

**SELF REGULATION IN ACTION**

# **Better recognition for Effective Self-regulation**

*March 31 2008*

*European Economic & Social  
Committee*

***Dr Oliver Gray  
Director General EASA***





## Starting Point

**“This is not so much a debate about self-regulation against hard-law, but rather about how law and self-regulation can and should interact in modern Europe”**

**Conclusion of Robert Madelin, DG of DGSanco**

**Chair of the European Advertising Round Table organised by DG Sanco**



## What is self-regulation?

- **Industry polices itself to make sure ads are legal, honest, truthful and decent**
- **Accepted standards & rules 'professional diligence'**
- **National Self-Regulatory bodies (SROs) apply rules**



We love advertising  
so much that at times we  
have to restrain it



# What is a Self-Regulatory Organisation (SRO)?



‘Advertising Watchdog’  
Independent body, guardian of the code  
Funded by industry



## REACTIVE:

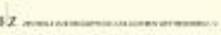
- Handles consumer & competitor complaints
- Issues sanctions (modify or withdrawal)



## PROACTIVE:

(EASA Best Practice)

Advice, training and awareness  
Monitoring compliance with the codes  
Benchmarking



## EASA – The European Alliance for advertising self-regulation

**Promoting responsible advertising through best practice in self-regulation**

### **31 SROs in 29 countries:**

- 25 European SROs – most EU
- 6 corresponding SRO members  
AUS, BR, CAN, IND, NZ, SA

### **16 industry organisations:**

- Advertisers
- Agencies
- Media



## Advertising Complaints handling in Europe

- SROs in Europe deal with +/- 50 000 complaints every year
- Represents less than 0.1% of total number of ads circulating

### Advantages of complaint handling through SROs

- **Quick** – complaints usually handled within 3-30 working days
- **Flexible** - Technological and Societal change
- **Cheap & Accessible** – Consumer doesn't pay & accessible on/offline
- **Reversal of burden of proof** – Companies must prove innocence
- **Industry listens to SRO rulings** -> effective sanctions adverse publicity
- **Effective Sanctions:** modification or withdrawal with media gatekeeper



## Misleading ads: #1 reason to complain

**UK** – ad in various media

**Complaint:** unsubstantiated claim  
“the product’s antioxidants could help keep people healthy”

**Ruling:** Complaint upheld

**Sanction:** Campaign withdrawn

- Cost: £15million
- Contract with agency terminated



## Examples of complaints handled – indecency



**Ireland** - Outdoor poster

**Complaint:** Offensive, direct link to sex, not suitable for children

**Ruling:** Complaint upheld

**Sanction:** Campaign withdrawn & report released

**Spain** - Outdoor poster

**Complaint:** Woman portrayed as sex object

**Ruling:** Complaint upheld

**Sanction:** Campaign withdrawn worldwide after similar ruling in Italy



## Digital marketing communications challenge

- ✓ Self-regulation is answer
- ✓ Don't need new code -> Apply existing principles to new circumstances
- ✓ SRO remit needs widening

### EASA's digital strategy

- ✓ Will not include editorial content
- ✓ Still discussing brand-owned websites
- ✓ Brief Commission, consult NGOs: Apr 2008
- ✓ National discussion on EASA best practice end 2008-2009



### UK Crazy Frog

- Mobile tel download
- offer not transparent
- appeal to children

## Dealing with problematic ads crossing borders ...

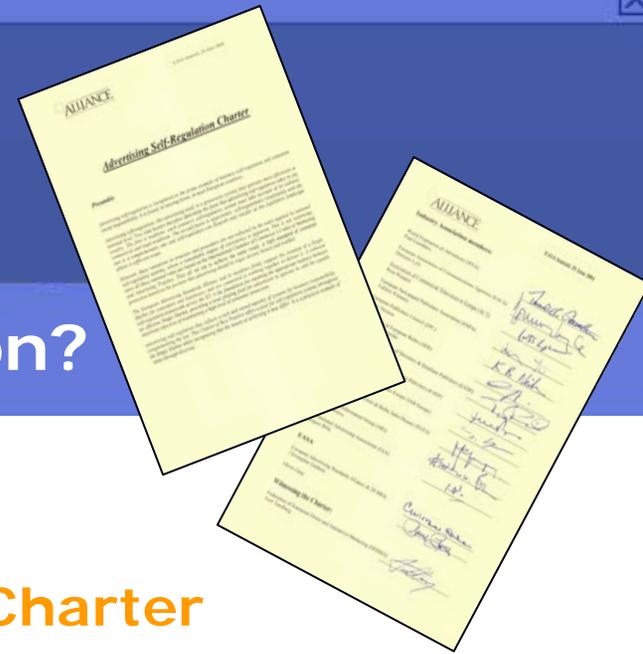
***EASA coordinated handling of more than 2000 cross-border complaints since 1992***

### **Cross Border Complaints Mechanism**

- Based on principle of “country of origin”
- Combat of Rogue traders, alerting authorities
- **Example:** complaint from France about a Polish ad will be forwarded to SRO in Poland



## Promoting effective self-regulation?



June 2004 summit: EASA members sign the

### **EASA Advertising Self-Regulatory Charter** **sets 10 best practice principles**

- ✓ Geographical coverage
- ✓ Media coverage
- ✓ Funding
- ✓ Codes
- ✓ Consultation
- ✓ Administration
- ✓ Complaint handling
- ✓ Advice
- ✓ Sanctions
- ✓ Consumer awareness

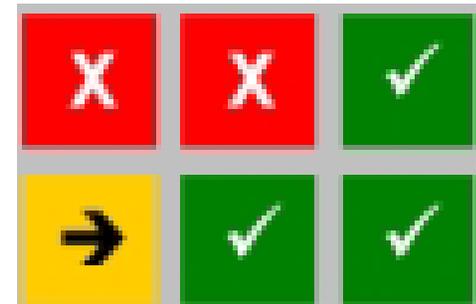


## EASA Charter/Commitments & EU Ad Roundtable

Feb 2005: '**EASA white paper**' to Commissioner Kyprianou

=> **EASA** to report on EU-25 implementation **by end 2007**

EASA « **Get fit programme** » to meet SR targets



**DG Sanco Advertising Roundtable** discussions

organised on basis of EASA Charter:

**DGs Sanco & InfSo, SecGen, Industry, EASA & NGOs**



# EU Advertising Round Table Report

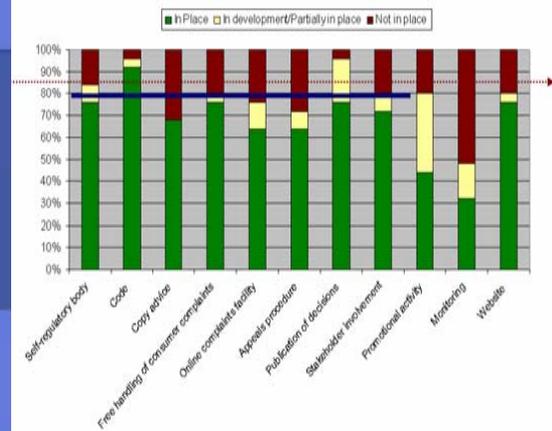
“The Round Table agreed on a best practice model, [...] which coincides with the essential thrust of recently adopted EASA best practice”

“I am confident that self-regulation will be given the full weight in society’s choices among the menu of regulatory options.”

Robert Madelin, Chair of EU Advertising Round Table



## Best Practice (BP) adopted 2005-7



### ❖ Geographical coverage

=> 81% of **EU-27** (5 SROs more)

- New SROs: **Poland & Lithuania**
- SROs in progress: **Cyprus & Estonia**

### ❖ Monitoring

=> **EASA BP Recommendation & Compliance model**

Annual compliance monitoring:

**Alcohol & Food TV & print ads**

- Results published & Ind. Reviewer

### ❖ Jury composition

**EASA BP recommendation:**

Majority lay experts

- Newly introduced in **6** SROs
- 1 SRO in progress

### ❖ Code drafting & consultation

**EASA BP recommendation**

- Uniform approach inappropriate
- BP dev. in **Ireland & France**



## Confidence & Recognition of Effective SR

### Robert Madelin - DG Sanco

“... the willingness of EASA and all others involved in the current debate to explore what a strategic improvement in SR quality might involve, **does create some confidence that SR is capable of a sustained move over time towards a level of heightened effectiveness.**”



### Commissioner Viviane Reding - DG Infso

“The increasing sense of responsibility of the ad industry **could in my view lead to deregulation in the field of advertising**”

## SR recognised in several EU directives & initiatives

### ❖ **Audiovisual Media Services Directive (Dec 2007)**

Article 3 (7) states that co- and/or self-regulation have proven to be valuable instruments in some Member States. The AMS obliges the Member States to encourage such mechanisms at national level in the fields coordinated by AMS to the extent permitted by their legal systems.

### ❖ **Unfair Commercial Practices Directive (May 2005)**

Articles 10 and 11 of the UCP recognise the valuable role played by voluntary business self-regulation.

### ❖ **Food white paper (May 2007)**

The white paper recognises the added value of and supports advertising self-regulation.

### ❖ **EU Alcohol strategy (2006)**

Commission does not intend to implement the strategy through specific new legislative proposals

# Inter-Institutional Agreement - Definition Issues

## SR works but reality differs from IIA Agreement better lawmaking

**Self-regulation:** possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements)

**Co-regulation:** mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field



## EU report calls to change IIA definitions of SR

- ➔ “There was general recognition that **the real world practice of SR did not follow the current IIA** on Better Lawmaking of SR and co-regulation”
- ➔ “**The definition leaves a grey area of self-regulation** that is not quite as purely autonomous as the wording implies and yet has none of the characteristics required for a system to qualify as co-regulation”
- ➔ “**A clearer understanding would ensure that effective SR is given appropriate recognition** (neither too much or too little) as public decision-makers weigh and balance the costs and benefits of different options”

***EU DGSanco Advertising Roundtable report 2007***



## Conclusions – Call for Action re IIA SR consideration

- ➔ **Effective Self-regulation works** and is recognised as such
- ➔ **Defined model for effective self-regulation** in EU advertising  
Round Table report by DG Sanco
- ➔ EU AMS directive & initiatives ask MS to **encourage effective SR**
- ➔ Definitions in the **Inter-Institutional Agreement need revision** to reflect reality & encourage complementary role of effective SR





## *Commissioner Kuneva - DG Sanco*

“Self-regulation today has a truly European dimension, thanks to the work that has been carried out by EASA over the years.

**I am sure that we can go further together to establish advertising self-regulation as a living best practice model – it (SR) has an important role to play in a modern and efficient regulatory framework....”**

EASA Blue Book on Advertising Self-Regulation 2007

*More info on EASA go [www.easa-alliance.org](http://www.easa-alliance.org)*