



On 3 September 2020, the CPME Executive Committee adopted the CPME Statement on Online Advertising of Unhealthy Products for the Digital Services Act Public Consultation' (CPME 2020/068 FINAL).

**CPME Statement on Online Advertising of Unhealthy Products for
the Digital Services Act Public Consultation**

The Standing Committee of European Doctors (CPME) represents national medical associations across Europe. We are committed to contributing the medical profession's point of view to EU and European policy-making through pro-active cooperation on a wide range of health and healthcare related issues¹.

CPME welcomes the European Commission initiative to launch a public consultation on the Digital Services Act and to collect, in Module IV of the consultation, stakeholders' views on potential issues emerging in the area of online advertising and smart contracts. However, module IV questions do not allow expressing CPME concerns on online advertising of unhealthy and harmful products, such as alcohol, tobacco and foods high in fat, sugar and salt (HFSS).

I – The impact of the Directive on Electronic Commerce on online advertising of unhealthy and harmful products

At present, the Directive on Electronic Commerce² determines that providers of online services are subject to the law of the Member State in which they are established (the so-called "internal market clause"),³ and not the law of the Member State where the service is accessible. The Directive also exempts intermediary services from liability for the content they manage under certain conditions. Moreover, Member States cannot impose a content monitoring obligation on intermediaries.

CPME underlines the obstacles for Member States to restrict online advertising of unhealthy and harmful products due to the internal market clause. This clause undermines Member States' ability to

¹CPME is registered in the Transparency Register with the ID number 9276943405-41.

More information about CPME's activities can be found under www.cpme.eu

² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

³ Article 3 of Directive 2000/31/EC.



decide their own level of public health protection, as they cannot enforce national rules to a company established in another Member State but where such company is targeting their nationals too.⁴

Companies established in Member States where online advertising of HFSS is less stringent have a competitive advantage over those which are established in Member States with more stringent rules. This environment distorts competition within the internal market leading to forum shopping. Moreover, citizens are confronted with different jurisdictions they are not familiar with. The principle of subsidiarity, as defined in Article 5 of the Treaty on European Union, which also aims to ensure that decisions are taken as closely as possible to the citizen, is then undermined.

II - Recommendations

CPME stresses the importance for policy-makers to prioritise the well-being of citizens living in Europe, in particular children and young people, over the financial interests of the marketing industry and take effective regulatory action to provide for responsible practices in advertising and other forms of communication, including social media.

Marketing plays a central role in the proliferation of diet- and alcohol-related harm in Europe.⁵ Noncommunicable diseases (NCDs), such as cardiovascular diseases, cancer and diabetes, represent major causes of ill-health and premature death, resulting in significant social and economic costs. Alcohol consumption, smoking and unhealthy diets are part of the main risk factors for NCDs. At the same time, alcohol, cigarettes and unhealthy foods and drinks are heavily advertised. Advertisers look for new methods to promote their brands as they collaborate for example with bloggers, vloggers and other influencers using different social media platforms where compliance by the latter with online advertising rules is more difficult to enforce.

Promoting healthy living cannot just be the responsibility of the health sector. A multi-sectoral approach is needed. Action in primary prevention is essential to ensure that people are able to live as healthy lives as possible, which will in turn reduce the incidence of NCDs and the resulting premature deaths in the populations.

⁴ As an example, in 2018, the European Commission [decided](#) that the Swedish intention to impose their ban on alcohol advertising on two broadcasters based in the UK and broadcasting in Sweden is not compatible with EU law. Sweden should have demonstrated that the broadcasters established themselves in the UK to circumvent such rules – see Commission decision C(2018) 532 final of 31 January 2018. As a result, the burden of proof imposed on the Member State run against the public health interest to protect human life and the national policy of reducing alcohol consumption.

⁵ WHO Europe (2016). [Tackling food marketing to children in a digital world: trans-disciplinary perspectives.](#)



CPME reaffirms that the industry self-regulation is not sufficient and that the Digital Services Act has the potential to improve the enforcement of national marketing rules. Self-regulation has not succeeded in improving public health outcomes so far. Voluntary commitments are often vague, lacking credible enforcement mechanisms and difficult to monitor.⁶ Therefore, CPME calls on the European Commission to introduce stringent cross-border restrictions for online advertising of unhealthy and harmful products.

CPME recommends:

- **Clarifying that the jurisdiction for online advertising of unhealthy and harmful products is not subject to the internal market clause;**
- **Clarifying that the protection of public health includes national public health measures (Article 3(4)(a)(i) of the Directive on Electronic Commerce);**
- **Extending the derogations from Article 3 (Annex) of the Directive on Electronic Commerce to cover commercial communications, including online advertising of unhealthy and harmful products;**
- **Considering the online advertisement of unhealthy and harmful products via games and social media illegal, due to the potential exposure for vulnerable groups, in particular children, youths, persons with disabilities, persons suffering from mental health disorders; and,**
- **Encouraging Member States to support civil society organisations and citizens to monitor and report illegal online content on unhealthy and harmful products.**

⁶ EPHA – European Public Health Alliance (2016). [Self-Regulation: A False Promise for Public Health?](#)