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30 September 2015

EASA response to the EU Commission Consultation on Directive 2010/13/EU on audiovisual media services (AVMSD) - A media framework for the 21st century

First and foremost, EASA, the European Advertising Standards Alliance, would like to thank the European Commission for the opportunity to respond to the consultation on the AVMS Directive.

Background

EASA's main goal is to ensure high standards of operation for national self-regulatory systems in Europe and beyond. Our model of advertising self-regulation makes sure that all advertising, not only on audiovisual media services but on any other media, is legal, decent, honest and truthful.

Our membership is made up of independent advertising standards bodies – or so-called self-regulatory organisations (SROs) – which are responsible for enforcing advertising standards at national level. In most cases this also includes enforcing provisions of key EU Directives related to advertising such as the AVMSD, the Unfair Commercial Practices Directive (UCPD) and the Misleading and Comparative Advertising Directive (MCAD). But their remit often goes well beyond as national self-regulatory codes relating to harm, offence and social responsibility exceed often substantially what is required by law and fundamental rights – including the advertising provisions of the AVMSD.

To ensure that ad standards respond to practical developments in the advertising landscape, we include the entire advertising ecosystem in our membership – that is the advertisers, the agencies and the media (both on- and off-line). The advertising industry is fully committed to regularly evaluating and updating the rules to stay abreast of new technological developments.

As of today, across the European Union, **23 EU Member States have an operational self-regulatory system in place** which together cover **97% of all advertisements seen by the EU population**. This means that 97% of all ads need to comply not only with national statutory regulation but also with detailed national codes which are enforced by independent organisations that handle all complaints made by consumers for free.

We believe that effective self-regulation as promoted by EASA is to the benefit of consumers and businesses and ultimately good for Europe – especially if legislation and self-regulation work well together and complement each other. In this spirit we have supported the setting up of the EU Community of Practice (CoP), chaired by former Director General of DG CONNECT Robert Madelin, and are also an active member of the CoP steering group.

The EU Commission's Better Regulation Package has officially recognized the value of well-designed non-regulatory means and the Principles for Better Self- and Co- Regulation, as developed by the CoP, are provided as the reference point.

We would like to highlight that since 2004 EASA has upheld such key principles through our [Advertising Self-Regulation Charter](#). (See also our Best Practice Recommendations¹ summarised in Annex 1.)

With the above said in mind, EASA has responded to those questions that relate to the consideration of self-regulation in the AVMSD.

Summary

- Well-designed self-regulation is an effective means of helping to achieve policy objectives in a fast changing technological environment. Given the proper space to operate and develop the advertising self-regulatory system will be crucial in the creation of a thriving Digital Single Market;
- Setting high industry advertising standards in fast evolving markets can only be done fast and efficiently by self-regulatory systems at Member State level
- In most Member States SROs are essential in the enforcement of the provisions of EU Directives dealing with advertising, such as the AVMSD, the UCPD and the MCAD and play thus a vital role when it comes to consumer protection;
- **For self-regulation to achieve its full potential it is crucial that the revised Media Framework (the new AVMSD):**
 1. recognises explicitly the value of self-regulation in enforcing advertising provisions;
 2. gives sufficient scope for self-regulation to develop, i.e. the rules should be based on principles and not be overly prescriptive, and should allow for the adjustment of the rules to the national legal and cultural context;
 3. encourages Member States to support the existing (or the development of) effective national advertising self-regulatory organisations and co-operate with the SRO whenever a legal backstop is needed (i.e. when dealing with illegally operating businesses);
 4. is futureproof and flexible;
 5. maintains the country of origin principle and strengthens cooperation practices between the different national regulators and SROs.

¹ EASA Best Practice Recommendations provide detailed guidance to SRO and industry members of EASA on how to go about advertising self-regulation. They are designed to stimulate and assist national discussions on the development of self-regulation according to the Best Practice model and they are regularly revised.

Detailed responses to the consultation

Set of Questions 1. Ensuring a level-playing field

Irrespective of the scope of the current Directive, we would like to argue in this section that self-regulation of the advertising sector though enforced ad standards already achieves a level-playing field and thus provides not only a high level of consumer protection but has also the advantage that it helps cut red tape for businesses and allows them to operate and generate growth.

In line with the Communication on the Better Regulation Agenda², the Better Regulation Guidelines and the “Toolbox” that accompanies the Guidelines which clearly state that well-designed non-regulatory alternatives should always be considered when designing policy options and because advertising self-regulation has been mentioned during the CoP meetings as a model of a well-designed non-regulatory system, we would like to argue that **the new legal media framework should give sufficient scope to self-regulation in the field of advertising and should also remain principle based and be futureproof to allow self-regulation to adapt to important changes in society and ways of advertising.**

a) Consistent media coverage

The advertising self-regulatory codes apply in general indiscriminately to advertisements on **all** media, including TV and on-demand, print, radio, and online. The system responds **quickly** to advances in technology and new ways of advertising. Codes are regularly reviewed to assess if they remain fit for purpose – especially when it comes to digital advertising.

Example 1: Digital SR Codes are regularly reviewed. In May 2015 EASA launched a revised [Best Practice Recommendation \(BPR\) on Digital Marketing Communications](#) to ensure advertising standards remain effective and relevant when it comes to the ever-changing digital landscape and interactive marketing techniques. An emphasis has been placed on the need for all marketing communications to be easily identifiable for consumers, no matter where or how they are displayed. At national level, SROs provide further advice and training to the local industry to make sure they continue to deliver responsible advertising across all platforms. See, for example, the new [UK Vlogging Advertising Guidelines](#).

Example 2: Encouraged by the European Commission to respond to emerging consumer concerns surrounding the practice of Online Behavioural Advertising (OBA), EASA has developed a [Best Practice Recommendation \(BPR\) on OBA](#) and helped implement an innovative self-regulatory programme across all EU and EEA markets. The programme

² “Better regulation for better results - An EU Agenda, setting out the overall strategic approach”

links the existing SR network, which functions as a one-stop-shop for consumer complaints, with the technological solution via an 'icon' displayed across online ads and websites, and the Your Online Choices website (www.youronlinechoices.eu) which empowers consumers with greater choice and control over their behavioural advertising preferences. The [European Interactive Digital Advertising Alliance \(EDAA\)](#) was launched in 2012 to administer the SR Programme based on a set of consistent pan-European Principles, while the national SROs ensure independent enforcement of the rules by adopting these Principles into their national Codes. As of today, over 150 companies from all European markets, from larger players to European SMEs, participate in the initiative. 11 EU SROs have extended their remit and apply the country of origin principle, under the management of EASA, to efficiently handle consumer complaints on OBA.

b) Geographical coverage

Across the European Union, **23 EU Member States have an operational self-regulatory system in place**. While this does not constitute the whole EU, it includes all the major markets which together cover **97% of all advertisements seen by the EU population**. This means that 97% of all ads need to comply not only with national statutory regulation but also with detailed national codes which are enforced by independent organisations (SROs) and handle all complaints made by consumers for free.

Furthermore, the advertising industry in Europe – especially the associations in EASA's membership – are committed to advertise responsibly. When running a marketing campaign in countries where no SRO exists, it is part of the professional diligence of advertisers to respect pan-European and/or international advertising codes and guidelines such as:

General code (applying to all marketing communications):

- the [Consolidated Code of Advertising and Marketing Communication Practice of the International Chamber of Commerce \(ICC\)](#);

Alcohol codes:

- the ICC Framework for Responsible Marketing Communications of Alcohol;
- the [Digital Guiding Principles](#) developed by IARD, the International Alliance for Responsible Drinking;
- Sector specific codes at EU level for [spirits](#), [beer](#) and [wine](#). The associations also hold their members accountable to respect these codes.

Food advertising code:

- the ICC Framework for Responsible Food and Beverage Marketing Communications.

Since 1992 EASA co-ordinates also a **cross-border complaints (CBC) mechanism** to ensure that consumers in one country can complain about an advertisement they have seen or heard in media published in another country or in the case of most online advertisements - an advertiser based in another country.

The EASA network and its CBC system includes furthermore the SROs in Turkey and Switzerland as well as [11 SROs](#) which are based outside Europe and has ties with other international ad standards bodies, such as the ones in the US.

The Cross-Border Complaints figures and reports are published on our website.

c) A level-playing field for businesses

Advertising self-regulation creates a level-playing field for fair competition and good business practice:

1. Advertising self-regulation enhances the credibility of ads and ensures that marketing communications are in tune with evolving values in society. Advertising standards help increase the relevance of ads and trust in brands;
2. SROs offer a quick and flexible independent complaint resolution mechanism, not only between consumers and businesses (B2C) but also between businesses (B2B), and provide thus a level-playing field for industry of all sizes;
3. Advertisers that breach the codes need to withdraw or modify their advertising campaigns. The costs to do this can run into millions and the adjudication against an irresponsible ad can damage the reputation of a brand; therefore the advertisers have a strong economic interest to comply with the self-regulatory rules;
4. The self-regulatory systems helps expose and sideline 'rogue traders' that deliberately operate on the fringes of the law for short-term commercial gain. SROs refer illegally operating businesses to the relevant national authorities;
5. Companies can turn to their local self-regulatory body or their umbrella organisation for guidance and training on the advertising rules as well as to receive concrete advice on the compliance of a specific advertising campaign before it is launched (this service is called *copy advice*). The system benefits especially smaller advertisers who cannot afford expensive compliance departments and lawyers. In 2014, European SROs offered support to companies in 77,895 instances;
6. The cross-border complaints mechanism administered by EASA has proven to be effective in ensuring that the advertiser (whose ads may circulate in more than one country) is answerable to one regulator. This helps cut red tape for businesses advertising in more than one EU MS. In 2014, EASA registered 158 cross-border complaints.

Set of Questions 2: Providing for an optimal level of consumer protection

Protecting consumers from illegal, harmful, offensive or misleading advertising practices is at the heart of advertising standards. As stated above, the national advertising codes cover commercial communications indiscriminately of the type of media – irrespective of the Directive's "graduated regulatory approach". Consumer protection in the field of advertising is thus consistent and comprehensive.

All consumers can complain about advertising they find irresponsible or indecent to their local SRO for free. The complaints are handled quickly and impartially by independent juries.

Adjudicating complaints at national level is very important, because local juries (which in most cases include lay experts) know best the values of the society they live in and thus adjudicate complaints with the average national consumer in mind. This is especially important when deciding on issues of taste and decency, but also when looking at claims in ads. Misleading advertising is on average the biggest concern of consumers in Europe (see the annual EASA stats reports [here](#)).

Conversely, the investigation and analysis of consumer concerns also helps SROs in better understanding current consumer values and needs – this in turn helps them train the industry better in creating responsible advertising.

Consumers don't need to provide evidence when complaining and neither do they need to know the details of the advertising codes: the onus to prove that claims are truthful and that the national advertising codes are thus respected lies with the advertiser.

On average, 88% of complaints are resolved in less than 60 days and all consumers receive feedback after an adjudication is made. In the majority of countries the decisions of the juries are published online and are thus accessible to all citizens. The self-regulatory system also provides the possibility to appeal a decision of the jury, if either the consumer or the advertiser have new evidence to challenge this decision.

Through EASA's cross-border complaints system, about a hundred complaints yearly are handled on the basis of the country of origin. Even if the complaint is dealt with in another country than the country of residence of the consumer, he or she will receive a response to the complaint and the outcome of the jury decision in his or her own language by the SRO in his/her country of residence. The SRO which investigates and adjudicates and the SRO in the country of the consumer work together.

Set of Questions 3: Protection of minors

The protection of minors is a key priority of the advertising industry. A number of measures have been developed to ensure high standards of practice in the area of advertising to children, as established in the provisions included in Article 18– [Children and Young People](#) and article D5 - [Digital marketing communications and children](#) of the ICC Code.

With the increasing number of children engaging with social media and accessing content through a wide range of devices such as smartphones, game consoles and tablets, it is particularly important that the advertising industry has recognised its responsibility to come up with technological solutions to enhance the protection of children online and give parents an easy way to control what children can see or do online. Good self-regulatory practices are listed [here](#).

Where the age of the Internet user is known (e.g. on social media platforms) advertisers can make sure that they don't deliver ads to children/minors which are not suitable for them.

Especially when it comes to advertising of products linked to societal problems, such as obesity and alcohol related harm, the advertising industry has recognised its responsibility to help achieve policy objectives and enhance the protection of minors by restricting and further regulating its

commercial communications for alcohol and food high in fat, salt and sugar.

SROs have thus robust codes in place that deal with advertising for alcohol beverages and responsible advertising to children (e.g. on the advertising of HFSS-foods). In its first report on the application of the current AVMSD it has been acknowledged that Member States have self-regulatory bodies which have transposed the AVMSD effectively, and that industry has established an efficient self-regulatory system especially on advertising of HFSS-food to children. When it comes to alcohol the report stated that “In implementing the AVMSD requirements on alcohol advertising, 22 Member States have put in place somewhat stricter rules for alcohol advertising involving channels, advertised products or time slots.” The European Parliament in its [Report on Preparing for a fully Converged Audiovisual World \(2013/2180 \(INI\)\)](#) has called on the Commission to ensure that the aims of Directive 2010/13/EU are accomplished more successfully by increasing flexibility and strengthening co- and self-regulation. Self- and Co-Regulation are also referred to when it comes to protection of youth in the EP’s report.³

Since the EC’s application report came out in 2012, many SROs have further strengthened or specified their codes or guidelines. Just this September 2015 [the German Advertising Standards Council has launched its guidelines on alcohol advertising on social media](#) and the [Irish SRO launched a revised code](#) after a significant public consultation which includes new rules including on advertising to children. On 29 September 2015 the UK Committee of Advertising Practice, has announced that it will be launching a [public consultation on the introduction of new rules governing the non-broadcast advertising, to children](#), of food and soft drinks high in fat, salt or sugar.

Further industry initiatives with regard to alcohol is the Responsible Marketing Pact: In 2012, leading producers from the beer, wine and spirits sectors launched a comprehensive initiative to strengthen advertising self-regulatory schemes for alcohol beverage marketing by establishing a set of common, rigorous standards for their marketing communications throughout the European Union. Under the “[Responsible Marketing Pact](#)”, alcohol beverage producers representing a majority of European alcohol advertising spend have developed common standards for ensuring advertising and marketing, including on social media, is aimed at adults of legal purchase age. The standards are subject to external scrutiny through independent monitoring and public reporting.

The alcohol beverage industry regards the independent monitoring of their commitments and advertising codes as crucial to development of best practice. They are furthermore a useful training exercise for all the participants in the self-regulatory process.

From 2005 to 2008 EASA coordinated three compliance monitoring exercises at the request of the European Forum for Responsible Drinking (EFRD) and in 2009 one for the spirits industry (see all on the spiritsEUROPE website under [reports](#)).

In 2010, EASA and the Brewers of Europe produced the report [Responsible Beer Advertising](#)

³ CNAPA, the Committee on National Alcohol Policy and Action, which is made up of national government representatives has also noted in its [Alcohol Action Plan on Youth Drinking and on Heavy Episodic Drinking](#) (Binge Drinking) (2014-2016) that “Advertising must be in compliance with the Audio-Visual Media Services Directive and with national regulation in Member States. Effective enforcement and self-regulatory measures also play an important role in this context.”

[Through Advertising Self-Regulation](#). The report focused on the effective SR systems in place with regards to beer advertising.

After each compliance monitoring exercise, the SROs involved meet with industry representatives to improve interpretation and understanding of SR rules.

Furthermore, as endorsed and encouraged in the AVMSD (Article 4.7), the leading food and beverage industry has developed further commitments to restrict advertising for unhealthy products (i.e. products that do not fulfil common nutritional criteria) to children under the age of 12. The so-called “[EU Pledge](#)” covers all advertising on TV, print and Internet. The Pledge has achieved – under the close scrutiny of the European Commission – significant results in reducing the exposure of children to ads promoting unhealthy food and beverages.

Since 2012 EASA and experts from self-regulatory organisations in EASA’s membership are in charge of monitoring the compliance of marketing communications for food and beverage products on company-owned websites (the compliance monitoring reports can be found [here](#)).

Set of Questions 3: Strengthening the Single Market

EASA’s Cross-Border Complaints (CBC) system began operating in 1992 to help facilitate advertising self-regulation in the Single Market. Since then EASA has coordinated more than 3,000 cross-border complaints.

The system is based on the “**country of origin**” principle enshrined in the Single Market, and in the current AVMSD and on the principle of “**mutual recognition**”. In following the principle of mutual recognition, EASA members agree to accept advertisements which comply with the self-regulatory rules in the country of origin of the media or advertiser, even if those rules are not identical to their own.

The CBC system based on the country of origin has several advantages for both consumers and business:

- a.) Consumers who complain about ads featured in media or by advertisers originating from outside their home territory can enjoy the same redress available to consumers within the country of origin of the media or advertiser;
- b.) Consumers can complain in their own language and any further information exchange (including the outcome of the decision) will be done in their own language through the local SRO;
- c.) The “country of origin” principle puts the SRO in charge of investigating the complaint which has the best enforcement power (as either the media running the ad or the advertiser is based in the same country as the investigating SRO);
- d.) The system helps reducing regulatory burden for business, as the advertiser is answerable only to their domestic SRO. The system prevents that different national SROs come to diverging decisions about the same campaign.

The use of the “country of origin” principle by SROs is not dogmatic, in that under certain circumstances SROs derive from it whenever it is necessary for the effective handling of complaints. In these cases, the affected SROs work closely together.

Based on our experience, we would like to argue that a change from the “country of origin” principle to a “country of destination” principle would be detrimental in the effort to create a well-functioning Digital Single Market.⁴

It is, however, important to strengthen co-operation practices and facilitate communication. In many countries, SROs already work closely with the national regulators (including the Audio-visual authorities) which facilitates complaint handling and enforcement whenever necessary.

It would be to the benefit of consumers, businesses and regulators if the proposal for a new media framework would build upon the effective advertising self-regulatory system which is already in place and encourages co-operation between national authorities and SROs for the sake of better enforcement.

Acknowledgement of Advertising Self-Regulation in the field of AVMS at national level

In the final section we would like to list examples of acknowledgement of advertising SR and good co-operation practices between national Media/Broadcast Regulators and the local SRO.

Bulgaria

In Bulgaria, the self-regulatory system is officially recognised by the national “Radio and Television Act” in a memorandum of understanding signed by the Bulgarian SRO, NCSR, and the Council for Electronic Media (CEM), the Bulgarian regulator for electronic media. This agreement covers all media and requires that all audio and video service providers observe the Ethical Code of the NCSR. It also establishes that any providers that refuse to implement the recommendations of the NCSR jury are subject to sanctions by CEM. Moreover, all TV and radio ads are monitored by CEM who in turn notifies NCSR in case of breaches of the Ethical Code.

In addition to the general advertising rules, NCSR, in cooperation with CEM, the media industry and the State Agency for Child Protection, has created special rules related to advertising aimed at children. NCSR applies these rules when adjudicating on commercial communications aimed at children.

France

The advertising self-regulation system exists in France since August 29th 1935, making ARPP, the oldest European advertising self-regulatory organisation.

⁴ The SR system for Online Behavioural Advertising requires that all participating companies need to declare their country of origin and the CBC system is thus facilitated. Complaints can be immediately forwarded to the competent body without further investigation.

In France, the Superior Audiovisual Council (Conseil supérieur de l'audiovisuel – CSA) is the authority responsible for regulating the content of radio and television advertisements since 1989. With the beginning of television advertising, the French advertising public sales house, which was created in 1969, referred to its own « reviewing commission » for clearance before TV broadcast. The commission gathered representatives of public authorities, advertisers, advertising federations and the BVP (former ARPP).

When private channels became legal (1986) and TF1 became private (1987), the commission wasn't supervised by the BVP, as the profession had requested, but by the public authority (CNCL, the former CSA). In October 1990, thanks to an inter-professional agreement (advertisers, agencies and TV) with the CSA, the pre-clearance commission was attributed to the BVP (former ARPP) in 1992.

Since then, the CSA is only responsible for the control after broadcast and can ask for the immediate suspension of the broadcast if the commercial breaches a legal text. According to article 14 of the law n° 86-1067 of September 30th, 1986, concerning freedom of communication, the CSA can take into account ARPP Codes drafted by the profession.

The CSA keeps ARPP informed of its decisions and of the reasons of those decisions. Otherwise, ARPP has contacts with CSA on a regular basis.

The French SRO has also signed cooperation agreements with the CSA (Cf. la Charte pour promouvoir une alimentation et une activité physique favorables à la santé dans les programmes et les publicités diffusés à la télévision).

So, by delegation of the CSA, ARPP is responsible for examining all the TV commercials with legal and professional rules before broadcast on TV channels (since 2011, this procedure has been extended to Audiovisual Media Services on Demand).

Partnership conventions have since then been signed with public authorities, as the one signed between the CSA and ARPP, or with the AMF (Financial market public Authority) or the ARJEL (online gambling public Authority)

The result is that this system, an advertising self-regulation system concerted with the CSA, is recognized as effective television advertising in France with the responsibility and respect due to consumers.

Germany

The reasoning of the 13th Interstate Treaty for Amending the Interstate Treaties with Regard to Broadcasting Law (13. Rundfunkänderungsstaatsvertrags) refers to the advertising code of the German SRO, Deutscher Werberat (DWR). The advertising guidelines of the State Media Authorities as well as the advertising guidelines of the main public broadcasters, ARD and ZDF, refer explicitly to the self-regulatory codes regarding advertising of alcohol beverages as well as to the codes regarding advertising to children on broadcast media.

Furthermore, the German Government has declared in its “National Strategy on Drugs and Addiction Policy” (page 18) that it will rely on a functioning self-regulation of the industry.

Greece

The Greek SRO, SEE, operates in close cooperation with several state authorities, including the National Broadcasting Council, which is responsible for the content of programs on TV and radio. As of now, there is no formal co-operation agreement, but co-operation occurs when necessary.

Hungary

In Hungary, the basic principles of the self-regulatory system are outlined in the Hungarian Media Law. The Hungarian SRO, ÖRT, has also signed a co-regulatory agreement with the Media Authority and is closely working with the competition authority and other governmental bodies.

Ireland

In Ireland broadcast advertising is subject to statutory control. It is however also subject to the ASAI Code, and the Chief Executive of the Broadcasting Authority for Ireland (BAI) is a member of the ASAI Complaints Committee. The ASAI receives the majority of broadcasting advertising complaints.

A self-regulatory code for On-demand audio-visual media services was developed by the industry because of the space provided by the Broadcasting Act 2008 and the AVMS Directive. It is approved by the BAI and operated by the ASAI.

Italy

In Italy there are several formal acknowledgements of the Italian SRO, IAP, in national laws which transposed key European Directives, such as the Unfair Commercial Practice Directive, the Misleading and Comparative Advertising Directive and the Audio Visual Media Services Directive. The Italian self-regulatory system is also officially recognised by the Italian Alcohol Law that requires radio and TV broadcasters, advertising agencies and producers to adopt and apply the Italian self-regulatory Code for advertising of alcoholic beverages.

In 2002, a new self-regulatory Code (Codice di Autoregolamentazione TV e Minori) was adopted by the Italian Media, which is aimed at protecting children and regulates advertising aimed at children on TV programmes. Article 4 of this code officially recognises IAP's self-regulatory Code. In 2014, IAP also signed an agreement with the Italian Authority in charge of the rights of children and minors. The agreement recognizes IAP's authority in dealing with advertising which can cause harm to minors.

Netherlands

In the Netherlands, responsibility for handling complaints about the content of advertising on radio and television (national, regional and local) has been legally delegated to the Dutch SRO, SRC, by the Dutch Media Act (see articles 2.92 for public media institutions and 3.6 for commercial media institutions).

All media institutions that are covered by the Dutch Media Act are with regard to their advertising messages subject to the rules of the Dutch Advertising Code and supervision of the Dutch Advertising Authority.

The Dutch Media Authority (Commissariaat voor de Media – CvdM) is responsible for the provisions of the Dutch Media Act and the regulations based on it. The Media Authority's remit includes linear and non-linear public service and commercial broadcasters and cable operators.

Poland

The Polish SRO, RR, co-operates on a regular basis with the National Broadcasting Council. The Council is also formally transferring advertising complaints to the Polish SRO. Most complaints relate to issues concerning religion.

Portugal

The Portuguese SRO, ICAP, has a good relationship with the Portuguese Government and the public authority, which can be demonstrated by the protocol established with the Regulatory Body for Social Communication (Entidade Reguladora para a Comunicação Social - ERC). The ERC was created in 2006 and is responsible for the regulation and supervision of all entities carrying out activity related to the media. The ERC supervises and monitors advertising and commercial communication content in areas where the Directorate General of Consumer (Direcção-Geral do Consumo - DGC) and Advertising Fines Enforcement Committee (Comissão de Aplicação de Coimas em Matéria Económica e de Publicidade – CACMEP) do not have statutory responsibility.

Romania

The Romanian SRO, RAC, is recognised by the Romanian National Audiovisual Council (Consiliul National al Audiovizualului – CNA), the statutory regulator responsible for enforcement of audiovisual legislation. Since 2003 the two bodies have interacted based on a protocol of cooperation. The protocol outlines the relationship between the two bodies who work together to resolve complaints about advertising. CNA consults RAC's opinion on problematical or misleading broadcast advertising and supports RAC in enforcing its decisions.

Slovakia

The Slovakian SRO, SRPR, has a working relationship with the Council for Broadcasting and Retransmission (Rada pre Vysielanie a Retransmisiu) which acts as a legal backstop when an advertiser disregards the SRPR's decision.

Slovenia

In Slovenia, coexistence of regulation and self-regulation has been officially recognised by the national law. The reference to self-regulation can also be found in the Audio Video Media Services Act (Zakon o avdiovizualnih medijskih storitvah - ZAVMS).

Spain

Following a successful cooperation between the Spanish former Audiovisual Authority (*Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información, SETSI*) with AUTOCONTROL which lasted more than 13 years a new collaboration agreement has been signed by the new Audiovisual Authority (*Comisión Nacional de los Mercados y la Competencia, CNMC*) with AUTOCONTROL.

For the last 13 years now, AUTOCONTROL has held a monthly working meeting with the Audiovisual Authority and additionally regular meetings with TV networks in order to keep track of developments in audiovisual advertising and to discuss the activities carried out by AUTOCONTROL, such as discussing AUTOCONTROL's copy advice reports (advice given by the SRO on the compliance of advertisements before broadcast), the adjudication of complaints made by the Jury of Advertising (AUTOCONTROL's Alternative Dispute Resolution system) on advertisements that were already disseminated, and the establishment of interpretive criteria. Since the launch of the TV advertising self-regulation system, AUTOCONTROL has issued more than 50,800 reports (Copy Advice® reports) on prospective broadcast ads. Alone in 2014, AUTOCONTROL issued 7,500 pieces of advice (control reports) for broadcast ads only out of the 24,800 control reports and queries issued in total.

The new Agreement between AUTOCONTROL and the Authorities helps consolidate the system of co-regulation of audiovisual advertising in Spain that was established in 2002. It established on the one hand, a voluntary procedure for a previous verification of television ads created by TV operators but managed by AUTOCONTROL; and, on the other hand, a system of cooperation in the control of television advertising between AUTOCONTROL and the former Spanish audiovisual authority (Secretariat of State for Telecommunications and the Information Society, SETSI).

It is precisely the effectiveness of the partnership between the Regulator and the SRO that explains why there has been explicit support for co-regulation of broadcast advertising in Spain in legal texts. Thus, in addition to the provisions on TV self-regulation which are included in the General Law on Audiovisual Communication, the Law 3/2013 of June 4th, which established the creation of the National Commission of Markets and Competition (CNMC), now also includes a specific provision on "Promoting TV advertising co-regulation."

The new agreement signed between CNMC and AUTOCONTROL in the framework of this legislative provision (2015), includes the following:

- i. CNMC recognizes the usefulness of self-regulation of TV advertising and, in particular, welcomes and supports the prior consultation system managed by AUTOCONTROL.
- ii. The previous advice requested by a TV network is forwarded to the other TV networks to ensure the effectiveness of the system (especially if the report is negative).
- iii. TV broadcasters are obliged to comply with the rulings of the Jury of AUTOCONTROL.
- iii. It is expected that when a service provider of television audiovisual media services receives an administrative requirement or a communication from CNMC concerning an audiovisual commercial communication whose final version has obtained a positive report from

AUTOCONTROL, it may inform CNMC of the content of such report in order to show its diligent behavior.

iv. The agreement states that the CNMC may take into account that a television audiovisual commercial communication has obtained a positive Copy Advice® report from AUTOCONTROL, as long as they have been subjected to the preliminary report, which will be incorporated into the corresponding administrative file (presumption of good faith concerning the TV network).

v. It specifies that, in case of ex officio investigations (on its own initiative or following a complaint received), CNMC may require that AUTOCONTROL provides its opinion and intervention on a specific commercial information that had not been subjected to prior consultation. In such cases, AUTOCONTROL will bring the case before its Advertising Jury, which will proceed according to its Rules.

UK

In the UK, since its inception in the 1950s, broadcast advertising (television and radio) has been subject to a statutory regulation. In 2004, the success of the self-regulatory system led the government communications regulator, Ofcom, to delegate operational responsibility for regulating broadcast advertising to ASA (as part of a co-regulatory relationship). This created a 'one-stop shop' for all advertising complaints within a self- and co-regulatory framework. For non-broadcast media, the self-regulatory part of the system, the ASA applies the Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing written and maintained by the Committee of Advertising Practice (CAP). For television and radio, ASA applies the Code of Broadcast Advertising (BCAP Code), written and maintained by the Broadcast Committee of Advertising Practice (BCAP). BCAP is responsible for writing and maintaining the UK Code of Broadcast Advertising, but any major changes to the rules must be approved by Ofcom. Under the UK Communications Act, all broadcasters licensed by Ofcom are required to ensure that the advertisements which they carry comply with the BCAP.

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European Advertising Standards Alliance
Transparency Register ID 070638512780-81

ANNEX 1 - Best Practice Recommendation summaries

Best Practice Recommendation on Copy Advice

This BPR describes one of the key elements of the self-regulatory system – the copy advice. Copy Advice is a service for advertisers, agencies, media owners and media service providers who want to check the compliance of their prospective advertisements or marketing campaigns against the national advertising codes. Copy advice is provided by the SRO on a confidential basis and usually accompanied by advice on how non-complaint advertisements need to be amended to be compliant. The BPR defines the difference between copy advice and pre-clearance and explains how the service can be funded and in what form it should be provided. The BPR also offers guidance to SROS on the type of information that should be included and how long the process should take.

Best Practice Recommendation on Standards of Service

The BPR on Standards of Service aims to establish recommended standards of service for SROs in their daily operational activities.

Best Practice Recommendation on Publication of Decisions

The BPR on the Publication of Decisions offers guidance to SROs on making public the adjudications of their juries (also known as complaints committee). Transparency in decision making is essential to establishing and maintaining the credibility of the system and building consumer confidence. The BPR explains the purpose of publishing decisions, both as a deterrent and as an information source for advertisers, to help prevent future breaches of the advertising codes. It also lists the important features of an effective system, including the right information to be included in the report, and suggests media for publishing the decisions.

Best Practice Recommendation on Claims Substantiation

The BPR on Claims Substantiation addresses a central principle of advertising self-regulation, the reversal of the burden of proof. The principle requires advertisers to prove that an advertising claim is truthful, rather than the complainant having to demonstrate that it is not. The BPR describes how the principle works in practice, what types of claims need to be substantiated, the criteria for assessing claims, the role of experts in this process and the appropriate length of time to be allowed for providing evidence.

Best Practice Recommendation on Confidentiality of Identity of the Complainant

The BPR on Confidentiality describes the differing national approaches regarding the disclosure of the identity of the complainant. When it comes to B2B cases, the SROs usually disclose the identity of the complaining party, but not necessarily in B2C cases.

The BPR gives advice on this topic and recommends when prior consent needs to be sought before information is transferred to another SRO under the cross-border procedure.

Best Practice Recommendation on Jury Composition

The BPR on Jury Composition addresses the principle that the self-regulatory system must be, and be seen to be, independent. For this reason, decisions of the self-regulatory juries must be reached in an impartial manner and this should be reflected in the complaints handling process and the composition of the jury. This Recommendation provides guidance on the composition and size of the jury, the selection process and conditions of service, as well as the composition of the appeals body.

Best Practice Recommendation on Complaints Handling

The BPR on Complaints Handling emphasises the importance of dealing with complaints quickly and efficiently and provides guidance on how this can be achieved. The BPR also offers advice on the notification of the outcome to complainants and advertisers, the appeals procedure, and guidelines on how SROs should manage complaints handling against defined standards of service, including specific performance targets.

Best Practice Recommendation on Advertising Monitoring

The Monitoring BPR deals with an important activity which, by contrast with reactive complaints handling, enables an SRO to play a proactive role in ensuring advertising code compliance and the implementation of its complaints adjudications. The document suggests ways of obtaining systematic access to advertising and explains how to conduct monitoring on specific sectors, media or issues that have attracted high levels of complaints or are linked to societal concerns. The BPR provides guidance on monitoring procedure, follow-up action and reporting of results.

Best Practice Recommendation on Code Drafting and Consultation

The BPR on Code Drafting and Consultation offers advice on the procedure for reviewing and revising national advertising codes. The aspects covered include ownership of the code, its scope, coverage and content, the frequency of updates and the processes of drafting, consultation and adoption, implementation and creating awareness of the code. The document examines in detail key procedural issues, notably consultation with interested parties outside the advertising industry, which are regarded as essential features of a credible self-regulatory model.

Best Practice Recommendation on SRO Funding

The BPR on Funding explains why adequate and properly resourced long-term funding is essential to enable self-regulatory systems and SROs to comply with EASA's Best Practice Model. It examines the strengths and weaknesses of the membership and levy systems and assesses four different European national self-regulation funding methods against the criteria of the EASA Best Practice Model and Charter Principles.

Best Practice Recommendation on SRO Communications

The BPR on Communication emphasises that to achieve effectiveness at national level, SROs must work to create awareness of the self-regulatory system among key stakeholders, i.e. consumers, regulators and the advertising industry, so that all concerned understand and can participate in the system. It points out the importance of transparency in self-regulatory procedures and provides guidelines on communication strategies, tools, measurement and resources.

Best Practice Recommendation on Digital Marketing Communications

This BPR was first published in October 2008 to offer advice and support to SROs and industry members on the application of self-regulation to Digital Marketing Communications (DMCs). More specifically it explained how SROs could extend the remit of their advertising codes to include DMCs. In 2015 the Digital Marketing Communications BPR was revised to be 'futureproof' against new technological developments in advertising. A special emphasis has been placed on the need for all marketing communications to be easily identifiable for consumers, no matter where or how they are displayed.