

2018

EASA BEST PRACTICE RECOMMENDATION ON INFLUENCER MARKETING

EASA

EASA – the European Advertising Standards Alliance is the single authoritative voice on advertising self-regulation in Europe. EASA promotes high ethical standards in commercial communications by means of effective self-regulation, for the benefit of consumers and business in Europe and beyond.

Effective advertising self-regulation helps ensure responsible advertising, meeting consumers' demand for honesty and transparency, regulators' demand for responsibility and engagement and businesses' demand for freedom to operate responsibly. EASA and its members have developed a robust and coherent system of advertising self-regulation that can respond effectively to new challenges.

EASA is not a Self-Regulatory Organisation (SRO) in itself, but acts as a co-ordination point for best practice in the implementation of self-regulation, as well as operational standards for its national SRO members. Part of EASA's role involves coordinating the cross-border complaint mechanism as well as international compliance monitoring exercises. EASA also collects and analyses top line statistical data on received and resolved complaints, as well as on copy advice requests and pre-clearance from its SRO members each year.

EASA was set up in 1992 to represent national self-regulatory organisations in Europe. In 2004, it developed into a partnership between national advertising SROs and organisations representing the advertising industry. Today, EASA is a European network of 41 organisations (27 SROs from Europe and 14 advertising industry associations, including advertisers, agencies and the media) committed to making sure advertising is legal, decent, honest and truthful. EASA is also a founding member of the International Council on Ad Self-Regulation (ICAS).

EASA is a not-for-profit organisation with a Brussels-based Secretariat. For further information please visit www.easa-alliance.org.

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1. What is an EASA Best Practice Recommendation?

EASA's Best Practice Recommendations (BPRs) are designed to provide support and advice to EASA's Self-Regulatory Organisations (SROs) and industry members on the practice of advertising self-regulation. They are based on EASA's "Common Principles and Operating Standards of Best Practice"¹ (EASA Common Principles) and EASA's "Best Practice Self-Regulatory Model"². In June 2004 the advertising industry committed to achieve these through the signing of EASA's "Advertising Self-Regulation Charter"³ for a stronger self-regulatory network in the enlarged European Union, while recognising that advertising self-regulation reflects a rich and varied tapestry of systems for business responsibility, complementing the law.

EASA BPRs can be divided into two main categories: operational and blueprint BPRs. Operational BPRs give guidance on the operation, structure and procedures of SROs while blueprint BPRs provide guidance on the remit and codes of SROs. The content of blueprint BPRs, such as the present publication on Influencer Marketing, needs to be agreed upon by the whole advertising eco-system and all SROs at European level.

Best Practice Recommendations do not constitute a European code and are not formally binding. However, they do aim to achieve a high level of coherence regarding remit and application of advertising self-regulation throughout Europe, but the way to achieve this at national level may differ as a result of the national regulatory, cultural and societal context. The implementation of a BPR at national level needs to be the result of a negotiation process taking into account the existing (self) regulatory framework and the legal background to find an approach best suited to the

1 In 2002, EASA approved its Common Principles and Operating Standards of Best Practice to be complied with by all national SROs, with the aim of making the continued acceptance of self-regulation by European consumers and government at both national and EU levels more certain.

2 Based on the EASA Common Principles, EASA approved the "Best Practice Self-Regulatory Model" in April 2004. This Best Practice Model describes the various component parts of self-regulatory systems that the EASA wishes to see in place in all self-regulatory systems for advertising, with the aim of helping the EASA and its members to evaluate, initiate and develop effective and efficient systems.

3 On 25 June 2004, the European advertising industry formally signed the "Advertising Self-Regulation Charter" in Brussels in front of the European Commission. The Charter offers a goal for self-regulatory systems throughout the Single Market and confirms the advertising industry's commitment to achieve a stronger self-regulatory network in the enlarged European Union, while recognising that advertising self-regulation reflects a rich and varied tapestry of systems for business responsibility, complementing the law.

national circumstances and needs. A national SRO may choose to adopt provisions in its advertising code that go beyond those recommended by EASA; some indeed, have already done so.

BPRs are thus also designed to stimulate and assist national discussions on the development of effective self-regulation and are intended as a means for taking clear actions at both European and national level.

2. Best Practice Recommendation on Influencer Marketing

2.1 Introduction

As elaborated in the previous chapter, all EASA BPRs are based on EASA's Charter which commits its signatories to ensure comprehensive coverage by self-regulatory systems of all forms of advertising and all practitioners (Art 1.) and to enforce comprehensive and effective codes of advertising practice (Art. 3), which would be "applicable to all forms of advertising", including digital marketing communications, which cover advertising using "digital interactive media intended primarily to promote products or to influence consumer behaviour."⁴

Due to the fast-paced evolution of technologies and rapid development of platforms new forms of digital advertising practices have evolved which have seen an exponential growth in recent years urging SROs and EASA to have a closer look at such marketing communications and explore the best ways to address the challenges coming with them.

Therefore, the present EASA Best Practice Recommendation on Influencer Marketing aims to look at the key elements of influencer marketing techniques and assist SROs in creating their own national guidance by showcasing already existing national guidance on this topic across the SR network⁵ and elaborating the different elements a guidance should address and define.

EASA recognises that, subject to local parameters SROs may vary in their national practices and choose to go beyond what is suggested in this document or design and implement alternative strategies and guidelines to ensure that influencer marketing abides by the national advertising codes and is honest, decent and truthful and can be thus trusted by consumers.

⁴ ICC Advertising and Marketing Communications Code, Chapter C: Direct Marketing and Digital Marketing Communications, 2018

⁵ See Annex I: National SR guidelines on influencer marketing in this BPR

2.2 Influencer marketing

2.2.1 What is Influencer marketing?

Academics and scholars frequently choose to define influencers as independent third party endorsers who shape audience attitudes through blogs, posts, tweets, and the use of other social media⁶. Subsequently influencer marketing traditionally involves elements of identification of such individuals by the advertisers and engaging them in marketing activities and promotion of the brand and/or its products⁷.

On the one hand, such a broad definition of influencer marketing is needed to make it future proof and ensure that ongoing developments of this advertising technique will still fall under the scope of SR codes. On the other hand, and for the purpose of this BRP, it is important to define influencer marketing based on criteria which allow to decide when the influencer's activity on social media is a commercial communication as opposed to pure editorial content. As already defined in EASA's Digital Marketing Communications BPR:

"If marketers or brand owners approach users to generate content in exchange for payment or other reciprocal arrangements, and have control of the content, then this would need to be clearly identified as marketing communication⁸."

Therefore, the presence of two conditions - compensation and editorial control - allow to identify an influencer's message as a marketing communication. Later sections of the present BPR will look at these conditions, as well as their variations, more in depth.

2.2.2. Should Influencer marketing be covered under the remit of the SRO?

In 2008, EASA launched its first edition of the Digital Marketing Communications Best Practice Recommendation (DMC BPR)⁹. The DMC BPR (revised in 2015) recommended the extension of the "remit of advertising self-regulation to all forms of marketing communications, including for digital media, as well as any future forms of digital marketing communication that are yet to be developed."

⁶ Karen Freberg, Kristin Graham, Karen McGaughey, Laura A. Freberg, Who are the social media influencers? A study of public perceptions of personality, Public Relations Review, Volume 37, Issue 1, 2011, Pages 90-92,

⁷ Brown, Duncan and Nick Hayes (2008), Influencer Marketing: Who really influences your customers?, Routledge

⁸ This should not prejudice the existing legal protections.

⁹ EASA, "EASA Digital Marketing Communications Best Practice Recommendation" 2015, (first published in 2008). The DMC BPR had been developed in co-operation of all EASA SRO and Industry members as well as external stakeholders such as platforms.

The DMC BPR provides a “non-exhaustive” list of digital advertising techniques and gives further elaboration of selected marketing communications. Section “2.2.6 Social Media” is particularly relevant to this BPR as it states that

“Marketing communications on social media may take the form of <...> UGC to which the marketer elects to associate his brand, product or service”¹⁰.

The DMC BPR then further clarifies that although UGC is usually outside the remit of SR codes, the UGC that is “endorsed by a marketer” or generated “in exchange for payment or other reciprocal arrangements” falls into the remit of regulation¹¹.

These definitions match the broad description of influencer marketing provided above and, therefore, undeniably fall within the remit of SROs.

Since the DMC BPR has been introduced, all EASA members have accepted and implemented the DMC BPR¹².

At international level, the International Chamber of Commerce (ICC) has in its recent update of the ICC Advertising and Marketing Communications Code (2018)¹³ unambiguously stated its “applicability to other participants in the marketing eco-system, including market influencers, bloggers, vloggers, affiliate networks, [etc.]¹⁴”.

2.2.3. Importance of Influencer marketing: why is it addressed in a separate BPR?

As described in the preceding sections of this BPR, influencer marketing is by its nature already covered by the remit of EASA’s SROs since the adoption and implementation of the DMC BPR in 2008. However, the growing importance of this marketing technique and especially the role played by influencers – a third party which is not part of the self-regulatory system in its present form – make additional guidance necessary to ensure that the advertising self-regulatory efforts are on the forefront of ensuring responsible marketing and protecting consumers and society at large from inappropriate advertising.

¹⁰ EASA, “EASA Digital Marketing Communications Best Practice Recommendation” 2015, section “2.2.6 Social Media”

¹¹ EASA, “EASA Digital Marketing Communications Best Practice Recommendation” 2015, section “2.2.7 User-Generated Content”

¹² Based on EASA Best Practice Recommendations Scoreboard, annual assessment exercise, 2018 edition

¹³ ICC Advertising and Marketing Communications Code, Chapter C: Direct Marketing and Digital Marketing Communications, 10th Code Revision – significant changes, p.2, 2018

¹⁴ ICC Advertising and Marketing Communications Code, Chapter C: Direct Marketing and Digital Marketing Communications, Art. C20, 2018

Content created by social influencers is viewed and followed by an increasing number of people, particularly young people and minors. For some it is even a part of their daily lives and an important source of information. Therefore, it is vital to clearly draw the lines between genuine unbiased opinions shared by such influence holders and the ones that have a marketing intent. However, since influencer marketing is closely linked to the concept of user generated content, these lines can blur more easily than in traditional advertising, which could subsequently mislead consumers.

Therefore, the role of the advertising self-regulatory organisations is to guide the industry stakeholders – advertisers and brand owners as well as influencers themselves – to use this marketing technique responsibly and in compliance with the existing SR principles and national SR codes.

The following sections of the present BPR will highlight the key elements which are recommended to be addressed by SROs when developing or updating their guidance on influencer marketing. The document will also recommend some proactive steps which SROs could take in order to ensure higher compliance with their codes in this area.

2.3. Recommendation on Influencer marketing guidance

2.3.1. Editorial control and compensation

As defined in section 2.2.1. of this BPR content uploaded by influencers (which e.g. promotes a product, a brand etc.) is then defined as a marketing communication if the advertiser had “editorial control” over the message shared by the influencer and if the advertiser compensated the influencer either by “payment or other reciprocal arrangements”. Thus, editorial control as well as compensation are two key elements defining whether an influencer’s message should be considered as advertising and thus falling under the SR codes.

2.3.1.1. **Editorial control** can be understood broadly and include different elements ranging from more inclusive to more strict definitions. Examples of inclusive definitions are the advertisers’ suggestion or proposal for the tone, structure and/or direction of the message; for example, requests for a positive review, requests for a specific number of posts on a certain social media channel mentioning the service/product or requests to show the product in a social media post. The concept of editorial control can also be defined more strictly, including thus a dominant control with a pre-suggested message script, scenario or speech for the influencer prepared by the advertiser with additional requests for validation of the content before its publication.

EASA acknowledges the differences already existing in national SR practices and approaches on this issue and recommends, regardless of the chosen definition of editorial control, to explain the concept clearly as part of their guidance, particularly by providing examples to illustrate different situations.

2.3.1.3. **Compensation** for the marketing communication shared by the influencer can also take different forms ranging from formal contractual agreements defining monetary payments to a mere provision of free goods or other reciprocal commitments for the benefit of the influencer. While a contract and/or a monetary remuneration by the advertiser or its representative is undoubtedly the clearest and most straightforward way to establish the commercial relation between the brand and the influencer, other types of arrangements should also be considered as compensation. For example, compensation in kind, such as the provision of free products/services or discounted products/services might be considered as compensation for influencer’s messages. However, some exemptions might be made to the products/services of particularly low value, i.e. “free samples”, which should be defined in the SRO’s guidance.

As suggested for editorial control, the considered mechanisms of compensation should be explained in the SRO guidance (preferably by giving examples).

Although both elements - editorial control and compensation – in combination clearly identify a marketing communication, EASA also recognises that some SROs might choose to assess these elements differently and treat them individually as sufficient to determine the existence of marketing intent. However, it is advisable to assess and adopt such practice with caution, as it might eventually lead to defining all independent reviews of products and services as marketing communications (e.g. those products provided to journalists in relation to new product launch campaigns or press screenings).

2.3.2. Recognisability and disclosure

2.3.2.1. **Recognisability** of commercial communications is of paramount importance and is a cornerstone of responsible advertising. As for traditional media (native advertising, product reviews on TV etc.), some forms of marketing communications online, including influencer marketing, require dedicated disclosure making sure that the audience clearly recognises a marketing communication as opposed to pure editorial content. The ICC code, which is at the basis of most national advertising codes, states that marketing communications:

“[...] should be clearly distinguishable as such, whatever their form and whatever the medium used. When an advertisement, including so-called “native advertising”, appears in a medium containing news or editorial matter, it should be so presented that it is readily recognisable as an advertisement and where appropriate, labelled as such.

The true commercial purpose of marketing communications should be transparent and not misrepresent their true commercial purpose. Hence, a communication promoting the sale of a product should not be disguised as, for example, market research, consumer surveys, user-generated content, private blogs, private postings on social media or independent reviews”.

(ICC Advertising and Marketing Communications Code, Art. 7 — Identification and Transparency, 2018 edition, p.10)

All influencer marketing communications should therefore be designed and presented in such a way that that the audience immediately identifies them as such. This identification can be done by various means (as discussed in the following section) as long as the public is made aware of the existing engagement or agreement between the advisers and the influencer each time the commercial message is being shared.

It is recommended that in their guidance the SROs emphasise that such “awareness” and recognition should be widespread and not attained only by a specific target group or selected audience (e.g. the followers of a particular influencer who might be “aware” of the agreement between the brand and influencer from his/her previous messages).

2.3.2.2. **Disclosure** of commercial intent of the influencer’s message could be made in a variety of ways, but, most importantly, it should appear instantly. Therefore, in their national guidance regarding influencer marketing the SROs are recommended to consider giving examples of acceptable disclosure by covering all different types of formats used by influencers (e.g. pictures, posts, tweets, videos, blogs), different platforms that the messages appear on (e.g. Instagram, YouTube, Facebook, Twitter) as well as different contexts of local markets, national languages and different main target audiences (e.g. adults, young adults, children).

The following elements of disclosure should be further defined at national level:

- Placement of disclosure
- Timing of disclosure
- Labelling of disclosure (such as particular hashtags which are accepted as a clear identification of marketing communications and the ones that are likely to confuse consumer and not be considered as sufficient by the SROs).
- Wording of appropriate disclosure (such as phrases used to correctly identify the nature of the agreement with the advertiser, e.g. “these products have been sent for free to give a review”, “the trip was sponsored by”)

EASA acknowledges that due to the evolving nature of influencer marketing as well as the changes in the tools provided by platforms, setting up an exhaustive list of appropriate labelling (i.e. particular hashtags, formulation of phrases) may not be advisable and SROs might instead choose to give more general guidance of how to make the disclosure easily identifiable and distinguishable from other information given in the influencer’s message.

2.3.3. Responsibility

As laid down in the ICC Code the “general rules on responsibility are technology neutral and apply to all forms of marketing communications¹⁵”. Furthermore “Overall responsibility for all aspects

¹⁵ ICC Advertising and Marketing Communications Code, Chapter C: Direct Marketing and Digital Marketing Communications, Art. 23, 2018

of direct marketing and digital marketing activities, whatever their kind or content, rests with the marketer ¹⁶”.

However, a recent revision of the ICC Code also acknowledges that “All parties concerned need to take into account that responsibility, also applies to other participants in the direct marketing and digital marketing eco-system including: <...>market influencers, bloggers and vloggers¹⁷”. This shows that influencers have and should be reminded of their duty to abide by the SR codes and to adhere to responsible marketing practices.

EASA acknowledges that the SROs may identify which parties bear responsibility differently based on the provisions in the national laws and the specific conditions identified in a given influencer marketing case (e.g. lack of editorial control by the brand, no clear agreement between the brand and the influencer). It is therefore recommended that in their national guidance for influencer marketing SROs would explain the responsibilities and obligations of all parties concerned (i.e. advertisers and/or their representatives, influencers and/or their agencies) and remind them of their duties in the local markets.

2.3.4. Awareness raising

EASA’s Self-Regulatory Organisations already have a multitude of communication tools available which they use for awareness raising. Depending on the local context, SRO’s membership and structure, these tools include sharing news and updates via various communication channels, publications, communications with journalists and the media, or organisations of seminars or workshops for the industry on specific topics. Therefore, national SROs are in the best position to decide which communication techniques would suit their needs best.

Advice and guidance on influencer marketing can also be given in different ways. SROs might want to consider drafting a dedicated guidelines’ document on influencer marketing, providing advice and/or documents listing frequently asked questions online, organising workshops for advertisers (or their representative) working with influencers (or their agencies) as well as training and educating the influencers themselves. This list is by no means exhaustive, limiting or obliging SROs to conduct any of the specific activities.

Nevertheless, EASA recommends that given the growing importance of influencer marketing at global level, its member SROs should raise awareness and advocate for responsible influencer

¹⁶ ICC Advertising and Marketing Communications Code, Chapter C: Direct Marketing and Digital Marketing Communications, Art. C20, 2018

¹⁷ Ibid.

marketing by providing guidance for relevant industry practitioners in a way that best suits the context and the need of their local markets.

3. Annexes

Annex I: National SR guidelines on influencer marketing

Country	Influencer marketing guidelines/ guidance notes or other advice given on the subject
Austria	In development
Belgium	Belgian Advertising Council Recommendations on Online Influencers (in Dutch and in French)
France	Part of Recommandation Communication publicitaire digitale
Germany	Leitfaden zur Kennzeichnung von Werbung auf Instagram
Ireland	ASAI Guidance Note
Italy	Part of IAP Digital Chart
Romania	In development
Spain	In development
Sweden	The Swedish Consumer Agency Guidance on marketing in blogs and other social media]
The Netherlands	Part of SRC The Dutch Advertising Code
UK	CAP and CMA's Influencer's Guide to making clear that ads are ads

Annex II: EASA's Advertising Self-Regulation Charter

Preamble

Advertising self-regulation is recognised as the prime example of business self-regulation and corporate social responsibility. It is found, in varying forms, in most European countries.

Advertising self-regulation, like advertising itself, is a grassroots activity that operates most effectively at national level. Two vital factors therefore determine the form that advertising self-regulation takes in any country. The first is tradition: each country's self-regulatory system must take account of its cultural, commercial and legal traditions. The second factor is opportunity: self-regulation's relationship with the law is a complementary one and self-regulation can flourish only insofar as the legislative landscape allows it sufficient scope.

However, these variations in structure and procedure are not reflected in the rules applied by national self-regulatory systems, where a remarkable degree of consistency is apparent. This is not surprising, since all these national rules are based on the International Chamber of Commerce's Codes of Marketing and Advertising Practice. They all set out to achieve the same result: a high standard of consumer protection based on the premise that advertising should be legal, decent, honest and truthful.

The European Advertising Standards Alliance and its members firmly support the creation of a Single Market for consumers and businesses and are committed to working together to deliver it. A coherent self-regulatory framework across the EU is the foundation for ensuring the appropriate balance between an effective Single Market, providing a level playing field for advertisers to operate in, and the equally important objective of maintaining a high level of consumer protection. Advertising self-regulation thus reflects a rich and varied tapestry of systems for business responsibility, complementing the law. This Charter of Best Practice offers a goal for self-regulatory systems throughout the Single Market while recognising that the means of achieving it may differ. It is a practical example of 'unity through diversity'.

Charter

We, the undersigned, representatives of the advertising industry of Europe i.e. advertisers, agencies and media, and the European Advertising Standards Alliance (EASA), re-commit to effective self-regulation across the enlarged European Union as the best way to maximise confidence in responsible advertising – for consumers, competitors and society.

We recognise that effective advertising self-regulation demonstrates industry's ability and obligation to regulate itself responsibly, by actively promoting the highest ethical standards in all commercial communications and safeguarding the public and consumer interest. We further recognise that contractual relationships between advertisers, agencies and the media should recognise the need for responsible marketing communications.

We declare

- That effective self-regulation provides compelling evidence of business' commitment to Corporate Social Responsibility
- That effective self-regulation together with the statutory enforcement authorities can provide appropriate redress for consumers, a level playing field for advertisers, and a significant step towards completing the Single Market
- That legislation cannot achieve these aims on its own, but it can provide the essential legal backstop to make self-regulation effective and tackle rogue traders
- That the continued acceptance of self-regulation by European consumers, governments and society can best be assured by the application of common principles and standards of best practice in all self-regulatory systems across Europe.

To this end, recognising EASA's statement of Common Principles and Operating Standards of Best Practice¹⁸ and EASA's Best Practice Self-Regulatory model¹⁹, we confirm our commitment to achieving in the practical operation of self-regulatory bodies²⁰ and systems the following principles:

1. Comprehensive coverage by self-regulatory systems of all forms of advertising and all practitioners.
2. Adequate and sustained funding by the advertising industry proportionate to advertising expenditure in each country.
3. Comprehensive and effective codes of advertising practice:
 - based on the globally accepted codes of marketing and advertising practice of the International Chamber of Commerce (ICC);

¹⁸ Adopted at EASA's AGM on 31 May 2002 in Brussels, Belgium.

¹⁹ Adopted at EASA's AGM on 1 April 2004 in Istanbul, Turkey.

²⁰ Self-Regulatory Organisations (SROs) are independent, national bodies, actively supported by the constituent parts of the local advertising industry. SROs are responsible for administering their respective self-regulatory systems and applying national codes of advertising practice.

- applicable to all forms of advertising.
4. Broad consultation with interested parties during code development.
 5. Due consideration of the involvement of independent, non-governmental lay persons in the complaint adjudication process.
 6. Efficient and resourced administration of codes and handling of complaints thereon in an independent and impartial manner by a self-regulatory body set up for the purpose.
 7. Prompt and efficient complaint handling at no cost to the consumer.
 8. Provision of advice and training to industry practitioners in order to raise standards.
 9. Effective sanctions and enforcement, including the publication of decisions, combined with efficient compliance work and monitoring of codes.
 10. Effective awareness of the self-regulatory system by industry and consumers.

Annex III: Overview of EASA BPR

The following EASA Best Practice Recommendations²¹ have been issued to-date:

- Advertising Monitoring
- Claims Substantiation
- Code Drafting and Consultation
- Complaints Handling
- Confidentiality of Identity of the Complainant
- Copy Advice
- Digital Marketing Communications
- Jury Composition
- Online Behavioural Advertising
- Publication of Decisions
- SRO Communications
- SRO Funding
- Standards of Services

²¹ For more information, please visit EASA website www.easa-alliance.org.