



Broadcasting Authority of Ireland

General Commercial Communications Code

Code of Fairness, Objectivity and Impartiality in News and
Current Affairs

Code of Programme Standards

Advertising and Teleshopping: Daily and Hourly Limits

Statutory Report

6th March 2023

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Introduction

Sections 42 and 43 of the Broadcasting Act 2009 (“the 2009 Act”) mandate the preparation and revision of broadcasting codes and rules governing broadcast content. Section 45(3) of the 2009 Act requires the BAI to review the effect of its codes and rules on a periodic basis and to provide the Minister for Tourism, Culture, Arts, Gaeltacht, Sports and Media with a report on the outcomes of its statutory review. The Minister is then responsible for ensuring that this report is laid before both Houses of the Oireachtas.

In this context and pursuant to section 45(3) of the 2009 Act, the BAI has undertaken a statutory review of the following codes and rules¹: -

- [General Commercial Communications Code](#)
This Code sets out the rules required when broadcasters air commercial communications i.e., advertising, sponsorship (including competitions), product placement and other forms of commercial communications. This Code contains principles and rules applying to all forms of commercial communications, a set of rules concerning specific types of commercial communications (e.g., sponsorship rules), rules applying to products and services where the risk to viewers and listeners is higher (e.g., alcohol), and rules setting out prohibited commercial communications.
- [Code of Fairness, Objectivity and Impartiality in News and Current Affairs](#)
This Code is concerned with ensuring that the broadcasting of editorial content that constitutes news is objective and impartial and content that is current affairs is fair, objective, and impartial and that both are presented in an objective and impartial manner and without any expression of the broadcaster’s own views. The BAI has issued separate election and referenda guidelines which are anchored in an obligation in this Code to comply with any such guidelines issued by the BAI in respect of national ballots. The BAI has also produced guidance notes for the Code. The guidelines and guidance are part of the review.
- [Code of Programme Standards](#)
This Code sets out the principles applying to all editorial (but not commercial) content with a view to minimising harm and undue offence that such content may cause. The Code deals with privacy, the public interest, violent and sexual content, and the protection of children, amongst other matters.
- [Rules on Advertising and Teleshopping](#)
These rules outline the daily and hourly limits for advertising and teleshopping on commercial and community radio and television services. Limits for public service broadcasters are set by the Minister.

This document sets out the findings of the statutory review of the aforementioned codes. Ordinarily, reviews of codes and rules by the BAI are followed by the preparation of revised codes and rules. Following this current review the BAI will not be undertaking any revisions to the codes and rules considered as any such revisions will be a matter for Coimisiún na Meán, the new media regulator provided for in the Online Safety and Media Regulation Act 2022 (“OSMR Act 2022”).

¹ The BAI Children’s Commercial Communications Code and BAI Access Rules (which sets rules with respect to subtitling, Irish Sign Language and audio description) were outside the scope of this current review. This is because the children’s code was recently reviewed, and the BAI Access Rules are the subject of a separate review in 2022.

This regulator will replace the BAI in 2023. This approach will facilitate a consistency in the development of the codes and rules applying to commercial and editorial content across broadcasting, on-demand and video-sharing platforms. When reviewing the rules, the new regulator will also consider the findings of the review of the Children's Commercial Communications Code.²

The remainder of this report is divided into the following sections: -

Section 1 Review Methodology

Section 2 Review Findings

- 2.1 General Commercial Communications Code*
- 2.2 Code of Fairness, Objectivity and Impartiality in News and Current Affairs*
- 2.3 Code of Programme Standards*
- 2.4 Advertising and Teleshopping: Daily and Hourly Limits*

Section 3 Review Conclusions

1. Review Methodology

The review comprised the following elements.

a) *Operational Review*

The operational review examined issues arising from the practical implementation of the codes and rules. This entailed engagement with stakeholders including broadcasters and advertisers and their representative bodies. These stakeholders are responsible for the day-to-day implementation of the BAI's codes and rules. In the case of broadcasters, they are accountable for compliance with the regulations and may be subject to investigations via the statutory complaints handling scheme or via statutory investigations. The operational review was undertaken by Wagner-Hatfield on behalf of the BAI and a copy of their report is attached at Appendix 1.

b) *Public Call for Comments and Observations*

This entailed the publication of a document inviting comments and observations from the public and other interested stakeholders. The findings of this aspect of the review are reflected in the report of Wagner-Hatfield included at Appendix 1. The submissions received are included also as an appendix to this document

c) *Practice Review*

This aspect of the review entailed an examination of regulatory approaches, including updates to broadcasting codes and rules made in EU states to transpose the revised Audio-Visual Media Service Directive ("AVMS Directive"). This aspect of the review was undertaken by Comm Sol Limited on behalf of the BAI and a copy of their report is attached at Appendix 2.

² The Access Rules will be updated by the new regulator via a separate process to expand their scope to on-demand services and to revise broadcasting provisions as required.

The review process sought to gather input on the effectiveness of the BAI's codes and rules and identify those aspects of the regulations that might require updating. The BAI sought a wide range of inputs, and it was open to all contributors to the review to highlight any issue/s that they considered to be relevant. In addition, the BAI sought to explore several specific areas as part of the review,

in addition to an examination of the codes and rules as a whole. The specific areas in this regard were:

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- Sustainability, including climate change
- Science-based factual reporting
- Election and referenda coverage
- Hate speech, including gender-based violence
- Cosmetic surgery and services
- Cryptocurrency and related financial services
- Product placement
- Gambling
- Medical products, treatments and services.

2. Review Findings

This section of the report provides an overview of the findings of the review for each of the four codes and rules that were examined. The findings are drawn from the activities undertaken as part of the review and further details about the basis for the findings may be found in the two reports included in appendices to this report and the submissions received, also appended.³

2.1 General Commercial Communications Code (“GCCC”)

This Code sets out the rules required when broadcasters air commercial communications i.e., advertising, sponsorship (including competitions), product placement and other forms of commercial communications. This Code contains principles and rules applying to all forms of commercial communications, a set of rules concerning specific types of commercial communications (e.g., sponsorship rules), rules applying to products and services where the risk to viewers and listeners is higher (e.g., alcohol), and rules setting out prohibited commercial communications.

Key findings arising from the review are set out now with reference to the relevant sections of the Code.

• Overall approach to the Code

- Industry stakeholders prefer the use of overarching principles alongside guidance notes rather than strict principles and rules that are set out in the current approach taken in the GCCC. There was general agreement from these stakeholders that restrictions and prohibitions should come primarily from the law.

³ The review presents the perspectives of stakeholders as provided and it should be noted that in some instances the views expressed reflect in complete or incorrect understandings of the codes and rules. For the sake of brevity and conciseness, these are not addressed in all instances in the report, but will be addressed as part of the revision process.

- An issue particular to industry stakeholders using the GCCC is the potential overlapping between different regulatory regimes, i.e. the BAI Code, the ASAI Code and other self-regulatory codes. This is seen as something that can complicate regulation and adds unnecessary regulatory burdens.
 - Looking at the scope of the Code, given the passing of the OSMR Act 2022 the scope of the Code needs to be widened to clearly address on-demand audiovisual media services, and also the online on-demand services of broadcasters.
- **Definitions**
 - Having regard to the passing of the OSMR Act 2022 and in order to give effect to those elements of the Act that transpose the Audio-visual Media Services Directive (“AVMS Directive”), a number of existing definitions need updating, including those relating to “audio-visual commercial communication”, “product placement” and “sponsorship”.
- **Principles Applying to All Commercial Communications**
 - The Practice Review concludes that the principles and objectives outlined in the GCCC are in line with international practice, and reflect the key aims of the AVMS Directive. The Practice Review recommends that, in order to align with common practice in Europe, an additional paragraph related to gender stereotyping in advertising should be inserted under Principle 2. This would cover the concern that advertisements must not include gender stereotypes that are likely to cause harm, or serious or widespread offence.
 - The Practice Review also recommends that some changes be made in relation to Principle 4 and these include the addition of “mental” (or “psychological”) harm in the language. This review also suggests that some consideration be given to the 50% audience threshold used to define, in part, children’s programmes. This review notes that this percentage threshold is higher than international standards.⁴
- **Prohibitions**
 - Having regard to the transposition of the AVMS Directive via the OSMR Act 2022, the Code needs to be updated to include a complete prohibition of audiovisual commercial communications for electronic cigarettes. This will impact the prohibition section but also current rules in the Code dealing with sponsorship, product placement, medicinal products, and smoking cessation tools (Section 18).
 - In addition, the AVMS Directive prohibits the commercial use of personal data of minors collected when implementing technical protection measures for protection on audio-visual media services and the rules need to be updated accordingly.
 - On the issue of political advertising, there is no strong demand to alter the current restrictions. It is worth noting that regulations on this issue are currently under review by the EU with a view to standardising the approach to political advertising across Europe. In addition, the Irish Electoral Reform Act includes a definition and related restrictions on online political advertising during elections and referenda and these are currently being reviewed by the EU. Each development will need to be considered as part of the revisions of the Code.

⁴ Audience thresholds were examined in the context of the review of the Children’s Commercial Communications Code and will be considered when that Code and the GCCC are revised.

- **Rules Applying to All Commercial Communications (including radio and television specific rules)**

- The Practice Review suggests some additions are needed in relation to privacy in terms of the use of images and information on individuals. The use of images has arisen in the context of prior BAI complaints. More generally, considering further issues relating to privacy may be desirable as this issue is not directly addressed in the current Code.

- **Sponsorship Rules⁵**

- In terms of sponsorship, industry stakeholders are of the view that greater clarity is required about what is sponsorship and how it should be separated from advertising, as well as what is meant as “advertising copy”, which is not permitted in sponsorship announcements. Industry stakeholders favour a more liberal approach to ‘calls for purchase’ in sponsorship messages.
- In the context of the Public Call for Comments and Observations, it is suggested that the rule preventing sponsorship announcements or credits making ‘special promotional references’ to a product/service is too restrictive and prevents broadcasters selling sponsorship. In particular, it is suggested that broadcasters should be permitted to use ‘calls to action’, provide information on pricing, as well as promote products and services.
- Stakeholders from the community media sector stated that they would like more flexibility to refer to the price of local events in editorial content which is of genuine interest their audiences.
- The Practice Review notes that the rules will need to be updated to reflect the prohibition on the display of sponsorship logos in children's programmes.

- **Product Placement Rules**

- The Practice Review highlights that the revised AVMS Directive updates the approach to product placement with the current prohibition of product placement (with exceptions) having been reversed to allow product placement (except in certain circumstances). Accordingly, the rules need to be updated. It is also worth noting that the revised AVMS Directive introduces a prohibition on product placement in consumer affairs programme and the rules need to be updated to reflect this prohibition.
- Separately, some industry stakeholders are concerned over the requirement for the use of product placement in programming to be editorially justified.
- In the context of the Public Call for Comments and Observations, there is a call for the BAI to act with caution in relation to product placement of products that are legal but harmful such as tobacco and fossil fuels. Similar views are expressed vis-à-vis medical products, treatments, and services for which there is weak scientific evidence.

- **Rules Applying to Specific Products and Services**

- On the regulation of specific categories of products and services, there are calls from some industry stakeholders for more clarity on the sponsorship of events by alcohol brands.

⁵ The rules on sponsorship include necessary requirements that give effect to the distinction between sponsorship and advertising that must be maintained because there are time limits on advertising and not sponsorship and this needs to be given regulatory effect.

- Regarding commercial communications for cosmetic surgery and services, medical products, treatments and services, the Practice Review notes that the GCCC is already quite comprehensive. At the same time, new EU rules on these products and services address claims made in advertising and these need to be given further consideration in terms of a review of the GCCC.
- On the topic of cosmetic surgery and services, a respondent to the Public Call for Comments and Observations states that the advertising of cosmetic surgery and services could result in an unhealthy pressure on people, especially young people, to change how they look and that these services should only be advertised to adult audiences.⁶ In addition, some industry respondents state that the rules on cosmetic services should be updated having regard to what they describe as the evolution of these services, in particular cosmetic services and procedures.
- There is desire from industry stakeholders for the rules for High Fat, Salt and Sugar products to be reviewed.⁷ Some industry stakeholders state that the financial rules on the inclusion in advertising of terms and conditions are inefficient and too constraining – especially for radio though it must be noted that the Central Bank primarily regulates the content of these adverts rather than the BAI.
- Regarding commercial communications for infant formula and follow-on infant formula, the Practice Review notes that recent EU regulations introduce additional rules regarding the advertising, marketing and promotion of such foods. The Practice Review highlights that the GCCC is largely in line with these rules, but some minor suggestions are included in the Practice Review. It is worth noting that the OSMR Act 2022 includes a new provision which permits Coimisiún na Meán to restrict or prohibit advertising of these products and this will need to be considered as part of any revisions to this Code.
- On the topic of gambling, a response from the Public Call for Comments and Observations requests a limit be put on the advertising of gambling to adult audiences and that advertising include disclaimers about the addictive nature of the activity and provide information on addiction prevention. The Practice Review notes that the introduction of watersheds for the advertising of gambling is becoming common practice. The current gambling rules in the GCCC will be impacted by the rules introduced by the new gambling regulator provided for in Irish gambling legislation, currently being considered in the Houses of the Oireachtas. This will eventually mean that the new gambling regulator will take on oversight of the regulation of this type of advertising.
- Several responses to the Public Call for Comments and Observations address alcohol advertising. One respondent states that the BAI should be proactive and prohibit alcohol advertising before the watershed while waiting for the implementation of the radio and television advertising provisions of the Public Health Alcohol Act to be enacted.

This Act includes a watershed on such advertising as well as restrictions on advertising content outside of the watershed. As with gambling, regulation of this type of advertising will move to a new oversight structure once the advertising provisions are enacted. The GCCC will need to be updated to reflect this change. However, the BAI has no role under the Public Health Alcohol Act for enforcing these advertising provisions.

⁶ Advertising of this nature is not permitted in children's programmes.

⁷ These were examined in the context of the prior review the Children's Commercial Communications and will be considered when that Code is reviewed.

- On the issue of alcohol, some respondents to the Public Call for Comments and Observations argue that there is currently high levels of alcohol-based sponsorships and product placement on popular shows and that alcohol brands (including zero alcohol products) should be banned from sponsoring programmes. Countering that argument, representatives of the drinks industry argue that they honour their commitment to advertising alcohol products responsibly and operate rigorous internal marketing codes supported by initiatives to comply with a comprehensive set of international, national and sectoral codes.
- More generally, representatives of industry state that any changes to the GCCC should use a science and evidence-based approach. They set out their view that current rules on alcohol and on food, nutrition and health should not be changed, since these rules are seen as effective, workable, comprehensive and are complied with by the industry.

- **New Regulatory Areas**

The review of the GCCC sought opinions on new areas of regulation, including matters relating to the environment, sustainability and cryptocurrency.

- Inputs from the review, including from industry stakeholders, indicate that specific rules regulating environmental claims would be broadly welcomed. A respondent to the Public Call for Comments and Observations proposes that the Code be updated to include an additional principle ‘the protection of public health and environmental health’. This respondent argues that this will focus on the impact of highly carbon polluting and environmentally degrading activities and products which are advertised, marketed or involved in sponsorship arrangements. In addition, there are calls for the GCCC to prohibit ‘greenwashing’ or the promotion of products or services that undermine climate action and the Code should be updated to align with the objectives of the EC European Green Deal.

It is further suggested that advertisements for products or services that promote the use of fossil fuels, plastics, etc., should be accompanied with a consumer warning. Some respondents also suggest that it is irresponsible to promote, encourage or advertise air-travel. One respondent proposes a total ban on advertising of products and services which contribute to greenhouse gas emissions.

- On the issue of the environment, the Practice Review highlights that the introduction of a specific section on “environmental claims” would be in line with emerging international practice and self-regulation. This could be included under Section 5 as environmental claims relate to a range of products and services, or it could be a stand-alone section.
- The Practice Review also notes that while the GCCC, in several areas, speaks to the issue of the use of scientific data, several countries have specific sections for rules related to the use and presentation of scientific data. This is relevant to the issue of ‘greenwashing’ but also any science-based claims and the Practice Review proposes that there may be value in developing a section or specific rules on the use of scientific data in the GCCC and this could come under Section 5 of the Code.
- On the topic of cryptocurrency, the Practice Review highlights that concerns regarding promotions of cryptocurrency and related services is increasing, and likely to be legislated soon in the UK and elsewhere. The review notes that the UK Advertising Standards Authority has introduced guidelines to ensure that such advertising is not misleading, and similar guidelines could be included under section 17 of the GCCC dealing with financial claims.

The issue of cryptocurrency is also under active consideration by Irish regulators, both statutory and self-regulatory organisations.

2.2 Code of Fairness, Objectivity and Impartiality in News & Current Affairs (“NCA Code”)

The NCA Code is concerned with ensuring that the broadcasting of editorial content that constitutes news is objective and impartial, and content that is current affairs is fair, objective, and impartial and that both are presented in an objective and impartial manner and without any expression of the broadcaster’s own views. The BAI has issued separate election and referenda guidelines which are anchored in an obligation in this Code to comply with any such guidelines or guidance issued by the BAI in respect of national ballots. The BAI has also produced guidance notes for the Code. The guidelines and guidance are part of the review.

Key findings arising from the review are set out now with reference to the relevant sections of the Code.

• Overall approach to the Code

- The Practice Review highlights that the Code is in line with European standards and approaches in other jurisdictions. The Practice Review recommends that consideration be given to including within the objectives of the Code the role of the Code in supporting media plurality. The BAI Media Plurality Policy highlights the role of the NCA Code in supporting plurality and it therefore seems suitable that the Code should directly address this in the objectives, which is currently not the case.
- The Practice Review also notes that, given the number of overlaps in relation to protection from harm, fairness and respect for groups in society, it is worth considering combining the Code on Programme Standards with the Code of Code of Fairness, Impartiality and Objectivity in News and Current Affairs (as is the case in many other countries).
- Within a wider European context, the EU is currently considering the development of the Media Freedom Act, which would introduce community-wide requirements with respect to media plurality. While still under active debate, the NCA Code would need to be reviewed should the Act become European Law. At a national level, the debates in the Houses of the Oireachtas on the OSMR Bill highlighted a range of concerns regarding news and current affairs, in particular around the role of this regulation in terms of electoral and referenda coverage, on-air fairness and also gender issues.

Accordingly, consideration needs to be given to whether the development is required of a specific Code relating to election and referendum coverage (including party political announcements on broadcasting and on-demand) and also the development of rules supporting gender parity in news and current affairs programming.

• Principles

- The Practice Review also recommends that the NCA Code be updated to include rules and guidance regarding hate speech, discrimination and denigration, which can be referenced in relation to different kinds of programming. While currently addressed in the Code of Programme Standards (see below), applying the AVMS Directive and the OSMR Act 2022 to a revised NCA Code would seem to necessitate the inclusion of some new rules dealing with these issues.

- The Practice Review also notes that, given the relatively high levels of trust in the Irish media (compared with other countries), the Principle of Accuracy could perhaps be more prominent. The review suggests that renaming the code: Code of Fairness, Objectivity, Accuracy and Impartiality in News and Current Affairs, could be considered. This might also be appropriate given issues in recent years relating to misinformation on Covid-19, climate change and other matters and the potential inclusion of rules on science-based factual reporting.
- In terms of the responses to the Public Call for Comments and Observations, a respondent recommends that the NCA Code be updated to ensure broadcasters' access to local sports which would help community media cover local sport in news programming. The respondent expresses a concern that current broadcast rights arrangements for Gaelic Athletic Association (GAA) content is being limited to commercial broadcasters, thus reducing plurality. This respondent states that this change would support the objective of the Code "to promote independent and impartial journalism in the provision of news and current affairs content."

- **Statutory Duties of Broadcasters**

- In terms of the statutory duties for broadcasters, set out in the Broadcasting Act 2009 as amended by the OSMR Act 2022, some industry stakeholders want the Code to provide greater clarity about what is 'news' content and what is 'current affairs' content. There is also confusion on the part of some industry stakeholders over whether "fairness" applies to news content as well as current affairs. There are also mixed views over whether fairness to the individual (or organisation) as outlined in the NCA Code also applies to genres other than news and current affairs.

- **Fairness Rules**

- The Practice Review includes several recommendations about fairness. In particular, this review suggests that the treatment of people contributing to news and current affairs, who may for various reasons be vulnerable or less media savvy than other contributors, could be addressed via updates to the NCA Code or the Code of Programme Standards. Rules in this respect were developed in the UK in recent years. This could in practical terms entail the addition of a Principle of Fairness or alternatively it could be addressed via the Principle of Respect for Privacy included in the Code of Programme Standards.

- **Objectivity and Impartiality Rules**

- On the issue of the role of the presenter in news and current affairs and the rules under this section of the NCA Code, there are mixed views from industry stakeholders about how much the Code currently permits presenters to give their own views on controversial matters, with some calls for more flexibility in this area.

It should be noted that presenters can express views once the programme does not infringe the fairness, objectivity and impartiality provisions of the Code.

- Separately, industry stakeholders state that while the NCA Code indicates that a "balance" of time or views in news and current affairs content is not always required, this should be made absolutely explicit in the body of the Code rather than only in the guidance notes.

- The issue of 'false equivalence' is raised by industry stakeholders and also in the responses to the Public Call for Comments and Observations. This includes calls for further guidance on the application of impartiality and fairness when an issue is more, or less settled or when scientific evidence points unequivocally in one direction.

- **Election and Referendum Coverage**

- The Practice Review finds that in France, Italy, Ireland, the UK, Poland and the Netherlands, broadcasters are required to cover election and referenda campaigns in a fair, balanced and impartial manner. This review notes that it is common practice in European countries for the regulator to provide guidelines for election and referenda. Depending on their statutory duties, these can be more or less prescriptive, and the approaches to achieving the same aims are varied.

Hence, the Practice Review concluded that, when compared with European standards, there is no particular issue that stood out in relation to the Irish Code as it relates to election and referenda coverage. The Practice Review finds that, as some countries also impose further obligations relating to pluralism and equality during election periods, it might be useful to consider this as a principle (as noted above with reference to the Media Plurality Policy) reflecting the importance of ensuring a diversity of voices and opinion.

- In relation to the BAI's Election and Referendum Guidelines, there is a clear call from industry stakeholders for the moratorium applied at election and referendum times to be removed, or at least reformed. Separately, some of these stakeholders state that the Election Guidelines should recognise how broadcasters cover constituency matters during elections or referenda by e.g. hosting debates or producing reports about a specific constituency. Election candidates normally participate in such content. These respondents state that it would be helpful for the Election Guidelines to acknowledge some of the factors that should be taken into account when deciding who should take part in such items as this would assist broadcasters in ensuring regional, local or community coverage meets the requirements of the BAI's Guidelines.
- A further common area of concern for industry stakeholders dealing with election campaign coverage is determining which candidates to interview or give airtime to and there is a clear desire for Election Guidelines to recognise (in a non-prescriptive manner) that broadcasters should consider several factors (such as past electoral support) when determining who to interview/cover. In the case of coverage of party conferences or the airing of party political broadcasts, there are also calls from some of these stakeholders for the Guidelines to state that while political parties are responsible for the content of their broadcast, the content must comply with the law and regulations.
- A respondent to the Public Call for Comments and Observations notes the importance of impartiality in election and referendum coverage while not following "the equal representation paradigm" which could result in false equivalence being given to different perspectives. The Public Call for Comments and Observations also indicates mixed reactions to the guidelines regarding election moratoriums and party-political broadcasts with some respondents seeing the restrictions as unfair while others consider that the current codes do not need to be changed.

- The Practice Review notes that there is a growing tendency to extend ‘silence’ periods (moratoriums) to online media (for example in Spain and France). The prohibition of publication of opinion polls and exit polls online during silence periods are addressed in the rules in Italy and the UK. Therefore, consideration needs to be given to the election and referenda rules that might apply to on-demand audiovisual media services given the expansion of news and current affairs obligations to include such services.
- The Practice Review notes that *the Irish Electoral Reform Act is significant in relation to the regulation (mainly concerning transparency) of online paid political advertising. This introduces a separate regime for broadcast and online media. The Act does not however appear to deal with issues such as respecting a moratorium for political advertising or the publishing of opinion polls online.* It will be important that Coimisiún na Meán engages with the new Electoral Commission to ensure a consistent approach by regulators during electoral or referenda periods.

- **New Regulatory Areas**

The review sought opinions on new areas of regulation, including matters relating to the environment, science-based reporting, and sustainability.

- A good deal of inputs to the review relate to how environmental issues are covered in news and current affairs with calls for the NCA Code to be expanded to include guidance on how to deal with these issues, including as they relate to biodiversity loss and nature. In particular, there are calls from some stakeholders for the Code to deal with the presentation of factual information on the carbon and/or environmental impact of activities or sectors in the context of news and current affairs.
- In addition, there are calls for broadcasters to avoid presenting extreme and inaccurate views on the topic of the environment, including climate change in order to achieve ‘balance’. There are also calls for greater transparency of the potential vested interests of participants in debates and discussions.
- Some industry stakeholders outline a request for greater clarity on whether broadcasters are in breach of the NCA Code if the presenters or journalists express their own views and especially in areas such as the climate crisis.
- Relating to, but wider than coverage of the environment, are comments on the reporting of scientific data with a concern from stakeholders that a failure to take into account nuances might potentially lead to a misrepresentation of the facts. An example cited relates to when there are differences between male and female responses to medicine / medical procedures and only one set of data (relating to either men or women) is presented.
- In terms of the Practice Review and science-based factual reporting, this review concludes that while the Code of Programme Standards provides some guidance in relation to programming related to the environment (under the Principle of Public Interest), consideration should be given to reflecting similar provisions in the NCA Code, with further guidance regarding “due weight to the balance of contemporary scientific knowledge.” The Practice Review also notes that it may be necessary to expand the notion to all types of science reporting including incorporating news on health etc.

2.3. Code of Programme Standards (“Standards Code”)

The Standards Code sets out the principles applying to all editorial (but not commercial) content with a view to minimising harm and undue offence that such content may cause. The Code deals with privacy, the public interest, violent and sexual content, and the protection of children, amongst other matters.

The Code applies to news and current affairs content as well as other editorial genres, like drama, lifestyle, comedy etc.

Key findings arising from the review are set out now with reference to the relevant sections of the Code.

• Overall approach to the Code

- The Practice Review notes that the Standards Code is relatively high-level compared to the other BAI codes. As such, the Code may require more detail under the specific principles, in particular as there are a range of issues that require updating on account of the OSMR Act 2022 and the need to transpose the AVMS Directive. Moreover, new concepts will need to be introduced.
- The Practice Review makes several suggestions intended to enhance the usability and clarity of the Code, including its relationship with other codes. This includes providing for web-based codes rather than simply online versions of print versions. This review also considers that combining the Standards Code with the NCA Code may be desirable (as is the case in other countries). This review also considers the development of guidance, where relevant, and/or link to relevant guidance documents of other organisations, could be useful.
- In terms of industry stakeholders, a number of these set out a view that a clearer distinction between what they describe as mandatory and advisory provisions in the Code would be helpful. These stakeholders also stated that greater emphasis on context would be useful in relation to how “undue offence” is considered (e.g. differentiating between fictional, satirical and factual content). There are also calls for clearer definitions of some terms including “offence”, “balance”, “opinion”, “gender identification”, etc. It is felt by some stakeholders that clearer guidance is required on what constitutes “psychological harm”. In terms of the complaints process, there is a call for a ‘right of appeal’ where complainants feel that their complaint has not been adequately dealt with by the BAI.⁸

• Principle 1 – Respect for Community Standards

- The Practice Review finds that the provisions under this Principle are comprehensive and provide a very useful introduction to the main themes of the Code. This review notes that they could be considered as interpretative principles and some of the detail on achieving the goals outlined could potentially be further elaborated specifically where they are needed, for example under the Principle of the Protection of Minors.

⁸ Under the current and forthcoming regulatory systems, the only right of appeal to statutory complaints is via the courts system.

- **Principle 2 – Importance of Context**

- Several industry stakeholders outline their view that there is no watershed for radio services and that the Code should make this clear.⁹ In addition, in their view the Code should emphasise that the primary responsibility for protecting minors rests with parents or guardians rather than the shared responsibility set out in the current Code.

- **Principle 3 – Protection from Harm**

- On this Principle, the Practice Review suggests that the concept of harm could be expanded to include protecting participants in programmes from harm (also discussed in the context of the NCA Code). This review notes key examples from other countries which could be examined to ensure participants are protected in relation to informed consent and duty of care. A key concern is the protection from harm of participants in reality television shows. As noted earlier in the report, this could in practical terms entail the addition of a Principle of Fairness or alternatively it could be addressed via the Principle of Respect for Privacy.
- On the matter of content that might be potentially harmful, the Practice Review suggests that supporting guidance could be developed where relevant, and/or link to relevant guidance documents of other organisations.
- In terms of the Public Call for Comments and Observations, a respondent suggests that this Principle to be amended so that audience would be presented (before or following programming that may negatively impact audiences) with a helpline telephone number, not just a link to a website containing helplines. In addition, it is argued that the method used for self-harm or suicidal behaviours should not be broadcast unless there is strong editorial justification for their inclusion.¹⁰
- Another respondent noted that recent changes in legislation meant that coercive control is now included under definitions of sexual violence and, accordingly, the Code should reflect this change.

- **Principle 4 – Protection of Children**

- The Practice Review states that the rules outlined under Principle 4 may need further detail and do not currently fully align with the revised AVMS Directive. In this regard, the AVMS Directive requires that viewers should have sufficient information regarding the types of content which may be harmful to minors or children. This review notes that although this is referred to in the Principle addressing context, it would be important to reiterate this under Principle 4 in the context of parental/guardian empowerment to protect children. Linked to this, this review notes the importance of including the various measures that should be used to protect children aside from scheduling and information for viewers. This includes the technical protection required by the AVMS Directive in terms of pornography or gratuitous violence, which should be subject to the strictest measures.

⁹ While there is no neat watershed as is the case of radio, there are periods of the day when radio broadcasters must have regard to child audiences, such as during school run time or in the case of alcohol advertising. Statutory watersheds will be introduced shortly for radio (and television) via other regulations for gambling and alcohol advertising.

¹⁰ This addition is reflective of both the World Health Organization advice and the Samaritans guidance.

In the other jurisdictions examined in the Practice Review, over-18 content considered harmful to children is blocked via technical means, parental control and the provision of PIN numbers to restrict access.

- As noted in respect to the GCCC Code, the Practice Review states that it may be worth considering whether the audience thresholds (used in part to define whether a programme should be considered a children's programme) be reduced, or a secondary audience threshold be included with regard to programming that is not children's programming but likely to be seen by children, such as those broadcasting during the early peak-time period (6pm-9pm).
- The Practice Review also highlights several other issues including suggestions that, this Principle could refer to the rules on harmful content covered under Principle 3. Furthermore, additional rules could be added in relation to the participation of minors in programmes and additional rules regarding the reporting of minors involved in crimes, whether victims or perpetrators, could be added here or under the NCA Code.

- **Principle 5 – Respect for Groups in Society**

- The Practice Review highlights that this Principle needs to be expanded and it is highly recommended that the BAI develop rules and guidance regarding hate speech, discrimination and denigration, which can be referenced in relation to different kinds of programming. A range of examples are provided in the Practice Review.
- The Practice Review also highlights that respect for the different groups in society also implies more engagement with groups regarding understanding of terminology, regarding consultation in the development of programming, and in the communication with representative groups when seeking input or opinions or contributions to programmes. For any participants in programmes, the principles of fairness and duty of care already discussed above could apply. The Practice Review states that addressing these issues is in line with the BAI goal of ensuring the principles of Equality, Diversity and Inclusion are reflected in the policies and strategies of the organisation.
- In relation to Principle 5, it is suggested by one respondent to the Public Call for Comments and Observations that mental health diagnosis be included in the list of characteristics that should only be emphasised when contextually justified.

- **Principle 6 – Protection of the Public Interest**

- The Practice Review notes that the promotion of public interest content could be expanded to include programmes that inform public debate relating to climate change and environmental sustainability.
- The Practice Review also notes that as this Principle addresses the prohibition of content that incites crime, it should incorporate these references from the AVMS Directive (including regarding hate speech, racism etc.).
- One respondent to the Public Call for Comments and Observations proposes that this Principle include the protection of environmental health, in particular as a means of regulating the way highly carbon polluting or highly environmentally destructive products or activities are presented in broadcast content. Also related to this Principle, it is suggested that broadcasters undertake regulator certified training on the climate and biodiversity crisis.

The issue of sustainability should be covered in an interdisciplinary manner, connecting it with ecology, biodiversity and social justice, which are all seen as intricately intertwined.

Principle 7 - Privacy

- The Practice Review suggests that this Principle could be integrated with issues concerning fairness and duty of care – in particular as fairness of treatment in programming could include a range of rules in relation to informed consent.
- *Noting the transposition of the AVMS Directive and the expansion of the scope of statutory regulation in Ireland to on-demand services (via the OSMR Act 2022), the Practice Review outlines the need to introduce a section in the Standards Code on on-demand audiovisual media services. This review states that on-demand audiovisual media services could be referred to under each section of the code, or alternatively a specific section could be added to the code.*
- The Practice Review notes that the OSMR Act 2022 widens the scope of obligations regarding content (including harmful and illegal content, and also in relation to the protection of minors). A review of the Standards Code will need an adaptation of the terminology in the document in order to include on-demand services alongside broadcasters. This review notes that as on-demand services have the same obligations regarding content, any rules or guidance documents on harmful content, on protection from harm, on issues of fairness and duty of care, and on hate speech, discrimination and denigration should also be addressed to on-demand audiovisual media services.

2.4 Rules on Advertising &Teleshopping: Daily & Hourly Limits

These rules outline the daily and hourly limits for advertising and teleshopping on commercial and community radio and television services. Limits for public service broadcasters are set by the Minister. The statutory review process did not consider these rules in detail as the content of the rules are, with limited exceptions (namely the policy limitations placed by the BAI on community media and the amount of advertising during children’s programming broadcast on commercial television) are determined either by national legislation or European legislation.

The OSMR Act 2022 updates the rules in respect of advertising and teleshopping. In the case of television services, the Act requires Coimisiún na Meán to develop rules that transpose the AVMS Directive. In the case of radio advertising, specific limitations are set down in the OSMR Act 2022 and these will frame the work of the new regulator in terms of updating the Rules on Advertising and Teleshopping.

The current review highlighted that there was general (but not universal) agreement that the current minutage for advertising was adequate but more flexibility in the scheduling of minutage would be welcome.

3. Review Conclusions

Having regard to the range of activities undertaken as part of the review of these codes and rules and the key findings set out above, the following conclusions can be reached. They are addressed under three headings: OSMR Act 2022 & Transposition of the AVMS Directive; Specific Areas; Other Relevant Matters.

3.1 OSMR Act 2022 & Transposition of the AVMS Directive

The review has been undertaken in the context of the passage of the OSMR Act 2022 which will widen the scope of statutory regulation to include audiovisual content and video-sharing platforms. The existing codes and rules must therefore be updated to reflect any changes in legislation. In summary, the following areas need to be updated:-

Commercial Communications

- Definitions for different types of commercial communications require updating to reflect new legislative provisions.
- The section dealing with prohibitions needs to be updated to include a prohibition on commercial communications for e-cigarettes and other rules in the GCCC must be updated to reflect this change.
- The rules on product placement must be updated to reflect the reframed approach of the AVMS Directive which now permits Product Placement (with limitations) as opposed to prohibiting it (with exceptions and which is the approach reflected in the current version of the GCCC). The product placement rules also need to be updated to include a prohibition on its use in consumer affairs programmes.
- Rules on cosmetic surgery, services and treatments as well as rules on medicines, medical products and devices need to be updated to reflect changes in EU law.
- The rules on infant formula and follow-on formula need to be updated to reflect changes in EU law and consideration must be given to the provisions in the OSMR Act 2022 which permit Coimisiún na Meán to restrict or prohibit commercial communications for these products.
- Revisions to the Daily and Hourly Limits: Advertising and Teleshopping are required to reflect updated provisions for television advertising and teleshopping included in the AVMS Directive and updated provisions for radio included in the OSMR Bill.

Editorial Content

- The scope of existing editorial codes (the Code of Fairness, Objectivity and Impartiality in News and Current Affairs and the Code of Programme Standards) will need to be updated so that they cover on-demand audiovisual media services and content under the editorial control of video-sharing platforms.
- Related to the expanded scope to cover on-demand is the fact that the OSMR Act 2022 will also apply to video content produced by news organisations with a turnover of over €2m. This means that news and current affairs content included in video catalogues and available online will be subject to the Code of Fairness, Objectivity and Impartiality in News and Current Affairs. The Code of Fairness, Objectivity in News and Current Affairs will have to have regard to this change.
- On the issue of news and current affairs, the Code of Fairness, Objectivity and Impartiality in News and Current Affairs will need to be updated to have regard to the expansion of rules on party political programmes (formerly party political broadcasts) to both broadcast and online content.

- Further, the OSMR Act 2022 requires Coimisiún na Meán to consider developing codes relating to gender representation in news and current affairs programmes and also the inclusion on radio of music composed or performed by women and both will also need to be considered in any revision to the Code of Fairness, Objectivity in News and Current Affairs or via the development of new codes addressing gender and music.
- Both the Code of Fairness, Objectivity in News and Current Affairs and the Code of Programme Standards will need to be updated to reflect changes in legislation relating to hate speech, incitement to violence and discrimination and gender-based hate will also be a relevant area to be considered in that context.
- The editorial codes will also need to be revised to reflect updated legislation with respect to the protection of minors, including rules to introduce technical mechanisms (such as PIN codes) to protect minors from content that is harmful to them. This will supplement existing provisions which include the appropriate scheduling of content as well as the provision of verbal and on-screen information to assist parental/guardian decisions about radio and television consumption by children.

3.2 Specific Areas

As noted above, the BAI sought to explore several specific areas as part of the review, in addition to an examination of the codes and rules as a whole. These areas and issues for further consideration in the context of revisions to the rules are as follows: -

Sustainability, including climate change

The review indicates broad support to update the BAI's codes and rules to deal with the issue of environmental sustainability. Areas of focus for revisions would include claims in commercial communications, news and current affairs reporting, and the wider issue of harm and the need to protect the public interest. The OSMR Act 2022 also requires the new regulator to have regard to the issue of environmental sustainability and this is set down as part of its key functions. In view of the support from the review and this new statutory remit, a review of both commercial and editorial codes to address matters of sustainability is clearly warranted.

Science-based factual reporting

The review indicates either direct support or indirect support (in terms of feedback on sustainability) for addressing issues related to science-based factual reporting in a review of the BAI's editorial codes. While the Digital Services Act deals with disinformation and misinformation, the issue of accuracy is key for effective factual reporting and for ensuring the ongoing trust in, and credibility of, media in Ireland, including the coverage of matters such as climate change or health and science matters.

Election and referenda coverage

The review, as well as inputs into the debates in the Houses of the Oireachtas on the OSMR Bill, highlight the need to look again at the regulatory approach to news and current affairs coverage of elections and referenda. In addition, coverage of candidates or interest groups in broadcast content has been a source of ongoing debate and controversy. As a result, the development of a specific statutory code, rather than guidelines, on elections and referenda may now be warranted to address this issue. Consideration of the application of a moratorium to coverage should be reviewed in this context. The extension of the Code of Fairness, Objectivity and Impartiality in News and Current Affairs to on-demand content also provides another strong reason to consider revisions to the current approach.

Gambling

As noted in the document issued as part of the Public Call for Comments and Observations, the regulation of gambling will, in 2023 or 2024, become the responsibility of a new gambling regulator. The BAI sought views on gambling so that it could inform its ongoing understanding of this type of advertising. The review highlights that this type of advertising content remains a public concern.

Cryptocurrency and related financial services

The BAI included this topic as there is currently no statutory regulation of this type of financial instrument. It is generally accepted that the nature of this type of financial instrument presents a particular type of harm to audiences, as has been highlighted by recent controversies and financial collapses linked to cryptocurrencies. The revisions of the GCCC will need to consider how this financial instrument is regulated and close cooperation with the Central Bank and other regulators will be important in this regard.

Other Areas

The BAI also sought input on hate speech (including gender-based violence), cosmetic surgery and services, medical products, treatments and services and product placement. Conclusions in this regard are set out either in the section above dealing with updates required by legislation and below in the section dealing with other matters, in particular implementation matters.

3.3 Other Relevant Matters

There are several other matters that will need to be considered as part of the revisions to the codes and rules and these include the following: -

Implementation and Support

The review indicates there is a need to further enhance support for the implementation of the codes and rules. At present the BAI provides advice and guidance on request, undertakes training and information sessions, and has also issued guidance, for example, on the issue of political advertising.

The publication of complaint decisions also highlights to the public and broadcasters how the codes and rules are interpreted and understood by the BAI. The review included requests and recommendations to provide additional guidance. In addition, some review responses indicated an incomplete or unclear understanding of some of the rules and there is a role for the regulator to further support broadcasters in this regard.

Sponsorship

The review highlighted requests to liberalise the current sponsorship regulations to provide further scope for commercial content. As noted above, there are statutory limits on the amount of advertising permitted per day and per hour. For this reason, the rules must be very clear about what content constitutes advertising, which is time limited, and what content is sponsorship or product placement, which is not time limited. It is not clear what further changes could be made to the rules which would not result in difficulties in maintaining the distinction between advertising and other forms of commercial communications.

At the same time, it is important to review all the rules and the revision process can invite views on whether any further changes can be made to the sponsorship rules which would not erode the necessity for a clear distinction between advertising and sponsorship.

Dialogue

There are a range of different stakeholders involved in ensuring that audiences are protected in terms of commercial or editorial content. New regulatory authorities are now or will soon become involved in direct regulation of media services. This includes the Department of Health, as it relates to alcohol advertising, the new gambling regulator, and the new Electoral Commission. It will be important to ensure effective and ongoing communications and dialogue between Coimisiún na Meán and these regulatory bodies. In addition, there are several self-regulatory authorities who have an important role because they support standards by directly regulating advertisers or because they regulate areas where there is no statutory regulation at this time. The Advertising Standards Authority of Ireland is important in this regard. At a European level, the European Advertising Standards Alliance and its members also support the public interest. Bodies representing industry are also of relevance. Ongoing engagement with regulated entities who have direct responsibility for complying with the codes and rules is also necessary.

Most importantly, views and inputs from the public and organisations representing their interests are essential for ensuring that revisions to the codes and rules meet the public interest, which is the key objective for regulation. For this reason, the legislation requires that the public must be consulted when revising codes and rules and regard must be had to any views they provide on draft versions before they are finalised.

Programme Participants - Fairness and Protection from Harm

The current regulations provide protection for audiences and also programme participants including via rules on privacy, identification, consent, amongst other matters. The review highlights that the codes may need to give additional protection to participants in programming because their participation may result in harm after a programme has been broadcast. This is an issue that should be considered as part of the revisions of the codes.

Balance and False Equivalence

The issues of balance and false equivalence in news and current affairs has been an ongoing regulatory concern and a matter of public debate, whether in the context of elections or referenda or in the case of coverage of climate change or Covid-19. It was also highlighted by those who inputted into this review.

The BAI has provided guidance and information on when balance is necessary and clarified that it may be necessary to ensure fairness and that there are occasions when it is not necessarily a requirement. There is a risk that the provision of balance where it is not necessary can result in the amplification of views that do not reflect the facts of a news story, and which can therefore distort public information via false equivalence. At the same time, balance can be vital to fair, objective and impartial news and current affairs. Media service providers, such as broadcasters are best placed to make decisions in this regard. Having said that, the review highlights that ongoing communication by the regulator on the issue of balance and false equivalence is important and the best approach to be taken for ensuring that communication is effective is a matter that requires further consideration in the context of the revisions of the codes and rules.

Other Matters

There are several other matters that the review indicates need further consideration. These include the issue of privacy, the way in which the codes and rules are communicated and plurality in terms of sports coverage and rights. The issue of alcohol advertising was raised during the review. The BAI's rules will be, for the most part, superseded following the implementation of the provisions of the Public Health Alcohol Act that relate to the use of a watershed for alcohol advertising and specific rules on the content of such advertising. The BAI has a role in supporting the Minister in developing the approach to be taken but has no statutory role in the implementation of these new regulatory arrangements. In view of this, it is not proposed to update the current alcohol rules until such time as the new regulations provided for in the Public Health Alcohol Act are implemented.

Appendix 1

Stakeholder Engagement Report – Wagner-Hatfield

**BAI Statutory Review of Codes and
Guidelines:
Report of targeted consultations**

Presented by



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1. Introduction

Section 42 and 43 of the Broadcasting Act 2009 (“the 2009 Act”) requires the preparation and revision of the broadcasting codes and rules governing broadcasting content. Section 45(3) of the Act mandates the BAI to review the effect of these codes and rules on a periodic basis. This report, by Wagner-Hatfield (“WH”), is presented to the Broadcast Authority of Ireland (“BAI”) as part of its statutory review of the BAI’s codes and rules and draws on information gathered via targeted, and public, calls for comments and observations. The codes (together “the codes”), guidelines (and guidance)¹ reviewed for this report are:

- Code of Programme Standards
- Code of Fairness, Objectivity, Impartiality in News and Current Affairs (incorporating the Guidelines for Coverage of General, Presidential, Seanad, Local & European Elections and the Guidelines in Respect of Coverage of Referenda)
- General Commercial Communications Code
- Rules on Advertising and Teleshopping².

This consultation sought comments on:

- The effectiveness of the current codes and rules.
- Changes or additions that could be made to the current codes and rules, bearing in mind the forthcoming changes in the Irish regulatory landscape.
- Views on the following key topics:
 - Sustainability, including climate change
 - Science-based factual reporting
 - Election and referenda coverage
 - Hate speech, including gender-based violence
 - Cosmetic surgery and services
 - Cryptocurrency and related financial services
 - Product Placement
 - Gambling
 - Medical products, treatments and services.

The report collates stakeholders’ comments and views on the above codes and draws out common themes.

¹ The BAI Children’s Commercial Communications Code is outside the scope of this review as it was subject to a separate review in 2019-2020. A separate review of the Access Rules is being undertaken in parallel with the review covered by this document.

² The Rules on Advertising and Teleshopping are, for the most part, set in legislation (and, in particular, the European Audiovisual Media Services Directive) and by the Minister. As a consequence, the BAI has a limited role in terms of setting rules in this area. Accordingly, this review only tangentially deals with matters relating to advertising limits. Where consultees offered opinions on this Code, it is included in this report.

Executive Summary

The review has been conducted and drafted in light of one of the BAI's key strategic objective to *"inform and engage the public and BAI stakeholders on the review and revision (as appropriate) of BAI Codes, Rules and Policies"*³.

The information gathered from stakeholders as part of this review found that, in general, the codes were good, useful, sensible, intuitive and the *"bread and butter"* for the broadcasting industry. The BAI staff are considered consistently professional, obliging and courteous, and prompt to reply. Stakeholders expressed a very good cooperative relationship with the BAI over the years, and hope that the same quality of cooperation will continue with Coimisiún na Meán.

Reflecting how the broadcasting industry operates, the codes provide clear responsibilities for broadcasters and a helpful framework for managing different aspects of broadcasting content.

Codes based on 'principles' were deemed to be an effective way of providing guidance without being overly prescriptive.

The transparency around the BAI's process of development and adoption of the codes is considered to be exemplary, and stakeholders appreciated the opportunity to contribute to the process and were very willing to contribute to the process.

One concern that was raised by every stakeholder interviewed – whether discussing commercial activity, freedom of expression in news and current affairs or standards imposed on editorial material – was the largely unregulated nature of online media in an Irish context.

It was noted by numerous respondents that while the codes were fit for purpose when they were developed, technological developments combined with changing social and cultural norms means that some aspects of the codes are now out of date and do not reflect how the broadcasting market in general has been impacted by the dramatic increase in availability and use of largely unregulated, online media services with particularly negative implications for commercial broadcasters.

To help the development of future media regulation codes and guidance, there was a proposal for the development of a body of longitudinal research commissioned by the regulator in order to map changes in cultural and social norms which would in turn prompt more regular code revisions.

³ The BAI Strategy Statement 2021-2023 (page 15) available at <https://www.bai.ie/en/about-us/our-strategic-goals/>

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There was also a call for the BAI to expand its remit to include broadcast material available on catchup services.

Comparisons with online competitors were frequently made and the current situation was seen as unfair and anti-competitive with almost universal calls for the introduction of a ‘more level playing field’.

Some respondents viewed the BAI Codes as being overly-prescriptive and difficult to navigate in the day-to-day operation. One idea for making the BAI Codes more accessible and less repetitive was to merge all the codes into one document, with clearly identifiable sections for each policy area.

Many respondents to the BAI public consultation focused on sustainability and climate change. They appreciated the BAI’s emphasis on these issues, suggesting that the BAI Codes addressing these topics, as well as science based factual reporting, were updated.

Other responses to the public consultation noted that positive representation of mental illness in Irish broadcasting did not properly reflect the experience of the people living with mental illness, especially where features of serious violent crime are concerned.

Some stakeholders saw this review of the BAI Codes as an opportunity to call for a move away from a regulatory culture historically focused on restricting commercial content, to a modern, flexible culture of enablement.

There is keen anticipation amongst stakeholders that the soon to be established media regulator (Coimisiún na Meán) would actively take on board the representations gathered for this review and address these imbalances through the development of future codes and rules,⁴

Code of Programme Standards

For the Code on Programme Standards (“Standards Code”) there was a suggestion from a number of stakeholders that a clearer distinction between mandatory and advisory provisions would be helpful.

It was also noted that greater emphasis on context would be useful in relation to how “undue offence” is considered (e.g. differentiating between fictional, satirical and factual content).

There were calls for clearer definitions of some terms including “offence”, “balance”, “opinion”, “gender identification”, etc. It was felt that clearer guidance was required on what constitutes “psychological harm”.

⁴ It is anticipated that this new regulator will be established early in 2023.

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A number of stakeholders wanted it made clearer that there is no watershed for radio services and that the Standards Code should emphasise that the primary responsibility for protecting minors lies with parents or guardians.

Code of Fairness, Objectivity and Impartiality in News and Current Affairs

A common finding across the Code of Fairness, Objectivity, Impartiality in News and Current Affairs (“NCA Code”) was that there should be greater clarity about what is news and what is current affairs content.

There were mixed views about how much the NCA Code currently permits presenters to give their own views on controversial matters, with some calls for more flexibility in this area.

While the NCA Code indicates that a “balance” of time or views in news and current affairs content is not required, there were calls to make this absolutely explicit.

The issue of false equivalence was raised a number of times with calls for further guidance on the application of impartiality and fairness when an issue is more, or less settled or when scientific evidence points unequivocally in one direction.

There was also some confusion on the part of stakeholders over whether “fairness” applies to news content as well as current affairs and there were mixed views over whether fairness to the individual (or organisation) as outlined in the NCA Code also applies to genres other than news and current affairs.

Election and Referendum Guidelines

In relation to the Election and Referendum Guidelines, there was a clear call for the moratorium applied at election and referendum times to be removed, or at least reformed.

The Election Guidelines should recognise how broadcasters cover constituency matters such as hosting debates or producing reports about a specific constituency. It would therefore be helpful for the Election Guidelines to acknowledge some of the factors that should be taken into account when deciding which of the election candidates should take part in such items.

A common area of concern for stakeholders dealing with election campaign coverage was determining which candidates to interview or give airtime to and there was a clear desire for Election Guidelines to recognise (in a non-prescriptive manner) that broadcasters should consider a number of factors (such as past electoral support) when determining who to interview/cover.

There were also calls for the Guidelines to state that while political parties (or campaign groups) are responsible for the content of their broadcast, the content must comply with the law and regulations.

General Commercial Communications Code

For the General Commercial Communications Code (“The GCC Code”), stakeholders preferred the use of overarching principles alongside guidance notes rather than strict principles and sub-principles. There was general agreement that restrictions and prohibitions should come primarily from the law.

There was a desire for greater clarity about what is sponsorship and how it should be separated from advertising, as well as what is meant as “advertising copy”. Stakeholders favoured a more liberal approach to calls for purchase in sponsorship messages and expressed concern over the requirement for the product placement to be editorially justified.

An issue particular to stakeholders using the GCC Code was the potential overlapping between different regulatory regimes, i.e. the BAI Code, the ASAI Code and other self-regulatory codes.

On the regulation of specific categories of products and services, there were calls for more clarity on the sponsorship of events by alcohol brands and it was felt that the rules on cosmetic services should take into account the evolution of these services, in particular non-invasive cosmetic surgery.

There was a desire for the rules for HFSS products to be reviewed and it was felt that the financial rules on general conditions are inefficient and too constraining – especially for radio.

Specific rules regulating environmental claims would be welcomed.

There was general (but not universal) agreement that the current minutage for advertising was adequate but more flexibility in the scheduling of minutage would be welcome.

2. Methodology

The review is based primarily on qualitative data gathered from a combination of:

- Desk-based research
- Semi-structured interviews with key stakeholders
- The BAI's public and targeted call for comments and observations from relevant parties.

The desk research was carried out using existing documentation including the current codes, guidance and guidelines issued by the BAI, relevant Irish and EU legislation, and other regulatory (including self and co-regulatory) codes and guidelines.

Findings from the desk research helped to inform the development of a methodology suitable for public and targeted consultation. A list of relevant stakeholders to be targeted as part of this review process was identified, in close cooperation with the BAI. A list of those who participated is at Annex 1.

To help stakeholders prepare for their interviews, a preparation note was created and distributed to all potential interviewees. This note included a list of relevant (general and specific) questions to encourage stakeholders to share their views on any issue related to the codes, including the functionality and effectiveness of its principles, potentially challenging aspects of the codes and/or aspects that might require amending/updating. Particular emphasis on specific issues were included in the interview preparation note. Please see Annex 2 for more detail.

In particular, the questions revolved around whether:

- i. The guiding principles are clearly explained and meet the objectives of the relevant Code or are they in need of updating or amending;
- ii. The distinction between some of the terms (e.g. harm and offence, fairness and impartiality) is sufficiently clear;
- iii. The broadcasters' responsibilities are outlined clearly enough within each principle; and
- iv. The guidance provided around specific areas (such as violence, sexual content and language, watershed) is sufficiently clear and relevant.

It is important to note that the questions contained in the interview preparation note were not mandatory and were created to help ensure that stakeholders considered all aspects of the codes as they prepared their feedback.

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During the interviews, stakeholders were encouraged to share their feedback on the codes based on their first-hand experience of using them. The questions were only used as prompts if required.⁵

The meetings were held online or in person (but in most cases a combination of both) across a period of four weeks from the 20 September 2022.

In addition to the targeted stakeholder meetings, the WH team also held 3 consultative meetings with the BAI representatives, to capture insights and issues identified by the regulator. WH also initiated a formal review point, mid-way into the review with the BAI to provide general feedback from the review and initial findings.

In addition to the targeted consultation with selected broadcasters, the BAI a conducted public Call for Comments and Observations. This online consultation opened on 16 November 2022 and sought observations from the public, broadcasters, advertisers, programme-makers and other interested parties on its Codes and rules. A total of 13 submissions were received, including: Alcohol Action Ireland (AAI), Drinks Ireland, Food Drink Ireland FDI (including Prepared Consumer Foods and Dairy Industry Ireland), Wireless, Association of Advertisers in Ireland (AAI), Community Radio Ireland (CRAOL), Headline and 6 individuals, offering comments to all the codes, as well as some general observations.

During the interpretative analysis of information gathered, the WH team identified common themes and key insights on which this report is based and which were cross-referenced against the BAI's public and targeted call for comments and observations which took place online between 16 November and 21 December 2022. Please see Annex 3 for more information.

⁵ It should be noted that this report may include representations from the stakeholder even where, on occasions, their submissions contained factually inaccurate or an incorrect interpretation of the regulations.

3. Note on Online Media

This statutory review is required to assess the codes and rules relating broadcast content only. However, it is not possible to understand and consider stakeholders' views on the current regulatory framework without reference to online media.

The broadcast media has been heavily regulated since its inception. The orthodoxy has been that the power and influence associated with broadcasting (and especially television) means it has to be heavily regulated. In fact, the regulation of broadcast content by Western society has changed little since the medium was invented.

However, online media has not only entered the public sphere of information, discussion and debate but is, in some cases, a direct competitor to the traditional, and regulated, mass media platforms. The traditional concept of the public sphere has been transformed by online and social media. Therefore, to understand stakeholders' position on the regulation of broadcasting, it has to be considered in relation to the limited regulation currently applied to the online world.

Broadcasters expressed their frustration over the lack of level-playing field with online media, calling for more flexibility and for updating and adapting the codes to the present circumstances. For instance, currently there exists no regulation of editorial material⁶ (including news and current affairs) for podcasts while all the BAI codes apply to radio content (such as the requirement for impartiality, the application of harm and offence rules and sponsorship requirements).

The broadcasters and other stakeholders consulted generally welcomed the future establishment of the new media regulator, Coimisiún na Meán in 2023. With its remit to cover not only broadcasting but on-demand audiovisual services, as well as online content, they hoped that a more 'level playing field' could be achieved. Many stakeholders felt that they were at a significant competitive disadvantage to their online rivals. It is fair to conclude that the more commercial or competitive a broadcaster wanted to be, the more concerned they were about these discrepancies.

As a consequence, while there were calls for a partial liberalisation of the rules, broadcasters predominantly suggest bringing the online media sphere within the realms of (self-)regulation. It has been reiterated that it is pivotal for the views expressed during this statutory review of the BAI codes be forwarded to Coimisiún na Meán and be seriously considered when drafting new rules.

⁶ All content available online must comply with the law of the land such as ensuring material does not incite violence or racial hatred.

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There remain significant concerns over the regulatory imbalance between broadcasting and online services with many online platforms having almost no boundaries and the freedom to operate unregulated. The quality of discourse on online platforms is not necessarily as good or as strong as it is in broadcast media, because of the lack of such codes.

Concerns were also expressed over the forthcoming launch of major international streamers in the Irish market, which is presumed will affect the broadcasting community.

5. Code of Programme Standards

5.1 Introduction

The BAI Code of Programme Standards (‘the Standards Code’) applies to all radio and television content. It is drafted in light of section 42(2) and 42(3) of the 2009 Act.

The objective of the Standards Code is to “*promote responsible broadcasting*”⁷ and ensure the audience is protected from harmful or unduly offensive material. The Standards Code sets out seven principles against which all content and complaints are assessed:

- Principle 1: Respect For Community Standards
- Principle 2: Importance of Context
- Principle 3: Protection from Harm
- Principle 4: Protection of Children
- Principle 5: Respect for Persons and Groups in Society
- Principle 6: Protection of the Public Interest
- Principle 7: Respect for Privacy.

The Code contains an explanation of the intention of each principle as well as the rules which broadcasters must adhere to ensure compliance. The Standards Code also outlines how the BAI deals with complaints (see report section ‘Other Matters’).

5.2 List of key findings and common concerns

In general, stakeholders felt that the Standards Code was well articulated and provided good advice and direction for broadcasters. Social and cultural norms, as well as technology have, however, evolved since the Standards Code was first drafted and as a result some aspects of the Standards Code now feel ‘out-of-date’.

Other aspects of the Standards Code would benefit from additional clarification such as a clearer distinction between the mandatory and advisory provisions within the Standards Code and more guidance on what constitutes “psychological harm”. To a lesser degree, it was noted that some language in the Standards Code could be updated, such as advising broadcasters to use the term “road traffic collision” and not “road traffic accidents”, in line with the current thinking by relevant authorities.

While the Standards Code recognises the subjective nature of “offence” and acknowledges that the audience does not have a “right not to be offended” and that “there will be programming that

⁷ Page 6 of the Standards Code section “The Objectives Of This Code”, available <https://www.bai.ie/en/codes-standards/#al-block-4>

causes offence to some members of the audience”, a number of stakeholders noted that greater emphasis on context would be useful in relation to how undue offence is considered (e.g. differentiating between fictional, satirical and factual content, with a higher threshold for satirical/comedy content in relation to offence) and that perhaps the use of the term “gratuitous” rather than “undue offence” might be helpful.

In relation to the protection of minors, a few stakeholders suggested that the Standards Code should emphasise that the primary responsibility for protecting minors lies with parents or guardians. A number of respondents also felt that making it clearer that there is no watershed for radio services would be helpful in terms of managing the expectations of parents and guardians around the radio content.

To help delay future Standards Codes becoming prematurely ‘out-of-date’, there was a call for more frequent revisions of the Standards Code based on regular cultural surveys which could map changes in standards and inform the industry’s understanding of contemporary community standards.

Finally, some stakeholders felt it would be helpful if the Standards Code provided additional guidance on how the BAI assesses harm from flashing images which may cause photosensitive epilepsy and whether the use of the Harding test would be useful.

5.3 Overall summary of feedback from stakeholders

Principle 1. Respect for community standards

Given the speed at which cultural and societal changes occur (not least because of the impact of technology), some broadcasters feel that there should be a constant cultural survey operated by the regulator which would prompt much more frequent reviews of the Standards Code.

Principle 4. Protection of children/watershed

Some respondents want the Standards Code to be explicit that the watershed does not apply to radio.

The current wording of the Standards Code states that broadcasters share a responsibility with parents for what children listen to and watch. However, some broadcasters believe that the primary and greater responsibility is on the parents/guardians, and this should be reflected in the Standards Code.

One of those interviewed requested that when the Standards Code deals with sexual material and violence, it should put a greater emphasis on the importance of context (such as audience expectation, time of broadcast, what channel it is transmitted on and the genre of the programming).

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Principle 5. Respect for persons and groups in society

The objective of Principle 5 is clear and supported, however some participants felt that the Standards Code should be clearer on certain points, such as decency, offence, opinion, gender identification, etc., by providing definitions and more detailed guidance.

With respect to hate speech, the broadcasters are clear in their legal obligations, but find some of the terms used in the Standards Code unhelpful. For example, the term “stir up hatred” is difficult to interpret and the term “incite” might be better.

Principle 6. Protection of the public interest/balance and impartiality

Matters around sustainability, science-based reporting and climate change can be challenging and there was a view that the provision that broadcasters shall:

“...not encourage behaviour or views that are grossly prejudicial to the protection of the environment. Broadcasters are encouraged to inform audiences of current developments in respect of environmental matters in a manner that gives due weight to the balance of contemporary scientific knowledge.”

be moved to the Code of Fairness, Objectivity And Impartiality In News and Current Affairs.

Principle 7. Respect for privacy

A broadcaster suggests the Standards Code’s reference to an individual’s request for “withdrawal of consent” should not be a matter for regulation. Such requests fall under the contractual agreements and, where necessary, there is protection for the participants from the courts. Such a reference results in legal uncertainty.

Scope and jurisdiction

Some broadcasters are contesting the provision: “*This Code shall apply to all programme material broadcast by broadcasters within the jurisdiction of Ireland*” from the perspective of acquired programmes, claiming no control over the commissioned/acquired programmes. It is recommended to make a list of provisions and state that this provision does not apply to acquired content.⁸

Harm and offence

Broadcasters agree with having to abide by community standards but note the now consistent and dramatic change in them. Broadcasters question whether they now serve the community they broadcast to, as the Standards Code appears to be a “*relic of the world gone by*”, (especially with proliferation of online content).

⁸ It should be noted that licence holders are responsible for all the content they transmit irrespective of the material’s origin. It is the responsibility of Irish broadcasters to ensure that their output complies with all BAI codes.

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The reference to offence is well understood, but broadcasters assert that there is no right not to be offended⁹ and some broadcasters believe a clear distinction between fictional depictions and factual programming should be made. Views are expressed that there is always an inherent risk that “undue offence” becomes self-referential, while being a subjective judgement. Some broadcasters are more inclined to use “*gratuitous offence*”, in training courses etc., in the context of offence that is broadly accepted as crossing a line in societal norms. One broadcaster recommended adding the following explanation, either:

“gratuitous/undue offence is offence that can reasonably be regarded as content that breaches a broad societal acceptance of standards expected from broadcasters”

or

“an offence is more contextualised in general community standards, taking into account the expectations of the audience, the channel, the time of viewing”.

Some broadcasters use the Harding test¹⁰ to check whether flashing images in programmes may cause harm to those suffering photosensitive epilepsy. It is suggested that a reference to this specific test may be useful in the Standards Code (or associated guidance). While the use of the test does not guarantee the compliance, (e.g. a breaking news story may require the use of such content but with a warning), it would be useful to provide guidance indicating how broadcasters should be mindful of these issues, with an explanation as to how the BAI might approach this matter, in its complaints procedures.

“psychological harm”

Some broadcasters express difficulties in dealing with, or understanding the practical application of, this term. This is especially related to ambiguities as to how content could cause psychological harm and how that might be validated.

Other issues

An Garda Síochána no longer refers to “road traffic accidents” but instead uses the term “road traffic collision”. (This is because accident infers no fault, which may or may not be the case.) A broadcaster suggested that the BAI adopt such an approach.

Finally, with the ubiquitous use of smartphones, incidental filming has become increasingly frequent and used regularly on television. As a result, what constitutes “incidental filming” should

⁹ It should be noted that the Foreword to the Standards Code states “*Not only is there no right not to be offended, it will be unavoidable that a programme service that captures the full richness of life and that seeks to address the entire range of topics of concern to the audience will contain material which will be a source of offence to some.*”

¹⁰ The Harding test is a photosensitive test frequently used by broadcasters to analyse video content for flashing and stationary patterns to determine the likelihood of causing harm to those who suffer from photosensitive epilepsy.

be examined, especially in context where long queues (e.g. for vaccination) should be considered as public events.

Specific comments from the BAI public Call for Comments and Observations

One respondent called for Principle 3, Protection from harm to be amended so that audience would be presented with a helpline telephone number, not just a link to a website containing helplines. In addition, it was argued that the method used for self-harm or suicidal behaviours should not be broadcast unless there was strong editorial justification for their inclusion.¹¹

In relation to the Principle 5, Respect for persons and groups in society, it was suggested that mental health diagnosis was included in the list of characteristics that should only be emphasised when contextually justified.

An expansion of Principle 6, Protection of the public interest was proposed to include the protection of environmental health, in particular the manner in which highly carbon polluting or highly environmentally destructive products or activities are presented in the broadcast content. Also related to this principle, it was suggested that the broadcasters undertake regular certified training on the climate and biodiversity crisis. The issue of sustainability should be covered in an interdisciplinary manner, connecting it with the ecology, biodiversity and social justice, which are all seen to be intricately intertwined.

With the definition of violence being expanded to include coercive control, there was a call for the BAI to articulate its values in broad terms. This approach would also help to address the situation where content may be in breach of relevant codes without being illegal under related legislation.

In terms of the complaints process, there was a call for a 'right of appeal' where complainants feel that their complaint has not been adequately dealt with by the BAI.

¹¹ This addition is reflective of both the World Health Organization advice and the Samaritans guidance.

6. Code of Fairness, Objectivity And Impartiality In News and Current Affairs (incorporating Elections and Referenda Guidelines)

6.1. Introduction

'The Code on Fairness, Objectivity & Impartiality In News and Current Affairs' ("the NCA Code") provides rules for broadcast content which is specifically news or current affairs. It sets out rules to ensure that such material is treated, among other things, with fairness, objectivity and impartiality. It is drafted in light of sections 39 and 42 of the Broadcasting Act 2009. The BAI also publishes Guidance Notes which supplement the NCA Code and provide broadcasters and other stakeholders further guidance on how the Code will be interpreted in practice.

Rule 27 of the NCA Code requires broadcasters to comply with the 'Guidelines for Coverage of General, Presidential, Seanad, Local and European Elections' ("Elections Guidelines"). These Guidelines place requirements on broadcasters in respect of their coverage of elections.¹²

Rule 27 of the NCA Code also requires broadcasters to comply with 'Guidelines in Respect of Coverage of Referenda' ("Referenda Guidelines"). Similar to the Election Guidelines, the Referenda Guidelines require broadcasters to comply with a set of regulations in respect of referendum coverage in addition to the rules set out in the NCA Code.

6.2 List of key findings and common concerns

NCA Code

As with the Standards Code, stakeholders understood the legal requirement for and principles of fairness, objectivity and impartiality in news and current affairs (including at times of elections and referenda) and some actively welcomed these obligations differentiating them from their digital competitors. There was general agreement that the NCA code was well written and provided good guidance, however some common concerns did emerge.

Stakeholders felt that there should be greater clarity about what is news content and what is current affairs content, perhaps with the use of some definitions.

¹² The Broadcasting Act 2009 (section 41(3)) prohibits the transmission of "an advertisement which is directed towards a political end" (ie political advertising).

There are mixed views about how much the NCA Code permits presenters to give their own views on controversial matters.

There is also some confusion about whether the NCA Code requires ‘balance’ of time or views in news and current affairs content.

Further guidance would be welcomed on the application of impartiality and fairness when an issue is more, or less settled or when scientific evidence points unequivocally in one direction. In these circumstances, some broadcasters are concerned that applying strict impartiality can result in ‘false equivalence’.

Broadcasters communicated different understandings about whether the regulatory concept of “fairness” applies to news content as well as current affairs. There were also mixed views over whether fairness to the individual (or organisation) as outlined in the NCA Code also applies to other genres.

Election and Referendum Guidelines

There was universal agreement from all broadcasters that the current moratorium applied at election and referendum times is no longer effective given the easy online access to the prohibited information. It was proposed that the moratorium be removed altogether.

Many broadcasters would welcome an acknowledgement of ‘constituency’ reporting and debates¹³.

There was a desire that the Election Guidelines (in a non-prescriptive manner) recognise that broadcasters must make decisions on who to interview/cover based on a number of factors (and, in particular, past electoral support).

Those broadcasters that carry Party Elections and Political Broadcasts (as well as Referendum broadcasts) would like the Guidelines to state that while political parties (or campaign groups) are responsible for the content of the broadcast, the content must comply with the law and regulations. Therefore, in extreme cases, the broadcaster may, as the publisher, have to intervene.

¹³ A constituency report or debate is where a broadcaster focuses the content on one specific electoral constituency and may discuss and analysis issues that are specific to that area. They frequently contain interviews with prospective electoral candidates or their representatives.

6.3 Overall summary of feedback from stakeholders.

There was an overall feeling that the NCA Code and the Elections and Referenda Guidelines are well drafted, clear and the principles understood. One broadcaster believes that such rules give the sector “benefits” and “credibility in their editorial output”. However, there was a request for specific clarification in certain areas as well as a desire for the removal or changes in other areas.

NCA Code

Difference between news and current affairs

Since different rules apply to different content (e.g. news compared to current affairs or documentaries) there is a request, by some, that the NCA Code is clearer about what constitutes news and what is current affairs. Some recommended unambiguous definitions for both genres.

Presenter’s opinions

There is some disagreement between broadcasters over whether, and how much, the NCA Code permits presenters to provide ‘opinionated’ content. One stakeholder says that the rule requiring presenters to be fair “had to go” stating that the presenter’s viewpoint is “central to the public interest”. It is, in its view, “1940s thinking” and it is for the broadcaster itself to ensure that impartiality is achieved over the service. Another considers that presenters need to be “so balanced and watch their step”. Conversely, other broadcasters believe that the NCA Code gives their presenters the liberty (and encourages them) to give their opinions. For these broadcasters, “The Code is clear that the presenter is to be provocative but also keeps us between the lines”.¹⁴ Some broadcasters feel that it is not always clear that the public understands how the NCA Code works in this area.

Balance v impartiality

The requirement for impartiality (both in news and current affairs and during elections and referenda) is frequently confused with ‘balance’. Some believe that there is ambiguity over whether they are required to give “equal time” to both sides and want the rules to provide absolute clarity and be more explicit.

Some believe that the NCA Code itself should specifically state that ‘balance’ is not a requirement.¹⁵ However, despite being adamantly opposed to the requirement to balance time, some broadcasters still maintain an informal log of on-air minutage given to political parties in

¹⁴ The requirement to exclude the expression of the broadcaster applies specifically to the licence-holder (or broadcasting company) and not individual journalists.

¹⁵ It is of note that both the NCA Code states that “fairness, objectivity and impartiality does not require necessarily equality of airtime.” (emphasis added) The Guidance Note to the NCA Code states, “*Appropriate implementation of a fairness principle should not be taken to mean that an ‘artificial balance’ is required in order to comply with the Code, nor should it be taken to imply that equal allocation air-time is always necessary to achieve fairness.*” (emphasis added)

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election coverage and each side during referenda. Separately, but nevertheless linked, during some referenda, broadcasters feel they were compelled to provide a disproportionate amount of time to one side of the argument when there was very little support or evidence that the referendum was contentious.

One broadcaster requested that the NCA Code provided more flexibility to maintain “*balance*” across a schedule and not restrict the impartiality requirement to specific programmes.

False equivalence

Obligations for balance or fairness (especially during referenda) can result in ‘false equivalence’. For example, one broadcaster cites the 2019 referendum on lowering the period of separation for couples before they divorced (from 4 years to 2 years). The broadcaster states that this was not contentious and, in fact, found it extremely difficult to find voices who would oppose the proposal. The result was that it gave a disproportionate amount of time to opposing side (resulting in false equivalence).

Application of fairness

There are different views over whether the ‘fairness’ requirement in the NCA Code applies to news as well as current affairs.¹⁶ Some broadcasters apply the fairness obligation to news and current affairs, however some view fairness as a matter for current affairs only. They state that there is no requirement for ‘fairness’ in news reporting where the obligations are for objectivity, impartiality and accuracy. They believe this should be explicit in the NCA Code. They point out that, in their view, the Broadcasting Act 2009 recognises news content was live and constantly evolving and it is not possible for any one programme to provide fairness, but this is achieved over time.

Fairness to individual v subject matter

While the NCA Code requires fairness to certain subject matters, it also requires fairness to the individual (and organisations) as outlined under “*Fairness Rules*”. These rules are considered to be clear and well formulated. However, there is some disagreement between broadcasters over whether the rules on fairness to the individual or organisation applies to just news and current affairs content or, in fact, all content.¹⁷

¹⁶ Section 42(2)(a) of the Broadcasting Act 2009 states “*that all news broadcast...is reported and presented in an objective and impartial manner and without the expression of the broadcaster’s own views*”. Meanwhile, section 42(2)(a) states “*that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without the expression of the broadcaster’s own views*”.

¹⁷ The BAI Code on Programme Standards states, in its Foreword, “*The freedom of expression is not absolute and does not include the freedom to defame or unfairly to impugn the character and good name of individuals.*” However, there is no other reference to fairness in the Code on Programme Standards.

Misinformation

Most broadcasters acknowledge that the increased use of misinformation is a relatively new phenomenon and while it is challenging to deal with, did not consider that a specific reference or section in the NCA Code was necessary. However, one broadcaster suggests that regulatory guidance on misinformation could be useful. Overall, there is agreement that the onus is on the broadcaster to deal with these matters responsibly, though some believe that recognition that the broadcaster may not cover more “*conspiratorial theories*” could be useful.

Elections Guidelines and Referenda Guidelines

Moratorium

Amongst the broadcasters spoken to, there is unanimity that the moratorium¹⁸ put in place before elections and referenda should be removed all together, and if not, at the very least revised. The view is that the moratorium is outdated and serves no purpose. Newspapers, digital media including the broadcasters’ own on-demand video services, websites and platforms run by the broadcasters, are all able to carry information and news about the election or referendum when voting takes place and up to the close of polls. These platforms also carry archive content accessible to all about the election or referendum.

In fact, some outlets continue to request wire services to provide news updates on polling day to publish material on their websites. The consensus was that the BAI should remove the moratorium all together. If this is not possible, then at the very least it should only be implemented when the polls open. There is, however, some differing views about the publication of opinion polls on the day of voting. Overall, there is a view that since newspapers and digital media could carry them, there is no reason in principle broadcasters should be prohibited – not least because broadcasting no longer has the influence that it once did. In general, broadcasters considered it should be a matter of editorial judgement for broadcaster whether to carry an opinion poll on voting day.

While, (or if), the moratorium remains in place, broadcasters would welcome further guidance on what news and issues can be covered during this period. Examples were given where the news was, in their view, unnecessarily restricted because a moratorium was in place on the day of an election.

¹⁸ The moratorium commences at 2pm on the day before the polls open and finishes once the polls close. During this period, radio and television broadcasters are not permitted to carry any content that relates directly to General Election or referendum issues, including material pertaining to the merits or otherwise of General Election candidates or referendum issues. The moratorium, which applies to all on-air personnel and programme contributors, does not preclude coverage of legitimate news and current affairs stories that are unrelated to the election.

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Constituency reporting

Broadcasters are aware of their obligations regarding 'constituency reporting' during election periods. However, they would welcome acknowledgment and support in the Election Guidelines about this specific area of broadcast coverage. There was a risk that some politicians use the broadcasters' considerable impartiality and fairness obligations during election times to 'demand' airtime when in fact there is no requirement. This results in a chilling effect where some broadcasters decide simply not to cover constituency matters at all while others continue with debates but feel compelled to include all participants, making them unmanageable. This appears to be a particular problem for smaller, local radio stations where there may not be in-house legal support available. There is a danger, in their view, that this undermines the democratic process. It would therefore be helpful for the Election Guidelines to reflect constituency reporting and very simply what the broadcasters' duties are in this area. One broadcaster also stated that guidance to ensure that politicians do not inappropriately use debates or interviews to make 'constituency points'¹⁹ would be valuable.

Past electoral support and other factors

While broadcasters agree that it is for them to determine who to interview or cover (and from which political parties) during election time, based on a number of factors, they all believed that it would be helpful if the BAI could identify some of those factors in an expanded Election Guidelines.

While these factors will never be determinative, and a 'one size fits all' approach would be unhelpful, broadcasters all state that it is necessary to have these outlined in the Election Guidelines.

RTÉ, in particular, point to its substantial internal guidelines for standards to be adhered to during elections and referenda. This, it argues, provides transparency and manages expectations for the public and programme participants. In particular, all broadcasters want to see a requirement for licensees to take into account 'past electoral support' when assessing election coverage, among other things.

RTÉ states that the Irish courts have consistently endorsed its use of criteria based on past electoral support as a fair and impartial metric in guiding election coverage and the allocation of airtime.

¹⁹ A 'constituency point' is where a prospective candidate for election uses an interview or debate to make a point or raise an issue about a specific constituency and as a result broadcasters, to ensure absolute impartiality, would be required to provide other candidates an opportunity to comment on the matter.

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However, any system needs flexibility and circumstances can change rapidly, even during an election and for this reason RTÉ states that revised guidelines should also acknowledge broadcasters may review election criteria to achieve fairness in coverage.

One broadcaster proposed that the use of the term “*proportionality*” would be also helpful.

Election/Referendum complaints

Some broadcasters suggest that the regulator might wish to consider constituting a specific ‘Election Committee’ to look at significant election or referendum complaints at speed. However, any such system would need to be clearly defined within an appropriate framework established to avoid parties purposely disrupting coverage and seeking to intervene on a daily basis. If effective, such a process may avoid the need for complainants to head to the courts.

Standards in Party Election and Referendum Broadcasts

Party Political and Elections (and Referendum) Broadcasts are an important part of the Irish democratic process. One broadcaster stated that it would support some regulatory guidance in this area. For instance, while the content rests with the political parties (such as claims) the broadcaster still remains responsible for compliance and issues such as defamation or material that may be perceived as grossly offensive i.e. the broadcaster’s wider legal obligations.

Specific comments from the BAI public Call for Comments and Observations

In relation to election and referenda coverage comments highlighted the importance of impartiality while not following “the equal representation paradigm”.

There were a significant number of comments relating to how environmental issues are covered in news and current affairs with calls for the NCA Code to be expanded to include guidance on how to deal with biodiversity loss and nature.

In particular, there were calls for the presentation of factual information on the carbon and/or environmental impact of activities or sectors in the context of news and current affairs.

In addition, there were calls for broadcasters to avoid presenting extreme and inaccurate views on the topic to achieve ‘balance’. There were also calls for greater transparency of the potential vested interests of participants in debates and discussions.

Some broadcasters would like greater clarity on whether broadcasters are in breach of the NCA Code if the presenters or journalists express their own views and especially in areas such as the climate crisis.

Another potential issue that was raised in the public Call for Comments and Observations was the reporting of scientific data which did not take into account nuances potentially leading to a misrepresentation of the facts.

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For example, when there are differences between male and female responses to medicine / medical procedures and only one set of data (relating to either men or women) is presented.

In relation to the objective "to promote independent and impartial journalism in the provision of news and current affairs content", there was a call for the NCA Code to also ensure broadcasters' access to local sports which would help community media cover local sport in news, as there is a concern that Gaelic Athletic Association (GAA) content is falling under broadcasting contracts to commercial broadcasters.

There was support for keeping the current prohibition on political advertising.

There were mixed reactions to the codes regarding election moratoriums and party-political broadcasts with some respondents seeing the restrictions as an unfair while others felt the current codes did not need to be changed.

7. The General Commercial Communications Code

7.1 Introduction

The General Commercial Communications Code (“the GCC Code”) provides broadcasters with a framework of rules and standards to be followed around advertising, sponsorship, and product placement. The GCC Code is required by statute, specifically sections 42(2)(h) and (j) of the 2009 Act.

Rules and principles of this Code are cumulative and indivisible and evolve around several objectives and four main principles which overall aims at protecting the interests of the audience:

- Principle 1 - Legal, honest, decent, and truthful
- Principle 2 - Human dignity Offence and Harm
- Principle 3 - Transparency
- Principle 4 - Protection of Children

The GCC Code also lays out specific rules for several categories of products and services, ranging from alcohol to medical products, cosmetics, hypnosis, food, financial services, gambling, etc.

7.2 List of key findings and common concerns

In general, the consensus was that the GCC Code remains effective and fit for purpose for the broadcasting sector. The underpinning principles are relevant, even though some terms would benefit from more clarification.

Stakeholders indicated that the current model of overarching principles alongside guidance notes was preferable to a model of strict principles and sub-principles. The current model provides more flexibility and is more likely to capture all potential situations.

A common piece of feedback from stakeholders was that restrictions and prohibitions should come primarily from the law.

In relation to sponsorship and product placement, stakeholders would like to see greater clarity around what is considered sponsorship and how it should be separated from advertising. Many of the stakeholders involved in advertising and commercial communications would like a more liberal approach to calls for purchase in sponsorship messages and clarification about what is meant as “*advertising copy*”.

There is concern amongst stakeholders over the requirement for the product placement to be editorially justified and they argue that the implementation of this rule has the potential to reflect negatively on their programming.

Some stakeholders argued that product placement and sponsorship rules were interpreted differently by different organisations.

Another common issue was the challenge of navigating between multiple and overlapping codes e.g. the BAI Code, the ASAI Code and other self-regulatory codes.

Some stakeholders felt that the GCC Code was out of step with the higher level of media literacy that exists today, particularly in terms of how they know how to distinguish between advertising and editorial content.

On the regulation of specific categories of products and services, stakeholders would like more clarity on the sponsorship of events by alcohol brands.

The rules on cosmetic services should take into account the evolution of these services, in particular non-invasive cosmetic surgery.

Rules for HFSS products (products high in fat, sugar and salt) need to be reviewed to remedy the public's confusion between nutritional claims and health claims.

In relation to the rules around advertising of financial services, the rules on general conditions are seen as inefficient and too constraining and particularly challenging for radio.

Stakeholders also expressed a desire for specific rules regulating environmental claims.

There was general (but not universal) agreement that the current minutage for advertising was adequate but more flexibility in the scheduling of minutage would be welcome with suggestions of a minutage cap across a period of time rather than per hour.

7.3 Overall summary of feedback from stakeholders

Principles

Stakeholders²⁰ generally expressed satisfaction with the four main principles of the GCC Code. They are considered to be sufficiently clear and relevant. Some broadcasters asked for greater clarity and qualifiers to interpret certain terms, e.g. what is meant by "widespread offence" and under what conditions nudity might fall into this category, and how to interpret whether a communication is decent or not. These terms are highly subjective in nature, and greater guidance in this area is needed because of the role of the broadcaster, "*As a publisher, you have to represent society, you have to represent views of the broader audience*".

Others reported difficulties in understanding the scope of what is considered "*legal*", calling for clarification on what is legal and what is not. Some stakeholders argued that the third principle, relating to transparency, could be updated to reflect the greater degree of media literacy and the

²⁰ In its consultation on the GCC Code, the WH team heard from not only broadcasters but also those involved in the advertising industry such as the Advertising Standards Authority of Ireland.

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ability of the public to distinguish between advertising and editorial content. However, this claim, according to some broadcasters, is not supported by evidence of great media literacy among the public. Some stakeholders also suggested the introduction of new principles that would promote responsible consumerism in relation to sustainability, and greater diversity and inclusion to reflect a better representation of Irish society on screen.

Definitions

There were no specific comments on the definitions as they appear in the GCC Code. In a broader sense, to overcome issues around a lack of clarity and confusion over the interpretation of certain terms, stakeholders requested guidance notes rather than the introduction of additional sub-principles or rules which would hinder the implementation of the GCC Code and make it less flexible.

Prohibited commercial communications

Most of the rules on prohibited commercial communication are understood and supported. Some broadcasters indicated that they feel that any prohibition should derive primarily from the law, and also asked for further guidance on the rules for cigarettes and vaping products. Some also suggested that the ban on surreptitious and subliminal advertising should be given greater prominence.

General rules for all commercial communications

The requirement to retain documentary evidence of testimonials (Rule 5.10) should be abolished according to some broadcasters. They argue that this rule is excessive in practice, especially as the provision does not specify how long testimonials should be kept and it seems generally unnecessary.

Sponsorship

The rules on sponsorship were frequently discussed in the interviews. Broadcasters explained that it is difficult for them in some circumstances to know what is considered to be sponsorship, e.g. in a situation where a brand organises a special event, they ask whether the event in question should be considered sponsorship, product placement or advertising.

Similarly, what constitutes "*clear separation*" between sponsorship and advertising in practice (Rule 9.2) is unclear, and guidance was requested in this area. Another frequently raised point relates to Rule 8.5, in particular the prohibition of the inclusion of endorsements and calls to purchase. Some stakeholders welcomed the relaxation of communications for sponsorship taglines in the latest revision of the GCC Code, however several stakeholders renewed their calls for a "*more liberalised approach to general commercial communications*" and, in particular, fewer restrictions on calls for purchase. They consider this too restrictive and not in line with current radio and TV sponsorship practice or considering "*how much more media literate individuals have become*". In addition, some stakeholders argued that these restrictions "*hurt the radio sector*" and

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are seen as “*grossly unfair*” in particularly in relation to “*the lack of regulation in other media*”. Some also question what “*advertising copy*” actually meant, and others said that the ban on such copy in sponsorship was considered too restrictive in practice. The ban on sponsorship of news programmes is understood and supported, but some broadcasters question the ban on sponsorship of current affairs of television programmes as being too restrictive.²¹

Product placement

With regard to product placement, some concern was expressed about the requirement that product placement be editorially justified and some stakeholders considered the implementation of this rule could negatively affect their programming. Others also suggest that the requirement to keep records of information (Rule 10.10) should be deleted, as this is an onerous obligation on the broadcaster and the provisions do not specify how long records must be kept.

Regulation of specific products/services

The regulation of alcohol advertising is seen as effective, but sometimes too restrictive or unclear for some broadcasters. The additional self-regulation in Ireland for alcohol products is welcomed and supported by some, while others indicate that it could lead to problems of double regulation and be difficult to navigate in practice. Some suggested that the obligation to identify and publish a list of programmes which do not carry commercial communication for alcohol (Rule 11.8) should be “*reversed*”. It is significantly easier for a broadcaster to provide a list of programmes which do include commercial communications for alcoholic beverages, rather than provide a list of programmes that do not. They also questioned the need to publish this list on their website and recommended that the list should be retained and made available, if necessary, to the BAI. In addition, some broadcasters viewed the obligation to enforce a Code of Conduct for their presenters to ensure that they do not glamorise or encourage over-consumption of misuse of alcohol (Rule 11.9) as unnecessary. Many broadcasters have many different codes dealing with a number of issues, and it therefore seems excessive to have a code dealing only with this specific aspect.

Several broadcasters feel that the field of cosmetic surgery has developed significantly since the GCC Code was developed and the GCC Code does not fully reflect the new types of non-invasive cosmetic treatments. These, in some cases, are administered by medical professionals and could therefore be equivalent to a medical procedure. Some treatments may be high-risk but these are not clearly differentiated from other cosmetic treatments in the GCC Code. Therefore, greater clarity on how they should be qualified in the Code is needed. Furthermore, some suggest that rather than adopting an absolute ban on advertising of such cosmetic treatments, it would be better to define them more clearly and leave the choice of whether or not to use them to the viewer, without going so far as to encourage the use of such treatments. Other stakeholders

²¹ It should be noted that European legislation (the Audiovisual Media Services Directive 2018) prohibits the sponsorship of news and current affairs television programmes.

added that although they noted the evolution of this type of service, the current rules prohibiting all forms of misleading advertising were sufficient.

The rules for HFSS products may need to be revised since some elements have changed since they were first introduced. One example raised related to the potential confusion caused when associating nutritional claims of certain products with health claims, as a product being nutritious does not make it healthy. Stakeholders also questioned whether such claims should be warned about as part of a balanced diet. Other stakeholders suggested opting for stricter, more definitive regulation, following the example UK regulations or the ASAI rule which prohibits advertising of HFSS products if more than 50% of the media's audience is under the age of 15.

For financial services, disclosure requirements (Rule 19.3) were viewed as particularly remote from reality and ineffective. They are time-consuming, limit creativity and can make the medium (especially radio) less attractive compared to other media which are not subject to these obligations. Some broadcasters called for a better alignment of the financial services rules with the Consumer Protection Code²². Some also discussed the emergence of cryptocurrencies and indicated that some guidelines in this area could be useful, without going as far as strict regulation. While any issue relating to this product could be dealt with by the general principle of prohibition of misleading advertising, any specific restriction in that area would have to come primarily from the law.

Some broadcasters suggested a better alignment of the level of restriction set for gambling with alcohol, while others called for an alignment with the Irish bookmaker Association (“IBA”) Code. Some mentioned that confusion may also arise from the different levels of regulation of gambling, as it is also regulated by the IBA, the ASAI and the National Lottery regulator. It can therefore be difficult to navigate. Some broadcasters also noted a lack of clarity regarding the rules for fundraising events and asked for more flexibility in this regard.

Environmental claims and sustainability were also discussed throughout the interviews. Some stakeholders mentioned what is currently being done in this area, such as the ad Net Zero Initiative²³, guidance issued by the World Federation of Advertisers²⁴ and the ASAI Code rules. While some stakeholders state that this was not a controversial area, others indicate that environmental and sustainability claims are particularly difficult and this is an area that should be dealt with in a specific section, rather than under general principles.

This issue is not limited to misleading environmental claims, but also concerns how “*advertising actively demonstrates good practice as opposed to just making claims*”. Regarding the misleading

²² See <https://www.centralbank.ie/regulation/consumer-protection/consumer-protection-codes-regulations>

²³ See <https://adnetzero.com>

²⁴ See <https://wfanet.org/knowledge/item/2022/04/04/Global-Guidance-on-Environmental-Claims-2022>

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aspect, strong guidance has been requested by some broadcasters, as environmental claims can give rise to difficult problems of interpretation, e.g. in understanding whether a particular claim that a product or service is "*green*" or "*greener*" or "*carbon neutral*" is misleading. This problem also arises for other types of substantiation claims, e.g. in the retail automotive sector and the telecommunications sector.

Some broadcasters also highlighted the advertising of Cannabidiol ("CBD") products, which may require guidance, since the level of Tetrahydrocannabinol can determine whether a CBD product is considered a food supplement, a novel food or prohibited altogether.

The emergence of new products such as self-driving cars or 'smart glasses' technology was also mentioned, in the context of security and privacy issues, and which might require stronger public information interventions. With regard to smart glasses, in particular, this is a completely new area for some of the broadcasters, with no precedent to guide them. Some wondered what kind of legal issues might arise in the future, and whether a general guiding principle would be useful in this respect.

Minutage rules

Most broadcasters had little comment on the Rules on Advertising and Teleshopping (concerning advertising minutage), but some said they were content to keep the current limits because of the potential effects on the audience / quality of programming. They believe that this area is self-regulating, as too many advertisements per hour may turn the audience away from the medium. However, the lack of flexibility is problematic and they would prefer to have a minutage caps across a period of time rather than the strict 10 minutes per hour. Some radio broadcasters would like to see small increase (e.g. 2 minutes) in their hourly limit, but not full liberalisation.

Specific comments from the BAI public Call for Comments and Observations

It was suggested that the BAI should be proactive and prohibit alcohol advertising before the watershed while waiting for the Public Health Alcohol Act to be enacted.

Some respondents argued that there are currently high levels of alcohol-based sponsorships and product placement on popular shows and that alcohol brands (including zero alcohol products) should be banned from sponsoring programmes.

Countering that argument, representatives of the drinks industry argue that they honour their commitment to contributing to a responsible drinking environment by advertising alcohol products responsibly and operating rigorous internal marketing codes with initiatives to comply with a comprehensive set of international, national and sectoral codes.

Any changes to the GCC Code should use a science and evidence-based approach. However, for some, Sections 11 (Alcohol) and 16 (Food, Nutrition and Health) of the Code should not be changed, since these rules are seen as effective, workable, comprehensive and are complied with by the industry.

It was proposed that the GCC Code be updated to include an additional principle 'the protection of public health and environmental health'. This would focus on the impact of highly carbon polluting and environmentally degrading activities and products on the advertising, marketing and sponsorship.

In addition, there were calls for the GCC Code to prohibit 'greenwashing' or the promotion of products or services that undermine climate action and be updated to align with the objectives of the EC European Green Deal. It was further suggested that advertisements for products or services that promote the use of fossil fuels, plastics, etc. should be accompanied with a consumer warning. Some respondents also suggested that it was irresponsible to promote, encourage or advertise air-travel. On this issue, one respondent supported the total ban on advertising of products and services which contribute to the gas emissions.

It was argued that advertising of cosmetic surgery and services could result in an unhealthy pressure on people, especially young people, to change how they look and that these services should only be advertised to adult audiences.

There was a call for the BAI to act with caution in relation to product placement of products that are legal but harmful such as tobacco and fossil fuels. Similar views were expressed vis-à-vis medical products, treatments, and services for which there is weak scientific evidence.

Some stakeholders believed that the rule preventing sponsorship announcements or credits making special promotional references to a product/service is too restrictive and prevents broadcasters selling sponsorship. In particular, broadcasters would like sponsorship credits to use calls to action, provide information on pricing, as well as promote products and services. Community media would like more flexibility to refer to the price of local events in editorial content which is of genuine interest their audiences.

There were call to limit the advertising of gambling to adult audiences and that advertising should include disclaimers about the addictive nature of the activity and provide information on addiction prevention.

8. Other matters and observations

Stakeholders raised other matters and made observations relating to the functions of the BAI but not directly connected with the codes. These are highlighted below:

- They welcome (formal and information) consultations with the BAI and find them extremely beneficial and, where possible, would like to see more.
- Stakeholders would welcome more interaction with the regulator and requested opportunities, where possible, to have additional training, video tutorials and workshops around the codes. Examples were given where the BAI had organised workshops and webinars and these were considered to be extremely useful in terms of helping educate the industry and raising awareness of regulation and specifically the codes rules. (It was noted that there is now an increasing turnover of staff in the advertising industry.)
- There is a view that the current complaints system works well.
- Some stakeholders (particularly those who were not big enough to be able to access 'in-house' legal advice) indicated that some form of 'pre-clearance' or advice mechanism from the BAI would be very helpful.
- There were some suggestions that the BAI could make greater use of guidance notes for those codes that do not currently have them.

Specific comments from the BAI public Call for Comments and Observations

- It was suggested that the BAI Rules on Advertising and Teleshopping apply to on-demand services and RTÉ and TG4 as well.

- In addition, there was a suggestion that the advertising time limit of 6 minutes for community radio should remain, but the clock hour should be changed to a rolling hour, providing greater flexibility for the coverage of sport, mass or prayer broadcasts.

- Due to the expansion of online trading and deliveries, it was argued that the Code should permit community media to advertise services located outside the local area.

- Some commercial broadcasters would like to see an increase of the hourly advertising limit to 12 minutes per hour to help address the current lack of level-playing field between the broadcasters and online media.

- Finally, those stakeholders who would like to see advertising minutage updated would generally like to see an averaging of minutage across an extended time period, rather than enforcing strict hourly limits.

9. Final Thoughts

Overall, the view from all stakeholders is that BAI codes are effective and useful. In particular, it is recognised that laws take time to adopt so the flexibility afforded by the BAI's approach is extremely beneficial.

Although in the minority, a few stakeholders did however, voice concerns that the regulatory approach could sometimes appear to resemble a “*moral police*”, protecting the standards of a minority in society.

It was also noted that different regulatory regimes can make the adherence to the codes challenging. Some broadcasters are of the opinion that broadcasting should be regulated by law and that “*the broadcasting framework should be more aligned with freedoms online.*” They argue that if prohibitions or restrictions are in place, they should be enshrined in legislation and applicable to all platforms. This was seen, by many, a matter for Coimisiún na Meán, the new media regulator.

It was noted that, while there is some intersectionality between some of the codes, stakeholders expressed a preference for separate codes, especially in relation to news and current affairs. However, better use of cross-referencing would be helpful. Currently, the system is simple, and that is exactly how it should be, and the majority of broadcasters feel the present structure works well.

The sense from the stakeholders was one of acceptance, even ownership of the codes and there appears to be a very strong culture (even pride) in adherence to the codes.

There was a noticeable difference in how the codes were used by different organisations, with larger, longer established organisations appearing to be better able to interpret the codes in a way that did not stifle creativity or innovation. Invariably, these organisations had 'in-house' legal support and/or large and very experienced editorial teams.

Smaller and/or less well-established organisations who were not in a position to call on the support and guidance of 'in-house' legal advice were more likely to 'err on the side of caution' in relation to the how the codes are interpreted on a day-to-day basis with a number of examples provided on how content that did adhere to the rules was never broadcast because of the fear of “*getting it wrong*”. Unsurprisingly, these smaller organisations were more likely to request additional training and more concrete guidance from the BAI on the implementation of the codes, particularly the broadcasters who cannot afford legal advice, have high staff turnover, volunteers, etc.

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The bigger broadcasters however also desired more concrete engagement from the BAI in terms of the provision of clear and unambiguous guidance (video tutorials, training sessions, case studies, etc.), especially in the context of evolving community standards and the emergence of new products and services. Most stakeholders leaned towards more direct engagement on the part of the regulator.

It is clear that the vast majority of stakeholders view the codes as a central plank in the scaffolding required to produce high quality content. The codes are used proactively (during planning and development of programmes) as well reactively (when something potentially goes wrong such as receiving a complaint). The codes are also used for training and development and knowledge about the codes is often a contractual obligation for staff.

Some broadcasters were of the view that the mandatory nature of the codes can, in some circumstances, be unhelpful. Broadcasters emphasise that the viewers are the ones making decisions, and some of the things from the codes appear to overregulate and to be quite old fashioned. In that sense, some of the terminology used in the codes such as “*broadcasters shall*” or “*shall not*” feel excessively prescriptive and stakeholders suggested the use of alternative terms like “*show due regard to*”; “*be sensitive to*”; “*be alert to*” etc.

Finally, as noted at the beginning of this document, one of the most pressing regulatory issues for the stakeholders consulted as part of this review is the discrepancy between the comprehensive regulation of traditional media (radio, TV) and the largely unregulated nature of online media. There are considerable expectations on the part of stakeholders that Coimisiún na Meán will start to address some of these complex but extremely important issues as a matter of urgency.

Annex 1: Stakeholders meetings' schedule

Date	Stakeholder²⁵
20 Sept 2022	Virgin Media
23 Sept 2022	IBI
28 Sept 2022	TG4
29 Sept 2022	Bauer Media
30 Sept 2022	RTÉ
3 Oct 2022	Advertising Standards Authority of Ireland (ASAI)
3 Oct 2022	Radio Centre Ireland
3 Oct 2022	RTÉ
6 Oct 2022	Wireless
11 Oct 2022	The Institute of Advertising Practitioners in Ireland (IAPI)
11 Oct 2022	Association of Advertisers in Ireland (AAI)
13 Oct 2022	CRAOL
13 Oct 2022	RTÉ
17 Oct 2022	BAI
17 Oct 2022	Editorial Committee of Network News
19 Oct 2022	BAI

²⁵ The number of meetings held with any given stakeholder were determined by the manner in which the organisation/sector was structured and/or availability of key staff on any given date.

Annex 2: Interview Preparation Notes circulated to Stakeholders

Thank you for agreeing to be interviewed as part of the periodic review of the BAI's broadcasting codes and rules. This review will help to inform and shape any subsequent revisions of these codes and rules by Coimisiún na Meán (the Media Commission), once established.

The purpose of this interview is to give your organisation an opportunity to provide feedback to the BAI about the current General Commercial Communications Code, the Code of Fairness, Objectivity and Impartiality in News and Current Affairs, and Code of Programme Standards.

The purpose of this document is to assist you with identifying issues and topics related to the Codes that you might want to raise during the interview.

The Wagner Hatfield team will be led by you in terms of which Codes you would like to provide feedback on – based on which Codes, and topics covered by Codes are most relevant to you. We will not go through every question, or point, highlighted below. Please use this document as a tool to help you, and your colleagues, decide what points are most important for you to feedback on.

We expect the meeting to last around one hour, however we are happy to accommodate longer meetings if required. Additionally, if your organisation wishes to have more than one person to provide feedback on all the Codes, please let us know, so that we can accommodate it.

A. General Commercial Communications Code

1. There are four main principles to this Code:
 - Principle 1 - Legal, Honest, Decent and Truthful
 - Principle 2 – Human Dignity, Offence and Harm
 - Principle 3 – Transparency
 - Principle 4 – Protection of Children

Do you find these principles sufficiently clear in the way they are described in the Code?

Do you think these principles adequately cover all categories or do they need to be updated or increased? e.g. to address issues related to environmental considerations or the prevention of hate speech?

In general, do you think the rules relating to the four principles achieve the objectives of the Code to; ensure that the public can be confident that commercial communications are legal, honest, truthful, decent and protect the interests of the audience; do not impinge on the editorial integrity of broadcasts; provide guidance on the standards the public can expect; provide guidance to broadcasters on the standards that must be adhered to; to provide broadcasters with a simple, flexible and comprehensive code?

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2. Are these definitions contained within the Code clear enough? Do any definitions need to be amended or updated? Are there any definitions missing?
3. Different rules relate to the prohibition of certain commercial communications, e.g., for political advertising. Are these rules clearly set out in the code? Are there other products or services that are not yet prohibited by this Code but should join this list?
4. If you are involved in TV broadcasting, have you experienced any difficulties in understanding and/or implementing the rules on sponsorship or product placement?
5. If you are involved in radio broadcasting, have you experienced any difficulties in understanding and/or implementing the rules on sponsorship?
6. Are the rules clear and precise enough? Are there any grey areas where further explanation and clarification would be useful?
7. How do you feel about the overall effectiveness of the Code in relation to sponsorship, product placement and products/services that have greater potential to cause harm such as gambling or new types of advertising?
8. The Code provides specific rules for the following categories of products and services:
Alcohol
 - Medicinal Products and Medical Devices
 - Medical Treatments and Services, including psychiatry, psychotherapy and counselling
 - Cosmetic Products, Treatments and Services
 - Hypnosis, Hypnotherapy and similar services
 - Food, Nutrition and Health
 - Slimming Treatments, Products and Services
 - Smoking Cessation Aids
 - Financial Services and Products
 - Gambling
 - Premium-rate Telecommunications Services
 - Fortune Tellers, Psychic Services, etc.

Are the rules for these categories clearly and efficiently presented?

Are the rules still relevant? What if any, categories should be updated? (cosmetic surgery and services, gambling, and medical products), treatments, and services.? If so, why and how?

Are there any other categories of products or services that are not included in this list but should be added and regulated by this Code? (e.g. cryptocurrency and related financial services, environmental claims and 'green washing').

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9. Do you have any feedback in relation to future revisions to the code addressing the following:
 - cosmetic surgery and services,
 - cryptocurrency and related financial services,
 - product Placement,
 - Gambling,
 - medical products, treatments, and services.

B. BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs

1. There are four Principles at the centre of the Code
 - Principle 1: Fairness
 - Principle 2: Objectivity and Impartiality
 - Principle 3: Accuracy and Responsiveness
 - Principle 4: Transparency and Accountability

Do you find these principles sufficiently clear in the way they are described in the Code?

2. Are the Guidelines dealing with the coverage of elections and referenda clear and relevant? What, if any, aspects of these guidelines require updating?
3. How clear, relevant and appropriate are the rules around science-based factual reporting?
4. Were there any lessons learned covering Covid-19 or climate crisis?
5. Is there ever confusion over the term fairness as it applies to both subject-matter and individuals?
6. Do you have any feedback in relation to future revisions to the code addressing the following:
 - sustainability,
 - climate change,
 - science-based reporting.
7. In general, do you think the Code meets its objectives of: setting out clearly the minimum standards and practices expected of broadcasters in relation to news and current affairs; providing general guidance to broadcasters to assist in their decision-making processes; promoting independent and impartial journalism; informing and generating awareness among citizens about the standards they may expect; protecting the interests of citizens, in their right to access fair, objective and impartial, news and current affairs content.

C. Code of Programme Standards

1. There are seven Principles at the centre of the Code
 - Principle 1: Respect For Community Standards
 - Principle 2: Importance of Context
 - Principle 3: Protection from Harm
 - Principle 4: Protection of Children
 - Principle 5: Respect for Persons and Groups in Society
 - Principle 6: Protection of the Public Interest
 - Principle 7: Respect for Privacy

Do you find these principles sufficiently clear in the way they are described in the Code?

Do any of the Guiding Principles need to updated / refined / merged or made more specific?

2. Is the distinction between Harm and Offence sufficiently clear?
3. Are the responsibilities of broadcasters outlined clearly enough within each Principle?
4. Do you think the guidance around violence, sexual content and language is sufficiently clear and relevant? If not, please explain.
5. Do you think the guidance around watershed and the protection of minors is sufficiently clear and relevant?
6. Do you think the categories listed under Principle 5: Respect for persons and groups relevant, comprehensive and useful? (including matters relating hate speech, gender-based violence)
7. Does the Code offer sufficient guidance in relation to Public Interest vs Protection of Privacy?
8. Do you cross reference this Code with other Codes? Would merging of some Codes be useful? If so, which ones?
8. Do you have any feedback in relation to future revisions to the code addressing the following:
 - sustainability,
 - climate change,
 - science-based reporting.
9. In general, do you think the rules relating to the seven principles achieve the objectives of the Code which are: to promote responsible broadcasting, enhancing a range of views and reducing undue offence and harm; to acknowledge encourage and facilitate a

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diversity of interests and tastes, to enable the holding of broadcasters to account; to provide guidance to broadcasters.

Appendix 2

Practice Review – Comm Sol Limited



STATUTORY REVIEW OF BAI CODES AND RULES (PRACTICE REVIEW)

Prepared for the Broadcasting Authority of Ireland by Commsol, December 2022

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1 Introduction and context of the study

This report contributes to the current BAI review of several codes relevant to the broadcasting sector in advance of the enactment of the Online Safety and Media Regulation (OSMR) Bill, and the subsequent establishment of the new regulator, the Coimisiún na Meán. Although these will not immediately involve an update of the current codes, they are intended to prepare the ground for Coimisiún na Meán to develop future codes and to ensure “*a consistent approach to the application of rules applying to commercial and editorial content across broadcasting, on-demand and video-sharing platforms*”.¹

1.1 Scope of the report

The report examines three key Codes relevant to the broadcasting sector: the General Commercial Communications Code (GCCC), the Code on Programme Standards, and the Code of Fairness, Objectivity and Impartiality in News and Current Affairs.² Although the future Coimisiún na Meán will have a broader remit with regard to the regulation of VSPs, and deal with broader issues of online harm, it is not the purpose of this review to examine these issues in detail. As the Audiovisual Media Services Directive has levelled the playing field with regard to obligations for linear and non-linear audiovisual media services, the review will also provide detail on approaches to regulation of on-demand services in relation to the issues addressed in the three codes.

Given the need to cover three major codes, the level of detail is not comparable to that provided in previous statutory reviews. The aim of this report is to comprehensively review all the relevant changes and regulatory trends and to provide a streamlined and practical approach which will inform the overall BAI statutory review report.

The report will place the themes in the context of EU law and regulations relevant to the fields addressed, and refer where relevant to international human and national human rights obligations, and Council of Europe standards. Additional EU regulations (such as online political advertising, the Digital Services Act), codes (concerning disinformation and hate speech), and Council of Europe documents and recommendations (on hate speech and on integrity of elections) will also be briefly referenced where necessary to place the regulatory developments in context.

1.2 Methodology

Previous reviews of codes and policies of the BAI suggest that BAI Codes are frequently ahead of the curve with regard to the new developments in comparison with many European states. Often the most important examples of best practice that are useful to examine include those of the major markets such as France, Germany and the UK, and also the Nordic countries. Of particular relevance are countries with similar population size and other characteristics such as Austria and Belgium (both dominated in the audiovisual sphere by neighbours in the same language group). The approach of

1 According to the Tender Terms of Reference

2 The codes and rules to be examined date from 2011, 2013, and 2015 (respectively) and hence require review.

regulators in non-European English-speaking jurisdictions such as Australia, Canada and New Zealand are also regular sources of innovative ideas.³ Alongside relevant European Directives, Regulations and Codes and Council of Europe or other international standards, several comparative European reports and studies covering the key themes and the documentation of national regulatory authorities are also referred to where relevant.

The review specifically sought out information on a range of themes. Regarding audiovisual commercial communications (ACCs) this included the regulation of ACCs for products and services such as cosmetic surgery and services, cryptocurrency and related financial services, gambling, medical products, treatments and services. Other changes emerging from the revised Audiovisual Media Services Directive, including rules on product placement were also reviewed.

In addition, several key topics were included in the review in order to illustrate emerging trends in regulation - in some cases with relevance for all three codes. Sustainability, including climate change has been included in BAI strategies as a recognition of the need to incorporate the UN Sustainable Development Goals in their work. The Online Safety and Media Regulation Bill has further enhanced the role of the BAI in this area.⁴ Sustainability, climate change and the environment is a topic that has relevance for audiovisual commercial communications, programming and news, and is therefore referred to below in relation to all three codes.

Linked to the above is the topic of science-based factual reporting. This topic relates to ethical practices, and policies on information accuracy and editorial integrity. There have been global concerns regarding reporting on scientific issues that relate both to environmental news and also to health information (in particular following the Covid 19 pandemic).⁵ The review has sought out any rules or guidance in relation to these issues.

Further issues addressed in the review are hate speech and also gender-based violence. As regards hate speech, this is an issue of growing concern and has given rise to significant action (in terms of research and developments of codes and regulations at the EU and the Council of Europe level). There are several important recommendations regarding the combatting of gender based violence and the particular role and responsibilities of the media in this area – with an emphasis on reporting of these issues. This is a topic already addressed by several regulators in Europe.

³ In the context of this research, examples of regulation and practice have been provided from Austria, Australia, Belgium, Canada, Denmark, France, Germany, Italy, the Netherlands, New Zealand, Norway, Spain, the United Kingdom.

⁴ Under Sections 7 and 128C and 159F of the Bill.

⁵ See for example the European Science-Media Hub (ESMH), a project of the European Parliament's Panel for the Future of Science and Technology (STOA). "The European Science-Media Hub aims at empowering science journalism and promote evidence-based information for citizens in a "post-truth" era flooded by fake news and intended misinformation". <https://sciencemediahub.eu/about-us/>

Finally, with reference to the Guidance documents that support the Code of Fairness, Objectivity and Impartiality in News and Current Affairs, rules and regulations around election and referenda coverage were also included in the review.

Each section of the research provides a “Key Findings” table in order to summarise the alignment of the BAI with approaches in other countries, and to highlight elements that may be lacking, and to present briefly the approach used in other countries.

1.3 General comments on the codes

Overall the key principles outlined in the codes remain valid and provide a sufficient basis for further development and addition of new elements and rules.

It is recommended that the presentation of the codes in the future should be web-based as is the case regarding most self-regulatory codes and also the codes in the UK, France and Canada. This makes for easier and more efficient access to specific rules. In particular for very long and detailed codes such as the General Code on Commercial Communications, users (whether audiovisual media service providers or viewers) can more easily access rules in relation to specific topics and issues. This will also provide the possibility of directly linking relevant guidance documents in the same section of the website to the relevant issues addressed.

The style and approach of the three codes is quite different and a certain harmonisation may be required. For example, the General Commercial Communications Code and the Code of Fairness, Objectivity and Impartiality in News and Current Affairs are quite detailed, whereas the Code on Programme Standards is relatively high-level. As will be seen in the analysis of the Code on Programme Standards (chapter 3), this code needs a certain amount of supplementary detail in order to align with best practice from other countries, to provide more specific guidance to media services with regard to their actions, and to provide viewers with a more clear indication of the obligations of media services. The proposal to include additional detail on certain rules does not negate the important approach of the Code in providing distinctions between the concepts of offence (which is more nuanced) and harm (which in many cases is very specific).

It may also be useful for the future to consider combining the two codes (Code on Programme Standards and Code of Fairness, Objectivity and Impartiality in News and Current Affairs) into one as is the case in the UK. There are many cross-overs in the rules. Discrimination against specific groups in society, the issue of hate speech and incitement to hatred, issues around privacy and protection from harm, and also the concept of fairness are all somewhat interconnected. Chapter three provides some additional commentary on these issues in relation in both codes: - fairness and duty of care - and the issue of hate speech or discrimination.

These principles apply across all the codes as they relate to members of the public and how they may be reported on, represented, or included in programming, or news and current affairs.

Sustainability, including climate change, as a theme is relevant regarding general programming and also news and current affairs (while environmental claims are an important area to be addressed in relation to audiovisual commercial communications).

2 General Commercial Communications Code (GCCC)

The current General Commercial Communications Code (GCCC) came into force in 2017, and the last statutory review was completed in 2015. The code rests on four principles: that commercial communications (CCs) should be legal, honest decent and truthful; that CCs should not prejudice respect for human dignity, and should not cause serious or widespread offence, or harm or encourage harmful behaviour; CCs should respect the principle of transparency to ensure that audiences are fully aware of the nature of the communications they see and/or hear; and CCs should ensure the protection of children from material that is unsuitable or would be likely to cause physical or moral detriment.⁶

It is worth noting that these principles (in the BAI code) remain a key aspect of the revised EU Audiovisual Media Services Directive.⁷ The alignment of the current GCCC with the updated Directive is examined here, and emerging and relevant trends in the regulation of advertising content in a range of jurisdictions are identified. This includes research into the regulatory practice covering ACCs for specific products and services as highlighted in the tender documents: cosmetic surgery and services, cryptocurrency and related financial services, infant and follow-on formula, gambling, and medical products, treatments and services, and cosmetic surgery and services. Other issues that emerged in the context of the research have also been included in the analysis.

In many countries, the regulation of advertising is largely carried out via self-regulatory mechanisms, while issues of duration, placement, identification and general principles regarding content are part of the legislative and regulatory framework. Hence many of the country examples (Belgium, France, Germany, Austria, New Zealand, Spain) are from the self-regulatory codes. As these codes address the entire advertising industry, there are additional rules that are aimed at the creators of advertising and hence not directly applicable to audiovisual media services.⁸

Finally, the majority of recent updates and developments in the regulation of commercial communications are more focused on the online world. Issues such as influencer marketing are being regulated by the relevant self-regulatory bodies in Austria, Ireland, Canada, the Netherlands, Spain and the United Kingdom (among others).

⁶ Pages 11-12 of the General Commercial Communications Code of 2017

⁷ European Union, Audiovisual Media Services Directive, 2018,

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN>

⁸ The links to all of the relevant codes and rules are provided throughout the document.

2.1 Definitions used in the code

Several definitions in the code need to be updated in order to align with the Directive and the Online Safety and Media Regulation Bill. The definitions in the code are frequently focused on broadcasting and need to ensure the inclusion of on-demand media services where relevant. A definition on on-demand audiovisual media services should be included. The definition of commercial communication in the GCC is close to the definition in the Directive, lacking only the reference to “user-generated video”. The definitions of product placement and sponsorship in the GCC are focused on television, whereas they now need to incorporate on-demand audiovisual media services, and allow for the incorporation of relevance for VSPs. Definitions for surreptitious advertising and teleshopping are in line with the Directive.

Regarding the definition of children’s programmes, it was observed in the 2018 review of the Children’s Commercial Communications Code⁹ carried out for the BAI in 2018, that in comparison to a broad range of countries the audience threshold in the BAI code that defines children’s programmes is quite high at 50% (some examples of the use of 25% or 35% thresholds - depending upon the nature of the issue being regulated - are provided in this report). It has also been noted with regard to the protection of children under the Code of Programme Standards (see chapter 3) that the same high threshold definition is used to define relevant programming.

Updating definitions in line with the AVMS Directive, the Online Safety and Media Regulation Bill and other practice
‘audiovisual commercial communication’ means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;
‘product placement’ means any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service or the trade mark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration;
‘sponsorship’ means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing

⁹ Jurisdictional Review of the Children’s Commercial Communications Code carried out by Commsol for the BAI in 2018. <https://www.bai.ie/en/download/135734/>

platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products;

‘On-demand audiovisual media services’ means an audiovisual media service provided for the viewing of programmes at the moment chosen by the user and at the user’s request on the basis of a catalogue of programmes selected by the provider of the service;

‘Children’s Programmes’ are programmes that are commonly referred to as such and/or have an audience profile of which over (to be decided whether 25% or 35% or otherwise) are under 18 years of age.

In order to apply the rules to additional services in the future, the language (which focuses on broadcasting) under the introduction to the Code – the legislative basis, scope, objectives, compliance, complaints etc., will need to be updated. In addition, references to relevant legislation and other relevant authorities (consider the new regulators with responsibility for the oversight of elections and referendums, and for gambling - An Coimisiún Toghcháin and Údarás Rialála Cearrbhachais na hÉireann respectively) will also need updating.

2.2 Relevant recent European rules, recommendations and codes

The revision of the AVMS Directive emphasised the need for flexibility with regard to audiovisual commercial communications (ACCs), in particular for quantitative rules for linear audiovisual media services and for product placement (PP). This issue of quantitative rules will not be addressed in this review. The new provision allows for PP in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and children’s programmes. The provision still includes a range of requirements (regarding presentation etc.) and limitations (related to specific products, services) (Article 11 of the 2018 AVMS Directive). This implies that the wording of section 10 of the GCCC would need to be revised so that product placement is allowed – but to list the range of programming genres where it is prohibited. In this case, additional types of programming outlined in the current Code where PP is prohibited could be retained: as in docu-dramas, and in talk/chat shows that regularly include 20% or more of news and current affairs content.

Regarding sponsorship, the Directive allows for the possibility Member States may choose to prohibit the showing of a sponsorship logo during children’s programmes, documentaries and religious programmes. The Broadcasting Act 2009 does not specifically address programmes where such logos should not be displayed, however the rules (under 8.9) could be expanded to include children’s programmes, as in many other countries.¹⁰ In addition, this requirement is included with regard to

¹⁰ The publishing of sponsorship logos during children’s programmes is prohibited in Bulgaria, Croatia, Estonia, Germany, Greece, Italy and Malta. The sponsorship of children’s programmes is prohibited in Belgium. See the AVMS Database of the European Audiovisual Observatory: <https://avmsd.obs.coe.int/>

on-demand audiovisual media services in the relevant Statutory Act implementing the 2010 AVMS Directive.¹¹ The complete prohibition of audiovisual commercial communications for electronic cigarettes will require adaptation of the GCCC under several sections including prohibited ACCs (Section 4) and those related to sponsorship (Sections 8, 9 and 10).

In addition, this prohibition of ACCs for electronic cigarettes will require adaptation in other areas such as under medicinal products (Section 12), and smoking cessation tools (Section 18). This issue is further clarified under section 2.4.3 (medicinal products).

As the GCCC should apply equally to linear (broadcast) and non-linear (on-demand) audiovisual media services, it is important to include the prohibition of commercial use of personal data of minors collected when implementing technical protection measures on audiovisual media services (Article 6a (2) of the Directive). This addition may be more appropriate in the CCCC but could also be added to the GCCC (and to the Code on programme Standards).

2.3 The objectives and principles in comparison with other jurisdictions

As noted above, advertising content is frequently the subject of self-regulation, and in addition the majority of national self-regulatory systems are based on international standards such as those of the International Chamber of Commerce. Overall the principles and objectives outlines in the GCCC are in line with international practice. They are examined in detail below.

2.3.1 Principle 1 Legal Honest Decent and Truthful

The principle regarding legal, honest, decent and truthful advertising is a core element of the codes on advertising at the international level (ICC) and hence in most national self-regulatory codes. The ICC Code also addresses truthfulness and substantiation, whereby advertising should not mislead the consumer with respect to the product, and all forms of claims relating to verifiable facts should be capable of substantiation at the time of publication. These issues are well elaborated under this principle (and further under section 5 regarding the rules for all ACCs, and under section 6). As will be discussed further below, there may be a need for more specific rules under principle 5 on the use of scientific data (see section 2.4.7).

2.3.2 Principle 2 Human Dignity, Offence and Harm Principle

Regarding the principle of non-discrimination, it would also be advisable to align this with any reforms of the equality Acts, if these have taken place.¹² These relates to Principle 2 (para 2):

¹¹ Article 18, S.I. No. 258/2010 - European Communities (Audiovisual Media Services) Regulations 2010. <https://www.irishstatutebook.ie/eli/2010/si/258/made/en/print>

Article 7 (7) Sponsorship logo shall not be displayed during children's programmes, documentaries and religious programmes in an on-demand audiovisual media service.

¹² For example, there were discussions with regard to including "gender identity" and "socio-economic status" / or "social background" in the grounds for discrimination, there is a need to check if this happened.

The manner in which persons and groups in society are represented in commercial communications shall be appropriate and justifiable and shall not stigmatise, support or condone discrimination or incite hatred against persons and groups in society, based on sex, racial or ethnic origin, nationality, religion or belief, disability, age, sexual orientation or membership of the Traveller community.

The main issue that emerged in the study in relation to harm and offence concerned gender stereotypes in advertising (discussed below) which is included in the UK rules (BCAP) under the section on harm and offence, and also in rules in Belgium, France and Spain.

2.3.3 Gender stereotypes in advertising

The issue of gender stereotypes in advertising has become a significant area of self-regulation, regulation and co-regulation several countries. The French regulator (formerly the CSA) is required to ensure a fair representation of women and men in the programmes of audiovisual communication services and of the image of women appearing in these programmes, in particular by combatting stereotypes, sexist prejudices, degrading images, violence against women and violence committed within couples. A recent CSA study highlighted the recurrent representation of gender stereotypes, which led to the drafting of a charter of voluntary commitments for the fight against sexual, sexist and gender stereotypes in advertising, which was signed in March 2018.¹³ Under the British BCAP code rules on harm and offence, an additional rule has been added that advertisements must not include gender stereotypes that are likely to cause harm, or serious or widespread offence. In this context the Advertising Authority also provides a guidance regarding such gender stereotypes.¹⁴ In 2022, the Belgian CSA published a Code of conduct on Sexist, Hypersexualised and Gender-Stereotyped Commercial Communications.¹⁵ The Catalan Regulator also issued Guidelines in 2019 for equality in advertising.¹⁶

2.3.4 Principle 3 Transparency

Transparency is a key issue addressed in the Audiovisual Media Services Directive with regard to identification of audiovisual commercial communications, and the prohibition of surreptitious advertising and the use of subliminal techniques. These issues are well elaborated under this principle (and further under section 5 regarding the rules for all ACCs, and section 6). Transparency of advertising has become a central tenet in the regulation of online advertising (in the Digital Services Act) and political advertising (in the proposal for a regulation of political advertising).

13 Charte d'engagements volontaires pour la lutte contre les stéréotypes sexuels, sexistes et sexués dans la publicité, 6 March 2018, <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Retrouvez-la-charte-contre-les-stereotypes-sexistes-dans-les-publicites>

14 United Kingdom Advertising Guidance: "Depicting gender stereotypes likely to cause harm or serious or widespread offence" <https://www.asa.org.uk/static/6c98e678-8eb7-4f9f-8e5d99491382c665/guidance-on-depicting-gender-stereotypes.pdf>

15 Belgian CSA: https://www.csa.be/wp-content/uploads/2022/09/CSA_Codepubsexistes_EN.pdf

16 Catalan Regulator Guidance: https://www.cac.cat/sites/default/files/2019-07/Recomanacions_publicitat_igualitaria_CA.pdf

2.3.5 Principle 4 Protection of children

As the BAI has a separate Children’s Commercial Communications Code, which already underwent a significant review in 2018,¹⁷ details of rules regarding the protection of children are not addressed here. The main principles outlined in the GCCC are covered. In addition, where significant changes have occurred in relation to the regulation of audiovisual commercial communications (for example with regard to gambling) and these may be relevant to the BAI rules for children, these will of course be referred to under the relevant sections.

In line with changes to the Directive, the first principle states that “Children must be protected from advertisements that could cause physical, mental or moral harm”. In line with the addition of the word “mental” in the Directive, the first paragraph under principle 4 should be adapted to “physical or moral or mental (or psychological) harm.”

As noted above (with regard to definitions) it is recommended to reconsider the definitions relevant to children’s programming or programming likely to be viewed by children that are based on audience thresholds. Also highlighted above is the question of prohibiting sponsorship logos in children’s programmes.

Regarding revisions of the AVMS Directive, it is important to include the prohibition of commercial use of the personal data of minors collected when implementing technical protection measures on audiovisual media services.

Under Section 5 (5.7) of the GCCC, reference is made to privacy issues regarding individuals. In the ASA Code in New Zealand, there are additional rules on privacy including: when personal information (including images) is collected, it must be clear to the individual how their information will be used in an advertisement; and parental or guardian consent must be obtained before personal information (including images) of anyone under the age of 18 is used in an advertisement. These additional rules could be added to 5.7 in the GCC (and also in relation to parental consent for use of information (including images) of minors to rule 8.3 in the CCC).

Although not addressed in this review, in the event that the GCCC is to be extended to apply to video-sharing platforms in the future, significant further detail will need to be added with regard to privacy and data protection.

2.4 Products and themes in the code and approaches in other countries

The following section addresses specific products and themes, some of which are already regulated in the Code, and others that represent new and emerging issues.

¹⁷ Jurisdictional Review of the Children’s Commercial Communications Code carried out by Commsol for the BAI in 2018. <https://www.bai.ie/en/download/135734/>

2.4.1 Cryptocurrency and related financial services

A new area of focus concerns the advertising of cryptocurrency and other related financial services such as cryptocurrency exchanges. National Security and Financial authorities are generally tasked with regulating crypto currencies. But there are growing concerns regarding the promotion of such currencies and services, which mainly takes place online. The most prominent promotions of cryptocurrency on took place in the USA with a large number of celebrities promoting the purchase of such currencies on television and on social media.¹⁸ Given the massive slump in November 2022 in the value of cryptocurrencies following the collapse of the major exchange FTX, celebrities may be less inclined to become involved in such endorsements. Before this, there was however a growing concern regarding the promotion of such services to the public as the area remains largely unregulated.

Concerns include the volatility of such markets, the use of such currencies in the commission of crime including money laundering, and the financing of terrorism, and also the general lack of understanding of how these currencies and exchanges function. For many experts, the cryptocurrency market is considered to be a major Ponzi scheme, or even worse than a Ponzi scheme as it is not based on any real assets,¹⁹ and cryptocurrency investments have been described as “rife with fraud, scams, and abuse”.²⁰

Most countries do not consider it to be legal tender but still require the currencies to be registered at national Security and Financial Authorities. In the UK, such currencies need to register with the Financial Conduct Authority (FCA) and comply with reporting obligations.

In January 2022, the UK government announced plans for legislation to address ‘misleading crypto asset promotions’ with the intention to bring cryptocurrency advertising ‘into line with other financial advertising’.²¹ According to details in the consultation documents, it is estimated that: *“Around 2.3 million people in the UK are now thought to own a cryptoasset with their popularity rising - but research suggests that understanding of what crypto actually is, is declining, suggesting that some users may not fully understand what they are buying. This poses a risk that these products could be mis-sold.*

18 Bloomberg (August 2022); The Disastrous Record of Celebrity Crypto Endorsements.

<https://www.bloomberg.com/features/2022-crypto-celebrity-endorsements/?leadSource=uverify%20wall>

19 The Financial Times (December 2021): Why bitcoin is worse than a Madoff-style Ponzi scheme

<https://www.ft.com/content/83a14261-598d-4601-87fc-5dde528b33d0>

20 The Guardian (June 2022): The Crypto Crash: all Ponzi schemes topple eventually (Quoting the chair of the US Securities and Exchange Commission (SEC)) : <https://www.theguardian.com/technology/commentisfree/2022/jun/19/the-crypto-crash-all-ponzi-schemes-topple-eventually>

21 Government UK (January 2022): Government to strengthen rules on misleading cryptocurrency adverts

<https://www.gov.uk/government/news/government-to-strengthen-rules-on-misleading-cryptocurrency-adverts>

The UK government's plan is to bring the promotion of cryptoassets within the scope of financial promotions legislation and such promotions will be subject to the FCA (Financial Conduct Authority) rules applied to other financial promotions such as stocks, shares, and insurance products. The aim is to ensure that cryptoasset advertisements are fair, clear, and not misleading.

This process is still ongoing, but in the meantime, the UK Advertising Standards Authority issued guidance on this issue in March 2022 following several rulings that Ads for cryptocurrencies had been misleading and socially irresponsible.²² When promoting cryptocurrencies – this means coins themselves (for example initial coin offerings – ICOs), crypto exchanges or promotions that otherwise involve the transfer, sale or supply of cryptocurrencies – the following applies:

All ads must expressly and prominently state:

- *Cryptocurrencies are unregulated in the UK*
- *Cryptocurrency profits may be subject to Capital Gains Tax*
- *The value of investments is variable and can go down as well as up*
- *Campaigns for cryptocurrencies should not trivialise investing in cryptocurrency or take advantage of consumers' inexperience or credulity. They should not:*
 - *Imply that the product or services are regulated;*
 - *Imply that investments are safe or guaranteed, or that past performance is a guide for the future;*
 - *Employ fear of missing out or "FOMO" or imply that investment decisions are simple, easy or for anyone;*
 - *Encourage people to invest using credit.*²³

As the GCCC, under section 19, emphasises that Commercial communications for financial services and products shall be presented in terms which do not mislead, whether by exaggeration, omission or in any other way, a similar statement (with the rules above) could be added for cryptocurrency and related services.

2.4.2 Gambling

Any changes to the regulation of advertising of gambling in the BAI Code will be influenced by the new Gambling Regulation Bill, which according to news reports intends to prohibit any advertising aimed at children and problem gamblers. Gambling advertising will be prohibited between 5.30am and 9pm.²⁴ A new Gambling Regulatory Authority (Údarás Rialála Cearrbhachais na hÉireann) will enforce the new advertising and sponsorship rules across all media, and will overhaul the licensing laws for the gambling industry. The Government plans to have the new authority established and operational in 2023. The General Scheme of the new Bill was published in autumn 2022.²⁵

22 <https://www.asa.org.uk/static/d04a14c7-b541-48b9-a7f733ef5f9aa8a5/EnforcementNoticeCryptoassetsCryptocurrencies.pdf>

23 <https://www.asa.org.uk/news/enforcement-notice-advertising-of-cryptocurrencies.html>

24 See for example: <https://igamingbusiness.com/legal-compliance/legal/ireland-creates-regulator-and-bans-free-bets/>

25 The bill is available here - <https://data.oireachtas.ie/ie/oireachtas/bill/2022/114/eng/initiated/b11422d.pdf>

Currently the BAI regulates gambling advertising in the GCCC and in the Children's Commercial communication Code. In the latter Betting and Gaming services or products are prohibited in children's commercial communications whereas the GCCC bans material in commercial communications which is directed exclusively or principally at children in or around children's programmes. It is not yet clear what impact the final Gambling Regulation Bill will have on the role of the BAI in this context.

Recent developments in this area include a complete prohibition of gambling advertising in Italy in 2018. The Italian Communications Authority (AGCOM) issued guidelines to implement the provisions of Article 9 of the so-called Dignity Decree²⁶ The decree completely banned all forms of advertising, sponsorship or communication presenting promotional content relating to games or betting with cash prizes. This rule applies to TV and radio broadcasting, the press, billboards, the Internet, digital and electronic tools, and social media.²⁷

In New Zealand, advertising of gambling is supervised by the Advertising Standards Authority (ASA) via the ASA Gambling Advertising code.²⁸ All gambling advertisements must be legal, decent, honest and truthful and respect the principles of fair competition. This Code recognises that gambling advertisements must not undermine the need for the prevention and minimisation of gambling-related harm, with particular regard for the need to protect children, young people and other vulnerable persons. Gambling advertisements must not target children or young people. "Children" means all persons below the age of 14 years and "Young People" means all persons who are at least 14 years but under 18 years. Measures to determine if young people are likely to be a 'significant proportion' of the expected average audience may include one or a combination of the following; where accurate data exists indicating that 25% or more of the expected audience will be children and / or young people; or the content has significant appeal to children and/or young people such as programmes, artists, playlists, video, movies, and magazines.

In The Netherlands there have been several developments in the regulation of advertising, both in changes in the relevant laws and also in relation to the self-regulatory approach. A new law on online gambling and gambling advertising (Online Gambling Act) came into force on 1 April 2021.²⁹ Previously all on online gambling and advertising of online gambling was prohibited but it was increasingly difficult to regulate popular (illegal) foreign gambling websites. The new law removed the ban and introduced a regulatory structure. Gambling service providers now need to request a permit for online gambling. The new law introduced strict standards on how to advertise online gambling. In line with these changes the Media act was also amended to restrict advertising on television during the time slot between 06:00 and 21:00. The Online Gambling Act does not allow athletes and celebrities to promote online gambling. Furthermore advertising cannot target anyone

26 Decreto Dignità", Decree Law No. 87/2018

27 [AGCOM sets forth new guidelines defining the restrictions on gambling and betting advertisements IRIS 2019-7:1/21. https://merlin.obs.coe.int/article/8626](https://merlin.obs.coe.int/article/8626)

28 New Zealand ASA Advertising Gambling Code

29 Wet Kansspelen op afstand, including notable amendments to the Dutch Media Act (Mediawet) (see IRIS 2021 -1/24

below age of 25, anyone with gambling problems, or to anyone with mental health problems or disorders.

The law also prohibits the use of personal data in advertising campaigns. The Dutch Gambling Authority (Kansspelautoriteit) will be responsible for the enforcement of these new rules and with monitoring and regulating permit compliance. It can impose injunctions against advertising agencies, media companies, and payment services, to prevent illegal distribution and use of online gambling services. Finally, the Dutch Media Authority (Commissariaat voor de Media) will monitor compliance with the new rules contained in the Media Act.³⁰

Following this, the self-regulatory body for advertising introduced a new Online Gambling Advertising Code in December 2021.³¹ The code completely bans such advertising on television between 6 a.m. and 9 p.m. (Article 9(1)). The code also prohibits online gambling advertising between 9 p.m. and 6 a.m. on television channels of which, according to annual averages for the period more than 25% of the total viewing audience consists of minors and young adults combined (Article 9(3)). This was partly a rational response to the difficulty of ensuring that advertising did not target anyone below age of 25, or with gambling problems, or anyone with mental health problems or disorders.

Furthermore, the broadcast of online gambling advertising immediately before or following the programmes that, according to generally accepted viewing figures, are viewed by more than 25% of minors and young adults combined is also prohibited. Under Article 9(7), online gambling advertising targeting “vulnerable groups of persons” is also prohibited through all media (including non-linear television services, print media, websites and social media). The code further restricts the number and length of advertisements to be placed at any one time.³²

Hence, the Dutch law (and code), similar to the new Irish law, and the UK gambling industry (see below) introduces a watershed. The Dutch code (similar to the New Zealand approach) uses a 25% audience threshold when restricting advertisements at other times (to protect minors and young people).

In the UK, the BCAP Code contains specific rules relating to gambling advertising. These include content-based restrictions (e.g. prohibiting gambling adverts from featuring in a significant role anyone who is, or seems to be, under 25) and scheduling-based restrictions (e.g. prohibiting gambling adverts from appearing in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 18). The gambling industry in the UK has also introduced its own regulation and includes a 9pm watershed restriction on

30 [NL] New law on online gambling and media advertising. IRIS 2021-7:1/24. <https://merlin.obs.coe.int/article/9232>

31 the Dutch Advertising Code Foundation (Stichting Reclame Code - SCC)

32 [NL] New Online Gambling Advertising Code comes into effect IRIS 2022-2:1/15.

<https://merlin.obs.coe.int/article/9375>

gambling advertising (with exemptions), and a ‘whistle-to-whistle’ ban on such advertising during televised sporting events. This is a voluntary code drawn up by gambling operators.³³

2.4.3 Medical products, treatments and services.

Section 12 of the GCCC outlines the rules regarding medicinal products and medicinal devices. Given that the revised AVMS Directive now bans the advertising of e-cigarettes, all references to e-cigarettes should be removed from this section.³⁴ There has been considerable debate and research with regard to the safety of e-cigarettes, which have been variously viewed as “smoking cessation tools” or potential “gateways to smoking.” Changes should also be made to Section 4 (regarding prohibited goods, where no exception can be made), and to section 18 that deals with smoking cessation aids. E-cigarettes also need to be referenced under sponsorship and product placement rules (Sections 8, 9 and 10).

A new EU Regulation on Medical Devices came into force in 2021,³⁵ where Article 7 deals with claims in the marketing and promotion of medical devices. These additional elements could be added to section 12 (see below).

In the labelling, instructions for use, making available, putting into service and advertising of devices, it shall be prohibited to use text, names, trademarks, pictures and figurative or other signs that may mislead the user or the patient with regard to the device's intended purpose, safety and performance by:

- (a) ascribing functions and properties to the device which the device does not have;*
- (b) creating a false impression regarding treatment or diagnosis, functions or properties which the device does not have;*
- (c) failing to inform the user or the patient of a likely risk associated with the use of the device in line with its intended purpose;*
- (d) suggesting uses for the device other than those stated to form part of the intended purpose for which the conformity assessment was carried out.*

2.4.4 Cosmetic surgery and services

Regarding the regulation of cosmetic surgery and services, these are regulated at the EU level under Regulation (EU) No 655/2013. The regulation includes rules on: truthfulness; evidential support; honesty; fairness; and informed decision-making. This regulation is supplemented by very detailed

33 IGRG's Gambling Industry Code for Socially Responsible Advertising: <http://igrq.org.uk/wp/wp-content/uploads/2019/01/Gambling-Industry-Code-for-Socially-Responsible-Advertising-5th-Edition.pdf>

34 Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions concerning the manufacture, presentation and sale of tobacco and related products. The recital cautioned that electronic cigarettes can develop into a gateway to nicotine addiction and ultimately traditional tobacco consumption, and therefore it is appropriate to adopt a restrictive approach to advertising.

35 REGULATION (EU) 2017/745 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2017 on medical devices: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017R0745&from=EN>

technical rules regarding claims made in such advertising.³⁶ The main novelty of this document deals with justification of claims in advertisements. In particular "Free from" claims or claims with similar meaning should not be made concerning (an) ingredient(s) which is prohibited for use in cosmetics by Regulation (EC) No 1223/2009. A review of the GCC confirms that the rules detailed are far more comprehensive than those outlined by most self-regulatory bodies (including the ICC at the international level) and the co-regulatory body in the UK (the ASA). The most comprehensive sets of rules are provided in the French self-regulatory code of the ARPP,³⁷ and the Dutch code.³⁸

2.4.5 Infant and follow-on formula,

Under the GCCC code, commercial communications for infant formula for use by infants during the first 6 months of life are prohibited (4.5). Rule 16.9 underlines the requirement to comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority. It also stresses that commercial communications for follow-on infant formula shall not suggest, either directly or by implication, the superiority of this product to breastfeeding and shall clearly indicate the unsuitability of this product for infants under six months.

A recent EU regulation from 2016³⁹ introduced stronger rules regarding the advertising, marketing and promotion of such foods. In force since 22 February 2020, the regulation reiterates the rules above, and also prohibits the use of the terms 'humanised', 'maternalised', 'adapted', or similar terms specifies with regard to infant and follow-on formulas. Article 10 limits the advertising of infant formula to publications specialising in baby care and scientific publications. The BAI Code is largely in line with these restrictions, in particular as the Code already prohibits advertising of infant formula. It may be necessary to prohibit the use of the terms 'humanised', 'maternalised', 'adapted', or similar terms specifies with regard to follow-on formulas. Similar updates have been introduced in the Dutch self-regulatory Code, available in English.⁴⁰

Of note is the new provisions in the OSMR Bill which will permit Coimisiún na Meán to restrict commercial communications for infant and follow on formula. In this respect, the legislative provisions draw on the language used with respect to current powers to regulate HFSS foods.⁴¹

³⁶ EC Technical rules on claims made in cosmetic advertising

<https://ec.europa.eu/docsroom/documents/24847/attachments/1/translations/en/renditions/native>

³⁷ France ARPP advertising code Cosmetic Products. Available here in English: <https://www.arpp.org/nous-consulter/regles/regles-de-deontologie/cosmetic-products-code-v8/#appendix>

³⁸ Dutch self-regulatory advertising code on Cosmetics: <https://www.reclamecode.nl/nrc/advertising-code-for-cosmetic-products/?lang=en>

³⁹ Regulation (EU) 2016/127 supplementing Regulation (EU) No 609/2013 as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0127>

⁴⁰ Dutch Code on infant and follow-on formula: <https://www.reclamecode.nl/nrc/infant-and-follow-on-formulae-advertising-code/?lang=en>

⁴¹ See page 55, subsection 7 of the final version of the Bill -

https://data.oireachtas.ie/ie/oireachtas/bill/2022/6/eng/ver_d/b06d22s.pdf

2.4.6 Sustainability, climate change, and the environment

With regard to environmental issues, the General Commercial Communications Code includes the general obligation from the AVMS Directive that ACCs shall not encourage behaviour prejudicial to the protection of the environment. In the current UK Code of Broadcast Advertising (BCAP),⁴² a specific section is devoted to “Environmental Claims” in advertising, a potential issue for consideration in the Irish code. Self-regulatory systems in Austria, Belgium, Ireland, France, the Netherlands, New Zealand, and Australia include rules that cover advertising related to the environment – specifically “Environmental claims”.⁴³

The Australian code provides a useful definition of Environmental Claim: *Environmental Claim means any express or implied representation that an aspect of a product or service as a whole, or a component or packaging of, or a quality relating to, a product or service, interacts with or influences (or has the capacity to interact with or influence) the Environment.*

In several countries, the environment is included in specific codes that often address issues of sustainability (France) and also broader issues of science-based and factual information in advertising (Spain). The table below attempts provides (a non-exhaustive) summary of the types of rules outlined in a range of codes. The rules cover issues of: truthful and factual information; clarity and accuracy; non-exaggeration; substantiation of claims; comparative advertising claims, and the use of logos and specific slogans.

Examples of types of rules on environmental claims in advertising
<p><i>Truth, clarity and factual information</i></p> <ul style="list-style-type: none">- Environmental claims shall not be misleading or deceptive or be likely to mislead or deceive (AUS-ASA, FR-ARPP). The basis of environmental claims must be clear. (GB-BCAP, AT-WR, IE-ASAI, AUS-ASA, NL-SRC) Unqualified claims could mislead if they omit significant information (AT-WR, IE-ASAI, GB-BCAP)- Marketing communication should not be framed so as to abuse consumer concern for the environment, or exploit their possible lack of environmental knowledge (ICC Code, BE- JEP).- Advertising should not encourage, or give the impression of approval of, any actions that have a negative impact on the environment (general prohibition in AVMS Directive) <p><i>Substantiation</i></p> <ul style="list-style-type: none">- No representations or statements should be made that cannot be backed up by facts. Environmental claims must be accurate and able to be substantiated by evidence that reflects

⁴² The co-regulatory regime of the Advertising Standards Authority and the Ofcom: <https://www.asa.org.uk/codes-and-rulings/advertising-codes/broadcast-code.html>

⁴³ Links to all of the relevant codes are provided in Annexe 1

scientific and technological developments (AT-WR, BE-JEP, IE- ASAI, FR-ARPP, NZ-ASA, NL-SRC, AUS-ASA)

Use of scientific terms

- The meaning of all terms used in advertisements must be clear to consumers (BE-JEP, IE-ASAI, FR-ARPP, GB-BCAP). Scientific terms should not be used unless strictly necessary and should not be misleading (AT- WR, BE-JEP, ICC Code,). The use of extravagant language should be avoided, as should bogus and confusing pseudo-scientific terms (IE-ASAI).

Labels, logos and slogans

- Environmental labels/ logos should not be used if these labels/ logos are not generally recognized or if they can result in false/incorrect impressions about the characteristics of goods or services (AT-WR, BE-JEP, FR-ARPP, IE-ASAI)

- Expressions, statements or slogans such as, for example, "good for the environment", "ecologically safe" .. implying that a product or service has no effects on the environment at any stage either of its life cycle, are prohibited, except proof established in application of article 14 of this code. (BE-JEP, NL-SRC,)

- Qualified claims such as "environmentally friendlier / safer / kinder" require an ability to prove a meaningful environmental advantage over competitors or a meaningful improvement on previous formulations, components, packaging or method of manufacture or operation (GB-BCAP, NZ-ASA)
- Disclaimers or important limitations and qualifications should be displayed prominently, in clear, plain and specific language (AUS-ASA)

Comparative claims

- Advertising may not suggest false superiority or disparage other similar products or services in terms of environmental effects. Environmental superiority over competitors can only be claimed if it is possible to demonstrate a significant advantage (AT-WR, BE-JEP, IE-ASAI, FR-ARPP, GB-BCAP).

Life-cycle of product

- Absolute environmental claims will be assessed on the complete life-cycle of the product and its packaging, taking into account any effects on the environment of its manufacture, distribution, use, disposal, etc. (GB-BCAP, NZ-ASA, FR-ARPP, BE-JEP, IE-ASAI)

It is recommended to introduce an additional section entitled "Environmental Claims". This would probably fit best under section 5 "Rules for all Commercial Communications." Alternatively it could constitute a stand-alone section.

In the French self-regulatory code a specific section is dedicated to "Sustainable Development", which includes the rules on environmental claims. The code focuses on two areas of responsibility

in relation to the rules: to accurately present the meaningful action(s) of the advertiser or the properties of the advertised product(s) in terms of sustainable development; and to respect the principles of the Sustainable Development Goals of the UNDP (United Nations Development Programme) which address the different dimensions of sustainable development: growth, employment, environment, social cohesion, and the environment.⁴⁴

Under the French Code, advertising must prohibit any representation likely to trivialize or promote practices or ideas contrary to the objectives of sustainable development. For example: there should be no representation of behaviour contrary to the protection of the environment and the preservation of natural resources (waste or degradation of natural resources, damage to biodiversity, air, water or soil pollution, climate change, etc.), except in the case of denunciation; and advertising may not directly or indirectly incite excessive consumption patterns or patterns contrary to the principles of the circular economy; it must not encourage waste through the scrapping of a product or its degradation while it is still working and/or remains consumable, without taking into account – where possible – its durability, reuse, second life or recycling.

2.4.7 Scientific claims in advertising

Linked to the above, but also a stand-alone theme in several codes is the use of scientific claims in advertising. The GCCC prohibits reference to recommendations by scientists in relation to medicinal products and medical treatments, cosmetic products and cosmetic treatments or hypnosis, hypnotherapy and similar services. In addition, Rule 16 (3) states that nutrition and health claims in commercial communications shall be based on and substantiated by generally accepted scientific data. The BCAP in the UK is similar in that specific references are made to scientific claims in relation to various themes.

The use of technical or scientific data and terminology is addressed in the ICC Code at the international level. Similar specific themes are found in the self-regulatory codes in Spain and New Zealand. The key objective of these sections in both the Spanish Autocontrol Code and the New Zealand ASA code is that advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive.⁴⁵

⁴⁴ The French ARPP Sustainable Development Code: <https://www.arpp.org/nous-consulter/regles/regles-de-deontologie/sustainable-development-code/>

⁴⁵ The codes of the International Chamber of Commerce, or the New Zealand ASA are most detailed in relation to the presentation of Scientific data. See Annexe 1 for links to these codes.

2.5 Key Findings: General Commercial Communications Code

The table below outlines the key findings from the review of the GCCC with recommendations for adaptation of the code.

Key Findings in relation to the GCCC
<p><i>AVMS impact</i></p> <ul style="list-style-type: none"> - Scope of the code: the code should be clearly addressed to audiovisual media services in order to include on-demand audiovisual media services, and also the online on-demand services of broadcasters. Hence some of the language will need to change - the legislative basis, scope, objectives, compliance, complaints etc. (Section 1). - There is a need to adapt several definitions: “audiovisual commercial communication” ‘product placement’ and ‘sponsorship’ in line with the AVMS Directive, and possibly ‘children’s programming’ (Section 2).
<p><i>AVMS impact and prohibitions</i></p> <ul style="list-style-type: none"> - The prohibition of product placement (with exceptions) has been reversed to allow product placement (except in certain circumstances). It is recommended to prohibit the display of sponsorship logos in children’s programmes (section 10). - The complete prohibition of audiovisual commercial communications for electronic cigarettes will require adaptation of the GCCC under several sections: prohibited ACCs (Section 4), sponsorship and product placement (Sections 8, 9 and 10). medicinal products (Section 12), and smoking cessation tools (Section 18). - Include the prohibition of commercial use of personal data of minors collected when implementing technical protection measures for protection on audiovisual media services (Article 6a (2) of the Directive).
<p><i>Principles</i></p> <ul style="list-style-type: none"> - The principles and objectives outlined in the GCCC are in line with international practice, and reflect the key aims of the AVMS Directive. - Some additions are recommended under general rules (section 5) which would complement Principle 1 (related to use of scientific data), Principle 2 (related to offensive stereotypes). - While the GCCC, in several areas, speaks to the issue of the use of scientific data, several countries have specific sections for rules related to the use and presentation of scientific data. It is recommended to also develop a section on the use of scientific data in the GCC code.

- In order to align with common practice in Europe (GB, BE, FR, ES), it is recommended to introduce an additional paragraph related to gender stereo-typing in advertising under Principle 2 covering the concern that advertisements must not include gender stereotypes that are likely to cause harm, or serious or widespread offence.

- Some changes are discussed in relation to principle 4 (protection of children): including the addition of “mental” (or “psychological”) harm; and suggestions regarding the audience threshold, which is higher than international standards,

Rules applying to all commercial communications (Section 5)

- See comment above regarding use of scientific data.

- Some additions in relation to privacy could be added in relation to the use of images and information on individuals (with example from NZ).

- It is recommended to introduce a specific section on “environmental claims” in line with emerging international practice and self-regulation (AT, AUS, BE, BG, FR, IE, NZ, and ICC). The review provides an overview of the types of rules used in these codes. This could be under Section 5 as environmental claims relate to a range of products and services, or it could be a stand-alone section. Potential additional rules in relation to sustainability (under French regulation) are also outlined above.

Specific products and services

- Regarding commercial communications for infant formula and follow-on infant formula, recent EU regulations have introduced additional rules regarding the advertising, marketing and promotion of such foods. The BAI Code is largely in line with these rules but some minor suggestions are included in the review (Section 16).

- Regarding commercial communications for cosmetic surgery and services, the GCCC is already quite comprehensive. New EU rules on this issue address claims made in advertising, as outlined in the review (Section 14).

- Regarding ACCs for medical products, treatments and services, the GCCC is already comprehensive. Some recent EU rules on marketing medical devices are outlined in the review (Section 12).

- Gambling: the introduction of watersheds for the advertising of gambling is becoming common practice. The GCCC will likely be impacted by the rules in the forthcoming Irish gambling legislation (Section 20).

- Cryptocurrency: concern regarding promotions of cryptocurrency and related services is increasing, and likely to be legislated in the near future in the UK. In the meantime the UK Advertising Standards Authority has introduced guidelines to ensure that such advertising is not misleading. Similar guidelines could be included under Section 19.

3 Discussion on broad concepts relevant to the Codes

Before continuing with the review of the Code on Programme Standards and the Code of Fairness, Objectivity and Impartiality in News and Current Affairs, it is useful here to consider several concepts and themes that are relevant to both codes: fairness and duty of care; and the issue of hate speech or discrimination.

3.1 Protection from harm, ensuring fairness and duty of care

Consideration could be given to expanding the concept of protection from harm as elaborated in the Code on Programme Standards to address the issue of protecting participants and contributors to programming from harm. The Code defines harm: *“Harmful material is material that has an ‘effect’ - content that causes mental, psychological or physical harm”*.

There is a strong argument to be made that participation in programming can also have an effect that causes “psychological harm”. This is discussed in detail below (under 4.3.2). In relation to the protection of minors when participating in programming, this is also highlighted under section 4.3.4 (consent being an issue covered in rules in a wide range of countries).

Such rules could cover issues of informed consent, and also rules to protect participants from harm related to their participation. These rules exist in the codes in the UK and France. One of the key issues in focus regarding protection from harm (4.3.2 below) are reality television shows.

The duty of care under Ofcom rules requires broadcasters to take several criteria into consideration in relation to participants used in programming. Among these are the questions that need to be asked as to whether the person could be considered “a vulnerable person”; or a person “not used to being in the public eye”.

The participation in programming is an issue addressed under the principle of fairness in the Code of Fairness, Objectivity and Impartiality in News and Current Affairs. A principle of fairness could also be introduced in relation to the Code of Programme Standards, covering the issues outlined above regarding consent and duty of care.

In addition the rules on the principle of fairness in the Code of Fairness, Objectivity and Impartiality in News and Current Affairs could also be expanded and informed by the general rules on duty of care in programme participation. An examination of some of the criteria developed in the UK as regards duty of care and the extent to which they could be added to the fairness principle will be covered below (under section 4.3.3).

3.2 Hate speech, discrimination and denigration

The complex concept of hate speech needs a brief overview in advance of the review of the two codes. Linked to this are concerns with regard to discrimination and denigration. There is an extent to which these issues may also need to be considered under both codes with regard to general programming, and with regard to news and current affairs (including representations in documentaries and discussions in talk-shows). It is highly recommended that the BAI develop specific guidance on hate speech, which can be referenced in relation to different kinds of programming.

Article 6 of the AVMS Directive addresses prohibited content: audiovisual media services provided by media service providers should not contain any: *(a) incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter; the grounds of the Charter are sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*

The Principle of Respect for Persons and Groups in Society (Principle 5 of the Code of Programme Standards) refers to respect for human dignity, and requires that programme material should not stigmatise, support or condone discrimination or incite hatred. Some brief guidelines are provided but there is a need for a much more nuanced overview of the relevant issues. The issue is complex as hate speech can fall under directly prohibited content which in its most extreme form it is illegal, and therefore should be dealt with under the Principle related to protecting the public interest. It can also constitute harmful material, “..material that has an ‘effect’ - content that causes mental, psychological or physical harm”.

The Council of Europe (CoE) has defined hate speech in the following way:

“hate speech is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as “race”, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.”⁴⁶

The CoE also stressed the need to differentiate between types of hate speech:

“ a. i. hate speech that is prohibited under criminal law; and ii. hate speech that does not attain the level of severity required for criminal liability, but is nevertheless subject to civil or administrative law; and

b. offensive or harmful types of expression which are not sufficiently severe to be legitimately restricted under the European Convention on Human Rights, but nevertheless call for alternative responses”

⁴⁶ Council of Europe Recommendation CM/Rec(2022)16[1] of the Committee of Ministers to member States on combating hate speech https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955

Taking these three categories one at a time, the first references illegal content – probably unlikely to appear on any of the broadcast services in Ireland. Such content may however be problematic online and will be within the remit of the future Coimisiún na Meán with regard to video-sharing platforms (under the Audiovisual Media Services Directive, and under the Digital Services Act). In addition, the forthcoming Irish Hate Crimes Bill will have significant relevance for the interpretation of hate speech by the courts.

An interesting analysis⁴⁷ of the Bill and its potential impact on the implementation of the Digital Services Act, cautions against overly broad definitions of hate speech, providing the examples of the potential to limit freedom of expression which can include criticism of organisations who by their very nature promote discrimination and hatred. There have been some recent updates to the text of the Bill (October 2022), including what is described as a provision to protect freedom of expression.

This is a provision “*that a communication is not taken to incite violence or hatred solely on the basis that it involves discussion or criticism of matters relating to a protected characteristic.*”⁴⁸ There are also changes as regards the protected characteristics, which may suggest an update of the protected characteristics in the various BAI codes. Regarding “*hate speech that does not attain the level of severity required for criminal liability, but is nevertheless subject to civil or administrative law*” (CoE definition), civil and administrative proceedings are likely to arise in relation to hate speech in the context of online media (such as video-sharing platforms) – regarding complaints, removal of content, redress and court proceedings.

The Ofcom Broadcast Code (in 2016) introduced a specific section on “Crime, disorder, hatred or abuse”. Illegal content is covered, as material likely to encourage or incite crime is prohibited on broadcast services and on-demand services, and includes “*hate speech which is likely to encourage criminal activity or lead to disorder.*”

Further rules cover hate speech not considered as inciting crime: “*Material which contains hate speech must not be included in television and radio programmes or BBC ODPS except where it is justified by the context.*” And “*Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services or BBC ODPS except where it is justified by the context*” (3.2 and 3.3).

These would appear to be closer to addressing the other types of content considered under the Council of Europe recommendation, including: “*hate speech that does not attain the level of severity required for criminal liability*” and also “*offensive or harmful types of expression which are not sufficiently*

⁴⁷ S. Allen (2022): Regulating Hate Speech: The European Digital Services Act and Ireland's Hate Crimes Bill. Publication of the IIEA. https://www.iiea.com/images/uploads/resources/Regulating_Hate_Speech.pdf

⁴⁸ New Bill to tackle hate crime and hate speech includes clear provision to protect freedom of expression <https://www.gov.ie/en/press-release/74ed9-new-bill-to-tackle-hate-crime-and-hate-speech-includes-clear-provision-to-protect-freedom-of-expression/>

severe to be legitimately restricted under the European Convention on Human Rights, but nevertheless call for alternative responses.”

The New Zealand Broadcasting Code⁴⁹ addresses discrimination and denigration. “Denigration” is defined as “*devaluing the reputation of a particular section of the community*”. The UK and the New Zealand codes and the Council of Europe Recommendation all provide guidance on the importance of context. In summary (and combined), these cover the issues outlined below. These mix two sets of criteria that are interconnected – a general assessment of hate speech – and – a specific assessment of hate speech in the media.

Combined criteria/ factors relating to assessment of hate speech and the importance of context
<p><i>Content, language, tone, intent:</i></p> <ul style="list-style-type: none">- The content of the expression (CoE); the language used (NZ); the tone of the person making the comments (NZ); the intent of the speaker CoE).
<p><i>The persons involved:</i></p> <ul style="list-style-type: none">- The status or position of anyone featured in the material (UK); the speaker’s role and status in society (CoE); the characteristics of the targeted group (CoE).
<p><i>The medium</i></p> <ul style="list-style-type: none">- The service on which the material is broadcast; and size and composition of the potential audience (CoE, UK).- The genre and editorial content of the programme, programmes or series and the likely audience expectations (UK).- The forum in which the comments were made; for example, a serious political discussion or a satirical piece (NZ). - How the expression is disseminated or amplified (COE).
<p><i>Consequences, context and rebuttal</i></p> <ul style="list-style-type: none">- The capacity of the expression to lead to harmful consequences, including the imminence of such consequences (CoE).- The political and social context at the time of the expression (COE).- Whether the comments made a legitimate contribution to a wider debate or carried public interest (NZ)- Whether the comments were repeated or sustained, or corrected or rebutted (NZ). The extent to which sufficient challenge is provided (UK).

⁴⁹ Code of Broadcasting Standards in New Zealand – Guidelines on Discrimination and Denigration

The Council of Europe, with regard to the media, also recommends the following (among others): that media and journalists should be encouraged to promote a culture of tolerance and understanding; media and journalists should, in their efforts to provide accurate and reliable information, avoid derogatory stereotypical depiction of individuals, groups and communities and give voice to diverse groups and communities in society, especially when reporting on matters of particular public interest and during election periods.

In conclusion, it is important to carefully consider where each of these different types of approaches to hate speech that incites crime, hate speech that does not incite crime, and other content that is discriminatory or denigrating in its nature should be addressed in different parts of the two codes. The principle of Protection of the Public Interest (Principle 6 of the Code of Programme Standards) addresses issues of incitement to crime and should therefore include the range of criminal content outlined in the AVMS (among others incitement to hatred and incitement to violence, and racism and xenophobia).

It is also proposed that the principle of Respect for Groups in Society (Principle 5 of the Code of Programme Standards) could be elaborated to provide more rules and guidance regarding hate speech, discrimination and denigration.

Finally, a section covering hate speech, discrimination and denigration could be included under the Code of Fairness, impartiality and Objectivity, with regard to news and current affairs (including representations in documentaries and discussions in talk-shows).

4 Code on Programme Standards

The most recent version of the BAI Code of Programme Standards dates from 2015. This Code (like the GCCC) also takes a principles based approach. These are the: Respect for Community Standards; the Importance of Context; the Protection from Harm; the Protection of Children; the Respect for Persons and Groups in Society; the Protection of the Public Interest; and the Respect for Privacy. The alignment of the current Code of Programme Standards with the updated AVMS Directive, European standards and practice is analysed here. Emerging issues and relevant trends regarding programme standards in a range of jurisdictions are also identified.

4.1 General comments on the structure and style of the code

As noted above (under 1.3), the Code of Programme Standards is relatively high-level compared to the other codes under review here. The Code, in its foreword, acknowledged the responsibility already being taken by broadcasters at that time to minimise harm and undue offence, to protect minors in particular with regard to respecting watersheds by exercising care regarding scheduling of programming. In a sense, the code appears to present a minimal set of rules and was perhaps the more appropriate approach at the time of its development.

The principles based approach is highly appropriate, however there is a sense that a certain level of detail or expansion on the principles is absent. In addition, there is an extent to which the Irish

broadcast landscape has evolved since the drafting of this code. The number of services licensed by the BAI has expanded to include more international channels. Of importance is the fact that this Code should also cover audiovisual on-demand media services, either to be included in the context of each principle, or to be added as a separate section in the code. For these reasons, it is proposed that the code incorporate both a principle, and an evidence, based approach. The additional research being carried out for the BAI (including with stakeholders) may also provide further guidance on where more detail is needed.

The proposal to include additional detail on certain rules does not negate the important approach of the Code in providing distinctions between the concepts of offence (which is more nuanced) and harm (which in many cases is very specific). Hence, it is recommended that the first two principles of the Code be re-configured as principles relevant to interpretation and implementation. The principles may, for example be organised as outlined below.

Alternative titling of the principles
<p><i>Interpretation and implementation</i> Principle 1 Respect for Community Standards; Principle 2 Importance of Context.</p> <p><i>Content Standards</i></p> <p>Principle 3 Protection from harm, Principle 4 Protection of children, Principle 5 Respect for persons and groups in society, Principle 6 Protection of the public interest, Principle 7 Respect for privacy.</p>

On the basis of the review of relevant European codes and regulations, and also the practice in other countries, the first conclusions are that more detail is needed with regard to “protection of children” and to the more general section on “protection from harm.”

Following from the discussion above (3.1), there is a need to include principles of fairness and duty of care in relation to programming. In addition, issues such as hate speech and discrimination need to be addressed in different ways regarding programming content, and news and current affairs content.

It is also advisable to develop specific guidance documents under certain principles. There is an established practice in many countries to supplement Broadcast Codes and Audiovisual Media Content Codes with additional “guidance” documents. The Ofcom in the UK does this in relation to almost every area covered in the broadcast and on-demand codes. The regulatory authority in Catalonia (CA) has published a range of supplementary guidance documents on the subjects of, for example, reporting on mental health, and on anorexia nervosa and bulimia nervosa, the portrayal of violence against women, and guidelines on reporting death by suicide in the media etc. It is also common to link to the relevant Guidance of other organisations.

As noted above under (under 1.3), the use of web-based codes would make the inclusion of specific guidance documents related to a set of rules or principles easier to access.

4.2 Relevant recent European rules, recommendations and codes

The AVMS Directive introduces a level-playing field for linear and non-linear services as regards content. The BAI code needs to be applied to on-demand audiovisual media services, or include a specific set of rules for on-demand services within the code (as is the case in the UK Code developed by Ofcom). See more details under section 4.4.

Article 6 of the AVMS Directive was updated with regard to prohibited content: audiovisual media services provided by media service providers should not contain any: incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter; public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541. An additional obligation for video-sharing platforms includes: offences concerning child pornography and offences concerning racism and xenophobia (Article 28b (1)).

These issues as discussed in detail under section 3 may be considered under the principle of Protection from harm, and partly under Respect for persons and groups in society, and also under the Principle 6 Protection of the public interest.

4.3 Principles and themes in the Code and comparison with other jurisdictions

The following section provides an analysis of the principles outlined in the Code with reference to European rules, standards and practice.

4.3.1 Principles 1 and 2 – Community Standards and Context

It is common practice in several jurisdictions to discuss issues of community standards and also the importance of context in relation to interpretation of codes related to programme standards (for example, in the UK, Australia and New Zealand). As noted above, the first two principles of the Code – Principle 1 Respect for Community Standards, and Principle 2 Importance of Context are comprehensive and a very useful introduction to the main themes of the code. Regarding the section on context, measures to be taken with regard to protection of minors should preferably be briefly summarised here, while detailed and elaborated rules on such measures could be included directly under the principle on protection of children (see section 2.2.3 below). This increases the facility for the lay-person to more quickly understand these rules and the expectations that they can have from audiovisual media services.

4.3.2 Principle 3 Protection from Harm

Principle 3 concerning the protection from harm articulates well the need to provide warnings for viewers to ensure that audiences are not exposed to harmful content and must provide adequate information to audiences to allow them to make informed choices about what they listen to and watch. In this context, the main focus of the principle concerns content with which viewers may identify strongly by virtue of their own personal circumstances or experiences and that may cause them distress. In this case additional support mechanisms or further information/guidance maybe needed. The principle also concerns programme material that can cause a physical reaction, for

example, material that affects those with photo sensitive epilepsy or those who are susceptible to hypnosis. And finally, the principle addresses types of content that purports to be one thing when it is another, for example, something seemingly factual that is actually fictional or controversial

As noted earlier, the Code defines harm: “*Harmful material is material that has an ‘effect’ - content that causes mental, psychological or physical harm*”.

Specific distressful content includes content such as sexual violence, self-harm or suicide, reconstructions of factual events and archive footage. The code, as is standard in other countries, provides that broadcasters will provide warnings, guidance and help-line information.

The BAI plays a role under Ireland’s National strategy to Reduce Suicide 2015-2020⁵⁰ in applying and monitoring the Code of Programming Standards including Principle 3 – Protection from Harm, which references self-harm and suicide to ensure responsible coverage around these issues in the broadcast media. Hence, the links to the Guidance of the Samaritans⁵¹ provided on the BAI website could be a link directly available in the code. The NUJ also have specific Guidelines for reporting mental health and death by suicide.⁵²

As news coverage and current affairs can also include content likely to cause harm – or distressful content, it is proposed that the Code of Fairness, Objectivity and Impartiality refer directly to the Code on Programme Standards with regard to rules on potentially harmful content.

The Australian Code specifically addresses news that causes distress and provides some more detail than the BAI code.⁵³

In broadcasting a news or Current Affairs Program, a Licensee must:

a) not include material which, in the reasonable opinion of the Licensee, is likely to seriously distress or seriously offend a substantial number of viewers, having regard to the likely audience of the Program, unless there is a public interest reason to do so; and

b) include a spoken warning before a segment that contains material which, in the reasonable opinion of the Licensee, is likely to seriously distress or seriously offend a substantial number of viewers having regard to the likely audience of the Program; and

⁵⁰ National strategy to Reduce Suicide 2015-2020 (Connecting for Life - CFL):

<https://www.hse.ie/eng/services/list/4/mental-health-services/connecting-for-life/national-strategy-to-reduce-suicide/>

⁵¹ The Samaritans Media Guidelines for Reporting Suicide:

https://media.samaritans.org/documents/Media_Guidelines_FINAL.pdf

⁵² NUJ Guidelines for reporting mental health and death by suicide. <https://www.nuj.org.uk/resource/nuj-guidelines-for-reporting-mental-health-and-death-by-suicide.html>

⁵³ Australian Free TV Code of Practice: https://www.freetv.com.au/wp-content/uploads/2019/07/Free_TV_Commercial_Television_Industry_Code_of_Practice_2018.pdf

c) not broadcast reports of suicide or attempted suicide unless there is a public interest reason to do so, and exclude any detailed description of the method used, and exclude graphic details or images; and

d) exercise sensitivity in broadcasting images of or interviews with bereaved relatives or people who have witnessed or survived a traumatic incident; and

e) have regard to the feelings of relatives and viewers when including images of dead bodies or people who are seriously wounded, taking into account the relevant public interest.

As noted above, it is possible to develop a range of guidance documents as for example those provided by the regulatory authority in Catalonia (CA)⁵⁴ or link to useful documents produced by other organisations.

4.3.3 Expanding the understanding of harm to protect programme participants.

Regarding protection from harm, there are also additional considerations of harm including the potential harm caused to people participating in programmes. As will be seen below (4.3.4), several countries address the participation of children in programming or in news.

Ofcom rules have an additional principle not fully addressed by the BAI Code. Section 7 of the Ofcom Code deals with “fairness” and covers the principle of ensuring that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes. In terms of its aim it is similar to the Fairness rule in the Code of Fairness, Objectivity and Impartiality in News and Current Affairs. This would be an important potential addition the BAI Code with regard to protection from harm and applied to participation in all programme genres.

The Ofcom code includes extensive rules regarding informed consent where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation is minor) (7.3).

A specific area of concern in many countries has been the growing genre of reality television. According to a recent EPRA report, reality and talent shows are covered by general provisions on protection of minors from harmful content that apply to any other audiovisual programmes.⁵⁵ For some regulators responding to the questionnaire (linked to the EPRA report), the broad obligation to respect human dignity was also relevant in this case. In most countries it is required that such programmes should be aired after the watershed and labelled over 18 (reality shows) or over 16 (pseudo reality shows).

Some rules protecting the participants in reality shows exist in the UK and in France. The UK rules distinguish between “Reality programmes” and “Pseudo reality programmes”.

⁵⁴ For example, reporting on mental health, and on anorexia nervosa and bulimia nervosa, the portrayal of violence against women, and guidelines on reporting death by suicide in the media.

⁵⁵ EPRA (2016): Case Study on the Protection of Minors: Reality and Talent Shows. Comparative Background Document. https://cdn.epra.org/attachments/files/2854/original/BCN_WG2_%20RealityTV_final_revised.pdf?1466159222

“Reality programmes has been limited to ostensibly unscripted versions of this television genre that show the life of a group of participants in an isolated space who are permanently in the zone of video cameras and microphones, and who are trying to win or are competing for a prize. Pseudo-reality programmes are defined as scripted programmes that display either reconstructions of authentic events or entirely fictional but real life-like situations whose focus is on drama and conflicts, for example adultery, criminal acts, difficult life situations etc.”

In 2019, Ofcom updated the Guidelines for protecting programme participants following the suicides of two people involved in reality shows. The new guidelines extended the broadcaster duty of care to people made vulnerable by their participation in TV shows. This applies during production and broadcast, and afterwards, particularly on social media.⁵⁶

Section 7 of the Ofcom Code now has an additional rule (7.15) that specifically addresses the duty of care regarding participants in programmes:

7.15: Broadcasters should take due care over the welfare of a contributor who might be at risk of significant harm as a result of taking part in a programme, except where the subject matter is trivial or their participation minor.

A contributor might be regarded as being at risk of significant harm as a result of taking part in a programme for reasons including (but not limited to) the following:

they are considered a vulnerable person; they are not used to being in the public eye; the programme involves being filmed in an artificial or constructed environment; the programme is likely to attract a high level of press, media and social media interest; key editorial elements of the programme include potential confrontation, conflict, emotionally challenging situations; or the programme requires them to discuss, reveal, or engage with sensitive, life changing or private aspects of their lives.⁵⁷

4.3.4 Principle 4 Protection of Children

Overall, the section of the Code in relation to the protection of minors requires a significant update and the addition of more detail. The introduction to the principle is very useful. At the same time, with regard to the audience profile used for the BAI in the definition of children’s programming, it was observed in the 2018 review of the Children’s Commercial Communications Code⁵⁸ carried out for the BAI in 2018, that in comparison to a broad range of countries the audience threshold in the BAI code that defines children’s programmes is quite high at 50%. It could be taken into consideration whether to adjust this in line with audience threshold approaches in other countries,

⁵⁶ Ofcom (2019): New rules to protect people on TV and Radio shows: <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/new-rules-protect-people-tv-and-radio-shows>

⁵⁷ Ofcom Rules under Section 7: Fairness <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/section-seven-fairness>

⁵⁸ Jurisdictional Review of the Children’s Commercial Communications Code carried out by Commsol for the BAI in 2018

and /or introduce an additional definition for programming likely to be viewed by children in terms of audience percentages.

The first rule under principle 4 states that broadcasters shall: “*Ensure that programme material that might seriously impair the physical, mental or moral development of children is not broadcast when children are likely to be viewing, in particular, programmes that include pornography or gratuitous violence*”.

In this case, the rule is not in line with the AVMS Directive, which states under Article 6a (1) that the most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures. This section of the Code is also not in line with the relevant Statutory Act⁵⁹ implementing the 2010 AVMS Directive in Ireland which states specifically that a broadcaster shall not broadcast programmes that might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence. In addition, content (excluding pornography or gratuitous violence) which might seriously harm minors must be controlled via scheduling or encryption.

In the UK, under the Ofcom Broadcasting Code (rule 1.17 relevant to sexual material) it states that material equivalent to the British Board of Film Classification (“BBFC”) R18-rating must not be broadcast at any time. It is notable that the Irish Film Classification Office does not have a rating for pornographic videos (as the UK R-18), and the conclusion is that they are perhaps not distributed in Ireland. Even though it is unlikely that there would be channels established in Ireland that broadcast pornography, it is recommended to prohibit the broadcast of pornography and use the strictest of measures in relation to any other content that would seriously impair the physical, mental or moral development.

In Austria,⁶⁰ television schedules shall not include any programmes that might seriously impair the physical, mental or moral development of minors, particularly any containing pornography or gratuitous violence. The same prohibition exists in the Norwegian law.⁶¹ The Irish code could introduce a system of “mandatory restricted access” a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view. Under Danish law, the most harmful programmes, including programmes that contain gratuitous violence or pornography, shall be subject to the most stringent measures available, such as encryption and parental control systems.⁶² A similar requirement is outlined in the Austrian law. The Code of Broadcasting Standards in New Zealand also recommends the use of filtering

⁵⁹ Article 18, S.I. No. 258/2010 - European Communities (Audiovisual Media Services) Regulations 2010.
<https://www.irishstatutebook.ie/eli/2010/si/258/made/en/print>

⁶⁰ Austria - Federal Act on Audiovisual Media Services (AMD-G) – consolidated 1st January 2021

⁶¹ Norway - Act relating to the protection of minors against harmful audiovisual programmes
https://lovdata.no/dokument/NLE/lov/2015-02-06-7#KAPITTEL_3

⁶² Denmark - Order No 976 of 18 June 2020 - Order on TV 2 DANMARK A/S's public service programming activities

technologies for 18 programming, and requires that explicit over 18 programming is available only on premium channels (where login is also required).

In the UK, a “mandatory restricted access” system is required in the OFCOM code:

‘Adult sex material’ – material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation – must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access. In addition, measures must be in place to ensure that the subscriber is an adult.

Ofcom also requires a “mandatory daytime protection” whereby BBFC 15-rated films (or their equivalent on premium subscription film services), and programmes that are unsuitable for children that would usually be scheduled after the watershed, and films up to BBFC 18-rated or equivalent, may be broadcast on television at any time of day when a “mandatory daytime protection” system is provided.

Reference is made to the watershed in the BAI Code under Principle 4, but this could be clarified as being after 9pm (as under principle 2 in relation to context), and an end time for the watershed could be indicated.

The Directive (under Article 6a (3)) requires the provision of sufficient information about content which may impair the physical, mental or moral development of minors. Although this is referred to under principle 2, in relation to context, it would be important to reiterate under the protection of minors of the need to indicate the nature of the content (by means of an acoustic or other warning or through the inclusion of a visual symbol in the case of television programming) - not only to allow a viewer or listener to make an informed choice – but also to ensure that parents can make choices to protect children.

Labelling systems for broadcast content were mandatory under co-regulatory systems in the Netherlands, Finland, Germany, Italy and Spain. Such systems are mandatory under statutory regulation in Croatia, France, Hungary, Slovakia and the UK.⁶³

In summary, it is proposed that the set of rules advising broadcasters to take care when scheduling certain types of content that may impair the physical, mental or moral development of minors be more detailed in order to be in line with European standards.

It may well be the case that broadcasters already take sufficient care in this regard or that distribution companies such as cable and satellite companies already provide technical means to limit user access to certain content. However, these rules could still more clearly prescribed under

⁶³ ERGA (2017): Protection of Minors in the Audiovisual Media Services: Trends & Practices (ERGA report). <https://erga-online.eu/wp-content/uploads/2016/10/ERGA-PoM-Report-2017-wordpress.pdf>

Principle 4 in order to ensure the key objectives of the code: advising viewers and listeners on the standards they can expect from broadcasting services and to enable viewers and listeners to hold broadcasters to account in the event that they believe that a broadcaster has behaved irresponsibly; and providing guidance to broadcasters in relation to matters falling within the scope of the codes. In addition, in a multi-channel environment, if any need arises to restrict the reception of channels and programme content from other countries on the grounds of harmful content, the rules in the Irish regulatory system with regard to the protection of minors should be more precisely presented.

Although already addressed under the GCCC, above, it is important to include the new provision from the AVMS regarding the prohibition of commercial use of personal data of minors collected when implementing technical protection measures on audiovisual media services. This is particularly relevant in relation to on-demand audiovisual media services, which also have an obligation under Irish law to protect minors from harmful content.⁶⁴

The protection of minors can be interpreted beyond the issue of their potential access to adult content, or content of a violent or sexual nature. Some examples of this are already addressed under Principle 3 in relation to protection from harm. In this context it is useful to distinguish between the protection of the general public / audience from harm, and the protection of minors from harm.

Several issues raised under principle 3 could be further expanded under principle 4 or a simple cross-reference to the issues outlined under Principle 3 could be included, for example: *“broadcasters shall take extra special care to ensure that the types of harmful content outlined under Principle 3 will not be broadcast before the watershed or during programming likely to be seen by children”*.

Two additional issues are addressed by the Ofcom Code. One concerns the involvement of people under eighteen in programmes, and the second issue relates to the coverage of sexual and other offences in the UK involving under-eighteens. Regarding the rules on participation in programming, this is also regulated in France.⁶⁵ In fact, such an obligation to obtain consent of parents/guardian/other legal representative for any participation (and the minor him/herself) is covered in a broad range of countries.⁶⁶

In France, the participation of a minor in a television program is subject to the prior authorization of parents or guardians as well as the minor. In addition, both parents and the minor must be informed of the theme of the program, its title and its object at the time of giving their consent. They must

⁶⁴ Article 6 (2), S.I. No. 258/2010 - European Communities (Audiovisual Media Services) Regulations 2010. <https://www.irishstatutebook.ie/eli/2010/si/258/made/en/print>

⁶⁵ Délibération du 17 avril 2007 relative à l'intervention de mineurs dans le cadre d'émissions de télévision diffusées en métropole et dans les départements d'outre-mer: <https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-l-Arcom/Les-deliberations-et-recommandations-de-l-Arcom/Recommandations-et-deliberations-du-CSA-relatives-a-la-protection-des-mineurs/Deliberation-du-17-avril-2007-relative-a-l-intervention-de-mineurs-dans-le-cadre-d-emissions-de-television-diffusees-en-metropole-et-dans-les-departements-d-outre-mer>

⁶⁶ For example: CY, GR, BA, RO, LU, ES - CAC, ES -CNMC, RS, ME, UA. See the EPRA (2016): Case Study on the Protection of Minors: Reality and Talent Shows. Comparative Background Document. https://cdn.epra.org/attachments/files/2854/original/BCN_WG2_%20RealityTV_final_revised.pdf?1466159222

also have the right of withdrawal from a programme. Both sets of rules (UK and France) stress the requirement to take due care regarding the welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes.

The Ofcom code also emphasises that people under eighteen must not be caused unjustified distress or anxiety by their involvement in programmes or by the broadcast of those programmes. In addition, any prizes aimed at children must be appropriate to the age range of both the target audience and the participants.

The French code includes rules regarding the identity of certain minors. Television services must refrain from soliciting the testimony of a minor placed in a difficult situation in their private life when there is a risk of stigmatization after the broadcast of the programme, unless they ensure total protection of his identity (face, voice, name, address, etc.) by an appropriate technical process likely to prevent his identification.

In the UK, with regard to the coverage of crimes involving under-eighteens, broadcasters should also be particularly careful not to provide clues which may lead to the identification of those who are not yet adult (the defining age may differ in different parts of the UK) and who are, or might be, involved as a victim, witness, defendant or other perpetrator in the case of sexual offences featured in criminal, civil or family court proceedings.

The French Code also requires each broadcaster to develop a specific “Charter” that applies to all programmes that involve minors. This should: define the procedures for respecting the sensitivity of children; outline the conditions governing the presence of minors at the broadcaster premises as regards security and supervision and possibly accompaniment of the child by a health professional.

It is recommended to include sections regarding the participation of minors in programmes, and also rules regarding reporting on minors in relation to crimes.⁶⁷ The latter may also be more appropriately placed in the Code of Fairness, Objectivity and impartiality in News and Current affairs.

4.3.5 Principle 5 Respect for Persons and Groups in Society

As discussed above, this principle refers to respect for human dignity, and requires that programme material should not stigmatise, support or condone discrimination or incite hatred. Some brief guidelines are provided but there is a need for a much more nuanced overview of the relevant issues.

In the context of the BAI Stakeholder Review of the BAI Gender Action Plan, which sought feedback on the development of a BAI Equality, Diversity and Inclusion Strategy,⁶⁸ there was considerable discussion on programming, talk shows and news reporting with regard to specific groups in Irish

⁶⁷ See the Ofcom Broadcast Code section on these issues: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/section-one-protecting-under-eighteens>

⁶⁸ BAI Stakeholder Review of the BAI Broadcasting Authority of Ireland's Gender Action Plan, and input to the development of a BAI Equality, Diversity and Inclusion Strategy: <https://www.bai.ie/en/download/136922/>

society. These discussions made direct reference to the Codes of the BAI. Hence it is important to consider this feedback from these groups here in the context of programming and also under the Code of Fairness, Impartiality and Objectivity in news and current affairs. Issues of concern that emanated in the above study included the overall representation of women, and the framing of “women’s’ issues” in the media – in particular with regard to discussions on the issue of violence against women, the need for quality journalism to counteract anti-gender, anti-LGBT and anti-women rhetoric, particular challenges regarding representation of transgender people, and a very high level of concern regarding a tendency in some media towards provocation, leading to polarised and confrontational debates regarding the Irish Traveller Community.⁶⁹ Addressing these issues is also in line with the BAI goal of ensuring the principles of Equality, Diversity and Inclusion are reflected in the policies and strategies of the organisation.

The second paragraph states that broadcasters shall “*Only emphasise age, colour, gender, national or ethnic origin, disability, race, religion or sexual orientation when such references are justified, having regard to the principles of this Code, in particular, the importance of context.*”

It would be recommended to include in this sentence the phrase, *or membership of the travelling community, the LGBTQ+ community, or any other minority group in Irish society.*

The guidelines under Principle 5 are rather slim in this regard. It is highly recommended that the BAI develop specific more rules and guidance regarding hate speech, discrimination and denigration, which can be referenced in relation to different kinds of programming (see detail and examples under 3.2 (above)).

Finally, respect for the different groups in society also implies more engagement with groups regarding understanding of terminology, regarding consultation in the development of programming, and in the communication with representative groups when seeking input or opinions or contributions to programmes (this is further addressed below in relation to news and current affairs).⁷⁰ As noted under 3.1, a principle of fairness could also be introduced in the Code of Programme Standards regarding participation in programmes covering the issues of consent and duty of care.

4.3.6 Principle 6 Protection of the Public Interest

The section on protection of the Public Interest is very well elaborated and provides not just an important standard for the work of broadcasters, but also a useful framework for the evaluation of public interest content with regard to the other interests protected by the code.

⁶⁹ Feedback from the National Women’s Council of Ireland, the Equality Expert Group, LGBTI, and the Irish Traveller Movement.

⁷⁰ These recommendations also reflect feedback from the Gender Action Plan Stakeholder Review and came from the National Women’s Council of Ireland, LGBTI, the Irish Traveller Movement, and the Disability Association of Ireland.

Under the heading “Public interest content may include programme material that..”, it would be recommended to include: *programmes that inform public debate relating to climate change and environmental sustainability.*⁷¹

Given that the AVMS Directive specifically includes a range of prohibited content and illegal content under Article 6, (and addressed in the Online Safety and Media Regulation Bill 2022 under 46J), it is important to add to this phrase: audiovisual media services should not include any content that constitutes an incitement to hatred or to violence, or an incitement to commit a terrorist offence.

4.3.7 Principle 7 Respect for Privacy

This principle regarding fairness is well articulated. It could be integrated with issues concerning fairness and duty of care – in particular as fairness of treatment in programming could include a range of rules in relation to informed content.

Hence, it is recommended to rename this section “Respect for privacy, and fairness in the treatment of participants in programming”, and include the recommended sections discussed under section 3.1 (above).

4.4 Including on-demand audiovisual media services

In the UK, on-demand audiovisual media services were previously part of a co-regulatory structure but are now regulated directly by Ofcom. Within the Ofcom Broadcasting Code, there is a specific section: “On Demand Programme Service Rules and Guidance”. Whether the future approach in Ireland involves co-regulation or statutory regulation, it is important to also develop a set of content standards with regard to on-demand audiovisual media services. A useful starting point in the Irish context is the Code of Conduct for On-Demand Audiovisual Media Services. Currently this contains a section on content, which will need to be updated in order to align fully with the expectations of a revised BAI Code of Programme Standards. The revised AMS Directive requires that all audiovisual media services now have the same content obligations. However, the means of ensuring compliance with obligations are somewhat different for online services.

4.4.1 On-demand audiovisual media services and the protection of minors

The Online Safety and Media Regulation Bill 2022 has broadened the scope of the requirements on protection of minors (and a range of other issues) to include on-demand audiovisual media services under “Duties” 46N⁷² Given this clear expansion in scope, the terminology in the document will need to be adapted to include on-demand services alongside broadcasters.

Accordingly, Coimisiún na Meán may make codes governing the relevant standards and practices of the broadcasters and audiovisual on-demand media services.

⁷¹ As under Section 7 of the OSMRB

⁷² Although these issues are briefly addressed in the voluntary ODAS code

In order to ensure that children will not normally see or hear anything which may impair their physical, mental or moral development, key approaches in other jurisdictions are the mandatory use of parental controls, and in some cases the introduction of watersheds (times where online content is not available for viewing). Several countries have imposed a watershed on VOD providers via state regulation. In the Netherlands this watershed applies only to the national public service broadcasters with regard to their online services. Any content in the catch-up services that can be considered to be (potentially) harmful for viewers under the age of 16 may only be made available online between 22.00 p.m. and 6.00 a.m. Both Germany and France have imposed mandatory watersheds regarding content on VOD services. In France content unsuitable for children under 16 years should not be made freely available to the public on VOD, except between 10:30pm and 5:00am. In Germany a system exists that requires labelling such content (the so-called age-de.xml standard) so that it can be recognised and blocked by parental control systems.⁷³

The Norwegian law requires protective measures to prevent minors from accessing audiovisual programmes or related material with seriously harmful content, including parental control systems (technical measures). In France a specific secondary act was introduced to regulate content on on-demand audiovisual media services in 2011. This Deliberation introduced the requirement for on-demand audiovisual media services to use programme classification, signals warnings etc, and pictogrammes to provide information to the viewer and to parents. Such services must create a space within their service for family viewing. On-demand services that offer the most harmful content can only be offered under subscription services. The rules further address technical blocking of such services, user access etc. As noted above, for non- subscription based services the French regulation introduced a watershed.

4.4.2 Prohibited content and harmful content

With regard to prohibited and harmful content, 46J of the Bill addresses “Harm, offence, incitement and authority of the state”. This section applies rules to both broadcasters and audiovisual on-demand services, reflecting the AVMS Directive prohibition of content related to incitement to violence or hatred, and public provocation to commit a terrorist offence on audiovisual media services (Article 6). Under 46N, the Coimisiún may develop codes and practices to ensure that that broadcasters and providers of audiovisual on-demand media services comply (among others) with section 46J.

The Ofcom rules for on-demand services already comply with the new Directive regarding illegal content (which is also prohibited on VSPs) whereby prohibited material means: material the inclusion of which in an on-demand programme service would be conduct required by any of the following to be punishable as a criminal offence such as relating to a terrorist offence and the sexual abuse and sexual exploitation of children and child pornography (Rule 11). It may also be useful in the Irish

⁷³ ERGA (2017): Protection of Minors in the Audiovisual Media Services: Trends & Practices (ERGA report). <https://erga-online.eu/wp-content/uploads/2016/10/ERGA-PoM-Report-2017-wordpress.pdf>

case to include the requirements on illegal content (outlined in the Directive for VSPs) as applicable to other online services such as on-demand services.

The discussions related to harmful content, protection from harm, issues of fairness and duty of care, and related to hate speech, discrimination and denigration outlined in this review are also relevant to on-demand services. Any additional rules and guidance on these issues could therefore also be addressed to these services.

4.5 Key findings: Code on Programme Standards

The table below combines all the findings regarding the Code on Programme Standards.

Key findings in relation to the Code on Programme Standards
<p><i>Overview</i></p> <ul style="list-style-type: none"> - The overall impression is that the Code is relatively high level compared to the other codes. More detail is needed under the specific principles, and there are a range of issues that require updating, while new concepts need to be introduced. <p>Several suggestions are made with regarding to enhancing the usability and clarity of the code, including its relationship with other codes:</p> <ul style="list-style-type: none"> - To provide for web-based codes - To consider combining the Code on Programme Standards with the Code of Fairness, Impartiality and Objectivity in news and current affairs (as is the case in many other countries) - To consider developing guidance where relevant, and/or link to relevant Guidance documents of other organisations
<p><i>Principles 1 and 2 regarding Community Standards, and the Importance of Context</i></p> <ul style="list-style-type: none"> - These are comprehensive provide and a very useful introduction to the main themes of the code. They could be considered as interpretative principles and some of the detail on achieving the goals outlined could be better elaborated specifically where they are needed, for example under protection of minors.
<p><i>Principle 3 – the Protection from harm</i></p> <ul style="list-style-type: none"> - The concept outlined here focuses on the protection of viewers from harmful content. As outlined in the analysis above, it is suggested that this concept of harm could be expanded to include protecting participants in programmes from harm. (See the detailed discussion under section 3.2) - In particular, key examples from other countries such as the UK and France could be examined in order to ensure participants are protected in relation to informed consent and duty of care. - A key concern is the protection from harm of participants in reality television shows.

- A Principle of fairness could be added to the code, or alternatively combined with the respect for privacy (see below)

- Develop guidance where relevant, and/or link to relevant Guidance documents of other organisations regarding potentially harmful content

Principle 4 – the Protection of Children

Overview

- Overall, the rules outlined under Principle 4 lack detail (some of which is referred to under Principle 2 but could be further elaborated here) and do not fully align with the revised Directive, and in some instances they are not in line with practices in other countries. Part of the elaboration can be found under Principle 2 with regard to context, but it could be argued that this does not make the code easily accessible and understandable for the lay-person.

- The scope of the code should be expanded to include audiovisual media services on-demand, or alternatively a specific section should be added that addresses on-demand audiovisual media services (see more below).

Audience thresholds and watersheds

- It is worth considering whether the audience thresholds be reduced, or a secondary audience threshold be included with regard to programming likely to be seen by children (for example – where 25% of the audience are people under 18 – this is the threshold used in the UK BCAP regarding advertising for alcohol, and rules regarding gambling in the Netherlands and New Zealand).

- Mention is made of the watershed but this could be explicitly defined as 9pm, and with an end time.

Protection from harmful content

- As in many other countries (including the UK), pornography is prohibited in broadcasting, according to the relevant Irish Statutory law and this should be reflected in the Code.

- The AVMS Directive requires that viewers should have sufficient information regarding the types of content which may be harmful to minors or children. Although this is referred to in the principle addressing context, it would be important to reiterate this under principle 4 in the context of parental empowerment to protect children.

- Linked to this, it is important to include the various measures that should be used to protect children aside from scheduling and information for viewers. The measure of technical protection is required by the Directive with regard to the most harmful content such as pornography or gratuitous violence, which should be subject to the strictest measures.

In the other jurisdictions examined here, over 18 content considered harmful to children is blocked via technical means, parental control and the provision of PIN numbers to restrict access.

Other issues

- Principle 4 could make reference to the rules on harmful content covered under Principle 3.
- Additional rules could be added in relation to: the participation of minors in programmes.
- Additional rules regarding the reporting of minors involved in crimes whether victims or perpetrators could be added here or under the Code of Fairness, Objectivity and Impartiality in News and Current affairs.

Principle 5 Respect for Persons and Groups in Society

Hate speech, discrimination and denigration

- This section needs to be expanded and it is highly recommended that the BAI develop rules and guidance regarding hate speech, discrimination and denigration, which can be referenced in relation to different kinds of programming. A range of examples have been provided regarding approaches in other countries. (See the detailed discussion under section 3.2, which looks at Council of Europe recommendations in the field, and the work of the regulators in the UK and New Zealand).

Other elements of respect

- Respect for the different groups in society also implies more engagement with groups regarding understanding of terminology, regarding consultation in the development of programming, and in the communication with representative groups when seeking input or opinions or contributions to programmes. For any participants in programmes the principles of fairness and duty of care already discussed above could apply.
- Addressing these issues is also in line with the BAI goal of ensuring the principles of Equality, Diversity and Inclusion are reflected in the policies and strategies of the organisation.

Principle 6 Protection of the public interest.

- The section on protection of the Public Interest is very well elaborated. The promotion of public interest content could be expanded to include programmes that inform public debate relating to climate change and environmental sustainability.

- As this principle addresses the prohibition of content that incites crime, it should incorporate these references from the AVMS Directive (including regarding hate speech, racism etc.)

Principle 7 Protection of privacy

- This principle regarding fairness is well articulated. It could be integrated with issues concerning fairness and duty of care – in particular as fairness of treatment in programming could include a range of rules in relation to informed content. Hence, it is recommended to rename this section

“Respect for privacy, and fairness in the treatment of participants in programming”, and include the recommended sections discussed under section 3.1 (above).

Introducing a section on on-demand audiovisual media services

- Regarding on-demand audiovisual media services, these can be referred to under each section of the code, or alternatively a specific section could be added to the code.

- The Online Safety and Media Regulation Bill 2022 widens the scope of obligations regarding content (including harmful and illegal content, and also in relation to the protection of minors). A review of the Code of Programme Standards will need an adaptation of the terminology in the document in order to include on-demand services alongside broadcasters.

- As on-demand services have the same obligations regarding content, any rules or guidance documents on harmful content, on protection from harm, on issues of fairness and duty of care, and on hate speech, discrimination and denigration should also be addressed to on-demand audiovisual media services.

5 Code of Fairness, Objectivity and Impartiality in News and Current Affairs

The BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs, last updated in 2013, has a range of objectives that include establishing minimum standards and practices for broadcasters in their treatment and broadcast of news and current affairs content and promoting independent and impartial journalism in the provision of news and current affairs content. The code also aims to provide guidance to broadcasters in this area and to promote and protect the rights of citizens to access fair, objective and impartial, news and current affairs.

As with the other two codes, this code is based on a range of principles: that news should be fair, objective and impartial; that broadcasters should ensure accuracy and be responsive in dealing with inaccurate information; and that broadcasters and newsrooms should ensure transparency and accountability regarding their work.

The Online Safety and Media Regulation Bill 2022 has broadened the scope of the requirements on impartiality and objectivity of news to include on-demand audiovisual media services under 46L1.⁷⁴ Given this clear expansion in scope, the terminology in the document will need to be adapted to include on-demand services alongside broadcasters.

Under the Powers and Functions of Coimisiún na Meán, an Coimisiún, (Article 3 (3d), shall (d) provide a regulatory environment that will sustain independent and impartial journalism. In addition, an Coimisiún will potentially have a broader role to stimulate the provision of high quality, diverse and innovative news and comment on current affairs across all media (press and periodicals, broadcasters, and online services consisting substantially of news and comment on current affairs, that is under the provider's editorial control) (Article 3 (5b). Any action in this regard would be determined by arrangement with the Ministry.

5.1 Relevant recent developments at the European level

News and current affairs are not an area covered specifically by European Union laws and regulations, although this will change somewhat with the European Media Freedom Act (see further below). A key focus of the EU in the area of news concerns the fight against disinformation and misinformation, and the protection of the integrity of elections. Also referenced below with regard to elections is the EU proposal for a regulation on transparency of political advertising.

To this end, the EU has developed the Code on Disinformation targeting online platforms. In addition, the European Digital Media Observatory (EDMO) was established in June 2020, which facilitates knowledge exchanges and collaborative processes among fact-checkers and academic researchers. There are three national hubs based in Ireland, France, Italy and five multinational hubs. The EDMO Ireland Hub is coordinated by Dublin City University and is engaged in national and EU collaborations

⁷⁴ Although these issues are briefly addressed in the voluntary ODAS code

on disinformation and media.⁷⁵ The EDMO Ireland Hub is one of eight hubs chosen by the European Commission to help implement and expand the work of the European Digital Media Observatory. This review does not address in detail the issue of disinformation, as the relevant key principle in this regard – the principle of accuracy – will be discussed below.

The main source of standards in this area of news and current affairs is the Council of Europe,⁷⁶ and the case-law of the European Court of Human Rights (ECHR).

The Council of Europe has recognised and emphasised the important role of quality journalism in countering disinformation and resolved to encourage a media and information literate public that is empowered to make informed and autonomous decisions about its media use, that is able and willing to critically engage with the media, that appreciates quality journalism and that trusts credible news sources.

In the EU Proposal for a European Media Freedom Act, the main focus on journalism is the protection of media freedom and pluralism. The recital (par 11) emphasises: *“the right of citizen access to quality media services, which have been produced by journalists and editors in an independent manner and in line with journalistic standards and hence provide trustworthy information, including news and current affairs content, and stresses that such quality media services are also an antidote against disinformation, including foreign information manipulation and interference.”*

The links between the core principles applied in the production of news and the overall “trust” in the media is therefore vital. According to research into issues of trust in the media, Ireland scores highest internationally on the level to which people “trust most of the news most of the time” (at 52%). This implies that Irish journalism and the news production of Irish media outlets already has a relatively high level of credibility among the public.

5.2 The objectives and principles and comparison with other jurisdictions

The principles underlying the BAI code such as fairness, objectivity and impartiality, accuracy and responsiveness, reflect those promoted by the majority of international media associations such as the International Federation of Journalists, the European Broadcasting Union, and several major important media groups.⁷⁷ These key principles are therefore enshrined in self-regulatory regimes and the internal codes of broadcasters. The additional principle of transparency and accountability is not so explicitly common although it has a direct connection with responsiveness in terms of correction of information. However, it is also worth noting that the Ethical Journalism Network

⁷⁵ Supported also by the BAI in terms of funding certain research.

⁷⁶ For example, the 2015 Parliamentary Assembly Resolution and Recommendation on media responsibility and ethics in a changing media environment. <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=21960&lang=EN>

⁷⁷ See: Cappello M. (ed.), Media reporting: facts, nothing but facts?, IRIS Special, European Audiovisual Observatory, Strasbourg, 2018 - an overview of how the principles of accuracy, objectivity and fairness in news and current affairs reporting are regulated at European and national level <https://rm.coe.int/media-reporting-facts-nothing-but-facts/16808e3cda>

includes as its core principles of ethical journalism: truth and accuracy, independence, fairness and impartiality, humanity, and accountability. The Journalism Guidelines of RTÉ (updated in 2020) are based on the principles of trust, accuracy, impartiality and fairness.

A recent EPRA analysis on this issue revealed that almost all respondents to their questionnaire reported the existence of rules pertaining to accuracy, objectivity and/or impartiality to some extent (based on feedback from 27 countries).⁷⁸

It may be useful to consider incorporating additional aims from the Media Plurality Policy (2019) of the BAI.⁷⁹ The policy, relation to the Code of Fairness, Objectivity and Impartiality in News & Current Affairs, emphasised that: *the extent to which diverse views on news and current affairs are available is a key factor enabling a media environment that is pluralistic.* The Policy also stressed that the Code would:

“continue to play an important role in facilitating a mix of trusted and credible voices, opinions and sources of news and current affairs which enhance active citizenship and democratic debate and promote the fair and diverse representation of, and expression by, various political, religious and ideological groups, including minority viewpoints.”

5.2.1 The Principle of fairness

The principle of fairness aims to ensure that individuals and organisations that are the subject of news and current affairs content, or persons who contribute to news and current affairs programmes or items, are treated fairly and honestly.

The Code provides significant detail on the principle of fairness should be applied in relation contributors to current affairs content or with persons or organisations referred to in that content. As noted in the previous chapter with regard to the programme content standards, the (UK) Ofcom rules deal with “fairness” and covers the principle of ensuring that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes. Although developed in relation to reality TV shows they apply equally to participants in all types of programming, including news or current affairs programming.

7.15: Broadcasters should take due care over the welfare of a contributor who might be at risk of significant harm as a result of taking part in a programme, except where the subject matter is trivial or their participation minor.

⁷⁸ EPRA (2017): News in the Digital Age. Session focus: the Role of Regulators Implementing Accuracy, Objectivity and Impartiality in practice. 6th EPRA Meeting Vienna:12-13 October 2017.
https://cdn.epra.org/attachments/files/3161/original/PS1_News_in_Digital_Age_final_postmeeting_version.pdf?1513763879

⁷⁹ BAI Media Plurality Policy: <http://www.bai.ie/en/download/134016/>

A contributor might be regarded as being at risk of significant harm as a result of taking part in a programme for reasons including (but not limited to) the following:

they are considered a vulnerable person; they are not used to being in the public eye; the programme involves being filmed in an artificial or constructed environment; the programme is likely to attract a high level of press, media and social media interest; key editorial elements of the programme include potential confrontation, conflict, emotionally challenging situations; or the programme requires them to discuss, reveal, or engage with sensitive, life changing or private aspects of their lives.⁸⁰

Also discussed in the previous chapter (regarding respect for different groups in society) were several conclusions from stakeholder feedback related to the BAI Gender Action Plan. These related to concern regarding the approach in some programming, talk shows and news reporting with and the treatment of specific groups in Irish society. Problematic themes included discussions on the issue of violence against women and “victim blaming”, challenges regarding representation of transgender people, and a tendency in some media towards provocation, leading to polarised and confrontational debates regarding the Irish Traveller Community. In addition, several representative organisations cited examples of people (particularly women) from various groups who claimed to have very difficult experiences of dealing with the media.

Hence, it would be useful to consider the Ofcom approach in this regard and consider a broader group of people that “*might be regarded as being at risk of significant harm as a result of taking part in a programme*” than just children. Representative organisations frequently emphasise that it is important that news media organisations or other current affairs or talk shows should approach their organisations for discussions on issues relevant to those groups. Members of the public who belong to these groups may be in a vulnerable position as they “*are not used to being in the public eye*”, or in comparison to other contributors, they are not media savvy.

The NUJ has developed guidelines in relation to reporting on various issues which could usefully inform other media actors who address current affairs in their programming. Among others, the NUJ guidelines on reporting on Gypsies and Travellers include the following: *Do not sensationalise stories involving Gypsies and Travellers, particularly around their relations with settled communities and over issues concerning housing and education; Only use the words Gypsy or Traveller if relevant to a story and accurate.*⁸¹

In addition, the NUJ also have Guidelines on LGBT reporting.⁸² The Discussion under Section 3.2 above in relation to hate speech, discrimination and denigration is relevant also to news coverage, current affairs. The recommendation that the BAI develop specific guidance on hate speech,

⁸⁰ Ofcom Rules under Section 7: Fairness <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/section-seven-fairness>

⁸¹ NUJ: Race Reporting Guidelines: <https://www.nuj.org.uk/resource/race-reporting-guide.html>

⁸² <https://www.nuj.org.uk/resource/nuj-guidelines-on-lgbt-reporting.html>

discrimination and denigration, which can be referenced in relation to different kinds of programming is reiterated here.

5.2.2 The Principle of accuracy and responsiveness

As noted above, there are relatively high levels of trust in the Irish media with regard to the accuracy and objectivity of news. The principle of accuracy should perhaps be more prominent. The equivalent code elaborated by the Ofcom is found under section five of the Ofcom Broadcasting Code entitled “Due impartiality and due accuracy.” The New Zealand, the Free-to-air TV Code focuses on balance and accuracy with regard to provision of information. It may be worth considering to name the code: Code of Fairness, Objectivity, Accuracy and Impartiality in News and Current Affairs.

5.2.3 Approaches to science-based factual reporting

Science-based factual reporting is an issue strongly related to challenges regarding ethical practices, and policies related to information and editorial integrity. Concerns have been raised regarding reporting on scientific issues that relate both to environmental news and also to health information (in particular following the Covid 19 pandemic).

Criticism of Irish media coverage was included a recent commentary⁸³ on an article in the Irish Times that opened with *“We might all agree that climate change is bad, but think for a moment about the winners from a heating planet. In the short to medium term, Ireland may gain from inbound tourism as the Mediterranean becomes uncomfortably hot”*.

The commentary concluded that the Irish media is drastically failing to understand and report on the true severity of the Climate Crisis, and in doing so is failing the people of Ireland on a daily basis. As far back as 2001, the Social Issues Research Centre in the UK published guidelines for the media on science and health communication covering the following issues: Credibility of sources; Procedures and methods; Findings and conclusions; The significance of the findings; Communicating risk; Anticipating the impact; The role of specialist correspondents and editors; The role of sub-editors; Expert contacts.⁸⁴

In several countries (UK, Germany and Australia), Science Media Centres have been established to support reporting of scientific issues. These organisations provide media briefings on science news. The Australian science media centre provides a range of tips on reporting Scientific issues. Regarding the question of balance they note that:

“Giving both sides their due is a basic principle of news-gathering, particularly when covering political and social debates. But good reporting on science issues requires more than a simple “he said/she said” approach to balance. In science, claims must be backed up by evidence. Understanding the context for a

⁸³ <https://www.irishevs.com/irish-times-climate-denial>

⁸⁴ http://www.sirc.org/publik/revised_guidelines.shtml

scientific assertion or research study is crucial to giving your audience a balanced view, and allowing them to assess the truth of competing claims.

The issue of balance is a key question in relation to reporting on scientific issues. The media has to navigate the requirements of truth and accuracy in reporting while also respecting the principle of balance. There are many arguments as to why absolute balance of opinions on an issue based on scientific data is not entirely appropriate as more weight should be placed on the credibility of the evidence that back the claims.

Ofcom covers the need for special impartiality regarding Matters of political or industrial controversy and matters relating to current public policy. In its guidance Ofcom outlines that:

“It will not always be necessary to present an opposing view which is at odds with the established view of the majority or inconsistent with established fact in order to preserve due impartiality. Further, whether or not due impartiality has been preserved will also be dependent on a range of other factors such as: the nature of the programme; the programme’s presentation of its argument; the transparency of its agenda; the audience it is aimed at, and what the audience’s expectations are.

Furthermore, the Guidance notes that in considering whether an issue is one of “political or industrial controversy” or has been broadly settled, broadcasters should consider relevant factors. These may include, as appropriate, independent reports commissioned by, for example, the UK Parliament and whether the issue has already been scientifically established and does not appear to be challenged by, for example, established political parties or other significant domestic or international scientific institutions. An example of an issue which Ofcom considered to be broadly settled is the scientific principles behind the theory of Anthropogenic Global Warming

This approach aligns with recommendations of researchers in a recent article from a US journalist resource organisation, that explains how journalists can use scientific consensus to bolster their coverage and battle misinformation about public policy topics. The article defines scientific consensus as “*the collective position scientists in a given field have taken, based on their interpretation of the available evidence.*”. The article also recommends taking a **“weight-of-evidence” or “weight-of-experts” approach to covering science.**⁸⁵

Reporting on environmental issues is included as part of the Protection of Public Interest in the Code of Programme Standards, which encourages broadcasters to “*to inform audiences of current developments in respect of environmental matters in a manner that gives due weight to the balance of contemporary scientific knowledge*”. Hence this issue is addressed in a different code. It would be recommended to repeat this in the Code of Fairness, Objectivity and Impartiality in News and Current Affairs, with further guidance regarding “*due weight to the balance of contemporary scientific*

⁸⁵ From the website of Journalist’s Resource: <https://journalistsresource.org/media/scientific-consensus-news-tips/>

knowledge.” It would also be necessary to expand the notion to all types of science reporting and not just confined to environmental issues – hence also incorporating news on health etc.

5.3 Guidance on elections and referenda

A recent report by the European Audiovisual Observatory focused on media coverage of elections, and provides a useful overview of regulatory practice in this area.⁸⁶ In a review of rules in France, Italy, Ireland, the UK, Poland and the Netherlands, the research found that in all cases broadcasters are required to cover election and referenda campaigns in a fair, balanced and impartial manner. The report also highlighted that some countries impose further obligations relating to pluralism and equality during election periods (Spain, Netherlands).

While most of the regulators issue new guidance for each election or referendum campaign the strength of regulation varies between countries. Some issue specific guidelines and recommendations for each election and referendum in respect of how broadcasters should cover candidates, political parties, political organisations, campaign organisations, and electoral or referendum issues. They may be more prescriptive, as for example, in the Netherlands, the media regulator (Commissariaat voor de Media) determines the allocation of airtime for political parties. France, recently introduced more discretion for broadcasters in 2016 replacing the principle of equal speaking time for candidates during election campaigns to allocation of time according to their level of representation in the French parliament and their actual involvement in the campaign.

Regarding party political broadcasts, the Polish regulator requires broadcasters to broadcast these (unlike in Ireland where this is not mandatory but allowed as long as a fair allocation of time is provided). In the UK the Ofcom rules on Party Political Broadcasts are also more prescriptive,⁸⁷ as Ofcom is required (under the Communications Act 2003) to ensure that Party Political Broadcasts (“PPBs”) (including Party Election Broadcasts (“PEBs”)) and Referendum Campaign Broadcasts (“RCBs”) are included in every licensed public service television channel, every local digital television programme service, and every national commercial radio service etc. The Ofcom establish an Election Committee to deal with disputes between broadcasters and political parties regarding these issues.

Ireland, similar to the UK and the Netherlands has no specific rules on elections debates. While there has been some controversy around these issues in Ireland and the UK (settled via court cases), there are few examples of regulators providing rules regarding debates or leadership debates. In the countries covered in the study, just the Polish regulator issues detailed regulations on the organisation of debates. All of the countries reviewed include a period of silence and rules on publishing opinion polls and exit polls during this period. A conclusion to be reached with regard

⁸⁶ Cappello M. (ed.), Media coverage of elections: the legal framework in Europe, IRIS Special, European Audiovisual Observatory, Strasbourg, 2017. <https://rm.coe.int/16807834b2>

⁸⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0035/99188/pprb-rules-december-2020.pdf

to the findings of the Observatory report is that the same principles are addressed but the approaches are quite varied and in some countries the regulator provides more detailed rules than in others.

The only aspect worth considering is the addition of an aim to ensure pluralism and diversity of voices (in some Member States), as stated in the BAI Media Plurality Policy. This may have more significance in terms of referenda. For example, a further comment in the stakeholder review of the BAI Gender Action Plan was that balance (where required) was not just limited to gender balance on a debate or discussion around referendum issues.⁸⁸ For example, in the context of debates surrounding the referendum on marriage equality, the LGBTI representative stated that a 50% representation of women on panels does not always guarantee a fair debate on certain issues. It was suggested that the media should consider how to ensure that where a 50/50 approach is required to achieve balance, that it is inclusive. The Online Safety and Media Regulation Bill 2022 includes under 46N the provision that Coimisiún may develop codes to promote balanced gender representation of participants in news and current affairs programmes broadcast by broadcasters or made available by providers of audiovisual on-demand media services (46N 4(a).

5.3.1 Election coverage online and political advertising

In November 2021, the European Commission published its Proposal for a Regulation on the transparency of political advertising.⁸⁹ The proposed regulation introduces:

- (a) *harmonised transparency obligations for providers of political advertising and related services to retain, disclose and publish information connected to the provision of such services;*
- (b) *harmonised rules on the use of targeting and amplification techniques in the context of the publication, dissemination or promotion of political advertising that involve the use of personal data.*

The proposal does not cover other aspects regulated at national level like the legality of the content of political advertisement and the periods during which advertisements are permitted, or the nature of participants in the democratic process. The scope of the regulation covers political advertising in all media (not just online). It is intended to complement the Digital Services Act, which already requires transparency of advertising.

While the DSA imposes transparency requirements on online platforms, this initiative covers the entire spectrum of political advertising publishers, as well as other relevant service providers involved in the preparation, placement, promotion, publication and dissemination of political advertising.

⁸⁸ There is no automatic requirement for balance in news and current affairs, including during elections and referenda although it may be required depending on the context of the programme or national debate on a referendum.

⁸⁹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transparency and targeting of political advertising. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0731&from=EN>

The proposal provides a definition of “political advertising”:

‘political advertising’ means the preparation, placement, promotion, publication or dissemination, by any means, of a message: (a) by, for or on behalf of a political actor, unless it is of a purely private or a purely commercial nature; or (b) which is liable to influence the outcome of an election or referendum, a legislative or regulatory process or voting behaviour.

There are strong requirements for transparency of political advertising. It requires (among others) that providers of advertising services shall request sponsors and providers of advertising services acting on behalf of sponsors to declare whether the advertising service they request the service provider to perform constitutes a political advertising service (Article 5).

Providers of political advertising services shall retain information they collect in the provision of their services, on the following: (a) the political advertisement or political advertising campaign to which the service or services are connected; (b) the specific service or services provided in connection to the political advertising; (c) the amounts they invoiced for the service or services provided, and the value of other benefits received in part or full exchange for the service or services provided; and (d) where applicable, the identity of the sponsor and its contact details (Article 6).

In Ireland an Electoral Reform Bill was passed in the national parliament in July 2022. This introduced (for the first time) the establishment of the Electoral Commission.⁹⁰

The key elements of the Bill included (among others): establishment of the Electoral Commission; modernisation of the election registration process; the regulation of online political advertising to provide for transparency during electoral campaigns and ensure that elections remain free from hidden influences on how people vote; provisions to protect the integrity of the electoral processes which will see the regulation of electoral process information and online electoral information in order to guard against manipulative or inauthentic behaviour during electoral campaigns.

The Irish Electoral Reform Law grants the new Electoral Commission strong investigative powers in relation to deal with disinformation, misinformation, or content that involves manipulative or inauthentic behaviour, including the use of undisclosed bots, The Law also requires that the Electoral Commission establish a stakeholder council to provide advice and opinions to the Commission generally and in relation to the preparation and use of codes of conduct.

The Electoral Reform Act establishes completely separate set of rules for online paid political advertising, which is allowed and now regulated. At the same time paid political advertising is prohibited in broadcasting. The legislative Act no doubt is the response to the reality that such advertising already exists online. The main aim is to provide transparency.

⁹⁰ CHAPTER 3- Powers of Commission - Monitoring, and investigation, of online electoral information: <https://data.oireachtas.ie/ie/oireachtas/act/2022/30/eng/enacted/a3022.pdf>

There are no provisions confining online political advertising to the campaign period, although the definition in the Act provides that it is “advertising during a campaign period”. No moratorium prohibiting political advertising or publishing of opinion polls online by the platforms on the day of voting were noted in the Act.

The study (referenced above) noted that there is a considerable amount of regulation applicable to online media. Often these emanate from election and referendum legislation, but also from data protection legislation and electronic communications legislation. In some Member States, silence periods have been extended to online media (Spain and France). The prohibition of publication of opinion polls and exit polls online during silence periods are addressed in the rules in Italy and in the UK.

It would be useful to ensure that BAI rules on election and referenda coverage apply to on-demand audiovisual media services. With regard to other online media, it will be important that the new Electoral Commission recognises the importance of silence periods during the last day of election campaigns. It is possible that guidelines, rules or codes will be developed in this area.

5.4 Key findings: Code of Fairness, Objectivity and Impartiality

The table below combines all the findings regarding the Code of Fairness, Objectivity and Impartiality in News & Current Affairs.

Key findings in relation to the Code of Fairness, Objectivity and Impartiality in News & Current Affairs and Guidelines on Election and Referenda
<p><i>Overview</i></p> <p>The overall impression is that the Code is in line with European standards and approaches in other jurisdictions.</p> <p>It is recommended to include in the objectives:</p> <p><i>“to facilitate a mix of trusted and credible voices, opinions and sources of news and current affairs which enhance active citizenship and democratic debate and promote the fair and diverse representation of, and expression by, various political, religious and ideological groups, including minority viewpoints”,</i> in line with the aims of the BAI Media Plurality Policy.</p> <p>As mentioned in relation to the Code of Programme Standards (see above), given the number of overlaps in relation to protection from harm, fairness and respect for groups in society, it may be worth considering combining the Code on Programme Standards with the Code of Code of Fairness, Impartiality and Objectivity in news and current affairs (as is the case in many other countries)</p>

Principle of fairness

Several recommendations are made with regard to the principle of fairness. In particular the treatment of people contributing to news and current affairs – who may for various reasons be vulnerable or less media savvy than the usual contributors – could be developed as outlined above (considering approaches in the UK, and the various Guidance of the NUJ).

In addition, as outlined in relation to the Code of Programme Standards, it is recommended that the BAI develop rules and guidance regarding hate speech, discrimination and denigration, which can be referenced in relation to different kinds of programming (See the examples from the UK and New Zealand, and the various Guidance of the NUJ).

Principle of accuracy and responsiveness

Given the relatively high levels of trust in the Irish media (compared with other countries), the principle of accuracy could perhaps be more prominent. For example it may be worth considering to name the code: Code of Fairness, Objectivity, Accuracy and Impartiality in News and Current Affairs. This could be explained as an effort to highlight the importance placed on this principle by broadcasters.

With regard to science-based factual reporting, having examined developments in this area in a range of countries, it was concluded that the Code of Programme Standards provided some guidance in relation to programming related to the environment. Under the Principle of Public interest, broadcasters shall endeavour “*to inform audiences of current developments in respect of environmental matters in a manner that gives due weight to the balance of contemporary scientific knowledge*”.

It is recommended to repeat this in the Code of Fairness, Objectivity and Impartiality in News and Current Affairs, with further guidance regarding “due weight to the balance of contemporary scientific knowledge.” It may also be necessary to expand the notion to all types of science reporting hence also incorporating news on health etc.

Guidelines on election coverage and on coverage of referenda

Overview

A recent report reviewed the rules in France, Italy, Ireland, the UK, Poland and the Netherlands, and concluded that in all cases broadcasters are required to cover election and referenda campaigns in a fair, balanced and impartial manner.

It is common practice in European countries for the regulator to provide guidelines for election and referenda. Depending on their statutory duties, these can be more or less prescriptive, and the approaches to achieving the same aims are varied. Hence, there was no particular issue that stood out in relation to the Irish Code. As some countries also impose further obligations relating to pluralism and equality during election periods, it might be useful to consider this as a principle (as noted above with reference to the Media Plurality Policy) regarding ensuring a diversity of voices and opinion. This may have particular significance during referenda.

Election and referenda campaigns online

The Electoral Reform Act is significant in relation to the regulation (mainly concerning transparency) of online paid political advertising. This introduces a separate regime for broadcast and online media. The Act does not however appear to deal with issues such as respecting a moratorium with regard to political advertising or the publishing of opinion polls online. There is a growing tendency to extend silence periods to online media (Spain and France). The prohibition of publication of opinion polls and exit polls online during silence periods are addressed in the rules in Italy and the UK.

It would be useful to ensure that BAI rules on election and referenda coverage apply to on-demand audiovisual media services. With regard to other online media, it will be important that the new Electoral Commission recognises the importance of silence periods during the last day of election campaigns. It is possible that guidelines, rules or codes will be developed in this area.

Appendix 3

BAI General Commercial Communications Code

General

Commercial

Communications

Code



General

Commercial

Communications

Code

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1. Introduction

Legislative Basis

The Broadcasting Authority of Ireland (BAI) prepares and publishes broadcasting codes for broadcasters, as required by law. This Code gives expression to the statute, specifically to the requirements of sections 42(2) (h) and (j) of the Broadcasting Act 2009 (the Act):

42(2) Broadcasting codes shall provide:

(h) that advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, other than advertising and other activities as aforesaid falling within paragraph (g), must protect the interests of the audience,

(j) for the matters to be provided for by Chapters IIA, IV and V of the Council Directive.¹

Section 42(2) of the Act also provides for other broadcast matters in relation to programming and commercial content, which are given expression in a range of BAI Codes and Rules. The legislative provisions and the corresponding BAI Codes and Rules are set out in a table in Appendix One.

The Objectives of this Code

- To ensure that the public can be confident that commercial communications are legal, honest, truthful, decent and protect the interests of the audience.

- To ensure that commercial communications do not impinge on the editorial integrity of broadcasts.
- To provide guidance to the general public on the standards they can expect from commercial communications on broadcasting services.
- To provide clear guidance to broadcasters as to the standards to which commercial communications shall adhere.
- To provide broadcasters with a simple, flexible and comprehensive code that does not impede in an unwarranted manner their right to communicate commercial messages.

Complying with this Code

- Broadcasting services shall comply with the spirit as well as the letter of the Code.
- The principles of this Code are indivisible, that is, all commercial communications shall conform to all of the principles.
- Commercial communications shall comply with all applicable rules in this Code. Commercial communications may be required to comply with more than one rule. Broadcasters are advised to consider the totality of the Code's provisions and not to apply any single rule in a too narrow or focused way.

¹ 'Council Directive' means Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007. A simplified and codified version of these Directives was introduced in 2010: the Audiovisual Media Services Directive 2010/13/EU.

Complying with Relevant Legislation and Codes from other Authorities

- All commercial communications shall comply with applicable Irish and European legislation and have regard to international conventions. This includes, but is not restricted to, the *Broadcasting Act 2009*, *Directive 2010/13/EU (Audiovisual Media Services Directive)* and *S.I. No. 258/2010 (European Communities (Audiovisual Media Services) Regulations 2010)*. A non-exhaustive list of legislation pertaining to commercial communications is included in Appendix Four.
- The Audiovisual Media Services Directive shall apply, as appropriate, to television broadcasting services exclusively devoted to advertising and teleshopping as well as to television broadcasting services exclusively devoted to self-promotion.
- Commercial communications shall comply with all applicable binding codes issued by the relevant competent authorities, e.g. ComReg, the Health Products Regulatory Authority, the Central Bank, etc.

The Right to Complain

This Code is intended to help viewers and listeners who believe that they have a legitimate complaint about a broadcast and who wish to make a complaint. It explains how the BAI may assess a complaint. The intention is to make it as easy as possible to have your complaint considered.

How to Make a Complaint

- Viewers and listeners who believe commercial communication(s) have not complied with the provisions of this Code are entitled to make a complaint. Complaints should be made, in the first instance, to the broadcaster.
- You should identify the particular commercial communication(s) and explain what it is about the broadcast that has led you to make a complaint. It is important to set out clearly the grounds of your complaint or why you believe a commercial communication(s) does not comply with the Code and/or the legislative provisions set out above.

- Your complaint should reference at least one of the principles and/or rules.
- Each broadcaster is required to consider complaints in line with its Code of Practice for Complaints Handling and you should refer to the broadcaster's Code of Practice when making your complaint to the broadcaster. The Code of Practice should explain how a broadcaster will consider and assess your complaint.

How Complaints will be Assessed by the BAI

In circumstances where your complaint has not been responded to by the broadcaster or you are not satisfied with the response, you may refer your complaint to the BAI. Commercial communications shall be considered by the BAI in whole and in context with reference to:

- The matters identified in the complaint;
- The principles and rules in this Code;
- The provisions of the *Broadcasting Act 2009*;
- The provisions of the *Audiovisual Media Services Directive 2010/13/EU*; and
- The procedures, practices and policies of the BAI.

The BAI will not carry out a separate or independent assessment outside of the matters raised in the complaint.

Further information on the complaints process is available on www.bai.ie or by phoning (01) 6441200.

All complaints adjudicated by the BAI will be published on the BAI's website, unless it is inappropriate to do so. Where a complaint is upheld, in whole or in part, the broadcaster concerned will broadcast the BAI's decision, unless it is inappropriate to do so. The BAI's methods and approach to dealing with instances of non-compliance by broadcasters is set out in the BAI's Compliance and Enforcement Policy, which is also available on www.bai.ie.

Scope and Jurisdiction

This Code shall apply to all commercial communications carried on broadcasting services operating under contract with the BAI or established under Irish statute. It shall not apply to commercial communications carried on broadcasting services licensed in other jurisdictions or commercial communications carried on non-broadcasting services.

Guidance on the Code for Broadcasters

The BAI does not provide a copy clearance service to broadcasters, advertisers or the general public.

The BAI will provide general non-binding guidance regarding the provisions of this Code and/or in relation to commercial communications on request or as and when it is deemed necessary. The BAI reserves the right to publish and amend any such guidance from time to time as it sees fit.

Requests for such guidance must be submitted in writing or email, include the complete text and, where relevant, audio/video copy of the commercial communication in question. The submission should clearly state the section(s) of the Code, which the requestor believes are relevant, and set out the specific question about which the requestor would like a view. In certain circumstances, broadcasters may be requested to refrain from airing the communication under consideration. The BAI accepts no liability for any decision (or consequences arising) made by a broadcaster to defer the airing of a commercial communication pending receipt of guidance from the BAI. Similarly, the BAI accepts no liability for any decision (or consequences arising from) made by a broadcaster to air a commercial communication following receipt of non-binding general guidance from the BAI.

Effective Date

This Code comes into effect on 1st June 2017.



2. General Definitions and Exclusions

General Definitions

Below are the definitions that pertain to terms used throughout this Code. Definitions in relation to specific products and services are set out in Appendix Two.

Advertising

Images with or without sound and radio announcements broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.

Broadcaster

The term 'broadcaster' is understood in the context of the definition provided in the Broadcasting Act 2009, which is as follows:

A person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not).

For the purpose of this Code, a broadcaster may provide one broadcasting service or multiple broadcasting services, depending on the broadcaster's ownership of said services or the broadcaster's functions as established in statute. That is, a broadcaster is a person or legal entity owning and controlling one or more broadcasting services or an entity established by legislation to provide public service broadcasting (e.g. RTÉ).

Broadcasting Service

The term 'broadcasting service' is understood in the context of the definition provided in the Broadcasting Act 2009, which is as follows:

a service which comprises a compilation of programme material of any description and which is transmitted, relayed or distributed by means of an electronic communications network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include:

- a. a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or*
- b. other audio and audiovisual services provided by way of the Internet.*

Broadcasting services may be commonly understood as the television and radio channels that are transmitted to the audience via cable, satellite, set-top box or integrated TV, or, for radio, on a traditional radio receiver. It does not cover services provided over the internet. It does not cover on-demand audiovisual services made available in the Republic of Ireland. On-demand audiovisual services are governed by the ODAS Code of Conduct for media service providers of on-demand audiovisual media services.

Call to Purchase

A call to purchase is an instruction or direction to the audience to make a transaction in relation to a product or service, usually using an imperative verb such as buy, purchase, lease, acquire, sign up, book or other verbs which describe acquiring or purchasing goods or services.

Child/Children

For the purpose of this Code, the terms 'Child' and 'Children' refer to any person under 18 years of age.

Children’s Programmes

Children’s programmes are programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age.

Commercial Communication

Images with or without sound and radio announcements which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images and radio announcements accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of commercial communication include, among other things:

- advertising,
- sponsorship,
- teleshopping, and
- product placement.

Public service announcements and charity appeals broadcast free of charge are not commercial communications.

Comparative Commercial Communications

Commercial communications that contain explicit or implicit identification of a competitor or products or services offered by a competitor.

Cross-Promotions

These are announcements made in connection with programmes and ancillary products directly derived from these programmes, aired without payment or similar consideration on a broadcasting service other than the one airing the programmes, and where the broadcasting services in question are owned and controlled by the same broadcaster. The term ‘ancillary’ refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes and does not include commercial activities of the broadcaster unrelated to programmes or ancillary products.

Interactive advertising

An advertising technique which allows the viewer/listener to interact with the television or radio broadcast by actively choosing the advertising content to which s/he wishes to be

exposed to for as long as s/he wants. Interactive advertising allows the viewer/listener to provide information directly to the broadcaster/advertiser by means of a return path, and/or participate in an interactive environment which is separate to the broadcast content.

Misleading Commercial Communications

Commercial communications that contain any element of spoken or visual presentation which misleads or is likely to mislead, either directly or by implication, by act or omission, with regard to the merits of the product or service promoted or its suitability for the purpose recommended and which, by reason of its misleading nature, is likely to prejudice the interests of individuals or a competitor.

Product Placement

Any form of commercial communication on television consisting of the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme. The decisive criterion distinguishing product placement from sponsorship is the fact that in product placement the reference to a product or service is built into the action of a programme. In contrast, sponsor announcements or references may be shown during a programme but are not part of the plot or narrative of the programme. The display of logos or branding in programme content (and outside of sponsorship announcements or references) is considered product placement if it meets the definition of product placement.

For the purposes of this Code, there is a distinction between two types of product placement as provided for in the Audiovisual Media Services Directive, as follows:

Paid Product Placement	A third party provides products and services for inclusion within a television programme for payment or similar consideration to the broadcaster.
Prop Placement	A third party provides products and services for inclusion within a television programme free of charge and the total value of all the products and services featured in a single scheduled episode of a programme is of significant value.

Products and services featured within a television programme free of charge, and where the total value of all those products and services featured within a single scheduled episode of a programme is **not** of significant value, does not constitute product placement. However, where the featuring of such products and services is unduly prominent, is not editorially justified and/or could be construed as a commercial communication, the BAI may rely on the provisions of this Code prohibiting surreptitious commercial communications.

Significant Value	Products and services are deemed of significant value where the total value of all products and services featured in a single episode of a programme exceeds €1,000. The BAI reserves the right to amend this interpretation of significant value from time to time as it sees fit and such amendments will be published on the BAI’s website at www.bai.ie .
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Self-Promotions

These are announcements on a broadcasting service for programmes and ancillary products directly derived from these programmes, aired without payment or similar consideration on that broadcasting service. The term ‘ancillary’ refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes and does not include commercial activities of the broadcaster unrelated to programmes or ancillary products.

Split-screen Technique

A technique which allows the simultaneous presentation of editorial content and commercial information on the same screen, divided into two or more parts.

Sponsorship

Any contribution made by a public or private undertaking or natural person not engaged in providing radio or television services or in the production of sound broadcasting or audiovisual works, to the financing of television and/or radio services or programmes with a view to promoting its name, its trade mark, its image, its activities, its products or its services.

Sponsor announcements or references may be shown during a programme but shall not be part of the plot or narrative, that is, they are limited to announcements declaring the sponsorship arrangement (e.g. “sponsored by”, “brought to you by”, etc) and announcements for sponsored competitions. References to a product or service that are built into the action of a programme constitute product placement, where such references meet the definition of paid product placement or prop placement.

Subliminal Commercial Communications

Commercial communications that include any technical device, which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, members of an audience without their being aware or fully aware of what has been done.

Surreptitious Commercial Communications

Commercial communications that contain the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve as a commercial communication and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.

Teleshopping

A direct offer broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment. This includes content designed primarily to promote premium-rate telecommunication services.

Trailer

A trailer is a compilation of extracts from a forthcoming programme or programmes.

Virtual Advertising

An advertising technique which allows broadcasters to electronically insert virtual commercial messages into broadcasts by altering the broadcast signal itself, for example, by replacing existing advertising boards on a field or by superimposing new (e.g. three-dimensional) images.

Exclusions

Minutage Exclusions

The following exclusions are forms of commercial communication and shall adhere to the principles and applicable rules of this Code, but they do not count towards advertising and teleshopping minutage.

1. Self-promotions.
2. Cross-promotions.
3. Information announcements broadcast on RTÉ services for forthcoming concerts, recitals or performances, whether intended for broadcast or not, given by the National Symphony Orchestra, the RTÉ Concert Orchestra, and other RTÉ performing groups or of any other comparable groups which are employed by or under contract to RTÉ or employed by or under contract to a broadcaster and to which the public are allowed entry.
4. Sponsorship announcements and product placements.
5. Announcements of outside broadcasting events or of non-broadcast events organised in whole or in part by the broadcaster if the public are allowed entry free of charge. In the case of announcements of outside broadcasting events and announcements of non-broadcast events linked to a sponsorship arrangement, the broadcaster may credit the sponsor in accordance with the rules in relation to sponsorship in this Code.

Code Exclusions

The following exclusions are not forms of commercial communication and are not required to comply with this Code. They shall, however, comply with the BAI's Code of Programme Standards.

1. 'Trailers' are considered programmes and not commercial communications once they relate to programmes carried on the same broadcasting service. Trailers for programmes on another broadcasting service, aired without payment or similar consideration, are considered cross-promotions, when the broadcasting services are owned and controlled by the same broadcaster.
2. Public service announcements and charity appeals broadcast free of charge.

3. Principles of the Code

Principle 1 – Legal, Honest, Decent and Truthful

- Commercial communications shall be prepared with a sense of responsibility both to the individual and to society and shall be legal, honest, decent, truthful and protect the interests of the audience.
- Advertisers, sponsors and providers of placed products and services and providers of other commercial communications shall not exercise any editorial influence over the content or scheduling of programmes. Special care is required in instances where commercial communications are included in programme content. In such instances the featured products, services, facilities, trademarks or branding of the provider shall not be unduly prominent and their inclusion shall be editorially justified.
- Advertising, sponsorship, teleshopping, product placement and any other type of commercial communication must be easily understood by audiences, must not unduly distract or alarm viewers and listeners and must not mislead the public, either directly or indirectly. Claims made in commercial communications must be true and devoid of exaggeration. Broadcasters shall have mechanisms to satisfy themselves to a reasonable degree that the details, claims, etc., made in commercial communications are legal, honest, decent and truthful.

Principle 2 – Human Dignity, Offence and Harm

- Commercial communications shall not prejudice respect for human dignity, cause serious or widespread offence, cause harm or encourage harmful behaviour.
- The manner in which persons and groups in society are represented in commercial communications shall be appropriate and justifiable and shall not stigmatise, support or condone discrimination or incite hatred against persons and groups in society, based on sex, racial or ethnic origin, nationality, religion or belief, disability, age, sexual orientation or membership of the Traveller community.
- Broadcasters shall have due regard for the appropriateness and/or justification for broadcasting commercial communications that include, depictions and/or descriptions of violence, sexual conduct and coarse and/or offensive language.
- Commercial communications shall not encourage behaviour prejudicial to health or safety or grossly prejudicial to the protection of the environment.

Principle 3 – Transparency

— The principle of transparency is about ensuring that audiences are fully aware of the nature of the communications they see and/or hear. Broadcasters must ensure that the distinction between editorial content and commercial communications is clear and identifiable for audiences. Any commercial arrangement within programming shall be readily recognisable as such and the listener/viewer shall be made aware of such an arrangement.

— The closer the commercial content is to programme content, through the use of sponsorship and product placement for example, the greater the degree of transparency required.

Principle 4 – Protection of Children

— Children are viewers and listeners with particular needs and broadcasters share a responsibility with parents and guardians for what children listen to and watch. It is expected that broadcasters will protect them from material that is unsuitable or would be likely to cause physical or moral detriment. This principle recognises that children of different ages and maturity require different levels of protection and that in all actions and decisions relating to children, the child's best interests shall be a primary concern.

— Commercial communications shall not directly exhort children to buy or hire a product or a service by exploiting their inexperience or credulity; they shall not directly encourage children to persuade their parents, guardians or others to purchase the products or services being promoted; they shall not exploit the special trust children place in parents, guardians, teachers or other persons; and, they shall not unreasonably show children in dangerous situations.

— The BAI has a separate Children's Commercial Communications Code that deals specifically with commercial communications promoting products, services or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programming. This is available to download from www.bai.ie.

4. Prohibited Commercial Communications

- 4.1 Surreptitious, subliminal and misleading commercial communications are prohibited.
- 4.2 All forms of commercial communications for cigarettes and other tobacco products are prohibited. This includes indirect forms of commercial communication which, whilst not directly mentioning the tobacco product, seek to circumvent the ban on commercial communications for cigarettes and other tobacco products by using brand names, symbols or other distinctive features of tobacco products or of undertakings whose known or main activities include the production or sale of such products.
- 4.3 Commercial communications for controlled drugs under section 2 of the Misuse of Drugs Act 1977, for psychoactive substances under the Criminal Justice (Psychoactive Substances) Act 2010 and for medicinal products and medical treatments available only on prescription in Ireland are prohibited.
- 4.4 Commercial communications with the aim or direct or indirect effect of promoting electronic cigarettes and refill containers are prohibited. This does not apply to electronic cigarettes and refill containers that are considered medicinal products or medical devices, that is, they are subject to (1) an authorisation requirement relating to medicinal products for human use (under Directive 2001/83/EC) or (2) the requirements concerning medical devices (under Directive 93/42/EEC).
- 4.5 Commercial communications for infant formula for use by infants during the first 6 months of life are prohibited.
- 4.6 Commercial communications that are directed towards a political end or that have any relation to an industrial dispute are prohibited. This rule does not prohibit the broadcasting of a party political broadcast provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party. This rule does not apply to commercial communications broadcast at the request of the Referendum Commission in relation to a matter referred to in section 3 of the Referendum Act 1998 concerning a referendum.
- 4.7 Commercial communications that address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation are prohibited.

Broadcasters should be aware that other classes of commercial communication are prohibited, limited or otherwise restricted by legislative or regulatory provisions. A guide to these provisions is contained in the Appendix Four and this guide should not be deemed exhaustive.

5. Rules for all Commercial Communications

- 5.1 All pertinent details of an offer contained in a commercial communication shall be stated in a clear and understandable manner and shall not be contained solely in footnoted text on TV or taglines at the end of a commercial communication on radio.
- 5.2 Commercial communications shall comply with the following:
- Disclaimers and asterisked or footnoted information included/required in commercial communications shall not contradict more prominent aspects of the message and shall be located and presented in such a manner as to be clearly visible and/or audible;
 - Where practicable, broadcasters shall use plain language which is easily understood by listeners and viewers;
 - Where information is spoken, it must be at an appropriate speed so that the content of any additional information provided can be clearly understood;
 - When using on-screen messages, broadcasters shall be mindful of the varying abilities of the public in terms of their physical and educational ability to read on-screen text; and,
 - Broadcasters shall also take into consideration the time required to read the specific text and matters of readability, including the contrast between the text and the background picture onto which it is placed.
- 5.3 Presenters and other on-air personnel shall not advertise or endorse products or services during editorial content. This does not limit legitimate editorial comment where products or services may be reviewed and about which opinions may be given, for example, in consumer programmes or reviews of cultural matters.
- 5.4 Comparative commercial communications containing direct or implied comparisons with other products or services are permissible provided they objectively compare products or services meeting the same needs or intended for the same purpose. Points of comparison or top seller claims (e.g. claims a brand or product is number one) shall be based on facts that can be substantiated. The subject matter of a comparison shall not be chosen in such a way as to confer an artificial or unfair advantage to a promoter of a product or service.
- 5.5 Broadcasters shall be mindful of the potential for sound effects in commercial communications to distract and/or alarm viewers and listeners. Particular care shall be taken when including sound effects such as sirens, horns, ringing phones and screeching tyres. They shall not be included at the beginning of a commercial communication. This rule applies regardless of the placement of the commercial communication in an advertising break i.e. whether at the beginning, middle or end of an advertising break.
- 5.6 Commercial communications shall be appropriately scheduled with regard to the time of broadcast; the type of programme; the type of broadcasting service; the likely expectations of the audience of a programme or broadcasting service; the nature of the product or service being promoted; and, the likely size and composition of the audience.
- 5.7 Individual living persons shall not normally be portrayed or referred to in commercial communications without their permission. In general, any reference to such an individual, taking the form of a caricature or an impersonation which has not been approved by the person in question, is not permitted. However, references to living persons may normally be made in

COMMERCIAL COMMUNICATION
SPONSORSHIP
PRODUCT PLACEMENT
COMMERCIAL MESSAGES
PROTECTION OF CHILDREN
HONEST
COMPREHENSIVE FLEXIBLE
STANDARDS
TRANSPARENCY DECENT
PROTECT
TRUTHFUL
LEGAL
HUMAN DIGNITY
AUDIENCE GUIDANCE
SIMPLE

commercial communications for books, films, radio or television programmes, newspapers, magazines etc., which feature the persons referred to in the communication, provided they are not offensive or inaccurate.

- 5.8 Commercial communications shall not be calculated to induce unwarranted fear on the part of the viewer or listener. Any appeal to fear in a commercial communication must be justified in the context of the product, service or activity promoted in the communication. Broadcasters shall give special consideration to the appropriateness and scheduling of such communications.
- 5.9 Commercial communications shall not feature persons regularly presenting news programmes (e.g. top-of-the-hour news bulletins and extended news bulletins). Commercial communications promoting appeals by registered charities or public service campaigns for safety, health, education, etc., do not fall within this category.

- 5.10 Commercial communications may make use of testimonials, that is, statements given by individuals reflecting their genuine views about a product or service. Such testimonials shall be genuine, relevant and contemporary and shall relate to the person giving the testimonial. Commercial communications that give the impression of a testimonial but where the testimonial is not genuine are prohibited. It must be made clear to audiences when a genuine testimonial is presented by an actor. The broadcaster shall retain documentary evidence of testimonials.
- 5.11 The language used in relation to guarantees, warranties and free goods and services shall be clear and unambiguous and shall not prejudice legal rights of consumers. No commercial communication shall contain a direct or implied reference which purports to take away or diminish the legal rights of a purchaser.
- 5.12 Commercial communications shall not describe products or services as 'free' unless the products or services are supplied at no cost or at no extra cost (other than actual postage or carriage) to the recipient. A trial may be described as 'free' even if the customer has to pay for the costs of returning the goods, provided this is made clear in the communication.

6. Advertising and Teleshopping

Rules applying to radio only

- 6.1 Advertising shall be readily recognisable and distinguishable from editorial content and shall be kept quite distinct from other parts of the programme by acoustic means. Such means shall not contain any commercial communications, such as a sponsorship announcement.
- 6.2 The insertion of advertising shall not affect the editorial integrity and value of programming. Advertising shall be inserted into programmes in such a way that takes into account the natural breaks in and the duration and nature of the programme concerned, and shall not prejudice the rights of the rights holders.
- 6.3 Advertising shall not be inserted in any broadcast of a religious service.
- 6.4 Broadcasters shall take all reasonable measures to ensure that advertisements do not sound louder than adjacent programming. Broadcasters shall establish clear limits on the use of compression, limiting and equalisation as these apply to advertisements, in accordance with best practice.

Rules applying to television only

- 6.5 Advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of split-screen, virtual or interactive advertising techniques, advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means. Such means shall not contain any commercial communications, such as a sponsorship announcement.
- 6.6 The insertion of advertising and teleshopping shall not affect the editorial integrity and value of programming. Advertising and teleshopping segments shall be inserted into programmes in such a way that takes into account the natural breaks in and the duration and nature of the programme concerned, and shall not prejudice the rights of the rights holders.
- 6.7 Advertising or teleshopping segments shall not be inserted in any broadcast of a religious service.
- 6.8 Broadcasters shall take all reasonable measures to ensure that advertisements do not sound louder than adjacent programming. Broadcasters shall establish clear limits on the use of compression, limiting and equalisation as these apply to advertisements, in accordance with best practice.
- 6.9 Advertising or teleshopping segments shall not be inserted:
- In any television broadcast of films made for television (excluding series, serials and documentaries), cinematographic works and news when their scheduled duration is less than 30 minutes; or,
 - More than once in each scheduled period of at least 30 minutes during the transmission of films made for television (excluding series, serial and documentaries), cinematographic works and news programmes.
- 6.10 Isolated advertising and television spots, other than in the transmission of sports, shall remain the exception. An isolated spot is generally understood as a single advertisement.
- 6.11 Teleshopping shall not exhort children to contract for the sale or rental of products and services by exploiting their inexperience or credulity. Please refer to the BAI's separate Children's Commercial Communications Code for further details.
- 6.12 Teleshopping shall not feature medicinal products (including prescription medicines), medical treatments, devices and services or cosmetic treatments and services.

7. Split-screen, Interactive and Virtual Advertising Techniques

- 7.1 Split-screen and virtual advertising will count towards advertising minutage in the same way as a traditional advertisement.
- 7.2 Split-screen advertising is permitted during natural breaks and during end credits. Split-screen advertising may also be inserted during long-form sports programmes which do not have a natural break e.g. Formula 1 Racing.
- 7.3 Split-screen advertising shall not exceed 50% of screen space and only one split-screen advertisement shall appear at any given time.
- 7.4 Split-screen and virtual advertising are not permitted in news or current affairs programmes, cinematographic works, television films, or broadcasts of religious services.
- 7.5 Interactive advertising shall not bring the audience immediately/directly to products or services that are advertised. Audiences shall be warned by appropriate means that they are about to enter a commercial interactive environment not governed by this Code. This shall be done via a two-step process whereby the viewer/listener shall be able to access the interactive content only after the second step.



8. Sponsorship on Television, including competitions

- 8.1 Sponsorship shall not influence the content and scheduling of programmes in such a way as to affect the responsibility and editorial independence of the broadcaster.
- 8.2 There shall be a clear separation between sponsorship and advertising for the audience. There is no prohibition on the inclusion of advertisements for a programme sponsor during advertisement breaks. Broadcasters shall take care to ensure sufficient separation between formal programme sponsorship announcements scheduled before or at the end of advertisement breaks and advertising for the products or services of the sponsor carried in a separate advertisement break.
- 8.3 There shall be a clear distinction between sponsorship and product placement. Sponsorship announcements and references may be shown during a programme but shall not be part of the plot or narrative, that is, they are limited to announcements declaring the sponsorship arrangement (e.g. "sponsored by", "brought to you by", etc.) and announcements for sponsored competitions. References to products or services or a trademark, including the display of logos or branding, built into the action of the programme, are considered product placement, where such references meet the definition of paid product placement or prop placement.
- 8.4 Audiences shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.
- 8.5 Sponsorship must not constitute advertising, as defined in this Code, and sponsored programmes shall not directly encourage the purchase or rental of goods or services. A sponsorship announcement or reference shall not:
- Make special promotional references to a product or service e.g., sales and discounts;
 - Include advertising copy, prices, endorsements or calls to purchase; or,
 - Afford undue prominence to a product or service of the sponsor, though reference to more than one product or service is permitted.
- 8.6 Audience competitions within programme content may be sponsored. Announcements in relation to sponsored competitions shall not constitute advertising, as defined in this Code. Competition questions, entry mechanisms and prizes shall not give undue prominence to the sponsor, in particular its facilities, products or services.

- 8.7 Participants in competitions shall have a fair chance of winning a sponsored competition and broadcasters shall make available to the audience pertinent information in relation to it, including, but not limited to:
- How to enter the competition;
 - Closing times and dates;
 - The means by which a winner is selected;
 - Key terms and conditions that would void entry or prohibit a winner from taking up the prize;
 - How to access the full set of terms and conditions in relation to the competition; and,
 - Any changes to the competition terms and conditions and/or processes and/or prize.
- 8.8 News and current affairs programmes shall not be sponsored. This rule does not prohibit the sponsorship of weather, entertainment and traffic items.

- 8.9 Sponsor logos may not be shown during the editorial segments of documentaries and religious programmes.
- 8.10 Programmes sponsored by sponsor(s) whose activities include the manufacture or sale of medicinal products or medical treatments may promote the name or the image of the sponsor, but shall not promote specific medicinal products or medical treatments available only on prescription in the State.
- 8.11 Programmes shall not be sponsored by sponsor(s):
- Whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
 - Whose products or services are not permitted to be promoted to the typical audience for that programme; or,
 - Who are involved in the manufacture, supply or provision of a product or service that is not permitted to be promoted under this Code.

9. Sponsorship on Radio, including competitions

- 9.1 Sponsorship shall not influence the content and scheduling of programmes in such a way as to affect the responsibility and editorial independence of the broadcaster.
- 9.2 There shall be a clear separation between sponsorship and advertising for the listeners. There is no prohibition on the inclusion of advertisements for a programme sponsor during advertisement breaks. Broadcasters shall take care to ensure sufficient separation between formal programme sponsorship announcements scheduled before or at the end of advertisement breaks and advertising for the products and services of the sponsor carried in a separate advertisement break.
- 9.3 Sponsorship must not constitute advertising, as defined in this Code, and sponsored programmes shall not directly encourage the purchase or rental of goods or services. A sponsorship announcement or reference shall not:
- Make special promotional references to a product or service e.g., sales and discounts;
 - Include advertising copy, prices, endorsements or calls to purchase; or,
 - Afford undue prominence to a product or service of the sponsor, though reference to more than one product or service is permitted.
- 9.4 Listeners shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, branding of the sponsor, and/or a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes e.g. by using phrases such as "sponsored by", "brought to you by", etc.
- 9.5 Listener competitions within programme content may be sponsored. Announcements in relation to sponsored competitions shall not constitute advertising, as defined in this Code. Competition questions, entry mechanisms and prizes shall not give undue prominence to the facilities, products or services of the sponsor.
- 9.6 Participants in competitions shall have a fair chance of winning a sponsored competition and broadcasters shall make available to the audience pertinent information in relation to it, including, but not limited to:
- How to enter the competition;
 - Closing times and dates;
 - The means by which a winner is selected;
 - Key terms and conditions that would void entry or prohibit a winner from taking up the prize;
 - How to access the full set of terms and conditions in relation to the competition; and
 - Any changes to the competition terms and conditions and/or processes and/or prize.

- 9.7 News programmes on radio shall not be sponsored. This rule does not prohibit the sponsorship of current affairs, weather, entertainment, traffic items or religious programmes.
- 9.8 Programmes sponsored by sponsor(s) whose activities include the manufacture or sale of medicinal products or medical treatments may promote the name or the image of the sponsor, but shall not promote specific medicinal products or medical treatments available only on prescription in the State.
- 9.9 Programmes shall not be sponsored by sponsor(s):
- a. Whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
 - b. Whose products or services are not permitted to be promoted to the typical audience for that programme; or,
 - c. Who are involved in the manufacture, supply or provision of a product or service that is not permitted to be promoted under this Code.

10. Product Placement

- 10.1 Product placement shall be prohibited save for the exceptions set out in this section.
- 10.2 Paid product placement is only permitted in cinematographic works, television films, sport, dramas, including one-off dramas, drama series and serials (excluding docu-dramas) and light entertainment programmes (excluding talk/chat shows that regularly include 20% or more of news and current affairs content).
- 10.3 Prop placement is permitted in all programmes but shall not affect the integrity of such programmes, in particular, news and current affairs programmes.
- 10.4 Prop placement in children's programmes is not permitted in the case of products/services that may not feature in children's programmes (e.g. alcohol and HFSS foods) and in the case of other relevant restrictions.
- 10.5 The content and scheduling of programmes that contain product placement shall not be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster.
- 10.6 The placement of products in programme content shall be editorially justified and shall not give undue prominence to the products or services in question. Product integration, where programme content, including storylines, is tailored around a product, service or facility provided through a product placement arrangement is not permitted. Thematic placement, where programme content, including storylines, is tailored around a specific theme, e.g. the beliefs, policies, aims and objectives of the product or service provider, is also not permitted.
- 10.7 Programmes that contain product placement shall not directly encourage the purchase or rental of products or services in particular by making special promotional references to those products or services and the placement therein must not constitute advertising as defined in this Code.
- 10.8 Audiences shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified by an announcement at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the audience. The BAI may prescribe the form of a product placement announcement from time-to-time, including its text, logo, size, colour, font type and audio message, and broadcasters shall ensure product placement announcements comply with the form and any related guidance prescribed by the BAI. This rule does not apply when broadcasting television programmes that have neither been produced nor commissioned by the broadcaster or a company affiliated to the broadcaster.

10.9 Programmes shall not contain product placement of:

- a. Tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
- b. Specific medicinal products or medical treatments available only on prescription in the State; or,
- c. A product or service that is not permitted to be promoted under this Code.

10.10 The closing credits of a programme containing product placement shall include the name of the providers and the products, services etc. provided. Broadcasters shall keep a record of the programmes in which product placement occurs, the placement in each programme, the value of each individual placement and whether it is paid product placement or prop placement. This information must be available to the BAI upon request in the context of compliance monitoring or in instances where a complaint is investigated. This information must also be available in respect of any independent programmes commissioned by the broadcaster.

Rules pertaining to specific products and services



11. Alcohol

- 11.1 Commercial communications for alcoholic beverages shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority, in particular any relevant codes of practice published or recognised by the Department of Health.
- 11.2 Commercial communications for alcoholic beverages shall be cast towards brand selling and identification and shall not:
 - a. Depict or feature children consuming these beverages or encourage children or non-drinkers to begin drinking;
 - b. Link the consumption of alcohol to enhanced physical performance or to driving;
 - c. Create the impression that the consumption of alcohol contributes toward sexual attraction and success or social success;
 - d. Claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative, tranquilizer or a means of resolving personal conflicts;
 - e. Encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
 - f. Place emphasis on high alcohol content as being a positive quality of the beverages; or,
 - g. Bear health claims or nutrition claims for beverages containing more than 1.2% AbV, other than those which refer to a reduction in the alcohol or energy content.
- 11.3 Commercial communications are not permitted for the following:
 - a. Beverages containing alcohol content of 25% AbV and above e.g. vodka, whiskey, tequila, rum, gin, brandy, etc.; or
 - b. Alco-pops, pre-mixed spirit drinks and products of a similar nature.

This rule does not prohibit commercial communications for liqueurs containing alcohol content of less than 25% AbV.
- 11.4 Commercial communications are permitted for events or activities that have alcohol sponsorship. The sponsor of the event or activity and the sponsor's product(s) may be referenced in the commercial communication but shall not be more prominent than the event or activity being promoted.
- 11.5 Alcohol sponsorship of sports programmes and sports bulletins, including competitions within sports programmes, is not permitted. Solus/whistle breaks advertising spots for alcohol brands are not permitted during sports programmes. These are understood as isolated or individual advertising spots before the normal advertising breaks at half-time or full-time in programme coverage of a sports event.

- 11.6 Commercial communications for alcoholic beverages shall comply with the following:
- a. They shall not be placed in children's programmes;
 - b. They shall not be broadcast in or around children's programmes;
 - c. They shall be broadcast only in or around programmes with an adult audience profile of 75% or greater; and
 - d. They shall not be broadcast between 6am and 10am.

11.7 Where alcohol advertising is permissible, it is limited to a maximum of 25% of sold advertising time and only one in four advertisements for alcoholic beverages is permissible across the broadcast day, excluding the period from 6am to 10am. No more than two advertisements for alcoholic beverages can appear in any one advertising break.

11.8 Each broadcaster shall identify the programmes in their schedules that do not carry commercial communications for alcoholic beverages, in particular, children's programmes, and shall publish this list on a website maintained by the broadcaster and make a copy of the list generally available.

11.9 Broadcasters shall enforce a Code of Conduct for their presenters ensuring that speech content that glamorises or encourages over-consumption or misuse of alcohol is prevented. Each broadcaster will publish this Code on a website maintained by the broadcasters and make a copy of the Code generally available.

12. Medicinal Products and Medical Devices

Relevant definitions for this section can be found in Appendix 2.

- Medicinal Product
- Medical Device
- Electronic Cigarette

12.1 Commercial communications for medicinal products and medical devices shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.

12.2 Commercial communications are not permitted for prescription-only medicinal products, controlled drugs, psychoactive substances or for medicinal products or medical devices intended to treat any serious complaint, condition, symptom or disease which should rightly receive the attention of a registered medical practitioner. This rule does not apply to commercial communications for vaccination campaigns approved by the Minister for Health. This rule does not apply to human health or disease awareness campaigns provided there is no reference, even indirect, to medicinal products.

12.3 Commercial communications for all other medicinal products are only permissible where such products are the subject of a marketing authorisation or certificate of traditional use registration or are registered/certified by a relevant competent authority. Commercial communications for electronic cigarettes and refill containers are permitted where such products are deemed medicinal products or medical devices, that is, they are subject to (1) an authorisation requirement relating to medicinal products for human use (under Directive 2001/83/EC) or (2) the requirements concerning medical devices (under Directive 93/42/EEC).

12.4 Commercial communications for medicinal products shall not be broadcast unless:

- a. All parts of such communications comply with the particulars set out in the summary of product characteristics for the product;
- b. The rational use of medicinal products is encouraged by presenting them objectively and without exaggerating their properties; and,
- c. They are not misleading.

12.5 Commercial communications for medicinal products shall be clear that the message is an advertisement and the products are clearly identified as medicinal products. Such communications shall include the following minimum information:

- a. The name of the medicinal product;
- b. If it contains only one active ingredient, the common name of the medicinal product;
- c. The information necessary for the correct use of the medicinal product;
- d. An express and legible invitation to read carefully the instructions on the leaflet contained within the package or on the label, as the case may be; and,
- e. If it is a traditional herbal medicinal product, the following words "Traditional herbal medicinal product for use in" followed by a statement of one or more therapeutic indications for the product compatible with the terms of the certificate of traditional-use registration for that product, followed by the words "exclusively based upon long-standing use".

This rule does not apply to a commercial communication for a medicinal product that is intended only as a reminder, if the commercial communication consists solely of the following: the name of the product or international non-proprietary name or trademark (or in the case of a homeopathic medicinal product that is the subject of a certificate of registration, the scientific name of the stock or stocks or its invented name); and, advice to read carefully the instructions on the leaflet contained within the package, or on the label of the medicinal product, as the case may be.

12.6 Commercial communications for medicinal products and medical devices shall not contain material which is directed exclusively or principally at children.

12.7 Commercial communications for medicinal products and medical devices shall not contain material which:

- a. Is calculated to induce fear on the part of the viewer or listener that s/he may, without treatment, suffer, or suffer more severely, from any serious complaint, condition, symptom, or disease;
- b. Uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a medicinal product or medical device on the human body or parts thereof;
- c. Refers, in improper, alarming or misleading terms, to claims of recovery;
- d. Encourages unnecessary, indiscriminate, irrational and/or excessive use of medicinal products or medical devices;
- e. Gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail (includes post, telephone, e-mail and other electronic means of communication);

f. Might, by a description or detailed representation of a case history, lead to erroneous self diagnosis;

g. Suggests that the effects of taking a medicinal product are guaranteed, are unaccompanied by adverse reactions or are better than, or equivalent to, those of another treatment or medicinal product;

h. Suggests that the health of the subject can be enhanced by taking the medicinal product or medical device;

i. Suggests that the health of the subject could be affected by not taking the medicinal product or availing of the medical device (this does not apply to commercial communications for vaccination campaigns approved by the Minister for Health);

j. Contains unwarranted and indiscriminate use of such words as "safe", "without risk", "harmless", or terms of similar meaning in connection with medicinal products or medical devices;

k. Suggests that the safety or efficacy of the medicinal product or medical device is due to the fact that it is natural;

l. Includes exaggerated claims, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of medicinal products or medical devices;

m. Refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity status, could encourage the consumption of medicinal products or use of medical devices;

n. Gives the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented, whether actually or by implication, as being qualified to give such advice or recommendation;

o. Refers to a hospital, clinic, college, institute, laboratory or other similar body unless a bona fide establishment corresponding to the description used does in fact exist;

p. Refers to doctors unless such reference can be used with propriety in the context of the commercial communication;

q. Suggests that the medicinal product is a foodstuff, cosmetic or other consumer product;

r. Refers to a prize, competition or similar scheme or offers medicinal products or medical devices as prizes in a competition; or,

s. Refers to an offer of a free sample of a medicinal product to a consumer as part of a promotion.

13. Medical Treatments and Services, including psychiatry, psychotherapy and counselling

Relevant definitions for this section can be found in Appendix 2.

— Medical Treatments and Services

- 13.1 Commercial communications for medical treatments and services intended to treat any serious complaint, condition, symptom or disease, which should rightly receive the attention of a registered medical practitioner, are not permitted. This does not prohibit commercial communications for vaccination campaigns that have been approved by the Minister for Health or disease awareness campaigns.
- 13.2 Commercial communications for medical treatments and services shall not contain material which is directed exclusively or principally at children.
- 13.3 Commercial communications for medical treatments and services shall not contain material which:
- a. Is calculated to induce fear on the part of the viewer or listener that s/he may, without treatment, suffer, or suffer more severely, from any serious complaint, condition, symptom, or disease;
 - b. Uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a medical treatment or service on the human body or parts thereof;
 - c. Refers, in improper, alarming or misleading terms, to claims of recovery;
 - d. Encourages unnecessary, indiscriminate, irrational and/or excessive use of medical treatments and services;
 - e. Gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail (includes post, telephone, e-mail and other electronic means of communication);
 - f. Might, by a description or detailed representation of a case history, lead to erroneous self diagnosis;
 - g. Suggests that the health of the subject can be enhanced by availing of a medical treatment or service;
 - h. Suggests that the health of the subject could be affected by not availing of a medical treatment or service;
 - i. Contains unwarranted and indiscriminate use of such words as "safe", "without risk", "harmless", or terms of similar meaning in connection with medical treatments and services;
 - j. Suggests that the safety or efficacy of a medical treatment or service is due to the fact that it is natural;
 - k. Includes exaggerated claims, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of medical treatments and services;

LEGAL COMMERCIAL COMMUNICATION
TRUTHFUL GUIDANCE DECENT
PRODUCT PLACEMENT
PROTECTION OF CHILDREN
COMMERCIAL MESSAGES
AUDIENCE FLEXIBLE
STANDARDS TRANSPARENCY
COMPREHENSIVE HONEST
SIMPLE SPONSORSHIP
HUMAN DIGNITY PROTECT

- i. Refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity status, could encourage the use of medical treatments and services;
- m. Gives the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented, whether actually or by implication, as being qualified to give such advice or recommendation in connection with medical treatments and services;
- n. Refers to a hospital, clinic, college, institute, laboratory or other similar body unless a bona fide establishment corresponding to the description used does in fact exist;
- o. Refers to doctors unless such reference can be used with propriety in the context of the commercial communication; or,
- p. Refers to a prize, competition or similar scheme or offers medical treatments or services as prizes in a competition.

14. Cosmetic Products, Treatments and Services

Relevant definitions for this section can be found in Appendix 2.

- Cosmetic Product
- Cosmetic Treatments and Services

- 14.1 Commercial communications for cosmetic products shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.
- 14.2 Commercial communications for cosmetic products shall not contain material such as text, names, trademarks, pictures, and figurative or other signs, to imply that these products have characteristics or functions which they do not possess.
- 14.3 Commercial communications for cosmetic treatments, products and services intended to treat any serious complaint, condition, symptom or disease, which should rightly receive the attention of a registered medical practitioner, are not permitted.
- 14.4 Commercial communications for surgical cosmetic treatments and services, may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed a direct encouragement to use the treatment or service.
- 14.5 Commercial communications for cosmetic treatments and services shall not contain material which is directed exclusively or principally at children.

14.6 Commercial communications for cosmetic treatments, products and services shall not contain material which:

- a. Is calculated to induce fear on the part of the viewer or listener that s/he may, without treatment, suffer, or suffer more severely, from any serious complaint, condition, symptom, or disease;
- b. Uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a cosmetic treatment, product or service on the human body or parts thereof;
- c. Refers, in improper, alarming or misleading terms, to claims of recovery;
- d. Encourages unnecessary, indiscriminate, irrational and/or excessive use of cosmetic treatments, products and services;
- e. Gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail (includes post, telephone, e-mail and other electronic means of communication);
- f. Might, by a description or detailed representation of a case history, lead to erroneous self diagnosis;
- g. Suggests that the health of the subject can be enhanced by using a cosmetic treatment, product or service;

- h. Suggests that the health of the subject could be affected by not using a cosmetic treatment, product or service (this does not prohibit verifiable and substantiated claims concerning the prevention of conditions using cosmetic products, e.g. tooth decay, gingivitis or skin damage caused by the sun);
 - i. Contains unwarranted and indiscriminate use of such words as "safe", "without risk", "harmless", or terms of similar meaning in connection with cosmetic treatments, products and services;
 - j. Suggests that the safety or efficacy of a cosmetic treatment or service is due to the fact that it is natural;
 - k. Includes exaggerated claims, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of cosmetic treatments and services;
 - l. Refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity status, could encourage the use of cosmetic treatments and services;
 - m. Gives the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented, whether actually or by implication, as being qualified to give such advice or recommendation in connection with cosmetic treatments and services;
 - n. Refers to a hospital, clinic, college, institute, laboratory or other similar body unless a bona fide establishment corresponding to the description used does in fact exist;
 - o. Refers to doctors unless such reference can be used with propriety in the context of the commercial communication;
 - p. Refers to a prize, competition or similar scheme or offers cosmetic treatments and services as prizes in a competition; or,
 - q. Details special offers, discounts, references to credit facilities available or any other promotional offers intended to encourage the use of surgical cosmetic treatments or services.
- 14.7 Commercial communications promoting sunbeds shall comply with any guidance, rules or regulations prescribed by the Minister for Health regarding permitted information and marketing practices for sunbeds.

15. Hypnosis, Hypnotherapy and similar services

- 15.1 Commercial communications for hypnosis, hypnotherapy and similar services may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed a direct encouragement to use the services.
- 15.2 Commercial communications for hypnosis, hypnotherapy and similar services intended to treat any serious complaint, condition, symptom or disease, which should rightly receive the attention of a registered medical practitioner, are not permitted.
- 15.3 Commercial communications for hypnosis, hypnotherapy and similar services shall not contain material which is directed exclusively or principally at children.
- 15.4 Commercial communications for hypnosis, hypnotherapy and similar services shall not contain material which:
 - a. Is calculated to induce fear on the part of the viewer or listener that s/he may, without treatment, suffer, or suffer more severely, from any serious complaint, condition, or symptom;
 - b. Uses, in improper, alarming or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of hypnosis, hypnotherapy and similar services on the human body or parts thereof;
- c. Refers, in improper, alarming or misleading terms, to claims of recovery;
- d. Encourages unnecessary, indiscriminate, irrational and/or excessive use of hypnosis, hypnotherapy and similar services;
- e. Gives the impression that a medical consultation or surgical operation is unnecessary, in particular by offering a diagnosis or by suggesting treatment by mail (includes post, telephone, e-mail and other electronic means of communication);
- f. Might, by a description or detailed representation of a case history, lead to erroneous self diagnosis;
- g. Suggests that the health of the subject could be affected by not using of hypnosis, hypnotherapy and similar services;
- h. Contains unwarranted and indiscriminate use of such words as "safe", "without risk", "harmless", or terms of similar meaning in connection with hypnosis, hypnotherapy and similar services;
- i. Includes exaggerated claims, in particular, through the selection of testimonials or other evidence unrepresentative of the effectiveness of hypnosis, hypnotherapy and similar services;

- j. Refers to a recommendation by scientists, health professionals or persons who are neither of the foregoing but who, because of their celebrity status, could encourage the use of hypnosis, hypnotherapy and similar services;
- k. Gives the impression of professional advice or recommendation made by persons who appear in the commercial communication and who are presented, whether actually or by implication, as being qualified to give such advice or recommendation in connection with hypnosis, hypnotherapy and similar services;
- l. Refers to a hospital, clinic, college, institute, laboratory or other similar body unless a bona fide establishment corresponding to the description used does in fact exist;
- m. Refers to doctors unless such reference can be used with propriety in the context of the commercial communication;
- n. Refers to a prize, competition or similar scheme or offers hypnosis, hypnotherapy and similar services as prizes in a competition; or,
- o. Details special offers, discounts or any other promotional offers intended to encourage the use of hypnosis, hypnotherapy and similar services .

16. Food, Nutrition and Health

Relevant definitions for this section can be found in Appendix 2.

- Food
- Infant Formula
- Follow-on Infant Formula
- Health Claim
- HFSS Foods
- Nutrition Claim

- 16.1 Food information in commercial communications shall be accurate, clear and easy to understand and shall not mislead as to the characteristics of the food, food effects or properties or attribute medicinal properties to foods. Food information shall not attribute to any food the property of preventing, treating or curing a human disease, nor refer to such properties, subject to derogations provided for by European law applicable to natural mineral waters and foods for particular nutritional uses. Commercial communications attributing medicinal claims to foods are permitted where such foods are legally recognised as a medicinal product and those communications shall comply with section 12 of this Code - Medicinal Products and Medical Devices.
- 16.2 Commercial communications containing health and nutritional claims made for foods shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.

- 16.3 Nutrition and health claims in commercial communications shall be based on and substantiated by generally accepted scientific data. A nutrition or health claim shall not be made if it is inconsistent with generally accepted nutrition and health principles or if it encourages or condones excessive consumption of any food or disparages good dietary practice.
- 16.4 The use of nutrition and health claims in commercial communications shall only be permitted if the average consumer can be expected to understand the beneficial effects as expressed in the claim.
- 16.5 The use of nutrition and health claims in commercial communications shall not:
- a. Be false, ambiguous or misleading;
 - b. Give rise to doubt about the safety and/or the nutritional adequacy of other foods;
 - c. Encourage or condone excess consumption of a food;
 - d. State, suggest or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients in general, subject to derogations provided for by European law; or,
 - e. Refer to changes in bodily functions which could give rise to or exploit fear in the consumer, either textually or through pictorial, graphic or symbolic representations.

- 16.6 Commercial communications involving health claims shall include all of the following information:
- a. A statement indicating the importance of a varied and balanced diet and a healthy lifestyle;
 - b. The quantity of the food and pattern of consumption required to obtain the claimed beneficial effect;
 - c. Where appropriate, a statement addressed to persons who should avoid using the food; and,
 - d. An appropriate warning for products that are likely to present a health risk if consumed to excess.

- 16.7 The following health claims shall not be allowed in commercial communications:
- a. Claims which suggest that health could be affected by not consuming the food;
 - b. Claims which make reference to the rate or amount of weight loss; or,
 - c. Claims which make reference to recommendations of individual doctors or health professionals and other associations not registered/certified by a relevant competent authority.

16.8 Reduction of disease risk claims in commercial communications shall comply with European and Irish legislation and shall also bear a statement indicating that the disease to which the claim is referring has multiple risk factors and that altering one of these risk factors may or may not have a beneficial effect.

16.9 Commercial communications for follow-on infant formula shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority. Commercial communications for follow-on infant formula shall not suggest, either directly or by implication, the superiority of this product to breastfeeding and shall clearly indicate the unsuitability of this product for infants under six months.

16.10 A maximum of 25% of sold advertising time and only one in four advertisements for High Fat Salt Sugar (HFSS) food products and/or services products are permissible across the broadcast day. There is a range of other rules in relation to food commercial communications for children and these can be found in the BAI's Children's Commercial Communications Code, which is available to download from www.bai.ie.

17. Slimming Treatments, Products and Services

- 17.1 Commercial communications shall not contain any offer of a treatment, product or service for slimming (i.e. weight reduction, limitation or control) which:
- a. Is in itself likely to lead to harmful effects;
 - b. Is not directly associated with the following of a properly designed diet; or,
 - c. Does not clearly state the manner in which slimming will be achieved.
- 17.2 Commercial communications for slimming treatment, products and services shall not contain material which is directed exclusively or principally at children.
- 17.3 Commercial communications for foods for use in energy restricted diets for weight reduction shall not make reference to the rate or amount of weight loss which may result from their use.
- 17.4 Where slimming treatments, products and services could reasonably be categorised under the headings in sections 12 to 16 of this Code, the commercial communications for such slimming treatments, products and services must adhere to the rules under the relevant section(s) in addition to rules under this section.

18. Smoking Cessation Aids

- 18.1 Commercial communications for products or services purporting to assist people to quit smoking shall indicate clearly that the product or service is only effective in conjunction with the positive application of the consumer's will power. Commercial communications purporting to assist people to quit smoking shall not indicate that a cure will be brought about by the product or service but may focus on the potential role of the product or service in assisting people to quit smoking.
- 18.2 Where smoking cessation aids could reasonably be categorised under the headings in sections 12 to 16 of this Code, the commercial communications for such smoking cessation aids must adhere to the rules under the relevant section(s) in addition to rules under this section.
- 18.3 Commercial communications for electronic cigarettes and refill containers are permitted where such products are deemed medicinal products or medical devices, that is, they are subject to (1) an authorisation requirement relating to medicinal products for human use (under Directive 2001/83/EC) or (2) the requirements concerning medical devices (under Directive 93/42/EEC). These commercial communications shall comply with the rules in section 12 of this Code – Medicinal Products and Medical Devices. Where these products purport to assist people to quit smoking, section 18 of this code will also apply.



19. Financial Services and Products

- 19.1 Commercial communications for financial services and products shall be presented in terms which do not mislead, whether by exaggeration, omission or in any other way.
- 19.2 Commercial Communications for financial services and products shall comply with relevant Irish and European legislation and with the rules, regulations and codes of practice issued from time to time by the relevant competent authority.

Rule applying to radio only

- 19.3 Mandatory regulatory disclosure statements and warning statements in commercial communications for financial services and products shall comply with this Code but shall not count toward advertising minutage. It shall be clear to listeners that these statements are part of the overall commercial communication for a financial product or service but the statements themselves shall not include any content that constitutes advertising.

20. Gambling

Relevant definitions for this section can be found in Appendix 2.

- Gambling
- Remote bookmaking operations

- 20.1 Commercial communications for gambling shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.
- 20.2 Commercial communications are not permitted for remote bookmaking operations carried on by a person who does not hold a bookmaker's licence.
- 20.3 Commercial communications are permitted for the National Lottery and other lotteries granted licenses by the relevant competent authority (e.g. charity bingo). These commercial communications shall comply with the *Marketing Communications, Advertising, Promotions and PR Code of Practice* approved by the regulator of the National Lottery, where applicable, and with rules 20.5 and 20.6 of this section of the Code. Commercial communications for any other lotteries are not permitted.
- 20.4 Commercial communications that seek to promote services to those who want to gamble may contain the address of the service provider and factual descriptions of services available but shall not contain anything which could be deemed to be a direct encouragement to gamble. This includes providing information detailing special offers, free bets as prizes in competitions, discounts, inducements to visit any gambling establishment (including on-line) or any promotional offer intended to encourage the use of services of this nature.

- 20.5 Portrayals of gambling in commercial communications shall not:
- a. Encourage behaviour that is socially irresponsible or could lead to financial, social, psychological or emotional harm;
 - b. Suggest that gambling can be a solution to personal or professional problems or financial concerns;
 - c. Suggest that gambling can enhance personal qualities or contribute toward sexual attraction and success or social success; or
 - d. Depict or feature children gambling.
- 20.6 Commercial communications for gambling shall not contain material which is directed exclusively or principally at children and shall not be broadcast in or around children's programmes.

21. Premium-rate Telecommunications Services

- 21.1 Commercial communications for premium-rate telecommunication services shall comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.
- 21.2 Commercial communications for premium-rate telecommunication services shall clearly state all charges for accessing these services in terms which do not mislead, whether by exaggeration, omission or in any other way.

22. Fortune Tellers, Psychic Services, etc.

- 22.1 Commercial communications for fortune tellers, psychic services etc., are acceptable where the service is evidently for entertainment purposes only and this is made clear in the communication. Such communications shall not include any of the following:
 - a. Claims that future events may be predicted, other than as a matter of opinion;
 - b. Claims to make contact with deceased persons; or,
 - c. Claims pertaining to matters of health, cures, curing and/or healing.
- 22.2 Commercial communications for fortune tellers, psychic services etc., shall not contain material which is directed exclusively or principally at children and shall not be broadcast in or around children's programmes.

Appendix One

BAI Codes and Rules corresponding to Section 42(2) of the Broadcasting Act 2009

Legislation	Broadcasting Codes shall provide:	BAI Code
Section 42(2)(a)	— all news broadcast by a broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views,	Code of Fairness, Impartiality and Objectivity in News and Current Affairs
Section 42(2)(b)	— the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster's own views,	Code of Fairness, Impartiality and Objectivity in News and Current Affairs
Section 42(2)(c)	— anything being likely to promote or incite to, crime, or as tending to undermine the authority of the State, is not broadcast by a broadcaster,	Code of Programme Standards
Section 42(2)(d)	— in programmes broadcast by a broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon,	Code of Programme Standards
Section 42(2)(e)	— a broadcaster does not, in the allocation of time for transmitting party political broadcasts, give an unfair preference to any political party,	Code of Fairness, Impartiality and Objectivity in News and Current Affairs and Election and Referenda Guidelines
Section 42(2)(f)	— in respect of programme material broadcast by a broadcaster that audiences are protected from harmful or offensive material, in particular, that programme material in respect of the portrayal of violence and sexual conduct, shall be presented by a broadcaster – — (i) with due sensitivity to the convictions or feelings of the audience, and — (ii) with due regard to the impact of such programming on the physical, mental or moral development of children,	Code of Programme Standards

Legislation	Broadcasting Codes shall provide:	BAI Code
Section 42(2)(g)	— advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, must protect the interests of children having particular regard to the general public health interests of children,	Children's Commercial Communications Code
Section 42(2)(h)	— advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, other than advertising and other activities as aforesaid falling within paragraph (g), must protect the interests of the audience,	General Commercial Communications Code
Section 42(2)(i)	— the provision of a broadcasting service which has, as one of its principal objectives, the promotion of the interests of any organisation, protects the interests of the audience, and	Code of Programme Standards
Section 42(2)(j)	— for the matters to be provided for by Chapters IIA, IV and V of the Council Directive. ²	Code of Programme Standards, General Commercial Communications Code, Children's Commercial Communications Code, BAI Rules on Advertising and Teleshopping

² 'Council Directive' means Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007. A simplified and codified version of these Directives was introduced in 2010: the Audiovisual Media Services Directive 2010/13/EU.

In preparing or revising a broadcasting code, the Authority must have regard to each of the following matters, further to the provisions of Section 42(3) of the Act:

- a. the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description,
- b. the likely size and composition of the potential audience for programmes included in television and sound broadcasting services generally, or in television and sound broadcasting services of a particular description,
- c. the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience,
- d. the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content,
- e. the desirability of securing that the content of a broadcasting service identifies when there is a change affecting the nature of the service that is being watched or listened to and, in particular, a change that is relevant to the application of the codes set under this section, and
- f. the desirability of maintaining the independence of editorial control over programme content.

Appendix Two

Definitions for Specific Products and Services

Cosmetic Product

A cosmetic product is defined as any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity, with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours.

Cosmetic Treatments and Services

Cosmetic treatments and services are defined as surgical and non-surgical procedures where the primary aim is the change, the restoration, normalisation or improvement of the appearance, the function and well-being at the request of the individual. These treatments are for aesthetic rather than medical reasons. A non-exhaustive list of surgical procedures includes: lipo-sculpture/liposuction; breast augmentation/uplift and reduction; penile enhancement; circumcision; ear correction surgery; fat removal; tummy tuck; lip, calf, cheek and chin implants. A non-exhaustive list of non-surgical procedures includes: semi-permanent make-up; laser skin rejuvenation; non-surgical uplift; microdermabrasion; tattoo removal; laser hair removal; Botox injections; dermal fillers.

Electronic Cigarette

Electronic cigarette means a product that can be used for consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank. Electronic cigarettes can be disposable or refillable by means of a refill container and a take, or rechargeable with single use cartridges. Refill container means a receptacle that contains a nicotine-containing liquid, which can be used to refill an electronic cigarette.

Infant Formula

Infant formulae means foodstuffs intended for particular nutritional use by infants during the first months of life and satisfying by themselves the nutritional requirements of such infants until the introduction of appropriate complementary feeding.

Follow-on Infant Formula

Follow-on infant formulae means foodstuffs intended for particular nutritional use by infants when appropriate complementary feeding is introduced and constituting the principal liquid element in a progressively diversified diet of such infants.

Food

Food means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans. Food includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC. Food shall also not include:

- feed;
- live animals unless they are prepared for placing on the market for human consumption;
- plants prior to harvesting;
- medicinal products within the meaning of Council Directives 65/65/EEC (1) and 92/73/EEC (2);
- cosmetics within the meaning of Council Directive 76/768/EEC (3);
- tobacco and tobacco products within the meaning of Council Directive 89/622/EEC (4);
- narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs, 1961, and the United Nations Convention on Psychotropic Substances, 1971;
- residues and contaminants.

Gambling

Gambling is defined as playing for a stake in a game of chance for a monetary prize or other form of reward, and includes the playing of games available in casinos. Gambling may be gaming, betting, lotteries, bingos or amusement arcade games. Betting is defined as making or accepting a bet (including when made or accepted through a betting service or a betting exchange) on: (a) the outcome of a race, competition or other event or process, including virtual events, (b) the likelihood of something occurring or not occurring, or (c) whether or not something is true, and includes pool betting. Financial services and products regulated by the Financial Regulator must adhere to the rules under the Financial Services and Products section of this Code and are not required to adhere to the rules pertaining to Gambling.

Health Claim

A health claim means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health (for example, “aids digestion”). Broadcasters should also note the definition of a reduction of disease risk claim included in EU regulation. This means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease.

HFSS foods

HFSS foods are those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the BAI. An overview of the Nutrient Profiling Model and how to apply it is provided in Appendix Three.

Medical Device

A device intended to prevent, cure or alleviate a medical complaint, condition, symptom or disease, including devices used in diagnosis and treatment

Medical Treatment or Service

A medical treatment or service is defined as a treatment or service intended to prevent, cure or alleviate a medical complaint, condition, symptom or disease. This includes, but is not limited to, psychiatry, psychotherapy and counselling.

Medicinal Product

For the purpose of this Code, a medicinal product is defined further to Directive 2001/83/EC, as amended by Directive 2004/27/EC, as

“any substance or combination of substances presented as having properties for treating or preventing disease in human beings or any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis”.

This definition includes prescription-only medicines and medicinal products available from the pharmacy or shop counter that can be sold only once a Product Authorisation License has been granted by the relevant competent authority. It also includes medicinal products that are subject to any other licensing or certification requirements, including homeopathic and traditional herbal medicines. This does not include foods that make health or nutritional claims except those making medicinal claims.

Nutrition Claim

Further to the EU regulation, a ‘nutrition claim’ means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:

- the energy (calorific value) it provides, provides at a reduced or increased rate, or does not provide;
- the nutrients or other substances it contains, contains in reduced or increased proportions, or does not contain.

Remote Bookmaking Operations

These are operations carrying out the business of bookmaking by any electronic means, including over the internet, telephone or telegraphy (whether or not wireless telegraphy).

Appendix Three

Nutrient Profiling Model

For the purpose of this Code, the Nutrient Profiling Model developed by the UK Food Standards Agency should be used to assess whether commercial communications is for a product or service that is high in fat, salt or sugar and therefore subject to restrictions and regulation. There are three steps to working out the overall score of a food or drink.

1. Work out total 'A' points

A maximum of ten points can be awarded for each nutrient.

Total 'A' points = (points for energy) + (points for saturated fat) + (points for sugars) + (points for sodium). The following table indicates the points scored, depending on the amount of each nutrient in 100g of the food or drink:

Points Allocation 'A' Nutrients

Points	Energy (kJ)	Sat Fat (g)	Total Sugar (g)	Sodium (mg)
0	≤ 335	≤ 1	≤ 4.5	≤ 90
1	>335	>1	>4.5	>90
2	>670	>2	>9	>180
3	>1005	>3	>13.5	>270
4	>1340	>4	>18	>360
5	>1675	>5	>22.5	>450
6	>2010	>6	>27	>540
7	>2345	>7	>31	>630
8	>2680	>8	>36	>720
9	>3015	>9	>40	>810
10	>3350	>10	>45	>900

If a food or drink scores 11 or more 'A' points then it cannot score points for protein unless it also scores 5 points for fruit, vegetables and nuts.

2. Work out total 'C' points

A maximum of five points can be awarded for each nutrient/food component.

Total 'C' points = (points for % fruit, vegetable & nut content) + (points for fibre [either NSP or AOAC]) + (points for protein)

The following table indicates the points scored, depending on the amount of each nutrient/food component in 100g of the food or drink:

Points Allocation 'C' Nutrients

Points	Fruit, Veg and Nuts (%)	N&P Fibre (g)	Or AOAC Fibre ³ (g)	Protein (g)
0	<40	<0.7	<0.9	<1.6
1	>40	>0.7	>0.9	>1.6
2	>60	>1.4	>1.9	>3.2
3	-	>2.1	>2.8	>4.8
4	-	>2.8	>3.7	>6.4
5	>80	>3.5	>4.7	>8.0

3. Work out overall score

If a food scores **less than 11 'A'** points then the overall score is calculated as follows:

- Total 'A' points (energy + saturated fat + sugars + sodium) minus total 'C' points (fruit, veg and nuts + fibre + protein)

If a food scores **11 or more 'A' points** but scores 5 points for fruit, vegetables and nuts then the overall score is calculated as follows:

- Total 'A' points (energy + saturated fat + sugars + sodium) minus total 'C' points (fruit, veg and nuts + fibre + protein)

If a food scores **11 or more 'A' points, and less than 5 points for fruit, vegetables and nuts**, then the overall score is calculated as follows:

- Total 'A' points (energy + saturated fat + sugars + sodium) minus total points for fibre + points for fruit, vegetables and nuts (not allowed to score for protein)

A **food** is classified as 'less healthy' where it scores **4 points or more and is subject to the restrictions in the Code.**

A **drink** is classified as 'less healthy' where it scores **1 point or more and is subject to the restrictions in the Code.**

For further detail on the application of this model, please refer to separate guidance provided by the BAI and published on www.bai.ie.

³ One or other of the dietary fibre columns should be chosen to how the fibre content of the food or beverage was calculated by the manufacturer.

Legislation affecting commercial communications

The following is a non-exhaustive guide to the principal legislation which may restrict, control or otherwise affect commercial communications in Ireland. This is provided for guidance only and it is entirely a matter for individual parties to ascertain any relevant legislative provisions that may apply in each case as well as any updates, repeals or amendments made to the relevant legislation.

Broadcasting Legislation

- Broadcasting Authority Act, 1960
- Broadcasting Authority (Amendment) Act, 1976
- Broadcasting and Wireless Telegraphy Act, 1988
- Broadcasting Act, 1990
- Broadcasting Act, 2009

Other National Legislation

- Adoption Acts 1952 to 2010.
- Animal Remedies Act 1993.
- Animal Remedies (Control of Sale) Regulations 1985-1991 (S.I. 258/1985, S.I. 244/1991).
- Betting Act 1931.
- Betting (Amendment) Act 2015.
- Building Societies Act 1989 as amended by 2006 Act.
- Central Bank and Financial Services Authority of Ireland Act, 2003 and 2004.
- Central Bank Acts 1942-1998.
- Central Bank (Supervision and Enforcement) Act 2013.
- Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (S.I. No. 420/2015).
- Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 (S.I. No. 585/2015).
- Censorship of Films Acts 1923-1992.

- Censorship of Publications Acts 1929-1967.
- Censorship of Publications Regulations 1980 (S.I. 292/1980).
- Child Trafficking and Pornography Act 1998.
- Child Trafficking and Pornography (Amendment) Act 2004.
- Code of Professional Conduct and Ethics for Social Workers bye-law 2011 (S.I. No. 143/2011).
- Companies Acts 1963-2014.
- Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010.
- Communications Regulation (Licensing of Premium Rate Services) Regulations 2012 (S.I. No. 111/2012).
- Consumer Credit Act 1995.
- Consumer Credit Act 1995 (Section 28) Regulations, 1996 (S.I. 245/1996).
- Consumer Protection Act, 2007.
- Consumer Information (Advertisement for Concert or Theatre Performances) Order 1997 (S.I. 103/1997).
- Consumer Information (Advertisements)(Disclosure of Business Interest) Order 1984 (S.I. 168/1984).
- Consumer Information (Advertisement for Airfares) Order, 2000 (S.I. 468/2000).
- Consumer Information (Miscellaneous Goods)(Marking) Order, 1984 (S.I. 178/1984).
- Copyright Act 1963.
- Copyright and Related Rights Acts 2000 and 2004.
- Credit Guarantee Scheme 2012 (S.I. No. 360/2012).
- Credit Union Act 1997.
- Criminal Justice (Psychoactive Substances) Act 2010.
- Criminal Justice (Theft and Fraud Offences) Act 2001.
- Data Protection Acts 1988 and 2003.
- Dairy Products Acts 1924 to 1947.
- Defamation Act 2009.
- Defence Acts 1954 to 2007.
- Dietitians Registration Board Code of Professional Conduct and Ethics Bye-law 2014 (S.I. No. 448/2014).
- Employment Agency Act 1971.
- Employment Agency Regulations 1972 to 1993 (S.I. 27/1971, S.I. 255/1972, S.I. 49/1993).

- Employment Equality Acts 1998 and 2004.
- Gaming and Lotteries Acts 1956 to 1979.
- Hallmarking Act 1981.
- Health (Foods for Particular Nutritional Uses) Regulations 1991 (S.I. 331/1991).
- Health (Miscellaneous Provisions) Act 2014.
- Health (Pricing and Supply of Medical Goods) Act 2013.
- Hire Purchase and Credit Sale (Advertising) Order 1961 (S.I. 183/1961).
- Industrial and Commercial Property (Protection) Acts 1927 to 1958.
- Industrial Research and Standard Acts 1961 and 1979.
- Insurance Acts 1909 to 2000
- Investment Intermediaries Act 1995.
- Licensing Acts 1833 to 2004.
- Investor Compensation Act 1998.
- Medicinal Products (Control of Advertising) Regulations 2007 (S.I. 541/2007).
- Medical Preparations (Labelling and Package Leaflets) Regulations 1993-1999 (S.I. 71/1993, S.I. 440/1994, 187/1999).
- Medical Preparations (Licensing, Advertisement and Sale) Regulations 1984 to 1994 (S.I. 210/1984, S.I. 347/1989, S.I. 70/1993, S.I. 439/1994).
- Medicinal Products (Prescription and Control of Supply) Regulations 2003 as amended (S.I. 540/2003).
- Medicinal Products (Licensing and Sale) Regulations 1998 (S.I. 142/1998) and 2001.
- Merchandise Marks Act 1970.
- Metrology Act 1996.
- Milk and Dairies Acts 1935 and 1956.
- Occasional Trading Act 1979 as amended by the Casual Trading Act 1995.
- Official Languages Act 2003.
- Opticians Acts 1956 and 2003.
- Package Holidays and Travel Trade Act 1995.
- Prices and Charges (Tax-Inclusive Statements) Order 1973 (S.I. 9/1973).
- Property Services (Regulation) Act 2011.
- Public Health (Sunbeds) Act 2014

- Public Health (Sunbeds) (Prohibition of Certain Marketing Practices) Regulations 2015 (S.I. No. 51/2015).
- Public Health (Sunbeds) (Prohibition of Certain Marketing Practices) (Amendment) Regulations 2015 (S.I. No. 279/2015).
- Public Health (Tobacco) Acts 2002 to 2009.
- Public Health (Tobacco) (Amendment) Act 2013.
- Public Health (Tobacco) (Control of Sales Promotion) Regulations 2013 (S.I. No. 530/2013).
- Radiographers Registration Board Code of Professional Conduct and Ethics Bye-law 2013 (S.I. No. 392/2013).
- Red Cross Acts 1938 to 1954.
- Sale of Goods and Supply of Services Act 1980.
- Savings Certificates (Issue 21) Rules 2014 (S.I. No. 442/2014).
- Solicitors Acts 1954-2002 Solicitors (Advertising) Regulations 2002 (S.I. 518/2002).
- Solicitors Acts 1954-2002.
- Speech and Language Therapists Registration Board Code of Professional Conduct and Ethics Bye-law 2014 (S.I. No. 472/2014).
- State Airports (Shannon Group) Act 2014.
- Stock Exchange Act 1995.
- Taxi Regulation Act 2013.
- Taxi Regulation (Small Public Service Vehicle) Regulations 2015 (S.I. No. 33/2015).
- The Civil Law (Miscellaneous Provisions) Act 2011.
- Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) Regulations 1991-2009 (S.I. 326/1991, S.I. 215/2000, S.I. 243/2009).
- Tourist Traffic Acts 1939 to 1970.
- Trade Marks Act 1996.
- Trustee Savings Banks Acts 1989 and 2001.
- Unit Trusts Act 1990.

Rights

- Equality (Miscellaneous Provisions) Act 2015
- Equal Status Acts 2000 to 2004
- Equality Act 2004
- European Convention on Human Rights Act 2003
- EU Charter of Fundamental Rights
- Prohibition on Incitement to Hatred Act 1989
- UN Convention on the Rights of the Child

European-Based Legislation

- Council Directive 2010/13/EU (Audiovisual Media Services Directive)
- European Communities (Audiovisual Media Services) Regulations 2010 (S.I. No. 258/2010).
- Council Regulation (EC) No. 2200/96 as amended by 2699/2000 and European Communities (Fruit and Vegetables) Regulations 1997 (S.I. 122/1997).
- European Communities (Authorisation, Placing on the Market, Use and Control of Plant Protection Products) Regulations 2003 as amended (S.I. 83/2003).
- European Union (Batteries and Accumulators) Regulations 2014 (S.I. No. 283/2014).
- European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477/2011).
- European Union (Biocidal Products) Regulations 2013 (S.I. No. 427/2013).
- European Union (Capital Requirements) Regulations 2014 (S.I. No. 158/2014).
- Electronic Commerce (Directive 2000/31/EC) Regulations 2003 (S.I. 68/2003).
- European Communities (Definition, Description and Presentation of Spirit Drinks) Regulations 1995 (S.I. 300/1995).
- European Communities (Definition, Description and Presentation of Aromatised Wines, Aromatised Wine-Product Cocktails) 1998 (S.I. No. 254/1998).
- European Communities (Classification, Packaging and Labelling of Pesticides) Regulations 1994 (S.I. 138/1994).
- European Communities (Classification, Packaging and Labelling of Plant Protection Products and Biocide Products) Regulations 2001 (S.I. 624/2001).
- European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281/2010).
- European Communities (Co-operation between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2006 (S.I. 290/2006).
- European Communities (Cosmetic Products) Regulations 1997-2013 (S.I. 87/1997, S.I. 213/1998, S.I. 150/2000, S.I. 203/200, S.I. 870/2004, S.I. 373/2006, S.I. 440/2013).

- Commission Regulation (EU) No. 655/2013 laying down common criteria for the justification of claims used in relation to cosmetic products.
- European Union (Deposit Guarantee Schemes) Regulations 2015 (S.I. No. 516/2015).
- European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (S.I. 853/2004).
- European Communities (Distance Marketing) of Consumer Financial Services) (Amendment) Regulations 2005 (S.I. 63/2005).
- European Union (Energy Performance Of Buildings) Regulations 2012 (S.I. No. 243/2012).
- European Union (Foodstuffs Intended for Particular Nutritional Uses) Regulations 2012 (S.I. No. 169/2012).
- European Communities (Food Supplement) Regulations 2003 (S.I. 539/2003).
- European Communities (Infant Formulae and Follow-on Formulae) Regulations 2007 (S.I. No. 852 of 2007) amended by European Communities (Infant Formulae and Follow-on Formulae) (Amendment) Regulations 2009 (S.I. No. 209 of 2009), European Communities (Infant Formulae and Follow-on Formulae) (Amendment) Regulations 2013 (S.I. No. 384 of 2013) and European Communities (Infant Formulae and Follow-on Formulae) (Amendment) Regulations 2014 (S.I. No. 92 of 2014).
- Commission Directive 2006/141/EC on Infant Formulae and Follow-on Formulae.
- European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485/2015).
- European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2000 and 2002 (S.I. 92/2000, S.I. 483/2002).
- European Communities (Life Assurance) Framework Regulations 1994 (S.I. 360/1994).
- Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342/2005).
- European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 (S.I. No. 271 of 2016).
- Means of Distance Communications (Amendment) Regulations 2005 (S.I. 71/2005).
- European Communities (Misleading and Comparative Marketing Communications) Regulations 2007 (S.I. 774/2007).
- Directive on Misleading and Comparative Advertising (Directive 2006/114/EC).
- European Communities (Names and Labelling of Textile Products) Regulations 1998 (S.I. 245/1998).
- European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. 359/1994).
- European Communities (Directive 1924/2006) on Nutrition and Health Claims Made on Foods.
- European Union (Nutrition and Health Claims made on Foods) Regulations 2014 (S.I. No. 11/2014).
- European Communities (Requirements to Indicate Product Prices) Regulations 2002(S.I. 639/2002).
- European Communities (Pesticides Residues) (Feeding Stuffs) Regulations 1992 (S.I. 40/1992).
- European Communities (Plant Protection Products) Regulations 2012 (S.I. No. 159/2012).

- Poisons (Control of Residues in Foods of Animal Origin) Regulations 1985 and 1986 (S.I. 257/85, S.I. 236/86).
- Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. 324/2005).
- European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001(S.I. 207/2001).
- European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) (Amendment) Regulations 2005 (S.I. 71/2005).
- European Communities (Protection of Geographical Indication and Designations of Origin for Agricultural Products and Foodstuffs) Regulations 1995 and 1999 (S.I. 148/1995, S.I. 275/1999).
- European Union (Protection of Consumers in respect of Timeshare, Long-term Holiday Product, Resale and Exchange Contracts) Regulations 2011 (S.I. No. 73/2011).
- European Union (Provision of Food Information to Consumers) Regulations 2014 (S.I. No. 556/2014).
- European Union (Quality and Safety of Human Organs intended for Transplantation) Regulations 2012 (S.I. No. 325/2012).
- European Communities (Supply of Information on the Origin Identification and Destination of Bovine Animals) Regulation 1999 (S.I. 258/1999).
- European Communities (Television Broadcasting) Regulations 1999 (S.I. 313/1999).
- Tobacco Products Directive (2014/40/EU).
- EC (Traditional Specialities Guaranteed) Regulations 2010 (S.I. No. 379/2010).
- European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations 2003 (S.I. 211/2003) (as amended).

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Appendix 4

BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs



ÚDARÁS
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Code of Fairness, Objectivity & Impartiality in News and Current Affairs



**BAI Code of Fairness, Objectivity & Impartiality
in
News and Current Affairs**

April 2013

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Introduction

This Code deals with matters of fairness, objectivity and impartiality in news and current affairs content. It is prepared by the Broadcasting Authority of Ireland (BAI) in accordance with sections 42(1), 42(2)(a) and 42(2)(b) & (e) of the Broadcasting Act 2009 ('the Act').

Section 42 of the Act provides that:

- (1) The Authority shall prepare, and from time to time as occasion requires, revise, in accordance with this section, a code or codes governing standards and practice ("broadcasting code") to be observed by broadcasters.
- (2) Broadcasting codes shall provide –
 - (a) that all news broadcast by a broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views,
 - (b) that the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster's own views,
 - (e) that a broadcaster does not, in the allocation of time for transmitting party political broadcasts, give an unfair preference to any political party.

In developing the Code of Fairness, Objectivity and Impartiality in News and Current Affairs the BAI had regard to a range of matters set out in section 42(3) of the Act. It also had regard to its own statutory objectives, set out in section 25, in particular that, in performing its functions the BAI shall:

- Endeavour to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld,
- Provide a regulatory environment that will sustain independent and impartial journalism,
- Seek to ensure that any measures it takes are proportionate and will produce regulatory arrangements that are stable and predictable.

In devising the rules, the BAI has also taken into account the European Convention on Human Rights and in particular the provisions relating to freedom of expression, the right to privacy and the securing of rights without any discrimination on any ground.¹

Jurisdiction

The Code applies to broadcasters within the jurisdiction of Ireland. It does not apply to other services commonly received in this State, but licensed in the United Kingdom or other jurisdictions.

The term 'broadcaster' is understood in the context of the definition provided in the Broadcasting Act 2009, which is as follows:

“Broadcaster means a person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not).”

Guidance Notes

It is not intended that this Code will set out each and every rule in relation to the preparation, treatment and broadcast of news and current affairs content. In this regard, broadcasters, programme makers and citizens should have regard to the Guidance Notes which have been developed in conjunction with this Code. These notes are provided as an aid to understanding the intent of the principles and rules and the manner of their application in a broadcast context. The BAI will update the Guidance Notes from time to time.

Complaints

If a viewer or listener has a complaint or is dissatisfied with the manner in which a broadcaster is complying with this Code, the matter should, in the first instance, be referred directly to the relevant broadcaster. Further information on the complaints process is available on www.bai.ie or by phoning 01 6441200.

The effective date of this Code is 1st July 2013.

¹To access a copy of the ECHR [click here](#) or go to www.ehcr.coe.int

1. Code Objectives

The objectives of the Code are:

- To set out clearly the minimum standards and practices that are expected of broadcasters in their treatment and broadcast of news and current affairs content;
- To provide general guidance to broadcasters to assist in their decision-making processes, as they pertain to news and current affairs content;
- To promote independent and impartial journalism in the provision of news and current affairs content;
- To inform and generate awareness among citizens with regard to standards they may expect in relation to news and current affairs content;
- To protect the interests of citizens, in their right to access fair, objective and impartial, news and current affairs content.

2. Principles Underpinning the Fairness, Objectivity and Impartiality Rules

This section outlines the principles which underpin this Code. In addition to the specific rules outlined in Section 4, the principles provide direction as to the general standards expected in order to achieve fairness, objectivity and impartiality in the treatment of news and current affairs content. Thus, a broadcaster is expected not only to comply with the rules, but also to apply these general principles to its news and current affairs content.

The principles which shall be applied in this Code, together with a brief narrative, are set out below:

Fairness: The BAI is committed to ensuring that, through the implementation of this Code, individuals and organisations that are the subject of news and current affairs content, or persons who contribute to news and current affairs programmes or items, are treated fairly and honestly. Viewers and listeners have a legitimate expectation that a broadcaster will demonstrate an even-handed approach to how news and current affairs content is presented and interrogated and how contributors are treated. The principle of fairness does not necessarily require that all possible opinions on a subject are addressed or that they should receive equal air-time.

The approach to covering issues, including those of public controversy or current public debate, should be guided by ensuring equitable, proportionate coverage.

Objectivity & Impartiality: The principles of objectivity and impartiality are concerned with ensuring that news and current affairs content is compiled, produced and presented in a manner which is and can be seen as independent, unbiased, and without prejudgement. The rules set out in this Code with regard to objectivity and impartiality should not be taken to imply that a presenter or a reporter cannot convey critical views or pursue vigorous lines of questioning. Indeed, this is often required in order to achieve fairness, objectivity and impartiality. What is necessary, however, is that production, reporting and questioning on any news or current affairs item is credible, trustworthy and editorially independent.

Accuracy & Responsiveness: Audiences are entitled to, and do, trust that the news and current affairs content they access from the broadcast media is accurate. Accurate information enables citizens to participate more fully in a democratic society. Accuracy is therefore a fundamental principle associated with the broadcast of news and current affairs content and should always take priority over the speed with which content can be delivered. It is also acknowledged that despite best efforts, inaccurate information can sometimes be conveyed, whether explicitly or implicitly. The principle of responsiveness is designed to ensure that broadcasters adopt fair, timely and appropriate remedies in handling the broadcast of inaccurate information.

Transparency & Accountability: the principles of transparency and accountability are concerned with ensuring that practices and procedures adopted by broadcasters in sourcing, compiling, producing and presenting news and current affairs are visible, open to scrutiny, robust and accessible. This is particularly the case where a decision to broadcast may impact on an individual's privacy.

3. Compliance & Assessment

- In the treatment of news and current affairs content, broadcasters shall comply with the principles and rules specified in this Code. Broadcasters should be mindful of all the provisions of this Code as programme material may be required to comply with one or more applicable provision.
- News and current affairs content shall be assessed in whole and in context and with reference to:-
 - The provisions of the Broadcasting Act 2009 (as amended);
 - The principles of the Code;
 - The rules of the Code;
 - Contextual factors including, but not limited to, the type of programme concerned and audience expectations;
 - The procedures, practices and policies of the BAI.
- Broadcasters shall comply with the spirit as well as the letter of the Code.

4. Rules

The following rules shall apply to the treatment of all news and/or current affairs content.

Fairness, Objectivity and Impartiality - Statutory Duties of Broadcasters

1. In their treatment of news and current affairs content broadcasters shall comply with section 39 (1) (a) & (b), section 39 (2) and section 39 (5) & (6) of the Broadcasting Act 2009.

39.—

(1) Every broadcaster shall ensure that—

- (a) all news broadcast by the broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views,*
 - (b) the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views, except that should it prove impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other,*
- (2) Nothing in subsection (1)(a) or (b) prevents a broadcaster from transmitting party political broadcasts provided that a broadcaster does not, in the allocation of time for such broadcasts, give an unfair preference to any political party.*
- (5) A broadcaster shall ensure that the broadcast treatment of any proposal, being a proposal concerning policy as regards broadcasting, which is of public controversy or the subject of current public debate, which is being considered by the Government or the Minister, shall be reported and presented in an objective and impartial manner.*
- (6) Paragraphs (a) and (b) of subsection (1), in so far as they require the broadcaster not to express his or her own views, do not apply to any broadcast made under subsection (5).*

2. In their treatment of news and current affairs content broadcasters shall comply with the following principles as articulated in this Code:
 - Fairness;
 - Objectivity & Impartiality;
 - Accuracy & Responsiveness;
 - Transparency & Accountability.

Fairness Rules

3. A broadcaster shall deal fairly with contributors to current affairs content or with persons or organisations referred to in that content.
4. In the normal course of events, interviewees for news and current affairs content shall be made generally aware of the subject matter and the nature and format of their contribution, so that their agreement to participate constitutes informed consent.
5. A broadcaster shall not generally broadcast any news or current affairs interview with any person without the consent of that person. The broadcast of any news or current affairs content in the absence of consent must be editorially justified. Requests for withdrawal of consent shall be given due consideration by the broadcaster, having regard to the public interest, natural justice and the principles of fairness, objectivity and impartiality.
6. Care shall always be taken with the inclusion of interviews with children or vulnerable people in news or current affairs content. In all cases, the overriding principle must be to avoid the broadcast of material that may be unfair or detrimental to their interest.

The consent of a parent, guardian or legal representative shall generally be obtained prior to the broadcast of any interview with a child less than 16 years of age or a vulnerable person, where the subject matter is of a sensitive or serious matter or where not to do so could be deemed unfair. A decision to broadcast an interview in the absence of such consent must be justified in the public interest.

7. Where a person or organisation refuses to contribute to news and current affairs content or chooses to make no comment, the broadcast shall make this fact clear and shall report in a reasonable manner the person/organisation's explanation for declining to participate, where not to do so could be deemed unfair.
8. The refusal of a person or organisation to participate will not preclude the broadcast of news and current affairs content. However, the broadcaster has a responsibility to reflect, as far as practicable, the views of the absent party and to do so fairly.
9. The editing process shall not distort the context or meaning of the original interview.
10. A broadcaster shall ensure that the re-use of any material in a news and current affairs context, including the use of archive material, does not create unfairness or result in inaccuracies.
11. The re-construction or re-enactment of an event in news or current affairs content shall be clearly identified as such and should be authentic in its depiction of the event(s) in question.
12. The use of secret or undisclosed recording or filming in current affairs content shall only be used in exceptional circumstances. It must be warranted and a broadcaster shall have appropriate procedures in place for the authorisation of such recordings at the most senior editorial level. Such authorisation shall be in writing.

The following considerations are essential elements in determining if secret or undisclosed recording or filming is warranted:

- The item being covered is demonstrably in the public interest and the broadcaster has evidence of matter that merits coverage;
 - The co-operation of the subject is unlikely to be forthcoming;
 - There is reason to believe that coverage of the subject matter will be frustrated as the content cannot reasonably be obtained by other means.
13. Any person secretly filmed or recorded shall be afforded the opportunity to participate in the news and current affairs content that will include the recording if, in the opinion of the broadcaster, not affording the opportunity to participate would be unfair to that person.

14. By its nature, a direct unarranged approach (“door-stepping”) to an interviewee may contravene fairness. However, in appropriate circumstances it may be justifiable to dispense with the normal practice of making arrangements for an interview directly with an interviewee, or with a representative, and with suitable notice. “Door-stepping”, may be appropriate in circumstances where:
 - The item being covered is demonstrably in the public interest;
 - The interviewee is unlikely to co-operate if approached in the normal way, and;
 - The approach to the individual(s) is necessary to the authenticity and credibility of the content in question.
15. Broadcasters shall have in place appropriate policies and procedures for handling contributions via social media.
16. Any undertaking given to a contributor relating to confidentiality or anonymity shall be clear and be honoured. Any associated audio-visual techniques utilised in both filming and editing shall be carefully applied to ensure complete confidentiality is achieved and commitments given are fully honoured.

Objectivity & Impartiality Rules

17. News and current affairs content shall be presented with due accuracy, having regard to the circumstances and the facts known at the time of preparing and broadcasting the content.
18. Two, or more, related broadcasts may be considered as a whole if the broadcasts are transmitted within a reasonable time period and such links are made clear to the audience.
19. Views and facts shall not be misrepresented or presented in such a way as to render them misleading. Presenters should be sensitive to the impact of their language and tone in reporting news and current affairs so as to avoid misunderstanding of the matters covered.
20. A significant mistake shall be acknowledged and rectified as speedily as possible, in an appropriate and proportionate manner. A broadcast correction or clarification shall have regard to the time and circumstances of the original broadcast.

- 21.** A news presenter and/or a reporter in a news programme may not express his or her own view on matters that are either of public controversy or the subject of current public debate.
- 22.** It is an important part of the role of a presenter of a current affairs programme to ensure that the audience has access to a wide variety of views on the subject of the programme or item; to facilitate the expression of contributors' opinions – sometimes by forceful questioning; and to reflect the views of those who cannot, or choose not to, participate in content. This being so, a presenter and/or a reporter on a current affairs programme shall not express his or her own views on matters that are either of public controversy or the subject of current public debate such that a partisan position is advocated.
- 23.** 'Personal view' or 'authored' current affairs segments or programmes can be appropriate, subject to normal editorial controls. This does not exempt the segment or programme – or a series of related segments/programmes – from the statutory obligations to be impartial, objective and fair to all interests concerned. Similarly, an "authored" item or programme may be permitted if part of a series of related segments/programmes which, taken together, will discharge the statutory obligations.
- 24.** A 'personal view' or 'authored' programme or segment shall be clearly signalled to the audience at the outset, or in the case of a series of segments or programmes, at the start of each one.
- 25.** Each broadcaster shall have and implement appropriate policies and procedures to address any conflicts of interests that may exist or arise in respect of anyone with an editorial involvement in any news or current affairs content, whether such person works on-air or off-air.
- 26.** Any personal, professional, business or financial interest of anyone with an editorial involvement in news or current affairs content that calls into question (or that might reasonably be perceived as calling into question) the fairness, objectivity or impartiality of a programme or item, shall be brought to the attention of the audience. To this end broadcasters shall satisfy themselves that they are in a position to be aware of the relevant interests of the personnel concerned, and to determine whether the interest concerned is of such extent as would warrant the withdrawal of any person from further involvement in the item or programme.

Election & Referendum Coverage

27. Coverage of an election or a referendum shall comply with guidelines and codes of practice issued from time to time by the BAI.

Legal Requirements and Guidance

28. Broadcasters and programme makers shall adhere to all legislative requirements when sourcing, compiling, producing and presenting news and current affairs content.
29. Broadcasters shall have due regard to guidance issued in respect of this Code.

Appendix 5

BAI Code of Programme Standards



ÚDARÁS
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BROADCASTING
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OF IRELAND

BAI CODE OF PROGRAMME STANDARDS



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FOREWORD

Developing a Code of Programme Standards is a challenging task, not least because there is no absolute, universally shared sense of what standards are or should be observed. Moreover, there is the concern that such a code could become a litany of prohibitions that ultimately constrain effective broadcasting. And the concepts of harm and offence that are embedded in the legislation are complex, subtle and distinctly different one from the other.

But broadcasting is not a free for all. There are standards. There are lines that virtually all in the audience will not want to see crossed.

This Code, as the Broadcasting Authority of Ireland (BAI) sees it, is a service to broadcasters and audiences alike. It seeks to offer a framework that is set firmly within the statutory context that recognises the important service that broadcasting provides to the public that does not attempt to circumscribe the reasonable editorial freedom of any broadcaster. But it recognises also the entitlement of the audience to have its deeply held convictions respected, its complexity and diversity recognised and reflected and those who are vulnerable protected.

And it provides a yardstick against which the audience can evaluate broadcast output and a clear basis on which to found a complaint if it is believed that a broadcaster has failed to observe the requirements of the law or of this Code. It sets out, therefore, to provide clear principles that should be observed and a set

of requirements (not exhaustive) that must be discharged. Through these, broadcasters, listeners and viewers have a path clearly delineated.

Harm and offence are important issues for the law and they are complex issues for the regulator. It would be an unconscionable restriction on the freedom of expression and the vitality of broadcasting if nothing likely to offend anybody could ever be broadcast. But that is neither what the law requires, nor what this Code prescribes. Not only is there no right not to be offended, it will be unavoidable that a programme service that captures the full richness of life and that seeks to address the entire range of topics of concern to the audience will contain material which will be a source of offence to some. There is an obligation on broadcasters to be provocative and to contribute to the awareness that a society has of itself, of its dynamic and changing character and of its place in the modern world.

That is why this Code is not simply a list of prescriptions or prohibitions. It prefers to capture a sense of the appropriate than to seek agreement on what constitutes taste. It acknowledges the importance of tone and context in how an audience will respond to programmes. It knows that there are types of content that more typically offend but knows also that it is not necessarily helpful to attempt to have a static or pre-determined view of what taste will be at any given time.

Harm, however, as the Code outlines, is altogether different. It is right and proper to ensure that no one in the audience is harmed by what is broadcast. There is a right not to be harmed. The concerns of children are of serious significance in this context and are specifically noted in the Code, as in the Broadcasting Act 2009 (“the Act”) and the Audiovisual Media Services Directive 2010/13/EU (“the Directive”).

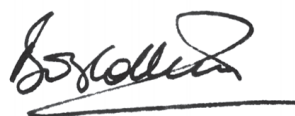
The Act juxtaposes the portrayal of violence and sexual conduct in the same sentence. But that is not to establish a moral equivalence between them. Different judgments must be made in their regard.

There will be times when programme content will be perceived to cross a threshold of acceptability and where editorial intervention should prevent its transmission. The freedom of expression is not absolute and does not include the freedom to defame or unfairly to impugn the character and good name of individuals. Where such content is broadcast, it is important that redress is available. It is to be a source of that redress that the Compliance Committee, a statutory committee of the Authority, exists.

The public interest is of crucial concern to the Broadcasting Authority of Ireland. It is the foundation of much of what the law contains and of the BAI’s approach to its work. But there can be circumstances in which that purpose can be invoked in ways that differ from our approach. It may be useful, therefore, to clarify what we mean. In this Code, the term public interest is used in a sense that facilitates and not one that

restricts. It connotes the genuine interests of citizens and others who live in this state; their capacity fully to understand the way in which public life is conducted; and their entitlement to the fullest range of information to assist them in the choices and decisions they will make in their lives and in the conduct of our democracy.

Much of what the Code provides is already reflected in the way responsible broadcasters approach their important work. In their exercise of their editorial judgments, for example, they will be sensitive to the values of the community; they will respect the watershed; they will appreciate the qualitatively different audience profile that is available during school holidays; and they will schedule sensitively. What the BAI hopes this Code will do is encourage the highest possible standards in the service provided to the audience and that its principles and linked requirements will both set the approach that broadcasters should take and offer reassurance to the audience that its interests are supported and protected.



Bob Collins
Chairperson (2009–2014)
Broadcasting Authority of Ireland

INTRODUCTION

LEGISLATIVE BASIS

The Broadcasting Authority of Ireland (“BAI”) prepares and publishes codes of practice for broadcasters, as required by law. This Code gives expression to the statute, specifically to the requirements of sections 42(2) (c), (d), (f), (i) and (j) of the Broadcasting Act 2009 (“the Act”).

LEGISLATION	BROADCASTING CODES SHALL PROVIDE:	BAI CODE
Section 42(2)(a)	all news broadcast by a broadcaster is reported and presented in an objective and impartial manner and without any expression of the broadcaster’s own views,	Code of Fairness, Impartiality and Objectivity in News and Current Affairs
Section 42(2)(b)	the broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster’s own views,	Code of Fairness, Impartiality and Objectivity in News and Current Affairs
Section 42(2)(c)	anything being likely to promote or incite to, crime, or as tending to undermine the authority of the State, is not broadcast by a broadcaster,	Code of Programme Standards
Section 42(2)(d)	in programmes broadcast by a broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon,	Code of Programme Standards

Cont. →

LEGISLATION	BROADCASTING CODES SHALL PROVIDE:	BAI CODE
Section 42(2)(e)	a broadcaster does not, in the allocation of time for transmitting party political broadcasts, give an unfair preference to any political party,	Code of Fairness, Impartiality and Objectivity in News and Current Affairs and Election and Referenda Guidelines
Section 42(2)(f)	in respect of programme material broadcast by a broadcaster that audiences are protected from harmful or offensive material, in particular, that programme material in respect of the portrayal of violence and sexual conduct, shall be presented by a broadcaster – (i) with due sensitivity to the convictions or feelings of the audience, and (ii) with due regard to the impact of such programming on the physical, mental or moral development of children,	Code of Programme Standards
Section 42(2)(g)	advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, must protect the interests of children having particular regard to the general public health interests of children,	Children’s Commercial Communications Code
Section 42(2)(h)	advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, other than advertising and other activities as aforesaid falling within paragraph (g), must protect the interests of the audience,	General Commercial Communications Code

Cont. →

LEGISLATION	BROADCASTING CODES SHALL PROVIDE:	BAI CODE
Section 42(2)(i)	the provision of a broadcasting service which has, as one of its principal objectives, the promotion of the interests of any organisation, protects the interests of the audience, and	Code of Programme Standards
Section 42(2)(j)	for the matters to be provided for by Chapters IIA, IV and V of the Council Directive. ¹	Code of Programme Standards, General Commercial Communications Code, Children’s Commercial Communications Code, BAI Rules on Advertising and Teleshopping

¹ ‘Council Directive’ means Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 and by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007. A simplified and codified version of these Directives was introduced in 2010: the Audiovisual Media Services Directive 2010/13/EU.

In preparing or revising a broadcasting code, the Authority must have regard to each of the following matters, further to the provisions of Section 42(3) of the Act:

- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description,
- b) the likely size and composition of the potential audience for programmes included in television and sound broadcasting services generally, or in television and sound broadcasting services of a particular description,
- (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience,

d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content,

(e) the desirability of securing that the content of a broadcasting service identifies when there is a change affecting the nature of the service that is being watched or listened to and, in particular, a change that is relevant to the application of the codes set under this section, and

(f) the desirability of maintaining the independence of editorial control over programme content.

These statutory provisions are given practical effect in a number of codes operated by the BAI. The provisions highlighted in the above table are covered by this Code of Programme Standards. All of the BAI codes can be found at www.bai.ie.

THE OBJECTIVES OF THIS CODE

- To promote responsible broadcasting in which access to information, entertainment and education and a range of views are enhanced and undue offence and harm are reduced.
- To acknowledge the diversity of tastes and interests that exist in contemporary Irish society and to encourage and facilitate broadcasting that caters for this diversity.
- To advise viewers and listeners on the standards they can expect from broadcasting services and to enable viewers and listeners to hold broadcasters to account in the event that they believe that a broadcaster has behaved irresponsibly.
- To provide guidance to broadcasters in relation to matters falling within the scope of the codes.

THE RIGHT TO COMPLAIN

The Code is intended to help viewers and listeners who believe that they have a legitimate complaint about a broadcast and who wish to make a complaint.

It explains how the BAI may assess a complaint. The intention is to make it as easy as possible to have your complaint considered.

HOW TO COMPLY WITH THIS CODE

- Broadcasters are required to comply with all seven principles in this Code.
- The principles are indivisible, that is, all programme material must conform to all of the principles.
- Each principle has a list of non exhaustive requirements which broadcasters must discharge. These requirements help viewers and listeners to understand how the principle may be fulfilled.

HOW TO MAKE A COMPLAINT

- Viewers and listeners who believe programme material has not complied with the principles and requirements of this Code are entitled to make a complaint. Complaints should be made, in the first instance, to the broadcaster.
- You should identify the relevant programme broadcast and explain what it is about the broadcast that has led you to make a complaint. It is important to set out clearly the grounds of your complaint or why you believe the programme material does not comply with one or more of the principles of this Code and/or the legislative provisions set out above.
- Your complaint should reference at least one of the principles.
- Each broadcaster is required to consider complaints in line with its Code of Practice for Complaints Handling and you should refer to the broadcaster's Code of Practice when making your complaint to the broadcaster. The Code of Practice should explain how a broadcaster will consider and assess your complaint.

HOW COMPLAINTS WILL BE ASSESSED BY THE BAI

In circumstances where your complaint has not been responded to by the broadcaster or you are not satisfied with the response, you may refer your complaint to the BAI. The BAI will consider the programme material complained of in whole and in context with reference to:

- The matters identified in the complaint;
- The seven principles of this Code and the requirements of each of the principles;
- The provisions of the Broadcasting Act 2009;
- The provisions of the Audiovisual Media Services Directive 2010/13/EU; and,
- The procedures, practices and policies of the BAI.

The BAI will not carry out a separate or independent assessment outside of the matters raised in the complaint.

Further information on the complaints process can be found on the BAI's website www.bai.ie or by telephone on 01 6441200.

SCOPE AND JURISDICTION

This Code shall apply to all programme material broadcast by broadcasters within the jurisdiction of Ireland. It does not apply to commercial communications, such as advertising, programme sponsorship or teleshopping or to complaints about fairness, objectivity and impartiality in news and current affairs content. It does not apply to other services commonly received in this State, but licensed in the United Kingdom or other jurisdictions.

The term 'broadcaster' is understood in the context of the definition provided in the Broadcasting Act 2009, which is as follows:

"Broadcaster means a person who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether than person transmits, relays or distributes that material as such a service or not)."

EFFECTIVE DATE

This Code comes into effect on the 1st day of March 2015.

CODE OF PROGRAMME STANDARDS PRINCIPLES

There are seven guiding principles underpinning the Code of Programme Standards and against which all complaints will be assessed. These principles are:

- | | | | |
|---|------------------------------------|---|--|
| 1 | RESPECT FOR
COMMUNITY STANDARDS | 5 | RESPECT FOR PERSONS
AND GROUPS IN SOCIETY |
| 2 | IMPORTANCE OF CONTEXT | 6 | PROTECTION OF
THE PUBLIC INTEREST |
| 3 | PROTECTION FROM HARM | 7 | RESPECT FOR PRIVACY |
| 4 | PROTECTION OF CHILDREN | | |

THE DISTINCTION BETWEEN HARM AND OFFENCE

In requiring the BAI to draw up this Code, the Act talks about harm and offence. There is an important distinction to be made between both. Those matters which cause offence can, and frequently do, differ from person to person and are largely subjective in their nature. Acknowledging this, there can be no guarantee that programme material will be free from offence. There is no right not to be offended and, for broadcasters, it is to be expected that, in fulfilling their duty to provide a diverse range of programming that caters to a diverse audience, there will be programming that causes offence to some members of the audience. The Code responds to offence in two ways. First, it aims to ensure that the viewer and listener are equipped with sufficient information to make an informed choice as to what they listen to or view. Broadcasters guide viewers and listeners by providing pre-warnings and by scheduling programming according to audience expectations of that type of content or of a particular channel or service. Second, the Code also guards against undue offence which is programme material that, taking into account contextual factors such as editorial justification and public interest, could still be regarded as having crossed a line that has resulted in the viewer or listener being unduly offended.

Harm is less subjective. It is something that is not as dependent on the subjective views that each person brings to programmes that they listen to or view. Harmful material is material that has an 'effect' - content that causes mental, psychological or physical harm. Individuals should not be harmed by programme material and the Code aims to prevent harm to viewers and listeners. While acknowledging that these are two distinct concepts, the Code also accepts that offence can become harmful in certain circumstances.

Principle 1

RESPECT FOR COMMUNITY STANDARDS

There are general community standards that broadcasters must take into account when making programmes. These standards relate to a range of issues covered in programme material, including attitudes to specific language terms, the use of violent imagery and sexual content. Broadcasters are required to consider these standards with reference to the other principles of this Code. This principle recognises that such standards are ever evolving and broadcasting must be facilitated in representing the rich diversity, plurality and realities of contemporary Irish society. This may sometimes involve making programmes that may cause offence to viewers and listeners but are justified for creative, editorial or other reasons.

This principle acknowledges the importance of editorial independence and freedom and the entitlement of audiences to a diverse range of programming.

In fulfilment of Principle 1, broadcasters shall:

- Take due care in broadcasting depictions and/or descriptions of violence in programme material. Broadcasters shall have due regard to the appropriateness of and/or justification for, the inclusion of violent content in programme material having regard to all of the principles of the Code.
- Take due care in broadcasting depictions and/or descriptions of sexual content in programme material. Broadcasters shall have due regard to the appropriateness of, and/or justification for, the inclusion of sexual content in programme material having regard to all of the principles of the Code.
- Have due regard to the appropriateness of, and/or justification for, the inclusion of coarse and/or offensive language in programming.
- Be alert to, and guard against, the use of coarse and/or offensive language in live programming and, where such incidents occur, take timely steps to minimise any offence caused, such as, acknowledging, clarifying and/or apologising for the language used.

Principle 2

IMPORTANCE OF CONTEXT

Harm or offence may be caused solely by the programme material itself or by virtue of the context in which programme material is viewed or heard or because the material is not in line with the audience's expectations. Broadcasters show due care for their audiences by taking into account a range of contextual factors which can influence the viewer or listener's perception of programme material and, hence, the degree of harm or offence that can occur. Such factors include:

- The time at which a programme is broadcast;
- The type of programme (i.e. content, genre, live, pre-recorded or repeat);
- The likely expectations of the audience as to the nature of the particular programme or broadcast service;
- The use of audience information and guidance and the degree to which the nature of the content was brought to the attention of the audience in advance (by means of an acoustic or other warning or through the inclusion of a visual symbol in the case of television programming) to allow a viewer or listener to make an informed choice;
- The likelihood of persons who are unaware of the nature of the content being unintentionally exposed, by their own actions, to that content;
- The type of channel or service on which the programme material was broadcast;
- Whether the inclusion of the programme material complained of was editorially justified; and
- The likely size and composition of the audience for that programme material.

In fulfilment of Principle 2, broadcasters shall:

- Schedule appropriately, taking into account, amongst other things, the nature of the programme material, the likely age range of the audience, the nature of the broadcast service, the particular programme and the time of day when children are likely to be watching or listening to programme material and, on television services, the use of the watershed, which operates after 21.00.
- Have due regard to the established audience expectations of a broadcasting service and to the consequences of any intentional departure from the usual nature of the service.

- In live programming, take timely corrective action where unplanned content is likely to have caused offence. Such action may be to acknowledge, clarify and/or apologise for such content.
- Use prior warnings and/or include a visual symbol where programme material is likely to offend or cause distress to a significant number of viewers.
- Use an evaluative or descriptive classification system for programme material, where possible.
- Provide appropriate help line contact details for the viewer or listener, where relevant.
- Ensure all audience information and guidance mechanisms are provided in a manner which is clearly audible for radio audiences and clearly visible and audible for television audiences.
- Appropriately promote its audience information and guidance mechanisms.

Principle 3

PROTECTION FROM HARM

Broadcasting can be a force for public good. In enriching people's lives through entertainment, information or other programming, broadcasters must be free to make programmes that may be provocative or deal with sensitive issues. However, broadcasters must take due care to ensure that audiences are not exposed to harmful content and must provide adequate information to audiences to allow them to make informed choices about what they listen to and watch.

This principle recognises that there are some viewers and listeners who, by virtue of their age, particular circumstances or vulnerability, may be in need of special consideration.

Individual viewers and listeners may require support mechanisms or further information/guidance where they are exposed to content with which they identify strongly by virtue of their own personal circumstances or experiences and that may cause them distress. Some people require protection from programme material that can cause a physical reaction, for example, material that affects those with photo sensitive epilepsy or those who are susceptible to hypnosis. Some viewers and listeners may require protection from content that purports to be one thing when it is another, for example, something seemingly factual that is actually fictional or controversial.

In fulfilment of Principle 3, broadcasters shall:

- Take due care when broadcasting programme material containing characters, actions and personal circumstances with which audiences may identify and which can cause distress, particularly in relation to content such as sexual violence, self harm or suicide, reconstructions of factual events and archive footage. Programme material of this nature shall be accompanied by some form of audience information or guidance, such as prior warnings and help line contact details.
- Not encourage or favourably present the abuse of drugs, alcohol, or solvents or the use of illegal drugs. Depictions and/or descriptions of detailed methods and techniques for administering illegal drugs must have strong editorial justification for their inclusion.
- Not broadcast material that encourages people to imitate acts which are damaging to the health and safety of themselves or others or grossly prejudicial to the protection of the environment.

- Take due care when broadcasting programme material that includes the simulation of news. Simulated news (for example in drama or in documentaries) must be broadcast in such a way that there is no reasonable possibility of the audience being misled into believing that they are listening to, or watching, actual news.
- Treat demonstrations of exorcism, the occult, the paranormal, divination (including fortune telling) or practices relating to any of these that purport, or may be thought to be real, with due care. When such demonstrations are for entertainment purposes, this must be made clear to the audience. Such demonstrations, whether purporting to be real or for entertainment purposes, must not contain life changing advice directed at an individual upon which they may reasonably be expected to act or rely. This does not apply to demonstrations which feature in films, drama or other fictional programming.
- Take due care with regard to the manner in which hypnosis is conducted during a programme.
- Provide prior warnings, as appropriate, for viewers with photo sensitive epilepsy in a manner which is clearly audible and visible.

Principle 4

PROTECTION OF CHILDREN

Children are viewers and listeners with particular needs and it is expected that broadcasters will respond to the specific needs of children as audience members and protect them from material that is unsuitable for them. This principle encourages broadcasters to respond to the diversity of children's experience and to offer them programmes that have relevance for them. This principle further requires that children are not exposed to programming that would seriously impair their moral, mental and physical development, in particular, programmes involving pornography or gratuitous violence. Broadcasters share a responsibility with parents and guardians for what children listen to and watch and in protecting children from exposure to inappropriate and harmful programme material.

Under the Broadcasting Act 2009, children are defined as persons under the age of 18 years. For the purposes of regulation, the BAI defines children's programmes as programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age. This principle recognises that children of different ages require different levels of protection and broadcasters provide a range of programming for children, some of which may deal with more mature themes, appropriate to the lived reality and experience of older children.

In fulfilment of Principle 4, broadcasters shall:

- Ensure that programme material that might seriously impair the physical, mental or moral development of children is not broadcast when children are likely to be viewing, in particular, programmes that include pornography or gratuitous violence.
- Take particular care when broadcasting programme material to children or at times when children may be watching or listening. This will include, in particular, programme material broadcast before the watershed.
- Take particular care when scheduling programming material that is broadcast either side of programmes that are likely to be watched or listened to by children, such as after the watershed, during school runs, and during school holidays.
- Take particular care to ensure that trailers and promotions for programming not reasonably regarded as suitable for children shall not be shown immediately before, during or after children's programming or before the watershed.

Principle 5

RESPECT FOR PERSONS AND GROUPS IN SOCIETY

The manner in which persons and groups in society are represented shall be appropriate and justifiable and shall not prejudice respect for human dignity. Robust debate is permissible as is the challenging of assumptions but programme material shall not stigmatise, support or condone discrimination or incite hatred against persons or groups in society in particular on the basis of age, gender, marital status, membership of the Traveller community, family status, sexual orientation, disability, race, nationality, ethnicity or religion.

In fulfilment of Principle 5, broadcasters shall:

- Not broadcast material involving threatening, abusive or insulting visual images or sounds with the intent to stir up hatred or where it is likely that hatred will be stirred up as a result against persons or groups in society, including on the grounds of race, religion, sex, ethnicity, sexual orientation or nationality.
- Only emphasise age, colour, gender, national or ethnic origin, disability, race, religion or sexual orientation when such references are justified, having regard to the principles of this Code, in particular, the importance of context.
- Recognise that the use of terms, references and images that could be considered offensive to persons and groups in society and associated colloquial terms of abuse aimed at any group requires editorial justification for their inclusion in programming.
- Show due respect for religious views, images, practices and beliefs in programme material. This is not intended to prevent the critical scrutiny of religion by means of information, drama or other programming.

Principle 6

PROTECTION OF THE PUBLIC INTEREST

The BAI supports robust and responsible programme making that facilitates viewers and listeners in understanding subjects of public importance and informs them in the public interest. The public interest consideration should not be seen as a test used to limit broadcasting freedom but rather, it is a principle that animates broadcasting and serves a democratic society.

Public interest content may include programme material that:

- Reveals or detects crime;
- Protects public health or safety;
- Exposes false or misleading claims made by individuals or organisations;
- Discloses incompetence of individuals or organisations that affect the public;
- Exposes misuse of public funds;
- Exposes the breaking of the law;
- Encourages and facilitates debate and understanding of social and political topics;
- Informs the public, or raises a debate, on matters of public importance.

However, broadcasters must have regard to other matters of importance to society. In particular, broadcasters shall protect the interests of the audience where the provision of the broadcasting service has, as one of its principal objectives, the promotion of the interests of any organisation. Broadcasters shall not broadcast anything likely to promote, or incite, to crime or as tending to undermine the authority of the State. This principle should not be interpreted to inhibit broadcasters from challenging public policy or having open debates about how government and society does or does not operate. This principle recognises that the public interest can also be adversely affected by the omission of material and/or the inadequate representation of information or viewpoints.

In fulfilment of Principle 6, broadcasters shall:

- Not broadcast material likely to promote, or incite to, crime or as tending to undermine the authority of the State.
- Protect the interests of the audience where the provision of a broadcasting service which has, as one of its principal objectives, the promotion of the interests of any organisation.
- Not encourage behaviour or views that are grossly prejudicial to the protection of the environment. Broadcasters are encouraged to inform audiences of current developments in respect of environmental matters in a manner that gives due weight to the balance of contemporary scientific knowledge.
- Ensure competitions and voting are conducted fairly under rules made known to the audience so as not to mislead the audience.

Principle 7

RESPECT FOR PRIVACY

This principle recognises that individuals have a right to privacy. Broadcasters shall respect the privacy of the individual and ensure that it is not unreasonably encroached upon either in the means employed to make the programme or in the programme material broadcast.

This principle also recognises that the right to privacy is not absolute. The privacy to which an individual is entitled is that which is reasonable in all of the circumstances. The right to privacy must be balanced against other rights and considerations, such as the public interest, freedom of expression, the rights of others, the requirements of public order and the common good. The privacy of a person may be unreasonably encroached upon where there is no good reason for the encroachment.

The casual or incidental broadcast of people in public settings in a programme shall not, normally, be considered an unwarranted or unreasonable encroachment of privacy.

Complaints regarding privacy must be made by the person whose privacy may have been unreasonably encroached upon. A parent, guardian or representative nominated by the person, may make a complaint on behalf of the person where appropriate.

In fulfilment of Principle 7, broadcasters shall:

- Ensure that any encroachment on the privacy of an individual in a programme or in the means of making a programme is not unwarranted, having regard to the principles of this Code, in particular, the protection of the public interest. Any such encroachment must be proportionate and limited to the degree that is required to inform the audience in the public interest.
- Have due regard to the concept of individual consent and ensure that participants in a broadcast are generally aware of the subject matter, context and the nature and format of their contribution so that their agreement to participate constitutes informed consent.
- Have due regard to the particular considerations that apply in the case of a vulnerable person or a child under 16 years of age, to ensure that the privacy of such persons is never unreasonably encroached upon. Vulnerable people are individuals whose personal circumstances or well-being require that extra care be taken.

- Obtain consent where programme material, or the means of making programme material, directly involves a vulnerable person or a child less than 16 years of age. Consent should be sought from the vulnerable person or child, if possible, **and** from a parent, guardian, nominated representative or person responsible for his/her primary care. It may not be necessary to obtain consent if the subject matter is trivial or the participation is minor or, based on other factors, it is warranted to proceed without consent, having regard to the principles of this Code.
- Give due consideration to requests for withdrawal of consent, having regard to the principles of the Code, in particular, the protection of the public interest and other circumstances that may arise such as contractual relationships.
- Ensure that the re-use of material, for use in different programme material or for another purpose, does not unreasonably encroach on the privacy of an individual.
- Have due regard to the impact that coverage and repeated coverage of death may have on the families and friends of the deceased.
- Have due regard for the particular considerations that apply when filming in situations of emergency or when filming victims of accidents or those suffering personal tragedy, in order to ensure that the privacy of such persons is not unreasonably encroached upon.
- Ensure that surreptitious filming or recording is only used where it is warranted.

Appendix 6

BAI Advertising and Teleshopping Rules: Daily and Hourly Limits



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

BAI Rules on Advertising and Teleshopping

(Daily and Hourly Limits)

JULY 2010

1. Introduction

Section 43(1) of the Broadcasting Act, 2009 requires the Broadcasting Authority of Ireland (BAI) to prepare, and from time to time as occasion requires, revise rules with respect to:-

- (a) the total daily times that shall be allowed for the transmission of advertisements and teleshopping material on a broadcasting service, in respect of a contract under *Part 6*,
- (b) the maximum period that shall be allowed in any given hour for the transmission of advertisements and teleshopping material (within the meaning of *section 42(8)*) on such a broadcasting service, and the Authority may make different such rules with respect to different classes of broadcasting service.

The **BAI Rules on Advertising and Teleshopping (Daily and Hourly Limits)** have been developed in accordance with this statutory obligation.

2. Jurisdiction

The **BAI Rules Advertising and Teleshopping (Daily and Hourly Limits)** apply to certain radio and television broadcasters within the jurisdiction of the Republic of Ireland. In practical terms, this includes commercial radio and television services, community radio and television services as well as institutional and temporary radio services. The rules do not apply to services provided by the public service broadcasters RTÉ or to TG4 nor do they apply to other services commonly received in this country but licensed in the United Kingdom or in other jurisdictions.

3. Definitions

Advertising

Images with or without sound and radio announcements broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of products or services, including immovable property, rights and obligations, in return for payment.

Teleshopping

A direct offer broadcast to the public with a view to the sale, purchase, rental or supply of products or the provision of services, including immovable property, rights and obligations, in return for payment.

Children's Programmes

Children's programmes are programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age.

4. Rules

Rules Applying to Commercial Television Broadcasters

4.1 Advertising & Teleshopping Spots – General

The total daily time for broadcasting advertising and teleshopping spots shall not exceed a maximum of 18 per cent of the total broadcast day.

The time to be given to advertising and teleshopping spots in any clock hour shall not exceed a maximum of 12 minutes.

4.2 Advertising Spots – Children’s Programmes

The time to be given to advertising spots in children’s programmes shall not exceed a maximum of 10 minutes in any clock hour.¹

4.3 Teleshopping Windows

Teleshopping windows shall be of a minimum uninterrupted duration of 15 minutes.

With the exception of self-promotion channels and channels exclusively devoted to teleshopping, the maximum number of teleshopping windows per day shall be eight and the total daily time permitted for teleshopping windows shall be 3 hours.²

Rules applying to Commercial Radio Broadcasters

4.4 Advertising & Teleshopping Spots

The total daily time for broadcasting advertising and teleshopping spots shall not exceed a maximum of 15 per cent of the total broadcast day. The time to be given to advertising in any clock hour shall not exceed a maximum of ten minutes.

¹ Further to the Children’s Commercial Communications Code, Teleshopping spots are not permitted in children’s programmes.

² Further to the Children’s Commercial Communications Code, Teleshopping windows are not permitted in children’s programmes.

Rules applying to Community Radio

4.5 Advertising

The time to be given to advertising in any clock hour shall not exceed a maximum of six minutes.

Rules applying to Community Television

4.6 Advertising & Teleshopping Spots

The time to be given to advertising and teleshopping spots in any clock hour shall not exceed a maximum of six minutes.

4.7 Teleshopping Windows

Teleshopping windows shall be of a minimum uninterrupted duration of 15 minutes.

The maximum number of teleshopping windows per day shall be eight and the total daily time permitted for teleshopping windows shall be 3 hours.

Rules applying to Institutional and Temporary Radio Broadcasters

4.8 Advertising & Teleshopping Spots

Broadcasters licensed further to Section 68 of the Broadcasting Act 2009 may not carry advertising, including teleshopping.

Appendix 7
Submissions



AlcoholAction
Ireland

BAI Codes and Rules

Public Call for Comments
and Observations

DECEMBER 2022

Alcohol Action Ireland (AAI) is the national independent advocate working to reduce harm from alcohol.

We campaign for the burden of alcohol harm to be lifted from the individual, community and State, and have a strong track record in effective advocacy, campaigning and policy research.

Our work involves providing information on alcohol-related issues, creating awareness of alcohol-related harm and offering public policy solutions with the potential to reduce that harm, with an emphasis on the implementation of the Public Health (Alcohol) Act.

AAI support the work of the HSE Alcohol Programme, informing strategic alcohol initiatives as an instrument of public health planning. AAI is a member of the Public Health Alcohol Research Group established by the Minister for Health in Ireland to advise on evaluation research.

We act as the secretariat to the Alcohol Health Alliance Ireland, as its co-founding member, and serve on the Board of Eurocare – European Alcohol Policy Alliance, Brussels.

Alcohol Action Ireland
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T: +353 1 878 0610
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Alcohol Action Ireland Directors: Prof Frank Murray (Chair), Catherine Brogan, Pat Cahill, Paddy Creedon, Michael Foy, Dr Jo-Hanna Ivers, Marie-Claire McAleer, Dr Mary O'Mahony, Dr Colin O'Driscoll, Dr Bobby Smyth, Tadhg Young,

Patron: Prof. Geoffrey Shannon

Alcohol Action Ireland is a registered Irish Charity. Registered Charity Number: 20052713
Company No: 378738. CHY: 15342

Alcohol Action Ireland (AAI) is the national independent advocate working to reduce harm from alcohol.

We campaign for the burden of alcohol harm to be lifted from the individual, community and State, and have a strong track record in effective advocacy, campaigning and policy research.

Our work involves providing information on alcohol-related issues, creating awareness of alcohol-related harm and offering public policy solutions with the potential to reduce that harm, with an emphasis on the implementation of the Public Health (Alcohol) Act.

Ireland has a profoundly unhealthy relationship with alcohol, which is a psychoactive substance that has huge human and financial implications across society in Ireland.

This is no small part because of the tactics of an aggressive industry acting against the population's health through aggressive marketing, lobbying against effective public health measures and corporate social responsibility strategies that deflect attention from the harmful nature of the product.

It is therefore imperative that the State and all of its agencies act together to ensure that commercial interests do not trump public health measures. The evidence that marketing of alcohol drives consumption and is harmful to young people and other vulnerable communities is overwhelming. That's why the World Health Organization recommends a complete ban on alcohol marketing. In the absence of a complete ban, comprehensive regulations are required.

Evidence demonstrating the harmful nature of alcohol marketing is now comprehensive and well documented. There is no doubt that alcohol advertising to adults and children increases consumption.

Alcohol marketing saturates society with alcohol, creating ‘alcogenic’ spaces and perpetuating the social norm that alcohol is an ordinary product. Alcohol marketers mispresent alcohol as a safe product that brings happiness, success, friendship and more, with no apparent risks or side effects.

The ubiquitous nature of alcohol marketing is particularly harmful for vulnerable groups such as people who have a problem with alcohol – that’s an estimated 578,000 people in Ireland.

The impact of marketing on young people, while outside the scope of this submission, has also been well documented. The BAI’s own figures have shown that 7 out of 10 of the top programmes watched by children are big sporting events and Diageo is the number 4 advertiser to children.

AAI believes that given the delays in implementing alcohol restrictions enshrined in national law, in particular the broadcast watershed, the BAI should take action to ensure that alcohol ads are not shown before the watershed, while waiting for Public Health Alcohol Act to be implemented. This would at least curb the frequency of alcohol ads and protect young people and vulnerable groups immediately.

AAI has serious concerns around the issue of alcohol product placement and sponsorship of programmes. As regulations around where and when alcohol advertisers can run ads tighten, the industry is continually seeking new opportunities to get around any rules put in place.

Product placement and sponsorship of popular programmes are strategies the alcohol industry is using to normalize alcohol use in society and to drive sales.

A study analyzing UK TV shows in 2015 found very high levels of prevalence of alcohol product placement on the popular shows. An analysis of almost 3,000 minutes of national TV revealed that just one in 20 characters' drinks were a glass of water, while more than a third were alcoholic beverages.

Over two one-week periods, soap operas were found to dedicate 39% of "drinks screen time" to alcohol, with sitcoms giving 25%, dramas 34%, and The Archers radio show 44%. It is likely that research in an Irish context would yield similar results.

In respect of sponsorship, it is concerning that RTE allows alcohol brands to sponsor programmes and create marketing campaigns that sees alcohol brands expand their sponsorship reach across other RTE platforms, i.e. the RTE guide and website.

The Cassillero Del Diablo sponsorship of the Normal People was particularly insidious, ie increasing wine ads during COVID when lockdown was at its height and home drinking and domestic abuse was spiking, as evidenced by the words of the brand itself:

"In the early days of Covid19 TV played a hugely important role in keeping people informed and entertained. With TV being the most trusted medium we identified the opportunity to bring forward our plans and maximise TV's potential during the lockdown."

The BAI has a responsibility to ensure damaging campaigns like this are not allowed to occur.

Alcohol is 'no ordinary commodity – 'it causes cancer, is neurotoxic, a teratogen and addictive. Advertising of alcohol is therefore unlike that of any other product. The wellbeing of citizens and public health considerations must be given primacy over the commercial interests of the alcohol industry.

AAI recommends that:

- The BAI should take action to ensure that alcohol ads are not shown before the broadcast watershed, while waiting for Public Health Alcohol Act to be implemented.
- Alcohol brands (including zero alcohol products) should not be allowed to sponsor programmes and the BAI should show leadership around this issue.
- Alcohol brands should not be allowed to use sponsored content campaigns to advertise across platforms allowing it to normalise the visibility of a harmful product and drive consumption of alcohol.

Consultation response

Broadcasting Authority of Ireland

Sent by email to codes@bai.ie

21st December 2022

To the Broadcasting Authority of Ireland

RE: CONSULTATION on Broadcasting Authority of Ireland's Codes and Rules review

Many thanks for the opportunity to comment on the Broadcasting Authority of Ireland's Codes and Rules review. My comments are as follows.

1. Code of Programme Standards

The codes of Programme Standards are generally very good. In respect of Principal 6: 'Protection of the public interest', I would suggest that this be expanded to include the protection of environmental health. This would ensure that the urgent need for a national and international response to climate change and biodiversity loss is included in the code.

In particular this would relate to the manner in which highly carbon polluting or highly environmentally destructive products or activities are presented in the broadcast content. This would prevent situations where broadcasters platform, support or praise certain polluting activities without information for the public on the destructive impacts on the environment and the climate of such activities or products, e.g. private cars, air travel, intensive agriculture, fossil fuels and fossil fuel networks in much the same way as alcohol or cigarettes are dealt with.

2. BAI Code of Fairness, Objectivity and Impartiality in News and Current Affairs

I welcome the suggestions to update the code in how it deals with sustainability, including climate change and science based factual reporting, for example coverage of pandemics and climate change. I would ask that this code is expanded to include guidance on how to deal with biodiversity loss and nature.

I believe the BAI would better serve the public if factual information was presented on the carbon and /or environmental impact of activities or sectors in the context of news and current affairs.

In much the same way as public health information was provided alongside news and current affairs programming in relation to the Covid 19 pandemic 'wash your hands, wear a mask', public information on the serious nature of the climate and biodiversity crises should be given with all coverage of these issues.

We must in our public broadcasting allow rigorous debate of issues, but more often than not, broadcasters will platform the most extreme views on environmental topics which does not

serve to educate the public on our collective responsibility to take action, particularly when these actions challenge the status quo.

Actions which reduce greenhouse gas emissions are often opposed and challenged in bad faith by different actors, but it is important that news and current affairs programming are used to inform the public on the nature and type of climate action and environmental action that is necessary in Ireland and globally, especially in the context of recent international agreements such as COP 27 on Climate and COP 15 on Biodiversity.

Ensuring that discussions are presented in the context of the carbon budgets would be one way to ensure the context is not lost in the debate of 'for' and 'against'.

It is also important that the code reflects the influence of vested interests in debates on climate and environmental action. This would prevent the case where individuals or entities with vested interests against certain actions, policies or regulations are platformed in news and current affairs programmes presenting their view on why certain actions are a bad idea. For example, individuals or entities with business interests in dairy farming refuting the role of the dairy industry in water pollution or climate change, or individuals or entities with business interests in turf cutting challenging the importance of clean air and the impacts of poor air quality on human health and the impacts of burning turf on climate change and biodiversity decline.

3. General Commercial Communications Code

I would suggest that the code on commercial communications be updated to include an additional principle 'the protection of public health and environmental health'

The inclusion of this principle would impact on the advertising, marketing and sponsorship of highly carbon polluting and environmentally degrading activities and products such that products or activities that have a highly negative impact on climate or the environmental cannot be platformed without a disclaimer on their impact in much the same way that alcohol or cigarettes are treated.

In addition, I would suggest that the code is updated to ensure subtle greenwashing or promotion of products or services that undermine climate action are not permitted. Greenwashing is prolific across Ireland and Europe. In 2020 the European Consumer Protection Cooperation (CPC) Network undertook an analysis of sustainability claims made by EU traders^[1]. They found that in almost half of the cases authorities had a reason to believe the claim may be false or deceptive. In addition,

- In 57.5% of cases CPC authorities did not consider that the trader provided sufficient information which would allow them to assess the claim's accuracy.
- In 37% of cases CPC authorities considered that the claim included vague statements such as "environmental friendly", "eco-friendly", "sustainable" which aimed to convey the impression to consumers that a product or a trader's activity had no negative impact, or only a positive impact, on the environment.

- Moreover, in 59% of cases CPC authorities found that the trader had not provided a qualification or other evidence to support its claim in an easily accessible way

And finally, I would suggest that any updates to the Code be aligned with the forthcoming European Commission package of measures to make sustainable products the norm in the EU, which was adopted in March 2022[2]. The proposals are central to achieving the objectives of the European Green Deal, Europe's growth strategy to transform the EU into a fairer and more prosperous society and to implementing key strands of the 2020 Circular Economy Action Plan. They will contribute to reaching the EU's environmental and climate goals, doubling the circularity rate of material use and achieving energy efficiency targets by 2030.

The Commission's objectives on sustainable products aim to ensure that by 2030:

- a significant part of the products on the EU market are designed to be more durable and energy- and resource efficient, repairable, recyclable, and with preference for recycled materials
- companies from all over the world are able to compete on a level playing field without being undercut by others that leave society to deal with their environmental damage
- consumers have access to the information they need to make more sustainable choices, are better protected against practices harmful to the green transition and have longer-lasting products
- companies can access the data they need to ensure environmental sustainability and circularity of their products and business models

Companies will have to substantiate environmental claims using the EU methodology 'Product Environmental Footprint (PEF)'. The method is based on a Life cycle Assessments (LCA) of a product from extraction of raw materials through production and use, until final waste management.

Sincerely,



Brian Leddin TD

[1] [European Commission 2020 Sweep on misleading sustainability claims](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en#2020-sweep-on-misleading-sustainability-claims)
https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en#2020-sweep-on-misleading-sustainability-claims

[2] https://commission.europa.eu/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/sustainable-products/about-sustainable-products_en

From: Brendan O' Regan
Sent: Saturday 17 December 2022 11:26
To:
Subject: Codes Consultation

From Brendan O'Regan,

I would like to make a few points on the consultation re issues around broadcasting codes -

The codes themselves I've never found much of a problem with - the main problems are with enforcement and interpretation.

I think it's vital that there be a right of appeal or appeals process if a complainant feels they or their complaint has not been dealt with adequately by the BAI.

I think it's a problem that the default position of the BAI seems to be that the broadcaster is nearly always right - the vast majority of complaints are rejected even if they seem to have validity and are obviously made in good faith.

I think it's too much of a let-off for broadcasters that their lack of objectivity and neutrality can be defended as 'editorial decision' or defended because the debate/discussion was 'framed' in a certain way. The unfairness can be in the framing.

While objectivity, neutrality and fairness are prominent standards, and that's welcome, I think the concept of 'balance' should be included and fleshed out more.

Only in the very last resort, and in the most blatant cases, should complaints be judged to be vexatious, frivolous or in bad faith. A genuine, well-meaning and professionally submitted complaint should not be treated in this way.

Sometimes there are long gaps between the publication of decisions.

There should be greater clarity and transparency re the difference between the Executive Complaints Forum and the Compliance Committee.

The BAI's remit should include material on the RTE Player and other catchup services - it seems inappropriate that an item deemed to contravene broadcasting standards may be allowed to remain 'published' on these online outlets.

I wouldn't like debate on contentious issues to be curtailed because certain views are deemed 'unacceptable'. But yes of course such debate should be fair and balanced as far as practicable.

The codes should deal with a situation where, say, someone from one side of a debate is given a grilling, while in a later programme a person from the other side is given a soft interview. I don't think it's enough just to pass this off as different styles of different interviewers.

It is worth noting that BAI staff are consistently professional, obliging and courteous, and are prompt to reply.

As I reflect on this I may follow up with other points,

Best wishes,
Brendan

Submission from Colette Finn

I wish to make the following observations to the BAI in how they manage their remit into the future:

- Sustainability, including climate change – we know that adding carbon to the atmosphere is causing potentially catastrophic climate breakdown. Therefore, I think at a basic minimum companies that advertise products or services that promote the use of fossil fuels should warn consumers of this important risk.

The use of plastics has proved to be very problematic. Plastics are inedible and very long lasting. Therefore their incorporation into our ecosystem will have harmful effects which will be detrimental to our health and that of other organisms that we need to survive. The risk caused by using plastics should also be highlighted.

- Science-based factual reporting for example coverage of pandemics, climate change etc. Often there is no one right answer. Therefore, the ability to deal with complex evolving situations needs to be dealt with in the code. While scientific discovery has been hugely beneficial to our understanding of the world, we come to it with our own biases. For example, scientists have sometimes ignored the differences between male and female responses in medicine. This has led to a one size fits all approach and the assumption that sex differences don't occur. Complexity and underlying assumptions need to be highlighted when reporting scientific data. This needs to be balanced with causing unnecessary confusion and uncertainty so it is not an easy balance to strike.
- Election and referenda coverage. While it is important for a broadcaster to remain impartial this should not mean that all arguments are given equal coverage. Ultimately, we live in a democratic republic where our values dictate that all people are born with equal rights to be heard but not to say anything they like. The boundaries must be broad but not so broad that anything goes. Reality is our best understanding of the known world. That can change e.g. our understanding of the world changed when Einstein argued that time is not a constant in his theory of relativity. Therefore scientific facts are our best understanding at that point in time. However our values have more certainty and these should govern any debates in elections and referenda.
- Hate speech, including gender-based violence. As with the above points there are positions that offend our democratic values. In a democracy we cannot allow a platform for that which undermines our democracy. Hate speech and racism offends our democratic values and the BAI should not be impartial to this. Something can be wrong without being illegal therefore the BAI needs to articulate its values in broad terms. Equally violence offends the right of the person to bodily autonomy. With the definition of violence being expanded to include coercive control the BAI needs to code that it is not acceptable to excuse violence in its broadest terms. It should not allow a media outlet to platform opinions that offend these democratic principles.
- Cosmetic surgery and services. – I think there is too much pressure on people to look a certain way. I think it is unhealthy and has a spill over effect on people who might otherwise not use these services. It should therefore be only for adult audiences. I consider that children should be protected from being pressurised into looking older and sexier than they are.
- Cryptocurrency and related financial services. The money system is a political, legal and economic construct. If you accept that money is an agreement within a community to use something standardized as a medium of exchange then cryptocurrency is a version of that. Trust is a key ingredient in any agreement and fundamentally this is the issue when dealing with these topics.

- Product Placement. – It is no coincidence that tobacco companies used advertising to promote a harmful product. This is also the case with fossil fuels and other harmful products. The BAI needs to be cautious about products that are harmful but not illegal based on our best scientific knowledge at that time. Consumption is a major issue in a finite world. Is unlimited consumption just? 'Consumption in the Republic of Ireland exceeded adjusted per person planetary boundaries in six of seven measured domains. Going by this analysis, consumption and its associated environmental impacts will have to be the target of sustained and significant change to operate within a safe space for the biosphere.' (Nevin Economic Research Institute, 2021).
- Gambling. – this is a potentially addictive activity and should only be permitted for adult audiences and informed by the best available knowledge on addiction prevention.
- Medical products, treatments, and services. - supplier induced demand is an issue with medical treatments and the BAI needs to balance its education remit with concern for people who may be induced to have procedures for which there is weak scientific evidence.

-----Original Message-----

From: Celestine O'Reilly

Sent: Wednesday 23 November 2022 10:58

To:

Subject: Views on broadcasting codes and rules.

Under Principle 3 and Principle 6

Climate emergency

Dear Sir or Madam

It was reported at COP 27 that Dublin Airport was the single largest emitter of greenhouse gases in Ireland in 2021.

In view of this it is irresponsible to promote, encourage or discuss travel which involves getting on a plane, or to advertise same. It is also irresponsible to report on aviation as if it were a positive.

The government declared a climate emergency, which is at odds with its action plan for aviation; but it is accepted that the climate emergency is an existential threat caused by greenhouse gas emissions. At the recent COP 27 talks, UN chief António Guterres said we are on a "Highway to Hell". Taoiseach Micheál Martin said that Ireland would do everything in its power to ensure a sustainable planet. The BIA now has the opportunity to play its part.

I write on my own behalf.

Yours faithfully

Mrs C O'Reilly

-----Original Message-----

From: Brian Greene

Sent: Wednesday 21 December 2022 09:15

To:

Cc:

Subject: submission from Community Radio Ireland (Craol)

Below is Comments and Observations on BAI Codes and Rules from Craol - Community Radio Ireland

Regards Brian Greene

Comments and Observations on BAI Codes and Rules

On rules on adverts and teleshopping - as the codes will be used by the regulator in the future to regulate broadcasters and on demand services, the current jurisdiction excludes RTÉ and TG4. Consideration should be given to include RTÉ and TG4 in the jurisdiction of the code should the codes be expected to be expanded to include on-demand services.

In the BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs an objective is "To protect the interests of citizens, in their right to access fair, objective and impartial, news and current affairs content." This is in part similar to a right as expressed in article 19 of the United Nations Declaration on Human Rights.

The Community Media sector is to the forefront in bringing about this right in giving the citizens access to their community broadcaster. As Community Media is not yet universally available across Ireland the code could reflect this aim of community media while expecting the same universal rights of access for citizens to RTE and commercial media in Ireland.

Content from broadcasters that goes behind a paywall is also not accessible, and with the advancement of on demand and paywalls and podcasts from traditional broadcasters the codes could reflect the need to enshrine access to well mediated and editorially fair content universally to all citizens.

Another objective is "To promote independent and impartial journalism in the provision of news and current affairs content;" While sports coverage is not mentioned in the code, the Audiovisual Media Services Directive allows for fair use of sports coverage in news media.

There is a worrying growing trend where GAA content is falling under broadcasting contracts with commercial broadcasters. There needs to be a leveling of the playing pitch when it comes to access to cultural and indigenous sports reporting in news services on community media.

The codes should transpose the safeguarding of access to these local sports ensuring that community media is not locked out of the playing grounds to cover local sport in news.

On political advertising - Craol supports the keeping of prohibitions on political advertising for all broadcasters. There are no changes required to the codes regarding election moratoriums and party political broadcasts.

On advertising clock hours - community radio - The limit of 6 minutes for community radio should remain but the clock hour would be better changed to rolling hour where sport, mass or prayer broadcasts fill an hour the rolling hour principle would allow these hours to have advertisements bookended to the broadcast while not exceeding the total number of minutes across a day.

While not expressly addressed in the codes - community radio is restricted to local advertising within its franchise area. As many goods and services are more and more traded online and delivered into our franchise areas including hot food, there should be an updating of codes and thus licence terms concerning prohibitions on services located outside our area advertising on community media.

Finally, naming the price of events in editorial - the codes should reflect the reality for community media that editorial about local non commercial events that have a price tag or entry fee should not be prohibited from mentioning the price of admission as this is necessary information and not commercial messaging.

From:

Sent: Wednesday 21 December 2022 19:06

To:

Cc:

Subject: Drinks Ireland position on General Commercial Communications Code (GCCC)

Good afternoon,

Drinks Ireland welcomes the opportunity to share our views on the General Commercial Communications Code (GCCC) in light of the Authorities public consultation. Drinks Ireland member companies are committed to marketing and advertising their products responsibly and they operate rigorous internal marketing codes and initiatives in addition to complying with a comprehensive set of international, national and sectoral level codes and pledges, including the GCCC as well as the ASAI and AMCMB codes in the Irish market. The industry's adherence to these advertising and marketing initiatives demonstrates its commitment to contributing to a responsible drinking environment.

Drinks Ireland asks that if revisions changes to the GCCC, that they are made using a science- and evidence-based approach. Drinks Ireland stands by the Principles of the Code and abides by its rules, focusing on those related to alcohol as detailed in Section 11. The rules are effective and workable and industry is proud of its ability to uphold these high standards in their current iteration. We hope that any revisions are equally achievable. Section 11 of code as it currently stands, is comprehensive and being complied with by the industry. Therefore there is no need for change .

We would like to take this opportunity to highlight that Drinks Ireland. members also strictly adhere to the Children's Commercial Communications Code and its effectiveness is demonstrable by the low number of complaints.

The BAI has historically included Drinks Ireland in stakeholder meetings, and we hope to cooperate and engage with the new media regulator, the Coimisiún na Meán, in the same way.

Kind regards,

Jonathan

Jonathan McDade

Drinks Ireland

Director of Drinks Ireland Beer / Drinks Ireland Cider / Drinks Ireland Wine

84/86 Lower Baggot Street

Dublin 2

D02 H720

From: Sarah Fitzgerald
Sent: Wednesday 21 December 2022 15:24
To:
Subject: BAI Code - GCCC comments

Good afternoon,

Food Drink Ireland (FDI), including Prepared Consumer Foods and Dairy Industry Ireland, welcomes the opportunity to share our views on the General Commercial Communications Code (GCCC) in light of the Authorities public consultation. FDI member companies are committed to marketing and advertising their products responsibly and they operate rigorous internal marketing codes and initiatives in addition to complying with a comprehensive set of international, national and sectoral level codes and pledges, including the GCCC. The industry's adherence to these advertising and marketing initiatives demonstrates its commitment to contributing to a healthier food environment.

FDI asks that any changes to the GCCC are made using a science- and evidence-based approach. FDI stands by the Principles of the Code and abides by its rules, focusing on those related to food, nutrition and health as detailed in Section 16. The rules are effective and workable and industry is proud of its ability to uphold these high standards in their current iteration. We hope that any revisions are equally achievable.

Although not under review, we would like to take this opportunity to highlight that FDI members also strictly adhere to the Children's Commercial Communications Code and its effectiveness is demonstrable by the low number of complaints.

The BAI has historically included FDI in stakeholder meetings and we hope to cooperate and engage with the new media regulator, Coimisiún na Meán, in the same way.

Kind regards,

Sarah

Sarah FitzGerald
Public Affairs Executive
Food Drink Ireland
lbec
84/86 Lower Baggot Street
Dublin 2
D02 H720

Wireless Ireland's response to the BAI's Call for Comments and Observations on the BAI Codes and Rules

Wireless Ireland welcomes the opportunity to respond to this public consultation on the BAI's Codes and Rules, based on our experience applying the BAI's Codes and Rules in operating our radio stations. Wireless Ireland is the largest operator of local radio in the Republic of Ireland, with stations including FM104, Cork's 96FM and Live 95. Our radio stations reach 743,000 listeners in Ireland every week.¹

We share many of the BAI's objectives, as set out in the Codes and Rules. For instance, we want audiences to be protected from harm and for broadcasters to adhere to high editorial standards in programming. However, the current regulatory framework as set out in the Codes and Rules is overly-prescriptive, difficult to navigate in the day-to-day operation of our radio stations and out of date with the modern media landscape.

Live radio remains subject to stricter regulation than any other means of audio distribution, including livestreams and podcasts. This approach to regulation - where the same content is regulated differently depending on the distribution mechanism - is out of step in a market where media businesses operate across several distribution channels (e.g. radio, livestreams, podcasts). This patchwork of regulation creates a heavy compliance burden for us as a business, but it also creates a complex landscape for our advertisers to navigate. Because of the restrictive nature of the current regulatory regime, advertisers perceive radio as slow to adapt to market changes and inflexible compared to other advertising spaces (e.g. online environments). This creates a disadvantage for commercial radio businesses in attracting advertisers.

We welcome the establishment of the Media Commission, given that it has been founded on the basis that there should be a holistic, platform-neutral approach to supporting the media sector which reflects the market reality. We see this change as an opportunity to transition towards a modern regulatory framework for the radio and audio sector. This would involve replacing the current restrictive rules set out in the Code and Rules with simplified, liberal guidance.

There are several specific changes required to level the regulatory playing field for radio. Integrated commercial communications should be permitted in radio programming, without counting towards advertising minutage, provided that the commercial arrangement is transparent to listeners and advertising rules are adhered to in the content and scheduling of integrated commercial messaging. The approach to commercial sponsorship on radio should be more proportionate, including liberalising restrictions on the proximity between sponsorship messaging and advertising from the same client in an advertising break. There should be a more flexible approach to advertising minutage, so that advertising minutage is averaged across the broadcasting day, or parts of the day, rather than adhering to a strict ten minute per hour limit.

¹ JNLR, weekly reach from October 2021 to September 2022.

These changes would have a transformative effect on the commercial radio sector, encouraging fresh interest and investment in local commercial radio, and helping to support a vibrant, competitive commercial radio and audio sector in Ireland into the future. It would strike a more proportionate balance between protecting audiences and their interests, and enabling local commercial broadcasters to sustain their businesses.

This change in approach would bring Ireland more in line with comparable markets, including the UK. The Broadcasting Code in the UK was amended roughly a decade ago to take a more liberal approach to commercial content on radio. In the time since, the commercial radio sector has demonstrated an excellent record of compliance in relation to commercial content, and is enjoying record audience reach and share.²

The audio market has changed significantly since the last review of the Codes and Rules was conducted in 2016

Audio content remains very popular in Ireland, but the ways in which audiences interact with it has changed since 2016, given the growth in online audio provision and the take-up of connected devices. There is now more diversity for consumers in both the range of audio content available and how they choose to access it. While the proportion of audiences listening to live radio weekly has remained relatively stable (93% in 2019 vs. 90% in 2022), the proportion listening to podcasts weekly has increased significantly (9% in 2019 vs. 23% in 2022). In 2018, just one in ten Irish people owned a smart speaker - a growing means of consumers discovering and accessing audio content - compared to four in ten in 2022.³

Looking beyond the audio market, Irish audiences are now well used to operating in digital environments and are familiar with advertising-funded online services; two-thirds of Irish adults use Facebook, and a similar proportion use YouTube.⁴ Irish audiences are familiar with online audio services that carry advertising; 40% listen to music streaming services, 35% listen to YouTube music and 23% listen to podcasts weekly.⁵

Given the changing landscape, Irish radio broadcasters have adapted their distribution model to satisfy new ways of listening, while continuing to serve audiences through traditional means. Most are now digital operators, producing livestreams and podcasts in addition to live radio content. This presents two key challenges: the first is a compliance challenge, as broadcasters need to adhere to differing sets of codes. The second is a commercial challenge as radio broadcasters must now compete with large global platforms - not just domestic rivals - for both attention and advertising revenue.

² Radiocentre, October 2022,

<https://www.radiocentre.org/commercial-radio-listening-surges-to-all-time-high/>

³ JNLR 2022-2 Audio Module (April 22 to June 22 - 3 mth data). Base: All 15+. Published in Radiocentre Ireland, October 2022, [The Irish Audio Market Report](#).

⁴ Reuters Institute, June 2022, [Reuters Digital News Report, 2022](#).

⁵ JNLR 2022-2 Audio Module (April 22 to June 22 - 3 mth data). Base: All 15+. Published in Radiocentre Ireland, October 2022, [The Irish Audio Market Report](#).

Regulation has not kept pace with these market changes, with negative consequences for commercial radio broadcasters

Irish radio is a heavily regulated sector, compared to both other comparable jurisdictions (e.g. the UK) and to other means of distribution (e.g. online environments). Radio content broadcast live on air is governed by a different regulatory regime to content provided on-demand, over a livestream or as a podcast, so Irish radio broadcasters must now operate two different sets of commercial communications codes. Applying different regulatory regimes to different distribution channels creates a challenging operating environment for radio businesses, but as a commercial business reliant on advertising revenue, it also creates an unnecessarily complex environment for our advertisers to navigate. When the Codes are applied together, they are heavily prescriptive and strictly limit our offer to advertisers. This negatively impacts how advertisers perceive the radio sector.

Advertisers expect to be able to run campaigns across several platforms (e.g. radio, TV, online), and it creates confusion and frustration when sponsorship or advertising that is permitted online, on a livestream or a podcast isn't permitted on live radio. For example, a company offering cosmetic treatments (e.g. teeth whitening) could not refer to a prize or competition on FM radio, but could heavily promote such offers to listeners on a podcast.

This lack of regulatory coherence across mediums creates a real disadvantage for commercial radio in attracting advertisers. Advertisers perceive radio as slow to adapt to changing market dynamics and consumer expectations, inflexible and at odds with the approach taken on other platforms, especially online. We see advertisers moving to more liberally regulated spaces online as a result of the stricter regulatory approach to radio, a trend that will likely continue if regulation remains unchanged.

The current regulatory approach is negatively impacting commercial radio revenues, making it more challenging to maintain a sustainable commercial radio business. Liberalising the regulatory approach to commercial communications on radio to enable commercial messaging in programming, with provisions for ensuring transparency, would have a significant, positive impact on the sustainability of the commercial radio sector.

This review presents an opportunity to shift away from a regulatory culture historically focused on restricting commercial content, to a modern, flexible culture of enablement

The audio sector in Ireland would benefit from an approach that levels the playing field to enable radio businesses to better compete with online platforms for advertising revenues, and trusts modern, media literate audiences to delineate between editorial and commercial content, given their familiarity with commercial content in online audio environments.

Below, we have set out our view on how this approach could be applied to each of the Codes below, based on our experience applying them in operating our radio stations.

1. Code of Programme Standards and Code of Fairness, Objectivity and Impartiality in News and Current Affairs

We agree with the principles of Code of Programme Standards and Code of Fairness, Objectivity and Impartiality in News and Current Affairs. We have no views, at this time, on amendments that should be made to improve the specifics of these Codes.

2. General Commercial Communications Codes

We support the principles of editorial integrity and transparency in relation to commercial content, to protect the audience and their interests. However, the General Commercial Communications Code should be modernised to reflect the reality of the commercial media landscape and consumers' expectations. Continuing strict restrictions on integrated commercial messaging in programming and on commercial sponsorship is out of step in today's market, in which Irish consumers are familiar with paid promotions in other digital environments.

The Code should be changed to permit integrated commercial messaging in editorial content (e.g. presenter live-reads of commercial content), without compromising editorial integrity (e.g. through appropriate signalling). This would bring radio more in line with online audio content, where presenter live reads are used in a way not currently permitted on live radio. For example, presenter live reads are common in podcasts made and/or popular in Ireland (e.g. The Laughs Of Your Life, My Therapist Ghosted Me), and audiences are familiar with the format.

The Code should also be amended to introduce a more proportionate approach to commercial sponsorship on radio. This would include liberalising restrictions on the proximity between sponsorship messaging and advertising from the same client in an advertising break. The Code should recognise that today's media literate audiences are capable of distinguishing between sponsorship announcements, advertising for a sponsors' products or services, and editorial content.

In practice, these suggestions entail amending principles, such as Principle 1 in the Code, in relation to radio. Unlike TV, radio is not in scope for any of the overarching European legislation placing restrictions on integrated commercial messaging in broadcast content. It would also require revising radio specific rules in Section 6 and Section 9 of the Code, including rules 9.1 - 9.3. The existing restrictions in the Code go beyond what is required by Irish and European law, and what is required to protect consumers and their interests. Harmonising regulation with the statutory requirements would reflect the fact that a less interventionist regulatory approach is now a more proportionate approach.

A revised Code should trust audiences to be capable of identifying signalled commercial messaging and place more trust in radio broadcasters - who value their audiences - to appropriately manage commercial messaging. Amending the Code would help to level the regulatory playing field between media platforms, enabling commercial radio stations to better compete for advertising spend, and benefit the sustainability of local commercial radio stations.

3. Rules on Advertising and Teleshopping (Daily and Hourly Limits)

There is an opportunity for the regulatory approach to advertising minutage limits on radio to shift towards a more flexible model. We are not advocating for an increase in the minutage limit. Rather, we suggest moving away from a ten minute limit per hour to an approach that averages advertising minutage across the broadcasting day or across a number of hours within the day.

This better fits the natural flow of programming, so a radio presenter can finish a discussion on an important topic or let a conversation naturally reach a conclusion before introducing an advertising break, rather than forcing a pause to introduce a break for compliance purposes. Under a more flexible model of averaging across the day, the presenter could maintain the flow of conversation and move the commercials to the following hour, which would make for a better, more informed piece of content for the listener.

As a point of comparison, in the UK, there is no minutage cap and commercial radio stations are trusted to manage their advertising minutage. In our experience in that market, radio stations are disincentivized from the excessive concentration of advertisements around certain programmes or times of the day because of the impact it would have on the listening experience.

Shifting towards a more liberal approach to advertising minutage would benefit the commercial radio sector, our audiences and our advertisers in allowing for a more flexible compliance approach and helping us to produce better content.

4. Making the Codes and Rules more accessible

A final, overarching point is that the Codes and Rules are lengthy documents and often repeat the same or similar points. The Codes and Rules would provide clearer, more accessible guidance to broadcasters if they were streamlined. All four documents could be rolled into one document (e.g. a Broadcasting Code), with sections for each policy area (i.e. programme standards; fairness, objectivity and impartiality in news and current affairs; commercial communications; and advertising and teleshopping). This would make it easier for broadcasters to apply the rules and guidance in the operation of their radio stations.

To summarise our key points in response to the Call for Comments and Observations:

- The Codes and Rules should be updated to reflect changes in the media market and consumer behaviour since the last review in 2016. The fact that different regulatory approaches apply to the same or similar content being distributed via different channels (i.e. online or offline) is outdated in today's media market.
- This requires a modernisation in the regulatory approach to commercial radio. Integrated commercial communications should be permitted, without counting towards advertising minutage, provided that the commercial arrangement is

transparent to listeners and that advertising rules are adhered to in the content and scheduling of integrated commercial messaging. There should be a more liberal approach to sponsorship on radio, including liberalising the enforced separation of sponsorship and a sponsor's advertising.

- With regards to the Rules on Advertising and Teleshopping, we support a modernisation of the approach to advertising minutage, so that minutage is averaged across the broadcasting day or across hours the day, rather than enforcing strict hourly limits. We believe this would help us create better content for audiences, give more flexibility for our advertisers, and lower the regulatory compliance burden on the radio sector.
- These changes would have a significant positive impact on the sustainability of the commercial radio sector, making it more attractive to new and existing advertisers. It would help to create a more coherent regulatory approach across the audio market (e.g. radio, podcasts, on-demand radio).
- Overall, the Codes and Rules should shift from a starting point of prohibition regarding commercial communications on radio, to one of enablement, while respecting the principle of transparency. We believe this change in approach would strike a more proportionate balance between protecting audiences and their interests, and helping local commercial radio broadcasters sustain their businesses into the future.

December 2022

Should you have any queries related to this submission, please contact Aoife Hyde, Public Policy Manager, [or Alex Stepney, Head of Policy and Public Affairs.](#)

Observations from WLR re: BAI broadcasting codes and rules as part of current review process....

Code of Fairness, Objectivity and Impartiality in News and Current Affairs:

- 1) With regard to election coverage (also part of this review) we refer to the broadcast moratorium which applies to broadcast media but does not to print and social media. If a moratorium is to be in place, we would argue it should be more equitable. The current situation also places practical difficulties on broadcast media when it comes to news reviews and discussing the morning papers on election day.
- 2) While we strive to uphold the rules re: balance consistently, the pandemic and also ongoing reportage of climate change, for example, have highlighted maybe a lack of clarity, we would argue, on the expectations.

For example, during our coverage of the pandemic, we received (as we're sure other media did) quite a lot of accusations/complaints (non formal) re: a perceived 'lack of balance and objectivity' when it came to, for example, having public health experts and others discussing issues on our current affairs programme such as Covid illness stats and death stats as 'fact'. We feel there is maybe a 'grey area' here in terms of the expectation on us to provide balance here.

Also, more and more the term 'climate change' is being replaced by 'climate breakdown' as it becomes accepted that what is happening is ultimately a very big negative. Again, there are those who would deny this and again, we would have concerns that the current rules are vague enough to allow a complaint of lack of balance.

- 3) Broadcasting expressing their own view...

Again, we would see the reasoning of this MOST of the times but to use climate change example above again, if a current affairs broadcaster expresses concern/upset about an issue such as climate breakdown/change, does this leave (unfairly and unjustly) leave them open to possible complaints about objectivity and impartiality? Maybe again, we just need more clarity, we would contend, as we prepare to deal with this important issue locally, nationally and internationally more and more going forward.

General Commercial Communications Code:

- 1) Re: advertisements towards a political end....

WLR, as a licensed commercial broadcaster, believes that not allowing radio stations broadcast advertisements during a local or national election is an unfair code imposed on broadcasters.

As a station that is obliged by law to broadcast a minimum 20 % news and current affairs, that we are not allowed broadcast important political messages to our audience or avail of

advertising revenues to help pay for the news service we supply - while newspapers and social media benefit - is unfair to our industry.

2) Re: sponsorship must not constitute advertising....

With regards to the rule that a sponsorship announcement or reference shall not make special promotional references to a product/service; include advertising copy, prices or service of the sponsor etc., we at WLR believe that this code is too restrictive and hinders the station in selling sponsorship of programmes and features. We would like to see sponsored programmes allow a call to action, information on pricing and allow products or services be promoted as part of the station's offering...

3) Advertising of cosmetic surgery and services, cryptocurrency, gambling or medical products etc...

While no right-thinking person or entity would want to promote hate speech, cigarette smoking or vaping, we see no reason why adults listening to radio should not hear advertisements for cosmetic surgery, cryptocurrency, gambling or medical products, treatments or services. The reality is that all of these products and services are being advertised on social media platforms or on non-terrestrial television services available in Ireland.

Rules on Advertising and Teleshopping (daily and hourly limits)

- 1) Re: rules applying to commercial radio broadcasters, the current maximum time per clock hour permissible for advertising is 10 minutes We would like to see that increase to 12 mins per hour and believe there is a strong case for same.

Observations from Angela Deegan on BAI codes and rules as part of BAI's review process

In his video message on the launch of the Third IPCC Report in April this year, the UN Secretary General stated that "We are on a fast track to climate disaster: Major cities under water. Unprecedented heatwaves. Terrifying storms. Widespread water shortages. The extinction of a million species of plants and animals. This is not fiction or exaggeration. It is what science tells us will result from our current energy policies. We are on a pathway to global warming of more than double the 1.5-degree limit agreed in Paris." He added "To keep the 1.5-degree limit agreed in Paris within reach, we need to cut global emissions by 45 percent this decade." This and other authoritative sources on the existential threat to humanity that is the climate change crisis inform my submissions below on this consultation.

Code of Program Standards

Principle 6 - Protection of the Public Interest

Education of broadcasters:

To ensure proper coverage of the most serious existential crisis facing the world - the combined climate/biodiversity crisis - add a rule requiring that broadcasters complete regular, (annual at minimum) certified training on the climate and biodiversity crises. This is paramount to ensuring quality of coverage. Principle 6 - Protection of the Public Interest - states that "BAI supports robust and responsible programme making that facilitates viewers and listeners in understanding subjects of public importance and informs them in the public interest". However, broadcasters cannot adhere to this principle in relation to the dual crises of climate and biodiversity unless they are educated to a high standard on these complex, interrelated topics.

Interdisciplinary coverage of sustainability

In relation to Principle 6 - Protection of the Public Interest - add verbiage that stories related to ecology, climate, biodiversity and social justice should be covered in an interdisciplinary manner. They are intricately intertwined. They cannot be covered adequately as stand-alone topics; Sustainability must become a prism through which stories are approached.

Guests' conflict of interest in relation to energy, environment, biodiversity, sustainability, climate change

In relation to Principle 6 - Protection of the Public Interest - add a rule that broadcasters seek to avoid having guests who have a conflict of interest in relation to the matters being discussed. For instance, broadcasters must be circumspect about interviewing fossil fuel company directors in regard to energy or climate change and interviewing climate deniers in regard to energy, transportation, agriculture, food, environment or climate change. It should be standard practice that broadcasters check, for instance, if a proposed guest is a signatory to the [debunked World Climate Declaration "There is no Climate Emergency"](#). The code needs verbiage requiring that, at minimum, in such cases the host explicitly states the nature of the conflict of interest and ensures that subject matter experts who do not have a conflict of interest are

interviewed in the same program. In order to be aware of conflicts of interest, guests must be researched to uncover any climate denialism.

General Commercial Communications Code

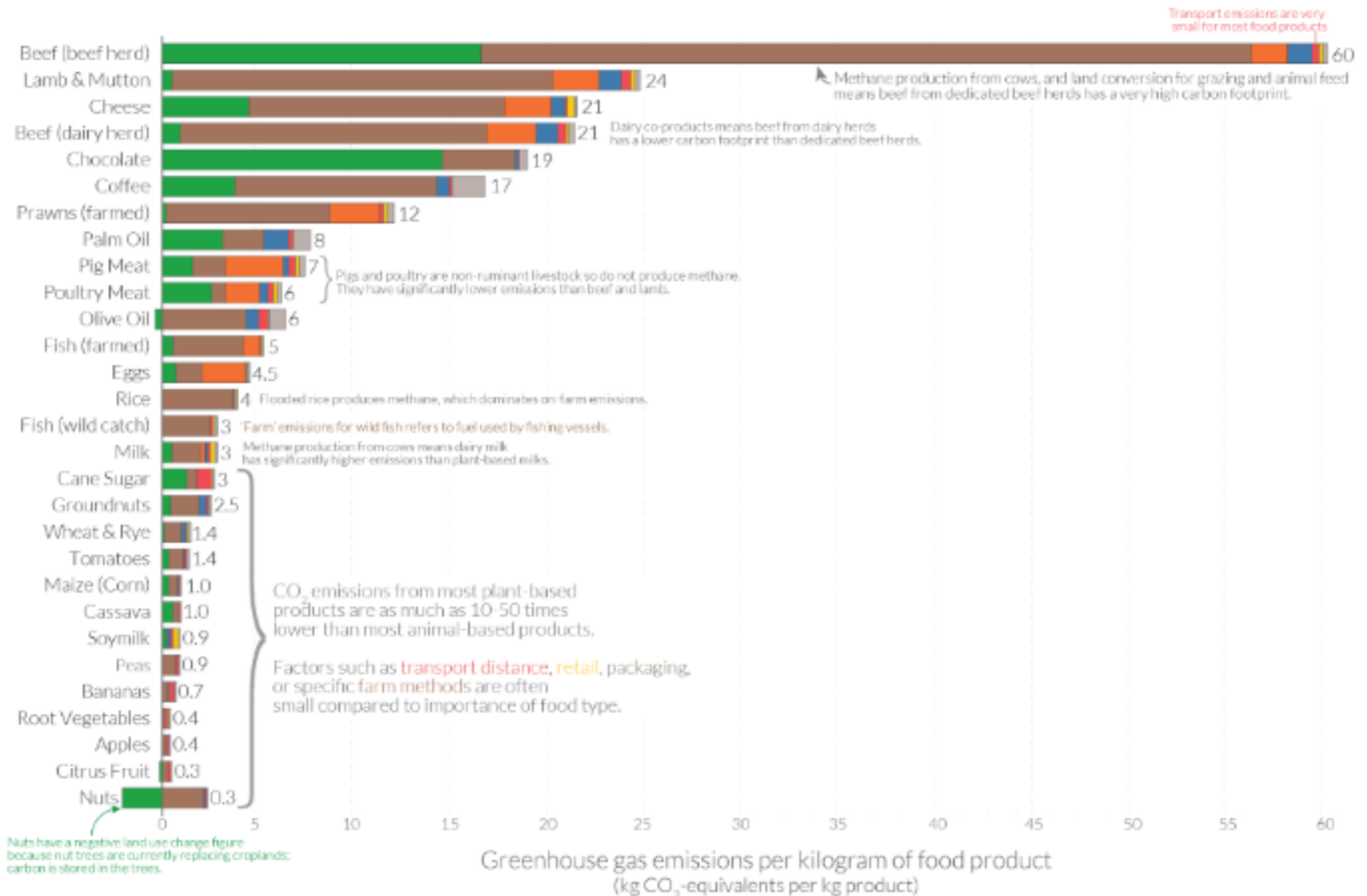
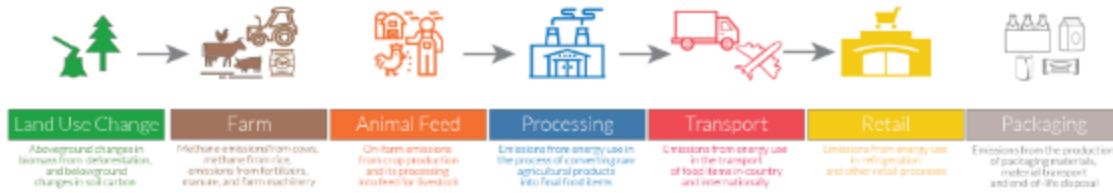
Given the existential threat to humanity that the climate change crisis constitutes, there must be a prohibition on all forms of commercial communications in relation to products/services that most contribute to the greenhouse gas emissions which drive climate change. Otherwise, broadcasters would fail to comply with Principle 1 of the code which requires broadcasters to ensure commercial communications "protect the interests of the audience". There is already a prohibition on all forms of commercial communications on cigarettes, for example (under section 4.2 of the General Commercial Communications Code). Smoking affects those who smoke or those nearby who inhale second-hand smoke. Greenhouse gas emissions from whatever source, however, affect us all because climate change affects the entire planet.

All forms of commercial communications for fossil-fueled cars - i.e. Internal combustion or hybrid cars should be prohibited. The OECD's recent findings (from October 2022 report Redesigning Ireland's Transport for Net Zero that "Current mobility patterns in Ireland are incompatible with the country's target to halve emissions in the transport sector by 2030. While important, electrification and fuel efficiency improvements in vehicles are insufficient to meet Ireland's ambitious target: large behavioural change in the direction of sustainable modes and travel reductions are needed. Such changes will only be possible if policies can shift Irish transport systems away from car dependency."

All forms of commercial communications for flights should be prohibited. Although aviation and shipping each account for only about 4% of the EU's total greenhouse gas emissions, they have been the fastest growing sources of [emissions that contribute to climate change](#).

All forms of commercial communications for beef should be prohibited. As can be seen in the [graph](#) below, it is the most unsustainable food by far.

Food: greenhouse gas emissions across the supply chain



Note: Greenhouse gas emissions are given as global average values based on data across 38,700 commercially viable farms in 119 countries.
 Data source: Poore and Nemecek (2018). Reducing food's environmental impacts through producers and consumers. Science. Images sourced from the Noun Project.
 OurWorldinData.org - Research and data to make progress against the world's largest problems. Licensed under CC-BY by the author Hannah Ritchie.

From: Barry Dooley

Sent: Wednesday 21 December 2022 09:59

To:

Subject: FW: BAI Code Specifically The General Commercial Communications Code

Good Morning

I hope this e-mail finds you well.

I would like to take this opportunity on behalf of the Association of Advertisers in Ireland to submit my views on the section entitled, "General Commercial Communications Code".

This code has been in effect for quite some time now, and, in our opinion, it has been practical and workable. I am conscious from previous discussions with BAI management and executives that, from an advertiser's point of view, industry has adhered to both the spirit and the letter of the code. We are obviously very keen for this arrangement to continue.

Whilst we are aware that the BAI Children's Commercial Communications Code is not applicable to this Public Call, I should also highlight that industry has adhered to this code since the launch in June 2013.

The Association of Advertisers in Ireland agrees with the current principles, 1, 2, 3 and 4. We also agree in principle with the range of rules as outlined in your November document. We would welcome the opportunity to discuss these and the development of your proposals in more detail in January 2023 if you consider this to be appropriate for reasons of clarity & transparency.

On a final note, and a very important general observation, I would like to say that the AAI are always ready to work with the BAI, The Media Commission & Government on a coherent, evidence-based approach to addressing any issues regarding the overall BAI Codes and Rules as highlighted in your document.

If you have any queries or would like to discuss developments, please don't hesitate to get in touch. In the meantime, have a happy Christmas and enjoy the break.

Regards

Barry

Barry Dooley

Chief Executive

Association of Advertisers in Ireland (AAI)