



**Submission from World Cancer Research Fund International  
on Directive 2010/13/EU audiovisual media services (AVMSD)  
– a media framework for the 21<sup>st</sup> century**

<https://ec.europa.eu/eusurvey/runner/AVMSD>

In this consultation response, we provide comments on questions 1.1, 1.2 and 2.1.

**Section 1: Ensuring a level playing field**

**Question 1.1**

**Are the provisions on the services to which the Directive applies (television broadcasting and on-demand services) still relevant, effective and fair?**

Relevant – **yes**

Effective – **no**

Fair – **no**

**Comments:**

The current Directive does not take into account or include online platforms and providers hosting user-generated content, such as YouTube. The revised and updated AVMSD must recognise these new and constantly evolving audio-visual media platforms that now exist. This is important as the WHO Europe report points out that estimates for advertising expenditure in Western Europe indicate that Internet spending is expected to rise by 20% of total advertising expenditure to 30% over the period 2010-2015 (WHO Europe, *Marketing of foods high in fat, salt and sugar to children: Update 2012-2013*, Copenhagen, 2013, page 5). Internet marketing expenditure in the UK already exceeds television advertising expenditure.

**Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) due to the fact that certain audiovisual services are not regulated by the AVMSD?**

**Yes**

**Comments:**

See comments below

**Preferred policy option:**

- a)  Maintaining the status quo
- b)  Issuing European Commission's guidance clarifying the scope of the AVMSD. No other changes to Union law would be foreseen.
- c)  Amending law(s) other than the AVMSD, notably the e-Commerce Directive. This option could be complemented by self and co-regulatory initiatives.
- d)  Amending the AVMSD, namely by extending all or some of its provisions for instance to providers offering audiovisual content which does not qualify as "TV-like" or to providers hosting user-generated content.
- e)  Other option (please describe):
  - *Mandatory regulation of ALL forms of food and beverage marketing and advertising, including online platforms and providers hosting user-generated content.*

**Please explain your choice:**

Forty-two million children worldwide under the age of 5 were overweight or obese in 2013 (WHO factsheet Number 311). Childhood overweight and obesity indirectly increase the risk of cancer, as being overweight or obese as a child increases the risk of being overweight or obese in adulthood. World Cancer Research Fund International's Continuous Update Project (CUP) has found that being overweight or obese in adulthood increases the risk of at least 10 cancers. Being overweight or obese also increases the risk of other non-communicable diseases. Primary prevention of childhood obesity is key as overweight and obesity is difficult to reverse and tracks into adulthood, leading to further health implications and erodes the social and economic foundations of national governments.

A systematic literature review conducted by the WHO found a causal relationship between advertising and children's food behaviours and health outcomes, "Evidence from more complex studies, assessed as capable of inferring causality, find promotional activity is having an effect on children." (WHO, 'The extent, nature and effects of food promotion to children: a review of the evidence to December 2008',). In addition, a study by Ofcom, the UK communication industry regulator, found "modest direct effects of television advertising on food preference, consumption and behaviour" and probably larger indirect effects, which are harder to quantify (Ofcom, 'Childhood Obesity – Food Advertising in Context', 2004). It is therefore important to restrict marketing and advertising of foods high in fat, sugar and salt (HFSS) and sugary beverages to children.

This view is supported by the EU Action Plan on Childhood Obesity that states "efforts to restrict marketing and advertising to children and young people should include not only TV but all marketing elements, including ... promotional actions, internet presence and social media activities."

Whilst recognising the importance of restricting advertising to children, the AVMSD's Article 9(2) only goes so far as to '*...encourage media service providers to develop codes of conduct regarding inappropriate audiovisual*

*commercial communication, accompanying or included in children's programmes, of [HFSS food]...*. For those companies who have signed up to the EU Pledge they can withdraw whenever they want, and can set a very low bar – stipulating that it only applies to programming where children under the age of 12 constitute over 35% of the audience. A recent Ofcom report in the UK highlighted that children between 4-15 years never exceed 21% of the total TV viewing audience at any time of the day and the highest peak is during family TV viewing times (7-8pm) [Ofcom 2011 "Children and parents: media and attitudes report" p. 161]. Thus, the current self regulatory rules seem to restrict advertising exposure 'on paper', but in reality they still allow large numbers of children to be reached by marketing for HFSS foods and beverages.

According to the UN Convention on the Rights of the Child, children have the right to grow up in a healthy environment. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Art 3.1).

Furthermore, the current Directive does not take into account or include online platforms and providers hosting user-generated content, such as YouTube. The revised and updated AVMSD must recognise these new and constantly evolving audio-visual media platforms that now exist. This is important as the WHO Europe report points out that estimates for advertising expenditure in Western Europe indicate that Internet spending is expected to rise by 20% of total advertising expenditure to 30% over the period 2010-2015 (WHO Europe, *Marketing of foods high in fat, salt and sugar to children: Update 2012-2013*, Copenhagen, 2013, page 5). Internet marketing expenditure in the UK already exceeds television advertising expenditure.

We believe that it is vital for the AVMSD to recognise the exposure of children to, and the power of, marketing in a highly complex and fast-moving globalised economy and digital environment, and therefore act to strongly protect children against the influence of marketing and advertising of HFSS foods and beverages.

We therefore recommend that the new and revised AVMSD:

- Introduces mandatory rules and regulation to limit the exposure of children to, and the power of, marketing of HFSS foods and beverages (see further comment in 2.1), with clear consequences for non-compliance.
- Be expanded to cover online platforms and providers hosting user-generated content.

## **Geographical scope of AVMSD**

### **Question 1.2**

**Are the provisions on the geographic scope of the Directive still relevant, effective and fair?**

Relevant - **yes**

Effective - **no**

Fair - **no**

**Comments:**

See comments below

**Are you aware of issues (e.g. related to consumer protection problems or competitive disadvantage) caused by the current geographical scope of application of the AVMSD?**

**Yes**

**If yes, please explain:**

Non-EU based media service providers can freely advertise products high in fat, sugar and salt (HFSS) to European viewers.

**Comments:**

At present the AVMSD provides no solution to the problem that non-EU based media service providers can freely advertise products high in fat, sugar and salt (HFSS) to European viewers.

If significant numbers of people in the EU view such content this may negatively affect public health outcomes and impact the sustainability of European health systems.

We recommend this loophole be addressed during the current review.

**Preferred policy option:**

- a)  Maintaining the status quo
- b)  Extending the scope of application of the Directive to providers of audiovisual media services established outside the EU that are targeting EU audiences.
- c)  Extending the scope of application of the Directive to audiovisual media services established outside the EU that are targeting EU audiences and whose presence in the EU is significant in terms of market share/turnover.
- d)  Other option (please describe)

**Please explain your choice:**

Option b)

This could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.

Option c)

As with option b), this could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.

## **Section 2: Providing for an optimal level of consumer protection**

### **Question 2.1**

**Are the current rules on commercial communications still relevant, effective and fair?**

Relevant - **yes**

Effective - **no**

Fair – **no**

#### **Comments:**

See comments below

**Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) caused by the AVMSD's rules governing commercial communications?**

**Yes**

#### **Please explain:**

Non-observance of the 12-minute rule and ineffectiveness of rules to protect children from advertising of HFSS products (see below for more detailed comments).

The AVMSD has set a rule of maximum 12 minutes of advertising per hour on television, but this is often not adhered to and is regularly breached. This has been highlighted by the EU Commission when it monitored advertising practices in eight Member States and found the 12 minute limitation of advertising spots regularly breached (First Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2010/13/EU "Audiovisual Media Service Directive" page 7). The European Parliament has also expressed concern about this regular breach in some Member States in its Resolution on the implementation of the AVMSD (EP report on the implementation of the AVMSD, P7\_TA(2013)0215).

The voluntary pledge outlined in Article 9(2) in the current AVMSD enshrines no duty to ensure that codes are adopted or that they are sufficiently effective. Self-regulation is not an effective mechanism to prevent inappropriate marketing of HFSS foods and beverages to children. This presents a clear case of conflict of interest, where public health is not a primary consideration, as compared to economic interests.

Preferred policy option:

- a)  Maintaining the status quo
- b)  Rendering the rules on commercial communications more flexible, notably those setting quantitative limits on advertising and on the number of interruptions.
- c)  Tightening certain rules on advertising that aim to protect vulnerable viewers, notably the rules on alcohol advertising or advertising of products high in fat, salt and sugars.
- d)  Other options (please describe):
  - *Mandatory regulation of marketing and advertising of products high in fat, salt and sugars to children.*

**Please explain your choice:**

Evidence strongly supports the view that self-regulation (like the EU Pledge) is not a suitable regulatory mechanism to protect children effectively from the harmful consequences that the marketing of HFSS foods and beverages have on their health (Bartlett and Garde, 'Time to seize the (red) bull by the horns: the EU's failure to protect children from alcohol and unhealthy food marketing' *European Law Review*. 2013; Ofcom, 'Children and parents: media use and attitudes report', 2004; Galbraith-Emami and Lobstein, 'The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review', *Obesity Reviews*. 2013; Chambers SA, et al 'Reducing the volume, exposure and negative impacts of advertising for foods high in fat, sugar and salt to children: A systematic review of the evidence from statutory and self-regulatory actions and educational measures.' *Prev Med*. 2015).

As recommended by the WHO in its *Set of recommendations on the marketing of foods and non-alcoholic beverages to children* (2010), the appropriate way forward therefore is to set effective and sufficiently high standards at the European level to ensure an adequate level playing field reflecting evidence as well as the scale of the public health concern involved. It should be stressed that the response must be of binding regulatory nature.

The current AVMSD require media service providers to limit 'inappropriate' marketing of HFSS foods and beverages 'accompanying or included in children's programming' without defining "inappropriate" or "children's programming". The World Health Organization's recommendations to limit exposure of children to the promotion of HFSS foods and beverages, suggest that ALL marketing of HFSS foods and beverages is inappropriate to children.

Comprehensive mandatory regulation must be underpinned by clear criteria - including defining terms like 'marketing' (e.g. all marketing techniques and communication channels), 'food' (e.g. which foods will be included and which will be exempted), marketing 'to' (e.g. any marketing communications that are directed to children, appeal to children, or, to which children are exposed, such as prime time TV that is not aimed at children but that they are likely to watch), and 'children' as a minimum of 16 years of age. World Cancer

Research Fund International's NOURISHING framework outlines a comprehensive approach to promoting healthy diets – one area being the restriction of food advertising and other forms of commercial promotion ([www.wcrf.org/NOURISHING](http://www.wcrf.org/NOURISHING)). As noted above, mandatory regulation is the most effective approach for restricting food marketing and advertising.

The results of the current AVMSD's voluntary codes are a fragmented internal market that does not function properly and an inefficient framework that does not protect children, as set out in the UN Convention on the Rights of the Child, which stipulates that the 'best interest of the child must be the primary consideration'. The Special Rapporteur on the Right to Health also emphasised that 'under the right to health, States are especially required to protect vulnerable groups such as children from violations of their right to health' (A/HRC/26/31 April 2014).

We therefore recommend that the revised AVMSD:

- Include mandatory regulation and rules of HFSS foods and beverages advertising to children, including a minimum 6am - 9pm watershed for HFSS foods and beverages on television throughout the EU
- Includes a definition of HFSS foods and beverages, through nutrient criteria
- Uses the nutrient profile model developed by the WHO Regional Office for Europe
- Extends to all audio-visual media (including promotional actions, Internet presence and social media activities), produced by or distributed by commercial organisations, as well as online platforms and providers hosting user-generated content such as YouTube.