



20 December 2022 • Brussels, Belgium

CENTR Board Statement on the call for evidence on Consumer protection – strengthened enforcement cooperation

CENTR recommendations

- CENTR fully supports the proportionate and tiered approach enshrined in Article 9(4) of the CPC Regulation concerning the minimum enforcement powers of consumer protection authorities.
- CENTR calls on the Commission to enshrine that action at domain name registry level should only be available as a measure of last resort as it does not remove the infringing content from the internet, and may have a disproportionate collateral effect on availability of lawful content and services associated with the domain name.
- CENTR encourages authorities of the CPC Network to increase the use of their cross-border investigation powers, including the alert system to increase the effectiveness of CPC actions in responding to emerging market threats in the EU.
- Voluntary cooperation agreements with services providers, such as domain name registries, can further support national authorities with their investigations.
- Competent national authorities should remain the primary enforcing authorities within Member States, when it comes to infringements affecting EU consumers.
- The European Commission could increase its oversight over investigations regarding traders and service providers established outside of the EU with cross-border impact in two or more Member States, in exceptional circumstances and in close and continuous consultation with national consumer protection authorities.

Introduction

CENTR is the association of European country code top-level domain registries (hereinafter ccTLDs). All EU Member State and EEA country ccTLDs (such as .de, .cz, and .no) are members of CENTR.

CENTR members are at the core of the public internet, safeguarding the stability and security of the internet. The majority of European ccTLDs are non-profit organisations, providing an internet infrastructure service in the interest of and in close cooperation with their local internet communities (i.e. registrars, end-users, rightsholders but also in cooperation with CSIRTs, law enforcement, and consumer protection authorities).

ccTLDs are responsible for operating and maintaining the technical Domain Name System (DNS) infrastructure for their top-level domain. The DNS is a well-established network protocol at the heart of the internet infrastructure – commonly thought of as the “phone book of the internet”. It provides a navigation function to map user-friendly domain names to numeric IP addresses.

ccTLDs only hold information enabling users to navigate the internet but do not store, transmit or enhance any content online. The domain names do not equal websites, as website hosting is an associated service that can be linked to a domain name, performed by a different service provider (i.e. hosting service provider).

CENTR welcomes the opportunity to provide a response to the call for evidence on Consumer protection – strengthened enforcement cooperation, in light of the upcoming reform of the Consumer Protection Cooperation (CPC) Regulation. As domain name registries are included in the scope of the CPC Regulation in the context of the minimum enforcement powers of competent authorities, the CENTR feedback will focus on the aspects of enforcement cooperation between authorities and service providers.

Action at DNS level as a measure of last resort

To ensure that consumers enjoy the same level of protection and fairness online and offline, CENTR believes that the proportionality principle enshrined in Article 9(4) of the CPC Regulation concerning minimum powers available for consumer protection authorities should be maintained and, where possible, strengthened.

To effectively address consumer infringements online, competent authorities should focus on removing the infringing content from the internet at its source, making it unreachable for users to access it again. Only the content publisher (usually the infringing trader) and the server which stores the content (the hosting provider) have the capacity to directly remove content from the internet. CENTR therefore calls on public authorities to first address infringing traders by ordering them to remove the unlawful content, in line with Article 9 of the CPC Regulation.

Only where no actions aimed at the infringing trader are successful (i.e. refusal to comply) and if it is necessary to “avoid the risk of serious harm to the collective interests of consumers”, should public authorities cooperate more closely with service providers which are closest to the content and have the capacity to remove unlawful content where it is hosted.

Finally, public authorities could, if appropriate and where no other effective means are available to bring about the cessation or the prohibition of the infringement, and to avoid the risk of serious harm to the collective interests of consumers, address intermediaries deeper in the internet's infrastructure stack, such as domain registries.

Action at domain registry level is the least proportionate and effective as it does not remove the infringing content. The suspension or deletion of a domain name removes the domain name from the TLD zone file and prevents it from resolving on the public internet. All subdomains and services related to it (i.e email addresses, websites, applications) are no longer functional. It also disables users' ability to navigate both lawful and unlawful content on websites linked to the domain. A 'delete' action cannot be undone when this choice of action is erroneously implemented, and as a result has a dramatic impact on the domain name holder.

CENTR calls on the European Commission to enshrine that action targeting infringing content at domain name registry level should only be available as a measure of last resort, due to the criticality of the DNS to the provision of all associated services.

The list of measures available for competent authorities in Article 9(4) of the CPC Regulation should be considered in a logical and hierarchical manner. If measures concerning the trader are not successful, no other effective means are available, and in order to "avoid the risk of serious harm to the collective interests of consumers", competent authorities should first order service providers to 1) remove content or restrict access to an online interface, 2) order hosting service providers to remove, disable or restrict access to an online interface and 3) as a last resort and where appropriate, order "domain name registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it".

CENTR calls on policy makers to follow and strengthen the proportionate approach laid down in Article 9(4) of the CPC Regulation, as it accurately reflects the gravity of interference by different actors of the internet ecosystem when targeting infringing content online.

Greater cooperation between consumer protection authorities and services providers

CENTR believes that the reinforcement of mutual assistance mechanisms available for the consumer protection authorities in Chapter III of the CPC Regulation, alongside a possibility to engage in voluntary cooperation agreements with service providers, are key to increasing the effectiveness of the CPC actions in responding to emerging market threats in the EU.

CENTR fully supports the cooperation of the CPC Network in conducting cross-border investigations and encourages authorities of the CPC Network to increase the use of their investigative powers to make traders comply with EU law. CENTR believes that information-sharing on infringements is essential in light of the cross-border nature of the EU digital single market, and to identify infringing traders, which can operate in different Member States and across digital services (e.g. moving infringing content to different places online).

For that purpose, CENTR would like to call on competent authorities to increase the use of the alert system laid forward in Articles 26 and 27 of the CPC Regulation. The provisions stipulate that competent authorities that

suspect an infringement which could affect the collective interests of consumers in other Member States shall notify the relevant authorities, as well as the European Commission, and can receive external alerts from consumer and trader associations.

In addition to strengthening existing enforcement and cooperation measures available for consumer protection authorities, CENTR believes that voluntary cooperation agreements with service providers, such as domain name registries, should be encouraged. As stated above, domain name registries do not have the technical capacity to remove content at its source and action at their level needs to be carefully considered due to its potential to yield disproportionate collateral effects on the availability of lawful content and services. Several European ccTLDs however have cooperation agreements in place with their national consumer protection authority¹ or law enforcement authority², to support authorities with their investigations, within legal and technical limits of internet infrastructure actors, such as ccTLDs. These cooperation agreements are developed within national contexts, and take into account local specificities, such as national legislation, size and organisational structure, as well as technical resources available for each national ccTLD.

The role of the European Commission in cross-border investigations

According to the call for evidence, the CPC Regulation reform could grant a greater role for the European Commission “in coordinating more effectively the work of CPC authorities” including by further contributing to “their investigations and enforcement actions, including imposing credible and deterrent fines against non-compliant businesses”. The European Commission could also be granted “direct powers[...] to enforce the CPC Regulation in relation to infringements of specific provisions of consumer law committed by large market players”.

CENTR supports the facilitation of cross-border investigations by the CPC Network and the European Commission in its coordination role. However, the competent consumer protection authority shall remain the primary enforcing authority within a particular Member State where the trader, and/or the service provider is established. The competent consumer protection authority within a particular Member State may already have in place agreements and established protocols with the service providers that facilitate the enforcement of consumer protection online. Direct communication channels, sharing of information and the clarity for both consumers and service providers alike is essential for the creation of an ecosystem of trust and cooperation.

However, for those traders and/or service providers that are established outside of the EU and where those national links with competent consumer protection authorities are missing, it might be beneficial for the European Commission to have a bigger oversight over investigations with cross-border impacts in the EU. Nevertheless, the involvement of CPC authorities within the affected Member States is quintessential, in order to understand local contexts and if needed, offer redress to affected consumers.

¹ DNS Belgium’s [‘Notice & Action procedure’](#) with the FPS Economy.

² CZ.NIC’s [Memorandum of Understanding](#) with the Czech Department of Special Activities of the Criminal Police and Investigation Service regarding the prevention and tracing of criminal activities and the prosecution of crimes.

Due to the aforementioned reasons, any expansion of the European Commission's competence, including a possibility to enlarge the scope of the enforcement powers of the European Commission, should be granted in exceptional circumstances and in close and continuous consultation with national authorities within the CPC Network. Any enforcement action on the EU level needs to follow the subsidiarity principle, and be available in cases where there is no EU presence of the infringing provider (and hence no CPC authority to take the lead), and when the effect of the infringement has a cross-border impact in two or more Member States.