16/SB-BR/2016

R E A S O N E D O P I N I O N

of the European Affairs Committee of the Federal Council

of 13 July 2016

pursuant to Article 23g (1) of the Federal Constitutional Act in conjunction with Article 6 of Protocol No.2 on the application of the principles of subsidiarity and proportionality

COM (2016) 283 final
Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws

A. Reasoned Opinion

Some parts of the project under consideration are incompatible with the principle of subsidiarity.

B. Grounds for Reasoned Opinion

The European Affairs Committee of the Federal Council agrees with the Commission that the effectiveness of enforcement action in the event of cross-border infringements of consumer protection laws has to be improved. The Regulation in force is not able to meet current requirements, especially in light of the digital economy and the development of cross-border retail trade, and therefore needs to be revised.
Effective cross-border cooperation between the competent national authorities is essential in order to prevent infringements of the legal provisions in force. Moreover, the Regulation also provides for international agreements to address the problem of infringements committed by traders based outside the EU.

The European Affairs Committee of the Federal Council wishes to underline that it does not question the need for a European regime governing cooperation between the national authorities responsible

for the enforcement of consumer protection laws, but objects to the implementing acts proposed by the Commission (Articles 10, 11, 12, 15, 20, 27). The Federal Council takes a critical view of the extensive use of delegated legal acts and implementing acts and the resulting erosion of competences of the Member States, which is diametrically opposed to the principle of subsidiarity. Moreover, in individual cases the Federal Council wishes to express concern as regards the proposal contained in Article 46, according to which the Commission is to monitor the implementation of the national enforcement plans, which is equally incompatible with the principle of subsidiarity.

Having examined the proposal, the Committee has come to the conclusion that the principle of proportionality should be given greater prominence in the text in respect of the exercise of the respective minimum powers by the competent authorities.
Accordingly, it should be clarified and specified if and when the powers of compensation and profit restitution can be legally exercised.

In the opinion of the European Affairs Committee of the Federal Council, parameters should also be defined for individual, far-reaching minimum powers in order to provide the competent authorities with criteria for the selection and enforcement of sanctions within the framework of the national legal order. The unlimited applicability of the minimum powers provided for in Article 8, without having established an adequate balance between the severity of the infringement and the desired success, would go beyond the measures required to achieve the objectives specified in the proposal and therefore be in conflict with the principle of proportionality.