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# Intellectual Property, Media and IT

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- > **Consumer protection: Decree-Law 71/2021 ensures implementation of Regulation (EU) 2017/2394 on cooperation between the national authorities responsible for enforcing consumer protection laws**



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## **Consumer protection: Decree-Law 71/2021 ensures implementation of Regulation (EU) 2017/2394 on cooperation between national authorities responsible for enforcing consumer protection laws**

On December 12, 2017, Regulation (EU) 2017/2394 on cooperation between national authorities responsible for enforcing consumer protection laws was published.

This Regulation aims to establish the conditions under which these authorities will cooperate and coordinate their actions among themselves (and with the Commission) to (i) enforce applicable law, (ii) ensure the smooth functioning of the internal market and (iii) strengthen the protection of consumer interests.

In addition, Decree-Law 71/2021, of August 11, ensures the application of the Regulation that grants a set of minimum powers to the competent authorities of the Member States and establishes mutual assistance mechanisms through information requests and enforcement measures, as well as mechanisms for coordinated investigation when Regulation infringements occur.

### **Competent authorities and single liaison office**

Under article 5(1) of Regulation (EU) 2017/2394, each Member State will designate one or more competent authorities and a single liaison office that will be responsible for applying this Regulation.

Article 4 of Decree-Law 71/2021 identifies the Directorate-General for Consumers (DGC), responsible for coordinating the authorities that make up the administrative cooperation network, as the single liaison office and as liaison with the European Commission and with the single liaison offices and competent authorities of other Member States.

In addition, the Decree-Law designates the competent national authorities responsible for applying national law that implements the Regulation and transposes the directives contained in the annex to Regulation (EU) 2017/2394.

The Mobility and Transport Authority, the Food and Economic Safety Authority, the National Data Protection Commission, INFARMED and the Public Prosecutor's Office are some of the entities that have been appointed as competent authorities.

### **Powers of competent authorities**

In its article 9, Regulation (EU) 2017/2394 sets out the minimum investigative and law enforcement powers of the competent authorities.



Nevertheless, under paragraph 2 of this article, Member States may decide not to grant all powers to all competent authorities, provided that each of those powers can be exercised effectively and to the extent necessary in relation to any offense under the Regulation.

Article 9 of Decree-Law 71/2021 also sets out the powers of the competent authorities.

Their investigative powers include the following:

- The power to access any relevant documents, data or information on offenses covered by the Regulation;
- The power to require any public authority, body or agency in its Member State and any individual or legal person to provide any relevant information, data or documentation;
- The power to carry out inspections at the appropriate locations to obtain the necessary information; and
- The power to carry out test purchases of goods and services, if necessary, under a fictitious identity to detect infringements and collect evidence.

Their law enforcement powers include the following:

- The power to adopt interim measures to avoid causing serious harm to the collective interests of consumers;
- The power to seek and accept commitments to cease the infringement from the professional responsible for the infringement;
- The power to receive additional repair commitments at the initiative of the professional for the benefit of consumers;
- The power to order the professional, in writing, to cease the offenses committed under the Regulation;
- The power to stop offenses under the Regulation; and
- The power to impose fines or periodic penalty payments for offenses under the Regulation.

Article 20 of Decree-Law 71/2021 sets out the procedures leading to the assumption of commitments by professionals, with the aim of stopping infringements affecting the rights of consumers.

Exercising the above powers must be proportionate and appropriate to the nature and overall harm (effective or potential) of infringing European Union legislation on this matter.



## **Obligation to cooperate**

Decree-Law 71/2021 also establishes the obligation of the different competent authorities exercising these powers to cooperate to guarantee the effectiveness of procedures for applying the laws that protect the rights of consumers.

Under article 5, these entities must cooperate to develop mutual assistance mechanisms (article 11 ff. of Regulation (EU) 2017/2394) and, in case of overall infringements and general EU infringements in developing mechanisms for coordinated investigation and enforcement in accordance with the procedures set out in chapters III and IV of the Regulation.

## **External alerts**

Under article 23 of Decree-Law 71/2021, the following entities can issue external alerts to the competent authorities of the Member States and to the European Commission: the European Consumer Center; the legally incorporated consumer associations referred to in article 17 of Law 24/96, of July 31, in its current wording; and the confederations and professional associations appointed to the single liaison office by the respective competent authorities responsible for applying the laws as provided in the annex to the Decree-Law. These alerts are issued when there is reasonable suspicion that an offense covered by the Regulation has occurred.

## **Entry into force**

Article 25 of Decree-Law 71/2021 provides that it will enter into force on November 1, 2021.



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