

THE ADVERTISING STANDARDS AUTHORITY

and

COIMISIÚN NA MEÁN

CO-OPERATION AGREEMENT

Introduction

1. This Co-operation Agreement (“**agreement**”) establishes a framework of cooperation and constructive communication between the Advertising Standards Authority (“**ASA**”) and Coimisiún na Meán (the “**Commission**”), collectively referred to as the “**parties**” and individually referred to as a “**party**” throughout this document.
2. This agreement is entered into on a voluntary and non-binding basis. The ASA has, prior to this agreement, worked effectively alongside the predecessor of Coimisiún na Meán, the Broadcasting Authority of Ireland (“**BAI**”), in preparation for the advertising-related obligations arising for Ireland under Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (the “**Amending Directive**”) amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities (together the “**Revised AVMS Directive**”).

The Revised AVMS Directive

3. The Revised AVMS Directive encourages Member States to recognise the role that effective co-regulation and self-regulation can play as a complementary policy instrument to the legislative, judicial and administrative mechanisms in place and its useful contribution to the achievement of the objectives of the Revised AVMS Directive. Article 4a(1) provides that “*Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems*”.
4. Recital 14 of the Amending Directive describes self- and co-regulation in the following terms:

- (a) self-regulation is constituted by voluntary initiatives enabling economic operators, social partners, non-governmental organisations and associations to adopt common guidelines amongst and for themselves;
 - (b) co-regulation shares the regulatory role between stakeholders and national regulatory authorities and the role of public authorities such as the Commission in such schemes is to recognise the co-regulatory scheme, audit its processes and, if required, to partake in funding of the scheme, which should allow for the possibility of state intervention where its objectives are not met.
5. Reflecting the Revised AVMS Directive, section 34 of the Broadcasting Act 2009 provides that the Commission may co-operate with, or give assistance to, a person or group of persons, whether based in the Irish State or elsewhere, in the preparation by that person or group of standards, or in the establishment and administration by that person or group of a self-regulatory system, relating to the regulation of programme material, user-generated video (including content presented on video-sharing platforms), or other content.
6. Article 4a of the Revised AVMS Directive gives a set of criteria for such self- and co-regulatory regimes and codes, including that they:
- be broadly accepted by the main stakeholders in the Member States concerned;
 - be clear and unambiguous in setting out their objectives;
 - provide for regular, transparent and independent monitoring and evaluation of the achievement of their objectives;
 - provide for effective enforcement including effective and proportionate sanctions.
7. Self-regulatory organisations, coordinated at the European level by the European Advertising Standards Alliance (“**EASA**”), administer and enforce advertising codes of conduct adopted in accordance with the principles enshrined in the Revised AVMS Directive, ensuring responsible advertising through effective and comprehensive self- and co-regulatory systems at the national level. The BAI and EASA entered a Statement of Intent, with an intent to continue exploring and building on the work to date. The Commission and EASA also entered into a Statement of Common Intent on 25 July 2023.

Role and function of the ASA

8. The ASA is a non-statutory, independent self-regulatory body which has responsibility for promoting, regulating, and enforcing the highest standards in marketing communications in Ireland.
9. The ASA ensures the adherence by the advertising industry to standards drawn up and enforced on behalf of all advertising interests (Code of Standards for Advertising and Marketing Communications) and involves the enforcement of those standards through the commitment and co-operation of advertisers, agencies and media.
10. The Code of Standards for Advertising and Marketing Communications are based on the principles established by the International Chamber of Commerce and drawn up by the ASA following detailed consultation with all relevant interests and bodies including the public, consumer representatives, and government departments/agencies.

Role and function of Coimisiún na Meán

11. The Commission was established under the Broadcasting Act 2009 and under that Act is responsible for:

- (a) the regulation of broadcasting, audio-visual on-demand media;
- (b) supporting the development of the wider media sector;
- (c) providing a regulatory framework for online safety in Ireland through the creation and enforcement of media service codes and rules and online safety codes;
- (d) the supervision and enforcement of aspects of the Digital Services Regulation pursuant to the Commission's designation as the national Digital Services Coordinator and a competent authority by section 7(6) of the Broadcasting Act 2009.

12. With respect to commercial communications, the Commission may make—

- (a) with application to broadcasters or providers of audiovisual on-demand media services, media service codes providing for standards and practices to ensure that such communications—
 - (i) protect the interests of the audience, and
 - (ii) in particular, where they relate to matters likely to be of direct or indirect interest to children, protect the interests of children having regard to the general public health interests of children,and,
- (b) with application to video-sharing platform services, online safety codes to ensure that designated service providers—
 - (i) take appropriate measures to provide the protections set out in Article 28b(1)(a), (b), and (c) of the Revised AVMS Directive,
 - (ii) comply with the requirements set out in Article 9(1) of the Revised AVMS Directive with respect to audiovisual commercial communications that are marketed, sold or arranged by the service provider, and
 - (iii) take appropriate measures to comply with the requirements of Article 9(1) of the Revised AVMS Directive with respect to audiovisual commercial communications that are not marketed, sold or arranged by the service provider, taking into account the limited the control they exercise over those communications.

13. With respect to advertisements, section 46M of the Broadcasting Act 2009 prohibits certain advertisements and establishes maximum allocations of daily broadcasting time on sound broadcasting services for advertisements. Additionally, under the Digital Services Regulation advertisements—which include non-commercial advertisements—on online platforms must adhere to certain transparency requirements (Articles 26 and 39). There are also requirements attaching to recommender systems that determine the content, including advertising content, that is served to the recipient of the service (Articles 27 and 38).

Independence of parties

14. The parties have separate and independent mandates.
15. Each of the parties recognises their mutual independence and the need to conduct matters in accordance with their respective powers (as appropriate) and responsibilities.

Purpose of this agreement

16. The aim of this agreement is to enable a positive relationship between the parties in cooperating in matters of common interest relating to advertising and commercial marketing communication.
17. The parties have a common interest in the following matters (“**matters of common interest**”):
 - promoting awareness of, and ensuring compliance with, relevant provisions of European Union law relating to advertisements and commercial marketing communications, including, in particular, the Revised AVMS Directive and Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (the “**Digital Services Regulation**”);
 - protecting the interests of the recipients of advertisements and commercial marketing communications by seeking to ensure that those advertisements and communications are legal, decent, honest and truthful.
 - Seeking to ensure that children and at-risk individuals do not see content that may be harmful and that consumers generally can have confidence in advertising and other forms of commercial marketing communication.
18. The parties recognise the benefit of setting out in this agreement a shared understanding for this ongoing relationship.
19. Any co-operation and engagement between the parties shall be subject to the priorities and available resources of each of the parties and shall be consistent with all applicable legal requirements.
20. With respect to the matters of common interest, the parties are committed to the following principles of cooperation:
 - (a) providing an effective complaints process to recipients of advertisements or commercial marketing communications who wish to make valid complaints with respect to those advertisements or communications;
 - (b) promoting high standards among media services, online platforms and advertising bodies in adhering to provisions of Irish and European law applying to the matters of common interest;
 - (c) promulgating effective and robust regulatory codes and rules;
 - (d) protecting children and other at-risk individuals from advertisements or commercial marketing communications that would be harmful to them;
 - (e) promoting active dialogue and exchanges on the matters of common interest;
 - (f) exploration of potential avenues of joint research activity to further understanding of trends in the regulatory landscape as it relates to the matters of common interest.

21. Each of the parties acknowledges that, notwithstanding any other provision of this agreement, it may only disclose information to the other party in accordance with this agreement if permitted or required to do so, or not prevented from doing so, under any applicable laws.

Regular engagement

22. Officials of the parties shall meet and communicate at appropriate levels of seniority to discuss matters of mutual interest and may communicate as required between meetings on such matters of common interest that may arise in the course of day-to-day business.
23. An agenda for such meetings shall, as far as possible, be determined in advance to ensure attendance at the appropriate level and expertise.

Legal status and effect

24. This agreement does not give rise to legally binding obligations on the parties.
25. Nevertheless, the parties are committed to pursuing the aims and purposes of this agreement in good faith and intend to act in accordance with its terms on a voluntary basis.
26. Any failure by the ASA or the Commission to comply with a provision of this agreement shall not invalidate the exercise by the ASA or the Commission of any power.
27. This agreement shall not operate to make a party (or any employee, officer or agent thereof) liable to any person in damages or otherwise for anything done or omitted for which such person would not otherwise be so liable.

Duration and review of the agreement

28. The arrangements covered by this agreement are, wherever possible, set out in terms providing sufficient flexibility for the relationship between the parties to develop in light of experience.
29. The parties shall review these arrangements upon the first anniversary from the point it took effect to evaluate its continuing fitness for purpose. This agreement shall be automatically renewed for successive periods of three years thereafter unless the agreement is terminated pursuant to Clause 31.
30. This agreement may be varied, subject to the agreement of both parties. Where a party proposes a variation of the agreement that party shall submit, in writing, to the other party the text of the proposed variation and the reasons thereof.
31. Either party may terminate this agreement at any time and without cause by providing notice in writing to the other party of such termination. Such notice may be provided by a party by sending it by post to the address of the registered office of the other party or by electronic means.

Given under the common seal of the Advertising Standards Authority this 3rd of December 2024.

Present when the common seal of the Advertising Standards Authority was affixed hereto.

Miriam Hughes
Chair/Board Member
For and on behalf of the Advertising Standards Authority

Orla Twomey
Chief Executive/Company Secretary

Given under the common seal of Coimisiún na Meán this 3rd of December 2024.

Present when the common seal of Coimisiún na Meán was affixed hereto.

Aoife MacEivilly
Commissioner
For and on behalf of Coimisiún na Meán