

Brussels, 31 March 2020

## European Advertising Standards Alliance (EASA) preliminary comments on the review of legal framework for digital services (Digital Services Act)

In its 2020 work programme, the European Commission stated it will propose a new Digital Services Act to strengthen the single market and protect citizens and their rights<sup>1</sup>. The European Advertising Standards Alliance (EASA) welcomes the upcoming initiative, which aims at putting people first and opening new opportunities for businesses, and the opportunity to provide preliminary comments.

Established in 1992, EASA represents and coordinates the advertising self-regulatory systems across Europe. Its membership is composed of 27 independent advertising self-regulatory organisations (SROs), which ensure the enforcement of advertising self-regulatory codes of conduct at national level, and 13 advertising industry associations (advertisers, agencies and the media), which support these self-regulatory systems and commit to their principles.

EASA strongly believes in the effectiveness of the advertising self-regulatory system, in ensuring responsible commercial communications both online and offline. It suggests that any legislative review covering online commercial advertising should:

- recognise the current advertising self-regulatory system, and
- include criteria of the effective self-regulation into the legal framework.

EASA therefore kindly invites the European Commission to consider these suggestions, as further elaborated in the sub-sections below.

### Recognising the role of the current advertising self-regulatory system

Advertising self-regulation already plays an important role in ensuring a high level of consumer protection and trust. It supports industry stakeholders in maintaining and further developing ethical standards for commercial communications in response to rapid technological developments and changing consumer behaviour. It is therefore important to acknowledge the proven added value and benefits of self- and co-regulation when contemplating new policies, especially in areas related to the digital economy.

EASA and its network, which encompasses responsible advertising industry players, strive to achieve that all advertising practices must be legal, decent, honest and truthful. This notion is established in EASA's Charter<sup>2</sup> and applies to all forms of marketing communications and to all mediums and platforms, including digital<sup>3</sup>. Self-regulatory system enables continued development, improvement and effective enforcement of the industry's commitments in order to reflect market realities and adapt to new consumer behaviours in digital environments. Such system features not only codes of conduct,

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<sup>1</sup> European Commission, [Commission Work Programme 2020](#), 29 January 2020

<sup>2</sup> EASA, [Advertising Self-Regulation Charter](#), 2004

<sup>3</sup> EASA, [EASA Best Practice Recommendation on Digital Marketing Communications](#), 2015

independently enforced by the self-regulatory bodies, but provides monitoring, training and compliance advice to the industry. The European SROs handle on average 60.000 complaints per year and deliver additional 90.000 pieces of tailored advice to the industry<sup>4</sup>. The complaints procedure is free of charge to consumers and delivers investigations quickly, as the vast majority of cases<sup>5</sup> are resolved within two months. Furthermore, it is important to stress that the European consumers have significantly increased their focus on digital commercial communications over the past years, which also prompted EASA and its member SROs to introduce targeted industry guidelines<sup>6</sup> and design specialised training programmes aimed at addressing the challenges brought by the expansion of the online advertising ecosystem.

We therefore encourage the European Commission to take the existing advertising self- and co-regulatory framework into account when designing digital policies giving a strong voice to the European citizens and allowing businesses to respond to technological developments, in an agile way.

### Including criteria of the effective self-regulation into the legal framework

Following the principles for better self- and co-regulation, already established at the EU level<sup>7</sup>, is paramount to effectively implement self-regulatory mechanisms and to meet the expectations of the European citizens and policy makers. It is therefore important to reinforce these principles in any upcoming legislative initiatives to help ensure consistency and compliance by the market actors.

*Principles for Better Self- and Co- Regulation (SRCR)*<sup>8</sup>, endorsed in the EU Commission's Better Regulation Agenda<sup>9</sup>, provide guidance for conception and implementation of SRCR systems and list robust criteria that need to be fulfilled in order to establish a comprehensive self- or co-regulatory regime.

These criteria were further emphasised in the recently revised and adopted Audiovisual Media Services Directive (AVMSD), which calls Member States to encourage *"the fostering of self-regulation through codes of conduct adopted at national level"*<sup>10</sup>. The Directive clearly states that such codes must meet the following principles:

- *must be broadly accepted by the main stakeholders in the Member States concerned;*
- *must clearly and unambiguously set out their objectives;*
- *must provide for regular, transparent and independent monitoring and evaluation of the achievement of its objectives;*

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<sup>4</sup> Estimations are based on average number of complaints and copy advice requests respectively, provided in the five-year period between 2014 and 2018. For more information please refer to EASA's [European annual statistics reports](#).

<sup>5</sup> Around 90% of all cases are resolved within the period of two months, based on the statistics reports over the five-year period between 2014 and 2018. For more information please refer to EASA's [European annual statistics reports](#).

<sup>6</sup> For example, in the area of influencer marketing, addressed in EASA's [Best Practice Recommendation on Influencer Marketing](#) and across national guidelines adopted by EASA member SROs.

<sup>7</sup> European Commission, [The Community of Practice for better self- and co-regulation](#), 2017

<sup>8</sup> European Commission, [Principles for Better Self- and Co-Regulation](#), 2017

<sup>9</sup> European Commission, [Better Regulation principles](#), 2019

<sup>10</sup> European Commission, [Audiovisual Media Services Directive](#), 2018



- *must provide for effective enforcement including effective and proportionate sanctions.*

EASA and its members are governed by these principles and respect them as necessary operational standards. We therefore encourage the European Commission to include these criteria as defining principles of the self-regulatory design for digital services, particularly marketing communications, in order to ensure consistency across the EU legal frameworks and avoid misconceptions of effective self-regulation.

We remain at your disposal for any further questions or clarifications.

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