

European Commission / Consumer Protection Cooperation (CPC) Network

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

Following the recent outbreak of the new Coronavirus across the EU, there has been a proliferation of **deceptive marketing techniques** on online platforms to exploit consumers' fears in order to sell products, such as protective masks, detergents or other substances, by falsely claiming that they can prevent or cure an infection with **COVID-19**.

Consumer protection (CPC) authorities are currently in state of high alert and will closely cooperate with each other across the EU and with the Commission, as well as other relevant authorities (e.g. health authorities) at the national level, to ensure a prompt response to these deceptive practices and scams.

The [Italian competition and consumer protection authority \(AGCM\)](#), the [Verbraucherzentrale Bundesverband \(DE\)](#), the [UK Advertising Standards Authority](#) and the [US Federal Trade Commission](#) already took action, the [Hungarian Competition Authority \(GVH\)](#) issued guidance to businesses and consumers and the Commission and the competent authorities of the Member States continue to monitor the markets.

Under the **Consumer Protection Cooperation (CPC) Regulation (EU) 2017/2394¹**, the competent authorities of the Member States and EEA countries, with the support of the European Commission, have the legal obligation to cooperate in cross-border cases to enforce the EU consumer law in the Single Market. Since January 2020, this Regulation **equips Member States' consumer protection authorities with new minimum powers** to effectively address infringements, especially in the online world, **and provides for strong coordinated mechanisms to tackle widespread infringements**. Where a widespread infringement has a Union dimension, because it concerns most Member States, the Commission acts as the coordinator of the CPC Network.

The European Commission and the Consumer Protection Cooperation (CPC) Network are now seeking a firm engagement by on-line platform operators, including online marketplaces, who are active in the EU **to take concrete and effective measures to remove illegal marketing campaigns** from their websites. It is also in the interest of platform operators to keep the online environment safe and their users free from the risks posed by illegal commercial practices which may harm EU consumers in a moment where they are most vulnerable due to current events.

In this context, in accordance with Directive 2000/31/EC ("e-commerce Directive")² and the professional diligence requirements under Article the 5 of Directive 2005/29/EC (the "UCPD"),

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 December 2017, p. 1–26 (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017R2394&from=EN>)

² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17 July 2000, p. 1–16, (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0031&from=EN>).

platform operators that are active in the EU should take appropriate corrective measures, whenever they become aware of any illegal activity taking place on their websites.³

Recital 40 of the E-Commerce Directive further clarifies that "service providers have a duty to act with a view to preventing or stopping illegal activities". Based on Article 14 of the same Directive, information society service providers, which act as hosting services are not liable for the information stored by their users when they have no actual knowledge of illegal activities or content. However, Article 14(l)(b) requires that "the provider upon obtaining knowledge or awareness [of illegal activity or information], acts expeditiously to remove or disable access to the information". Article 14(3) further clarifies this Article shall not affect the possibility for an administrative authority "of requiring the service provider to terminate or prevent an infringement".

The European Commission and the Consumer Protection Cooperation (CPC) pursuant to legal requirements set out above, hereby **notify to Internet Platforms the most commonly reported breaches of EU consumer law** in the context of the recent outbreak of the Coronavirus in the EU:

1) Unsupported claims that products prevent or cure a COVID-19 infection

Traders make explicit or implicit claims that their products can prevent or cure a COVID-19 infection or increase resistance, which will help consumers to recover from an eventual infection, while failing to base those claims on solid scientific evidence, or make claims that are not fully aligned with official expert advice on how COVID-19 infections must be prevented.

***Example 1:** The [Italian competition and consumer protection authority \(AGCM\)](#) blocked the website of a trader who advertised a drug containing the active ingredients of antiviral for HIV treatment as the "only drug against Coronavirus (COVID-19)" and the "only remedy to fight Coronavirus (COVID-19)" despite official statements from health authorities that there is no effective cure to fight the virus.⁴*

***Example 2:** Traders advertise regular protective masks as "Coronavirus masks" while a number of scientific experts have questioned their protective properties against COVID-19.*

Such claims are in breach of Articles 5 and 6 of the UCPD that prohibit misleading actions about the main characteristics of the product, in conjunction with No 17 of Annex I (i.e. "blacklist") of the UCPD, which prohibits in all circumstances false claims that a product is able to cure illnesses, such as COVID-19.

2) Pressure selling techniques and excessive pricing

Very often, traders use pressure selling techniques or provide inaccurate information about market conditions or about the possibility of finding the product in order to cause the consumer to and to charge higher than normal prices.

³ See also [Commission Recommendation of 1 March 2018 on measures to effectively tackle illegal content online](#) (C(2018) 1177 final) on clearer 'notice and action' procedures for notifying illegal content, including fast-track procedures for 'trusted flaggers'.

⁴ Regulation (EU) 2017/2394, obliges Member States to empower their competent consumer protection authorities, in cross-border situations, to remove content or to restrict access to an online interface to bring about the cessation or prohibition of an infringement of EU consumer law to avoid the risk of serious harm to the collective interests of consumers.

Example 1: Traders claim that products are “only available for a very limited time” or “sell out fast”, which can be particularly detrimental in light of media coverage that governments plan to “seize” large quantities of products, for example protective masks.⁵

Example 2: Traders claim that due to the increased demand for protective masks, which they offer at a price of up to 600% higher than the normal price, are hard to find.

These practices contravene Articles 5 and 6 of the UCPD which prohibit traders from misleading consumers about various elements, including the availability of a product and the price, in conjunction with No. 7 Annex I of the UCPD, which prohibits in all circumstances to state that a product is only available for a very limited time, when this is not true, in order to trigger consumers’ immediate purchasing decision and deprive them of sufficient opportunity or time to make an informed choice.

Moreover, where traders exploit any specific circumstances of such gravity as to impair the consumer’s judgement to influence his decision to purchase a product, they also breach Articles 8 and 9 of the UCPD which prohibit aggressive commercial practices.

Furthermore, No. 18 Annex I of the UCPD prohibits in all circumstances passing on inaccurate information about market conditions or on the possibility of finding the product with the intention of charging the consumer higher than normal prices.

Cooperation with CPC authorities: ‘notice and action’ procedure

As information society service providers, online platforms, including online marketplaces and host service providers for online advertisement, are required by EU legislation, and in particular Article 5(1)(c) of the e-commerce Directive, to make easily and permanently accessible to the recipient of the service and to national competent authorities and/or designated bodies within the meaning of the CPC regulation, adequate contact information, including an email address, so that they can be "contacted rapidly and communicated with in a direct and effective manner".

Internet Platforms are required to provide the CPC Network adequate contact information as a matter of urgency in case the need arise for authorities to rapidly signal other scams and unfair commercial practices in relation to the recent Coronavirus outbreak on online platforms.

Furthermore, it should be noted that a platform operator acting as a "trader" must also always comply with EU consumer and marketing law as far as its own commercial practices are concerned. In particular, traders are subject to the requirements of Articles 6 and 7 of Directive 2005/29/EC on Unfair Commercial Practices, which require them to refrain from misleading actions and omissions whenever engaging in the promotion, sale or supply of a product to consumers.

The Commission and the CPC Network remain available to answer questions and to assist platform operators during the practical implementation of the ‘notice and action’ procedure.

⁵ <https://www.lefigaro.fr/conjoncture/coronavirus-emmanuel-macron-annonce-la-requisition-des-stocks-et-de-la-production-des-masques-de-protection-20200303>.