

The logo for Eurocare, featuring the word "eurocare" in a lowercase, sans-serif font. The "euro" part is in a light blue color, and the "care" part is in a dark blue color. The logo is set against a white background.

ADVOCACY FOR THE PREVENTION OF
ALCOHOL RELATED HARM IN EUROPE

Review of the "Television Without Frontiers" Directive

Level of detail in the regulation of television advertising

Focus Group 2

Alcoholic Beverages Commercials
Protection of Minors

February 2005

Introduction: Founded in Brussels in 1990, Eurocare is a European not for profit, non-governmental organisation that draws together networks and organisations from all the European Union and Accession Countries dedicated to the prevention of the harm done by alcohol. It is an active member of the EU Health Policy Forum and of the EU Alcohol and Health Working Group of the European Commission.

General Comments: Eurocare is pleased to take part in the Focus Group 2 discussions organised by the Commission regarding the level of detail in television advertising. As the principal non-governmental organisation advocating the prevention of alcohol related harm across the European Union, we have limited our comments and concerns to matters regarding article 15, and Article 12 to 16 of the Television Without Frontiers Directive as well as any matters that may be discussed regarding co-regulation mechanisms at community level and regulatory criteria.

Background: A long time ago, when the Television Without Frontiers Directive was first adopted in 1989, article 15 was established as a way to help Member States regulate their rules for alcoholic drinks commercials. Since then, society has changed, the market has changed, and marketing practices have changed with it. Only the rules appear to have stayed the same. Eurocare would like to point out that these rules are not particularly well suited to today's environment. For instance, sex is used to sell drinks much more than it used to be. Some advertising shows alcohol in environments that those who drafted the rules would never originally have thought of. Another very significant change was the advent of alcopops. Indeed, the alcopops approach to marketing has been a significant change in the overall ecology of drinks promotion and caused serious concerns amongst the European population and regulators alike. Those concerns were expressed by some parts of the alcohol industry and organisations working in the field of advocacy for the prevention of alcohol related harm and were, arguably, widely accepted. Indeed, the market had changed, patterns of drinking had changed and marketing tools had changed with it. It was only normal to adapt the old rules (or laws) to this new environment and it is widely recognised that rules that were written before the 90s are no longer "doing their job". Many Member States have since tried to address this problem, some by adopting tougher rules, some by introducing watersheds. **Yet, article 15 has remained unchanged.** It is for this very reason that Eurocare disagrees with the Commission's statement regarding public health protection. How is it possible that Article 15 could be "*generally considered to be satisfactory*"? Indeed, to be satisfactory this article would need to take specific account of the influence that alcohol advertising has had on children and young people's perception and consumption of alcoholic beverages since its introduction in 1989.

European Concerns: In 1998, A Declaration on Alcopops and Energy drinks (sponsored by MEP Eryl McNally and MEP Bill Miller) went before parliament to attract the attention of decision makers to public concern over the targeting of Alcopops and Energy Drinks to the young. Over 200 MEPS from all Member States and from across the political spectrum signed it. The need for action was also recognised by the European Union's Ministers of

Health in 2001, when they adopted Conclusions on a Community Strategy to reduce alcohol-related harm as well as a Recommendation 2001/458/EC on the drinking of alcohol by Children and Young people: The Council Recommendation describes alarming trends in regard to alcoholic beverages and young people. Some of the key recommendations are as follows:

Member States should ensure that alcoholic beverages are not designed or promoted to appeal to children or adolescents

2. The Commission should support the Member States in their efforts to implement these recommendations

Furthermore, there is growing international evidence that the volume of alcohol advertisements do affect attitudes and expectancies, consumption levels and patterns, and consequent alcohol-related harm¹. These facts were also recognised by Ofcom which recently reviewed its rules for broadcast advertising of alcohol drinks. The Ofcom review stated that:

“In the past, in the absence of consistent evidence about the influence of alcohol advertising, policy has been purely precautionary. Now, the evidence suggest that alcohol advertising can have some impact on young people’s attitude to alcohol, albeit smaller than other cultural and family influences”

Eurocare supports an evidence-led approach to alcohol policy, and the issue of alcohol advertising should not be an exception. We are aware that the alcohol and advertising industries are attacking further restrictions on TV alcohol advertising and the “no-lifestyle” advertising approach on the grounds that there is insufficient scientific evidence to prove a direct causal connection between alcohol advertising and levels of alcohol consumption or alcohol-related harm. Our view, however, is that while there present it is difficult to prove scientifically that controls on the content of alcohol advertisements alone are likely directly to bring about reductions in either consumption or harm, there is a great deal of evidence to suggest that they might. **This is a prime example of a case where an absence of proof should not be interpreted as proof of an absence of any adverse effect.**

Concerns about the **monitoring** of Article 15: It is our understanding that the measures provided for by the “Television Without Frontiers” Directive must be complied with by all Member States and that the European Commission oversees their application and may refer any failure to abide by the provisions of the Directive to the European Court of Justice. Article 26 of Directive 89/552 provides that the European Commission must submit to the European Parliament, the Council of the European Union and the Economic and Social Committee a report on the implementation of the Directive in general, and make any proposal necessary to adapt it to developments of the television broadcasting sector. Eurocare notes that, in each of these reports, it is stated that the TWF Directive

¹ Cook, Hastings & Anderson, *Desk Research to Examine the Influence of Marketing and Advertising by the Alcohol Industry on Young People’s Alcohol Consumption* (March 2002)

should demonstrate the validity of a common European approach to audio-visual issues and the Member States' commitment to achieve this goal. Paradoxically, in its most recent reports, the Commission recognises that there are a *remarkable number of differences at Member State level regarding the specific provisions covering alcohol advertising*², while still concluding that the Directive, as implemented in the member States, works effectively. We do not necessarily draw the same conclusions regarding article 15. The different cultures and traditions of the Member States are given as the reason for the lack of harmonisation and monitoring of this article. However, it is widely recognised that youth drinking styles are tending to converge in the European Union countries. Indeed, one of the most important concerns reported in the Council Recommendation 2001/458/EC is that "binge drinking patterns" are becoming a general trend among young people in Europe. It is timely to review Member States restrictions on marketing alcohol beverages to underage consumers and to see if they have been implemented correctly across all the Members States as well as the applicant countries.

Concerns about the **implementation** of article 15: While the current regulatory system exists to govern the content of individual advertisements, it is probably the cumulative weight and thrust of alcohol advertising that is most important in encouraging young people to regard alcohol as an essential part of a successful social and increasingly, sex life. This quantitative aspect is not dealt with by Article 15. The other principal problem with the Article is that because there is a high degree of subjectivity involved in its application and implementation, advertisers constantly seek to extend its limits as determined by the national regulator. Also, the situation in Member States where the regulator is not under statutory control (like in the Netherlands) is that the regulator interprets the code in a more lenient way than in countries where the regulator is part of a statutory control. Again, Eurocare believes that some guidelines should be issued to help national broadcasters and their advertising sales houses to implement the code correctly in an harmonised fashion across all the Member States as well as the applicant countries.

Concerns about **complaints regarding the implementation of article 15:** Eurocare believes that the fact that there are few complaints³ does not mean that the system is working. There are several reasons why people may not bother to complain, one possibility being lack of trust in the system and the awareness that most complaints are not upheld, which may act as a deterrent to potential complainants. Eurocare believes that the explanation of the small number of successful complaints is to be sought in the difficulty of proving that alcohol is being portrayed as playing a key role in sexual or social success. For instance, with regards to "sexual success", complainants need to

³ As claimed in the Study on the impact of advertising and teleshopping on minors (99/S 139-102855) – **Page 13** in the Fourth Communication from the Commission (COM (2002) 778 final) relating to the application of the "Television without Frontiers" 89/552/EEC directive for the period 2001-2002 has been adopted on 06.01.2003.

² Study on the impact of advertising and teleshopping on minors (99/S 139-102855) – **Page 13** in the Fourth Communication from the Commission (COM (2002) 778 final) relating to the application of the "Television without Frontiers" 89/552/EEC directive for the period 2001-2002 has been adopted on 06.01.2003.

prove that there is sexual success “off camera” or that without the alcohol, there would be no sexual success. The European Commission has received complaints and letters explaining these particular problems.

As already stated in our response in July 2003, Eurocare recommends that:

The Commission should immediately look at the possibility of adding objective parameters to article 15, such as time limits (e.g. 21:00 hours), programme limits (e.g. youth and sports) and limits on concentration of alcohol advertising (e.g. no more than 1 commercial per advertiser per programme). These objective parameters are already being implemented in most Member States

In accordance with article 23a of the Directive, the contact Committee should investigate how the monitoring and the effective implementation of Article 15 has been done in the Member States in order to facilitate an exchange of information on the situation and the development of this article. Images of alcohol advertising across the different Member States should be examined as well as the codes of conduct that sustain them.

The European Commission should set up an **independent advisory expert group** which would look at reducing and resolving the differences of the specific provisions covering alcohol advertising in all the Member States.

The advisory expert group should be made up of at least **50% of professionals working in public health** as well as **professionals working in television advertising** in order to be recognized as a valid entity by all people involved.

Comments regarding co-regulation and the effectiveness of self-regulation of the alcohol industry: Despite claims from the advertising and alcohol industry that self-regulation of alcohol advertising is effective, Eurocare would like to claim that it is not.

Enforcement of advertising: As stated in the 2004 WHO global status Report on alcohol policy, *“an important aspect of advertising restrictions is effective enforcement. This would include the existence of independent grievance panels or consumer boards and the possibility of sanctioning advertisers for breaking the rules of law. Caution should be exercised when interpreting the enforcement question, as the measure is subjective, based on the perception of the focal point. Focal points were asked to rate the enforcement level of existing advertising as fully, partially, rarely or not enforced. Of all responding countries, 36% have nothing to enforce legally because they either have no restrictions or they only have voluntary agreements”*.

Violations of the code: In a recent analysis of self regulation of alcohol marketing in the Netherlands commissioned by the Dutch government and conducted by STAP², the conclusions reached were that violations of the code were committed regularly even by the big advertisers. The research also observed that many small advertisers did not even know that a code existed. Furthermore, research on other industries has shown the limitations of self-regulation at both firm and industry levels. The greater the number of players and activities involved, the less likely it is that voluntary codes will be sufficient to restrain unacceptable practices (Ayres and Braithwaite 1992)³. Self-regulation is most commonly adopted by industries under threat of government regulation but, being against self-interest, tends towards under-regulation and under-enforcement (Baggott 1989)⁴. A review of media self-regulation in the US concluded that, although sometimes a useful supplement to government regulation, it rarely lived up to its claims (Campbell 1999)⁵. Experiences in different countries show these codes may work best where the media, advertising and alcohol industries are all involved, and an independent body has powers to approve or veto advertisements, rule on complaints and impose sanctions. Few countries currently have all these components. The World Health Organisation has noted that the effectiveness of codes in developed countries is often undercut by their vagueness, while in developing countries and the transitional markets of Eastern Europe codes are unlikely to be well enforced. The voluntary nature of codes also makes them inherently susceptible to collapse, as occurred in Australia in the early 1990s and with voluntary bans on spirits advertising in the US and UK in 1996 (Campbell 1999; Hill and Casswell 2001; Saunders and Yap 1991). The US provides an example of weak self-regulation through separate beer, wine and spirits codes administered by the alcohol industries themselves. Public controversies have arisen over the use of cartoons and Halloween imagery by major beer brands, alcohol billboard advertising near playgrounds, and depictions of violence against women in alcohol advertisements. In 1999 a Federal Trade Commission inquiry into the advertising practices of eight large beer and spirits companies found half were breaching their code and two were targeting underage audiences in a quarter of their ads. A possible consequence of industry self-regulation through voluntary codes is that attention is diverted from policy questions about whether it serves the public interest to allow promotion of products that have considerable adverse impact on public health. Instead, energy is focused on refinement of the codes, and reaction to unacceptable practices. Moreover, codes are largely irrelevant to the way most alcohol advertising actually works. Much alcohol advertising and sports marketing does not show the product or drinking at all, simply a logo. A successful mix of marketing promotions means that the advertising in the media to which the codes are applied can be restricted to association of the brand with images, lifestyles and events that are attractive and relevant to target audiences, particularly the young.

² *Don't ask a bird to clip its own wings* – Analysis of self regulation of alcohol marketing in the Netherlands – STAP – National Foundation for Alcohol Prevention (enclosed with our response)

³ Ayres, I. and Braithwaite, J. (1992) *Responsive Regulation: Transcending the Deregulation Debate.*: New York: Oxford University Press.

⁴ Baggott, R. (1989) Regulatory reform in Britain: The changing face of self-regulation. *Public Administration* **67**, 435-454.

⁵ Campbell, A. J. (1999) Self-regulation and the media. *Federal Communications Law Journal* **51**, 711-746.

Enforcement and Sanctions: Most advertising code committees only provide recommendations, and breaches of the advertising code for alcohol beverages do not carry a penalty. In the analysis conducted in the Netherlands it was observed that, even if breaches occurred repeatedly, the Advertising Code Committee had never imposed a fine despite several requests from STAP. On average, it takes a few months before the advertising Code Committee rules on a complaint about a commercial or advertisement. In most cases, the campaign concerned has long been completed when the Committee gives its verdict.

Recommendations: For all these reasons, Eurocare believes that it would be simpler and more effective for the European Commission to take the approach of introducing objective parameters to article 15. Rules always leave wide scope for differing interpretations as was demonstrated above and provide both incentive and opportunity for advertisers to find ingenious ways of pushing the rules to the limits or circumventing them. We would also urge the European Commission to consider the volume of alcohol advertising as well as its content. Arguably, the attitudes and behaviour of both children and adults are likely to be affected by the sheer number and repetition of alcohol advertisements as well as their content. In view of the historically high and still rising alcohol-related casualty rate in Europe, this is an appropriate time to begin reducing the exposure of children and adolescents to alcohol advertising and promotion. This is, after all, the Recommendation of the EU Council of Ministers, to which the European Commission is already theoretically committed.