

EASA CROSS-BORDER COMPLAINTS SYSTEM

The basic principles of the cross-border system: The EASA cross-border complaints system (CBC) is based on the principle of the '**country of origin**', a concept enshrined in EU law to facilitate the functioning of the Single Market by ensuring that an advertisement circulating in more than one country has to comply with only one set of rules: those of the 'country of origin'. For the purposes of EASA's CBC system, the country of origin is normally regarded as being the country where the media in which the advertisement appears is published. **The exceptions are in cases involving direct mail and the Internet/electronic advertising**, i.e. digital marketing communications; in both these cases, the country of origin is the one in which the advertiser is based. Moreover, in relation to **Online Behavioural Advertising (OBA)**, 'the country of origin' of the company is defined as being in relation to the location where the relevant policy decisions are made (not necessarily where those decisions are implemented or where OBA campaigns are booked).

- **The media's country of origin:** Cinema advertising, Outdoor, Print, Radio, TV
- **The advertiser's country of origin:** Direct mail, Digital Marketing Communications
- **The principle decision-making presence, i.e. office (as communicated in EDAA licenses):** Online Behavioural Advertising

Who is the competent body? Establishing the media's 'country of origin' (or, in the case of direct mail or electronic advertising, the advertiser's country of origin) establishes the competent Self-Regulatory Organisation (SRO) that will be able to deal with the complaint. There is only ever one single body who can deal with a complaint, as the SROs can depend upon the support of their national media in enforcing complaint rulings.

The EASA Member in the media's country of origin (or, in the case of direct mail or electronic advertising, the advertiser's country of origin) deals with a cross-border complaint according to its own procedures. In some cases these are different - and different rules apply - from those in the complainant's country. For instance, in terms of issues of taste and decency in advertising, taking into account cultural differences between EASA Member countries.

Dealing with a cross-border complaint: Initially the complainant may be unaware that the advertisement lies outside the competence of his or her national SRO, but the SRO will inform the complainant of the process of handling the complaint through the cross-border system. Upon receiving a complaint, the SRO will decide whether or not the complaint is of a cross-border nature. The EASA Secretariat offers investigative help in this and all aspects of the CBC. As soon as the complaint is identified as a CBC, it is passed on to the appropriate self-regulatory organisation in the media's country of origin for investigation, along with all relevant details pertaining to the complaint (or, in the case of direct mail or electronic advertising, the advertiser's country of origin). This is part of the EASA Member information sharing process. The EASA Secretariat is included in all correspondence relating to the cases and keeps a watchful eye on progression, suggesting appropriate action where necessary, involving other industry bodies where appropriate, and reporting on the outcome of cases when closed.

In some cases, a translation of the complaint may be necessary and any other relevant factors may also be mentioned, for example:

- The nature of the complaint, if this is not clear from the context of the complainant's letter and might not be obvious to someone in another country;
- Whether or not the advertisement complained about seems to comply with the rules of the SRO in the complainant's country. Competence lies, of course, with the EASA Member in the media's country of origin (or, in the case of direct mail or electronic advertising, the advertiser's country of origin), but nevertheless it can be helpful, for example in a case of alleged offensiveness, to know the views of the EASA Member in the complainant's country.

Assessing a cross-border complaint: When it receives the complaint, the SRO in the country of origin must first decide if the complaint is of substance, and therefore whether or not it should be pursued. Except in the case of direct mail advertising, the fact that an advertisement is the subject of a CBC does not automatically mean that it was addressed to consumers in the complainant's country and each case is assessed on its individual merits.

In deciding whether or not an advertisement is addressed to consumers in another country, the SRO will take into account such factors as whether the media concerned is generally available in that country, or virtually unobtainable there, whether the advertisement contains anything, e.g. an address or telephone number, to indicate clearly that it is addressed to consumers in the complainant's country or, alternatively, anything to indicate that it is not.

If the evidence clearly suggests that the advertisement was not addressed to consumers in the complainant's country, the SRO may conclude that the complaint need not be pursued. In this case, it will write back to its counterpart in the complainant's country, explaining its decision and the reasons for it.

If, on the other hand, the SRO decides that the advertisement was addressed to consumers in the complainant's country, it will investigate the complaint according to its own rules and procedures. Where the subject of the complaint falls under a general heading, such as offence or misleadingness, these rules may be applied taking into account the sensibilities and level of knowledge of consumers in the complainant's country.

The outcome of the case is then communicated in writing to the EASA Member in the complainant's country.

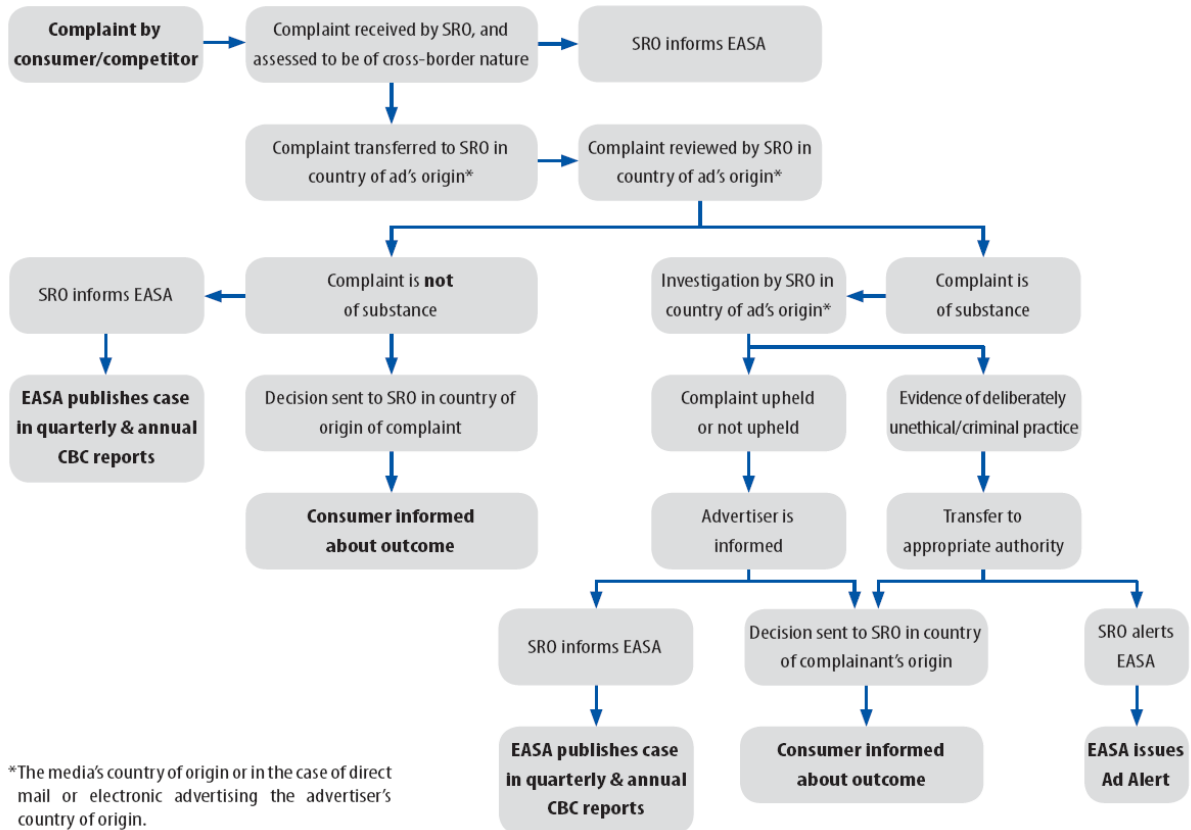
Responding to the complainant: The EASA Member in the complainant's country informs the complainant in writing of the outcome of the case, explaining that it has been handled under the cross-border complaints procedure. It may be necessary to explain differences in rules between EASA Member countries, if these are relevant.

Euro Ad-alert: If the ad shows evidence of deliberately unethical, dishonest or criminal activity (as distinct from normal commercial advertising), and relates to matters controlled by legislation rather than self-regulatory codes, the SRO will pass the complaint to the competent government agency. In such circumstances, the EASA Secretariat may, after discussion with Members involved, decide to issue an Euro Ad-Alert. As its name suggests, an Euro Ad-Alert notifies interested parties to the advertisers' activities. It is sent to EASA Members, the advertising industry, consumer organisations as well as the European Institutions.

Information exchanges: In cases which are not CBCs, but nevertheless involve a transnational element, for example because the advertiser is based in a different country from that of the media, the SRO members of EASA and the Secretariat cooperate to achieve a satisfactory outcome. These cases are called Information exchanges.

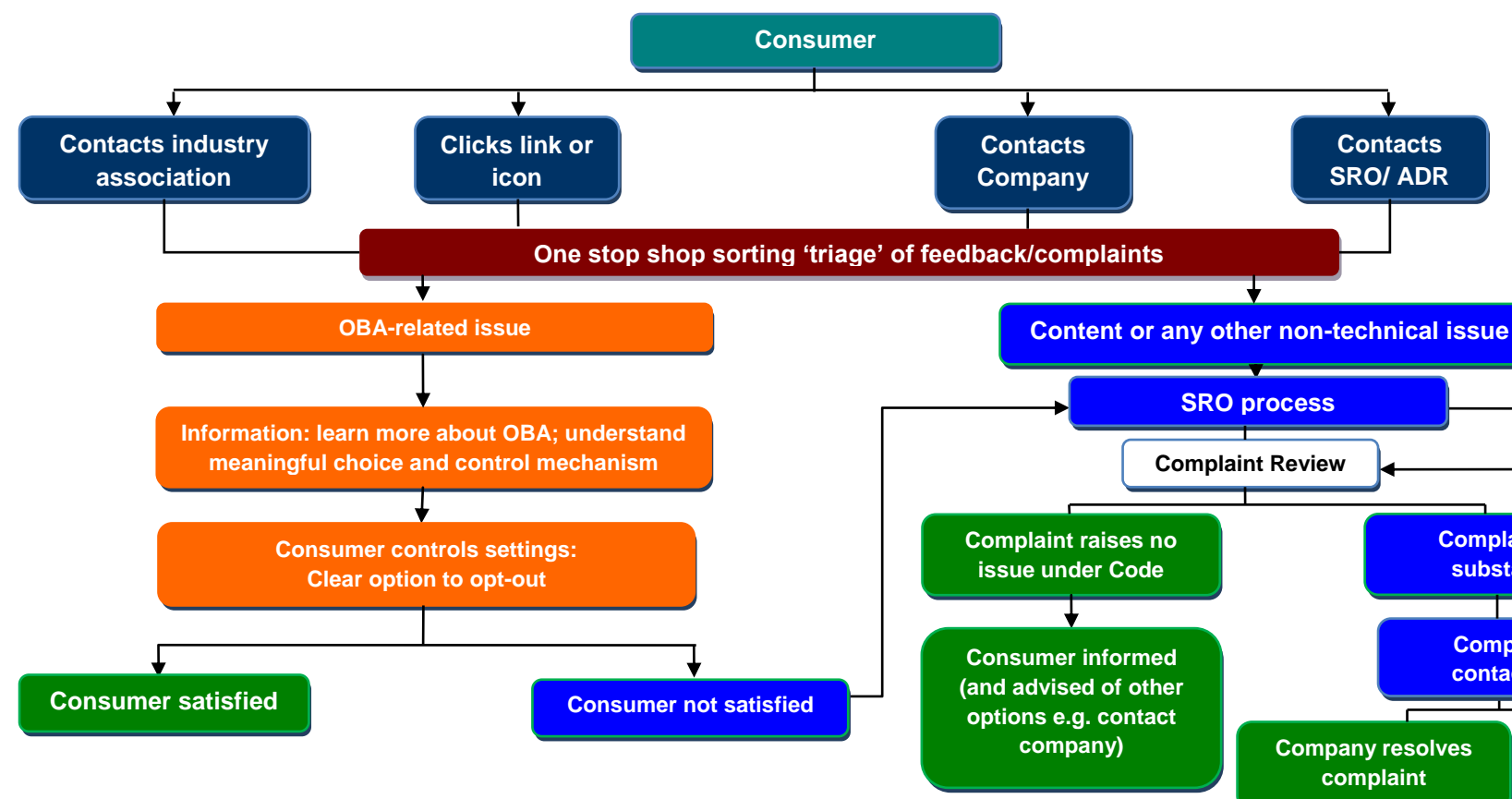
Publication: The closed cross-border complaints are reported, without revealing the identity of the complainant, in the CBC Report published on the EASA website: www.easa-alliance.org.

EASA's cross-border complaints process

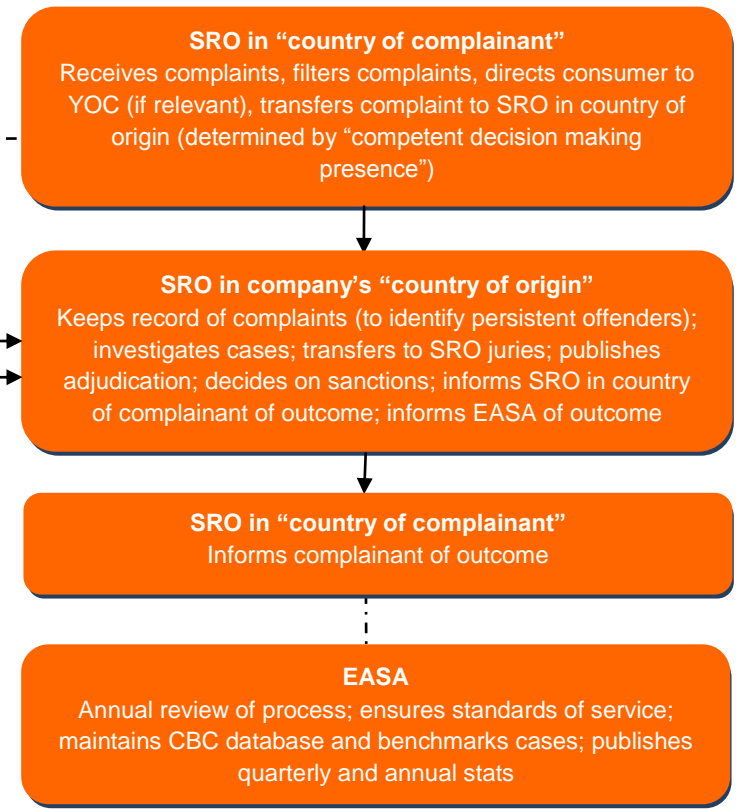
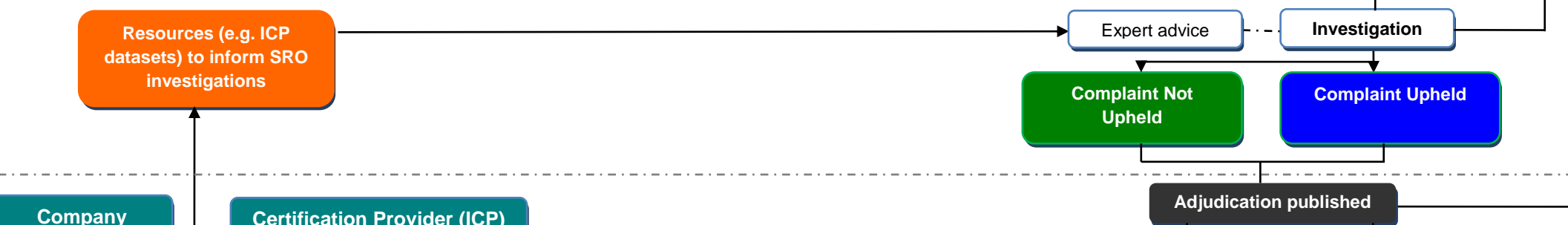


Flow Chart: Feedback/Complaint Handling/Certification/Sanctions Mechanisms

Phase 1 – Informal Complaints Handling Process



Phase 2 – Formal Investigation



Phase 3 – Compliance and Enforcement

