

# Over-reach: the EU's lifestyle regulation plans

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A report published by the European Commission on 3 February 2021 proposes a range of nanny state interventions intended to reduce the consumption of alcohol, tobacco, e-cigarettes and 'unhealthy food' (European Commission 2021). Many of the ideas in the Commission's Beating Cancer Plan, such as scientific collaboration on genomics and diagnostics, have great potential, but others are illiberal, ineffective and would have negative unintended consequences. Several of them go far beyond the EU's remit.

The Commission is proposing paternalistic interventions in all four of the areas covered by the Epicenter Nanny State Index. This short briefing paper discusses each of them.

## Alcohol

The Commission has four key proposals related to alcohol. It says it will 'review EU legislation on the taxation of alcohol and on cross-border purchases of alcohol by private individuals. The EU currently sets minimum alcohol duty at a modest level. Any significant increase would disadvantage the EU's poorer member states. A one-size-fits-all tax regime would be inappropriate and unfair when incomes vary so greatly across the EU.

The ability of private citizens to buy unlimited quantities of goods from different countries is what the EU's Single Market is all about. Cross-border shopping can be inconvenient for countries that have excessive rates of excise tax, but it remains a fundamental freedom. It would be extraordinary if the EU were to chip away at the Single Market for the sake of trying to bring about a negligible reduction in alcohol consumption in a handful of member states.

The Commission says it will 'closely monitor the implementation of the Audiovisual Media Service Directive provisions on commercial communications for alcoholic beverages, including on online video-sharing platforms. This will involve work with Member States and the European Regulators Group for Audiovisual Media Services (ERGA) and stakeholders to encourage self and co-regulatory initiatives.' This suggests that the Commission will step up its funding of anti-alcohol groups such as the European Alcohol Policy Alliance to lobby for policy changes at the national level. This is not a fair use of taxpayers' money. Member states are quite capable of formulating their own advertising laws without interference from the Commission or from the campaign groups it finances.

Finally, the Commission proposes 'a mandatory indication of the list of ingredients and the nutrition declaration on alcoholic beverage labels before the end of 2022 and of health warnings on labels before the end 2023'. Since member states are unable to mandate such labels unilaterally, this is arguably overdue. Consumers benefit from information and they deserve to know what they are putting in their bodies. There is a good case for calorie and ingredient information being mandatory on drink labels. The case for health warnings is less strong. There is limited space on many bottles and there is a danger that the health information would be incomplete or misleading. What is it that the Commission thinks consumers don't know about alcohol? Is it so important as to require intrusive warnings on the product or can the information be transmitted other ways?

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## Food

The Commission proposes taxes and advertising restrictions in the food market in the name of reducing obesity. It says the Commission 'is planning to prepare an implementation report in 2022 on the Audiovisual Media Service Directive, including those on commercial communications on unhealthy food and drinks. This appears to signal the Commission's intention to ban certain forms of advertising for a range of food products (and alcohol).

The EU has the authority to ban advertising in any medium that can cross borders, as it has already done for tobacco and e-cigarettes, but there are many arguments against such a policy. Food is an essential product and no food that is allowed to be sold is inherently dangerous. There is no legal definition of 'unhealthy food' and many products that are classified as high in fat, sugar or salt would not be considered to be 'unhealthy' or 'junk food' by the public. Advertising is an important lever of competition which allows new entrants to break into the market and fosters innovation. The food business is Europe's largest industry and food advertising is an important source of revenue for many media, advertising platforms and other services (including public transport and the arts). The association between food advertising and obesity is weak and based on poor quality evidence.

Banning advertising is a form of censorship which should only be considered in extreme circumstances. Advertisements for chocolate and ice cream do not cross any reasonable threshold of harm. No member State has taken such action and, therefore, there is no justification on market harmonisation grounds. A ban on such advertising would not help facilitate trade between member states. On the contrary, it would hinder it.

The Commission also says it will 'publish a study mapping fiscal measures and pricing policies on sugars, soft drinks and alcoholic beverages. Following this, the Commission will consider the feasibility of proposing new tax measures on sugars and soft drinks'. This seems to be beyond the EU's remit. A few member states have introduced taxes on sugary drinks (which have not led to any reduction in obesity levels), but that is a matter for them. There is no justification for an EU-wide tax on grounds of market harmonisation; domestic sugar taxes have no implications for intra-EU trade.

The Commission appears to be pre-empting the conclusions of its mapping study when it says that it will look at the feasibility of sugar taxes after it is published. No doubt the Commission will hire academics who support sugar taxes to produce this research, but the truth is that sugar taxes have never worked anywhere (Snowdon 2016). No country has seen a reduction in obesity - among adults or children - after introducing such a tax. They are revenue-raising measures first and foremost. If a national government wishes to introduce such a tax, it would surely prefer to collect the revenue itself rather than see it go to the EU.

Finally, 'the Commission will further reduce the presence of carcinogenic contaminants in food. It will set maximum levels for more of these contaminants, based on the latest available scientific evidence.' This should indeed be led by science, not

scaremongering. For example, acrylamide is produced naturally when food is cooked at high temperatures. The European Food Safety Authority (2015) has found very little evidence that it is a human carcinogen at the levels typically found in cooked food. Nevertheless, campaigners have cited the precautionary principle to demand a reduction in maximum permitted levels of acrylamide that would have a significant negative impact on food producers and their customers. The Commission attempted to push through lower limits for some foods in 2020 but this was rejected by the European Parliament.

Reducing 'carcinogenic contaminants in food' seems like a no-brainer, but in this, as in other areas, the EU should move beyond the precautionary principle - which gives *carte blanche* to bans on almost anything - and base policy on accurate scientific data and sound judgement.

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## Tobacco

The Commission says it wants to 'create a "Tobacco Free Generation" where less than 5% of the population uses tobacco by 2040'. It is unclear what democratic mandate the EU, let alone the Commission, has to take such a decision on other people's behalf. Tobacco is a legal product which adults are free to consume. If more than five per cent of the population still wishes to smoke in 19 years time, that is a matter for them.

The Commission conflates 'smoking' with 'tobacco use'. There is no acknowledgement that Sweden has by far the lowest smoking rate in the EU despite relatively high levels of tobacco use, thanks to widespread adoption of the smokeless tobacco product known as snus. Snus was banned by the EU in 1992 because it was believed to cause cancer. This belief has since been disproven and yet the ban remains in place (Sweden has always had an exemption).

The Commission says its plan involves 'working towards plain packaging and a full ban on flavours'. Plain packaging has failed to have an impact on smoking rates and cigarette consumption in the UK and Australia (Breton et al. 2018; Underwood et al.

2020; Davidson and de Silva 2017). Several EU countries have experimented with plain packaging without success. There is no reason for the rest of the bloc to follow them down this blind alley.

Smoking bans are beyond the EU's competence and are purely a matter for domestic governments. Nevertheless, the Commission says that it will 'propose to update the Council Recommendation on Smoke-Free Environments both extending its coverage to emerging products, such as e-cigarettes and heated tobacco products, and expanding smoke-free environments, including outdoor spaces.' The issue of emerging products is discussed below, but it should be noted that there is no credible evidence that smoking outdoors poses any health threat to nonsmokers. Banning smoking outdoors is naked paternalism designed to make smokers' lives even more difficult. Regulating smoking outdoors should not be the business of national governments, let alone of the EU.

### **E-cigarettes**

The reference in the report to a 'full ban on flavours' must be a reference to e-cigarette products since the EU has already banned all flavoured cigarettes, including menthol. Most vapers use flavoured e-cigarettes. Flavours are an essential part of e-cigarettes' appeal to smokers. Goldensen et al. (2019: 7) found that 'observational and qualitative studies suggest that flavored e-cigarettes may aid adult smokers in smoking reduction and cessation efforts. Former smokers cite the wide variety of available flavorings and superior taste of e-cigarettes as factors that aid smoking cessation, and note that restricting the availability of flavorings would make the vaping less enjoyable and reduce the appeal of e-cigarettes.'

There is ample evidence showing that policies which make e-cigarettes less appealing, including flavour bans, increase cigarette sales and increase the smoking rate. Pesko et al. (2020) found that 'higher e-cigarette tax rates increase traditional cigarette use'. Cotti et al. (2020) found that a decline in e-cigarette pod sales led to an increase in the sale of traditional cigarettes. Abouk et al. (2019) found that e-cigarette taxes led to more women smoking in pregnancy. Friedman (2015) found that banning the sale of e-cigarettes to minors increased the underage smoking rate. Yang et al. (2020) found that the ban on e-cigarette flavours in San Francisco led to increased smoking prevalence among 18-24-year-olds.

The evidence is quite clear that e-cigarettes and cigarettes are substitutes for one another, and that vaping is a gateway out of smoking for many people who would not otherwise have quit. This has been shown in a series of randomised control trials (Bullen et al. 2013; Carponnetto et al. 2013; Adriaens et al. 2014; Hayek et al. 2019; Walker et al. 2019) as well as numerous observational studies. Making vaping less accessible and less appealing will have consequences that run directly counter to the Commission's stated objectives.

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The Commission's proposal of encouraging member states to include vaping in their smoking bans is particularly wrongheaded. Firstly, there is no scientific evidence to support the belief that 'secondhand vaping' poses any risk whatsoever to bystanders, which is the ostensible justification for smoking bans. Secondly, the ability of vapers to use e-cigarettes indoors gives vaping a competitive advantage over smoking. If vapers are forced to stand outside to consume their nicotine, they may decide that they might as well smoke.

The Commission's recommendation to include vaping in smoking bans and to extend smoking bans to the outdoors could lead to the absurd situation in which it is illegal for people to exhale e-cigarette vapour - which is essentially water vapour - in the open air.

### **Conclusion**

Much of the Commission's report focuses on scientific research which requires international collaboration. It is right and proper that the EU sets standards and facilitates collaboration between nations in this way. The section on lifestyle regulation, by contrast, contains a list of extreme policies, almost none of which require EU action, and which have been mostly rejected by member states. National governments can decide for themselves whether they wish to introduce sugar taxes, plain packaging, outdoor vaping bans, etc. Most of them have chosen not to.

We do not know which individuals wrote the Commission's report, nor do we know who has been influencing them, but it would not be surprising if activists are using the EU to impose policies on national governments having failed to persuade politicians

and the public at the national level. Whatever the motive, the Commission has proposed a list of largely ineffective and illiberal policies that go far beyond the EU's remit and would undermine the Single Market.

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