

CO-REGULATION AGREEMENT BETWEEN THE DIRECTORATE GENERAL FOR THE REGULATION OF GAMBLING OF THE MINISTRY OF ECONOMY AND FINANCE, AND THE ASSOCIATION FOR SELF-REGULATORY COMMERCIAL COMMUNICATION (AUTOCONTROL), ON MATTERS RELATED TO ADVERTISING, SPONSORSHIP AND PROMOTION OF GAMING ACTIVITIES.

Madrid, 17 November, 2011

GATHERED

PARTY OF THE FIRST PART, Ms Inmaculada Vela Sastre, acting in her capacity as Director General for the Regulation of Gambling of the Ministry of Economy and Finance, by virtue of the authority established in temporary provision one of Law 13/2011, of 27 May, on the regulation of gaming.

PARTY OF THE SECOND PART, Mr Fernando Valdés Bueno, acting in his capacity as President of the Association for Self-Regulatory Commercial Communication (hereinafter, AUTOCONTROL), in accordance with the appointment made by Agreement of the Board of Directors of the previously mentioned Association during the meeting held on 20 April 2010, and with sufficient power of attorney as recorded in a public deed certified before the Notary Public of Madrid, Mr Ignacio García-Noblejas Santa-Olalla, registered under number 1,044 of his notary records.

AGREEMENT MADE BY AND BETWEEN

Both parties, acting on behalf of the previously mentioned bodies, mutually acknowledge their sufficient power and legal capacity to sign the Co-regulation Agreement herein

WHEREAS

1.- Article 24, Section 5 of Law 13/2011, of 27 May, on the regulation of gaming, establishes that *“The National Gaming Commission shall be able to sign co-regulation agreements that contribute to complying with the obligations established in this Law, especially referring to advertising, under the terms determined in accordance with regulations. Insofar as the said agreements affect advertising made by those who offer audiovisual communication services, it shall be necessary to demand a report from the State Council of Audiovisual Media prior to signing the agreements. Self-regulatory systems shall have independent monitoring bodies in place to ensure the effective implementation of the commitments made by the companies. Among others, their codes of conduct may include individual or collective self-control measures prior to the advertising content and shall establish efficient systems for extra-judicial settlements that comply with the requirements established in EU regulations and, as such, are notified to the European Commission, pursuant to the European Council Resolution of 25 May 2000, on a Community-wide*

network of national bodies for the extra-judicial settlement of disputes regarding consumer complaints or any equivalent provision”.

The forecast on the self-regulatory agreements contained in article 24.5 of Law 13/2011 has been laid down as regulation in the seventh additional provision of Royal Decree 1614/2011 of 14 November, which enacts Law 13/2011 of 27 May, with regard to gambling licences, authorisations and records, which not only contains the legal provisions laid down but also provides for the establishment of a Joint Commission set to monitor the co-regulatory agreements together with a few reported agreements, and sets an obligation to publish all self-regulatory agreements and codes of conduct on the National Gaming Commission's website.

Section 4 of Article 7, titled “Advertising, sponsorship and promotion of gaming activities”, stipulates that *“in the exercise of its administrative authority to demand advertisements for gambling activities to be withdrawn, the National Gaming Commission shall address the body, advertising agency, service provider of electronic or audiovisual communication, media or corresponding information society service, specifying and giving grounds for the failure to comply with the applicable regulations. Within two calendar days, the body, advertising agency, service provider of electronic or audiovisual communication or information society service shall communicate the compliance with the regulations. In the event the advertised message was issued a previous positive enquiry report by a self-regulatory advertising system with which the National Gaming Commission has one of the collaboration agreements mentioned in Section 5 of Article 24 of the Law, it will be understood that the action was made in good faith if adherence was made to said previous positive enquiry report, in the event administrative action is taken within the framework of disciplinary proceedings”.*

2.- On the other hand, Temporary Provision One of the previously mentioned Law, under the heading “Exercise of administrative powers prior to commencing activities of the National Gaming Commission”, states, in the first paragraph: *“Until the National Gaming Commission has been effectively established, its foreseen powers shall be exercised by the Directorate General for the Regulation of Gambling of the Ministry of Economy and Finance, including those related to the management and collection of the fees referred to in Article 49 of this Law”.* Therefore, given that said Commission has still not been effectively established, the Directorate General for the Regulation of Gambling may exercise the powers that will correspond to the Commission, stated in Law 13/2011, of 27 May.

3. In both European and national institutions it has been observed that there is a notable tendency towards encouraging plans for self-regulatory mechanisms, not understanding self-regulatory as an alternative system to existing legislation and public controls, but as a useful, efficient and necessary complement to the traditional legal, administrative and/or judicial instruments that exist in the EU Member States, without entailing any reduction of the capacity of the competent authorities to intervene in disciplinary proceedings. In this context, Community institutions and our national legislator are endowing self-regulatory systems with a considerable and growing recognition.

4. The promotion of self-regulation is already reflected in Directive 84/450/EEC concerning misleading advertising, which stated that along with administrative and judicial instruments, "the voluntary control exercised by self-regulating bodies to eliminate misleading advertising may avoid recourse to administrative or judicial action and ought therefore to be encouraged".

More recently, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices enabled Member States to encourage code of conduct managers to control unfair commercial practices, adding this mechanism to the administrative or legal procedures put in place to suppress unfair practices by halting or prohibiting them.

Likewise, the Spanish General Law on Advertising, Law 34/1988 of 11 November, states that the prevailing procedural rules with regard to law enforcement and punishment of unlawful advertising (currently laid down in the Code of Civil Procedure) shall apply "without prejudice to the voluntary advertising controls self-discipline bodies may effectively carry out."

5.- Since 1996, in Spain there has been an advertising self-disciplinary organisation, the Association for Self-Regulatory Commercial Communication (AUTOCONTROL), made up of companies that advertise, advertising agencies, the media and associations of the foregoing. This non-profit Association takes charge of managing the advertising self-regulatory system in Spain. Its aim is to contribute towards converting advertising into a particularly useful instrument in the economic process, safeguarding the respect for advertising ethics and consumer rights, excluding the defence of professional interests. The aims of said association include the following:

- drawing up codes of advertising ethics.
- resolving claims made as a result of allegedly illegal advertising.
- offering previous advice to advertisers, agencies or media about the legal and ethical correctness of a specific campaign project before it is publicly disseminated.
- actively collaborating with public authorities to ensure advertising adapts to the regulations that govern it.

This Association was created in 1992 and it is a member of the European Advertising Standards Alliance (EASA). It participates in the European network of self-regulatory advertising organisms which, under the coordination of EASA, provides operators and consumers with a system that settles *cross-border complaints*.

6.- For the purposes of being able to comply properly with its aims, AUTOCONTROL provided itself with a double instrument. On the one hand, an Advertising Code of Conduct based on the "Code of Advertising Practices" of the International Chamber of Commerce. On the other, an extra-judicial system for settling disputes related to advertising matters, responsible for applying the Advertising Code of Conduct, personified in the Advertising Ethics Jury. Its members are well-known experts of prestige in the fields of law, economics or commercial communication, and a quarter of its members were appointed by the National Institute of Consumer Affairs. The Jury's activity, carried out by means of a regulated procedure, is governed by the principles of independence, transparency, contradiction, efficiency, legality, freedom and representation, in

accordance with the criteria set in the European Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlements of consumer disputes.

7.- Apart from the work carried out by the Jury as an extra-judicial body for settling disputes, since 2001 AUTOCONTROL provides a pre-clearance or copy advice[®] service, in line with other self-regulatory systems that exist in our European surroundings. In regard to advertisements that have been received to be disseminated, the copy advice[®] system enables the advertiser or agency that so wishes or media to consult the Technical Advisors at AUTOCONTROL about the legal and ethical correction of a specific campaign project before it is publicly disseminated.

8.- The self-regulatory system personified in AUTOCONTROL has reached a high level of efficiency in settling disputes related to advertising matters, possessing a high degree of credibility and technical authority.

Proof of this is that the system used by AUTOCONTROL to settle disputes has been recognised since 2000, when the Spanish Government informed the Directorate General for Health and Consumers of the European Commission that the Spanish self-regulatory advertising system complied with the requirements stipulated in the Commission Recommendation 98/257/EC. Thus, at the end of 2000, the European Commission included AUTOCONTROL in the EEJ network of extra-judicial bodies for settling disputes regarding extra-judicial settlement bodies for consumer disputes.

AUTOCONTROL has accredited it complies with the requirements established in Article 37 of the Law on Unfair Competition, thus obtaining legal recognition; as well as, in particular, complying with the requirements established in Article 24, Section 5 of Law 13/ 2011, of 27 May, on the regulation of gaming, for the purposes of legal recognition with respect to signing co-regulation agreements that contribute to complying with the obligations established in the Law thereof, especially in regard to advertising.

9.- AUTOCONTROL has a firm commitment to collaborate with Public Administrations, in order to contribute to the development of responsible advertising. This commitment is also reflected in the Regulations of the Advertising Ethics Jury, whose rules include a provision related to collaborating with the administration. In particular, Article 36 establishes: *“In the event the administrative or jurisdictional Authorities request an opinion about a specific commercial communication, if it has been issued, they shall be provided with the corresponding resolution/decision of the Advertising Ethics Jury and/or the report drawn up by the Technical Advisors if said commercial communication has passed the pre-clearance procedure. If the previously mentioned Authorities request AUTOCONTROL to intervene and there is no resolution or it has been transferred or disclosed, the issue will be transferred to the Advertising Ethics Jury so at its own initiative it may initiate the claim procedure stipulated in Article 13 and following of the Regulations herein, with the purpose of obtaining the Jury's corresponding resolution or decision”*.



10.- In view of the above, understanding that co-regulatory advertising is an important channel – complementing the administrative and judicial channel- to be able to control advertising efficiently, and in line with the co-regulatory principle developed by the European, State and Regional regulations, and expressed in Article 24, Section 5 of Law 13/ 2011, of 27 May, on the regulation of gaming, and in additional provision seven of Royal Decree 1614/2011, of 14 November, it is appropriate to establish a relationship between the competent authority on matters regarding regulation, inspection and control of advertising gambling activities and the Spanish body for self-regulatory advertising, AUTOCONTROL, which, without undermining the powers of the former, enables mutual cooperation for monitoring gambling advertisements and to detect, correct and eliminate any advertisements that do not adapt to the applicable legal obligations.

11.- The undersigning parties of the Agreement herein consider that mutual collaboration in regard to the foregoing will contribute towards improving advertisements of gambling and gaming activities to the benefit of consumers and users, as well as the sector itself.

12.- Pursuant to Article 24, Section 5 of Law 13/2011, of 27 May, on the regulation of gaming, and insofar as the Agreement herein affects advertising offered by service providers of audiovisual communication, prior to signing the document herein, it has obtained the Report issued favourably by the Secretary of State for Telecommunications and Information Society, an organism that, in accordance with temporary provision seven of Law 7/2010, of 31 March, the General Law on Audiovisual Communication is, until the effective establishment of the State Council of Audiovisual Media, the competent administrative body for exercising the functions of the latter.

In view of the foregoing, and after the favourable reports issued by the Secretary of State for Telecommunication and Information Society, and the State Attorney's Office in the Secretary of State for Finance and Budgets of the Ministry of Economy and Finance, respectively, and in view of their common aims and interests, with the desire to reach the expressed purposes, the participating parties agree to sign the Agreement herein in accordance with the following

TERMS AND CONDITIONS

ONE- The Directorate General for the Regulation of Gambling, under the terms established in Article 24.5 of Law 13/2011, of 27 May, recognises and supports the self-regulatory system adopted by AUTOCONTROL, which complies with all the requirements set in the previously mentioned legal provision, without undermining any of the powers which may be legally assigned.

TWO- Notwithstanding their powers and prior to any control procedure related to advertising matters, or during the processing stage, the Directorate General for the Regulation of Gambling shall be able to request information from AUTOCONTROL about whether a specific advertisement has obtained a positive report within the framework of the pre-clearance or copy advice® procedure, as well as if it has been the subject of an extra-judicial settlement of a dispute within the ambit of the Advertising Jury. In either of these two cases, AUTOCONTROL will transfer a copy of the corresponding actions to the Directorate General for the Regulation of Gambling.

THREE- Notwithstanding, and without undermining their powers, prior to the initiation of disciplinary proceedings, the Directorate General for the Regulation of Gambling may urge AUTOCONTROL to take action in relation to a specific advertisement, enabling the Association to proceed at their own initiative before the Advertising Jury, in accordance with their self-regulatory procedures. AUTOCONTROL shall transfer the result of their actions to the Directorate General for the Regulation of Gambling.

FOUR- In the event the body, advertising agency, service provider of audiovisual or electronic communication, social communication medium or information society service, in their response to the request made by the Directorate General for the Regulation of Gambling to cease advertising their gambling activities, allege that the advertised message has received a previous pre-clearance report from AUTOCONTROL, the Directorate General for the Regulation of Gambling, without prejudice to persisting with the corresponding actions, will take said circumstance into account and, with AUTOCONTROL, will examine the previously mentioned positive pre-clearance report.

In all cases, if administrative action is carried out within the framework of disciplinary proceedings it will be understood that the operator acted in good faith if they have adhered to the positive pre-clearance report issued by AUTOCONTROL; a report that will be included in the corresponding administrative proceedings file.

FIVE- The Directorate General for the Regulation of Gambling may request AUTOCONTROL to collaborate in all matters related to regulating advertising and controlling the legality of the advertised messages.

SIX- AUTOCONTROL will keep the Directorate General for the Regulation of Gambling regularly informed about any resolution that is adopted by the Advertising Ethics Jury on matters related to gambling activities, providing copies of the resolutions and access to the document sources.

SEVEN- On a quarterly basis, AUTOCONTROL will inform the Directorate General for the Regulation of Gambling about its voluntary pre-clearance activity (copy advice®) of the gambling advertisements.

EIGHT- AUTOCONTROL may request the cooperation from the Directorate General for the Regulation of Gambling for issuing decisions, studies, projects and resolutions related to the



Association's aims, as well as about matters that affect regulation, self-regulation and deontological control of gambling advertisements.

NINE- Under the protection of the Agreement herein, the Directorate General for the Regulation of Gambling and AUTOCONTROL may organise and carry out as many dissemination, training or study actions they deem necessary by mutual agreement, and for which purpose they will adhere to the provisions of Law 30/2007, of 30 August, on Public Sector Contracts. Among other actions, they may promote or carry out analyses and studies of whether the legal and deontological regulations on matters related to gambling advertisements are complied with, which would help evaluate the impact or influence gambling advertisements have on society.

TEN- For the purposes of monitoring the execution of the Agreement herein, the parties undertake to set up the corresponding Monitoring Committee, comprising an equal number of representatives from both parties, and which shall meet periodically.

ELEVEN- The Agreement herein does not entail financial obligations or considerations for either of the parties.

TWELVE- The Agreement herein shall enter into effect on the day it is signed and will be of an indefinite length. It may be terminated by either one of the parties prior notice of three months.

And, in witness thereof, the contracting parties of the Agreement herein, in the capacity they exercise, they sign it in the place and on the date stated above.

The Director General of the
Gaming Regulation
MINISTRY OF ECONOMY AND FINANCE

The President for the Association for the Self-
Regulation of Commercial Communication
(AUTOCONTROL)

Inmaculada Vela Sastre

Fernando Valdés Bueno