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CONTRIBUTION

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Regulation on cross-border enforcement of unfair trading practices (UTPs) - Comments from Ireland

Ireland's preliminary observations on the draft proposal for a Regulation of the European Parliament and of the Council on cooperation between national enforcement authorities responsible for the enforcement of Directive (EU) 2019/633

1. General comment

- 1.1 Ireland welcomes that the Polish Presidency has introduced a legislative proposal that aims to improve and increase cooperation between enforcement authorities while maintaining a minimal interference in the legal orders of the Member States.
- 1.2 Ireland notes that it is intended that the proposed rules on collection of information and the proposed rules on enforcement do not alter national rules governing the collection of information and the adoption of enforcement measures.
- 1.3 Ireland notes further that it is not intended that the proposed measures would impact the administrative system or the procedural laws of the Member States, who remain free to design their systems of enforcement of the rules on unfair trading practices.
- 1.4 Ireland has some observations on the text concerning provisions for circumstances where the national rules in the Member State of an applicant Enforcement Authority are stricter than the national rules in the Member of the requesting Enforcement Authority. (Please see specific observations below for relevant text of Article 2 (1), Article 5 (4), Article 6, Article 7, Article 10 and Article 14).
- 1.5 Ireland considers that the Regulation should not refer to a time limit for providing the applicant information with the information requested (Relevant text Article 5 (1)).
- 1.6 Ireland would like clarification on the meaning of some text contained within the Regulation (Please see specific observations below).
- 1.7 Ireland would like clarification on the relationship between the mutual cooperation proposed in the draft Regulation and the confidentiality provisions for suppliers provided in Article 5 (3) of Directive 2019/633 where requests for information concern a complaint.
- 1.8 Ireland has identified a minor inconsistency in the references within the Regulation to 'requested enforcement authority'.

2. Specific observations on text of the proposal

2.1 Scope in the context of national rules within the meaning of Article 9 of Directive (EC) no. 2019/633 insofar as those rules concern the UTPs listed in the Directive.

- As advised in **Recital (4)**, the Regulation should allow Member States to decide that their enforcement authorities can make use of the possibility to exchange information established under the mutual assistance mechanism set out by this Regulation in relation to such rules and provides that in those cases, the enforcement authorities should still have the right to refuse to comply with such a request. Given the differences that can arise between national rules and accordingly the corresponding national legal powers

of enforcement authorities, the text of the regulation needs to be clear for such circumstances where Article 5 (4) 1st sub-paragraph is invoked.

- In that context, Ireland understands that, in accordance with **Article 2 (1) 1st sub-paragraph**, it is open to a Member State to decide if UTP rules that are stricter than the UTP Directive may be the subject of cross border mutual cooperation. Also in accordance with **Article 2 (1) 2nd sub-paragraph**, if the Member State so decides, Article 5 of the Regulation also applies in relation to national rules within the meaning of Article 9 of Directive (EU) 2019/633 in accordance with paragraph 4 of that Article.
- **Article 5 (4) 1st sub-paragraph** provides that Member States may make use of Article 5 provisions regarding requests for information for those national rules within the meaning of Article 9 of the Directive. **Article 5 (4) 2nd sub-paragraph** provides that where an applicant enforcement authority makes use of such possibility, the requested enforcement authority may refuse to provide the information.

However, a similar provision for right of refusal does not appear to be provided in **Article 6** on “Requests for enforcement measures” nor in **Article 7** on “Requests for the enforcement of decisions imposing fines or other equally effective penalties and interim measures”. In order to ensure consistency, it is suggested that reference to the right to refuse in the context of national rules within the meaning of Article 9 of the Directive be included in Articles 6 and 7 and related recitals.

- **Article 10** makes no reference to the Article 5 (4) provision in the Article 10 conditions necessary for a refusal to comply with mutual assistance. It is suggested that a reference along the lines of “Without prejudice to the right of refusal in Article 5 (4).....” could be added to Article 10 and also a reference to any other similar references that might be added to Articles 6 and 7 and related recitals.
- **Article 14** dealing with “Reasons for refusing to take part in the coordinated action” sets out conditions for why an enforcement authority may refuse to take part in a coordinated action. Such conditions do not refer to the national rules in the context of Article 9 of the Directive. It is suggested that Article 14 should refer to the provision in the 2nd sub-paragraph of Article 5 (4) and related recital.

2.2 Request for change to rule

2.2.1 Article 5 (1) dealing with “Request for information”

Notwithstanding that the text includes the term “unless otherwise agreed”, Ireland requests that the text “and within 60 days” be removed. There may be delays occurring in providing information where the Enforcement Authority is relying on third parties to provide the information, including where there is no suspected UTP arising in the Member State being requested for the information. Ireland considers that it is not

appropriate to include a timeline given the uncertainty relating to determining scope and obtaining information required, particularly if the requested Enforcement Authority has had no previous engagement with the operator that is the subject of the request by the applicant enforcement authority. It is suggested that a term along the lines of “within a reasonable time period” might be an appropriate alternative to a specific time period supplemented by text to the effect that the requested Enforcement Authority shall provide regular updates to the applicant Enforcement Authority on the progress of the response to their request.

2.3 Clarification on meaning of text and understanding of practical implementation of rules

Recital (6)

The recital states “Enforcement authorities should have the power to provide one another with and use in evidence in accordance with their national law any matter of fact or of law, including confidential information.”

- By using the term “should” in this context, it is not clear if this is intended to mean that
 - (a) the national law of Member States should allow/provide that Enforcement authorities to provide information to other Enforcement Authorities and use it in evidence in any matter in fact or in law, including confidential information

OR

- (b) Enforcement authorities should, where this is allowed by their national law, provide information to other Enforcement Authorities and use it in evidence in any matter in fact or in law including confidential information
- If (a) is the correct interpretation, it is suggested that a reference to exemption for circumstances regarding the national rules within the meaning of Article 9 of the UTP directive needs to be referenced.

Article 5

- Ireland notes that the legal basis for the request for information in Article 6.2 is “...this Regulation, the national law transposing Directive (EU) 2019/633, and the corresponding provisions of Directive (EU) 2019/633, and the corresponding provisions of Directive (EU) 2019/633, the purpose of the request, and specify what information is required”
- The text of Article 5 refers only to requesting information and not to the transfer of the information.

- Ireland seeks clarification on the legal basis for the transfer of such data to Enforcement Authorities in Member States and the associated methods of transfer. In that regard, Ireland seeks clarification on whether data sharing agreements will be required between cross-border enforcement authorities to allow for information transfer, including giving consideration to GDPR matters. Ireland notes also that **Article 15 (3)** in referring to Investigation measures in coordinated actions makes reference to the rules on confidentiality and on professional and trade secrecy laid down in Directive (EU) 2016/943 of the European Parliament and of the Council. Consideration could be given to including reference to that legislation regarding the exchange of information under Article 5. Finally, Ireland suggests that consideration should be given to the need to adhere to in Article 5 (3) of directive 2019/633 regarding protection of anonymity.

Article 5 (3)

Article 5(3) states: "The information provided shall only be collected by the requested enforcement authority and used by the applicant enforcement authority in accordance with their national law."

- It is not clear if it is the requested enforcement authority's national law or the requested enforcement authority's "national law" that is to be complied with.

Article 7

Article 7 (1) states "At the request of an applicant enforcement authority, the requested authority shall enforce, in accordance with its national law, final decisions imposing fines or other equally effective penalties and interim measures adopted in accordance with Article 6(1), first subparagraph, point (e), of Directive (EU) 2019/633."

- It is not clear whether the final decisions referred to is a final decision of the applicant Enforcement Authority.

Article 8

Article 8 requires that "an enforcement authority shall notify all other enforcement authorities within 1 month after adopting a decision establishing the occurrence of an unfair trading practice with a cross-border dimension in its Member State." This decision could be a decision whereby the Enforcement Authority has deemed that a UTP has arisen but the final legal proceedings are yet to be initiated. Clarification is required on whether the decision referred in Article 8 should be the "final decision" as defined in Article 3.

Article 10

Article 10 refers to conditions for refusal to comply with a request under Article 5, including where criminal investigations or judicial proceedings have already been initiated .

Article 10 (1) Vs Article 10 (2)

Article 10 (2) includes a right to refuse information requested under Article 5 if “(d) the applicant enforcement authority has not provided the information that is necessary in accordance with Article 5”. It is not clear why Article 10 (1) does not include a similar provision for refusal to provide information requested under Article 5.

Article 10 (1)

Article 10 (1) states “A requested enforcement authority may refuse to comply with a request for information under Article 5 only if any of the following applies:

(a) following a consultation with the requesting enforcement authority, the information requested is not needed by the requesting enforcement authority to establish whether an unfair trading practice with a cross-border dimension has occurred or is occurring;”

- Clarification is requested on whether this means that it is the requested Enforcement Authority that decides that the information is not needed.
- Clarification is requested on whether part refusal is permitted in order to protect anonymity of suppliers in accordance with Article 5 (3) of Directive 2019/633.

Article 13 (1)

Ireland suggests that consideration might be given to defining “coordinated action”.

Article 14

- Clarification is requested on whether part refusal is permitted in order to protect anonymity of suppliers in accordance with Article 5 (3) of Directive 2019/633.

2.4 Use of definitions

Note that Article 7 (1), 7 (4), 10 (2) (b) refer to “requested authority” instead of “requested enforcement authority”.

Department of Agriculture Food and the Marine

9/1/2025