

Brussels, 22 February 2018

AVMSD revision

EASA POSITION PAPER

In line with the European Commission's Better Regulation Agenda, the European Advertising Standards Alliance would like to stress the proven value of effective self- and co-regulation as part of a modern and sustainable policy framework. **Maintaining the recognition and encouragement of self- and co-regulation in the currently revised Framework for Audiovisual Media Services is vital for a healthy and thriving European media landscape.**

EASA recognises the efforts done by the European Commission, the Council of the EU and the European Parliament to negotiate a sensible new legal framework for Audiovisual Media Services, and has welcomed the balanced proposal for a new AVMSD drafted by the European Commission.

EASA would also like share its appreciation that, in the Council's general approach, Member States:

- a) Fully recognise co- and self- regulation as a means to ensure responsible and better audio-visual commercial communications;
- b) Recognise the existence and relevance of national codes in ensuring better audio-visual commercial communications in accordance with local culture and practice, by stating that *"the Union codes shall be without prejudice to the national codes of conduct"*;
- c) Define the role of ERGA, positioning it as a body providing *"technical expertise"*, providing *"opinions upon request of the Commission"*, *"information"*, *"experience"* and *"best practice sharing"*, thus avoiding the creation a pan-European duplication of Member State regulatory organisations at EU level and the creation of a para-statal body enforcing self-regulatory codes which would substantially undermine the existing and well-functioning self- and co- regulatory systems in advertising.

Areas of concern

Article 4a – SR/CR and the enforcement of the advertising codes

EASA is concerned that the initial AVMSD proposal of the European Commission and in particular the article on self- and co-regulation (Article 4a) could be altered in a way such that the very concept of self-regulation is undermined; even made absurd. We are in particular concerned about proposed article 4.7 of the European Parliament's report which states that *"the codes shall provide for effective and transparent enforcement by the regulatory bodies and / or authorities, including effective and proportionate sanctions"*. It is an inherent feature of self-regulation that codes of conducts are not enforced by authorities, but, as for example in the case of advertising self-regulation, by independent self-regulatory bodies. Even in co-regulatory schemes, where the regulator has delegated powers to self-regulatory organisations, the enforcement of the advertising codes and laws is done by SROs.

Any other interpretations would undermine the very concept of “self” regulation and the original spirit of Recital 44 of the 2010/13/EU directive which reads *“this should [not] disrupt or jeopardise current co-regulation or self-regulatory initiatives which are already in place within Member States and which are working effectively.”*

Union Codes

As previously indicated, we welcome the wording of article 4a which states that *“Union codes shall be without prejudice to the national codes of conduct”*. Nonetheless, we remain concerned that the final wording of the Directive may weaken/overrule the existing national self-regulatory systems in place in the field of advertising.

EASA agrees that in the new areas, which are currently not regulated (either by hard or soft law), it would make sense to encourage all relevant stakeholders to discuss and develop new codes of conduct (e.g. when it comes to issues of accessibility of content online or hate speech). However, it is crucial to make sure that the development of Union Codes does not put in jeopardy the already existing, well-functioning systems of self- and co-regulation, such as those we have put in place in the field of advertising.

We continue to strongly support the encouragement to Member States for developing self- and co-regulation through codes of conduct adopted at national level in the fields coordinated by the AVMS Directive and particularly regarding inappropriate audio-visual commercial communications¹.

Most recent position

At this point, EASA is glad to support the wording of the most recent compromise on Article 4a:

4a

1. Member States shall encourage co-regulation and self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. Those codes shall be such that they: a) are broadly accepted by the main stakeholders in the Member States concerned, b) clearly and unambiguously set out their objectives, c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at, and d) provide for effective enforcement, including effective and proportionate sanctions.

2. Member States and the Commission may foster self-regulation through Union codes of conduct drawn up by media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations. These codes shall be broadly accepted by the main stakeholders at Union level and shall comply with points (b) to (d) of paragraph 1. The Union codes of conduct shall be without prejudice to the national codes of conduct. The Commission shall make these codes publicly available and may give them appropriate publicity. In cooperation with the Member States, the Commission shall facilitate the development of Union codes of conduct, where appropriate, in accordance with the principles of subsidiarity and proportionality. The draft Union codes of conduct and amendments thereof shall be submitted to the Commission by the signatories of these codes. The Commission shall consult the Contact Committee on those draft codes or amendments thereof.

¹ These principles were established in the Articles 4 and 9 of the current Directive and in Articles 6a and 28a of the amending act.

More about advertising standards

Self-regulation sets high standards in commercial communications

Advertising self-regulation plays a key role in enforcing consumer rights when it comes to commercial communications. Indeed, advertising self-regulatory organisations (SROs) throughout Europe are responsible for developing national codes of conduct that notably implement rules from EU texts such as the Audiovisual Media Services Directive and the Unfair Commercial Practices Directive, as well as national regulations on advertising. Very often, those codes entail even stricter provisions than the law foresees and cover additional rules for areas and sectors which are close to the hearts of consumers and society in its whole, such as food and beverage advertising, advertising of alcoholic beverages and advertising to children. SROs make sure that all advertising on all media meets the high standards laid down in those codes. They also ensure that all ads are legal, decent, honest and truthful.

Self-regulation works

Advertising self-regulation has proven to be very successful. Many Member States have recognised that advertising self-regulatory systems are useful and efficient and consider them as valid alternative dispute resolution mechanisms that work within legal frameworks. The EU institutions acknowledged the value of self-regulation as well: the European Parliament resolution 'Towards a Digital Single Market Act' from 2015 called for "*strengthening of co- and self-regulation*" in the review of the AVMS, including "*improving how children are protected online, through transparent self-regulatory measures*"², while the European Commission decided to strengthen the references to self- and co-regulation in the AVMSD proposal due to convincing evidence coming from the Impact Assessment Exercise and REFIT Evaluation.

Self-regulation is an easy, quick, and cheap tool for consumers

Thanks to committed independent juries and a well-functioning system, consumer complaints towards advertisements receive a very quick response: in 2016, 91% of the complaints were handled in less than 2 months³. This mechanism is free of charge for the consumers and easy to use, but does not prevent them from going to court if they want to, or if they disagree with the jury's decision.

Self-regulation is a flexible and adaptable solution

Contrary to statutory legislation, self-regulation offers the possibility to adapt the rules at a quick pace and in a very flexible manner. This adaptability is particularly welcome in the advertising field where new technologies and new practices frequently require adaptations of the codes to respond best to consumers' and political demands.

Self-regulation respects national culture, expectations, and sensitivities

Although the basic principles regulating commercial communications are the same for all EU countries, as they are based on European values, international rules (e.g. International Chamber of Commerce code on

² European Parliament, Report on Towards a Digital Single Market Act (2015/2147(INI)), 21 December 2015.

³ Read EASA complaints report 2016 [here](#).



advertising and marketing communication practice) and European Best Practice Recommendations, the details of the codes are decided at national level. This gives the necessary flexibility to SROs to respond to consumers' needs and expectations in the most appropriate way, respecting national sensitivities, legal requirements, cultures, and traditions. In many cases, relevant stakeholders from outside the advertising value chain, such as associations and public authorities, are consulted in the process of drafting and updating of the codes, to make sure that their points of view are considered.

About EASA

The European Advertising Standards Alliance (EASA) is the single authoritative voice on advertising self-regulation and promotes high ethical standards in commercial communications by means of effective self-regulation, while being mindful of national differences of culture, legal and commercial practice. EASA was created in 1992, today its membership includes 27 independent advertising standards bodies (including 23 from EU Member States) and 14 ad industry associations representing the entire advertising ecosystem - advertisers, agencies and the media.

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