

EASL position on the Audio Visual Media Services Directive proposal

About EASL

Based in Geneva, with an office in Brussels, the European Association for the Study of the Liver is a membership organisation with over 4000 members from all the EU 28 countries and beyond. We promote state of the art research in the liver field, provide medical education to thousands of healthcare professionals in the hepatology field and host the largest hepatology congress in the world, all with the aim of beating liver disease.

Our comments on the revision of the Audio Visual Media Services Directive

Context

Alcohol and liver disease

The European region has the highest consumption levels of alcohol per capita.¹ Liver disease affects young and middle aged people and liver cirrhosis is the eighth leading cause of years of life lost in the Western European region.² In the WHO Euro region more than 2,370,000 years of life are lost before the age of 50 due to liver disease. This is more than from lung, trachea, bronchus, oesophageal, stomach, colon, rectum and pancreatic cancer combined.³

Alcohol associated liver toxicity is dose related – the higher the lifetime consumption of alcohol, the more likely a person is to progress from a simple fatty liver, through a spectrum of progressive fibrosis to cirrhosis and ultimately liver failure, portal hypertension and death. Therefore, consumption levels matter – at a population and personal level - and any reduction in price and increase in availability is likely to lead to a higher burden of alcohol related death and disease. **The majority of alcohol sales are to people who drink at hazardous or harmful levels; for example, in the UK around three-quarters of alcohol sales are to hazardous or harmful consumers.**⁴

Obesity and liver disease

Non-Alcoholic Fatty Liver Disease (NAFLD)

Non-alcoholic fatty liver disease (NAFLD) is the most common cause of chronic liver disease in Western countries.⁵ It is a chronic liver disease, characterized by excessive fat in the liver that may progress to cirrhosis and liver cancer. It is mostly (although not exclusively) found in overweight and obese patients. The OECD estimates that over half of the EU population

¹ Alcohol and liver disease in Europe – Simple measures have the potential to prevent tens of thousands of premature deaths; Journal of Hepatology 2016 vol.64, 957–967.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ NAFLD: A multisystem disease; Journal of Hepatology 2015 vol.62, S47-S64.

(approximately 255 million) is overweight or obese.⁶ According to the most recent research, between 30% and 70% of overweight and obese people suffer from NAFLD.⁷ Even if we take the lowest figure of 30%, this translates into more than 85 million EU sufferers.

NAFLD is predicted to become the most frequent indication of liver transplant by 2030. It currently costs approximately €100,000 to carry out a liver transplant and there is a shortage of available livers across the EU.

A recent meta-analysis showed that NAFLD increased mortality by 57%, mainly from liver related and cardiovascular (CVD) causes and increased risk of incident Type 2 diabetes by approximately twofold.⁸ There is also emerging evidence that it is linked to other chronic disease conditions such as colorectal cancers, the third biggest cause of cancer mortality in the EU, and chronic kidney disease.⁹ **NAFLD has also been observed to be increasingly present in obese and overweight children and adolescents.¹⁰ Alarming, studies have reported signs of early cardiac dysfunction in this population with NAFLD.**

It is also becoming apparent that many people with NAFLD have not been diagnosed and may be suffering from other undiagnosed conditions such as CVD, kidney disease and diabetes. All of this translates into potentially millions of new patients with these conditions in the EU, starting in childhood.

NAFLD is associated with poor nutrition and an unbalanced diet, high in fat, carbohydrates and fructose.¹¹

Why is this relevant to the Audio visual media services directive?

Because numerous studies suggest that exposure to marketing for alcohol and foods high in salt, sugar and saturated fats increases consumption of these products in all segments of the population, including minors. Accordingly, EASL believes that the proposal for a new directive should be strengthened with the following amendments.

Alcohol marketing

Does marketing communication impact on the volume and patterns of consumption of alcoholic beverages, especially by young people? - a review of longitudinal studies, Scientific Opinion of the Science Group of the European Alcohol and Health Forum

http://ec.europa.eu/health/ph_determinants/life_style/alcohol/Forum/docs/science_o01_en.pdf

Assessment of young people's exposure to alcohol marketing, Rand Europe, 2012:

http://ec.europa.eu/health/alcohol/docs/alcohol_rand_youth_exposure_marketing_en.pdf

Marketing of food high in salt, sugar and saturated fats to minors

Advertising as a Cue to Consume, Boyland et al

<http://ajcn.nutrition.org/content/early/2016/01/20/ajcn.115.120022>

Commentary:

<https://theconversation.com/advertising-has-the-power-to-make-children-fat-and-this-needs-to-stop-58899>

⁶ <http://www.oecd.org/healthy/obesity-Update-2014.pdf>

⁷ EASL, The Burden of Liver Disease in Europe:

http://www.easl.eu/medias/EASLimg/Discover/EU/54ae845caec619f_file.pdf

⁸ See footnote 5

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

Initial comments

EASL welcomes the improvements in the Commission proposal as compared to the current directive:

1. Inclusion of the stated aim of the reduction of exposure of minors to commercial communications in recitals 10 and 11 and Article 9.
2. The requirement, introduced by Article 4(7), that co and self-regulatory codes must have clear objectives.
3. The inclusion of video-sharing platforms in the directive.
4. Articles 30 and 30a addressing the independence and functioning of the regulatory authorities.
5. The mention of the WHO nutrient profile model in recital 10.

Additional improvements we would like to see included in the proposal

The legal basis should be strengthened to include Article 168, the public health protection article in the TFEU. This would be consistent with Article 168's objective of assuring *health in all policies*.

New text (**in bold**):

*Having regard to the TFEU and, in particular, Articles 53 (1), 62 **and 168** thereof*

Recital 27

It should be clarified that the maximum harmonization foreseen by the provisions on video-sharing platforms apply only to content and that MSs are free to adopt stricter requirements should they wish to do so:

New text (**in bold**):

As regards commercial communications on video-sharing platforms, they are already regulated by Directive 2005/29/EC of the European Parliament and of the Council, which prohibits unfair business-to-consumer commercial practices, including misleading and aggressive practices occurring in information society services. As regards commercial communications concerning tobacco and related products in video-sharing platforms, the existing prohibitions provided for in Directive 2003/33/EC of the European Parliament and of the Council, as well as the prohibitions applicable to communications concerning e-cigarettes and refill containers pursuant to Directive 2014/40/EU of the European Parliament and of the Council, ensure that consumers are sufficiently protected. The measures set out in this Directive therefore complement those set out in Directives 2005/29/EC, 2003/33/EC and 2014/40/EU. **With regard to commercial communications other than those referred to above, Member States remain free to set stricter rules in accordance with the minimum harmonisation principle of this directive.**

Article 4 (4)

Include a reference to the EU obligation to promote a high level of health protection in the directive by adding a final sentence to Article 4 (4):

The Commission shall assess these measures in the light of the EU's obligation to ensure a high level of public health protection and take the best interest of minors as a primary objective in its assessment of Member States' measures.

Article 4 (7)

The first sentence of Article 4 (7) should be strengthened to improve regulatory potential.

New text (**in bold**):

Without prejudice to the adoption of regulatory measures, Member States shall encourage co-regulation and self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems(...)

Article 9 (1) (c) (e)

The provision should be strengthened to protect minors from harmful commercial communications by replacing Article 9 (1) (c) (e) with:

(e) the exposure of minors to audiovisual commercial communications for alcoholic beverages shall be minimized.

Article 9 (l) (c) (g)

The word *directly* should be deleted from the text to strengthen the protection of minors and the **text in bold should be added**:

(g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not **directly** exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, **directly** encourage them to persuade their parents or others to purchase goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations, **or in attractive situations that are not linked to the nature of the product advertised.**

Article 9 (2)

Strengthen the protection of minors by rephrasing Article 9(2):

“The exposure of minors to commercial communications of foods and beverages the excessive intakes of which in the overall diet are not recommended, in particular fat, trans-fatty acids, salt or sodium and sugars shall be minimized.

In light of this objective, no such commercial communications shall be broadcast in the EU between 07.00 and 23.00h.

Member States and the Commission shall encourage the development of self and co-regulatory codes of conduct or introduce binding legislation to further minimize the exposure of minors to such commercial communications accompanying or included in programmes with particular appeal to minors.

The Commission and ERGA shall encourage the exchange of best practices on self and co-regulatory systems across the EU. Where appropriate, the Commission shall facilitate the development of EU-wide codes of conduct.

The WHO Regional Office for Europe’s nutrient profile model shall be used as a reference unless a higher level of protection can be achieved by another model, to be duly notified to the European Commission while substantiating the grounds on which the assessment is based.”

Reason for the amendment: The stated aims of the proposal and the proposed mechanism to achieve them are in conflict.

Article 9 (3)

Strengthen the protection of minors from exposure to harmful commercial communications by amending Article 9 (3):

“The exposure of minors to commercial communications of alcoholic beverages shall be minimized.

In the light of this objective, no such commercial communications shall be broadcast in the European Union between 07.00 and 23.00h.

Member States and the Commission shall encourage the development of self and co-regulatory codes of conduct or introduce binding legislation to further minimize the exposure of minors to such commercial communications accompanying or included in programmes with particular appeal to minors.

The Commission and ERGA shall encourage the exchange of best practices on self and co-regulatory systems across the EU. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.”

Article 10 (2)

Strengthen the protection of minors from exposure to harmful commercial communications by extending the scope of Article 10 (2):

“Audiovisual media services or programmes shall not be sponsored by undertakings whose principle activity is the manufacture or sale of cigarettes and other tobacco products, **alcoholic beverages and foods and beverages barred from advertising according to the WHO Regional Office for Europe’s nutrient profile model.”**

Article 11 (4)

Exclude alcoholic beverages and food high in salt, fat and sugar from product placement by adding two sub-paragraphs to Article 11 (4):

“In any event programmes shall not contain product placement of:

(...)

(c) alcoholic beverages

(d) foods and beverages barred from advertising according to the WHO Regional Office for Europe’s nutrient profile model.”

Article 22

In order to reduce alcohol-related harm, Article 22 shall be amended as follows. The text in the proposal in red italics shall be deleted and the text in black bold added:

“Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:

- (a) it may not be *aimed specifically at* **attractive to minors** or in particular, depict minors consuming these beverages;
- (b) It shall not link *the consumption of* alcohol to enhanced physical performance or to

- driving;
- (c) It shall not create the impression that *the consumption of* alcohol contributes towards sexual or social success;
 - (d) It shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
 - (e) It shall not encourage *immoderate* consumption of alcohol or present abstinence or moderation in a negative light.”

Article 33

We suggest the following text be added to Article 33:

“No later than three years after the adoption of this Directive the Commission shall draw up a report to the European Parliament, to the Council and to the European Economic and Social Committee with proposals to limit the exposure of minors to commercial communications of products prejudicial to health on the internet and social media.”

Reason

The current proposal does not cover commercial communications placed on the internet or social media and video-sharing platforms. These sources of marketing are on the rise and ever more pervasive. An analysis of the role they play and any ways in which they undermine the overall provisions of this directive should be made.