulative. For example, more efficient alerts mechanism means infringements are detected more quickly, new procedures and powers then permit smoother and more timely responses to mutual assistance requested (information can be used in legal proceedings due to mutual recognition, powers enable lowest cost proceeding to be followed). In the end the cost of enforcement is lower and as each phase is that bit quicker and more efficient delays are avoided/reduced. Thus it is sensible to assess the preferred option in its totality, capturing these synergies rather than as individual measures.

Table 4.11 Summary of synergies identified between policy measures

"X"= potential synergies "XX"= strong synergies "-" = limited/no synergies "/" =not applicable

Selected measure	Include short-lived infringements in the scope of the CPC Regulation	Include parallel domestic infringements in the scope of the CPC Regulation	Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation	Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission/lead Member States	Introduce the alerts' action categorisation based on a type of follow-up	Introduce a possibility to have access to the alert mechanism for other actors	Setting specific benchmarks regarding resources	Introduce a requirement to prepare a single integrated multi-annual enforcement plan
Include short-lived infringements in the scope of the CPC Regulation	/	X	XX	XX	XX	X	X	XX	-
Include parallel domestic infringements in the scope of the CPC Regulation	X	/	XX	XX	XX	XX	X	XX	-
Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	XX	XX	/	XX	XX	X	X	XX	-
Introduce a mechanism for mutual recognition	XX	XX	XX	/	XX	X	-	XX	-

Selected measure	Include short-lived infringements in the scope of the CPC Regulation	Include parallel domestic infringements in the scope of the CPC Regulation	Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation	Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission/lead Member States	Introduce the alerts' action categorisation based on a type of follow-up	Introduce a possibility to have access to the alert mechanism for other actors	Setting specific benchmarks regarding resources	Introduce a requirement to prepare a single integrated multi-annual enforcement plan
of evidence and/or the outcome of the investigation									
Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission/lead Member States	XX	XX	XX	XX		XX	-	XX	-
Introduce the categorisation of alerts on the basis of a required follow-up	X	XX	X	X	XX		-	XX	-
Introduce a possibility to have access to the alert mechanism for other actors	X	XX	X	-	XX	-		-	-

Selected measure	Include short-lived infringements in the scope of the CPC Regulation	Include parallel domestic infringements in the scope of the CPC Regulation	Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation	Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission/lead Member States	Introduce the alerts' action categorisation based on a type of follow-up	Introduce a possibility to have access to the alert mechanism for other actors	Setting specific benchmarks regarding resources	Introduce a requirement to prepare a single integrated multi-annual enforcement plan
Setting specific benchmarks regarding resources	XX	XX	XX	XX	XX	XX	-		XX
Introduce a requirement to prepare a single integrated multi-annual enforcement plan	-	+	-	-	+	-	-	XX	

4.5 Step 4: The preferred Option

4.5.1 Identification of the preferred option

The preferred option is composed of the measures shown in Figure 4.3. The option includes all four non-legislative measures which were found to have positive net benefits-cost ratio and contribute to more effective enforcement. The legislative measures included in the preferred option (indicated in blue font) by problem addressed (indicated in bold font) are:

Certain types of cross-border infringements are not being addressed as they are not covered by the CPC Regulation, namely:

- **Short lived predominantly online infringements**

Measure 1.A: Include short-lived (predominately online) infringements in the scope of the CPC Regulation

- **Parallel domestic infringements**

Measure 1.B: Include parallel domestic infringements in the scope of the CPC Regulation

Some infringements currently covered by the CPC Regulation are not tackled efficiently due to insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities, including in the digital environment

Measure 1.C.2 + Measure 1.C.1: Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)

Some infringements currently covered by the CPC Regulation are not tackled efficiently due to insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation which impede stopping of infringements through the CPC framework or create delays

Measure 1.D.2 + Measure 1.D.1: Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation and set binding time-limits to respond to mutual assistance requests. The Commission would monitor compliance within these time-limits.

Insufficient tools to tackle widespread infringements, namely:

- **Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities (and the Commission) to address widespread infringements, including in the digital environment**

Measure 2.A.2+ Measure 2.A.1 Introduce additional powers for competent authorities (and the Commission) to tackle EU-level/widespread infringements in the digital environment (medium sub-option)

- **Inadequate procedural mechanism to address widespread infringements, including in the digital environment**

Measure 2.B.2 + Measure 2.B.1: Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission/lead Member States

The current CPC information exchange via the alert mechanism is insufficient, emerging problems are being detected too late and detriment to consumers is prolonged:

- **Currently all alerts are given equal attention regardless of their potential importance and they are not followed up**

Measure 3.A.1: Introduce alerts categorisation based on type of follow-up (for compulsory action within a deadline or for information only)

- **Currently access to the alerts mechanism is limited to national authorities only, which limits the available information**

Measure 3.B.1: Introduce a possibility to have access to the alert mechanism for other actors

Diverging enforcement priorities among Member States, limited resources in some Member States focused on domestic issues, lack of common strategy and insufficient prioritisation of enforcement:

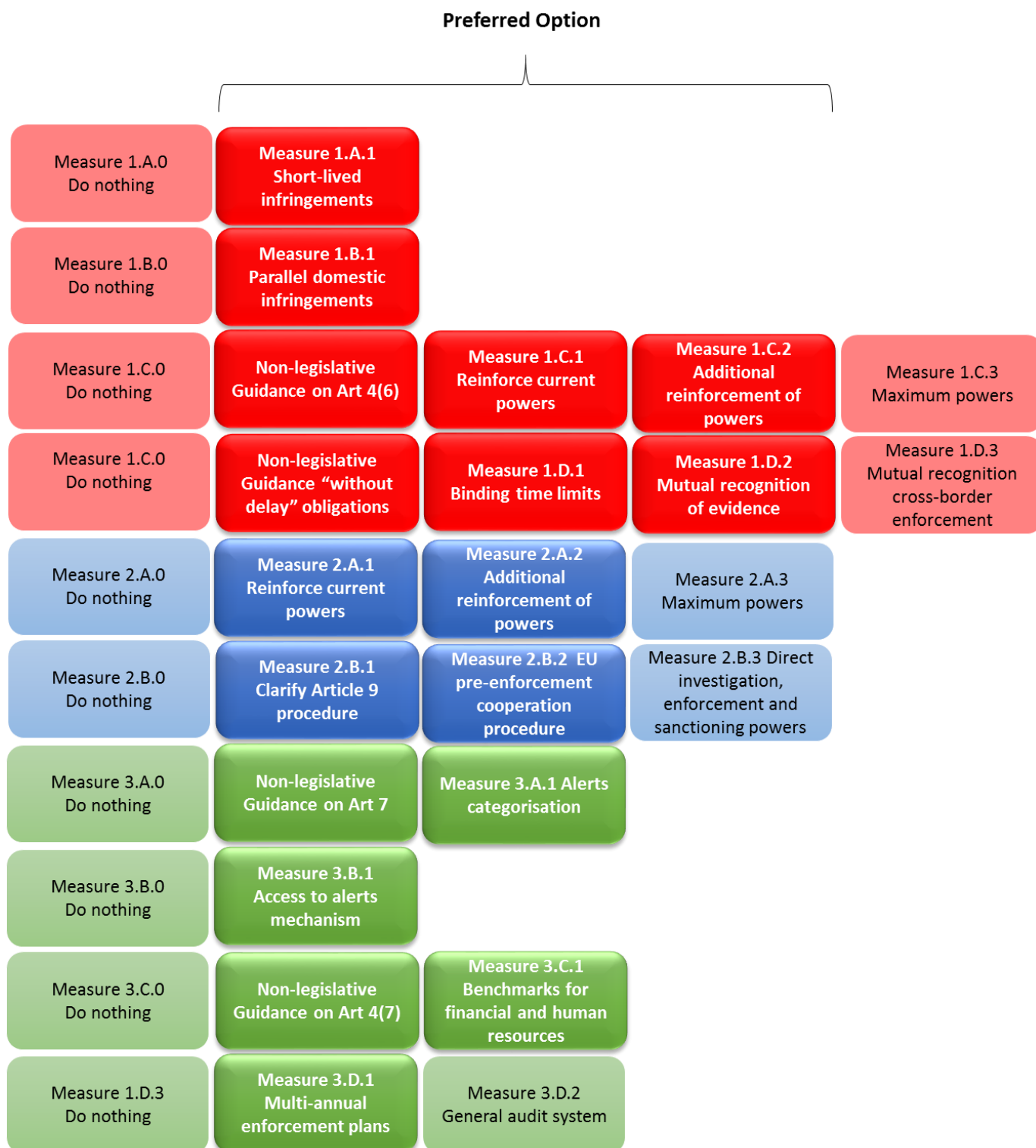
- **Insufficient resources dedicated to the enforcement cooperation under the CPC Regulation in some Member States**

Measure 3.C.1: Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation and corresponding powers for the Commission to audit these resources

- **No systematic and common/coordinated prioritisation of national and cross-border enforcement actions across the EU; no adequate monitoring of Member States' enforcement efforts**

Measure 3.D.1: Introduce a requirement for the competent authorities to prepare a single integrated multi-annual enforcement plan/strategy to ensure the effective implementation of the CPC Regulation, especially regarding priority criteria relevant for the DSM.

Table 4.12 Summary of legislative revision measures included in the preferred option



Source: ICF analysis

5 Comparison of the preferred policy option against the do nothing situation

This section provides some pointers to the preferred policy option.

5.1 Summary comparison of the preferred policy option against the do nothing situation

The impacts of the comprehensive policy options (Do Nothing and Preferred Policy Option) were assessed in terms of their expected achievement of the general and specific objectives, including meta-criteria such as social impacts, wider economic impacts, feasibility, stakeholder acceptance and the impact on fundamental rights.

A comparison of the preferred option against the do nothing is provided in Table 5.1. Details of the estimated monetary impacts can be found in Annex 4 and 5.

Table 5.1 Comparison of the preferred option against the do nothing situation

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
Reducing consumer financial detriment	0	High (+++)	<p>Overall: The preferred option is expected to result in a significant reduction in financial detriment being suffered by consumers. The potential overall reduction in consumer detriment in the EU28 is estimated to be around €9mn-€10mn per annum assuming no deterrence effect (1% of infringements are tackled and stopped compared to the do nothing situation of 0.03% handled by the current CPC Regulation). The estimated reduction in consumer detriment is €1.2bn-€3.6bn including a deterrent effect of 3%. For the 1% of infringements tackled 3% are actually prevented¹¹⁵.</p> <p>EU widespread infringements: The reduction in consumer detriment per individual case, which tackles a widespread infringement via the improved mechanisms, will depend on a case-by-case basis. The in-app purchases action of the CPC network was estimated to have saved consumers €68mn in financial detriment alone. With a minimum 4 or more common enforcement actions are forecast to be conducted per year, the reduction in consumer detriment is expected to be significant. Furthermore, the revision would introduce binding time limits for CPC authorities to respond to mutual</p>

¹¹⁵ A survey commissioned by the UK OFT on consumer law and business practice (OFT(2010) Factors affecting compliance with consumer law and the deterrent effect of consumer enforcement – OFT Paper 1228 by IFF, available at:

http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/OFT1228.pdf) found that “In the last 12 months, some three to four per cent of changes to respondents’ advertising campaigns or product descriptions, contract terms, goods and the selling of goods or services by distance means, was undertaken because of the perceived risk of investigation by the OFT”. This would imply that changes to the perceived risk of investigation and enforcement results in a 3%-4% reduction in non-compliance. Conservatively the researchers have assumed 3%.

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
			<p>assistance requests and mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community/widespread infringements, thus speeding up the exchange of information, the efficiency of enforcement proceedings and thereby preventing and reducing financial detriment suffered by consumers.</p> <p>Facilitating redress for consumers: all the authorities would have at their disposal the power to require traders to facilitate consumer redress, which would ensure that the benefits of improved CPC enforcement cooperation (which is designed to take collective interests) will also be realised for individual consumers.</p> <p>Improve consistency of enforcement actions/approaches across EU: the revision would significantly align the enforcement approaches among consumer protection authorities in different Member States. First, it would achieve convergence for minimum powers indispensable to tackle infringements in the digital sphere, ensuring that all the authorities have the powers, e.g., to adopt interim measures swiftly, take down websites, sanction past (short-lived infringements). Second, the revision would result in more infringements being tackled collectively (and for widespread infringements – at the EU level), through a coordinated Member States' enforcement action under the CPC. Thanks to the timely detection of national investigations running in parallel via the improved alert mechanism and to streamlined mechanism to address widespread infringements, more consistent enforcement in terms of the decisions reached and sanctions imposed across Member States on the same trader would be ensured. Such cases as described in the problem section (cf. case on the misleading advertising of commercial guarantees by Apple) would therefore be prevented.</p>
Reduce delays in handling of mutual assistance requests and intra-Community/wide spread infringements		High (+++)	<p>Reduced delays in handling mutual assistance requests and intra-community widespread infringements are the product of new efficient procedures (centralised procedures for EU-wide infringements) and the introduction of mutual recognition of evidence and investigations in national legal systems. Binding resourcing of CPC activities by competent authorities also contributes to reduced delays in handling and stopping of infringements. As most delays (see problem Section 2) can be consider a result of multiple factors from slow detection, low quality of evidence, competent authority capacity and differing legal procedures and practices in the Member States, these collective measures address many of these causes.</p> <p>Specifically in relation to widespread infringement, new procedures are proposed alongside increased investigation and enforcement powers and mutual recognition of decisions to ensure those</p>

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
			<p>infringements detected are enforced in the most efficient way possible. The “open cases review” exercise conducted by the Commission aims to ensure that no mutual assistance request remains unresolved over a long period of time. The benchmarks set out in the Operating guidelines are that requests for information should be handled within 3 months and requests for enforcement measures within 9-12 months. The requested authority should regularly update the applicant authority about the actions taken, at least every 3 months. By the end of 2014, almost 40% of the information requests and 50% of the enforcement requests were not treated and closed within the above benchmarks. 26% of all open cases were created more than two years ago. The preferred option by reinforcing powers and procedures to handle mutual assistance requests would drastically improve this performance, reducing delays in completing the investigation and legal proceedings against infringing traders.</p>
Compliance costs	0	Low (-)	<p>Compliance costs for Member States mainly concern the one-off of costs of familiarisation and training needed to adapt to the proposed changes in year 1. Annual costs include the increased caseload of competent authorities and of using the enhanced powers. Other costs include the FTE time taken to prepare multi-annual enforcement plans.</p> <p>Total costs per annum are estimated to be in the region of €0.3-€0.5 million per annum, reducing from the first year as one-off costs are removed. No costs is assumed for those Member State authorities already have the proposed investigation and enforcement</p> <p>Compliance costs for the Commission: Measures increasing the obligations of the Commission (centralised enforcement procedure, moderation of increased alerts categorisation, and evaluating multi-annual enforcement plans) all imply additional costs form the do nothing situation).</p> <p>Annually these costs are estimated at €0.1mn-€0.3mn per annum. Given the current freeze on new recruitments, it is assumed that resources are made available through redeployment from other activities.</p>
Savings	0	High (+++)	<p>Saving enforcement costs for CPC authorities: thanks to the reinforced minimum powers, the revision would permit more 'cheaper' enforcement solutions than currently available, which would decrease the costs per case, e.g. enforcers would experience savings from spending less time and resource preparing for cases (the costs per case would therefore be lower than the currently</p>

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
			<p>estimated average of €2,299)¹¹⁶. More cases, of enforcement undertakings will occur, where a trader agrees to work with the CPC authority to remedy its compliance and provide redress to consumers, without proceeding to the courts (the average costs of such a case involving undertakings is estimated to be around €1,500¹¹⁷). It is assumed that with the reinforcement of powers, ca. 75% of cases would be settled without the need for court proceedings (which are more expensive, ca €4,800 per case).</p> <p>Duplication of enforcement efforts: by alerting authorities to the fact that an infringement may be widespread through alerts categorisation and tackling infringements more efficiently through centralised cooperation procedures, mutual recognition of evidence and use on enhanced powers, there are savings for traders. The legal costs associated with uncertainty when trading cross border and costs to defend oneself in multiple jurisdictions is reduced. In the in apps case, the providers engaged with Commission and not 28 separate authorities and legal procedures.</p>
Impact on national legal systems	0	Low (-)	<p>The measures in the preferred option are partly selected on the basis they have a minimal negative impact on the legal systems in Member States. In other words, many of the additional investigation and enforcement power proposed such as mystery shopping, test purchasing, pecuniary sanctions, interim measure are already available in some Member States. From this reason the impact is expected to be low. Other measures are largely procedural and not expected to create any problems for national legal systems (i.e. change in scope of the CPC Regulation to include short lived infringements of establish binding resource benchmarks).</p>
Wider economic impact	0	Medium (++)	<p>Consumer trust in the Digital Single Market: More efficient regulatory measures will have a significant impact on the consumer Digital Single Market. Reinforced, better coordinated at the EU level, where relevant, enforcement actions are expected to have significant impacts due to the "open nature" of the Digital Single Market. By decreasing certain economic transaction costs (e.g. litigation costs, legal uncertainty, costs linked to non-transparency or non-competitive behaviour, inefficient administration, inefficient capacities to fight fraud, insufficient deterrent effect of public enforcement action) supply side levers would be activated, and, consequently, the demand side would automatically benefit leading to more economic growth.</p> <p>Competitiveness: removal of unscrupulous traders would reduce the perceived numbers of "free riders",</p>

¹¹⁶ Weighted average cost of enforcement per case account for the fact that in the baseline 75% of cases are high cost, which falls to 25% with greater powers.

¹¹⁷ Undertaking are the lowest costs enforcement action – Estimate based on effort involved in the enforcement action (number of staff involved and hours per staff per action) and hourly wage costs.

Assessment criteria	Rating Do nothing	Rating Preferred option	Explanation
			who exploit enforcement gaps by relocating their non-compliant business practices from one Member State to another and thus benefit commercially from the current lack of adequate market surveillance and enforcement, and will encourage new market entrants.
Fundamental rights	0	Low (-)	There are concerns that powers to name infringing traders, make public undertakings, request the supply of sensitive and often personal data to competent authorities and its use and storage by such authorities to investigate infringements (particularly in the DSM) may violate fundamental rights. This can be mitigated by establishing secure procedures and putting systems in place to ensure data is handled correctly for the purposes it was intended and disposed of with equal care. Naming must also be limited to when the trader is found guilty of the infringement so not affect fair justice and prevent businesses taking libellous action against the authority concerned.
Feasibility	0	High (+++)	Stakeholder acceptance: All the measures included in the preferred option received a high level of support based on the results of the public consultation. Therefore feasibility is considered high.

5.2 Cost benefit analysis of the preferred option

While the above table presents the annual estimated impacts of the preferred option, the table below provides the present value of costs and benefits associated with implementation of the preferred option over the full period 2015-2025, discounted at the agreed social discount rate of 4%¹¹⁸. Annex 4 provides details of how the estimates were calculated.

Table 5.2 Net present value of the preferred option 2015-2025 (€mn - 2015 prices)

	Including deterrent effect of CPC enforcement		Without deterrent effect of CPC enforcement	
	Lower bound estimates	Upper bound estimates	Lower bound estimates	Upper bound estimates
Costs				
Member States	9	15	9	15
European Commission	2	3	2	3
Total costs	11	18	11	18
Benefits	1,222	3,636	92	97
<i>Benefit-Cost ratio</i>	<i>116</i>	<i>202</i>	<i>9</i>	<i>5</i>

Source: ICF own analysis

¹¹⁸ European Commission (2015) Better Regulation toolkit

5.2.2 Sensitivity analysis

The final step of the analysis was to conduct a sensitivity analysis: the main assumptions underlying the quantification of the costs and benefits of the preferred policy option were varied and net present value and other outcomes recomputed to determine how sensitive outcomes are to changes in these assumptions. The results of the sensitivity analysis are presented in the Table 5.3 below.

Table 5.3 Results of the sensitivity analysis

Assumptions that were tested	Benefits-cost ratio with deterrence effect		Benefits-cost ratio without deterrence effect		Impact on estimated present value of benefits and costs of the preferred policy option
	Lower bound	Upper bound	Lower bound	Upper bound	
Estimated parameters of preferred policy option	103.4	119.5	7.4	4.2	
Scale of baseline infringements The number of infringements is scaled down by a factor of 10	32.8	39.0	2.3	1.4	Benefits fall by 90% Costs fall by ~70%
Share of infringements addressed by the CPC over 2015-2025 The share of infringements addressed by CPC remains at 0.03% (instead of 0.06% to 0.1%)	168.5	229.0	10.7	7.4	Benefits fall by 1% (when including deterrence effect) to 12% (when excluding deterrence effect) Costs fall by 40 - 50%
Share of infringements addressed by the CPC and unit costs of enforcement The share of infringements addressed by CPC remains at 0.03% and unit costs remain unchanged (no efficiency gains)	147.3	202.5	9.4	6.6	Benefits fall by 1% (when including deterrence effect) to 12% (when excluding deterrence effect) Costs fall by 30 - 40%
All effects taken together The number of infringements is scaled down by a factor of 10 The share of infringements addressed by CPC remains at 0.03% and unit costs remain unchanged (no efficiency gains)	16.3	21.9	1.5	0.9	Benefits fall by 90% Costs fall by 35 to 45%

The main conclusions of the sensitivity analysis are:

- The expected benefits significantly outweigh the estimated costs of the preferred option in all scenarios where assumptions are tweaked, when the deterrence effect is taken into account
- The expected benefits outweigh the estimated costs of the preferred option in all but one scenario, when the deterrence effect is not taken into account. Specifically, costs marginally exceed benefits (upper bound estimates) when:

- The expected number of infringements is scaled down by a factor of 10
- Simultaneously, it is assumed that the preferred option does not lead to any efficiency gains or an increase in the share of caseload of the CPC. It is highly unlikely that these assumptions would hold true in reality and have been included here only to illustrate the worst case.

The most significant effect on the estimated impact is the estimate of the total number of infringements, from which the total benefits are scaled. Given the uncertainties in this estimate and its influence on the overall set of results, some care is therefore required in the use of the results. The cost-benefit ratios reported should probably be taken as the upper end.

6 Approach to future monitoring and evaluation

The main policy objectives of the measures being considered to address the problem are:

- Enhance equal protection of consumer rights and reduce consumer detriment from infringements of consumer protection legislation in the (Digital) Single Market; and
- Establish a level playing field within the (Digital) Single Market by more effectively tackling EU wide unfair commercial practices committed by businesses with a pan-European outreach, including practices originating from third countries.

Each measures and preferred policy option have also been assessed with respect their contribution to the specific objectives underlying the above policy objectives.

These objectives provide the starting point for the assessment of the progress and impact of the preferred option. Table 6.1 indicates the criteria that are useful for assessing progress and impact, potential impact and methods that could be applied to gather relevant information.

Of note the biennial reports submitted by Member States under Article 21 of the CPC Regulation provides an ideal opportunity for the monitoring of the preferred option. The Commission also collects statistics annually on the CPCS on the number of cases handled and their key features. The basis for monitoring therefore already exists.

6.1 Evaluation

In addition, the implementation progress of the revision and further revision needs will be evaluated by the Commission after 5 years of the implementation of the revised legal framework. The results of the evaluation will feed into the discussion with Member State on further revision needs. This is consistent with the current Article 21a obligation

It is anticipated that the Commission submits to the European Parliament, the Council and the Economic and Social Committee, 5 years after the date of implementation of the amended Regulations, and every 5 years thereafter at the latest, an ex-post evaluation report on the application of the new instrument. It will respond to the question whether the objectives of the review have been reached. That report will be accompanied, where appropriate, by proposals for amendments.

Table 6.1 Monitoring the fulfilment of specific and operation objectives of a revised CPC Regulation

Specific objectives	Operational objectives	Indicators	Sources
<ul style="list-style-type: none"> Reduce the number of short lived infringements Reduce the number of situations where infringements are not duly investigated Reduce the number of parallel domestic infringements Reduce the number of situations where parallel domestic infringements are not duly investigated 	<ul style="list-style-type: none"> Bring past short-lived intra-Community infringements and parallel domestic infringements under the scope of the CPC Regulation Increase the number of situations where the CPC enforcement cooperation framework is invoked 	<ul style="list-style-type: none"> Number of short lived infringements Number of unsuccessful cases Number of parallel domestic infringements Number of unsuccessful parallel domestic infringements Number of assistance requests under the CPC cooperation 	<ul style="list-style-type: none"> Biennial reports CPCS statistics ECC complaint data Case law from Member States Workshop findings and discussion with CPC authorities
<ul style="list-style-type: none"> Reduce the number of infringements not stopped due to insufficient powers or standards Reduce the number of situations where the CPC enforcement cooperation is ineffective due to insufficient powers or standards Reduce delays in the CPC Regulation's mutual assistance mechanism (reduce the time needed to handle mutual assistance requests) which are due to insufficient powers or standards Reduce duplication of costs Reduce the number of situations where consumers face problems with redress for intra-Community infringements Increase the deterrent effect of CPC enforcement mechanism 	<ul style="list-style-type: none"> Introduce additional common minimum investigation and enforcement powers for competent authorities (e.g. to carry out test purchases/mystery shopping, obtain information from other authorities or third parties to track down the flow of money, to adopt interim measures, to facilitate consumer redress for intra-Community infringements) Amend/Clarify the provisions of the CPC Regulation which currently negatively affect the operation of the CPC network (e.g. introduce binding time-limits to respond to mutual assistance requests; monitoring powers for the Commission to verify how competent authorities comply with obligations under the mutual assistance mechanism) Introduce minimum procedural standards for the mutual assistance mechanism under the CPC Regulation (e.g. introduce a mechanism for mutual recognition of evidence and/or the outcome of investigation regarding intra-Community infringements) 	<ul style="list-style-type: none"> Number of unsuccessful assistance requests Survey authorities regarding their perception of the adequacy of their powers Time taken to reply to assistance requests Time taken to resolve infringements Costs of cases concerning parallel domestic infringements investigated by multiple authorities Consumer survey concerning experiences with intra-community infringements Number of success proceedings Survey authorities regarding their perceptions of adequacy of evidence and/or investigations by other authorities 	<ul style="list-style-type: none"> Biennial reports CPCS statistics ECC complaint data Case law from Member States Workshop findings and discussion with CPC authorities EC possible auditing and monitoring of cases in the CPC system and of MS resources/actions Survey of competent authorities
<ul style="list-style-type: none"> Reduce the number of widespread infringements due to inadequate powers or procedure 	<ul style="list-style-type: none"> Clarify the existing rules of procedure for CPC cooperation, in particular regarding common 	<ul style="list-style-type: none"> Number of common enforcement actions regarding widespread infringements 	<ul style="list-style-type: none"> Biennial reports Case law from Member States

Specific objectives	Operational objectives	Indicators	Sources
<ul style="list-style-type: none"> ■ Reduce the number of situations of ineffective enforcement due to inadequate powers or procedure ■ Remove duplication/multiplication of investigative efforts, use of disproportionate enforcement resources and divergent enforcement outcomes ■ Reduce the time needed to stop a widespread infringement ■ Save litigation costs for traders who operate across EU 	<ul style="list-style-type: none"> enforcement actions addressing widespread infringements ■ Introduce additional common minimum investigation and enforcement powers for competent authorities (e.g. to carry out test purchases/mystery shopping, obtain information from other authorities or third parties to track down the flow of money, to adopt interim measures, to facilitate consumer redress for intra-Community infringements; to stop a website) to effectively tackle widespread infringements, in particular in the digital environment ■ Provide an appropriate procedure (a one-stop-contact/shop at the EU level) with clear steps, time-limits and roles to tackle more efficiently widespread infringements committed by a trader(s) in several or all Member States or affecting entire sectors of economy 	<ul style="list-style-type: none"> ■ Survey authorities regarding their perception of the adequacy of their powers ■ Number of successful cases concerning widespread infringements ■ Average costs of investigation/enforcement (per case) ■ Time taken to resolve widespread infringements ■ Survey traders concerning their litigation costs 	<ul style="list-style-type: none"> ■ Workshop findings and discussion with CPC authorities ■ Member State and EC feedback on joint enforcement actions ■ EC possible auditing and monitoring of cases in the CPC system and of MS resources/actions ■ Survey of competent authorities ■ Survey of ECCs, consumer associations
<ul style="list-style-type: none"> ■ Reduce the number of situations where important alerts were not followed up ■ Improve the availability of information on emerging malpractices ■ Reduce cost of the evidence gathering phase of the case handling ■ Reduce the number of undetected infringements, in particular for parallel domestic investigations regarding the same infringement by the same trader(s) due to the fact that all alerts are given equal attention regardless their potential importance and that access to the alert mechanism is limited 	<ul style="list-style-type: none"> ■ Clarify the purpose, use and follow up of the CPC alert mechanism within the CPC Regulation ■ Improve the follow-up to the CPC alerts ■ Extend the access to the CPC alert mechanism to consumer and trade organisations, and ECCs for information only. Introduce the possibility for the Commission to raise an objection to such an alert posted by stakeholders ■ Introduce a possibility for the European Commission to post alerts for action or for information ■ Increase the frequency and quality of information exchanges among competent authorities, the Commission and other stakeholders (e.g. consumer organisations) on emerging malpractices 	<ul style="list-style-type: none"> ■ Number of investigated alerts ■ Average cost of investigation ■ Number of alerts coming from consumers/trade organisations and from the European Commission ■ Number of information requests from the European Commission ■ Number of information exchanges between authorities (yearly) ■ Survey of the authorities regarding information quality 	<ul style="list-style-type: none"> ■ Biennial reports ■ ECC complaint data ■ Case law from Member States ■ Workshop findings and discussion with CPC authorities ■ Survey of competent authorities ■ Survey of ECCs, consumer associations
<ul style="list-style-type: none"> ■ Ensure sufficient level of financial and human resources dedicated to the CPC cooperation ■ Reduce the number of situations where objectives and priorities of enforcement actions are inconsistent 	<ul style="list-style-type: none"> ■ Increase the number of situations of monitoring by the Commission of Member States' resources devoted for the application of the CPC Regulation and Member States' activities under the mutual assistance mechanism 	<ul style="list-style-type: none"> ■ Number of people (FTE) dedicated to the CPC cooperation ■ Budget allocated to cover the costs of the CPC cooperation 	<ul style="list-style-type: none"> ■ Biennial reports ■ Workshop findings and discussion with CPC authorities ■ EC possible auditing and monitoring of cases in the



Specific objectives	Operational objectives	Indicators	Sources
	<ul style="list-style-type: none"> ■ Clarify the provision stipulated in Article 4(7) of the CPC Regulation which requires Member States to ensure that competent authorities have adequate resources necessary for the application of the CPC Regulation ■ Set-up objective benchmarks to assess Member States' enforcement efforts, financial and human resources under the CPC Regulation ■ Introduce more frequent and vigorous monitoring by the Commission of Member States' activities under the mutual assistance mechanism (via, e.g. auditing of Member States enforcement capacities and resources and compliance with the obligations under the mutual assistance mechanism) ■ Introduce a requirement for the competent authorities to prepare a single integrated multi-annual enforcement plan/strategy to ensure the effective implementation of the CPC Regulation, especially regarding priority criteria relevant for the DSM 	<ul style="list-style-type: none"> ■ Number of monitoring/auditing exercises undertaken by the European Commission (yearly) ■ Surveying authorities regarding the effectiveness of CPC enforcement 	<p>CPC system and of MS resources/actions</p>

ANNEXES

Annex 1 List of documents reviewed in this study

A1.1 Studies

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Annex 2 Mapping on legislative and non-legislative measures addressing the problems

Table A2.1 Mapping of non-legislative measures against problems

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
1. Deficiencies in the design of the CPC Regulation	Certain types of cross-border infringements are not being addressed as they are not covered by the CPC Regulation, namely:			
	A. Short-lived, predominantly online infringements.	Problem not addressed by non-legislative measure		
	B. Parallel domestic infringements: it is uncertain to which extent they are covered by the current Regulation. Parallel domestic infringements are the infringements that take place in several Member States but do not have from the outset an apparent cross-border dimension (as defined in the definition of the "intra-Community infringement"). These infringements are nevertheless linked because, for example, the infringing trader is the same or belong to the same group of companies, the infringement is similar in its main elements or the infringements take place simultaneously.	Problem not addressed by non-legislative measure		
	Some infringements currently covered by the CPC Regulation are not tackled efficiently for the following reasons:			
	C. Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities, including in the digital environment.	Clarification of Article 4(6) minimum investigation and enforcement powers given to CPC competent authorities	Non-legislative	Measure would improve the uniform understanding and implementation of existing minimum powers within the CPC Regulation so that mutual assistance mechanism functions more evenly and efficiently.
D. Insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation,	Clarification of the obligation on CPC	Non-legislative	Measure would improve uniformity of	

	<p>which impede stopping of infringements through the CPC framework or create delays.</p>	<p>competent authorities to supply information “without delay” in mutual assistance requests, adhering to the time periods established in the implementing decision</p>		<p>understanding and implementation of this existing obligation within the CPC Regulation</p>
		<p>Recommend that Single Liaison Offices (SLOs) should be part of an authority in charge of horizontal consumer legislation</p>	<p>Non-legislative</p>	<p>Measure would reduce institutional fragmentation, ensuring SLO has practical case handling experience and knowledge of enforcement challenges faced by CPC competent authorities.</p>
<p>E. Widespread, including online, infringements which are affecting several Member States at the same time, are not being addressed effectively</p>	<p>Insufficient tools to tackle widespread infringements, namely:</p> <p>A. Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities (and the Commission) to address widespread infringements, including in the digital environment.</p> <p>B. Inadequate procedural mechanism to address widespread infringements, including in the digital environment:</p> <ul style="list-style-type: none"> ■ parallel or repetitive efforts of multiple national authorities across Member States or no enforcement action initiated by some national authorities to stop the same infringements in the Single Market; diverging outcomes of enforcement efforts (or no enforcement action initiated in some Member States) creating different conditions for consumers and traders across the Member States, ■ insufficient coordination of parallel actions of national enforcement authorities, and 	<p>Problem not addressed by non-legislative measure</p> <p>Problem not addressed by non-legislative measure</p>		

	<ul style="list-style-type: none"> inefficient balance of powers in the current coordination mechanism between the European Commission and Member States. 			
<p>3. No consistent evidence on emerging infringements and market conditions which impedes effective prevention and early detection of malpractices, especially those which are spread EU-wide in the digital environment</p> <p>No common EU-wide cross-border enforcement strategy and priorities to achieve the objectives of the CPC Regulation; inadequate financial and human resources dedicated to the cross-border enforcement cooperation</p>	<p>The current CPC information exchange via the alert mechanism is insufficient, emerging problems being detected too late and detriment to consumers is prolonged</p>			
	A. Currently all alerts are given equal attention regardless their potential importance and they are not followed up.	Clarification of Member State obligations concerning the use of the alerts mechanism specified in Article 7	Non-legislative	Measure would improve uniformity of understanding and implementation of existing obligations within the CPC Regulation as awareness of enforcement challenges and sharing of market intelligence is improved
	B. Currently access to alert mechanism is limited to the national authorities only, which limits the available information.	Problem not addressed by non-legislative measure		
	<p>Diverging enforcement priorities among Member States, limited resources in some Member States focused on domestic issues, lack of common strategy and insufficient prioritisation of enforcement</p>			
	A. Insufficient resources dedicated to the enforcement cooperation under the CPC Regulation in some Member States.	Clarification of Member State obligations to provide “adequate resources” (Article 4(7)) to handle mutual assistance requests	Non-legislative	Measure would improve uniformity of CPC implementation by ensuring Member State competent authorities have sufficient resources to carry out their obligations
	B. No systematic and common/coordinated prioritisation of national and cross-border enforcement actions across the EU; no adequate monitoring of Member States' enforcement efforts.	Problem not addressed by non-legislative measure		

Table A2.2 Mapping of legislative measures against problems

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
1. Deficiencies in the design of the CPC Regulation	Certain types of cross-border infringements are not being addressed as they are not covered by the CPC Regulation, namely:			
	A. Short-lived, predominantly online infringements.	Measure 1.A.0: Do nothing	Baseline	
		Measure 1.A.1: Include short-lived (predominately online infringements) in the scope of the CPC Regulation.	Legislative - Change in scope	Measure would allow CPC competent authorities to take enforcement action against traders who have infringed in the past but which continue to harm consumers.
	B. Parallel domestic infringements: it is uncertain to which extent they are covered by the current Regulation. Parallel domestic infringements are the infringements that take place in several Member States but do not have from the outset an apparent cross-border dimension (as defined in the definition of the "intra-Community infringement"). These infringements are nevertheless linked because, for example, the infringing trader is the same or belong to the same group of companies, the infringement is similar in its main elements or the infringements take place simultaneously.	Measure 1.B.0: Do Nothing	Baseline	
	Measure 1.B.1 Clarification of 'intra-Community infringement' definition to include parallel domestic infringements in the scope of the CPC Regulation.	Non-legislative	Measure would ensure that CPC competent authorities have a uniform understanding of the scope of the CPC Regulation. Implementation by Member States should then become more even and effective	

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
	<p>Some infringements currently covered by the CPC Regulation are not tackled efficiently for the following reasons:</p> <p>C. Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities, including in the digital environment.</p>	<p>Measure 1.C.0: Do nothing</p> <p>Measure 1.C.1: Reinforcement of the current provisions of the CPC Regulation on minimum powers concerning investigation and enforcement (sanctioning) powers.</p> <p>Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative (ex officio) ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains <p>Measure 1.C.2: Enhanced reinforcement of the current provisions of the CPC Regulation on minimum powers concerning investigation and enforcement (sanctioning) powers</p> <p>Investigation powers</p>	<p>Baseline</p> <p>Legislative - change in the minimum powers of CPC competent authorities</p> <p>Legislative - change in the minimum powers of CPC competent authorities</p>	<p>Measure would ensure Member State competent authorities have sufficient powers to: a) investigate suspected infringements; and b) cease those infringements found to occur with a cross-border dimension.</p> <p>Measure would also contribute to more uniform enforcement of infringement occurring cross-border and online</p> <p>The deterrent on infringing traders would also be enhanced as pecuniary sanctions are strengthened by the measure.</p> <p>Measure would go further than Measure 1.A.1 to ensure CPC competent authorities have sufficient powers to address more complex infringement cases (i.e. those occurring online covering multiple Member States where the location of the</p>

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
		<ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains (i.e. bank, tax and police records) <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to adopt interim measures (e.g. suspend website, order suspension or retention of payment to trader) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 		<p>infringing trader is difficult to establish or is deliberately hidden).</p> <p>Measure also introduces interim measures which ensure that any potential harm to consumers from an infringement is reduced as it is stopped as soon as an investigation commences</p> <p>The deterrent on infringing traders would also be enhanced compared to Measure 1.A.1 as “EU-wide” type sanctions are strengthened relevant to infringements occurring in multiple Member State.</p> <p>Consumers are also empowered to seek redress.</p>
		<p>Measure 1.C.3: Maximum reinforcement of the current provisions of the CPC Regulation on powers concerning enforcement (sanctioning) powers</p> <p>Enforcement powers:</p> <ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze the assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to close down a 	<p>Legislative - change in the minimum powers of CPC competent authorities</p>	<p>Measure introduces maximum enforcement powers and has maximum deterrent effect. For more complex and serial infringements, the power to freeze assets and close websites prevents the capacity of rogue trader to harm consumers.</p>

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
		website, publish all decisions relating to the case)		
	D. Insufficient procedural standards for the mutual assistance mechanism of the CPC Regulation, which impede stopping of infringements through the CPC framework or create delays.	Measure 1.D.0: Do nothing	Baseline	
		Measure 1.D.1: Introduce binding time-limits to respond to mutual assistance requests and corresponding powers for the Commission to monitor how competent authorities handle bilateral cross-border infringements cases and comply with these binding time-limits. For this purpose the Commission's access to information concerning the mutual assistance requests would need to be extended.	Legislative - change to Member State obligations Legislative - change to Commission's obligations	Measure would ensure Member State competent authorities respond to mutual assistance requests within specified parameters, ensuring more efficient and effective CPC case handling. Measure would also improve Commission's sight of cases and understanding of the functioning of the mutual assistance mechanism.
		Measure 1.D.2: Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation regarding intra-Community infringements between Member States	Legislative - change in procedures	Measure ensures the acceptance of evidence and/or the outcome of investigation carried out in another Member State. Legal proceedings brought against infringing trader would therefore be more efficient and decisions more even. Measure would also strengthen deterrence where the infringing trader is aware that evidence obtained in another Member State could be used against it.
		Measure 1.D.3: Introduce in certain defined cases mutual	Legislative - change in procedure	Measure ensures that consistent enforcement action is taken by a CPC competent authority where

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
		recognition/cross-border enforcement of extraterritorial enforcement decisions regarding the intra-Community infringements		the same trader has committed the same infringement in another Member State where an enforcement decision was reached. Enforcement would be more effective and even as a consequence.
2. Widespread, including online, infringements which are affecting several Member States at the same time, are not being addressed effectively	Insufficient tools to tackle widespread infringements, namely:			
	A. Insufficient minimum investigation and enforcement powers provided by the CPC Regulation for the competent authorities (and the Commission) to address widespread infringements, including in the digital environment.	<p>Measure 2.A.0: Do nothing</p> <p>Measure 1.A.1: Reinforcement of the current provisions of the CPC Regulation on minimum powers concerning investigation and enforcement (sanctioning) powers.</p> <p>Investigation powers</p> <ul style="list-style-type: none"> ■ to start investigations on own initiative (ex officio) ■ to carry out test purchases/mystery shopping ■ to gather, require the supply and/or use of digital evidence irrespective of where it is stored <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to publish decisions establishing infringements and to name the trader found guilty of the infringement ■ to impose pecuniary sanctions ■ to request restitution of illicitly obtained gains 	Baseline	
			Legislative - change in the minimum powers of CPC competent authorities	<p>Measure would ensure Member State competent authorities have sufficient powers to: a) investigate suspected infringements; and b) cease those infringements found to occur with a cross-border dimension.</p> <p>Measure would also contribute to more uniform enforcement of infringement occurring cross-border and online</p> <p>The deterrent on infringing traders would also be enhanced as pecuniary sanctions are strengthened by the measure.</p>

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
		<p>Measure 1.A.2: Enhanced reinforcement of the current provisions of the CPC Regulation on minimum powers concerning investigation and enforcement (sanctioning) powers</p> <p>Investigation powers</p> <ul style="list-style-type: none"> ■ to request information from other authorities or third parties to track down the flow of illicitly obtained gains (i.e. bank, tax and police records) <p>Enforcement powers</p> <ul style="list-style-type: none"> ■ to adopt interim measures (e.g. suspend website, order suspension or retention of payment to trader) ■ to require traders to adopt measures to facilitate redress for consumers ■ to make public a trader’s proposed undertakings ■ to impose, coordinate and monitor “EU-wide” type of pecuniary sanctions 	<p>Legislative - change in the minimum powers of CPC competent authorities</p>	<p>Measure would go further than Measure 1.A.1 to ensure CPC competent authorities have sufficient powers to address more complex infringement cases (i.e. those occurring online covering multiple Member States where the location of the infringing trader is difficult to establish or is deliberately hidden).</p> <p>Measure also introduces interim measures which ensure that any potential harm to consumers from an infringement is reduced as it is stopped as soon as an investigation commences</p> <p>The deterrent on infringing traders would also be enhanced compared to Measure 1.A.1 as “EU-wide” type sanctions are strengthened relevant to infringements occurring in multiple Member State.</p> <p>Consumers are also empowered to seek redress.</p>
		<p>Measure 1.A.3: Maximum reinforcement of the current provisions of the CPC Regulation on powers concerning enforcement (sanctioning) powers</p> <p>Enforcement powers:</p>	<p>Legislative - change in the minimum powers of CPC competent authorities</p>	<p>Measure introduces maximum enforcement powers and has maximum deterrent effect. For more complex and serial infringements, the power to freeze assets and close websites</p>

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
		<ul style="list-style-type: none"> ■ to adopt more severe interim measures (to temporarily freeze the assets or suspend the economic activity of a trader) ■ to adopt more severe sanctions (to close down a website, publish all decisions relating to the case) 		prevents the capacity of rogue trader to harm consumers.
	<p>B. Inadequate procedural mechanism to address widespread infringements, including in the digital environment:</p> <ul style="list-style-type: none"> ■ parallel or repetitive efforts of multiple national authorities across Member States or no enforcement action initiated by some national authorities to stop the same infringements in the Single Market; diverging outcomes of enforcement efforts (or no enforcement action initiated in some Member States) creating different conditions for consumers and traders across the Member States, ■ insufficient coordination of parallel actions of national enforcement authorities, and ■ inefficient balance of powers in the current coordination mechanism between the 	<p>Measure 2.B.0: Do nothing</p> <p>Measure 2.B.1: Specify and clarify the format of common enforcement action under Article 9 of the CPC Regulation with stronger coordination role of the European Commission; set out minimum requirements to ensure consistency among national actions and their outcomes.</p> <p>Measure 2.B.2: Setting up a new specific EU (centralised) cooperation procedure to handle EU-relevant infringements, including in the digital environment, with a greater role for the European Commission and/or the initiating (lead) Member State in a group of Member States.</p> <p>Measure 2.B.3: Provide for direct investigation, enforcement and sanctioning powers of the</p>	<p>Baseline</p> <p>Legislative - change in enforcement procedures Change in Commission's obligations</p> <p>Legislative - change in procedures</p> <p>Legislative - changes in Member State obligations</p> <p>Legislative - change in Commission's obligations</p> <p>Legislative - change in procedures</p>	<p>Measure establishes defined procedures for carrying out enforcement actions which involve more than two Member State competent authorities. Measure also establishes a more defined role for the Commission, ensuring the greater consistency, efficiency and effectiveness of common enforcement actions.</p> <p>Establishing a single (centralised) procedure would ensure the enforcement cooperation and actions are undertaken with increased efficiency and effectiveness. Measure would also prevent uneven enforcement in EU-relevant infringement cases and strength deterrent effects</p> <p>Measure establishes a single authority to direct enforcement actions in cases of EU-relevance. This would ensure maximum</p>

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
	European Commission and Member States.	European Commission to tackle defined EU-level relevant infringements of consumer legislation set out in regulations, in particular in the DSM.	Legislative - change in Commission's obligations	efficiency in tackling infringements and eliminate potential uneven enforcement by Member State competent authorities.
<p>3. No consistent evidence on emerging infringements and market conditions which impedes effective prevention and early detection of malpractices, especially those which are spread EU-wide in the digital environment</p> <p>No common EU-wide cross-border enforcement strategy and priorities to achieve the objectives of the CPC Regulation; inadequate financial and human resources dedicated to the cross-border enforcement cooperation</p>	The current CPC information exchange via the alert mechanism is insufficient, emerging problems being detected too late and detriment to consumers is prolonged			
	A. Currently all alerts are given equal attention regardless their potential importance and they are not followed up.	Measure 3.A.0: Do Nothing	Baseline	
		Measure 3.A.1: Introduce the alerts' action categorisation based on a type of follow-up (for compulsory action within a deadline or for information only)	Legislative - change to procedures	Measure mandates the action CPC competent authorities should take on receiving an alert, also forces notifying authorities to prioritise the action to be undertaken. Alerts would be more relevant, targeted and would entail greater follow-up action to make best use of intelligence provided.
	B. Currently access to alert mechanism is limited to the national authorities only, which limits the available information.	Measure 3.B.0: Do Nothing	Baseline	
Measure 3.B.1: Introduce a possibility to have access to the alert mechanism for other actors.		Legislative - new provision Legislative - change to procedure	Measure would allow consumer associations/ombudsmen to post (moderated by EC) and receive alerts so that market intelligence is more comprehensive in scope and response to enforcement challenge is more effective, consistent and efficient.	
		Measure 3.B.2: Introduce a possibility for the European Commission to post alerts for action or for information	Legislative - new provision Legislative - change to procedure	The Commission as the repository of a significant volume of market intelligence (ECC-Net, Eurobarometer surveys, studies, workshops) would be able to

Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
			Legislative - change to Commission's obligations	place this information on the alerts mechanism where appropriate. Measure would improve access to and the quality of intelligence, plus coordinate follow-up action.
Diverging enforcement priorities among Member States, limited resources in some Member States focused on domestic issues, lack of common strategy and insufficient prioritisation of enforcement				
	A. Insufficient resources dedicated to the enforcement cooperation under the CPC Regulation in some Member States.	Measure 4.A.0: Do Nothing Measure 4.A.1: <i>Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation</i> and corresponding powers for the Commission to audit these resources	Legislative - change in Member State obligations Legislative - change in Commission's obligations	Measure ensures that CPC competent authority resources are sufficient to meet their obligations under the CPC Regulation. In so doing, mutual assistance cooperation should be more efficient and effective. Auditing of these resources by the Commission would also ensure capabilities and capacities are maintained as cross-border caseloads change over time.
	B. No systematic and common/coordinated prioritisation of national and cross-border enforcement actions across the EU; no adequate monitoring of Member States' enforcement efforts.	4.B.0: Do Nothing Measure 4.B.1: Introduce a requirement for the competent authorities to prepare a single integrated multi-annual enforcement plan/strategy to ensure the effective implementation of the CPC Regulation, especially regarding	Baseline Legislative – new provision Legislative – change in Member State obligations	Measure would require CPC competent authorities to define enforcement priorities relevant to consumers in their Member State and communicate this in a report to the Commission and other Member States. Opportunities for coordinated action and improved cooperation would be more easily



Problem	Sub-problem	Measure(s) addressing the problem/sub-problem	Type of measure	Rationale/ intended effect
		<p>priority criteria relevant for the DSM.</p> <p>Measure 4.B.2: Set up a general auditing system. The auditing system would verify that the overall enforcement of the consumer protection legislation takes place in Member States in accordance with the multi-annual enforcement plan and would assess the national market surveillance frameworks in terms of the effectiveness of the enforcement actions, allocation of resources and coordination between SLOs and competent authorities within a Member State.</p>	<p>Legislative – new provision</p> <p>Legislative – change in Member State obligations</p> <p>Legislative – change in Commission’s obligations</p>	<p>identified to tackle infringements of common concern.</p> <p>Measure would go further than Measure 4.E.2 to allow verification that enforcement plans are adhered to and monitor resources devoted to cross-border infringement case handling.</p>

Annex 3 Screening of the identified measures for addressing the problems

Table A3.1 Screened out measures from the policy options

Possible Measure	Screened out?	Justification for screening
Repealing of the CPC Regulation	Y	This is not considered appropriate in view of the external evaluation and public consultation results. The CPC Regulation's rationale for intervention continues to be valid. Without the CPC Regulation, there would be no mutual assistance mechanisms and coordinated enforcement among competent authorities, which would result in greater fragmentation of consumer protection enforcement. This would be undesirable and inconsistent with the EU Consumer Agenda and Digital Single Market initiatives. The options therefore seek to improve and modernise the CPC Regulation and make it 'digitally fit', but not to repeal the cooperation framework in its entirety.
The power for the CPC competent authorities to apply more stringent sanctions due to the cross-border nature of the infringement	Y	Subsidiarity conditions met Low feasibility as discriminatory measure would treat cross border infringements differently to domestic, this is reflected in low acceptance among stakeholders
An EU complaint system directly accessible online to citizens	Y	Subsidiary conditions are not met High costs to establish and operate EU system although benefits are highly uncertain High feasibility as similar systems exist at EU level
Harmonisation of national administrative and judicial procedural rules	Y	Subsidiarity conditions are not met High disproportionate cost due to need to revise entire Member State legal systems Low political feasibility
Centralised alert system where the European Commission would filter alerts before they are disseminated to the competent authorities	Y	Subsidiarity conditions met High costs to establish and operate EU system, disproportionate to potential benefits Low acceptance from stakeholders in public consultation
Possibility for certain alerts to be made public	Y	Subsidiarity conditions met Disproportionately costly if trader takes legal action where misleading claims are made High practical feasibility ¹¹⁹ , low legal feasibility as who bears liability for incorrect alerts is uncertain
Setting up a specific EU market surveillance body to monitor digital markets and enforcement of consumer rights in the online environment, to collect, analyse and disseminate enforcement intelligence information and propose recommendations to policy makers	Y	Subsidiarity conditions met Disproportionate costs to establish and operate EU body, highly uncertain benefits in addition to national coordinated market surveillance High technical feasibility, potential low political feasibility

¹¹⁹ In the public consultation this was indicated as a top/highest priority by 49% of all respondents and by 47% of the CPC competent authorities.

Annex 4 CPC Impact Assessment: Quantification of Costs and Benefits

This section details the methodological and conceptual framework for quantifying the economic impact – in terms of costs and benefits – of the proposed policy measures, including the working assumptions underpinning the analyses and the data sources utilised to build the evidence base. Figure A4.1 illustrates the overall method of approach adopted for the quantification. It is followed by a description of the individual steps.

Figure A4.1 Overall Methodological Framework



A4.2 Step 1: Definition of Baseline

The following baseline estimates were developed to provide the basis for calculating the incremental costs and benefits of the proposed policy measures and the preferred policy option:

- Baseline infringements;
- Baseline consumer detriment;
- Baseline CPC caseload, and
- Baseline unit costs of enforcement

Each of these is explained in the following sub-sections.

A4.2.1 Baseline infringements

The Baseline Report estimated the total number of infringements projected to occur in the five sectors of study (clothing and sports goods, electronic goods, tickets for events, food supplements and consumer credit) across EU28 over the period 2015-2025. These estimates were broken down by domestic, parallel domestic and cross-border infringements (Table A4.2). The methodology and working assumptions underpinning the estimates below are detailed in the Baseline Report.

Table A4.1 Estimated number of infringements in the baseline scenario, EU 28, five sectors, 2015-2025, unit: Thousands

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Domestic	249	249	250	250	250	250	251	251	251	251	251
Cross-border	124	128	132	136	140	144	149	153	157	162	167
Parallel	26	26	27	27	27	27	27	28	28	28	28
Total	399	403	408	412	417	422	427	431	436	441	446

Source: ICF analysis

A4.2.2 Baseline consumer detriment

The Baseline Report also provided estimates of the number of consumers suffering harm and the potential scale of financial detriment resulting from the above infringements. For ease of reference, these figures are reproduced in the Table below.

Table A4.2 Estimated scale of consumer detriment, EU 28, five sectors, 2015-2025

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Number of consumers affected by the infringements (millions)											
Domestic	238	236	234	232	230	228	226	224	222	221	219
Cross-border	5	5	5	5	6	6	6	6	6	7	7
Parallel	29	29	29	29	30	30	30	30	30	30	30
Total	272	270	269	267	265	264	262	260	259	257	256
Consumer detriment (million euros)											
Domestic	9,234	9,252	9,287	9,304	9,327	9,365	9,393	9,423	9,467	9,503	9,550
Cross-border	221	233	246	260	274	288	304	320	336	354	373
Parallel	1,021	1,037	1,052	1,065	1,081	1,100	1,118	1,131	1,145	1,159	1,173

International	50	53	57	61	65	69	73	78	83	50	53
Total	10,526	10,575	10,642	10,690	10,747	10,822	10,888	10,952	11,031	11,066	11,149

Source: ICF analysis; *populated aged 16 and over

A4.2.3 Baseline CPC caseload

The baseline CPC caseload was calculated as a percentage of CPC relevant infringements. In the baseline scenario, CPC relevant infringements are those which are defined as EU cross-border, excluding those with short-lived characteristics and parallel domestic infringements.

Data on past CPC caseload (Table A4.3) was used to determine the percentage of CPC relevant infringements that are addressed by CPC authorities. The resultant figure was 0.03 percent.

$$\begin{aligned} \% \text{ infringements addressed by CPC} \\ &= \text{Average CPC caseload (2007 – 2013)} \\ &\div \text{CPC relevant infringements (2015)} \end{aligned}$$

$$\begin{aligned} \text{where CPC relevant infringements (2015)} \\ &= \text{crossborder infringements(2015)} \\ &- \text{parallel domestic infringements(2015)} \\ &- \text{short lived infringements (2015)} \end{aligned}$$

Short lived infringements were assumed to be 10 per cent of infringements. This assumption is based on data collected from the CPC authorities.

Table A4.3 CPC caseload, all sectors, 2007-2013

	2007	2008	2009	2010	2011	2012	2013	Average
Alert	52	100	44	37	27	42	104	58
Information Request	150	120	150	89	93	87	60	107
Enforcement Request	85	170	170	131	114	131	171	139
Total CPC caseload	287	390	364	257	234	260	3 35	303

Source: European Commission. [online] Available at:

http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/consumer_protection_cooperation_network/index_en.htm

Table A4.4 shows the estimated CPC caseload for the five sectors of study under the baseline scenario. It was further assumed that these five sectors represent 10 per cent of the total infringements – this assumption was informed by desk research, expert opinion and statistics of the relative weight of these sectors in the entire EU economy.

Table A4.4 Projected CPC caseload for five sectors of study , 2015- 2015, baseline scenario

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Total caseload	33	34	36	37	38	39	40	41	43	44	45
<i>Alerts</i>	7	7	7	7	8	8	8	8	9	9	9
<i>Enforcement Requests</i>	15	16	16	16	17	18	18	19	19	20	20
<i>Information Requests</i>	12	12	12	13	13	14	14	14	15	15	16

Source: ICF analysis

The key inputs and assumptions underpinning the calculation of baseline CPC caseload are summarised in the Table below:

Table A4.5 Baseline CPC caseload: key inputs and working assumptions underpinning the calculations

Variable	Value	Source of evidence
% infringements addressed by CPC	0.03%	Calculated as Average CPC caseload (2007-2013) <i>divided by</i> CPC relevant infringements (2015)
CPC relevant infringements (baseline)		EU cross-border, excluding those with short-lived characteristics and parallel domestic infringements (see Table A4.1)
Average CPC caseload (2007-2013)	303	Based on CPC statistics (Table A4.4)
Share of alerts	20%	Based on CPC statistics (Table A4.4)
Share of enforcement requests	45%	Based on CPC statistics (Table A4.4)
Share of information requests	35%	Based on CPC statistics (Table A4.4)
Share of short lived infringements	10%	Based on data collected from CPC authorities

A4.2.4 Baseline unit costs

The baseline costs are those associated with the current operation of the CPC Regulation. These largely comprise wage costs associated with the administration (including resources for market surveillance and cross-border collaboration with other enforcement agencies), and enforcement of the CPC Regulation.

Detailed (baseline) cost information for different types of interventions (alerts, information requests, enforcement requests) is required for calculating the cost implications of the proposed policy measures.

Establishing the baseline costs was however, not an easy task as national CPC authorities do not undertake activity-based tracking that would allow the calculation of unit cost of intervention. Furthermore, national CPC authorities typically do not maintain accurate records of the resources allocated to CPC activities. This meant that a bottom-up approach could not be used to establish the average unit cost for an enforcement action.

The resource data provided by the national CPC authorities (as part of the survey carried out within the framework of this Study) did not look reliable and therefore, could not be used for the analysis.

The study team also looked at alternative sources of information for this data. For instance, Table A4.6 was compiled from two data sources. It provides indicative estimates of enforcement costs from the CPC external evaluation and the number of NCAs in each Member State from DG JUST website country summary reports. To determine the estimated FTEs currently working on CPC activities in each Member State, the FTEs per NCA were multiplied by the number of NCAs. The resultant figure

however, cannot be accurate – it is inconceivable that 837 FTEs across Europe were handling a caseload of 260 in 2012 (the number of cases handled by the CPC network in 2012 – see Table A4.3).

Table A4.6 Indicative administrative and enforcement resources of the Member States in 2012

Member State	FTE annual resources for operation and maintenance per...		Number of NCAs in Member State	Estimated annual operation and maintenance cost (€) per...		Estimated FTE resources and annual cost of NCAs by Member State	
	SLO	NCA		SLO	NCA	FTE	Annual €
Austria	1	1	9	62,241	48,741	9	438,669
Belgium	7.5	12.5	1	466,455	674,426	12.5	674,426
Bulgaria	14	14	4	339,449	339,449	56	1,357,796
Cyprus	1.5	1.5	5	67,754	67,754	7.5	338,770
Czech Republic	2	2.5	10	59,106	73,258	25	732,580
Denmark	0	1.5	5 + consumer ombudsmen	-	109,660	7.5	548,300
Estonia	1.5	2.75	4	45,609	89,867	11	359,468
Finland	0.5	1	3	31,944	71,387	3	214,161
France	0	5	8 National	-	288,485	40	2,307,880
Germany	2.5	2.5	4 Federal + 57 Land	137,899	137,899	142.5	7,860,243
Greece	2.5	1.5	4 (+2 related authorities on food and health/safety)	85,055	54,033	9	324,198
Hungary	1	19	7	26,466	532,850	133	3,729,950
Croatia	N/A	N/A	1	N/A	N/A	N/A	N/A
Ireland	0	0.5	5	-	31,040	2.5	155,200
Italy	3	3	10	167,373	167,373	30	1,673,730
Latvia	4	3.5	9	109,097	95,460	31.5	859,140
Lithuania	4	3.5	8	39,765	39,765	28	318,120
Luxembourg	5	5	4	39,311	39,311	20	157,244
Malta	2.5	2.5	6	74,287	74,287	15	445,722
Netherlands	2.5	2	7	198,559	159,997	14	1,119,979
Poland	6	6	7	157,207	157,207	42	1,100,449
Portugal	0	6	4	-	182,755	24	731,020
Romania	3	3	12	75,429	75,429	36	905,148
Slovakia	0	2.5	8	-	71,567	20	572,536
Slovenia	0	13.5	3	-	525,147	40.5	1,575,441
Spain	11	11	9	562,276	562,276	9	438,669
Sweden	0	0.5	6	-	27,488	12.5	674,426
United Kingdom	2.5	3.5	6 to 7	110,406	140,888	56	1,357,796
						837	30,971,061

Source: EC (2012): External evaluation of the CPC Regulation by ICF (formerly ICF-GHK)

The study team therefore, additionally looked for existing data on cost of enforcement action in EU Member States. Only one relevant source was found: a recent UK Impact Assessment¹²⁰ provides some data on the unit cost of enforcement. In absence of reliable evidence from other sources, relevant data was extracted from the UK Impact Assessment to calculate unit cost of each enforcement action (see Table A4.7).

Table A4.7 Baseline unit cost of CPC enforcement actions

Enforcement action	Estimated unit cost (€)	Methodology
Alert	€46	<p>Calculation Calculated as:</p> <p>Total time spent on activity (hours) X hourly wage rate (€) + overheads</p> <p>Inputs and assumptions</p> <ul style="list-style-type: none"> ▪ It is assumed that on average, it takes a national CPC authority 's staff 2 hours to register an alert (<i>based on expert judgement and understanding of the process involved</i>) ▪ The average hourly wage rate of a public authority official across EU 28 = €20 (<i>based on Eurostat data¹²¹</i>) ▪ Overheads have been estimated at 14.5% (<i>based on CPC cost data triangulated with other sources such as Commission overheads, Executive Agency overheads and national public sector overheads</i>)
Information request	€298	<p>Calculation Calculated as above</p> <p>Inputs and assumptions</p> <ul style="list-style-type: none"> ▪ Time spent = 18 hours (<i>based on expert judgement and understanding of the process involved</i>). This includes the time spent on: <ul style="list-style-type: none"> - preparing an information request by a particular national competent authority (including answering any follow-up questions) - responding to the information request by its counterpart in another Member State ▪ The average hourly wage rate = €20 ▪ Overheads = 14.5%
Enforcement request	€2,299	See box 1 below

Box 1 Calculating unit cost of enforcement

¹²⁰¹²⁰ UK Department for Business, Innovation & Skills (2014) Consumer Rights Bill: Proposals for enhanced consumer measures, Impact Assessment: Final, January 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/280858/bis-13-1357-consumer-rights-bill-proposals-on-enhanced-consumer-measures-impact-final.pdf

¹²¹ Eurostat (2015): Estimated hourly labour costs – wages and salary: EU-28 average, 2014, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Wages_and_labour_costs



The unit cost data sourced from the UK Impact Assessment Study¹²² was used as the basis for calculating the weighted average unit cost of enforcement across the EU

The following steps were involved

1. Converting 2013 UK data expressed in pound sterling to euros and adjusting to current prices (2015 prices)

Enforcement action	Unit cost £	Unit cost €	2015 Value
Cost of a court case – high (criminal proceedings)	£4,050.00	4,768.86 €	4,869.43 €
Cost of a court case - low (civil proceedings)	£3,400.00	4,003.49 €	4,087.92 €
Enforcement undertaking	£1,270.00	1,495.42 €	1,526.96 €

NB: unit costs include: cost of enforcement authorities’ staff time, external legal advice and overheads (14.5%)

Exchange Rate (2013): £1=	0.84926	€
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Source: European Central Bank

Variable: Average or standardised measure for given frequency (annual), spot

Adjustment for inflation

	2013	2014
Inflation rate (%)	1.5%	0.6%

Source: European Central Bank

Variable: HICP - Overall index, Annual average rate of change, geographic area = EU

2. Adjusting UK costs for national differences in costs and set-up of legal system

The UK costs were adjusted for those Member State which currently have the above powers (interim powers, power to pursue criminal or civil or administrative proceedings) using the following variable: per capita budget allocated to legal systems. This variable was derived from Eurostat data on (i) general government expenditure on law courts¹²³ and (ii) population.

$$\begin{aligned} & \text{Cost of enforcement action in Member State } i \\ & = \text{Cost of enforcement action in UK } \times \text{Adjustment factor for Member State } i \end{aligned}$$

Where,

$$\begin{aligned} & \text{Adjustment factor for Member State } i \\ & = \frac{\text{Per capita budget allocated to legal system in Member State } i \text{ (2012)}}{\text{Per capita budget allocated to legal system in the UK (2012)}} \end{aligned}$$

¹²² Ibid

¹²³ Administration, operation or support of civil and criminal law courts and the judicial system, including enforcement of fines and legal settlements imposed by the courts and operation of parole and probation systems; legal representation and advice on behalf of government or on behalf of others provided by government in cash or in services.

Includes: administrative tribunals, ombudsmen and the like.

Excludes: prison administration



3. Calculating the weighted average costs using average CPC caseload (2007-2013) per Member State as weights and based on probability of a case going through a particular enforcement action.

Weighted average cost of a particular enforcement action (WAC)

$$= \sum_{i=1}^n C_i E_i \div \sum_{i=1}^n C_i E_i$$

Where, C_i = CPC caseload in Member State i

E_i = Cost of enforcement action in Member State i

Weighted average costs of all enforcement actions taken together

$$= (WAC \text{ court case} - \text{high } X \% \text{ probability of occurrence})$$

$$+ (WAC \text{ court case} - \text{average } X \% \text{ probability of occurrence})$$

$$+ (WAC$$

$$- \text{enforcement undertaking } X \% \text{ probability of occurrence})$$

The Table below shows the resultant weighted average costs of enforcement:

	EU weighted average cost of this action(baseline)	Probability of occurrence of this action	Expected Value
Court case- high	€3,230.02	10%	€323.00
Court case- average	€2,286.68	80%	€1,829.35
Enforcement undertaking	€1,468.90	10%	€146.89
weighted average cost of enforcement		100%	€2,299

The probability values in the above table are informed by caseload breakdowns provided in the published literature of national CPC authorities and the researchers experienced judgement

The average enforcement cost in the baseline is €2,299. However, the unit costs of enforcement vary widely per case and Member State. For example, labour costs of authorities differ among Member States. The length, complexity of investigation and legal resources required to tackle an infringement also differs per infringement and per enforcement system.

In reality in some Member States, the average cost per enforcement might be lower in particular in the systems which are characterised by the "self-managed administrative proceedings" where the national competent authority starts and conducts the investigation and takes enforcement measures without involvement of the courts (e.g. Italy).

Changes proposed by the policy measures can be translated into changes in the % probability of high and low cost cases occurring using the weighted costs approach. For example, increasing the enforcement powers of competent authorities enables authorities to select less costly means of ceasing an infringement. As such, the probability of a low cost case occurring should increase.

A4.3 Step 2: Identification of likely costs and benefits of proposed measures

The next step of the quantification exercise was to identify the (quantifiable) costs and benefits that could potentially arise from the implementation of each of the proposed policy measure. These are indicated in Table A4.8 below.

Quantifiable incremental costs/ cost savings include:

- Change in the total costs of handling CPC cases (alerts, information requests and enforcement requests), assuming that Member States are prepared to resource the agreed policy measures. These costs are a function of changes in:
 - *CPC caseload* – the number and type of cases handled by the CPC authorities which is a function of (i) the nature and scale of infringements taking place and (ii) the tools, resources and powers available to CPC authorities to detect and address these infringements;
 - *Unit costs of intervention* – the unit cost of handling an alert, an information request and an enforcement request.
- Changes in other costs such as:
 - The costs to enforcers of assessing and proposing the most appropriate remedy;
 - The cost of familiarisation and training, where these are expected to be non-negligible;
 - Additional costs for the European Commission.

The main quantifiable benefit is a potential reduction in the total financial value of consumer detriment arising from the implementation of a particular policy measure. Financial detriment is a function of the following three variables:

- Compliance rate – improved compliance among traders can be expected to manifest itself in the form of a reduction in the number of infringements;
- The average number of consumers affected per infringement;
- The average value of financial detriment per infringement per consumer.

To avoid superficial quantification, the following costs and benefits have been excluded from Table A4.8:

- Benefits such as a reduction in the number of consumers affected by an infringement due to its early detection by the CPC authorities (and thus, early cessation);
- Non-financial detriment resulting from infringements such as loss of time and any emotional or psychological detriment suffered by consumers;
- Cost to businesses of any sanctions imposed by national CPC authorities within the context of the CPC Regulation;
- Efficiency gains (cost savings) resulting from improved coordination, and reduced duplication of activities across the CPC network. However attempts in the analysis have been made to provide examples where feasible.

No evidence could be found (either from primary or secondary sources) to inform the quantification of the above benefits. Consequently, these have been qualitatively assessed in Chapter 4.

Due to lack of data, costs and benefits can only be quantified for a few measures and that too, partially. However, where feasible, the quantification provides an order of magnitude of impact and helps establish the extent to which benefits are likely to outweigh costs, thus justifying particular policy choices.

Table A4.8 Potential costs and benefits of the proposed policy measures

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
1.A Include short-lived infringements in scope	The costs of the expected increase in caseload of national CPC authorities as short-lived infringements now fall within the scope of the CPC Regulation	No change	<i>One-off costs associated with the development of common guidance or procedures for tackling short-lived infringements. These are expected to be negligible and therefore, not quantified</i>	A reduction in the number of short-lived infringements can be expected	On average, fewer consumers would be affected by a short-lived infringement	No change – the measures generally do not affect the <u>average</u> financial detriment suffered by consumers which is a function of the amount spent on a particular good or service and the value lost as a result of detriment	Net financial detriment reduces to the extent the gross detriment is reduced; however, consumers do not receive any additional financial compensation or redress
1.B Include parallel domestic infringements in scope	The costs of the expected increase in caseload of national CPC authorities as parallel domestic infringements now fall within the scope of the CPC Regulation	<i>Significant efficiency gains (cost savings) can be expected as duplication in the handling of parallel domestic infringements would be eliminated – the current scale of duplication is however, not known and can only be guesstimated. At one level it could be suggested that duplication is avoided</i>	<i>One-off costs associated with the development of common guidance or procedures for tackling parallel domestic infringements. These are expected to be negligible and therefore, not quantified</i>	A reduction in the number of parallel domestic infringements can be expected	Due to lack of evidence, it is conservatively assumed that this measure will not have any impact on the average number of consumers affected per infringement	No change as explained above	No change as explained above

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
		<i>in 27 other Member States. In reality this may only be 3-4 Member States. As shown in the Apple case only 11/28 Member States investigated the infringement. These efficiency gains have not been quantified due to lack of evidence base to inform any assumptions or calculations.</i>					
1.C.1 Reinforce (strengthen) current investigation and enforcement powers (<i>minimum reinforcement</i>)	No change in caseload	Change in unit costs of investigations and enforcement as some Member States now have additional powers which imply additional resource implications At the same time, with additional powers at their disposal, national CPC authorities can be expected to rely more on lower cost	Familiarisation and training costs for those CPC authorities who currently don't have the new investigative and enforcement powers envisaged under this measure	This measure will reduce the number of situations where infringements are not currently duly investigated or addressed due to lack of sufficient powers.	<i>Additional investigative and enforcement powers should in theory, result in quicker cessation of infringements. Therefore, one could expect fewer consumers to be affected per infringement. There is however, no basis for</i>	No change	No change

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
		interventions e.g. civil proceedings as opposed to criminal proceedings. This should result in a reduction in the average cost of intervention			<i>quantifying this effect as data are not available on the average duration of infringement</i>		
1.C.1 +1.C.2 Additional reinforcement of current investigation and enforcement powers (<i>medium reinforcement</i>)	No change	Change in unit costs of investigations and enforcement as some Member States now have additional powers which imply resource implications At the same time, Member States can be expected to rely more on lower cost actions e.g. interim powers and civil proceedings as opposed to criminal proceedings. This would result in a reduction in the average cost of enforcement	Familiarisation and training costs for those CPC authorities who currently don't have the new investigative and enforcement powers envisaged under this measure. Costs to enforcers of assessing and proposing the most appropriate remedy	As above – but scale of impact can be expected to be higher	As above	No change	Introduction of redress mechanism reduces the net financial detriment

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
1.C.2 +1.C.3 Maximum reinforcement of current investigation and enforcement powers (<i>maximum reinforcement</i>)	No change	Change in unit costs of investigation and enforcement as some Member States now have additional powers which imply resource implications At the same time, Member States can be expected to rely to a greater extent (as compared to previous measure) on interim powers and civil proceedings as opposed to criminal proceedings. This would result in a reduction in the average cost of enforcement	Familiarisation and training costs for those CPC authorities who currently don't have the new investigative and enforcement powers envisaged under this measure. Costs to enforcers of assessing and proposing the most appropriate remedy	As above – but scale of impact can be expected to be higher <i>In theory , the additional powers envisaged under 1.c.3 could be expected to lead to higher compliance and fewer infringements through a deterrence effect, but there is no basis for quantifying these effects</i>	As above	No change	Introduction of redress mechanism reduces the net financial detriment
1.D.1 Introduce binding time-limits to respond to mutual assistance requests	No change	Change in unit costs due to more efficient case handling	<i>In order to meet the binding time-limits, some Member States might have to reinforce capacity. One can therefore, expect an increase in FTEs/ staff</i>	No change	<i>A priori quicker enforcement should reduce the length of time an infringement occurs, thus reducing the</i>	No change	No change

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
			<p><i>time devoted to cross-border enforcement in Member States that are currently under-resourced. In absence of reliable data on resources currently devoted to CPC in each Member State, these costs could not be calculated.</i></p> <p><i>Cost of developing new protocols and operational guidance. These are expected to be negligible and therefore, not quantified</i></p>		<p><i>number of consumers affected per infringement. There is however, no basis for quantifying this effect as data are not available on the average duration of infringement</i></p>		
1.D.1 + 1.D.2 Introduce a mechanism for mutual recognition of evidence/outcome of investigation	No change	<p><i>Better use of evidence should reduce costs. These costs can however, not be quantified in absence of evidence to inform underlying assumptions and calculations</i></p>	<p>Familiarisation and training costs for CPC authorities</p> <p><i>Cost of developing new protocols and operational guidance. These are expected to be negligible and therefore, not quantified</i></p>	Better use of evidence should contribute to increased success in prosecutions leading to deterrence and fewer infringements. There is however, no basis for calculating the deterrence effect	No change	No change	No change

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
			<p><i>Investigation of parallel domestic infringements is currently duplicated across Member States. Cost savings can be expected from coordinated investigations, however there is no evidence to determine the scale of cost savings that could be expected to accrue</i></p>				
<p>1.D.2 + 1.D.3 Introduce mutual recognition for certain cross-border enforcement</p>	No change	<p><i>Better use of evidence and mutual recognition /cross-border enforcement of decisions should reduce costs . These costs can however, not be quantified in absence of evidence to inform underlying assumptions and calculations</i></p>	<p>Familiarisation and training costs for CPC authorities</p> <p><i>Cost of developing new protocols and operational guidance. These are expected to be negligible and therefore, not quantified</i></p> <p><i>Cost savings can be expected from mutual recognition of certain enforcement action as any duplication is</i></p>	As above	<p><i>Mutual recognition /cross-border enforcement of decisions should lead to quicker enforcement and quicker cessation of infringements, thus reducing the number of consumers affected per infringement. There is however, no basis for quantifying this</i></p>	No change	No change

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
			<i>eliminated, however there is no evidence to determine the scale of cost savings that could be expected to accrue</i>		<i>effect as data are not available on the average duration of infringement</i>		
2.A.1 Reinforce current investigation and enforcement powers	These measures are the same as 1.C.1, 1.C.2 and 1.C.3						
2.A.2 Additional reinforcement of current investigation and enforcement powers							
2.A.3 Additional reinforcement of current investigation and enforcement powers							
2.B.1 Specify and clarify the format of common enforcement action under Article 9, with a stronger role for the EC	No change	No change	No change	<i>Potential deterrence effect – but cannot be quantified</i>	<i>More efficient enforcement should reduce the length of time an infringement occurs, thus reducing number of consumers affected per</i>	No change	No change

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
					<i>infringement. There is however, no basis for quantifying this effect</i>		
2.B.1 + 2.B.2 Setting up a new specific EU (centralised) cooperation procedure	No change	No change	Costs incurred by the European Commission in coordinating Member State investigation and enforcement activities <i>Familiarisation and training costs associated with the implementation of the new specific EU (centralised) cooperation procedure These are expected to be negligible and therefore, not quantified</i>	No change	<i>Quicker enforcement action against parallel domestic infringements. There is however, no basis for quantifying this effect</i>	No change	No change
2.B.2 +2.B.3 Introduce direct investigation, enforcement and sanctioning powers	No change	No change	Costs incurred by European Commission in handling parallel domestic infringements	A reduction in the number of parallel domestic infringements can be expected	No change	No change	No change
3.A.1 Introduce alerts action categorisation	<i>A system of alert prioritisation should in theory lead to detection of</i>	No change	<i>Cost of developing criteria and protocol for prioritisation of alerts.</i>	<i>A system of alert prioritisation should in theory lead to detection</i>	No change	No change	No change

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
	<i>additional cross-border and parallel domestic infringement cases. There is however, no available evidence to indicate the increase in caseload that could potentially occur as a result of this measure</i>		<i>These are expected to be negligible and therefore, not quantified</i>	<i>of additional cross-border and parallel domestic infringement cases. There is however, no basis for quantifying the potential reduction in the number of infringements</i>			
3.B.1 Introduce the possibility to have access to the alert mechanism for a wider range of organisations	<i>In theory, this measure should lead to detection of additional cross-border and parallel domestic infringement cases. There is however, no available evidence to indicate the increase in caseload that could potentially occur as a result of this measure</i>	No change	Costs incurred by European Commission in accessing mutual assistance alerts, monitoring Member State responses, distributing intelligence and moderating alerts placed on the system by other stakeholders <i>One-off cost of providing training to ECCs, consumer and trade associations on the use on alert mechanism plus Commission staff time in vetting alerts, posting new alerts.</i>	<i>In theory, this measure should lead to detection of additional cross-border and parallel domestic infringement cases. There is however, no existing evidence to help determine the extent to which enforcement would improve as a result of opening access to alert mechanism to a wider range of organisations</i>	<i>Increased speed of detection and enforcement should lead to fewer consumers being affected per infringement. However, there is no basis for quantifying this effect</i>	No change	No change

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
			<i>These are expected to be negligible and therefore, not quantified</i>				
3.C.1 Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation.	<i>Increased resource allocation should result in the detection of additional cross-border and parallel domestic infringement cases. There is however, no basis for quantifying the potential change in CPC caseload, which would depend on the specific benchmarks</i>	No change	<i>Transition costs: additional resource costs for some Member States that currently fall short of prescribed benchmarks in terms of financial and human resources. As neither the current resource allocation by Member State nor the benchmarks envisaged under this measure are known, it is not possible to quantify these costs.</i>	<i>Increased resource allocation should result in the detection of additional cross-border and parallel domestic infringement cases. There is however, no basis for quantifying the potential reduction in the number of infringements. Specifically, the literature or existing CPC evidence does not help establish the mathematical relationship between inputs and impacts</i>	<i>Increased speed of detection and enforcement should lead to fewer consumers being affected per infringement. However, there is no basis for quantifying this effect</i>	No change	No change
3.D.1 Introduce a requirement for authorities to prepare enforcement plans	No change	<i>Potential reduction in unit costs due to improved coordination between national authorities. There is however, no basis for quantifying the reduction in unit costs.</i>	Cost of preparing national enforcement plans	<i>Potential deterrence effect from more effective cross-border enforcement– however, hard to establish the causal link between more coordinated</i>	No change	No change	No change

Measure	Potential cost implications of measure <i>ceteris paribus</i>			Potential benefits arising from measure, <i>ceteris paribus</i>			
	Change in the caseload of CPC authorities	Change in unit cost of investigations or enforcement actions	Other costs	Variables effecting the total value of gross financial detriment			Net financial detriment (gross detriment adjusted for any financial compensation/ redress received by consumers)
				Compliance rate/ The number of infringements taking place	Average number of consumers affected per infringement	Average value of financial detriment per infringement per consumer	
				<i>enforcement and improved compliance</i>			
3.D.1 +3.D.2 General auditing system	No change	No change	Costs incurred by the European Commission in conducting audits and evaluating Member State performance on an annual basis	<i>Potential deterrence effect from more effective cross-border enforcement– however, hard to establish the causal link between more coordinated enforcement and improved compliance</i>	No change	No change	No change

A4.4 Quantification of costs

A4.4.1 Quantification of costs – policy measures

The Table below specifies the working assumptions and calculations underpinning the estimation of incremental costs arising from the implementation of individual policy measures. It should be noted that at this stage, each individual measure has been looked in isolation i.e. cost implications of implementing a particular measure assuming everything else remains unchanged (*ceteris paribus*).

Table A4.9 Quantification of costs: working assumptions and calculations

Measure	Variable that is subject to change			Inputs and working assumptions	Calculations																
	Caseload	Unit costs of cases	Other costs																		
1.A Include short-lived infringements in scope	✓	X	X	<p>0.03% of short lived cross-border infringements estimated in the baseline scenario (where 0.03% is the share of CPC relevant infringements that are tackled by CPC authorities based on historical data)</p> <p>Short lived cross border infringements = 10% of cross-border infringements estimated in the baseline scenario</p> <p>Number of consumers affected by short lived cross border infringements = 10% to 20% of consumers affected by 'classic' cross-border infringements</p>	Incremental costs = incremental caseload by type of intervention X unit cost of intervention																
1.B Include parallel domestic infringements in scope	✓	X	X	0.03% of parallel domestic infringements estimated in the baseline scenario (less 10% short lived infringements) where 0.03% is the share of CPC relevant infringements that are tackled by CPC authorities based on historical data	Incremental costs = incremental caseload by type of intervention X unit cost of intervention																
1.C.1 Reinforce (strengthen) current investigation and enforcement powers	X	✓	✓	<p>Unit costs of enforcement</p> <p>The weighted average cost of enforcement = €2096: see comments above</p> <p>which has been calculated as follows</p> <table border="1" data-bbox="884 1053 1713 1380"> <thead> <tr> <th></th> <th>Probability of this action when at policy frontier</th> <th>Average EU costs when all MS are at policy frontier*</th> <th>Expected Value</th> </tr> </thead> <tbody> <tr> <td>Court case- high</td> <td>7.5%</td> <td>€2,591.10</td> <td>€194.33</td> </tr> <tr> <td>Court case- average</td> <td>72.5%</td> <td>€2,175.25</td> <td>€1,577.05</td> </tr> <tr> <td>Enforcement undertaking</td> <td>20%</td> <td>€1,624.23</td> <td>€324.85</td> </tr> </tbody> </table>		Probability of this action when at policy frontier	Average EU costs when all MS are at policy frontier*	Expected Value	Court case- high	7.5%	€2,591.10	€194.33	Court case- average	72.5%	€2,175.25	€1,577.05	Enforcement undertaking	20%	€1,624.23	€324.85	<p>Cost savings = Baseline costs – costs of enforcement following implementation of measure</p> <p>Familiarisation and training costs = Number of staff requiring training X hours spent on training per staff X staff costs per hour</p>
	Probability of this action when at policy frontier	Average EU costs when all MS are at policy frontier*	Expected Value																		
Court case- high	7.5%	€2,591.10	€194.33																		
Court case- average	72.5%	€2,175.25	€1,577.05																		
Enforcement undertaking	20%	€1,624.23	€324.85																		

Measure	Variable that is subject to change			Inputs and working assumptions	Calculations																				
	Caseload	Unit costs of cases	Other costs																						
				<p>weighted average cost of enforcement</p> <p>*based on all Member States having the minimum powers</p> <p>Cost of familiarisation and training No. of staff involved in CPC activities in Member States in which CPC authorities would require training (as they currently don't have the envisaged powers) = 300 to 350 Hours spent on training per staff = 7.5 hours to 15 hours Hourly wage rate = €20 (based on Eurostat data) plus overheads at 14.5%</p>	<p>€2,096</p>																				
1.C.1 +1.C.2 Additional reinforcement of current investigation and enforcement powers	X	✓	✓	<p>Unit costs of enforcement The weighted average cost of enforcement = €2031 which has been calculated as follows</p> <table border="1"> <thead> <tr> <th></th> <th>Probability of this action when at policy frontier</th> <th>Average EU costs when all MS are at policy frontier*</th> <th></th> </tr> </thead> <tbody> <tr> <td>Court case- high</td> <td>5%</td> <td>€2,591.10</td> <td>€129.56</td> </tr> <tr> <td>Court case- average</td> <td>65%</td> <td>€2,175.25</td> <td>€1,413.91</td> </tr> <tr> <td>Enforcement undertaking</td> <td>30%</td> <td>€1,624.23</td> <td>€487.27</td> </tr> <tr> <td colspan="3">weighted average cost of enforcement</td> <td>€2,031</td> </tr> </tbody> </table> <p>*based on all Member States having the minimum powers</p> <p>Cost of familiarisation and training Member States in which CPC authorities would require full training (as they currently don't have the envisaged powers) = 13</p>		Probability of this action when at policy frontier	Average EU costs when all MS are at policy frontier*		Court case- high	5%	€2,591.10	€129.56	Court case- average	65%	€2,175.25	€1,413.91	Enforcement undertaking	30%	€1,624.23	€487.27	weighted average cost of enforcement			€2,031	<p>As above</p> <p>Cost of assessing and proposing the most appropriate remedy = staff time per remedy X number of cases resulting in remedy X staff costs per hour Expected Value</p>
	Probability of this action when at policy frontier	Average EU costs when all MS are at policy frontier*																							
Court case- high	5%	€2,591.10	€129.56																						
Court case- average	65%	€2,175.25	€1,413.91																						
Enforcement undertaking	30%	€1,624.23	€487.27																						
weighted average cost of enforcement			€2,031																						

Measure	Variable that is subject to change			Inputs and working assumptions	Calculations								
	Caseload	Unit costs of cases	Other costs										
				Member States in which CPC authorities would require 'half' training (as they currently have some of the envisaged powers) = 15 No. of staff involved in CPC activities in Member States in which CPC authorities would require training (as they currently don't have the envisaged powers) = 300 to 350 No. of staff involved in CPC activities in Member States in which CPC authorities would require 'half' training = 500 Hours spent on full training per staff = 7.5 hours to 15 hours Hours spent on 'half' training per staff = 3.25 hours to 7.5 hours Hourly wage rate = €20 (based on Eurostat data) plus overheads at 14.5% Cost of assessing and proposing the most appropriate remedy Time taken = 1 day (7.5 hours) at €20 per hour plus overheads at 14.5% to 3days (22.5 hours) at €20 per hour plus overheads at 14.5% No. of cases requiring remedy: 50 % of cases going to civil courts (best estimate)									
1.C.2 +1.C.3 Maximum reinforcement of current investigation and enforcement powers	X	✓	✓	Unit costs of enforcement The weighted average cost of enforcement = €1,976 which has been calculated as follows <table border="1" data-bbox="887 1114 1715 1361"> <thead> <tr> <th></th> <th>Probability of this action when at policy frontier</th> <th>Average EU costs when all MS are at policy frontier*</th> <th>Expected Value</th> </tr> </thead> <tbody> <tr> <td>Court case- high</td> <td>5%</td> <td>€2,591.10</td> <td>€129.56</td> </tr> </tbody> </table>		Probability of this action when at policy frontier	Average EU costs when all MS are at policy frontier*	Expected Value	Court case- high	5%	€2,591.10	€129.56	As above
	Probability of this action when at policy frontier	Average EU costs when all MS are at policy frontier*	Expected Value										
Court case- high	5%	€2,591.10	€129.56										

Measure	Variable that is subject to change			Inputs and working assumptions			Calculations	
	Caseload	Unit costs of cases	Other costs					
				Court case- average	55%	€2,175.25	€1,196.39	
				Enforcement undertaking	40%	€1,624.23	€649.69	
				weighted average cost of enforcement			€1,976	
				<p>*based on all Member States having the minimum powers</p> <p>Cost of familiarisation and training Member States in which CPC authorities would require full training (as they currently don't have the envisaged powers) = 13 Member States in which CPC authorities would require 'half' training (as they currently have some of the envisaged powers) = 15 No. of staff involved in CPC activities in Member States in which CPC authorities would require training (as they currently don't have the envisaged powers) = 300 to 350 No. of staff involved in CPC activities in Member States in which CPC authorities would require 'half' training = 500 Hours spent on full training per staff = 7.5 hours to 15 hours Hours spent on 'half' training per staff = 3.25 hours to 7.5 hours Hourly wage rate = €20 (based on Eurostat data) plus overheads at 14.5%</p> <p>Cost of assessing and proposing the most appropriate remedy Time taken = 1 day (7.5 hours) at €20 per hour plus overheads at 14.5% to 3days (22.5 hours) at €20 per hour plus overheads at 14.5% No. of cases requiring remedy: 50 % of cases going to civil courts (best estimate)</p>				

Measure	Variable that is subject to change			Inputs and working assumptions	Calculations
	Caseload	Unit costs of cases	Other costs		
1.D.1 Introduce binding time-limits to respond to mutual assistance requests	X	✓	X	10% reduction in unit cost of information request and enforcement request (based on expert judgement)	Cost savings = Baseline costs – costs of enforcement following implementation of measure
1.D.1 + 1.D.2 Introduce a mechanism for mutual recognition of evidence/outcome of investigation	X	X	X	No basis for quantification	
1.D.2 + 1.D.3 Introduce mutual recognition for certain cross-border enforcement	X	X	X	No basis for quantification	
2.A.1 Reinforce current investigation and enforcement powers	Same as 1.C.1				
2.A.2 Additional reinforcement of current investigation and enforcement powers	Same as 1.C.2				
2.A.3 Additional reinforcement of current investigation and enforcement powers	Same as 1.C.3				
2.B.1 Specify and clarify the format of common enforcement action under Article 9, with a stronger role for the EC	X	X	X	No basis for quantification	
2.B.1 + 2.B.2 Setting up a new specific EU (centralised) cooperation procedure	X	X	✓	See Annex 5 for detailed calculations of cost implications for the European Commission	
2.B.2 +2.B.3 Introduce direct investigation, enforcement and sanctioning powers	X	X	✓	See Annex 5 for detailed calculations of cost implications for the European Commission	

Measure	Variable that is subject to change			Inputs and working assumptions	Calculations
	Caseload	Unit costs of cases	Other costs		
3.A.1 Introduce alerts action categorisation	X	X	X	No basis for quantification	
3.B.1 Introduce the possibility to have access to the alert mechanism for a wider range of organisations	X	X	✓	See Annex 5 for detailed calculations of cost implications for the European Commission	
3.C.1 Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation.	X	X	X	No basis for quantification	
3.D.1 Introduce a requirement for authorities to prepare enforcement plans	X	X	✓	Effort involved in the preparation of plans = 5 to 10 days per Member State 1 day = 7.5 hours Hourly wage rate = €20 + overheads	Costs = 28 Member States X effort involved (days per Member State) X working hours per day X Hourly wage rate
3.D.1 +3.D.2 General auditing system	X	X	✓	See Annex 5 for detailed calculations of cost implications for the European Commission	

A4.4.2 Quantification of costs – preferred policy option

The cost of the preferred policy option is the sum of the costs of constituent policy measures, adjusted for any duplication. The specific cost elements involved in the implementation of the preferred policy option are as follows:

Table A4.10 Cost elements – preferred policy option

	Cost element	Specific working assumptions
Member State costs	Cost of increased caseload from: <ul style="list-style-type: none"> Short-lived infringements Parallel domestic infringements A larger share of cross-border infringements 	Share of relevant infringements handled by the CPC = 0.06% to 0.1% (baseline = 0.03%). The rationale for this is that due to improved effectiveness, efficiency and reinforced capacity, the CPC network should be able to handle a much higher caseload than is currently the case
	Cost of assessing and proposing the most appropriate remedy	Time taken = 1 day (7.5 hours) to 3days (22.5 hours) Hourly wage rate = €20 per hour plus overheads at 14.5% No. of cases requiring remedy: 50 % of cases going to civil courts (best estimate)
	Familiarisation and training costs	Number of Member State officials requiring training = 800 to 850 Time needed for training = 7.5 hours to 15 hours Hourly wage rate = €20 + overheads
	Preparation of multi-annual enforcement plans	Effort involved in the preparation of plans = 5 to 10 days per Member State 1 day = 7.5 hours Hourly wage rate = €20 + overheads
European Commission costs	Cost of coordinating Member States' investigation and enforcement activity	See annex 5
	Costs incurred by European Commission in accessing mutual assistance alerts, monitoring Member State responses, distributing intelligence and moderating alerts placed on the system by other stakeholders	See annex 5

A4.5 Quantification of benefits

A4.5.1 Quantification of benefits – policy measures

As explained in section A4.3, the main quantifiable benefit is a potential reduction in the total financial value of consumer detriment arising from the implementation of a particular policy measure. Financial detriment is a function of the following three variables: compliance rate; the average number of consumers affected per infringement; and the average value of financial detriment per infringement per consumer.

The Table below specifies the working assumptions and calculations underpinning the estimation of incremental benefits arising from the implementation of individual policy measures. It should be noted that at this stage, each individual measure has been looked in isolation i.e. assuming everything else remains unchanged (*ceteris paribus*).

Table A4.11 Quantification of benefits: working assumptions and calculations

Measure	Inputs and working assumptions	Calculation
1.A Include short-lived infringements in scope	Deterrence effect = 1% to 3% of baseline short-lived cross border infringements (based on expert opinion and stakeholder consultation) Average number of consumers affected per short-lived infringements = 10% to 20% of consumers affected by a 'classic' infringement (based on an educated guess)	Number of infringements ceased X Number of consumers affected per infringement X Average value of financial detriment per infringement per consumer
1.B Include parallel domestic infringements in scope	Deterrence effect = 1% to 3% of parallel domestic infringements (based on expert opinion and stakeholder consultation)	As above
1.C.1 Reinforce (strengthen) current investigation and enforcement powers	See Table A4.10 for inputs and assumptions underpinning the calculation of cost savings	Cost savings = Baseline costs – costs of enforcement following implementation of measure
1.C.1 + 1.C.2 Additional reinforcement of current investigation and enforcement powers	Cost savings See Table A4.10 for inputs and assumptions underpinning the calculation of cost savings Redress/remedies secured for consumers affected by infringements and suffering detriment through civil courts Share of enforcement cases handled by the CPC authorities where remedy is secured for consumers: 50% of enforcement cases that end up in civil courts (best estimate)	Cost savings = Baseline costs – costs of enforcement following implementation of measure Value of remedies secured for consumers = Number of enforcement cases where remedies are secured X Number of consumers affected per infringement X Average value of financial detriment per infringement per consumer
1.C.2 + 1.C.3 Maximum reinforcement of current investigation and enforcement powers	As above	As above
1.D.1 Introduce binding time-limits to respond to mutual assistance requests	Cost savings See Table A4.10 for inputs and assumptions underpinning the calculation of cost savings	Cost savings = Baseline costs – costs of enforcement following implementation of measure
1.D.1 + 1.D.2 Introduce a mechanism for mutual recognition of evidence/outcome of investigation	No basis for quantification of benefits	
1.D.2 + 1.D.3 Introduce mutual recognition for certain cross-border enforcement	No basis for quantification of benefits	
2.A.1 Reinforce current investigation and enforcement powers	Same as Measure 1.C.1	

Measure	Inputs and working assumptions	Calculation
2.A.2 Additional reinforcement of current investigation and enforcement powers	Same as Measure1.C.2	
2.A.3 Additional reinforcement of current investigation and enforcement powers	Same as Measure1.C.3	
2.B.1 Specify and clarify the format of common enforcement action under Article 9, with a stronger role for the EC	No basis for quantification of benefits	
2.B.1 + 2.B.2 Setting up a new specific EU (centralised) cooperation procedure	No basis for quantification of benefits	
2.B.2 +2.B.3 Introduce direct investigation, enforcement and sanctioning powers	No basis for quantification of benefits	
3.A.1 Introduce alerts action categorisation	No basis for quantification of benefits	
3.B.1 Introduce the possibility to have access to the alert mechanism for a wider range of organisations	No basis for quantification of benefits	
3.C.1 Setting a specific benchmarking method to ensure adequate allocation of resources for the CPC enforcement cooperation.	No basis for quantification of benefits	
3.D.1 Introduce a requirement for authorities to prepare enforcement plans	No basis for quantification of benefits	
3.D.1 +3.D.2 General auditing system	No basis for quantification of benefits	

A4.5.2 Quantification of benefits – preferred policy option

The quantified benefits of the preferred policy option are the sum of the benefits of constituent policy measures, adjusted for synergies. The benefits of the preferred policy option have been calculated as follows:

Table A4.12 Benefits – preferred policy option

Nature of benefits	Main working assumptions
Reduction in <u>gross</u> consumer detriment by cessation of infringement cases handled by the CPC authorities	<p>The CPC authorities are able to detect and tackle a higher share of infringements i.e. a two or threefold increase in the share of relevant infringements being handled by the authorities. Share of relevant infringements handled by the CPC = 0.06% to 0.1% (baseline = 0.03%).</p> <p>This assumption is based on expert opinion</p>

Reduction in <u>gross</u> consumer detriment : deterrence effect of more effective cross-border enforcement	1 to 3% based on expert opinion However, benefits have also been estimated without deterrence effect to be on the conservative side
Reduction in <u>net</u> consumer detriment	Share of enforcement cases handled by the CPC authorities where remedy is secured for consumers: 50% of enforcement cases that end up in civil courts (best estimate)
Cost savings from improved efficiency and effectiveness (greater powers implying authorities are able to move from high cost enforcement actions to low cost actions such)	10% reduction in the unit costs of handling information requests and enforcement requests

A4.6 Step 4: Sensitivity analysis

The final step of the analysis was to conduct a sensitivity analysis: the main assumptions underlying the quantification of the costs and benefits of the preferred policy option were varied and net present value and other outcomes recomputed to determine how sensitive outcomes are to changes in these assumptions. The results of the sensitivity analysis are presented in the Table below.

Table A4.13 Results of the sensitivity analysis

Assumptions that were tested	Benefits-cost ratio with deterrence effect		Benefits-cost ratio without deterrence effect		Impact on estimated present value of benefits and costs of the preferred policy option
	Lower bound	Upper bound	Lower bound	Upper bound	
Estimated parameters of preferred policy option	103.4	119.5	7.4	4.2	
Scale of baseline infringements The number of infringements is scaled down by a factor of 10	32.8	39.0	2.3	1.4	Benefits fall by 90% Costs fall by ~70%
Share of infringements addressed by the CPC over 2015-2025 The share of infringements addressed by CPC remains at 0.03% (instead of 0.06% to 0.1%)	168.5	229.0	10.7	7.4	Benefits fall by 1% (when including deterrence effect) to 12% (when excluding deterrence effect) Costs fall by 40 - 50%
Share of infringements addressed by the CPC and unit costs of enforcement The share of infringements addressed by CPC remains at 0.03% and unit costs remain unchanged (no efficiency gains)	147.3	202.5	9.4	6.6	Benefits fall by 1% (when including deterrence effect) to 12% (when excluding deterrence effect) Costs fall by 30 - 40%
All effects taken together The number of infringements is scaled down by a factor of 10 The share of infringements addressed by CPC remains at 0.03% and unit costs remain unchanged (no efficiency gains)	16.3	21.9	1.5	0.9	Benefits fall by 90% Costs fall by 35 to 45%

The main conclusions of the sensitivity analysis are:

- The expected benefits significantly outweigh the estimated costs of the preferred option in all scenarios where assumptions are tweaked, when the deterrence effect is taken into account
- The expected benefits outweigh the estimated costs of the preferred option in all but one scenario, when the deterrence effect is not taken into account. Specifically, costs marginally exceed benefits (upper bound estimates) when:
 - The expected number of infringements is scaled down by a factor of 10
 - Simultaneously, it is assumed that the preferred option does not lead to any efficiency gains or an increase in the share of caseload of the CPC. It is highly unlikely that these assumptions would hold true in reality and have been included here only to illustrate the worst case.

The most significant effect on the estimated impact is the estimate of the total number of infringements, from which the total benefits are scaled. Given the uncertainties in this estimate and its influence on the overall set of results, some care is therefore required in the use of the results. The cost-benefit ratios reported should probably be taken as the upper end.

Annex 5 Assessing impacts on the Commission

A5.1 Summary of qualitative assessment

Earlier qualitative assessment of the impacts identified a sub-set of measures which have an impact on the financial and/or human resources of the Commission. The measures and impacts are summarised in Table A5.1 for reference.

Table A5.1 Summary of costs impacts by measure for the European Commission

Measure	Description of cost impact
Measure 2.B.2: 2.B.1 + Setting up a new specific EU (centralised) cooperation procedure	Measure introduces a streamlined Article 9 procedure for tackling EU widespread infringements. This involves a more formalised role for the Commission in coordinating Member State investigation and enforcement activities. It also involves greater management of the process, ensuring evidence is shared in a timely manner, in the correct format and encourages the trader to make a commitment to cease the infringement, otherwise ensuring that enforcement action is taken by Member States as far as possible at the same time and applying consistent sanctions.
Measure 2.B.3: 2.B.2 + Introduce direct investigation, enforcement and sanctioning powers	Measure involves a much more substantive role for the Commission than Measure 2.B.2, to directly take investigation, enforcement and sanction action on behalf of Member States for cases with a pan-European dimension. The number of cases relevant to this procedure is anticipated to be small (i.e. <5 cases per annum, which are not tackled by other means)
Measure 3.B.1 Introduce the possibility to have access to the alert mechanism	Measure introduces the power for the Commission to access mutual assistance alerts, monitor Member State responses, distribute intelligence and moderate alerts placed on the system by other stakeholders. Additional human resources are therefore anticipated under this measure to perform these functions.
Measure 3.D.2: 3.D.1 + General auditing system	Measure 3.D.2 includes the provision for the Commission to review Member State cross-border enforcement strategies and market surveillance priorities, includes performance against their obligations. Moderate levels of additional human resources are therefore anticipated to be required to conduct these audits and evaluate Member State performance on an annual basis.

A5.1.2 European Commission human resource costs

Data provided by DG JUST from DG Budget on the total average cost of personnel for 2015 is provided in Table A5.2.

Table A5.2 Labour costs – European Commission 2015

Category of personnel	Total average cost (€)*
Official	132,000
Temporary agent	132,000
Seconded National Expert	78,000
Contractual agent	70,000

*Assumed to relate to wage and salary costs only.

Source: DG Budget

Knowing that any additional human resources will be composed of the categories provided in Table A5.2. the average is used for the purposes of this analysis. This average figure (€103,000) has then been adjusted to include additional overheads to give an average total costs per FTE of around

€128,647. This unit staff cost is used in the rest of the analysis for consistency. Table A5.3 provides further details of the costs.

Table A5.3 Labour costs – European Commission 2015 adjusted to include overheads

Salary costs:	Cost (€)
Average cost per staff:	103,000
Additional overheads associated with staff:	
16% expat allowance	16,480
1.9% pension rights	1,957
7% indirect labour costs	7,210
Total cost	128,647

Source: Draft General Budget of the European Commission for the Financial Year 2015 – budget line 17 – health and consumer protection.

A5.2 Measures 2.B.2

In Measure 2.B.1, additional resources are needed support enforcement cooperation in an enhanced Article 9 procedure. The measure suggests a similar role for the Commission as in the recent in-apps purchase joint enforcement action¹²⁴ procedure. The resources used in that case, provided by the Commission, are shown in Table A5.4. Total resources for the in app case are estimated at 37.8% FTE or €48,629 required per joint enforcement action. In app purchasing was however a high profile and large case for the Commission covering all EU28 Member States. Taking a conservative approach we therefore consider these costs to be an upper bound with a lower bound of around 20% FTE for smaller cases (€25,729).

Table A5.4 Estimated Commission resources per joint enforcement action

Grade of staff	No. FTE involved in action	Workload (% of FTE)
Director general	1	0.2%
Director assistant	1	2%
Director	1	1.8%
Manager	1	3%
Case handler	1	30%
Case secretary	1	0.8%
Total FTE		37.8% FTE

Source: European Commission

Under this measure we would anticipate that a small number of infringements are tackled through a joint enforcement procedure per annum. Cases tackled in 2014 include in-apps purchasing and car rental. Conservatively we assume that the Commission is involved in 2-4 procedures per annum. The estimated range of additional resources required is therefore between €52,000 and €195,000 per annum, based on a range of 0.2-0.38 FTE per case.

As measures are additive, this cost is also included in Measure 2.B.2 and 2.B.3.

¹²⁴ http://europa.eu/rapid/press-release_IP-14-847_en.htm

A5.3 Measure 2.B.3

In addition to Measure 2.B.2, this measure introduces the power for the Commission to take direct investigation, enforcement and sanctioning action in cases of EU widespread infringements. The role of the Commission and resources required in this measure are clearly more substantive, requiring direct involvement in case handling, management, as well as providing legal support and advice.

This requirement is analogous to the role of the DG Competition in supporting Member State cooperation in antitrust cases through the European Competition Network (ECN). In its 2014 Management Plan¹²⁵, DG Competition indicates that in 2013, 120 cases were signalled to the ECN and the number of enforcement decisions and similar consultations handled was 70. The actual number of decisions reached is estimated in the region of 13 per annum, on the basis that 130 have been made in the last 10 years¹²⁶. The amount of DG Competition's personnel time (measured as FTE) allocated to these ECN activities was 1.02%. Within the division "Policy coordination, European Competition Network (ECN) and international cooperation" 140 FTE are reportedly employed according to the same 2014 management plan.

On the basis that each decision involves at least 1.5 FTE to provide administrative, technical and legal support, it can be estimated that 18 FTE are required to handle 13 cases per annum. However, the number of cases currently using an Article 9 procedure in the CPC Regulation is much lower and is expected to remain so, compared to the volume of ECN cases.

Therefore we have conservatively assumed that the additional Commission resources dedicated to Article 9 responsibilities in Measure 2.B.3 are likely to be between 50% and 100% to those of the ECN. On this basis we estimate the additional costs to the Commission to be equivalent to 9-18 FTE, or €1.2mn-€2.3mn per annum¹²⁷.

A5.4 Measure 3.B.1

There is limited evidence available on the costs of moderating and managing alert systems. The Commission does operate the Rapid Alert System for dangerous non-food products (RAPEX) which allows the 31 participating countries (EU countries, Norway, Iceland and Liechtenstein) and the European Commission to exchange information on products posing a risk to health and safety of consumers and on the measures taken by these countries to do away with that risk. The RAPEX system processed over 2,400 notifications in 2014¹²⁸, much more than through the CPCS. The Commission provided estimates that at least 2 FTE staff members are responsible for the RAPEX system, although it is not known what proportion of their time is spent moderating opposed to other tasks associated with the management and maintenance of the system (costs already included in the CPC budget for the technical and administrative functioning of the CPCS).

Again, adopting a conservative approach it can be assumed that 20% of staff time is spent moderating alerts in the system and the rest of the time dealing with technical issues or responding to requests from national authorities. Assuming the CPC alerts mechanism would require similar resources to moderate user inputs, the estimated cost is around €51,500 per annum.

A5.5 Measure 3.D.2

Under this measure, the Commission would gain the power to conduct audits of Member State multi-annual enforcement plans and the resources devoted to CPC Regulation. This function is analogous to the auditing system used in Food and Feed systems under Regulation 882/2004. The Food and Veterinary Office (FVO) is responsible for carrying out these audits, inspections and related non-audit

¹²⁵ http://ec.europa.eu/competition/publications/annual_management_plan/amp_2014_en.pdf

¹²⁶ http://ec.europa.eu/competition/publications/annual_report/2014/part2_en.pdf

¹²⁷ = FTE * €128,647

¹²⁸

http://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/reports/docs/rapex_report_2014finalweb_en.pdf

activities to ensure that EU legislation on food safety, animal health, animal welfare, plant health and in the area of medical devices is properly implemented and enforced.

The FVO website¹²⁹ indicates that each audit team is typically composed by 2 FVO staff, often with the presence of a national expert from a Member State authority (the expenses of which are paid by the FVO)¹³⁰. Assuming similar resource requirements for a CPC consumer protection audit, would mean 2 FTE staff are responsible for organising and sending our pre-audit questionnaire, before undertaking a full audit of Member State obligations under the CPC Regulation, and finally producing audit reports for each Member State. The costs for 2 FTE are estimated to be €257,000 plus €200,000 for national expert expenses¹³¹. A cost in the region of €457,000 per annum is estimated as the lower bound. To provide another example of a system monitoring Member State implementation of EU legislation, the Regulatory Coordination & Business Pilot¹³² monitors the rules of the EU telecom framework are adequately implemented in Member States in order to underpin a predictable & competition-friendly environment for the benefit of consumers and business users. Implementation of the telecoms framework is the responsibility of Member States. In order to minimise the risk of fragmentation of the market and lack of a level playing field it is necessary to conduct continuous monitoring, prevention and enforcement of implementation, including analysis of compliance of the national measures with the EU rules and handling of individual complaints.

The pilot involves 8.50 FTE although as noted the pilot does more than monitor and assess compliance with EU law as its budget also covers fact-finding missions to Member States, studies on Member State implementation and inventory of national case law, plus stakeholder events (e.g. Seminar for Judges). Even so, accounting for the fact that only 60% of staff time may be spend on auditing activities, this provides an upper bound estimate of €656,000.

Considering both estimates an estimate of €457,000-€656,000 seems sensible as both are within a similar order of magnitude.

¹²⁹ http://ec.europa.eu/food/food_veterinary_office/index_en.htm

¹³⁰ http://ec.europa.eu/dgs/health_food-safety/funding/cff/docs/other_financing_2014-15.pdf

¹³¹ We conservatively estimate half the funding allocated to the TVO for such expenses, provided in its multi-annual management plan: http://ec.europa.eu/dgs/health_food-safety/funding/cff/docs/other_financing_2014-15.pdf

¹³² <https://ec.europa.eu/dgs/connect/en/content/regulatory-coordination-business-implementation-telecom-framework>

Annex 6 Assessment of synergies and interdependences between measures

Measure's synergy/ interdependence on...	Include short-lived infringements in the scope of the CPC Regulation	Include parallel domestic infringements in the scope of the CPC Regulation	Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation	Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission /lead Member States	Introduce the alerts' action categorisation based on a type of follow-up	Introduce a possibility to have access to the alert mechanism for other actors	Setting specific benchmarks regarding resources	Introduce a requirement to prepare a single integrated multi-annual enforcement plan	Setting up a general auditing system
Include short-lived infringements in the scope of the CPC Regulation	/	Supports completion of CPC scope, ensuring other measures can achieve potential benefits	Expanding the scope is needed for additional powers to be effective (measure a prerequisite)	Uniform understanding of scope needed for mutual recognition to function cross-border (prerequisite to procedural efficiency)	Some EU-level infringement are also short-lived requiring inclusion in scope for centralised EU cooperation to be effective	Improved market intelligence would mean more short-lived infringements are tackled	Improved market intelligence would mean more short-lived infringements are tackled	Benefit of expanded scope is limited without sufficient resources (prerequisite of CPC effectiveness)	Not identified	Not identified
Include parallel domestic infringements in the scope of the CPC Regulation		Supports completion of CPC scope, ensure other measures can	Expanding the scope is needed for additional powers to be effective	Uniform understanding of scope needed for mutual	Recognising parallel domestic infringements as EU-	Benefits of action categorisation increased by measure as notification	Measure likely benefit from increased scope and therefore	Benefit of expanded scope is limited without sufficient	Not identified	Not identified



Measure's synergy/ interdependence on...	Include short-lived infringements in the scope of the CPC Regulation	Include parallel domestic infringements in the scope of the CPC Regulation	Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation	Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission /lead Member States	Introduce the alerts' action categorisation based on a type of follow-up	Introduce a possibility to have access to the alert mechanism for other actors	Setting specific benchmarks regarding resources	Introduce a requirement to prepare a single integrated multi-annual enforcement plan	Setting up a general auditing system
	achieve potential benefits		(measure a prerequisite)	recognition to function cross-border (prerequisite to procedural efficiency)	relevant with CPC a prerequisite for a centralised cooperation procedure	needed to detect where infringement in parallel domestic in nature ,	intelligence, but minor impact	resources (prerequisite of CPC effectiveness)		
Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	Additional powers ensures that infringements in expanded scope are investigated and stopped.	Additional powers ensures that infringements in expanded scope are investigated and stopped.		Additional powers needed to ensure evidence is gathered before mutual recognition applies	Enhanced powers needed for a centralised procedure to function and for EC/lead Member State to meet obligations	Supports detection first needed before additional powers are useful	Supports detection first needed before additional powers are useful	Additional powers ineffective without sufficient resources. Measures are interdependent	Not identified	Sports monitoring of powers and degree of improvement in enforcement
Introduce a mechanism for	Measure supports	Mutual recognition highly	Mutual recognitions		Mutual recognition	Supports detection first	Not identified	Resource needs with	Not identified	Not identified



Measure's synergy/ interdependence on...	Include short-lived infringements in the scope of the CPC Regulation	Include parallel domestic infringements in the scope of the CPC Regulation	Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation	Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission /lead Member States	Introduce the alerts' action categorisation based on a type of follow-up	Introduce a possibility to have access to the alert mechanism for other actors	Setting specific benchmarks regarding resources	Introduce a requirement to prepare a single integrated multi-annual enforcement plan	Setting up a general auditing system
mutual recognition of evidence and/or the outcome of the investigation	more effective enforcement of short lived infringements cross border	effective in parallel domestic cases, ensuring benefits of increased scope are realised	enhances the effectiveness and efficiency of additional powers, benefits are therefore greater as a result	/	supports centralised cooperation and to some degree is considered a prerequisite to tackling EU-level infringements	needed before additional powers are useful		mutual recognition should be lower. Some synergy expected.		
Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the	Some EU-level infringements short-lived therefore measure helps ensure the most is gains from	Recognising parallel domestic infringements as EU-relevant in CPC a prerequisite for a centralised cooperation procedure	Enhanced powers needed for a centralised procedure to function and for EC/lead Member State to meet obligations. Mutually	Mutual recognition supports centralised cooperation and to some degree is considered a prerequisite to tackling EU-	/	Measure requires improved detection of infringements (specifically EU-level) to be effective	Improved intelligence and information sharing supports efficient and effective centralised procedure	Sufficient resources a prerequisite of effective enforcement,	Not identified	Not identified



Measure's synergy/ interdependence on...	Include short-lived infringements in the scope of the CPC Regulation	Include parallel domestic infringements in the scope of the CPC Regulation	Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation	Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission /lead Member States	Introduce the alerts' action categorisation based on a type of follow-up	Introduce a possibility to have access to the alert mechanism for other actors	Setting specific benchmarks regarding resources	Introduce a requirement to prepare a single integrated multi-annual enforcement plan	Setting up a general auditing system
Commission/lead Member States	increased scope		supporting measures	level infringements						
Introduce the categorisation of alerts on the basis of a required follow-up	Improved market intelligence would mean more short-lived infringements are tackled	Supports identification of parallel domestic infringements, not possible without improved alerts system	By increasing detection of infringements, the most benefit is made from enhanced powers	Supports detection first needed before additional powers are useful	Supports detection first needed before centralised cooperation procedure can be effective		Not identified	Resources required for effective detection	Not identified	Not identified
Introduce a possibility to have access to the alert mechanism for other actors	Increased intelligence supports improves tackling of short lived infringements	Interdependent as ensures parallel domestic infringements identified by authorities	Supports detection first needed before additional powers are useful	Supports detection first needed before mutual recognitions in relevant	Interdependent as measures	Not identified		Not identified	Not identified	Not identified



Measure's synergy/ interdependence on...	Include short-lived infringements in the scope of the CPC Regulation	Include parallel domestic infringements in the scope of the CPC Regulation	Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)	Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation	Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission /lead Member States	Introduce the alerts' action categorisation based on a type of follow-up	Introduce a possibility to have access to the alert mechanism for other actors	Setting specific benchmarks regarding resources	Introduce a requirement to prepare a single integrated multi-annual enforcement plan	Setting up a general auditing system
Setting specific benchmarks regarding resources	Sufficient resources a prerequisite for all measures	Sufficient resources a prerequisite for all measures	Sufficient resources a prerequisite for all measures	Sufficient resources a prerequisite for all measures	Sufficient resources a prerequisite for all measures	Sufficient resources a prerequisite for all measures	Not identified		Sufficient resources a prerequisite for all measures	Not identified
Introduce a requirement to prepare a single integrated multi-annual enforcement plan	Not identified	Measure would help ensure prioritisation of EU-level infringement, harming a high number of consumers	Not identified	Not identified	Measure would help ensure prioritisation of EU-level infringement , harming a high number of consumers	Not identified	Not identified	Some resources required to implement measure		Prerequisite for general auditing system
Setting up a general auditing system	Not identified	Not identified	Audit system support monitoring of powers and	Not identified	Not identified	Not identified	Not identified	Some resources required to	General auditing system required to ensure	



<p>Measure's synergy/ interdependence on...</p>	<p>Include short-lived infringements in the scope of the CPC Regulation</p>	<p>Include parallel domestic infringements in the scope of the CPC Regulation</p>	<p>Introduce additional powers in particular to enable the CPC authorities to tackle infringements in the digital environment (medium sub-option)</p>	<p>Introduce a mechanism for mutual recognition of evidence and/or the outcome of the investigation</p>	<p>Setting up an EU centralised cooperation procedure to handle EU-level relevant infringements with a greater role for the Commission /lead Member States</p>	<p>Introduce the alerts' action categorisation based on a type of follow-up</p>	<p>Introduce a possibility to have access to the alert mechanism for other actors</p>	<p>Setting specific benchmarks regarding resources</p>	<p>Introduce a requirement to prepare a single integrated multi-annual enforcement plan</p>	<p>Setting up a general auditing system</p>
			<p>whether improvements in enforcement are achieved</p>					<p>implement audit system</p>	<p>compliance and delivery of benefits</p>	