

IMCO COMMITTEE VOTE ON DALTON-REPORT (NEW DEAL FOR CONSUMERS)
JOINT STATEMENT - BRUSSELS, 16 JANUARY 2019



JOINT CALL TO REJECT AMENDMENT 293

IMCO Vote on Dalton-Report: Better enforcement and modernisation of EU consumer protection rules (“New Deal for Consumers”)

The Commercial Broadcasters (ACT) together with the Association of Television and Radio Sales Houses (egta), and the European Association of Communications Agencies (EACA) support the goal of the Unfair Commercial Practice Directive (UCPD), which is designed to strengthen consumer’s rights and ban misleading online advertising.

However, we harbour serious reservations about Amendment 293, that is due to be put to a vote on Tuesday, 22 January, in the IMCO committee, and that suggests adding “unhealthy” food to the black list of commercial practices (Annex I) in the UCPD:

“23d. Online advertising of unhealthy food to children. Whether food is unhealthy should be assessed by taking into account the WHO Regional Office for Europe nutrient profile model from 2015.”

Amendment 293 should be rejected given the following shortcomings and implications:

- **AM 293 strongly conflicts with EU rules and cuts across national approaches.**
- **It is based on a contested WHO nutrient profile model.**
- **There is a risk of introducing a blanket ban of advertising HFSS products regardless of whether the target group is children or not.**
- **Simply advertising HFSS foods and beverages cannot be regarded as an unfair practice.**

I. Amendment 293 strongly conflicts with the newly revised Audiovisual Media Services Directive (AVMSD)

EU legislators have only recently reaffirmed the well-established self- and co-regulatory provisions for the marketing of so-called foods high in fat, sugar and/or salt (HFSS) on TV and on demand video services.

For some time now, Member States have successfully coped with these issues and found country-specific methods in accordance with their cultural differences to protect children from exposure to ads promoting HFSS food or drinks. For example, since 2003, [Ireland’s Children’s Commercial Communications Regulatory Code](#) has prohibited the advertising, sponsorship, and product placement of HFSS food, as defined by a nutrient-profiling model, during “children’s programmes”.

In Slovenia, [media service providers are required to announce and make publicly available codes of conduct](#). These cover inappropriate audiovisual commercial communications, accompanying or included in children’s programmes of certain foods and beverages, in accordance with government guidance. Subsequently, the Slovenian government adopted a nutrient profile model to serve as government guidance for implementation.

The food and beverage industries themselves are making significant efforts to meet their responsibilities: [Under the EU Pledge](#) that was launched about 10 years ago, 22 companies, responsible for the vast majority of advertising spent for food and beverages, have committed not to advertise HFSS products on mass media where children under 12 make up 35% or more of the audience.

Amendment 293 would cut across current EU legislation and existing national policies.

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II. The methodology of the WHO nutrient profile model is contested

According to the WHO scheme, even products like parmesan cheese or butter, not commonly regarded as so-called junk food, would qualify as unhealthy. That's why a number of EU countries have set up their own nutrient profile model, instead of adopting the WHO scheme as a whole.

The WHO nutrient profile scheme falls short of acting as a reference model for assessing the “unhealthy” nature of food and beverages.

III. Risk of becoming a blanket ban regardless of target group

Given the difficulty of controlling access to online content, the very broad scope of Amendment 293 runs the risk of introducing a blanket ban on advertising HFSS food and beverages in general – regardless of whether the targeted group is children or not.

It's not clear whether the amendment is targeted at children's content and/or content of particular appeal to children or at any content that children might ever see. Even if interpreted narrowly, i.e. covering advertising of HFSS products particularly marketed to children, it would be impossible to prevent children from viewing advertising of other HFSS products in the online sphere.

The lack of clarity in the wording of Amendment 293 would lead to uncertainty and potentially to a general ban of advertising HFSS products online.

IV. Simply advertising HFSS foods and beverages cannot be regarded as an unfair practice

The cases listed in Annex I of the UCPD comprise commercial practices that involve misleading, false or inaccurate claims. As long as the promotion of a food product neither misleads the consumer nor makes inaccurate or false claims, it cannot be considered unfair (regardless of the product exceeding the relevant nutrient threshold or not).

Besides the UCPD, the European legal framework provides a number of safeguards to protect consumers from misleading advertising or to inform purchasing decisions. These include lists of permitted health claims on food products (Regulation (EC) No 1924/2006), food labelling (Regulation (EU) No 1169/2011) or other official or certified sources of information.

Efforts to label the packaging of food products with health warnings and other nutritional information have been rejected during recent reforms of the EU law on food information.

It therefore seems unjustified, unfair and disproportionate to ban advertising of the very same products.

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SIGNATORIES

About the Association of Commercial Television in Europe (ACT)

The Association of Commercial Television in Europe represents the interests of leading commercial broadcasters in 37 European countries. The ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms. A healthy and sustainable commercial broadcasting sector that plays an important role in Europe's economy, society and culture. For more information please consult

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About the European association of Television and Radio Sales houses (egta)

[egta](http://www.egta.com) is the media trade body for television and radio advertising, representing 137 companies in Europe and beyond. egta members come from both public and private sectors and cover respectively 75% and 50% of the total TV and radio ad spend in Europe, thus playing a fundamental role in the sustainable funding of the European audiovisual and radio industries.

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About the European Association of Communication Agencies (eaca)

EACA is the voice of Europe's communication agencies and associations, promoting the economic and social contribution of commercial communications to society. EACA monitors and engages in relevant policy debates supporting evidence-based and proportionate regulation, forms industry coalitions, and promotes and participates in the development of industry standards. EACA's members comprise advertising, media, digital, branding and PR agencies as well as their national associations – together they represent more than 2,500 organisations from nearly 30 European countries that directly employ over 120,000 people.

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