

New CPC Regulation and ECN+ Directive: The powers of National Authorities in the fields of consumer protection and antitrust*

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ABSTRACT: National authorities in individual countries are responsible for the enforcement of EU consumer protection and antitrust laws together with the European Commission. This article seeks to define the powers of national consumer and antitrust authorities when enforcing those laws. In doing so, it analyses two main EU acts: on the one hand, EU Regulation no. 2017/2394, thanks to which national consumer authorities now have stronger powers to detect irregularities and take speed action; on the other hand, EU Directive 2019/1 that aims to ensure that, when applying EU antitrust rules, national competition authorities have the appropriate enforcement tools in order to bring about a genuine common competition enforcement area. The article will also take into consideration that in fields of consumer protection and antitrust, national authorities act in the framework of Networks (the “Consumer Protection Cooperation Network” and the “European Competition Network”), an aspect which also helps to define the scope of the action and inter-action of those authorities. In fact, the exercise of their powers must always take place in compliance with and within the limits imposed by the EU law principle of sincere cooperation enshrined in Article 4(3) TEU.

KEYWORDS: Antitrust, consumer protection, national authorities, networks, cooperation.

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1. Introduction

EU legal order recently endowed itself with two acts of fundamental relevance for defining the powers of National Authorities in the fields of consumers protection and antitrust.

On 17 January 2020, EU Regulation 2017/2394, on cooperation between national authorities responsible for the enforcement of consumer protection laws¹ (hereinafter “new CPC Regulation”), entered into force, repealing EC Regulation 2006/2004² (hereinafter “CPC Regulation”). This new Regulation lays down the conditions under which competent authorities of Member States (hereinafter “NCPAs”) are to cooperate and coordinate actions with each other and with the Commission to enforce compliance with the laws that protect consumers’ interests, ensure the smooth functioning of the internal market, and enhance the protection of consumers’ economic interests. The Regulation applies to intra-Union infringements, widespread infringements and widespread infringements with a Union dimension (see paragraph 2.1.).

On 3 February 2019, EU Directive 2019/1, intended to empower Member States’ competition authorities to be more effective enforcers and to ensure the proper functioning of the internal market³ (so-called “ECN+ Directive”) entered into force and has to become law in the EU countries by 4 February 2021. This Directive guarantees EU countries’ national competition authorities (hereinafter “NCAs”) the necessary independence, resources and enforcement and fining powers necessary to tackle agreements and practices by companies that restrict competition within their jurisdiction and provides for mutual assistance between competition authorities (NCAs and Commission) to ensure that companies cannot escape from enforcement, in order for the EU’s Single Market to operate smoothly.

With these two acts, the powers of national authorities in the fields of consumer protection and antitrust field have grown, and this growth

¹ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No. 2006/2004, OJ L 345, 27.12.2017, 1-26.

² 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 (Regulation on consumer protection cooperation), OJ L 364, 9.12.2004, 1-11.

³ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower Member States’ competition authorities to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019, 3-33.

has gone hand in hand with an increase in the forms of transnational cooperation.

The present article will analyse the detailed discipline contained in the new CPC Regulation as regards the various NCPAs and their powers and the modernization of the means of cooperation available. Then, the article will focus on the ECN+ Directive, showing the new powers attributed to the NCAs and the tools of cooperation at their disposal. Thanks to this analysis, it will be shown that in both fields a satisfying level of approximation of the laws⁴ has been reached.

2. National Authorities' powers in the consumer protection field

2.1. The new CPC Regulation

In the European Union, the NCPAs and the Commission are responsible for the enforcement of EU consumer protection laws, and they work together in what is called the “Consumer Protection Cooperation Network” (hereinafter “CPC Network”). This Network was introduced by CPC Regulation 2006/2004, which addressed the cooperation between national authorities responsible for the enforcement of consumer protection laws⁵. However, this Regulation has been considered by the Commission insufficient to effectively address the enforcement challenges of the Single Market, including the challenges of the Digital Single Market⁶. Indeed, the ineffective enforcement in cases of cross-border infringements, including infringements in the digital environment, has a double effect: on the one hand, it enables traders to evade enforcement by relocating within the Union; on the other hand, it gives rise to a distortion of competition for law-abiding traders operating either domestically or cross-border, online or offline, and thus directly harms consumers and undermines consumer confidence in cross-border transactions and the internal market. Therefore, the Commission has considered that “An increased level of harmonisation that

⁴ In the present article, the terms “approximation” and “harmonization” will be used with the same meaning. In this sense, see Opinion of Advocate General Szpunar of 16 July 2015, *R. L. Trijber v. College van burgemeester en wethouders van Amsterdam* and *J. Harmsen v. Burgemeester van Amsterdam*, C-340/14, EU:C:2015:505, paragraph 52.

⁵ Cf. Cristina Poncibò, “Networks to enforce European law: The case of the Consumer Protection Cooperation Network”, *Springer Science* (2011).

⁶ In fact, Article 21a of Regulation (EC) No. 2006/2004 provided for a review of the effectiveness of that Regulation and its operational mechanisms. Following such review, the Commission concluded that Regulation (EC) No. 2006/2004 was not enough for the purpose.

includes effective and efficient enforcement cooperation among competent public enforcement authorities is therefore necessary to detect, to investigate and to order the cessation or prohibition of the infringements⁷. This is the reason why the new CPC Regulation 2017/2394 was adopted to replace CPC Regulation 2006/2004⁸.

Briefly, while CPC Regulation 2006/2004 established the CPC Network, a network of competent public enforcers (NCPAs and the Commission) to tackle the infringements in a coordinated manner, the new CPC Regulation updates the cooperation framework to allow NCPAs from all countries in the European Economic Area to jointly address breaches of consumer rules when the trader and the consumer are established in different countries, and it also introduces some novelties. In fact, thanks to the update provided by the new CPC Regulation, NCPAs now have stronger powers to detect irregularities and take speedy action against rogue traders. Moreover, the cooperation has been made applicable to consumer rules belonging to 26 EU acts covering various areas, such as unfair commercial practices, e-commerce, geo-blocking, package holidays, online selling, and passenger rights⁹.

Unlike the CPC Regulation 2006/2004, applicable only to “intra-Community infringements”¹⁰, the new CPC Regulation applies to three types of infringements: (i) “intra-EU infringements”, where consumers live in an EU country other than that in which the infringement took place or the trader responsible is based or where the relevant evidence or assets are to be found¹¹; (ii) “widespread infringements”, which consist in (a) an act or an omission contrary to EU consumer protection law that harms or is likely to harm the collective interests of consumers in at least two EU countries other than the country in which it originated or took place, or in which the trader responsible for it is based, or where the evidence or assets

⁷ Recital no. 3 of Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, *supra*.

⁸ Cf. Fabrizio Cafaggi, “Towards collaborative governance of European remedial and procedural law?”, *Theoretical Inquiries in Law* 19 (2018), 244-247.

⁹ The new CPC Regulation covers 26 EU laws that protect consumers’ interests listed in its annex (new ones may be added in the future to extend the scope of the Regulation to new legislative areas).

¹⁰ Article 2(1) of Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, *supra*.

¹¹ Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, *supra*, Article 3(2).

of the trader involved are to be found; (b) any acts or omissions contrary to EU consumer protection laws that harm or are likely to harm the collective interests of consumers and that have common features, including the same unlawful practice, the same interest being infringed, and that are occurring concurrently, committed by the same trader, in at least three EU countries¹²; (iii) “widespread infringements with an EU dimension” that occur when the consumers affected reside in at least two thirds of the EU countries, representing at least two thirds of the EU population¹³. Any of the aforementioned infringements can be an act or an omission and may have ceased before enforcement starts or is completed.

2.2. The actors of the CPC Network

As far as NCPAs are concerned, according to the new CPC Regulation, each Member State must choose three actors for the enforcement of consumer protection laws. Firstly, each Member State must designate a “competent authority”, that is, a public authority established either at national, regional or local level, responsible for enforcing the Union laws that protect consumers’ interests¹⁴. Secondly, they must establish the “single liaison office”, the public authority responsible for coordinating the application of the new CPC Regulation within each Member State¹⁵. Thirdly, they have to identify a “designated body” having a legitimate interest in the cessation or prohibition of infringements of the Union laws that protect consumers’ interests. The “designated body” is instructed by a competent authority and acts on behalf of that competent authority for the purpose of gathering the necessary information and take the necessary enforcement measures available to that body under national law to bring about the cessation or prohibition of the infringement¹⁶.

The various Member States opted for different solutions and sometimes made this attribution based on the different EU directives that have to be enforced. In Italy, for instance, the role of the Ministry of Economic Development is both the Italian single liaison office and the competent authority for several directives (i.e. Directive 85/577/EEC, Directive 87/102/EEC, Directive 90/314/EEC, etc.), whereas the Italian Competition

¹² *Ibid.*, Article 3(3).

¹³ *Ibid.*, Article 3(4).

¹⁴ *Ibid.*, Article 3(6).

¹⁵ *Ibid.*, Article 3(7).

¹⁶ *Ibid.*, Article 3(8).

Authority (“AGCM”), the Authority for Communications Guarantees (“AGCOM”) and other independent authorities responsible for the enforcement of other directives¹⁷. In France, though, the General Directorate for Competition Policy, Consumer Affairs and Fraud Control (“DGCCRF”) of the Ministry of the Economy, Finances and Industry is the single liaison office and the competent authority for several directives, but some competences are delegated to other authorities or agencies¹⁸.

The new CPC Regulation provides that in cases like the ones just mentioned, where there is more than one competent authority, Member States shall ensure that “the respective duties of those competent authorities are clearly defined and that they collaborate closely in order to discharge those duties effectively”¹⁹.

2.3. The powers of the CPC Network actors

The new CPC Regulation confers NCPAs stronger powers to detect irregularities and take speedy action against rogue traders. In particular, it lists the minimum investigative and enforcement powers attributed to the NCPAs, which have to exercise those powers proportionally and in compliance with Union and national law, with applicable procedural safeguards, and with the principles of the Charter of Fundamental Rights of the European Union²⁰. However, it is important to stress that Member States are free to set out conditions and limits for the exercise of the powers in national law in accordance with Union law²¹, and they can also increase the rigour of the application of those powers.

¹⁷ See, for all the details, https://ec.europa.eu/info/files/national-consumer-bodies-italy_en, accessed May 9, 2020. Cf. Giacomo Pailli, Cristina Poncibò, “In search of an effective enforcement of consumer rights: The Italian case”, in *Enforcement and Effectiveness of Consumer Law*, ed. Hans-W. Micklitz, Geneviève Saumière (Switzerland: Springer, 2018), 350-352. For all the others Member States, see https://ec.europa.eu/info/policies/consumers/consumer-protection/our-partners-consumer-issues/national-consumer-bodies_en, accessed May 9, 2020.

¹⁸ See, for all the details, https://ec.europa.eu/info/files/organismes-nationaux-de-consommateurs-france_en, accessed May 9, 2020.

¹⁹ Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, *supra*, Article 5(5).

²⁰ *Ibid.*, Article 10(2).

²¹ Where, for example, in accordance with national law, prior authorisation to enter the premises of natural persons and legal persons is required from the judicial authority of the Member State concerned, the power to enter such premises should be used only after such prior authorisation has been obtained. See Recital 19 of Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, *supra*.

As far as the investigative powers are concerned, the new CPC Regulation provides for: (i) the power of access to any relevant documents, data or information related to an infringement²²; (ii) the power to require any public authority, body or agency within their Member State or any natural or legal person to provide any relevant information, data or documents for the purposes of establishing whether an infringement has occurred or is occurring and the details of such infringement (this power permits, for instance, to request information from domain registrars and banks to detect the identity of the responsible trader)²³; (iii) the power to carry out necessary on-site inspections (including the power to enter any premises, land or means of transport that the trader concerned uses for purposes related to his trade, business, craft or profession) or to request other public authorities to do so, in order to examine, take or obtain copies of information, data or documents, and the power to seize them for a necessary period²⁴; (iv) the power to request any representative or member of the staff of the trader concerned by the inspection to give explanations of facts, information, data or documents relating to the subject matter of the inspection and to record the answers²⁵; (v) the power to purchase goods or services as test purchases, where necessary, under a cover identity (so-called “mystery shopping”), in order to detect infringements and to obtain evidence (this power includes, for example, the possibility to carry out test purchases to check geographical discrimination or after-sales conditions such as withdrawal rights)²⁶.

As for enforcement powers, according to the new CPC Regulation, NCPAs will be able: (i) to adopt interim measures to avoid the risk of serious harm to the collective interests of consumers²⁷; (ii) to accept commitments from the trader responsible for the infringement to cease that infringement²⁸; (iii) to receive from the trader, on the trader’s initiative, additional remedial commitments for the benefit of consumers affected

²² Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, *supra*, Article 9(3), letter a).

²³ *Ibid.*, Article 9(3), letter b).

²⁴ *Ibid.*, Article 9(3), letter c).

²⁵ *Ibid.*.

²⁶ Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, *supra*, Article 9(3), letter d).

²⁷ *Ibid.*, Article 9(4), letter a).

²⁸ *Ibid.*, Article 9(4), letter b).

by the alleged infringement²⁹ (for example, reparation, replacement, price reductions, termination of contract or the reimbursement of the price paid for the goods or services); (iv) to inform consumers about how to seek compensation under national law³⁰; (v) to order in writing the cessation of infringements by the trader³¹; (vi) to bring about the cessation or the prohibition of infringements³²; (vii) where no other effective means are available, competent authorities (or third parties or other public authorities upon request) have the power to remove content or to restrict access to an online interface and to order the explicit display of a warning to consumers when they access an online interface, to order a hosting service provider to remove, disable or restrict access to an online interface, or to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it³³; (viii) to impose penalties, such as fines or periodic penalty payments, for infringements and for the failure to comply with any decision, order, interim measure, trader's commitment or other measure adopted pursuant to the new CPC Regulation³⁴.

Moreover, the new CPC Regulation also provides that competent authorities shall have the power to start investigations or proceedings on their own initiative³⁵, to publish any final decision, trader's commitments or orders adopted³⁶, and to consult consumer organisations, trader associations, designated bodies or other persons concerned regarding the effectiveness of the proposed commitments in bringing the infringement to an end³⁷.

Therefore, it is clear that, together with the more "classical" powers aimed at obtaining relevant information about the infringement, NCPAs now have powers that are more suitable within the framework of the Digital Single Market, such as the power to purchase goods or services as test purchases under a cover identity and the power to remove content from or restrict access to an online interface.

²⁹ *Ibid.*, Article 9(4), letter c).

³⁰ *Ibid.*, Article 9(4), letter d).

³¹ *Ibid.*, Article 9(4), letter e).

³² *Ibid.*, Article 9(4), letter f).

³³ *Ibid.*, Article 9(4), letter g).

³⁴ *Ibid.*, Article 9(4), letter h).

³⁵ *Ibid.*, Article 9(6).

³⁶ *Ibid.*, Article 9(7).

³⁷ *Ibid.*, Article 9(8).

The usefulness of these powers was not long in manifesting itself: just a few months after the entry into force of the new CPC Regulation, the Italian Competition Authority (“AGCM”) applied it by making use for the first time of the aforementioned power by ordering the shutdown of some websites that were advertising products with an allegedly preventive and therapeutic effectiveness against COVID-19 disease³⁸.

In conclusion, it is possible to affirm that the list of powers contained in the new CPC Regulation is much more detailed and wider in comparison with the provisions contained in the CPC Regulation 2006/2004³⁹. Therefore, it is evident that, in this field, the EU has brought about an intense approximation of the laws relying upon the legal basis of Article 114 of the Treaty on the Functioning of the European Union (hereinafter “TFEU”). This means that with the new CPC Regulation the EU established even more common rules and, as a consequence, deleted the differences between legal systems and overcame the high rate of non-compliance with the Union’s *acquis* in the field of consumers’ protection.

The fact that the list of powers contained in the new CPC Regulation is so detailed and wide is also relevant insofar as it helps to set with greater precision the boundaries of the power of the NCPAs and the Commission in the field of consumer protection. Moreover, the broad set of tools provided by the new CPC Regulation seem to be more suitable to make the detection and evidence of infringements more probable and to effectively

³⁸ See decisions of 27 March 2020 n. PS11733 and PS11735 of the ICA in which the Authority ordered the shutdown of the <https://farmaciamaschile.it> and <http://farmacia-generica.it> websites. Cf. Teresa Cimmino, “COVID-19 e pratiche commerciali sleali: la recente prassi della Commissione Europea e dell’Autorità Garante della Concorrenza e del Mercato a tutela del consumatore”, *Eurojus.it – Lémergenza sanitaria Covid-19 e il diritto dell’Unione europea. La crisi, la cura, le prospettive*, numero speciale (2020).

³⁹ Article 4(6) letters from a) to g) of Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, *supra*, which stated that competent authorities shall have, at least, the right: “(a) to have access to any relevant document, in any form, related to the intra-Community infringement; (b) to require the supply by any person of relevant information related to the intra-Community infringement; (c) to carry out necessary on-site inspections; (d) to request in writing that the seller or supplier concerned cease the intra-Community infringement; (e) to obtain from the seller or supplier responsible for intra-Community infringements an undertaking to cease the intra-Community infringement; and, where appropriate, to publish the resulting undertaking; (f) to require the cessation or prohibition of any intra-Community infringement and, where appropriate, to publish resulting decisions; (g) to require the losing defendant to make payments into the public purse or to any beneficiary designated in or under national legislation, in the event of failure to comply with the decision”.

put an end to “modern” infringements such as the ones committed on the digital platforms.

2.4. The modernisation of the cooperation in the CPC Network

The possibility for the NCPAs to exercise the aforementioned powers is enriched by other significant novelties introduced by the new CPC Regulation which concern mutual assistance, coordinated investigation and enforcement mechanisms and rely on the EU law principle of sincere cooperation enshrined in Article 4(3) of the Treaty on the European Union (hereinafter “TEU”). In fact, the new CPC Regulation aims to protect consumers against cross-border infringements to EU consumer law by modernising the cooperation of the relevant NCPAs in EU, European Economic Area (EEA) and European Free Trade Association (EFTA) countries among themselves and with the Commission.

The new CPC Regulation provides some tools for mutual assistance regarding intra-EU infringements by setting the procedure for requests for information and for enforcement measures from one EU country to another. The competent applicant authority shall send the request for mutual assistance – duly corroborated by the necessary information and evidences – to the single liaison office of the Member State of the requested authority, and the latter shall pass the request on to the appropriate competent authority⁴⁰. The competent authority must then respond to the request within 30 days (unless otherwise agreed) and apply appropriate enforcement measures, including penalties, without delay and normally within 6 months. It may also seek to obtain commitments from the trader to offer adequate remedies to consumers affected by the infringement, and receive additional remedial commitments from the trader⁴¹.

It is worth noting that, if necessary, when responding to requests submitted through the mutual assistance mechanism, competent authorities may also make use of other powers or measures granted to them at national level, including the power to initiate or refer matters for criminal prosecution⁴².

The new CPC Regulation also covers the conditions under which a request may be turned down. The requested authority may refuse to

⁴⁰ *Ibid.*, Article 13(1) and (2).

⁴¹ *Ibid.*, Article 12(1).

⁴² *Ibid.*, Recital no. 21.

comply with a request for information if it appears that the information is not needed to establish whether an intra-Union infringement has occurred or is occurring, or if criminal investigations or judicial proceedings have already been initiated against the same trader in respect of the same intra-Union infringement before the judicial authorities in the Member State of the requested authority or of the applicant authority⁴³, so that the principle of *ne bis in idem* is respected. The requested authority may therefore also refuse to comply with a request for enforcement measures⁴⁴. Moreover, if the exercise of the necessary enforcement powers has already been initiated or an administrative decision has already been adopted in respect of the same intra-Union infringement and against the same trader in the Member State of the requested authority, the requested authority may refuse to adopt enforcement measures⁴⁵. The same may happen if, following an appropriate investigation, the requested authority concludes that no intra-Union infringement has occurred⁴⁶, or if the requested authority has accepted commitments proposed by the trader to cease the intra-Union infringement within a set time limit and that time limit has not yet passed⁴⁷.

Any refusal decision adopted by the requested authority must be motivated and sent to the Commission⁴⁸. Even in the event of a disagreement between the applicant authority and the requested authority, there may be an involvement of the Commission – either upon request of the applicant authority or the requested authority, or *ex officio* – which will issue its opinion⁴⁹.

As far as widespread infringements and widespread infringements with a Union dimension are concerned, the new CPC Regulation provides for coordinated investigation and enforcement mechanisms, because in these contexts it is of the outmost importance to have a good level of rules harmonization.

⁴³ *Ibid.*, Article 14(1).

⁴⁴ *Ibid.*, Article 14(2), letter a).

⁴⁵ *Ibid.*, Article 14(2), letter b).

⁴⁶ *Ibid.*, Article 14(2), letter c).

⁴⁷ *Ibid.*, Article 14(2), letter e). However, the requested authority shall comply with the request for enforcement measures under Article 12 if the trader fails to implement accepted commitments within the time limit referred to in point (e) of the first subparagraph.

⁴⁸ *Ibid.*, Article 14(3).

⁴⁹ *Ibid.*, Article 14(4).

Before moving on to the analysis of the way coordinated actions work, it is worth explaining how to identify the NCPAs that must cooperate in order to face a specific widespread infringement or a specific widespread infringement with a Union dimension. In this regard, all relevant aspects of that infringement should be considered, particularly the place where the trader is established or resides, the location of the trader's assets, the location of the consumers harmed by the alleged infringement, and the place of the trader's points of sale, namely shops and websites⁵⁰.

With reference to the coordinated action, where there is a reasonable suspicion of a widespread infringement, competent authorities concerned must alert without delay the Commission, other competent authorities and liaison offices, and launch coordinated action where agreed, with a designated coordinator⁵¹.

If, instead, it is the Commission that becomes aware of a suspected wide-scale EU-wide infringement, it must report it to the NCPAs. Thus, competent authorities must conduct appropriate investigations and start a coordinated action if such investigations confirm that an infringement might be taking place. Coordinated actions to address widespread infringements with an EU dimension must always be coordinated by the Commission⁵².

EU countries may refuse to participate in a coordinated action for various reasons. Refusal is admitted if there are already ongoing criminal investigations or judicial proceedings, a judgement has been given, or a court settlement has been reached concerning the same infringement, in order to respect the principle of *ne bis in idem*⁵³. Moreover, the refusal may also come if an investigation has shown that the actual or potential effects of the alleged infringement are negligible in a country,⁵⁴ or if the relevant infringement has not occurred in that competent authority's Member State and, therefore, no enforcement measures need to be adopted⁵⁵. Lastly, a competent authority may also refuse to participate in a coordinated action if it has already initiated the exercise of the necessary enforcement powers before the issuing of an alert by the Commission, if it has already adopted

⁵⁰ *Ibid.*, Recital no. 28.

⁵¹ *Ibid.*, Article 17(1).

⁵² *Ibid.*, Article 17(3) and (4).

⁵³ *Ibid.*, Article 18(1), letter a).

⁵⁴ *Ibid.*, Article 18(1), letter c).

⁵⁵ *Ibid.*, Article 18(1), letter d).

an administrative decision⁵⁶, or if it has already accepted the commitments proposed by the trader⁵⁷.

The designated coordinator has to communicate the common position adopted by the competent authorities involved to the trader,⁵⁸ who may, on his own initiative, propose commitments to cease that infringement or offer remedial commitments to consumers affected by that infringement⁵⁹. Then, where necessary, the competent authorities concerned shall take all necessary enforcement measures within their jurisdiction against the trader to bring about the cessation or prohibition of that infringement and, where appropriate, impose penalties, such as fines or periodic penalty payments⁶⁰.

According to Article 22 of the new CPC Regulation, the coordinated action shall be closed if the competent authorities concerned conclude that the widespread infringement or widespread infringement with a Union dimension has ceased or been prohibited in all Member States concerned, or that no such infringement was committed.

Among the most recent coordinated actions, there is the one against rogue traders that advertise and sell products that allegedly prevent or cure the COVID-19 disease, such as protective masks, caps and hand sanitisers to consumers, that may be fake. The Commission has brought together national authorities working under the new CPC Regulation, which adopted the CPC Common Position COVID-19⁶¹ on how to deal with COVID-19 related scams.

Another example of coordinated action can be given by the *Booking.com* case, in which, following a dialogue with the CPC authorities, Booking.com has committed to changes in the way it presents offers, discounts and prices to consumers⁶².

⁵⁶ *Ibid.*, Article 18(1), letter b).

⁵⁷ *Ibid.*, Article 18(1), letter e).

⁵⁸ *Ibid.*, Article 19(4).

⁵⁹ *Ibid.*, Article 20(1).

⁶⁰ *Ibid.*, Article 21(1) and (2).

⁶¹ Common Position Of Cpc Authorities, Stopping scams and tackling unfair business practices on online platforms in the context of the Coronavirus outbreak in the EU: https://ec.europa.eu/info/sites/info/files/live_work_travel_in_the_eu/consumers/documents/cpc_common_position_covid19.pdf.

⁶² The commitments proposed by Booking.com to change their websites in the EU, with the final deadline to implement all changes 16 June 2020 are: https://ec.europa.eu/info/sites/info/files/live_work_travel_in_the_eu/consumers/documents/eu-wide_commitments_proposed_by_booking_com_.pdf, accessed May 9, 2020.

In the *Airbnb* case, instead, the CPC authorities, with the Norwegian Consumer Authority acting as a coordinator, adopted a common position regarding the protection of consumers using the services of Airbnb⁶³. Thanks to this coordinated action, Airbnb improved its presentation of prices in order to ensure that, whenever properties are offered, the consumer is provided with the total price inclusive of all the applicable mandatory charges and fees, to improve the fairness of its terms of services and to distinguish professional traders from private peer hosts.

Another relevant aspect of the modernization brought by the new CPC Regulation is that it also introduces new interesting cooperation tools for EU-wide activities such as alerts, exchange of information, sweeps and exchange of officials between competent authorities.

Among them, a new EU-wide market alert system has been provided for, so that emerging threats are detected more rapidly. This new alert system combines the system already existing under the CPC Regulation 2006/2004 with a wider exchange of relevant and necessary information. A competent authority or the Commission shall notify other competent authorities and single liaison offices of any reasonable suspicion that an infringement that may affect consumers' interests in other Member States is taking place in its territory⁶⁴. When issuing an alert, the competent authority may ask competent authorities and the relevant single liaison offices in other Member States and the Commission to verify whether "similar suspected infringements are taking place in the territory of those

⁶³ Common position of national authorities within the CPC Network concerning the commercial practices and the terms of service of Airbnb Ireland:

https://ec.europa.eu/info/sites/info/files/final_common_position_on_airbnb_ireland_4.6.2018_en_002.pdf.

⁶⁴ Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, *supra*, Article 26(1) and (2). Moreover, according to Article 26(3), when notifying, the competent authority or the Commission shall also provide: "(a) a description of the act or omission that constitutes the infringement; (b) details of the product or service concerned by the infringement; (c) the names of the Member States concerned or possibly concerned by the infringement; (d) the identity of the trader or traders responsible or suspected of being responsible for the infringement; (e) the legal basis for possible actions by reference to national law and the corresponding provisions of the Union legal acts listed in the Annex; (f) a description of any legal proceedings, enforcement measures or other measures taken concerning the infringement and their dates and duration, as well as the status thereof; (g) the identities of the competent authorities bringing the legal proceedings and taking other measures".

other Member States or whether any enforcement measures have already been taken against such infringements in those Member States”⁶⁵.

In addition, certain external bodies (such as consumer and trade associations, the European Consumer Centres and designated bodies given this power by the EU countries or by the Commission) will also be able to send alerts (so-called “external alerts”)⁶⁶.

Finally, authorities may also decide to conduct sweeps, that is, coordinated investigations of a consumer market to detect infringements, but these must normally be coordinated by the Commission⁶⁷. For instance, in 2019, CPC authorities of 27 countries (25 EU countries, Norway and Iceland) screened 481 websites offering clothing and footwear, furniture and household items and electric appliances. The exercise revealed that 67% of the screened online shops might be infringing basic EU consumer law⁶⁸.

All in all, with the new CPC Regulation, the level of harmonisation of the cooperation tools has been deepened with respect to the CPC Regulation since national arrangements for the enforcement of EU consumer laws were not sufficient in a cross-border context. The importance of this harmonisation is even more evident when considering that, in the absence of a EU framework for cooperation, the Member States would still have to rely either on a large number of bilateral agreements or on long and cumbersome judicial or consular exchanges of evidence and documents. In addition, decisions against a trader located in another Member State would not always be enforceable, and this would render enforcement in cross-border cases slow and often inefficient. Moreover, traders would relocate inside the Union to avoid compliance with enforcement decisions taken in one Member State, and this would in turn distort the level playing field and competition in the Single Market and reduce consumer trust in cross-border transactions.

With the new CPC Regulation, not only has a modern, efficient and effective system that reduces the consumer detriment caused by cross-border and widespread infringements to EU consumer law been developed,

⁶⁵ *Ibid.*, Article 26(4).

⁶⁶ *Ibid.*, Article 27.

⁶⁷ *Ibid.*, Article 29.

⁶⁸ For further details, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_156, accessed May 9, 2020.

but also a major possibility for NCPAs to reach similar outcomes regarding the same malpractices.

3. National Authorities' powers in the antitrust field

As far as the antitrust field is concerned, in the EU, public antitrust enforcement is competence of the Commission and the NCAs. Unlike what happens in the consumer protection field analysed above, in the antitrust enforcement field each Member State only has one NCA that enforces competition law rules. For Instance, in Italy, the competition authority is the "*Autorità Garante della Concorrenza e del Mercato*" ("AGCM"), whereas in France there is the "*Autorité de la concurrence*" and, in Germany, the "*Bundeskartellamt*" ("BKartA").

The entry into force, on 1 May 2004, of Council Regulation 1/2003 on the implementation of the rules of competition laid down in Articles 101 and 102 TFEU⁶⁹ (former Articles 81 and 82 EC) developed NCAs' enforcement powers, allowing them to apply Article 101 TFEU to agreements or concerted practices that may affect trade between EU Member States, and Article 102 TFEU in applying national competition law to any abuse prohibited by Article 102 TFEU.

Regulation 1/2003 foresees mechanisms of close cooperation between all NCAs in the European Union. As a framework for these mechanisms, the "European Competition Network" (hereinafter "ECN Network") has been established⁷⁰. This Network was created in order to ensure that the same rules are applied consistently throughout the EU and that the work-sharing is as efficient as possible. From the outset, it was made clear (as stated in the Joint Statement of the Council and the Commission on the Functioning of the NCAs⁷¹ that was adopted together with Regulation 1/2003) that within the ECN Network all NCAs are independent from one another and that cooperation takes place on the basis of equality, respect and solidarity. Moreover, in this field, NCAs have parallel competences to those of the Commission.

⁶⁹ Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003.

⁷⁰ Fundamental rules of the ECN are set out in the Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.4.2004, paragraphs 43-53, to which all NCAs in the network have adhered by a special statement.

⁷¹ Joint Statement of the Council and the Commission on the Functioning of the NCAs: https://ec.europa.eu/competition/ecn/joint_statement_en.pdf.

3.1. The ECN+ Directive

The enforcement powers set out in Regulation 1/2003 have been expanded by the ECN+ Directive 2019/1⁷², adopted on 3 February 2019 by the European Parliament and the Council upon the double legal base of Articles 103 and 114 TFEU. This Directive empowers NCAs to be more effective enforcers and ensures the proper functioning of the internal market. In particular, it guarantees NCAs the necessary independence, resources and enforcement and fining powers necessary to tackle agreements and practices that restrict competition within their jurisdiction and provides for mutual assistance between competition authorities to ensure that companies cannot escape from enforcement, in order for the EU's Single Market to operate smoothly.

The need to give NCAs more powers arose because, according to the Commission, over the past decade, NCAs have become the major enforcers of Articles 101 and 102 TFEU in the European Union⁷³. Empirical data clearly shows that, from 2004 to 2017, over 85% of the enforcement decisions taken pursuant to Articles 101 and 102 TFEU are the result of the work of NCAs⁷⁴ and that the number of decisions taken annually based on national antitrust rules has increased exponentially⁷⁵.

However, major divergences exist in relation to NCAs' enforcement powers, since they are defined by national procedural rules⁷⁶. The ECN+ Directive thus aims at harmonising the institutional set-up, enforcement

⁷² Directive (EU) 2019/1 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, *supra*.

⁷³ Communication from the Commission to the European Parliament and the Council, *Ten Years of Antitrust Enforcement under Regulation 1/2003: Achievements and Future Perspectives*, Brussels, 9.7.2014, COM/2014/0453 final, paragraph 8: "In the period covered from 1 May 2004 to December 2013, the application of the EU competition rules has grown at a remarkable rate, with approximately 780 cases being investigated by the Commission (122) and the NCAs (665)".

⁷⁴ Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, Brussels, 22.3.2017 COM(2017) 142 final, 2017/0063 (COD), paragraph 1.

⁷⁵ Federico Ghezzi, "L'efficacia dei poteri di enforcement delle autorità antitrust nazionali nella proposta di Direttiva europea e le possibili conseguenze sul sistema sanzionatorio italiano", *Rivista delle Società* 62, no. 4 (2017): 803.

⁷⁶ *Ibid*, 804; Maciej Bernatt, Marco Botta and Alexandr Svetlicinii, "The right of defense in the decentralized system of EU competition law enforcement. A call for harmonization from Central and Eastern Europe", *World Competition* 41, no. 3 (2018): 309.

powers, fines and leniency, and it introduces forms of cross-border cooperation among NCAs in EU competition rules enforcement⁷⁷.

3.2. *The new powers of the NCAs*

Chapters IV, V and VI of the ECN+ Directive provide NCAs powers which can be divided into three sections: enforcement powers, fining powers and the power to put in place leniency programmes.

As far as the first category is concerned, NCAs are, at a minimum, empowered to carry out unannounced company inspections, including the right to enter premises, examine records, seal buildings and question staff⁷⁸. In doing so, they can obtain the necessary assistance of the police or of an equivalent enforcement authority to conduct the inspection⁷⁹. Moreover, they can also search the homes of company directors, managers and employees if they suspect that they will find relevant books or other records there⁸⁰, but this power can be put in place only if there is a prior authorisation of a national judicial authority. Furthermore, in order to collect any information relevant for the application of Articles 101 and 102 TFEU, NCAs can directly request them to companies⁸¹ or they can compulsorily summon a company representative to appear for an interview⁸².

Once NCAs find an infringement of Article 101 or 102 TFEU, they may order any illegal practices to stop and take appropriate action, including imposing structural or behavioural remedies⁸³, order interim measures⁸⁴

⁷⁷ For an analysis of the ECN+ draft Directive, see Marco Botta, “The Draft Directive on the Powers of National Competition Authorities: The glass half empty and half full”, *European Competition Law Review* 38, no. 10 (2017).

⁷⁸ Directive (EU) 2019/1 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, *supra*, Article 6(1), letters a) to e).

⁷⁹ *Ibid.*, Article 6(2). In Italy, for instance, it is up to the *Guardia di Finanza* to assist the “AGCM”, according to Article 10(8) of the Decree of the President of the Republic of 30 april 1998, no. 217: “Regolamento in materia di procedure istruttorie di competenza dell’Autorità garante della concorrenza e del mercato”. On this point, cf. Alberto Franceschin, “Il ruolo della Guardia di finanza nell’esercizio dei poteri istruttori da parte dell’AGCM e della Commissione”, in *Dizionario sistematico del Diritto della Concorrenza*, ed. Lorenzo F. Pace (Italy: Jovene Editore, 2013), 218-228.

⁸⁰ Directive (EU) 2019/1 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, *supra*, Article 7.

⁸¹ *Ibid.*, Article 8.

⁸² *Ibid.*, Article 9.

⁸³ *Ibid.*, Article 10(1).

⁸⁴ *Ibid.*, Article 11(1).

or make commitments offered by companies binding⁸⁵ to achieve this. In case there have been material changes to any of the facts on which a commitment decision is based, where undertakings or associations of undertakings act contrary to their commitments, or where a decision was based on incomplete, incorrect or misleading information provided by the parties, NCAs are able to reopen enforcement proceedings⁸⁶.

With regard to fining powers, NCAs can impose effective, proportionate and dissuasive fines in their own proceedings or seek to impose these in non-criminal judicial proceedings not only for infringements of Articles 101 and 102 TFEU, but also when companies intentionally or negligently fail to cooperate with their investigative powers⁸⁷. Moreover, they can impose effective proportionate and dissuasive periodic penalties in order to compel compliance with their investigative and decision-making powers⁸⁸.

Finally, NCAs also have the power to put in place effective leniency programmes that encourage companies to report cartels throughout the EU⁸⁹. However, a leniency programme can only be put in place under certain conditions, that is, that the applicant ended its involvement in the alleged secret cartel at the latest immediately following its leniency application, that it cooperates genuinely, fully, on a continuous basis and expeditiously with the NCA from the time of its application until the authority has closed its enforcement proceedings against all parties under investigation by adopting a decision or has otherwise terminated its enforcement proceedings⁹⁰.

Since the ECN+ Directive has not yet been transposed by Member States, it is not yet possible to evaluate how much those States will empower their NCAs, whether they will just confer minimum powers as provided for in

⁸⁵ *Ibid.*, Article 12(1).

⁸⁶ *Ibid.*, Article 12(3).

⁸⁷ *Ibid.*, Article 13(1) and (2).

⁸⁸ *Ibid.*, Article 16.

⁸⁹ *Ibid.*, Article 17 to 23.

⁹⁰ *Ibid.*, Article 19, letters a) and b). Such cooperation includes providing the NCA promptly with all relevant information and evidence relating to the alleged secret cartel, remaining at the NCA's disposal to answer any request that may contribute to the establishment of facts, making directors, managers and other members of staff available for interviews with the NCA, not destroying, falsifying or concealing relevant information or evidence, and not disclosing the fact of its leniency application before the NCA has issued objections in the enforcement proceedings before it, unless otherwise agreed.

the Directive or if they will increase them⁹¹. However, it is already evident that the expansion of the powers of NCAs provided for by the ECN+ Directive is considerable and that the system is modelled upon the investigative powers of the Commission. The advantage of the completion and consolidation of the investigative and repressive tools available to NCAs is that they can increase the effectiveness of the enforcement activities, facilitating the acquisition of the evidences of the infringement and easing the definition of the administrative procedure. Moreover, a certain degree of convergence between the minimum investigative powers is functional to ensure effective investigative cooperation within the ECN Network.

3.3. The cooperation tools in the ECN Network

When enforcing competition law, NCAs may face cross-border infringements that require a close cooperation between NCAs of different Member States. Therefore, MS must provide one other with mutual assistance so that, for example, companies with assets in other EU countries cannot escape fines. This is the reason why Chapter VII of the ECN+ Directive, on the application of the EU law principle of sincere cooperation enshrined by Article 4(3) TEU, is dedicated to mutual assistance between NCAs, in the belief that a closer cooperation between the nodes of the ECN Network is the condition for a more effective functioning of the public enforcement system. Articles 24 to 28 of the ECN+ Directive aim at counteracting some inefficiencies detected by the NCAs themselves.

The first cooperation tool is provided by Article 24 of the ECN+ Directive. According to this article, when a NCA carries out inspections or interviews on behalf of and for the account of other NCAs under Articles 6, 7 or 9 of the Directive (power to inspect business and other premises and to interview), officials and other accompanying persons authorised or appointed by the applicant NCA shall be permitted to attend and to actively assist the requested NCA in the inspection or interview.

This provision is an important expression of the sincere cooperation principle set out by Article 4(3) TEU: the explicit reference to the concrete and active exercise of powers will generate greater effectiveness in the investigation phase thanks to the sharing of the investigative activity and the powers

⁹¹ For instance, as far as the Italian legal order is concerned, the main changes will surely concern the inspections and decision-making powers. On this point, cf. AGCM, *Relazione annuale sull'attività svolta*, 31 marzo 2019, available at: https://www.agcm.it/dotcmsdoc/relazioni-annuali/relazioneannuale2018/Relazione_annuale_2019.pdf, accessed May 9, 2020.

between the requesting NCA (interested in to the collection of information) and the requested one for reasons of territorial jurisdiction. For example, it will be much easier to carry out an interview in the presence of officials of both the requesting NCA, who know the information necessary to collect in order to evaluate the investigation elements, and the requested NCA, who may provide additional resources, knowledge and technical expertise.

Another cooperation tool is provided by Articles 25 and 26 of the ECN+ Directive, which aim at resolving the shortcomings of the ECN Network in terms of notification and enforcement of sanctions. In fact, both the notification of objections and sanctions and the actual collection of the fines or penalty payments may encounter a clear obstacle in the incapacity of the proceeding NCA to reach the addressee if the latter resides in a Member State other than the one in which the NCA operates or, with reference to the enforcement of the sanctions, when the latter, while residing in the same State, does not have sufficient assets to comply.

Therefore, the ECN+ Directive envisages an intensification of the cooperation amongst NCAs, which not only provide their assistance in the preparatory and information gathering phases, but also become the executive offshoots of the other authorities. These new possibilities ensure a territorial proximity that will certainly have the effect not only of speeding up and facilitating the antitrust enforcement procedure, but also of improving its results.

These acts are subject to the national laws of reference: the decisions subject to notification and enforcement must respect the law of the State in which the requesting NCA operates, while notifications and enforcement measures taken by the requested NCA must comply with the rules specific to that legal order.

This aspect is reflected in the regime of the disputes on the legitimacy set out in the ECN+ Directive: Article 26 establishes that disputes concerning the lawfulness of an act to be notified or the lawfulness of the uniform instrument permitting enforcement in the Member State of the requested authority shall fall within the competence of the competent bodies of the Member State of the applicant authority and shall be governed by the law of that Member State; on the other hand, disputes concerning enforcement measures taken in the Member State of the requested authority or concerning the validity of a notification made by the requested authority shall fall within the competence of the competent bodies of the Member State of the requested authority and shall be governed by the law of that Member State.

The advantage of this regime is that it creates a clear division of competences for the direct benefit of the subjects acting on the internal market who intend to challenge the aforementioned acts or measures; moreover, thanks to the application of the principle of territorial proximity, this regime also facilitates the work of courts, since they will have to decide on acts or measures adopted by the NCA of their own Member State, thus avoiding practical problems such as those of translation, increase of costs and lengthiness of procedures.

Cooperation amongst NCAs would be impossible without the provision of workable rules on limitation periods. In a system of parallel powers, national limitation periods for the imposition of fines or periodic penalty payments by the NCA “shall be suspended or interrupted for the duration of enforcement proceedings before national competition authorities of other Member States or the Commission”⁹², and the suspension or interruption shall last “as long as the decision of that national competition authority is the subject of proceedings pending before a review court”⁹³. However, “such suspension or interruption should not prevent Member States from maintaining or introducing absolute limitation periods, provided that the duration of such absolute limitation periods does not render the effective enforcement of Articles 101 and 102 TFEU practically impossible or excessively difficult”⁹⁴.

The await of the decision of other NCAs or of the Commission related to an infringement concerning the same agreement, decision of an association, concerted practice or other conduct prohibited by Articles 101 or 102 TFEU is necessary in order to impose consistent, effective, proportionate and dissuasive fines and periodic penalty payments.

Overall, it is possible to affirm that the ECN+ Directive is based on the sincere cooperation principle because, in order to make the functioning of the public enforcement system more effective, there is not only the need for the NCAs to have greater powers, but it is fundamental that the latter mutually assist one other. This coordination is necessary from the moment the inspection begins until the phase of the enforcement of decisions imposing fines or periodic penalty payments.

⁹² Directive (EU) 2019/1 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, *supra*, Article 29(1).

⁹³ *Ibid.*, Article 29(2).

⁹⁴ *Ibid.*, Recital no. 70.

4. Conclusion

Among the most recent developments in EU consumer protection and antitrust law, there is the attribution of more powers to national authorities thanks to the entry into force of the new CPC Regulation and the adoption of the ECN+ Directive. In parallel with the expansion of those powers, there has been an increase of cooperation tools at national authorities' disposal, and this increase can be seen as the answer to the modernisation of the way economic operations are mostly carried out nowadays, that is, on digital platforms, in the Digital Single Market, and at European, not national level.

The new CPC Regulation, after having established that each Member State has to choose three actors for the enforcement of consumer protection laws (competent authorities, single liaison offices and designated bodies), clearly sets the minimum investigation and enforcement powers of those subjects, yet giving Member States the freedom to set out conditions and limits for the exercise of the powers in national law, in accordance with Union law. Among the new powers provided by the aforementioned Regulation, in addition to those aimed at obtaining relevant information about the infringements, there are two that are particularly efficient to face “modern” consumer protection law infringements carried out in the Digital Single Market: the power to purchase goods or services as test purchases under a cover identity, and the power to remove content or to restrict access to an online interface. As a matter of fact, as soon as the new CPC Regulation entered into force, they were immediately used, for instance, by the Italian Antitrust Authority, in the framework of the prompt response to the COVID-19 related crisis, in order to stop undertakings from advertising on their websites products with an allegedly preventive and therapeutic effectiveness against the virus. Finally, the new CPC Regulation modernises the cooperation tools for exercising the enforcement powers, allowing a quicker and more efficient coordination and action of the Member States. This modernisation is extremely important in a context in which economic operations are increasingly carried out in the digital environment and infringements of consumer protection laws are therefore most likely widespread in Europe.

The ECN+ Directive attributes NCAs wide enforcement and fining powers and the power to put in place leniency programmes, modelling them upon the powers of the Commission, and seeks to promote cooperation between public enforcers in the field of antitrust enforcement. Its Chapter

VII is devoted to the mutual assistance between authorities and contains four cooperation tools: the possibility for officials and other accompanying persons authorised by the applicant NCA to attend and to actively assist the requested NCA in the inspection or interview phases; the intensification of the cooperation amongst the authorities in the phases of notification and enforcement of sanctions; the provision of a coordinated regime for disputes on legitimacy; and the provision of rules on the suspension or interruption of limitation periods for the imposition of fines or periodic penalty payments by the NCAs.

The analysis of these two acts shows that in the fields of consumer protection and antitrust, a satisfying level of approximation of laws has been reached. Moreover, in both cases, the European Legislator has acted on a double level in order to respond to the same needs: on the one hand, since the decentralised enforcement of consumer protection and antitrust law has always been very efficient, there was a need for national authorities to have wider powers in order to improve their performances and to act even more efficiently; on the other hand, since the infringements of EU rules on consumer protection and antitrust easily have a European dimension today, there was a need for cooperation amongst national authorities and the Commission, which have to work together in the CPC and ECN Networks in order to preserve the internal market.

Even if the two EU acts at stake are two different types of acts (a regulation and a directive), the similarities are manifold, both as regards their structure and their content. Not only do both acts provide a section related to the powers attributed to national authorities and a section dedicated to the means of transnational cooperation, but similarities can also be found with regard to single investigative or sanctioning powers that they provide for. For instance, both acts include the power to carry out necessary on-site inspections, the power of access to any relevant documents or information related to an infringement, the power to accept commitments, and the power to impose fines and periodic penalty payments.

Precisely because they are similar, the two EU acts analysed in this article may have similar effects. First of all, since they both contain a clear, detailed and wide set of powers and cooperation tools, they will both surely deter undertakings from putting in place practices that harm consumers or that restrict or distort competition within the internal market. Besides, they will both ease the detection and evidence of infringements because they provide authorities with new possibilities of action.

As regards the new CPC Regulation, it will also help increase consumers' and businesses' trust in e-commerce within the EU. Moreover, since it gives the possibility for certain external bodies (such as consumer and trade associations, the European Consumer Centres, and designated bodies given this power by the EU countries or by the Commission) to send alerts (so-called "external alerts"), it will increase the role of stakeholders in the enforcement of consumer protection law.

As for the ECN+ Directive, it will remove the gaps and limitations of the tools and guarantees of NCAs which undermine the antitrust enforcement system and will ensure a level playing field for undertakings operating in the internal market.

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