



Utrikesdepartementet
UD2018/00831/HI
103 39 Stockholm

Remissvar – KOM(2017) 795 Förslag till Europaparlamentets och rådets förordning om fastställande av regler och förfaranden för överensstämmelse med och genomdrivande av unionens harmoniseringslagstiftning för produkter.

Stiftelsen för Internetinfrastruktur (Internetstiftelsen) är en oberoende allmännyttig organisation som verkar för positiv utveckling av internet i Sverige. Vi ansvarar för internets svenska toppdomän .se, med registrering av domännamn samt administration och teknisk drift av det nationella domännamnsregistret. Sedan september 2013 sköter Internetstiftelsen också drift och administration för toppdomänen .nu.

Internetstiftelsen är medlem i CENTR (the Association of European country code top-level domain registries). CENTR är en branschorganisation för europeiska organisationer som driver och administrerar nationella toppdomäner som .de, .uk och .nl. CENTR har 54 nationella toppdomänsadministratörer som medlemmar, tillsammans ansvarar dessa för 60 procent av samtliga registrerade domännamn i Europa.

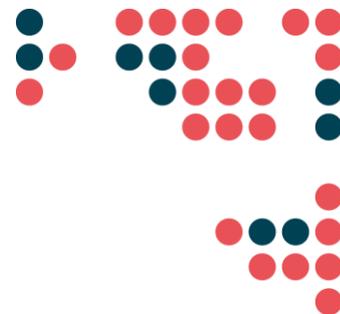
Internetstiftelsen har fått möjlighet att lämna remissvar och lämnar principiella synpunkter genom hänvisning till bifogat uttalande från CENTR, "*CENTR BoD Statement on the draft proposal for a Regulation laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products COM(2017) 795 final*".

Eftersom detta uttalande hänvisar vidare bifogas även "*Comment on the draft proposal for a Regulation on the cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2016) 283)*".

Stockholm den 21 mars

Stiftelsen för Internetinfrastruktur

Danny Aerts, vd



CENTR BoD Statement on the draft proposal for a Regulation laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products COM (2017) 795 final

Brussels, 15 March 2018 – CENTR is the Association of European country code top-level domain registries. Our members are the registry operators that technically manage or administer a country-specific top-level domain, such as .eu, .si or .de. CENTR welcomes the opportunity to comment on the draft proposal for a Regulation on Enforcement and Compliance in the Single Market for Goods COM(2017) 795 final.

Protecting consumers from non-compliant products is essential to ensure trust in the Union’s offline and online market and to achieve a successful single market. While supporting the general objectives of the draft regulation, i.e. a high level of protection of public interests, such as health, safety, the environment and security, we believe that more clarity is needed with regards to how these requirements can be enforced.

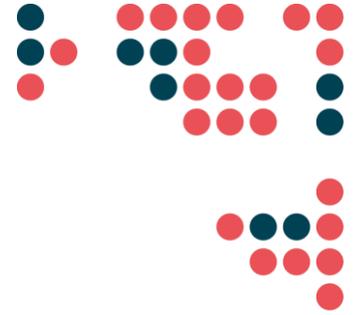
Preliminary remarks

We understand that the draft regulation as per Article 3 (Definitions) comprises to the “making available on the market” and/or “the placing on the market” of products and, with regards to business actors, targets so-called “economic operators”. The minimum powers of market surveillance authorities laid out in the draft, however, extend to actors that reach beyond the “supply chain” as referred to in the draft.

A domain registry is not involved either in the making available or placing on the market of products. Also, a domain is different from a website. A domain name can resolve to a website that holds (stores, displays, etc.) information about certain products. However, the domain registry is neither the manager/owner of the domain name nor the entity that puts content on that website. Domain registries only hold records of holders of a domain name.

Comments on the proposal

With regards to the above-mentioned proposal COM (2017) 795, we would like to share our concerns and offer the following suggestions. Our comments build on and are in line with those published within the context of the draft regulation on consumer protection cooperation (COM (2016) 283 (see here)).



1. Ensure coherence in the use of terminology and with other legislation

1.1. Coherence in the use of (technical) terms

- *Recital 13 speaks of “removal of content”, and “blocking access to non-compliant products offered through their services”.*
- *Recital 26 refers to the “suspension of website, service or account”*
- *Art. 14, 3 h) refers to “remove, disable or restrict access to content or to suspend or restrict access to a website... or put a fully qualified domain name on hold for a specific period of time”.*

It has to be noted that these terms have a very specific meaning in the technical context and refer to specific actors within the internet ecosystem. In order to make compliance with requests efficient and effective, **we suggest using consistent, non-ambiguous wording which applies to either websites or domain names and specifies who the addressee of certain requests is.**

1.2. Coherence with the e-commerce Directive (2000/31) (see Recital 26)

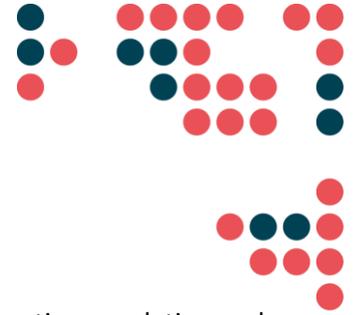
Recital 26: ... temporary measures..., including, where necessary, the suspension of a website, service or account, or putting a fully qualified domain name on hold for a specific period of time, in accordance with the principles laid down in Directive 2000/31/EC.

We would like to point out that registries are not defined as intermediaries in Directive 2000/31/EC. Accordingly, the principles laid down in that Directive, including liability exemptions for intermediaries, do not apply to registries. **We therefore suggest removing the reference to fully qualified domain names in this context.**

1.3. Coherence with the regulation on Consumer Protection Cooperation (2017/2394)

- *Art. 14, 3, (h): power to take temporary measures to prevent serious risk, including in particular temporary measures requiring hosting service providers to remove, disable or restrict access to content or to suspend or restrict access to a website, service or account or requiring domain registries or registrars to put a fully qualified domain name on hold for a specific period of time;*
- *Art. 9, 5, g (iii) of the CPC regulation, gives competent authorities “the power to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it.”*

First, we would be interested in better understanding the intentions of the Commission with regards to the different approach chosen in the current proposal as compared to the CPC regulation (i.e. “putting a domain name on hold” vs “deleting a domain name”).



Second, consistency across regulation – in this case the Consumer Protection Cooperation regulation and the Goods Package – will help both national authorities and those actors falling in the scope of such legislation to come up with common routines to ensure compliance.

Third, we would like to point out that both actions targeting domain names neither remove the content nor do they make the content inaccessible. They might make access to content more difficult for the average internet user who (only) relies on domain names to find a website. However, it is important to underline that in many cases of consumer fraud (e.g. spam with embedded IP addresses rather than domain-based links), putting a domain on hold (or removing) it will not protect consumers to the extent envisaged by the regulation, since the content is still available.

In fact, the impact of such measures on fundamental rights (through “overblocking” legal content and restricting the freedom to conduct business) could be disproportionate to the risk – especially since the proposed measures do not include the safeguard of judicial oversight.

In order to more effectively protect consumers and to ensure that measures safeguard the fundamental rights of millions of Europeans who have registered a domain name, we suggest a cascading sequence of steps to be taken prior to any attempt to call for a “put on hold” a domain name:

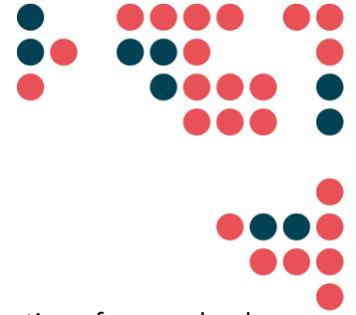
- a. The trader is ordered to modify or remove the content. If this fails:
- b. The host is ordered to remove the content. If this fails:
- c. The registrant (the person or entity who registered the domain) is ordered to suspend all domains referring to the content.

2. Better define the intended target and reach of minimum powers of market surveillance authorities

- *Art. 14, 3 (d) Minimum powers: power to require ... any natural or legal person, to provide any information ... for the purposes of ... ascertaining ... the ownership of websites;*
- *Recital 22: “Market surveillance authorities should be able to request third parties in the digital value chain to provide all the evidence, data and information necessary”.*

In order to ensure that requests by market surveillance authorities are targeted and efficient, it is important to establish which “third party”, or legal or natural person, is required to provide what type of information, since not all of them will be in the position to do so. For instance, records on who registered a domain name, do not necessarily correspond to owners of a website and/or the one responsible for putting content on a website. Registries store (personal) data that is different from that held by hosting providers, access or internet service providers, etc.

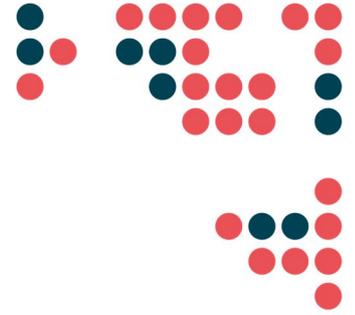
We suggest that recital 22 be clarified. ‘Requesting’ the closing down of a website seems to suggest that there is a voluntary element or room for judgement of the lawfulness of content on that website or the ‘request’ on the side of the third party, including registries. However, the addressee of any such ‘request’ will only be relieved of making value judgements and incurring liability as the result of infringement of



contractual and/or fundamental rights if the addressee acts on well-defined instructions from a clearly identifiable public authority, within a clearly defined legal framework. It would also be necessary to make clear that the actions taken by 'request' of a competent authority could never lead the party following such a 'request' to be held liable by a third party. We therefore strongly suggest to add this exoneration in the draft regulation

- Art. 14, 3, (h)

As mentioned above, it will be helpful to understand the intention and objective of a temporary measure in order to assess whether it will help lower or erase risks. We offer to provide more information about the impact of measures targeting domain names on both the technical operator, the registrant and the internet user.



CENTR Comment on the draft proposal for a Regulation on the cooperation between national authorities responsible for the enforcement of consumer protection laws (COM(2016) 283)

Brussels, 24 October 2016 – CENTR, the Association of European country code top-level domains (such as .eu, .uk or .sk) welcomes the opportunity to comment on the draft proposal on the cooperation between national authorities responsible for the enforcement of consumer protection laws ([COM\(2016\) 283](#)). In total, CENTR members manage over 60 million second-level domain registrations.

Strengthening consumer protection is essential to build online consumer trust and a prerequisite for a successful Digital Single Market. We feel, however, that the current draft lacks the clarity to achieve these goals. As managers of the registries that are at the core of the domain name infrastructure, we would like to share our concerns and offer suggestions for clarification.

1. Better define minimum powers of competent authorities and, in particular, what they can request or require from third parties, including from registries.

*Art. 8.2 (g) adopt interim measures to prevent the risk of **serious** and **irreparable** harm to consumers, in particular **the suspension** of a website, **domain** or a similar digital site, service or account;*

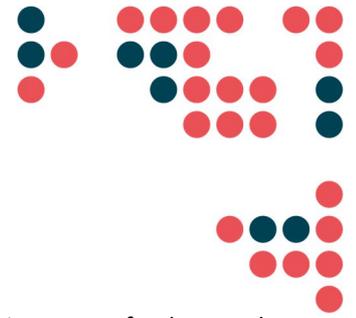
*Art. 8.2 (l) **close down** a website, **domain** or similar digital site, service or account or a part of it, including by requesting a third party or other public authority to implement such measures;*

The terms '**serious**' and '**irreparable**' need to be defined.

The term '**domain**' is too vague. Registries can only act when the demand from competent authorities deals with second-level domains, such as 'example.eu'. For third-level domains such as 'shop.example.eu', only the entity or person who registered 'example.eu' can take action. Any action taken by the registry related to a second-level domain will affect all third-level domains and, as such, will have unintended consequences for all users of third-level domains that are unrelated to the issue the competent authorities want to tackle. For instance, the deletion of 'europa.eu' would affect all third-level domains such as 'curia.europa.eu', 'europarl.europa.eu', 'ec.europa.eu' and so forth.

The term '**suspension**' of a domain name is unclear. We understand this refers to the temporary measure to stop the name from resolving, while keeping it registered under the current holder. We suggest for this to be explained in the text. In addition, the draft refers to 'interim measures', yet doesn't specify for how long such measures should be in place. A maximum period should at least be defined.

The term '**close down**' of a domain is unclear. We understand this refers to the deletion or deregistration of the domain. However, once a name is deleted, it would normally be available for registration again. In order to avoid this, the domain name would need to remain registered, but not resolving.



2. Ensure that proposed measures are effective and avoid disproportionate negative impact on fundamental rights.

The 'suspension' or 'close down' of a domain name does not remove the content. It does not make the content inaccessible. While it might make access more difficult for the average Internet user who (only) relies on domain names to find a website, it is important to underline that in many cases of consumer fraud (such as spam with embedded IP addresses rather than domain-based links), the 'suspension' or 'closing down' of a domain name will not protect consumers to the extent envisaged by the regulation.

We believe that the proposed [interim] measures could have a disproportionate and negative significant impact on fundamental rights. Although until now, courts have typically balanced the impact of the measure with the impact on the rights of the defendant, the current proposal seems to bypass the safeguards of the judicial oversight.

3. Better protect consumers through a cascading sequence of actions.

In order to achieve the effective protection of the consumer and to ensure that interim measures safeguard fundamental rights of the millions of Europeans who have registered a domain name, we ask for the following steps to be introduced in the regulation prior to any attempt to order the 'suspension' or 'closing down' of a domain:

- a. The trader is ordered to modify or remove the content. If this fails:
- b. The host is ordered to remove the content. If this fails:
- c. The registrant is ordered to suspend or close down all domains referring to the content.

4. Avoid third party assessment of lawfulness of content.

We suggest that art. 8.2 (l) be clarified.

'Requesting' the closing down of a website seems to suggest that there is a voluntary element or room for judgement of the lawfulness of content on that website or the 'request' on the side of the third party, including registries. However, the addressee of any such 'request' will only be relieved of making value judgements and incurring liability as the result of infringement of contractual and/or fundamental rights if the addressee acts on well-defined instructions from a clearly identifiable public authority, within a clearly defined legal framework. It would also be necessary to make clear that the actions taken by 'request' of a competent authority could never lead the party following such a 'request' to be held liable by a third party. We therefore strongly suggest to add this exoneration in the draft regulation.

5. Retain but clarify concept of 'information requests'.

We support the idea of 'information request' as indicated in art. 8.2 (b). Nevertheless, a clear definition of who can request that information is needed. In cases and/or Member States where no court order is needed, these requests should be based on the rule of law. Failure to do so might lead to conflicts with existing data protection laws. At a minimum, information requests should be proportionate to the purpose they serve and therefore be as detailed as possible.