

**About: AVMSD - suggested improvements to the General Approach - marketing to children and minors**

Monday 25 September, Brussels

**Dear Member State representatives,**

As you prepare for the upcoming trilogue meeting on the Audiovisual Media Services Directive (AVMSD), we urge you to consider the following improvements to the General Approach to the Directive as adopted by the Council on 23 May 2017.<sup>1</sup>

Marketing of alcohol and food high in fat, sugar and salt (HFSS) plays a central role in the proliferation of diet- and alcohol-related harm in Europe.<sup>2</sup> We call on you to ensure the AVMSD facilitates the creation of effective national frameworks to minimise the exposure of children and minors to the marketing of these products.<sup>3</sup>

In particular we call on you to consider the following suggestions:

## ARTICLES

### Article 4

#### **Paragraph 3(b):**

Maintain the text and the accompanying new recital as proposed in the General Approach. Current rules require Member States to prove that a Media Service Provider established itself in another Member State with the intention of circumventing stricter rules. The burden of proof associated with proving such an intention borders on the impossible. The changes proposed in the General Approach will ensure that the procedure outlined in article 4 functions as originally intended.

### Article 4a

#### **Paragraph 1(d):**

Add reference to 'effective and proportionate sanctions', as in the Commission proposal. Sanctions are recognised as important enablers to ensure compliance with codes of conduct.

"d) provide for effective enforcement, **including effective and proportionate sanctions.**"

<sup>1</sup> Council of the European Union, Document (9691/17) of 24 May 2017

<sup>2</sup> Anderson et al. (2009) [Impact of alcohol advertising and media exposure on adolescent alcohol use: A systematic review of longitudinal studies](#)

WHO (2008) [The extent, nature and effects of food promotion to children: a review of the evidence](#)

<sup>3</sup> World Health Organisation. Updated (2017) [Appendix 3 of the Global Action Plan for the Prevention and Control of Noncommunicable Diseases 2013-2020 – WHO "Best Buys"](#)

- Joint Statement by 40 European organisations: ["3 Steps Towards Healthier Marketing – Improve the AVMSD"](#)

**Paragraph 2:**

Include public health organisations in the drawing-up of Union codes of conduct. Public health organisations can provide evidence on the impact of marketing on children and options to minimise exposure; they are key stakeholders and should be listed alongside consumer organisations.

“Member States and the Commission may foster self-regulation through Union codes of conduct drawn up by media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer **and public health** associations or organisations.”

**Article 9**

**Paragraph 2:**

Add the option for Member States to restrict commercial communications during peak viewing hours by children. Restricting food advertising during children’s prime time viewing was found to result in the largest reduction in exposure to advertising of HFSS food when compared to other policy options.<sup>4</sup>

Advertising of HFSS food to children and minors is always inappropriate given EU member states’ legitimate concerns about child overweight and obesity; we therefore recommend deleting the word ‘inappropriate’.

"Member States are encouraged to use co-regulation and to foster self-regulation through codes of conduct as provided for in Article 4a(1) regarding **inappropriate** audiovisual commercial communications, accompanying or included in children’s programmes, **or during peak viewing hours by children (...)**"

Ensure that codes of conduct *are* effective, and not merely *aim* to be effective.

“Those codes shall ~~aim to~~ effectively limit the exposure of minors to audiovisual commercial communications”

**Paragraph 3:**

Ensure that codes of conduct *are* effective, and not merely *aim* to be effective, while adding the option for Member States to restrict exposure to commercial communications through statutory measures.

Advertising of alcohol to minors is always inappropriate; we therefore recommend deleting the word ‘inappropriate’.

**“Without prejudice to the adoption of statutory measures,** Member States are encouraged to use co-regulation and to foster self-regulation through codes of conduct as provided for in Article 4a(1) regarding **inappropriate** audiovisual commercial communications for alcoholic beverages. Those codes shall ~~aim to~~ effectively limit the exposure of minors to audiovisual commercial communications for alcoholic beverages.”

**Article 28A**

**Paragraph 1a:**

Ensure that video-sharing platforms comply with the full range of provisions on the marketing of alcohol and HFSS food in this Directive. The current text limits the compliance to general principles only, without reference to provisions related to codes of conduct.

"Member States shall ensure that video-sharing platform providers comply with the requirements set out in Article 9(1) **to 9(3)**"

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<sup>4</sup> Kelly et al. (2007) [The effects of different regulation systems on television food advertising to children](#)

**Article 33**

Request the Commission to produce a report on the effectiveness of co- and self-regulatory codes of conduct, and a report outlining an approach to protect children and minors from social media marketing for alcohol and HFSS food.

**Add:** “By [...date no later than three years after adoption] at the latest, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report evaluating the effectiveness of existing co-regulatory and self-regulatory codes of conduct as outlined in Art 9.2 and 9.3.”

“By [...date no later than three years after adoption] at the latest, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report outlining an approach to protecting children from social media marketing.”

**RECITALS****Recital 10**

Ensure that the WHO Regional Office for Europe’s nutrient profile model, which was specifically developed for marketing to children, is referenced as a key tool to differentiate foods on the basis of their nutritional composition, as in the original Commission proposal.<sup>5</sup>

We remain at your disposal and look forward to discuss these points in further detail,

**Sincerely yours,**

*Undersigned organisations:*

International Association of Mutual Benefit Societies (AIM)  
British Medical Association (BMA)  
European Academy of Paediatrics (EAP)  
European Alcohol Policy Alliance (Eurocare)  
European Association for the Study of the Liver (EASL)  
European Centre for Monitoring Alcohol Marketing (EUCAM)  
European Heart Network (EHN)  
European Public Health Alliance (EPHA)  
Standing Committee of European Doctors (CPME)  
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<sup>5</sup> “Certain widely recognised nutritional guidelines exist at national and international level, such as the WHO Regional Office for Europe’s nutrient profile model, in order to differentiate foods on the basis of their nutritional composition in the context of foods television advertising to children.” COM (2016) 287/4