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CENTR response to the public consultation on improving compliance with consumer rights across the EU

Summary of CENTR key recommendations

- CENTR supports the aims set by the Consumer Protection Cooperation (CPC) Regulation, and believes that the respect of the proportionality principle established within the Regulation to guide competent authorities when exercising their minimum enforcement powers is the key to strengthened consumer protection online.
- European ccTLDs are committed to their continuous cooperation with their national competent authorities in order to contribute to strengthened consumer protection online.
- CENTR calls on public authorities to continue exercising their enforcement powers enshrined in the CPC Regulation, by first taking all necessary and available measures against the infringing trader when dealing with consumer protection issues online.
- If the infringing trader does not comply, and there is a persistent infringement with a risk of harm to the collective interests of consumers, public authorities should address service providers closest to the content, in line with the hierarchical and tiered approach laid out in Article 9(4)(g) of the CPC Regulation.
- Orders addressed to domain name registries should remain a measure of last resort, as any action at registry level does not remove content from the internet. Intervention at registry level has drastic impacts on the DNS, disrupting all services linked to a domain name and should be generally considered appropriate only when no other effective means are available.
- In order to reap the benefits of the CPC Network and ensure that infringing traders are compliant with EU law across the single market, CENTR calls on public authorities to rely on the use of the mechanisms provided in Chapter III of the CPC Regulation on mutual assistance, and on the use of the alert systems.

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, .no, and .pt) are members of CENTR.

CENTR members are at the core of the public internet, safeguarding the stability and security of the internet as we know it today. The majority of European ccTLDs are SMEs or 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 and law enforcement 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.

CENTR welcomes the opportunity to provide a response to the public consultation on the cross-border consumer protection cooperation in order to improve compliance with consumers’ rights in the EU. As domain name registries are included in the scope of the Consumer Protection Cooperation (CPC) Regulation in the context of the minimum enforcement powers of competent authorities, the CENTR response to this public consultation will focus on the effective enforcement of consumer protection online.

Measures for public authorities to ensure that traders respect consumers’ rights

Removing infringing content from the internet as the most efficient action

CENTR supports the aims set and the measures provided by the CPC Regulation, and believes that the exercise of public authorities’ minimum powers towards infringing traders, as provided for in Article 9(4) of the CPC Regulation, is the best way to ensure that traders respect consumers’ rights online.

More specifically, public authorities’ focus should be to **remove the infringing content from the internet at its source, making it unreachable for users as this is the only effective solution that avoids content being accessed and consumed further.**¹ Only two actors have direct access to the content and can remove it from the internet for good: the content publisher (usually the infringing trader), and the server which stores the content, i.e. the hosting provider.

To ensure that infringing traders cannot continue carrying out their non-compliant activities, including by abusing the underlying digital infrastructure offered by service providers, and simply move infringing content

¹ For more information on the role of the DNS with regards to illegal content online, see CENTR’s video on “ccTLDs and online content explained”. Available here: <https://www.youtube.com/watch?v=kVwKDq-qUwY>; For more information on the role of domain name registries, see CENTR’s Issue Paper on “Domain name registries and online content”. Available here: <https://centr.org/policy/policy-documents/download/10204/5751/41.html>

elsewhere, CENTR calls on public authorities **to first address the 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”,² 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**. Hosting providers *de facto* have access to the content located on their servers and can therefore remove the infringing websites fully or partially from its servers, making the content inaccessible online.

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 ccTLDs. Action at ccTLD level **is the least proportionate and effective as it does not remove the infringing content**. Any action targeting infringing content at ccTLD level should therefore be treated as a measure of last resort available for competent authorities to mandate after careful consideration.

This is in line with the proportionate and tiered approach laid down in Article 9(4) of the CPC Regulation, which provides a hierarchical order of measures available for public authorities to bring about the cessation or the prohibition of the infringement. 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 have the power to order different service providers to i) remove content or restrict access to an online interface, (ii) order “a hosting service provider to remove, disable or restrict access to an online interface” or, (iii) where appropriate, order “domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it”. **CENTR calls on public authorities to ensure that the proportionate and hierarchical approach laid down in Article 9(4) of the CPC Regulation is respected as it accurately reflects the gravity of interference by different actors of the internet ecosystem when targeting infringing content online.**

Making access to infringing content more difficult: a measure of last resort

Deleting a fully qualified domain name and allowing competent authorities to register it does not remove infringing content

Deleting a fully qualified domain name and allowing competent authorities to register it is not effective in ensuring that traders respect consumers’ rights as the infringing content is not removed from the internet. Malicious traders can move the infringing content elsewhere in order to continue infringing consumer law.

Public authorities can be tempted to order action from domain registries or registrars as enshrined in Article 9(4)(g)(iii): to delete a fully qualified domain name and to allow competent authorities to register it. However such action does not remove the infringing content from the internet. This measure simply allows the domain name to be deleted from the list of registered domain names and releases it for a subsequent registration,

² Consumer Protection Cooperation Regulation, Article 9(4)(g)

including by a competent authority. It does not stop infringing traders from moving the content elsewhere, nor does it allow competent authorities to remove infringing content offline.

ccTLDs do not have the capacity to remove any type of content. The only action targeting access to infringing content they can take is to suspend a domain name, i.e. remove it from the DNS, which will entail that users will no longer get the valid IP address to access the website when looking up the domain name. In practical terms, this means that users aiming to reach the content will be presented with an information message stating that the domain name does not exist rather than viewing the expected content. Users intending to reach the content will be able to do so as long as they know the IP address.³

Suspending or deleting infringing domain names can have disproportionate impacts on the DNS and create conflicts with fundamental rights

Suspending or deleting a domain name may result in a collateral unwanted impact on fundamental rights enshrined in EU law and the Charter of Fundamental Rights, such as the freedom of expression and the freedom to conduct business.⁴ Suspending a domain name has drastic consequences on the DNS as it removes the domain name from the TLD zone file and prevents it from resolving on the public internet. All linked services such as its subdomains, as well as all services related to it (i.e. email addresses) are affected by this measure and are no longer functional. It also disables the ability of users to navigate to both lawful and unlawful content on the websites linked to the domain name, which can impact both users' and lawful traders' ability to conduct their business and get access to lawful information via related services.

The deletion of domain names is another drastic measure impacting the accessibility of services linked to a domain name, and also the ownership of a domain name. Once deleted, the domain name becomes available for registration again. A 'delete' action cannot be undone in the circumstances when this choice of action is erroneously implemented, and as a result has a dramatic impact on the domain name holder.⁵

The respect of the hierarchy in Article 9(4)(g) is therefore not only important to ensure that consumers' rights are respected, but also to avoid any disproportionate impact on the freedom of expression and the freedom to conduct business.

Reaping the benefits of the Consumer Protection Cooperation Network

Due to the cross-border nature of the EU's internal market and its digital single market, traders infringing EU consumers' rights can be located anywhere within and outside of the EU. CENTR therefore fully supports the

³ For more information on technical actions at domain name level, see the Internet & Jurisdiction Policy Network's Toolkit on "DNS level action to address abuses". Available here: <https://www.internetjurisdiction.net/uploads/pdfs/Internet-Jurisdiction-Policy-Network-21-105-Toolkit-DNS-Level-Action-to-Address-Abuses-2021.pdf>

⁴ Charter of Fundamental Rights, Article 11, Article 16.

⁵ For more information on differences between the deletion and suspension of domain names, see the Internet & Jurisdiction Policy Network's Toolkit on "DNS level action to address abuses". See footnote 3 for link.

operation of the established Union Product Compliance Network, which aims to serve as a platform for authorities to organise joint market surveillance to identify non-compliant products, as well as the Consumer Protection Cooperation Network (the ‘CPC Network’), which gathers consumer protection authorities in order to coordinate on consumer law infringements within the EU.

In order to reap the benefits of the CPC Network and ensure that infringing traders are more easily targeted cross-border and made to comply with EU law, CENTR encourages the further use of the mechanisms provided in Chapter III of the CPC Regulation on mutual assistance. The Chapter lays down measures for applicant authorities to request information to authorities in other Member States in order to identify infringement (Article 11), and to request that enforcement measures bring about the cessation of the infringement (Article 12). CENTR also calls on consumer protection authorities to make better use of the alerts system available to help identify pressing cross-border consumer protection infringements and accelerate both the investigation and enforcement process (Article 26).

Information sharing and joint investigations

According to Article 11 of the CPC Regulation, authorities must, at the request of an applicant authority, provide “all relevant information necessary” to assess whether an infringement has occurred without delay and within 30 days maximum. The provision also stipulates that the requested authorities can “allow officials of the applicant authority” to accompany it in the course of their investigations.

CENTR fully supports the cross-border cooperation of the CPC Network and encourages authorities of the CPC Network to increase the use of their given powers in order to identify and make traders comply with EU law. CENTR believes that cooperation regarding information-sharing on infringements is essential in light of the cross-border nature of the digital single market and in order to identify and target perpetrators which can operate in different countries and through different means (e.g. through moving infringing content to different places online).

CENTR also believes that joint investigations should also be increased in order to accelerate the process of identifying infringements and to ensure that actions are taken swiftly. Such joint investigations include the powers provided to competent authorities in Article 9(3), such as the power to carry out on-site inspections and to access documents and information related to a potential infringement.

Enforcement measures

CENTR believes that an efficient “notification and action” mechanism between different authorities is key to reap the benefits of the CPC Network and to ensure that infringing traders can be better targeted cross-border. This entails that upon notification from an authority, a request authority located in another Member State is obliged to take action to bring about the cessation of the infringement.

The CPC Regulation puts forward a similar mechanism on requesting enforcement measures in Article 12, which stipulates that upon the request of an applicant authority, the requested authority shall take “all necessary and proportionate enforcement measures to bring about the cessation or prohibition” of the infringement through

its minimum powers, to take action within six months and to regularly inform the applicant authorities about the steps taken.

CENTR fully supports the mechanism enshrined in Article 12 and would like to call on authorities of the CPC Network to continue and where necessary increase their use of the tools available to them in order to stand a greater chance of making traders comply with the law.

Alert systems

According to Article 26, competent authorities that suspect an infringement which could affect the collective interests of consumers in other Member States should notify the relevant authorities as well as the European Commission. Competent authorities can then ask authorities in other Member States to verify whether “similar suspected infringements are taking place in the territory of those other Member States or whether any enforcement measures have already been taken against such infringements”, to which the authorities should reply without delay.⁶

CENTR believes that this ‘enquiry power’ is a great tool to foster cooperation within the CPC Network and to increase consumer protection online, and would like to call on competent authorities to increase its use despite its current voluntary nature.

Indeed, the capacity for competent authorities to find out whether similar infringements are taking place in other Member States enables consumer protection authorities to identify the most pressing cross-border infringements cases, which accelerates both the investigation and enforcement process and therefore contributes to increasing consumer protection online.

⁶ Consumer Protection Cooperation Regulation, Article 26(4).