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

1. Complaint by consumer/competitor
2. Complaint received by SRO, and assessed to be of cross-border nature
3. SRO informs EASA
4. Complaint transferred to SRO in country of ad’s origin*
5. Complaint reviewed by SRO in country of ad’s origin*
6. SRO informs EASA
7. Complaint is not of substance
8. Investigation by SRO in country of ad’s origin*
9. Complaint upheld or not upheld
10. Evidence of deliberately unethical/criminal practice
11. Advertiser is informed
12. Transfer to appropriate authority
13. Consumer informed about outcome
14. SRO informs EASA
15. Decision sent to SRO in country of complainant’s origin
16. EASA publishes case in quarterly & annual CBC reports
17. Consumer informed about outcome
18. EASA issues Ad Alert

*The media’s country of origin or in the case of direct mail or electronic advertising, the advertiser’s country of origin.
Flow Chart: Feedback/Complaint Handling/Certification/Sanctions Mechanisms

1. **Consumer**
   - Clicks link or icon
   - Contacts Company
   - Contacts SRO/ADR

2. **One stop shop sorting ‘triage’ of feedback/complaints**
   - Content or any other non-technical issue
   - OBA-related issue
   - Consumer controls settings: Clear option to opt-out

3. **Application of sanctions** (stepped, consistent and proportionate approach)
   - SRO process
   - Complaint Review
   - Complaint of substance
   - Complaint Not Upheld
   - Complaint Upheld

4. **EASA**
   - Annual review of process; ensures standards of service; maintains CBC database and benchmarks cases; publishes quarterly and annual stats

5. **SRO in “country of complainant”**
   - Receives complaints; filters complaints; directs consumer to YOC (if relevant), transfers complaint to SRO in country of origin (determined by “competent decision making presence”)
   - SRO in company’s “country of origin”
     - Keeps record of complaints (to identify persistent offenders); investigates cases; transfers to SRO juries; publishes adjudication; decides on sanctions; informs SRO in country of complainant of outcome; informs EASA of outcome
   - SRO in “country of complainant”
     - Informs complainant of outcome
   - EASA
     - For deliberate, serious, and/or persistent offenders

6. **ICP**
   - Self-certification via online form (within 6 mths of signing FW)
   - Independent & ongoing monitoring
   - Submit to certification process (within 1 mth of self-certification)

7. **Company**
   - Company resolves issue following ruling
   - ICP informed by EDAA
   - 30 day correction period
   - Multiple fails: if breach remains after re-certification

8. **Certification Provider (ICP)**
   - Resources (e.g. ICP datasets) to inform SRO investigations
   - Company compliant
   - Company not compliant

9. **Adjudication published**
   - Level
     - 1: Name and shame
     - 2: Ad Alert
     - 3: Removal of EDAA ‘Trust Seal’
     - 4: Removal of Icon
     - 5: Referral to regulator

10. **For deliberate, serious, and/or persistent offenders**
    - Minor breaches may stop here. Uses include: consistent broken links, use of confusing / misleading language
    - SRO confidentially informs business partners of company breach
    - Sanction applicable for business-end breaches: data security, segmentation issues
    - Sanction applicable for consumer-facing breaches: persistent opt-out failures, linking to ‘dummy’ opt-outs
    - Multiple certification failures; deliberate, serious and persistent offenders; uncooperative offenders

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**Phase 1 – Internal Complaints Handling Process**

- Company
- Certification Provider (ICP)
- SRO in “country of complainant”

**Phase 2 – Investigation**

- Consumer
- SRO in company’s “country of origin”
- EASA

**Phase 3 – Compliance and Enforcement**

- SRO in “country of complainant”
- EASA
- ICP