

Marketing restrictions and obesity prevention:

A brief overview of the European Union's experience

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Purpose of the presentation

To briefly discuss the contribution which the European Union's experience in regulating food marketing can bring to the US debate

- Note:
 - The EU is a legal order deriving from the Treaty of Rome signed in 1957
 - Originally 6 Member States; now 27.
 - Cultural differences between them which affect how these States deal with food

What is the Internal Market?

Article 14(2) EC

"The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured *in accordance with the provisions of this Treaty.*"

- Relevance to obesity prevention:
 - Free movement of foodstuffs (goods)
 - Broadcasting of advertising from one Member State to another (services)

The EU's developing obesity prevention strategy

- A relatively new concern in the EU
- White Paper adopted by the European Commission on 30 May 2007 laying down a multi-sectoral, multi-level, multi-stakeholder strategy:
 - Soft law measures: exchange of best practice through various discussion fora
 - Adoption of legislation binding on all the Member States

Food labelling (1)

- Rationale: only consumers who are well informed will be empowered to make healthy dietary choices
- Hence the need to provide information which is both accurate and sufficient

Food labelling (2)

- December 2006: adoption of Regulation 1924/2006 on Nutrition and Health Claims
- General principle: nutrition and health claims should not mislead consumers
- Nutrition claims are allowed only if they comply with the requirements laid down in an Annex to the Regulation
- Health claims must be authorised by the European Commission before being used (on the basis of a scientific assessment)

Food labelling (3)

- 30 January 2008: proposal for a Regulation on Food Information, containing provisions on nutrition labelling
- Nutrition labelling would become mandatory for energy, fat, saturates, carbohydrates with specific reference to sugars, and salt (per 100g/100ml/portion)
- Front-of-pack labelling to facilitate the use of nutrition information by consumers

Food advertising to children (1)

- Children cannot be expected to read food labels and process the information they contain
- Nevertheless, independent evidence has established that bombarding children with food advertising impacts negatively on their dietary choices and, ultimately, their health
- Hence the raging debate at EU level that children's exposure to commercial pressure should be limited

Food advertising to children (2)

- Relevance of the Television Without Frontiers Directive (Directive 89/552)
- Aim: to ensure the free movement of broadcasting services within the EU
- Directive first adopted in 1989; recently amended in December 2007 (Directive 2007/65)

Food advertising to children (3)

- The TVWF sets up a scheme combining two principles:
- **Article 2:** Transmitting State principle (also referred to as the State of Establishment principle)
- However, it is to be read in conjunction with **Article 3:** the Directive lays down minimum requirements only to ensure that common core values are upheld in all MS (MS action not completely pre-empted)

Food advertising to children (4)

- AVMS Directive adopted in December 2007; it must be implemented by all 27 EU Member States by December 2009
- The AVMS directive extends the scope of the TVWF directive to all AVMS (both linear and non-linear): internet now within its scope
- Also contains provisions regulating the timing and the content of advertising

Food advertising to children (5)

- Article 3e (g) AVMS (similar to Article 16 TVWF):
 - „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 of service by exploiting their inexperience or credulity [or] directly encourage them to persuade their parents or others to purchase the goods or services being advertised[...].”
- Some MS have exercised their freedom to adopt more protective standards:
 - Sweden: advertising ban to children under 12
 - The UK: Ofcom rules banning junk food advertising in and around children’s programmes

Food advertising to children (6)

- On food advertising more specifically, insertion in the AVMS of Article 3e (2):
 - *“Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.”*

Food advertising to children (7)

- Regulation of product placement
- Specific definition provided of PP (separate from the definition of advertising, sponsorship or teleshopping)
 - Article 1(m): „PP means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof, so that it is featured within a programme, in return for payment or for similar consideration”

Food advertising to children (8)

- Article 3g(1): PP prohibited in principle
- However, Article 3g(2): possibility for MS to allow PP, provided certain conditions are fulfilled
- Article 3g(2) and (3): conditions relating to
 - the nature of the programme,
 - the nature of the product/service placed
 - transparency of practice for viewers
 - editorial independence
- Uncertainty in wording leading to uncertainty in scope
- Provisions not sufficiently focused on viewers.

Article 3(g):

"1. Product placement shall be **prohibited**.

2. By way of **derogations** from paragraph 1, product placement shall be admissible, unless a MS decides otherwise:

- in cinematographic works, films and series made for AVMS, sports programmes and light entertainment programmes; or

- where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

The derogation provided for in the first indent shall not apply to children's programmes.

Programmes that contain product placement shall meet at least all of the following requirements:

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services

(c) they shall not give undue prominence to the product in question

(d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

3. In any event programmes shall not contain product placement of:

Tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacturer or sale of cigarettes and other tobacco products;

or

Specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

Towards a children's rights approach to food marketing

- The UN Convention on the Rights of the Child has been ratified by all EU Member States
 - Article 3: « in all actions concerning children [...] the best interests of the child shall be a primary consideration. »
 - Article 24: « State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health. »
- Recommendation: ratification of the UNCRC by the US to effectively counter the commercial free speech argument