



15 March 2006

**EASA submission to DG SANCO Green Paper:**

***Promoting healthy diets and physical activity: Towards a European strategy for the prevention of overweight, obesity and chronic diseases***

*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 27 national advertising Self-Regulatory Organisations (SROs), including those of 19 Member States of the European Union, and 14 industry organisations representing advertisers, agencies and the different parts of the media.*

EASA will in this submission focus on the section of the Green Paper which discusses 'Consumer information, advertising and marketing', and in particular comment on these two questions:

- 1) Are voluntary codes ("self-regulation") and adequate tool for limiting the advertising and marketing of energy dense and micronutrient-poor foods? What would be the alternatives to be considered if self-regulation fails?
- 2) How can effectiveness in self-regulation be defined, implemented and monitored? Which measures should be taken towards ensuring that the credulity and lacking media literacy of vulnerable consumers are not exploited by advertising, marketing and promotion activities?

We will start with the last question.

***Definition, implementation and monitoring of self-regulation***

The European Advertising Standards Alliance has since 2001 worked extensively on the development of a model of self-regulation of advertising, which stresses the importance of speed, transparency, independent involvement and co-operation with national authorities as and when found necessary. Advertising self-regulation, like advertising itself, is a grassroots activity which 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.

The SR Charter was signed by the advertising industry in 2004, and commits it to:

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)
  - 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.

Following its signature, EASA met with Commissioner Kyprianou in March 2005, to explain the programme which has been designed to implement these principles. 10 Commitments were made in terms implementation of the Charter across the EU 25, until the end of 2006.

DG SANCO has followed up on the programme, by inviting for discussions the advertising industry, through EASA, and a range of stakeholders, such as the European Consumers organisation (BEUC), The European Public health Alliance (EPHA), the Confederation of Family Organisations in the EU (COFACE) and the European Community of Consumer Cooperatives (Eurcoop). The Advertising Roundtable is set-up to discuss criteria for the definition, implementation and monitoring of effective self-regulation that enjoys wide support that will contribute to

legitimising advertising standards as an established means to deliver a high level of consumer protection, in addition to a robust regulatory framework.

EASA would therefore suggest that the European Commission, for the purposes of this consultation, refers to the results of the Advertising Roundtable, when deciding on the parameters of definition, implementation and monitoring of self-regulation of advertising.

***The performance of advertising self-regulation and advertising standards***

Advertising self-regulation and advertising standards relate to the content of advertising and marketing communications. With this in mind, increases in obesity rates or binge drinking do not correlate with the general performance of advertising standards.

Advertising self-regulation has clear benefits for consumers and business which are well noted in EU studies<sup>1</sup> in terms of its speed, flexibility and appropriate specificity to media or advertising technique. The advertising industry is recognised by EU studies as being a leading working example of business responsibility where there is a clear day to day confirmation of this commitment demonstrated in the overall willingness of business actors to work within the advertising standards that are set by the advertising industry. These advertising standards are based on the globally accepted codes of advertising and marketing communications drawn up by the ICC, which have been further elaborated at national level or by sectors (such as the ICC Framework on responsible food and non-alcoholic beverages advertising and marketing). The principles of the Framework include provisions that oblige advertisers, for example: not to undermine healthy, balanced diets, and healthy active lifestyles; not to encourage or condone excessive consumption; not to represent snack food products as substitutes for meals; not to undermine the authority of parents. These have been sent to all EASA SROs who are encouraged to adopt these nationally, as recommended best practice, and are now being implemented in 16 EU member States

The advertising industry has already invested in systems for advertising standards in 19 of the EU Member States and self-regulatory systems are under discussion and construction in the remaining EU Member States. Regardless of the funding mechanism in place, for additional investment in further strengthening and extending self-regulation across Europe to take place, a clear incentive is needed from EU regulators, notably a formal recognition of the role and usefulness of self-regulation, to help bolster the commitment of all stakeholders particularly those in Start-up<sup>2</sup> and Emerging<sup>3</sup> SRO countries.

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<sup>1</sup> See: the *Information report on the current state of co-regulation and self-regulation in the Single Market*, published by the European Economic and Social Committee (February 2005); the *Study to identify best practice in the use of soft law and to analyse how this best practice can be made to work for consumers in the European Union*, by Lex Fori for the European Commission DG SANCO, (October 2002)

<sup>2</sup> **Start-up SROs** - where a Self -Regulatory system has just been set up and is within its first year or so of operation (start up) or has not developed further from initial startup situation due to resources

<sup>3</sup> **Emerging SROs** – Self-Regulatory systems in transition from start up where scope to operate allows opportunities to develop the system but funding/support has so far limited this transition.

Self-regulation of advertising, as outlined in the SR Charter, is designed as to deal effectively with mainstream advertising, through the enforcement of nationally developed codes, which are as strict as or stricter than the law. Self-regulatory organisations across the EU deal with around 52 000 complaints a year on all forms of advertising for all product and service areas. Around 98% of the cases are settled satisfactory. Only 2% of these complaints relate to food advertising, and 0.3% of all complaints received are related to advertising to children (independent of product category). Where issues related to claims arise, the advertiser is always required to provide further substantiation of the claim.

In addition, SROs are extending their activities to embrace the provision of copy advice<sup>4</sup> in order to provide guidance before an advertisement is published or broadcast. EASA has committed to extend copy advice from 18 EU member States in 2005, to 20 Member States by the end of 2006.<sup>5</sup> The use of copy advice in France for example grew by 6% from 2003 to 2004 of which 17% were related to food advertising.

In the few cases where the advertiser does not respect self-regulatory decisions, the self-regulatory organisation for advertising in the country seeks the co-operation with appropriate authorities. EASA has therefore welcomed the Regulation on a European Consumer Protection Enforcement network, which will ensure that in each Member State, an appropriate body to deal with such cases which cannot be solved by the SRO is in place.

### ***Conclusions***

EASA recommends that this study draws on the work of the DG SANCO Advertising Roundtable in respect of effective self-regulation and the recognition of its role, and considers adopting its recommendations in the further work related to advertising standards in relation to the green paper.

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<sup>4</sup> Copy advice is the advice on a proposed advertising campaign provided by a regulatory body, usually on a non-binding basis.

<sup>5</sup> See Advertising Standards in Europe – A briefing by the European Advertising Standards Alliance, presented to Commissioner Kyprianou in February 2005.

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