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European Commission
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Subject: TRIS Notification 2024/9015/NO Concerning Advertising Restrictions on High Sugar, Fat, and Salt (HFSS) Food Products

Dear Mr Maly,

The Advertising Information Group (AIG) is an informal European grouping of national advertising tripartites (representing advertisers, advertising agencies and the media), and several Brussels-based trade bodies that represent ad agencies, broadcasters, publisher, direct marketing, and online advertising. AIG exists to promote a genuine Single Market in commercial communications, and to support responsible advertising self-regulation in the EU. AIG is also an industry member of the advertising self-regulatory organisation, the [European Advertising Standards Alliance \(EASA\)](#).

We are grateful for the opportunity to comment on TRIS Notification 2024/9015/NO as we believe that the regulatory framework proposed under this notification would go beyond current restrictions on advertising HFSS (high-fat, sugar, and salt) food products. As such it would unfairly impact advertising, in particular sponsorships and promotional campaigns.

We kindly request that you consider blocking the proposed draft law or, at the very least, provide a detailed opinion, since the proposed Norwegian law will hinder the functioning of the internal market. We believe that it constitutes an unjustified advertising ban on HFSS-foods that goes far beyond the regulatory frameworks established in other EEA member states. Such disproportionate measures create significant barriers within the internal market by imposing restrictions that are neither harmonised nor justified under EEA law, as it creates barriers to the free movement and advertising of goods and services across member states.

It not only disrupts the free movement of goods and services but also unfairly impacts businesses operating across borders, undermining the principles of the single market. The proposed law also infringes upon fundamental European rights, including the freedom of expression and the freedom to conduct business, without adequate justification or proportionality. The lack of alignment with existing EEA standards highlights the necessity for the Commission to intervene to ensure that national measures like these do not undermine the integrity of the internal market.

1. Lack of empirical basis

Fundamentally, we believe that the proposed restrictions lack a clear empirical basis to justify their effectiveness in reducing childhood obesity. The evidence presented fails to establish a direct causal link between HFSS food advertising and childhood obesity rates. In addition, the proposal fails to address the multifaceted causes of obesity. For example, socio-economic factors, parental influence, and physical activity – factors which are more significant than advertising.

This lack of evidence of causality is further supported by research. The Max Rubner Institute (MRI), a scientific body under the German Federal Ministry of Food and Agriculture (BMEL), conducted a comprehensive study of 17 European countries. Their analysis revealed that, in countries where HFSS products are categorised using various nutrient profiling models and had either implemented a

complete advertising ban or restricted advertising, there was no measurable impact in relation to children's weight development.¹

2. Unjustifiable and enormous challenges for the economy

Beyond these effectiveness concerns, the proposal raises significant economic challenges as it imposes sweeping limitations on local businesses' ability to market their products while international competitors may bypass the restrictions due to the country-of-origin principle in EU law. The proposed advertising ban also erects new trade barriers for new entrants to the Norwegian market, thus making it harder for them to stand out from local competitors.

Implementation challenges are equally concerning, as the definitions in the draft are vague, making compliance and enforcement a significant hurdle. Specifically, there is lack of clarity and precision regarding the term "directed at children" in relation to advertising. Phrases such as "particularly appeals to children" is highly subjective, overly broad and difficult to apply consistently as it depends on cultural, individual, and developmental factors. Depending on the age, interests, and social environment almost anything could be considered appealing to a child.

This definitional ambiguity becomes even more problematic when considering age classifications. In the proposal "Children" are defined as individuals under the age of 18. However, the interests of 17-year-olds often closely align with those of young adults, making it even harder to distinguish marketing aimed at solely at "children". This ambiguity would lead to considerable uncertainty for businesses and enforcement authorities.

The proposal's restrictions become particularly problematic in Art. 4 (4), which suggests prohibiting the marketing of products listed in Annex I if it is done in a way that encourages adults to purchase the products for their children. This restriction would impose a severe and disproportionate limitation on advertising directed at adults and could affect the depiction of families in everyday situations in adverts. The proposed wording is also highly ambiguous, particularly due to the lack of clarity surrounding the term "encourages". The draft does not define what "encourages" means in this context, and therefore leaves significant space for interpretation. This uncertainty creates a serious challenge for advertisers, as it does not provide clear guidance on what types of marketing would be permissible.

3. The WHO nutrient profiling model

Another key issue lies with the proposal's reliance on the **WHO nutrient profiling model** as a basis for determining HFSS products subject to advertising restrictions. This approach is problematic as foods cannot be categorised as inherently "good" or "bad". This would oversimplify the complexities of nutrition, dietary health and consumption within the broader dietary context. The model's criteria may mislead consumers by stigmatising entire categories of food rather than promoting informed, balanced dietary choices. This undermines consumer education and shifts focus away from more nuanced health interventions that are needed to combat obesity.

The limitations of the WHO criteria become even more apparent in its treatment of food categories. The model categorises broad food groups without adequately considering cultural and nutritional diversity or the context of consumption. For example, cheese, yogurt, or cereals, which can form part of a balanced diet, are classified as unhealthy due to their individual nutrient profiles.

Total advertising bans are proposed for the first 6 categories of the annex – food categories: Category 1 (chocolate and sugar confectionery, energy bars, sweet spreads, and desserts), Category 2 (cakes, biscuits, and other sweet and/or fatty pastries), Category 3 (Snacks), Category 4 (edible ices), Category 5 (energy drinks) and Category 6 (Soft Drinks, cordial/squash and the like). **However, all**

¹ https://www.openagrar.de/servlets/MCRFileNodeServlet/openagrar_derivate_00045652/A2377.pdf

products falling within these categories are generally prohibited from being advertised. This applies regardless of their nutritional content, meaning, for example, that even sugar-free cough drops cannot be advertised.

Beyond these practical implementation challenges, the WHO nutrient profiling model lacks legal standing within the EU. It has been applied inconsistently across jurisdictions and is primarily a policy guideline that has not been incorporated into EU regulations. Its application has been limited to very specific contexts like Portugal but even there it has been applied in a modified form. Using it as the basis for national restrictions creates a mismatch with EU policy frameworks.

Perhaps most significantly, the WHO model's rigid threshold fails to account for portion sizes or broader dietary patterns. Its application assumes that restricting advertising for certain food categories directly impacts dietary habits, a link that remains empirically unsubstantiated.

4. Conclusion

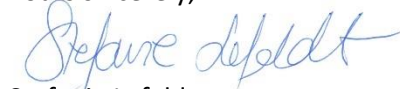
When considering the broader implications, the economic impact of this policy cannot be overlooked. Advertising not only generates income and jobs within the industry and helps fund content and media, but it also boosts the broader economy by driving consumer spending and stimulating economic activity. A previously commissioned economic study showed that every €1 spent on advertising generates €7 for the wider European economy. The effects extend beyond economic growth, as advertising facilitates brand competition, product innovation and a diverse and pluralistic media.

Given these numerous concerns, more balanced approaches should be considered. Alternatives such as targeted educational campaigns or parental guidance initiatives could achieve the stated objectives without these major economic impacts. Notably, the EU's AVMSD emphasises co- and self-regulatory measures as effective tools in this area. Therefore, it would be preferable if Norway could prioritise greater alignment with the guidelines set down by AVMSD by encouraging media organisations and industries, including platforms, to establish self-regulation mechanisms. We think that this would be much more effective than introducing statutory legislation.

The potential economic damage is already evident in similar proposals. For instance, comparable drafts in Germany to restrict advertising threatened approximately 70-80% of the food advertising market, which would have resulted in reduced product innovation and ultimately disadvantaging consumers. Rather than focusing on advertising bans, the policies and actions should emphasise improving dietary education, increasing access to different food options in schools, and promoting physical activity among children, as suggested by several health and nutrition studies.

While we support the objective of promoting healthier lifestyles, fighting obesity and protecting children, the proposed measures for Norway are too broad, lack sufficient empirical justification, and impose disproportionate burdens on the food industry. We strongly urge blocking the proposed draft law or, at the very least, provide a detailed opinion on this provision to ensure the principles of proportionality, safeguards personal freedoms, and alignment with constitutional and established EU legal standards.

Yours sincerely,



Stefanie Lefeldt
Head of European Affairs

Advertising Information Group