

**48<sup>th</sup> EPRA Meeting**  
**Bratislava, 10-12 October 2018**

**Working Group I**

**Commercial Communications 2.0: The respective roles of regulators**

Report to the plenary  
**Jean-François Furnémont, Content Producer**

**Introduction:**

While the spring session in Luxembourg looked at market and consumer views on the future of commercial communications, our autumn session focused on the current range of tools and approaches that NRAs have and whether (and how) the role of regulators should change.

In particular, the session focused on the way NRAs plan to approach the changes, notably with the inclusion of video sharing platforms in the field of regulation of commercial communications. It also explored opportunities for reinforced cooperation between regulatory and self-regulatory bodies.

**Key findings of the discussions:**

In order to set the scene, and considering both its upcoming adoption and the substantial changes it will bring in terms of (self-)regulation of commercial communications, **the first part of the session** started with a presentation of the provisions of the revised AVMS Directive in the field of audiovisual commercial communications, delivered by *Michael Wagner* from the BLM (DE).

Michael stressed the fact that the use of co-regulation is strongly encouraged by the AVMSD and that self-regulation may also be fostered through the adoption of codes of conduct, which apply both to AVMS providers and to Video Sharing Platforms (VSPs). He also mentioned the liberalization of certain provisions regarding AVMS (such as the admissibility of product placement) and the new rules regarding advertising for tobacco products, for alcoholic beverages, for medicinal products, as well as the new reference to the need to tackle the issue of HFSS foods via codes of conduct.

**The second part of the session** took the form of a panel discussion and brought together two statutory regulators and two self-regulators from UK and Slovakia:

- *Oli Bird* from UK statutory regulator Ofcom (also in his function as chair of ERGA SG4);
- *Malcolm Phillips* from UK self-regulator ASA/CAP (the Advertising Standards Authority);
- *Martin Dorociak* from the Slovak Council for Broadcasting and retransmission;
- *Martyn Željko Sampor*, from the Slovak Advertising Standards Council.

From these discussions, we can highlight four lessons:

1. The first one is related to the various legal challenges that will arise from the implementation of the AVMSD.

- a. These can be challenges **in terms of identification** of the appropriate physical or legal entity which is responsible for a commercial communication, especially on VSPs. Or even for different problematic aspects of a commercial communication: for example an ad on a platform can be the source of a breach in terms of content (under the responsibility of the advertiser), but also in terms of placement (under the responsibility of the platform).
  - b. These can also be challenges **in terms of qualification** of the content. The content of video bloggers can sometimes be editorial, but sometimes be advertising. The public indeed should know that an ad is an ad, but sometimes even platforms can have a hard time determining what is an ad and what is not.
  - c. These can also be challenges **in terms of jurisdiction**. With VSPs, the era where the advertiser, the media service provider and the consumer were all based in the same country is clearly over.
2. The second lesson is about the respective roles of regulators and self-regulators and platforms themselves in regulating VSPs. It is up to VSPs to develop various measures suitable for protecting consumers against inappropriate content or commercial communication, and it is up to regulators to check if the measures they take are appropriate and efficient. But how should this control should go?
  3. The third lesson is about the need for cooperation between regulators (statutory, co- and self-), especially on cross-border issues. Examples were given of effective cross border cooperation between self-regulators, including between Slovak and UK self-regulators, under the umbrella of the European Advertising Standards Alliance; but the need of a proper articulation between regulators and self-regulators was also emphasized. A question debated was the need for backstop powers: is this always necessary? The ASA mentioned the very high level of compliance with its decisions (99%), which suggests that publicity ("shame game") is enough, since advertisers indeed take care of their reputation. And this reputation is even more important in the online world.
  4. And finally the last lesson for regulators is about the need for renewed and refreshed relationships with the public. A widely discussed example was the one of video-bloggers, where the bloggers themselves are looking for guidance from (self) regulatory bodies. This is a shift from a traditional and top-down approach ("*rule, enforcement or the rule, compliance with the rules and sanction of breaches to the rule*") approach to an approach where guidance is provided to both the producers of online content and the consumer of this content, in a novel and suitable manner. Regulators should be aware that there is a community of young people who are interacting with the different professions of the advertising world and that this commands from (self)regulators a new type of relationship with their public, be it in the style or in the platforms used to deliver the message.