Response from the Association of European Cancer Leagues (ECL) to the call for evidence of the Audiovisual Media Service Directive

The Association of European Cancer Leagues (ECL), a non-profit umbrella organisation made up of 35 national and regional cancer leagues advocating for improved cancer control and care across Europe, welcomes the possibility to contribute to the call for evidence of the Audiovisual Media Service Directive (AVMSD), as well as the European Commission's willingness to review the AVMSD and ensuring the protection of children from harmful marketing practices.

A timely and needed revision for the protection of children

ECL welcomes the European Commission's consultation on the possible revision of the Audiovisual Media Services Directive (AVMSD). This initiative comes at a particularly timely moment, as the Commission has highlighted harmful marketing practices - especially for unhealthy food, alcohol and novel tobacco products - as a growing concern in a rapidly evolving digital media environment. The publication of the EU Cardiovascular Health Plan (also dubbed as EU Safe Hearts Plan) further underscores the importance of addressing shared risk factors for noncommunicable diseases (NCDs), as also acknowledge in the Europe's Beating Cancer Plan (EBCP).

We therefore urge the European Commission to firmly reject Option 1 (no change) and to revise the AVMSD to ensure effective, evidence-aligned regulation of harmful marketing.

EU competence and the rationale for regulating harmful marketing

The European Union has extensive powers under the Treaties to regulate cross-border marketing practices in order to ensure the proper functioning of the internal market, while at the same time guaranteeing a high level of health and consumer protection. The Court of Justice of the European Union (CJEU)[1] has repeatedly confirmed that EU measures may legitimately pursue these dual objectives, including in relation to tobacco, food and alcohol marketing.

Beyond internal market considerations, the EU is bound by a health mainstreaming obligation, requiring a high level of human health protection in all EU policies (art. 168.1 TFEU). Harmful marketing contributes to unhealthy environments that promote the consumption of products

[1] See in particular Articles 9, 114(3) and 168(1) of the Treaty on the Functioning of the European Union, as well as Article 35 of the EU Charter on Fundamental Rights, as interpreted by the EU Court of Justice.

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clearly implicated in the growing burden of NCDs, including cardiovascular diseases and cancers. Restricting such marketing is therefore a necessary component of effective prevention strategies and of efforts to reduce health inequalities.

The need to regulate harmful marketing is further reinforced by human rights considerations[2] . Exposure to marketing for tobacco, alcohol and unhealthy food undermines the realisation of the right to health and other related rights, particularly for children. The EU Charter of Fundamental Rights requires that the best interests of the child be a primary consideration in all actions relating to children. This obligation is not adequately reflected in the current AVMSD provisions on harmful marketing.

Tobacco and novel nicotine products control: the cornerstone of the fight against cancer

The AVMSD currently contains some of the strongest marketing restrictions among harmful products. Article 9(1)(d) prohibits "all audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers". Articles 10(2) and 11(4) further prohibit sponsorship and product placement by undertakings whose principal activity is the manufacture or sale of these products.

These provisions align closely with the objectives of the WHO Framework Convention on Tobacco Control (WHO FCTC), which the EU has long supported and implemented through complementary instruments such as the Tobacco Advertising Directive and the Tobacco Products Directive, whose revision was foreseen at the EBCP and it is still pending. In this respect, the AVMSD provides an example of how comprehensive marketing restrictions can be adopted to protect public health, including by preventing cancers linked to tobacco use.

However, as recognised by the Commission itself, including in the EU Cardiovascular Health Plan, market developments now require stronger regulatory clarity. Novel tobacco and nicotine products, such as nicotine pouches, are increasingly present and raise particular concerns for children. These emerging products carry their own health risks[3], promote dual or multiple use of

[2] Such as Article 3(1) of the UN Convention on the Rights of the Child (which all EU Member States have ratified), the EU Charter of Fundamental Rights.

[3] World Health Organisation (2020). Heated tobacco products: information sheet - 2nd edition, WHO/HEP/HPR/2020.2, 52.

tobacco products[4][5], and act as a gateway to cigarette smoking[6], making it essential to understand how they are marketed.

In this regard, a 2024 meta-analysis[7] showed that comprehensive advertising bans reduce the risk of smoking initiation by 37%, and numerous studies have linked advertising—both direct and indirect—to tobacco use initiation among young people. In particular, social media platforms and cultural events, especially festivals, have become key spaces where a wide range of direct and indirect marketing strategies are deployed to promote tobacco-related products, effectively reaching young audiences.

Moreover, certain definitions within product regulations create ambiguities in the application of existing legislation. For example, tobacco industry marketing strategies in many countries deliberately focus on promoting device brand names (such as IQOS or glo) in an attempt to circumvent existing bans on tobacco advertising, promotion and sponsorship. These tactics, which complicate legal interpretation, combined with insufficient monitoring and enforcement, facilitate the appearance of advertising campaigns for tobacco-related products in public spaces, on social media and at festivals. As a result, young people are exposed to such marketing, undermining progress made in tobacco prevention and the protection of public health.

The AVMSD should therefore be revised to explicitly clarify that its existing prohibitions on audiovisual commercial communications, sponsorship and product placement also apply to these novel products and its devices. Similarly, we call on the Commission to include these novel products when reviewing the Tobacco Advertising Directive and the Tobacco Products Directive to ensure both regulatory coherence and a high level of health protection across all EU Member States.

[4] Chen, D. T. H., Girvalaki, C., Mechili, E. A., Millett, C., & Filippidis, F. T. (2021). Global patterns and prevalence of dual and poly-tobacco use: a systematic review. Nicotine and Tobacco Research, 23(11), 1816-1820.
[5] European Commission: Directorate-General for Health and Food Safety, BDI, ICO, LSE, Open Evidence. (2021). Consumer preference and perception of specific categories of tobacco and related products,
[6] European Commission (2021). SCHEER. Opinion on electronic cigarettes.
[7] Saad, C., Takamizawa, R., Thakur, A., Lee, C. W., Leung, L., Veerman, J. L., & Aminde, L. N. (2025). Effectiveness of tobacco advertising, promotion and sponsorship bans on smoking prevalence, initiation and cessation: a systematic review and meta-analysis. Tobacco Control.

Alcohol consumption

In contrast to tobacco, the AVMSD provisions on alcohol marketing remain weak and poorly aligned with existing evidence on alcohol exposure. Article 9(1)(c) provides that audiovisual commercial communications for alcoholic beverages "shall not be aimed specifically at minors" and "shall not encourage immoderate consumption." While this acknowledges children's vulnerability, the formulation is too narrow to provide effective protection.

By focusing on whether marketing is "aimed specifically" at minors, the provision fails to address children's extensive exposure to alcohol marketing in mixed-audience and family-viewing contexts. This narrow approach encourages marketing practices that are formally compliant but substantively ineffective in reducing exposure. Article 9(3), which relies on co-regulation and self-regulation through voluntary codes of conduct, further weakens protection and mirrors the EU's broader failure to regulate alcohol marketing effectively, while delaying effective and binding legislation.

The emphasis on "immoderate consumption" is equally problematic. Evidence referred to in the original text makes clear that alcohol consumption should not be encouraged at all, particularly in light of its contribution to NCDs, including cancer. The WHO Regional Office for Europe has stated that there is no safe amount of alcohol. At a minimum, the AVMSD should be revised to focus on children's exposure to alcohol marketing rather than marketing aimed at them, and on the promotion of alcohol consumption as such rather than only "immoderate" use.

Overall, the current AVMSD does not provide effective protection against the harms of alcohol marketing, as acknowledged in the EU Safe Hearts Plan, as well as NoLo products[8] that are often used to promote alcoholic beverages through cross-promotion. We therefore call on the Commission to revise the AVSMD by regulating alcohol marketing in the same way as it has regulated tobacco marketing, by prohibiting all audiovisual commercial communications for alcohol across audiovisual media services and video-sharing platforms, including brand marketing through sponsorship and product placement.

[8] No and Low (NoLo) alcohol products, such as beer, spirits, wine, and cocktails) that normally contain ethanol as an ingredient but are produced with ethanol completely removed or significantly reduced

Unhealthy food marketing

Despite years of EU engagement on the issue, the regulation of unhealthy food marketing to children remains a clear failure. Article 9(4) AVMSD relies on voluntary self-regulation, encouraging codes of conduct regarding "inappropriate" audiovisual commercial communications accompanying or included in children's programmes. This approach does not reflect existing evidence or authoritative guidance. This is particularly so in light of the recently adopted 2023 WHO Guideline on food marketing and the accompanying policy guidance published jointly by Unicef and WHO.

The 2023 WHO Guideline, which is based on the latest evidence, calls on governments to protect children of all ages from the marketing of unhealthy food, specifically recommending the implementation of policies to restrict unhealthy food marketing to which children are exposed. Importantly, such policies should:

- be mandatory;
- protect children of all ages;
- use a government-led nutrient profile model to classify foods to be restricted from marketing;
- be sufficiently comprehensive to minimize the risk of migration of marketing to other media, to other spaces within the same medium or to other age groups; and
- restrict the power of food marketing to persuade

Article 9(4) fails to implement every single aspect of this evidence-based Guidelines. It does not define "children," allowing industry initiatives such as the EU Pledge and the EU Code of Conduct on Responsible Food Business and Marketing Practices to exclude adolescents, despite evidence that teenagers are also significantly affected by unhealthy food marketing. It does not incorporate a binding, EU-wide nutrient profiling system, referring instead to the WHO nutrient profile model only in the non-binding preamble.

The material scope of Article 9(4) is also too narrow, focusing on children's programmes rather than on children's actual exposure, including in mixed-audience settings[9]. While the extension of the AVMSD to video-sharing platforms in 2018 was an important step, significant gaps remain, notably for marketing appearing outside programmes or user-generated videos (including YouTube, Instagram and TikTok).

[9] The problem is compounded by the fact that Article 9(1) AVMSD only prohibits direct marketing to children – a requirement that is far too narrowly construed to protect children from exposure to unhealthy food, alcohol or other harmful marketing.

Furthermore, the AVMSD does not address the persuasive power of food marketing techniques, such as the use of celebrities, influencers, brand characters or promotional toys. By relying on self-regulation, Article 9(4) allows conflicts of interest to persist and fails to deliver meaningful protection for children. As currently drafted, Article 9(4) cannot achieve its stated objective of reducing children's exposure to unhealthy food marketing, nor can it contribute effectively to long-term NCD prevention, including cancer prevention.

Considering the limitations of Article 9(4) AVMSD, a coalition of over 20 Brussels-based civil society organisations was set up in 2021, including ECL, to call on the Commission to adopt legislation aligned with the Blueprint Directive on food marketing that was drafted to support their advocacy efforts. This Directive which predated the WHO Guideline nonetheless calls for very similar measures: mandatory regulation intended to protect all children from exposure to unhealthy food marketing, including brand marketing, in all cross-border media that the EU can lawfully regulate, not least audiovisual media series and video-sharing platforms which fall within the scope of the AVMSD. The Coalition has also advocated for the regulation of events sponsorship and packaging (which fall outside the scope of the AVMSD but should nonetheless be regulated at EU level, in a similar way to what the EU has done for the marketing of tobacco products).

The AVMSD should therefore be revised to introduce mandatory, government-led rules to protect all children from exposure to unhealthy food marketing, including brand marketing, across all audiovisual media services and video-sharing platforms within EU competence.

National measures and the limits of minimum harmonisation

The AVMSD is a minimum harmonisation instrument, allowing Member States to adopt stricter national measures. However, this flexibility is undermined by the low level of protection currently set at EU level and by the Country of Origin Principle, which limits Member States' ability to regulate cross-border harmful marketing.

As a result, the coexistence of weak EU rules and stricter national measures has led to fragmentation of the internal market without ensuring effective protection of child health or children's rights. This situation is neither legally certain nor compatible with the EU's health mainstreaming obligations or its duty to treat the best interests of the child as a primary consideration.

Conclusion

In light of the above, we urge the European Commission to firmly reject Option 1 (no change) and to revise the AVMSD to ensure effective, evidence-aligned regulation of harmful marketing. This will require political will, but it is essential to protect children, reduce the burden of NCDs - including obesity, diabetes and cancer - and ensure that the internal market functions in a way that prioritises public health and fundamental rights.

We remain available to provide further expert input to support the Commission's work on the revision of the AVMSD and its provisions on harmful marketing

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ECL expresses its warm gratitude to Law Professor Amandine Garde from the University of Liverpool (United Kingdom) for her leadership, support, and contribution to this response, as well as for her inspiring efforts in the fight against NCDs and the protection of children.

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The Association of European Cancer Leagues (ECL) is a non-profit umbrella organisation made up of 35 national and regional cancer societies advocating for improved cancer control and care across Europe. Transparency registry number: 19265592757-25