



Responsible Marketing of Alcoholic Beverages in Europe

A report produced by Canadean Ltd – April 2005

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1. Why a report on responsible marketing of alcoholic beverages in Europe?

Public and political concern about the misuse of alcoholic beverages, and notably reports from some EU Member States of an increase in 'binge' drinking among young people, led to the publication, in June 2001, of the Council *Recommendation on the drinking of alcohol by young people, in particular children and adolescents* (2001/458/EC). In the same month, the Commission asked the alcoholic beverages industry to provide a review of self-regulatory mechanisms for commercial communications in the EU and candidate countries.

The Brewers of Europe therefore commissioned Canadean Limited to carry out a fact-based Europe-wide review. The results of this review constituted the first edition of the Canadean Report, entitled *Responsible Marketing of Alcoholic Drinks: Regulations and Enforcement*, which was published in 2002.

DG SANCO welcomed the first Canadean Report and in 2004 asked for evidence of continued progress in the field of self-regulation of commercial communications by the alcoholic beverages industry. The Brewers of Europe therefore asked Canadean Limited to update the Report.

The Brewers of Europe trusts that this second edition of the Canadean Report will be considered by the European Commission and the EU Member States as an important contribution to the forthcoming Commission report on the implementation of the Council Recommendation.

2. Who is 'Canadean Ltd'?

Canadean Ltd is an independent marketing analysis and consultancy company based in the UK. Focused entirely on the drinks sector, Canadean produces regularly updated reports and databases and carries out consultancy for clients.

3. Who is 'The Brewers of Europe'?

Founded in 1958 and based in Brussels, The Brewers of Europe is the voice of the European brewing sector to the European institutions and international organisations. Current Members are the national brewers' associations of 21 European countries, representing more than ninety percent of the beer produced in the EU 25. The Brewers of Europe also has close links with other brewers' associations across Europe.

The Brewers of Europe, who actively campaigns for effective self-regulation of commercial communications for beer across Europe, funded the present report.

4. Can I find the Canadean report on-line?

The report can be downloaded free of charge from the website of The Brewers of Europe.

5. What does the report cover?

The report examines the regulatory and self-regulatory environment for commercial communications for alcoholic drinks in Europe. The report provides individual profiles for 30 countries, i.e. the EU Member States, plus Bulgaria, Romania, Turkey, Norway and Switzerland.

6. What methodology is the report based upon?

The report is based on a detailed questionnaire sent by Canadean to all organisations involved in the self-regulation of marketing communications for alcoholic beverages across Europe. The details of these organisations can be found in Appendix 2 of the Report (Sources). The information collected has been supplemented by additional research, using authoritative sources and carried out by Canadean.

7. What did the questionnaire used by Canadean cover?

The questionnaire included 37 detailed questions covering key items such as the creation of self-regulatory codes, their coverage in terms of types of commercial communications, the provisions contained within the codes, the functioning of self-regulatory bodies, promotion of the codes, services offered in relation to pre-launch of adverts, mechanisms for dealing with complaints, the types of sanctions applied, the actual number of complaints related to commercial communications for alcoholic beverages, consumer awareness activities and future plans in relation to each item.

8. What main conclusions can be drawn from the report?

The report reflects the growing consensus that legislation and self-regulation relating to commercial communications for alcoholic drinks function most effectively in combination, where self-regulation works within the broad framework of legislation.

National self-regulatory rules relating to commercial communications for alcoholic drinks demonstrate a high degree of consistency. In contrast, diversity in cultural, commercial and legal traditions means that the mechanisms for applying self-regulatory standards are not identical in any two countries, but also means that this variety of mechanisms is more appropriate than any single, harmonised method would be. Compliance mechanisms, however, remain uneven and clearly there is work still to be done in terms of strengthening self-regulatory systems in some countries.

Throughout the industry, there is evidence of unprecedented awareness and activity. Internal company codes and compliance systems complement the activities of Self-Regulatory Organisations and Social Aspects Organisations at national level. At EU level, drinks sector associations like The Brewers of Europe are supporting efforts to promote best practice, to improve sub-optimal national systems and to encourage the setting up of effective self-regulatory systems in the minority of countries where one does not already exist. Substantial progress has been and continues to be made. Self-regulatory activity is not confined to long-established Member-States: the report provides clear evidence that in more recent members, too – the Czech and Slovak Republics, Poland, Estonia, Latvia, Lithuania, Malta – and in accession countries like Bulgaria, the brewing sector has made great strides.

9. What is meant by 'commercial communications'?

When considering marketing of alcoholic beverages it is usually advertising, and more specifically broadcast advertising that one naturally thinks of. But alcoholic beverages can be marketed through a much wider range of commercial communications, including for instance labelling, packaging, point of sale material or sponsorship.

10. What is meant by 'self-regulation' of commercial communications?

Self-regulation takes a variety of forms, reflecting differing national, cultural, legal and commercial traditions. The term may be seen in some ways unhelpful, suggesting only individual self-restraint on the part of the advertiser.

Although 'internal' self-regulation carried out within the company is increasingly a feature of producers of alcoholic beverages and makes an important contribution to achieving compliance, it is far from showing the whole picture. National self-regulatory systems enjoy the support and co-operation of at least the three parts of the advertising industry - advertisers, agencies and the media – which put in place a code, by which they agree to be bound, together with an independent body to enforce it. This 'external' self-regulation enables the code to be enforced, if needs be, even against an uncooperative advertiser.

11. How can self-regulation effectively prevent inappropriate commercial communications?

In many countries self-regulation has proved its effectiveness in dealing with the detail of commercial communications.

These are difficult for the law to deal with, but they are important to consumers. Attempting to address such matters by judicial means can be disproportionately costly, slow and inefficient.

Self-regulation is based on the acceptance and co-operation of the industry regulated, so the regulator rarely finds it necessary to enforce decisions: companies will comply, even if they do not agree with every decision. This means that self-regulation can operate quickly and effectively, adapting flexibly to keep abreast of changes in the marketplace, public concerns and new communication techniques, and treating each case on its merits.

It could be argued that the promulgation by Member States of the provisions of the EU *Misleading Advertising* and *Television Without Frontiers* Directives has created a *de facto* situation in which 'pure' self-regulation of advertising no longer exists anywhere in the EU. This is certainly the case with regard to the alcoholic drinks sectors, bearing in mind however that in some countries, the government has passed operational responsibility to self-regulatory organisations.

Criticism of self-regulation implies that legislation could do the job better. Precisely because it is designed to regulate a legitimate commercial activity, self-regulation may be seen as less effective in dealing with the small minority of 'rogue traders' whose activities are not legitimate. However, those companies that break codes may have no intention of co-operating with regulation of any kind... including of course legislation.

12. Are there European measures regulating commercial communications for alcoholic beverages?

Commercial communications are regulated at European level by several pieces of 'framework' legislation: these include EU Directives on misleading advertising, distance selling, e-commerce and cross-border television. The last of these, the *EU Broadcasting Directive 89/552/EEC*, better known as the *Television Without Frontiers Directive*, contains a number of specific provisions relating to the advertising of alcoholic beverages, providing a degree of commonality between EU Member States.

In addition to the above mentioned legislation, the Council *Recommendation on the drinking of alcohol by young people, in particular children and adolescents (2001/458/EC)*, calls upon Member States, 'having regard to their different legal, regulatory or self-regulatory environments', to adopt appropriate measures to prevent commercial communications for alcoholic drinks from targeting minors or having special appeal to them. At the same time, the Recommendation calls upon the Commission to monitor the implementation of the proposed measures and to report back to the Council in 2005.

13. What measures can be found at national level?

All EU Member States and candidate countries have incorporated the relevant provisions of the *Television without Frontiers Directive* (Article 15 on television advertising and teleshopping for alcoholic beverages).

Notwithstanding the above, there is no standard national regulatory landscape for commercial communications for alcoholic drinks.

In some countries advertising and other forms of commercial communication are subject to restrictive legislation (often taking the form of total or partial bans, restrictions on media or types of marketing, etc.) or other forms of statutory regulation. In these circumstances, self-regulation is left little scope to operate and consequently a consumer with a complaint is likely to have to contact a statutory regulator, such as an Ombudsman, rather than a self-regulatory body.

In other countries legislation allows more scope for self-regulatory input and its provisions are extended and strengthened by self-regulatory codes and procedures.

In a minority of countries, statutory controls are at a minimal level and the responsibility for regulating commercial communications is entrusted almost entirely to one or more self-regulatory bodies.

14. Are commercial communications for beer, cider, wine and spirits regulated in the same way across the board?

In a number of countries stricter legislative measures are applied to spirits. It is not unusual to see advertising bans affecting these products, where as beer, cider or wine advertising is regulated to a lesser extent.

15. Do these differences also exist when it comes to self-regulation?

The Canadian Report records 12 EU Member States where self-regulatory provisions applying to all categories of alcoholic drinks existed at the time data for the report were collected: Austria, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia and the United Kingdom.

Codes for beer exist in 5 Member States: Belgium, the Czech Republic, Latvia, Poland and Spain, whilst in 6 additional countries they are due to be launched: Estonia, Greece, Italy, Lithuania, Portugal and Slovakia.

16. What do you usually find in a self-regulatory code for commercial communications for alcoholic beverages?

Most national self-regulatory systems have adopted general advertising codes based on the International Chamber of Commerce Code. In the majority of cases, general codes are supplemented by sector-specific rules governing the advertising of alcoholic beverages.

These vary between a few rules modelled broadly on those in the *Television without Frontiers* Directive (which of course applies only to television), to developed, detailed sub-codes covering such aspects as placement and timing restrictions in the broadcast media. It is of course a defining feature of self-regulation that its codes are applied in the spirit as well as to the letter.

Recent years have seen the development and promulgation of two detailed sets of guidelines: The Amsterdam Group *Common Standards for Commercial Communications* (1994) and The Brewers of Europe *Guidelines for Commercial Communications for Beer* (2003). The provisions of the latter, for instance, cover basic principles as well as key items such as misuse, minors, drink driving, association with hazardous activities, medical aspects, alcohol content, performance, as well as promotions and sampling. They provide common standards for implementation throughout Europe, which can be adapted to reflect each national culture and regulatory environment, but are not meant to replace well-developed national systems.

The above mentioned standards/guidelines are intended for use, where appropriate, by everyone involved with the marketing and sale of alcoholic beverages, including advertising agencies, trade associations, social aspects organisations, self-regulatory organisations and, obviously, the companies themselves. In addition, both organisations have published detailed guidance notes to assist in their implementation. These initiatives have been promoted across the enlarged EU, to provide guidance and to assist companies, trade associations and Social Aspects Organisations in the development or updating of codes and enforcement mechanisms.

Additionally, many international drinks companies have their own in-house regulatory systems and codes. These in-house mechanisms are not only applied internally, but also extend to external advertising and marketing agencies, often forming part of the contract, to ensure that the commercial communications which they deliver will comply with the rules of the drinks company.

17. Are stakeholders other than the producers/advertisers of alcoholic beverages involved in self-regulation?

Although there is no single approach, it is a fact that in a significant number of European countries, stakeholders other than the producers/advertisers of alcoholic beverages are also involved in self-regulation of commercial communications. In some countries the creation and updating of self-regulatory codes and systems was/is held in close co-operation with government and/or non-governmental parties. Often, complaints handling is performed by adjudication panels that involve not only the usual components of a self-regulatory party (i.e. advertisers, agencies and the media), but also consumer organisations, academics and/or other civil society representatives.

18. What is meant by a national self-regulatory organisation?

A national self-regulatory organisation (SRO) is a body set up and funded by the advertising industry to apply a code or rules regulating advertising content usually applying to all categories of products. A network of SROs across the EU is represented by the European Advertising Standards Alliance.

19. Are these the only self-regulatory organisations that exist in Europe?

No and there are several reasons for this.

First, national self-regulatory organisations (SRO) operate codes that, although maybe containing specific provisions targeting specific categories of products (including alcoholic beverages), apply in general to all commodities, ranging from cars to cosmetics.

Secondly, these national SRO codes usually cover advertising, which, although encompassing a wide variety of marketing activities, does not represent the whole range of commercial communications.

Thirdly, national SROs do not yet exist in all EU Member States.

This is why it is not unusual to find specific sectoral self-regulatory organisations set up and funded by alcoholic beverage producers in a number of countries: their remit generally covers all forms of commercial communications or complement what is already covered by an SRO (i.e. essentially advertising in the strict sense). These bodies may be encapsulated in what is usually known as *Social Aspects Organisations (SAO)*, i.e. industry-funded organisations that promote the responsible consumption of alcoholic beverages through education and awareness schemes. In some countries, self-regulatory bodies are initiated and hosted by brewers' associations.

20. If an operator contravenes the code, are there sanctions?

In many cases, advertisers will co-operate voluntarily with self-regulatory bodies.

In cases of obduracy, the principal sanctions available are media refusal of the offending advertising and/or adverse publicity. In some countries, self-regulatory bodies have introduced pre-clearance as a sanction in the case of any advertiser found to have breached the 'offence' provisions of its code. Another possible sanction is for retailers to refuse to stock products from a company which fails to respect the decision of the self-regulatory body.

21. How do consumers know how/where to make complaints?

To ensure that consumers are aware of national self-regulatory systems and know how to complain, many self-regulatory bodies undertake awareness campaigns, although these are dependent on the availability of resources.

High profile launching of national brewing codes, particularly in the new EU Member States, with press conferences involving government, health officials and consumer groups, contributes to awareness.

22. Are there many complaints about commercial communications for beer and other alcoholic beverages?

Throughout Europe, the number of complaints about advertising for beer and other alcoholic beverages is remarkably low, representing less than 1.5% of the total number of complaints. This applies equally to countries where there is a high public awareness of the self-regulatory services, and to those countries where such services have less prominence.

23. Rather than waiting for a complaint to be raised, isn't it better if a complaint is not made in the first place?

Pre-launch services, which have the aim of preventing offending communications, are available in a growing number of Member States. However, nothing forbids a consumer from subsequently making a complaint.

Some self-regulatory bodies have not opted for such services because they are of the opinion that these could merely encourage a company to push the code boundaries to the limits, going against the spirit in which these codes are created.

24. Where pre-launch services exist, how do they work?

Across Europe essentially two types of pre-launch services can be found: copy-advice or pre-clearance. Copy advice is a service offering confidential, non-binding pre-publication guidance on individual advertisements and campaigns. Copy advice is not to be confused with pre-clearance, which involves compulsory examination of an advertisement for code compliance as a condition of publication or broadcast. Pre-clearance may also be used as a sanction.

25. Recent years have seen increased interest in 'co-regulation'. What is the difference between 'co-regulation' and 'self-regulation'?

Co-regulation may be defined as any system of regulation involving both self-regulatory and statutory elements. This definition encompasses a wide spectrum of possible models.

Where the statutory element consists of nothing more than minimal framework legislation, the form of co-regulation which results is likely to be very close to 'pure' self-regulation, able to operate effectively without undue constraints.

At the other extreme, the statutory element may be so extensive that the role for self-regulation is reduced to little more than acting as the executive arm of a statutory regulator, which may mean that the self-regulatory aspect loses its speed and flexibility.

However, varying forms of co-regulation, involving a combination of statutory (usually legislative) and self-regulatory controls, are found in the great majority of European countries.