

ADVERTISING SELF-REGULATION



The European Advertising Standards Alliance (EASA) is the single authoritative voice of advertising self-regulation. Its mission is to promote responsible advertising through best practice in self-regulation across the Single Market for the benefit of consumers and business.

EASA comprises 28 national advertising Self-Regulatory Organisations (SROs), including those of all the Members States of the European Union, and 13 industry federations, covering advertisers, agencies and media.

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Discover the essentials

Advertising professional or layman – here’s your chance to find out how advertising self-regulation works in practice and what happens when somebody complains about an advertisement.

Here are the detailed answers to the most frequently asked questions about advertising self-regulation in the enlarging European Single Market.

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**“ ALL ADVERTISING SHOULD
BE LEGAL DECENT, HONEST
AND TRUTHFUL ”**

**(INTERNATIONAL CHAMBER OF COMMERCE’S
CODE OF ADVERTISING PRACTICE)**

The need...

Why does advertising need to be regulated?

Advertising plays a vital part in all market economies. It stimulates growth and innovation, encourages competition and increases consumer choice. To do all these things, advertising must inspire public confidence; it must be legal, decent, honest and truthful. If bad advertising - dishonest, misleading or offensive - is allowed to go on unchecked, even though it may account for only a small percentage of the whole, it will gradually undermine consumers' confidence and all advertising will suffer. So it is very much in the interests, not only of consumers, but also of the advertising industry itself, to ensure that advertising is properly regulated and consumers are not misled or offended.

What is self-regulation?

Self-regulation is a system by which the advertising industry actively polices itself. The three parts of the industry - the advertisers who pay for the advertising, the advertising agencies responsible for its form and content, and the media which carry it - work together, to agree advertising standards and to set up a system to ensure that advertisements which fail to meet those standards are quickly corrected or removed. Currently around 50,000 complaints are dealt with each year by self-regulatory systems in Europe. This represents less than 0.1% of the total number of advertisements published.



The advantages...

What are the advantages of self-regulation as opposed to legislation?

It is now widely accepted that self-regulation works best within a framework of legislation. The two complement each other, like the frame and strings of a tennis racquet.

Legislation is well-suited to laying down broad principles, for example that advertising must not mislead, and can provide a last resort in the rare cases when all else has failed. But when it comes to dealing with consumers' concerns about the detailed content of individual advertisements, the law is a disproportionate instrument: often slow to act, difficult for ordinary consumers to understand and expensive for them to afford, so the theoretical protection it provides may not be so readily available in practice.

Self-regulation, on the other hand, is specifically designed to deal with these important details in a proportionate way. By avoiding the complexities and delays of the judicial process, it offers consumers a quick, uncomplicated, easily-accessible and (because it is funded by the advertising industry) cost-free means of having their complaints handled.

As a general rule, advertisers and agencies are more ready to co-operate voluntarily with a self-regulatory system which has the support of their industry than with one imposed by legislators.

**A SELF-REGULATORY SYSTEM
EXISTS IN ALL COUNTRIES OF
THE EUROPEAN UNION**



Does self-regulation operate in every European country?

Self-regulation exists in all the current Member States of the European Union; in some of them it has been operating for several decades. In some countries, advertising is subject to detailed legislation to such an extent that the scope left for self-regulation is very limited. In others, there is little detailed legislation and advertising content is efficiently regulated by self-regulatory bodies. The role of self-regulation is acknowledged in various EU initiatives.

Many of the Accession countries were quick to appreciate the benefits of self-regulation to industry and consumers alike: most have already set up systems and others are in the process of doing so. In some of these countries, the important role of self-regulation has been formally recognised by government.

The way it works...

What is the basic idea of self-regulation?

The advertising industry draws up a code of standards and practice, which it formally agrees to support, financially, morally and practically. Then it sets up a body to apply the code and ensures that it is properly staffed and funded. This body is called a Self-Regulatory Organisation - SRO for short.

DETAILED RULES COVER AREAS SUCH AS ALCOHOLIC DRINKS, PORTRAYAL OF MEN AND WOMEN, FOOD AND ADVERTISING TO CHILDREN

How is a self-regulatory system structured?

The system usually consists of three parts:

- first the code-making body, which writes the code and is responsible for amending it and making sure that it stays up-to-date. The code-making body represents the constituent parts of the advertising industry, because it is the advertising industry's code and the whole industry agrees voluntarily to be bound by it;
- secondly, the code-applying body (usually called the complaints committee or jury), which is responsible for interpreting the code, applying it in specific cases and deciding on the appropriate action to take. Very often the chairman and some of the members of the complaints committee are independent of the advertising industry - they might, for example, include academics, members of the medical profession or representatives of consumer organisations;
- thirdly, the permanent secretariat - the professional staff responsible for the day-to-day running of the SRO. The secretariat is headed by a chief executive, who usually also acts as secretary to the code-making and code-applying bodies.

The code...

What is the basis of the code?

All the codes in use today, in Europe and elsewhere, have their origins in the globally accepted International Code of Advertising Practice published by the International Chamber of Commerce (ICC). This Code was first published in 1937 and has been updated regularly ever since. In some countries, national codes have developed well beyond the basic ICC Code, but all are based on its central premise: that advertising must be legal, decent, honest and truthful, prepared with a due sense of social responsibility and respect for the principles of fair competition.

Is there just one, general code, or are there different ones for different product categories and types of advertising?

Many national codes have special sections dealing with subjects such as advertising and children, medicines and health claims, food and nutrition, alcoholic drinks and motor vehicles. Other countries prefer to apply the general provisions of their codes, which are interpreted in the spirit as well as to the letter.



The code-making and interpretation...

Who decides what goes into the code?

Every national code reflects the cultural, legal and commercial traditions of that country. In some countries advertising is extensively regulated by law, reducing the scope for self-regulatory rules (there is no purpose in rules which simply reproduce legislation). In other countries, advertising regulation means largely self-regulation. Because they are written by the advertising industry itself, which understands its own business and the concerns of its customers, self-regulatory rules are particularly well-suited to the needs of both consumers and the industry. But self-regulatory codes do not represent only the interests and concerns of the industry and when they are written or updated, there is often consultation with consumer bodies, the medical profession and other interested parties.

How is the code interpreted?

Self-regulatory codes are interpreted in the spirit as well as to the letter: their whole purpose is to be flexible, so that each case can be judged on its merits. This flexibility enables the code to adapt swiftly to changes in the marketplace and respond to current consumer concerns. It also means that consumers' interests can be protected without unnecessarily stifling commercial freedom and creativity. The burden of proof is reversed: this means that advertisers have to justify their claims, rather than complainants having to prove that the claims are exaggerated or misleading.

How can self-regulation be impartial when it is funded by the industry?

To be credible and retain public confidence, self-regulation must be impartial. The very fact that it is likely to be suspected of bias makes rigorous impartiality all the more essential. Certainly self-regulation helps to safeguard the long-term interests of the advertising industry, but it does so by ensuring high standards and protecting the consumer. SROs are independent: their job is maintaining advertising standards, not protecting the interests of individual advertisers, agencies or media. Although the codes are written by the industry, they are impartial and the procedures of the complaints committees which apply them are designed to be independent and unbiased.

PRE-LAUNCH CAMPAIGN ADVICE ENSURES BETTER STANDARDS OF ADVERTISING PRACTICE



Can advertising professionals consult the SRO for advice about their campaigns?

Prevention is always better than cure. Most national SROs provide advice, on request, about the acceptability of proposed advertising campaigns; this service is called copy advice. It is usually non-binding and in the event of a subsequent complaint, the complaints committee is not necessarily bound by advice given previously by the SRO. However, copy advice obviously greatly reduces the risk of complaint and is of great value to the advertising industry, especially in media like television, where making changes to an advertisement is an expensive business.

The complaints...

How do I go about making a complaint?

If you see an advertisement which you consider to be misleading or offensive, you should write to your national SRO, enclosing full details of your complaint. If your complaint concerns a poster or a cinema, press, television, radio or Internet advertisement, include full details of the advertisement, the product advertised and where and when you saw it. If you can, include a copy of the advertisement itself. Remember to explain exactly why you are complaining. Some SROs also deal with complaints about other aspects of advertising, such as unwanted direct mail.

Do SROs ever charge money for handling complaints?

In principle complaints from individual consumers are handled free of charge. Some SROs make a charge for dealing with disputes between advertisers.

Do SROs just respond to complaints, or do they act on their own initiative to apply their codes?

So many advertisements appear each year that it would be quite impossible for any organisation to examine every one. However, some SROs monitor advertising on their own initiative, dealing with apparent code breaches in the same way as they would complaints. Often such monitoring concentrates on specific media or categories of advertising, particularly those where there may be some public concern.

How does an SRO decide if a complaint is justified?

This depends entirely on the nature of the complaint. A single complaint that an advertisement is seriously misleading, if it is well-founded, is usually enough to require the advertiser to correct the advertisement. In the case of complaints about alleged offensiveness, the SRO will consider whether or not there is evidence of serious or widespread offence to consumers, so the number of complaints may be relevant. Here again, however, evidence that a relatively small number of consumers are gravely offended may be more serious than evidence of relatively trivial offence to a larger number. Self-regulation judges each case on its merits.



The decisions and enforcement...

How are complaints dealt with?

When a complaint is received, the SRO will first ascertain whether it raises an issue covered by the code. Sometimes it is clear that the complainant has misread or misunderstood the advertisement, or complained about matters outside the scope of the code. Sometimes the nature of the complaint is not clear and the SRO has to ask the complainant for clarification. Whatever the complaint, it will be properly considered and the complainant will receive a response from the SRO.

If the SRO decides that the complaint requires investigation and eventual consideration by the complaints committee, it first contacts the advertiser and asks him to respond to the complaint. Many complaints result from unintentional mistakes or omissions and often the advertiser immediately agrees to change the advertisement; in this case the SRO informs the complainant of the outcome.

If the advertiser disagrees with the complainant, or if he fails to respond to the SRO, the case is referred to the complaints committee. If the complaint is about misleadingness, the advertiser may be asked to produce evidence to support his claims. In reaching its decision, the committee works on the basis of what the average person would understand the advertisement to mean. If the complainant alleges offensiveness, the committee will consider whether the advertisement would be likely to cause serious or widespread offence, bearing in mind the context in which it appeared - the standards which apply to media like posters, which are seen by everyone, are not necessarily the same as those which apply to magazines with a more specialised readership. Both the complainant and the advertiser are informed of the committee's decision.

The amount of time taken to deal with a complaint depends a lot on its nature and number of complaints received specific to that ad. Complaints of a simple nature can be dealt with within a few days. The majority take between six to eight weeks.

**LESS THAN 0.1% OF EUROPEAN
ADVERTISEMENTS GENERATE
COMPLAINTS**

What happens if the complaint is upheld?

If the complaints committee upholds the complaint, the advertiser is asked to withdraw the advertisement or change it. If the breach of the code is minor, a short period of time may be allowed for the advertisement to be amended, but in cases of serious offence or misleadingness, the committee will require the advertisement to be removed immediately. Most SROs publish the decisions of the complaints committee on a regular basis: this is regarded as good practice because it increases the transparency of the system and builds consumer confidence.

Is there a right of appeal?

If either the complainant or the advertiser seriously disagrees with the complaints committee's decision, most SROs have an appeals system. This may be formal and consist of a separate appeals committee, or the complaints committee or its chairman may agree to reconsider the case, provided of course that new evidence or arguments are introduced.

What enforcement powers do SROs have?

Self-regulation has the backing of the advertising industry, so in most cases advertisers accept the decision of the SRO, even if they do not agree with it. However, self-regulation cannot depend on voluntary compliance with its decisions - it must have teeth. SROs have a variety of ways of enforcing their decisions in cases where advertisers refuse voluntary co-operation. These include, for example, advising the media to refuse the advertisement, adverse publicity through the publication of decisions, the withdrawal of trading privileges such as preferential mailing rates, or expulsion from trade associations. On those rare occasions where all else fails, the SRO may refer the case to the statutory authorities, who have the power to prosecute the advertiser.

Do an SRO's decisions have the force of law?

Self-regulation complements the law: it is not a substitute for it. So the decisions taken by an SRO do not have legal force. However, in the event of a subsequent court case, the opinion of an SRO would be likely to be taken into account by the court in reaching its judgement.

**COMPLAINTS ARE HANDLED AT
NO COST TO THE CONSUMER**

How are consumers made aware of their right to complain and advertisers and agencies of their obligations?

Part of the job of the SRO's secretariat is to publicise the self-regulatory system and to ensure that consumers know how to complain. This often takes the form of advertising campaigns, which the media support by providing free space. The SRO works with industry trade associations to make sure that advertisers, agencies and the media are aware of their responsibilities under the code. Also, of course, adverse publicity resulting from the published decisions of the SRO acts as a constant reminder to the industry.



AMIAMO COSÌ TANTO
LA PUBBLICITÀ
CHE A VOLTE
DOBBIAMO BLOCCARLA.

ISTITUTO
AUTODISCIPLINA
PUBBLICITARIA

“WE LOVE ADVERTISING SO MUCH,
SOMETIMES WE HAVE TO RESTRAIN IT”

The European dimension...

Is there a European self-regulatory code?

No. Advertising regulation works best at national level, where it can reflect national cultural, commercial and legal differences and react to national trends and concerns. Despite the Single Market, there is still no such thing as a 'Euro-consumer'. Ideas of what is offensive vary widely throughout the EU and an advertisement which is not misleading to consumers in countries where the product or service advertised is well-known may still mislead consumers in countries where it is unfamiliar.

However, all the national self-regulatory codes are based on the ICC Code and the differences between them are much less serious than the differences between national laws affecting advertising, over which self-regulation has no control.



Is there one body responsible for self-regulation at European level?

All the national SROs in the EU, together with those from other European countries, are members of a co-ordinating body, the European Advertising Standards Alliance (EASA). Founded in 1992 and based in Brussels, the EASA also includes in its membership trade associations representing the advertising industry. It currently has 13 industry members representing advertisers, agencies and media at European level and 24 SRO members from 22 European countries, as well as SROs from South Africa, New Zealand, the USA and Canada. EASA is funded by the advertising industry at both national and EU level.

The EASA does not itself regulate advertising. It is the advertising industry's single voice on self-regulation. The EASA sets out to promote self-regulation as a preferable alternative to detailed legislation, helping to set up new national SROs and to strengthen self-regulation in countries where it is weak. It acts as a co-ordination point for self-regulation, providing information to, for example, the EU Commission and Parliament. It also conducts research and publishes results. Its members meet regularly, to share best practice and to identify areas where they can work together to solve problems. National SROs are well aware of the need to work together to ensure that their rules and principles converge as much as possible.

CORE VALUES

- **INDEPENDENCE**
- **TRANSPARENCY**
- **EFFICIENCY**
- **EFFECTIVENESS**
- **CONSUMER BENEFITS**

As part of a structured programme designed to improve the standard of self-regulation throughout Europe, the EASA published in mid 2002 its *Common Principles of Best Practice*. This document describes operating procedures, such as the provision of copy advice, the availability of an appeals procedure and the routine publication of decisions, which represent best practice in advertising self-regulation and which all systems should strive to achieve. Another example of EASA's commitment to raising the profile of self-regulation is the 'Self-Regulation Road Show', which, beginning in 2003, will take place in all EU member states, to remind legislators, government officials, consumer groups, the press and the advertising industry of how self-regulation works and what it has achieved.

Another important activity of EASA is its cross-border complaint handling system.

The cross-border issue...

What are cross-border complaints and how does EASA deal with them?

A cross-border complaint is a complaint from a person in one country about an advertisement which has appeared in that country but is carried in media based in another country. The SRO in the complainant's country has no control over the media in other countries. However, the EASA system enables the complaint to be passed to the SRO in the country where the media is based, which then deals with it according to its own code.

The cross-border system is based on the principle of 'country of origin', enshrined in EU law to facilitate the Single Market. This means that an advertisement should comply with the rules of the country where the media is based (or, if there is no conventional media, e.g. Internet or direct mail advertising, the country where the advertiser is based), so the complaint is handled by the SRO in that country. The system is designed to provide the complainant with the same redress as that available to consumers in the country of origin. EASA members also endeavour, where their national law allows, to apply a second principle, known as 'mutual recognition'. This means that they will, wherever possible, accept advertisements which comply with another member state's self-regulatory rules, even if those rules are not exactly the same as their own.

Since it was set up in 1992, the EASA cross-border complaint system has handled almost 1000 cases. The results are published regularly on the EASA's website. The system has attracted praise from EU institutions and was described by Commissioner David Byrne as 'a fine example of how effective self-regulation can be when there is the will to find solutions'.

Despite initial concerns that the Single Market would provoke an avalanche of cross-border complaints, there is now convincing evidence that cross-border advertising by reputable, mainstream advertisers attracts very few complaints. The overwhelming majority of the complaints dealt with by the EASA's cross-border system concern the activities of peripheral, unknown advertisers and so-called 'rogue traders'.

**CONSUMER COMPLAINTS CAN BE
DEALT WITH NO MATTER
WHERE THE AD WAS PUBLISHED
IN THE EU**



What can self-regulation do to combat cross-border fraud and sharp practice?

The European Single Market offers great opportunities for both advertisers and consumers. Unfortunately, it also provides opportunities for a minority of rogue traders, who misuse the techniques of legitimate advertising (usually direct mail) to disguise fraudulent offers and other kinds of sharp practice. Because it superficially resembles legitimate advertising, this sort of unethical activity gives advertising a bad name. When a complaint brings an example of it to light, the EASA and its members do all they can to put a stop to it. When appropriate, such cases may be transferred to the relevant statutory authorities, at either national or EU level. In cases where it is unable to suppress sharp practice, the EASA publishes a 'Euro Ad-Alert', giving all the details it has been able to discover. This is posted on the EASA website and circulated by e-mail and fax to its members, industry associations, consumer associations, the European Commission and other statutory bodies.

The future...



What challenges does the future hold for self-regulation in Europe?

The EASA is actively engaged in the ongoing debate about the future of advertising regulation in the EU: self-regulation versus statutory regulation. It has been implementing a strategy to ensure that alternative self-regulatory options are in place in all EU Member States. EASA actively encourage harmonisation between the rules and systems in place in Europe.

The progressive enlargement of the EU makes it essential to ensure that new member states have regulatory systems which are compatible with the ones already in place. Anticipating this need, the EASA and the advertising industry have been active for several years in the Accession countries, explaining the advantages and techniques of self-regulation to the industry, parliamentarians and civil servants and helping to set up self-regulatory systems in those countries. Much has been achieved, but more remains to be done and this remains a high priority for the EASA.

Another great challenge for self-regulation - and for other forms of regulation too - is the massive increase in electronic commerce and advertising on the Internet. This introduces not just a European dimension, but a global one, since European consumers can now access websites anywhere in the world. The nature of the Internet makes it very difficult to regulate and it seems unlikely that traditional legislative means will provide a satisfactory solution to the problem.

The EASA has been actively studying this challenge for some time and has lent its expertise to countries outside Europe, e.g. in Latin America. Self-regulation, because of its practical, flexible approach, based on voluntary co-operation between interested parties, may well provide a solution to this problem, as it has provided one to so many others. Its potential is already widely recognised as an effective complement to traditional legislative and judicial methods. Self-regulation has an important role to play in building consumer protection and confidence in the new media.

SELF-REGULATORY PRINCIPLES ARE APPLICABLE TO ALL MEDIA INCLUDING NEW INTERACTIVE SERVICES

How can I find out more about self-regulation?

The EASA website has extensive information on self-regulation best practice across Europe as well as contact details of all EASA's member Self-Regulatory Organisations (SROs) and industry associations.

EASA has produced a CD ROM containing the latest facts and figures on self-regulation across Europe as well as an in-depth look at how it works in practice. Publications are also available; they include Advertising Self-Regulation in Europe (the 'Blue Book'), a detailed study of national self-regulatory systems, and The EASA Guide to Self-Regulation, which explains in detail how to set up an SRO, as well as research reports on a variety of subjects related to advertising regulation.

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