

Self-Regulation: a False Promise for Public Health?

Briefing paper | December 2016

european public health alliance





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This briefing expands on a debate held in the European Parliament on 18 October 2016 on the merits of self-regulation for public health.¹

Self-regulation is a commonly promoted governance tool in public health policy-making, including in the domain of alcohol and food. This paper addresses the evidence on the effectiveness of self-regulation for attaining health objectives, its potential wider effects on public governance and the future role of self-regulation in public health policy.

The paper seeks to encourage further debate on the topic of governance for health.²

Two case studies presented during the meeting reflect on self-regulation as a tool to address unhealthy food advertising to children³ and acrylamide in food.⁴



¹ European Public Health Alliance. Self-regulation: a false promise for public health? <http://bit.ly/2guXv9Q>

² WHO Regional Office for Europe (2012) Governance for health in the 21st Century. <http://bit.ly/2flglll>

³ Dr. Gillian Rosenberg. AD Brake: Research into Junk Food Advertising and Children, Cancer Research UK. <http://bit.ly/2g9obsf>

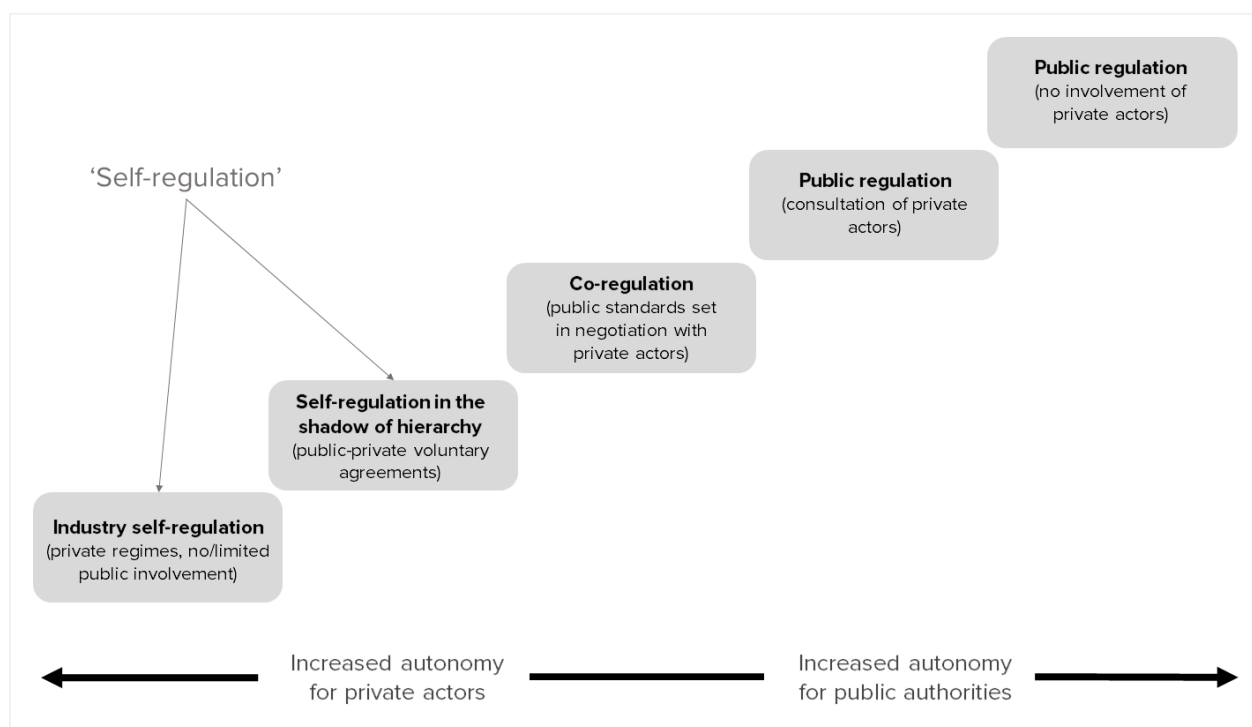
⁴ Camille Perrin. Acrylamide in Food, The Consumer Organisation (BEUC). <http://bit.ly/2fxz3jP>



Self-regulation as governance tool

The question of how to govern and deliver on policy objectives is fundamental to any society. Before addressing the merits of self-regulation for public health, it is useful to frame self-regulation in relation to other available governance options.

Figure 1 presents a typology of governance tools on a scale ranging from industry self-regulation (with no/limited public involvement), to public regulation (with no private actor involvement).⁵



In the proposed typology, the concept of 'self-regulation' cover both industry-led self-regulatory initiatives, like the EU Pledge,⁶ and voluntary agreements between governments and industry, like the UK Public Health Responsibility Deal.⁷ Although differences between these schemes exist, the defining similarity is that private actors predominantly retain autonomy over their commitment and compliance.

⁵ Adapted from Börzel and Risse (2002) Public-Private Partnerships: Effective and Legitimate Tools of International Governance? <http://bit.ly/1FO4tMI>

⁶ EU Pledge. <http://bit.ly/2gapU2l>

⁷ UK Department of Health. Public Health Responsibility Deal. <http://bit.ly/OkKGfG>



Self-regulation: unfit to meet health objectives?

Evidence consistently shows that self-regulation fails to deliver benefits for public health. Key findings from academic evaluations include:

1. Voluntary commitments are generally not designed based on the best evidence of what is needed to promote health.

Evidence demonstrates that self-regulatory schemes contain commitments which are usually vague and most often not based on the most effective approaches to limit alcohol harm and improve diets. This has been made clear in a range of evidence reviews,⁸ as well as evaluations of specific food⁹ and alcohol¹⁰ self-regulatory initiatives.

Self-regulatory actions tend to emphasise information provision and promoting lifestyle modifications, actions that put the burden of change on the individual, rather than on the environments in which choices are made. Approaches with the largest population effect modify the contexts in which consumption decisions are made, focusing on systemic drivers and on creating healthier food and drink environments.¹¹

For example, two recent systematic reviews of the UK Public Health Responsibility Deal (RD) on both alcohol and food conclude:

“The most effective evidence-based strategies to reduce alcohol-related harm are not relected consistently in the RD alcohol pledges.”¹²

“... the most effective strategies to improve diet, such as food pricing strategies, restrictions on marketing, and reducing sugar intake, are not reflected in the RD food pledges. Moreover it was difficult to establish the quality and extent of implementation of RD pledge interventions due to the paucity and heterogeneity of organisations’ progress reports.”¹³

⁸ Noel et al. (2016) Industry self-regulation of alcohol marketing: a systematic review of content and exposure research. <http://bit.ly/2fse2qH>
-Ronit et al. (2014) Obesity and industry self-regulation of food and beverage marketing: a literature review. <http://bit.ly/2gvs1Bc>
-Bartlett et al. (2015) The EU Platform and the EU Forum: New Modes of Governance or a Smokescreen for the Promotion of Conflicts of Interest? In: Alemanno A, Garde A, editors. The Emergence of an EU Lifestyle Policy: The Case of Alcohol, Tobacco and Unhealthy Diets: CUP; 2015.

⁹ Kunkel et al. (2015) Evaluating Industry Self-Regulation of Food Marketing to Children. <http://bit.ly/1AmoLM6>

-Jensen and Ronit (2015) The EU pledge for responsible marketing of food and beverages to children: implementation in food companies. <http://go.nature.com/2fPMKuQ>

-Knai C, et al. (2015) Has a public-private partnership resulted in action on healthier diets in England? An analysis of the Public Health Responsibility Deal food pledges. <http://bit.ly/2g8R0H5>

¹⁰ Knai et al. (2015) Are the Public Health Responsibility Deal alcohol pledges likely to improve public health? An evidence synthesis. <http://bit.ly/1NpOFS5>

-Knai et al. (2015) The Public Health Responsibility deal: has a public-private partnership brought about action on alcohol reduction? <http://bit.ly/2fbsnHi>

-Petticrew et al. (2016) Health information on alcoholic beverage containers: has the alcohol industry's pledge in England to improve labelling been met? <http://bit.ly/2fPDIOB>

¹¹ WHO, OECD and European Observatory on Health Systems and Policies (2013) Promoting health, preventing disease: is there an economic case? <http://bit.ly/2apExMd>

-Swinnburn et al. (2011) The global obesity pandemic: shaped by global drivers and local environments. <http://bit.ly/1XjIE0w>

-Food Climate Research Network and Chatham House (2015) Policies and actions to shift eating patterns: What works? <http://bit.ly/2asm1k7>

¹² Knai et al. (2015) Are the Public Health Responsibility Deal alcohol pledges likely to improve public health? An evidence synthesis. <http://bit.ly/1NpOFS5>

¹³ Knai C, et al. (2015) Has a public-private partnership resulted in action on healthier diets in England? An analysis of the Public Health Responsibility Deal food pledges. <http://bit.ly/2g8R0H5>



Even when self-regulatory schemes do cover strategic intervention areas, like marketing, and increased compliance rates are observed key indicators may still be heading the wrong direction. This emphasises the point that self-regulatory commitments tend not to be designed in a way to maximise health benefits:

“Of the 57 studies of alcohol advertising exposure, high levels of youth exposure and high awareness of alcohol advertising were found for television, radio, print, digital and outdoor advertisements. Youth exposure to alcohol advertising has increased over time, even as greater compliance with exposure threshold has been documented.”¹⁴

2. The lack of enforcement mechanisms and sanctions means that participants can break their commitments without consequence.

Self-regulatory schemes lack credible complaint, adjudication, investigation and sanctions mechanisms. Commitment holders maintain full autonomy over the implementation of their commitments, which provides no satisfactory answer to the inherent conflict of interests resulting from self-imposed standards or codes.

In the case of marketing, literature suggests that a 1% increase in advertising expenditure translates to a 0.12-0.24% increase in sales.¹⁵ In this context, a paper discussing marketing regulation in Europe argues:

“An inherent conflict of interest does arise when commercial operators are asked to voluntarily stop marketing to children whilst they have a primary responsibility towards their shareholders to increase their profits.”¹⁶

Examples of systematic violations of codes of conduct abound. For instance, during the 2014 FIFA World Cup, 86% of the alcohol advertisements aired in the Americas and Spain contained at least one violation of the International Alliance for Responsible Drinking's (IARD) Guiding Principles. Violators bear no consequences.¹⁷

A recent research paper assessing the implementation of the EU Pledge in Germany found that Pledge member companies had compliance rates of nearly 80% for advertising on children's networks. When the analysis was extended to all television channels however, just a little over 20% of children's ads were compliant with Pledge requirements.¹⁸ In contrast, the EU Pledge's own evaluations maintain that compliance rates are over 98%,¹⁹ which could indicate that Pledge criteria are permissive and open to multiple interpretations. At any rate, there is no redress in case of violations.

¹⁴ Noel et al. (2016) Industry self-regulation of alcohol marketing: a systematic review of content and exposure research. <http://bit.ly/2fse2qH>

¹⁵ Sethuraman et al. (2011) How Well Does Advertising Work? Generalizations from Meta-Analysis of Brand Advertising Elasticities <http://bit.ly/2gapQiO>

¹⁶ Bartlett and Garde (2013) Time to Seize the (Red) Bull by the Horns: The European Union's Failure to Protect Children from Alcohol and Unhealthy Food Marketing. <http://dro.dur.ac.uk/14865/>

¹⁷ Noel et al. (2016) Alcohol marketing in the Americas and Spain during the 2014 FIFA World Cup Tournament. <http://bit.ly/2gd8H8p>

¹⁸ Landwehr and Hartmann (2016) Does self-regulation work? The case of television food advertisement to children in Germany. <http://bit.ly/2fsm8Q2> (under publication in journal during time of writing)

¹⁹ EU Pledge Monitoring Report 2015. <http://bit.ly/2guSEW6>



3. Due to their voluntary nature, not all relevant actors will participate, weakening the potential impact of self-regulation.

When an action is voluntary, not everyone will participate. For instance, the EU Pledge claims its members “account for more than 80% of food and beverage advertising expenditure in the EU”.²⁰ While significant in terms of coverage, about 1/5 of all advertising still remains outside any framework.

A systematic literature review of initiatives to limit food and beverage marketing to children concluded that:

“... the narrow range of media, the weak definitions of marketing, the absence of many large food companies and the lack of enforceability or penalties for failure suggest that self-regulatory pledges are unlikely to be sufficiently comprehensive to have the desired effect of reducing Children’s exposure to promotional marketing of unhealthy food products unless tied to stronger government oversight.”²¹

The same review also found a striking contrast between results reported in peer-reviewed papers, which tend to show that high levels of exposure to unhealthy food advertising still persist, and industry-sponsored reports that indicate high adherence rates to voluntary codes.

A similar study in the US concluded:

“The lack of significant improvement in the nutritional quality of food marketed to children is likely a result of the weak nutritional standards for defining healthy foods employed by industry, and because a substantial proportion of child-oriented food marketers do not participate in self-regulation.”²²

4. Voluntary commitments usually involve activities that would have taken place anyway, providing limited, if any, added value.

A study evaluating the motivations of participants in the UK Public Health Responsibility Deal shows that partners usually ‘played safe’ by signing pledges for activities that they were already engaged in, or planning to be engaged in, and did not require substantial changes to plans. As one respondent answered:

“I believe they wanted people to, kind of, pledge other things(...) but I think you end up with such a long list of pledges, and 99% of them will be what people are doing anyway”.²³

²⁰ EU Pledge. Our Members. <http://bit.ly/2fgSQpY>

²¹ Galbraight-Imami and Lobstein (2013) The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review. <http://bit.ly/2fsmfeq>

²² Kunkel et al. (2015) Evaluating Industry Self-Regulation of Food Marketing to Children. <http://bit.ly/1AmoLM6>

²³ Durand et al. (2015) An evaluation of the Public Health Responsibility Deal: Informants’ experiences and views of the development, implementation and achievements of a pledge-based, public-private partnership to improve population health in England. <http://bit.ly/2gvycFt>



The EU Platform for Action on Diet, Physical Activity and Health, a platform composed of various European-level stakeholders including economic actors in the food chain, is often referred to as a key component of the European response towards improving dietary health.²⁴ In terms of additionality, the latest monitoring report shows that 8% of commitments would not have taken place without the Platform (this percentage includes commitments by NGOs introduced specifically to monitor Platform processes).

In terms of data reliability, levels of additionality are determined on the basis of submissions by commitment holders only, without capacity for further investigation. Monitoring does also not involve the evaluation of added value for health, either in terms of health outcomes or proximate indicators. Although methodological improvements are being implemented, the initiative's added value for public health remains difficult to evaluate.²⁵

5. Voluntary commitments are usually vague and permissive and their implementation is difficult to monitor and compare, also because reporting tends to be heterogeneous.

The vagueness, permissiveness and difficulties involved in monitoring and comparing voluntary commitments is a recurring theme in evaluations of self-regulatory schemes. A literature review on food and beverage marketing concludes:

“The studies show that commitments in industry self-regulation schemes tend to be relatively vague and permissive, that the measurable effects of the self-regulations tend to be relatively small and that some extent of public regulation may catalyse the effectiveness of industry self-regulation.”²⁶

A study looking at the EU Pledge in particular concluded that greater transparency is necessary if the Pledge is to constitute a credible alternative to public regulation:

“... analysis of the companies' specific stated commitments regarding TV advertising revealed substantial variation in the formulation of these commitments. (...) The considerable variation and lack of transparency in signatory companies' operationalisation of the EU Pledge may question the effectiveness of the pledge as a regulatory tool to reduce children's exposure to the marketing of energy-dense and low-nutrient food and beverages.”²⁷

²⁴ European Commission. EU platform for action on diet, physical activity and health. <http://bit.ly/1b64Sgm>

²⁵ ICF International (2016) Monitoring the activities of the EU Platform for Action on Diet, Physical Activity and Health. Annual Report 2016. <http://bit.ly/2dkQ1Ak>

²⁶ Ronit et al. (2014) Obesity and industry self-regulation of food and beverage marketing: a literature review. <http://bit.ly/2gvs1Bc>

²⁷ Jensen and Ronit (2015) The EU pledge for responsible marketing of food and beverages to children: implementation in food companies. <http://go.nature.com/2fPMKuQ>



Self-regulation and wider policy impacts

Self-regulatory schemes and public-private partnerships are believed to have wider governance implications that could impact on the ability to deliver health improvements.

Commentators raise fears that as relations with commercial actors tighten, public institutions may see their core values erode, priorities displace, and the ability to independently establish, monitor and uphold norms and standards weakened. Also, self-censorship may take hold.

These shifts may result in ‘slippery slopes’ leading public authorities to gradually abdicate from their responsibilities to protect citizen’s health and could lead, as some argue, to “*islands of excellence in seas of underprovision, while seemingly exonerating public authorities from blame for breaching the social contract*”.²⁸ Developments as these have the potential not only to undermine the achievement of health objectives, but to engender a loss of public legitimacy with key constituents and the larger population.

On the flipside, the principle of self-regulation appears to be actively used as a lobbying tool to undermine public policy making.²⁹ This has been widely documented as a political strategy, including by the alcohol industry:

*“The alcohol industry argues against marketing regulation by emphasizing industry responsibility and the effectiveness of self-regulation, questioning the effectiveness of statutory regulation and by focusing on individual responsibility. Arguments relating to industry responsibility are often reinforced through corporate social responsibility activities. The industry primarily conveys its arguments through manipulating the evidence base and by promoting ineffective voluntary codes and non-regulatory initiatives.”*³⁰

The latest evidence supporting this claim comes from apparently leaked internal emails from one of the world’s iconic soft drinks corporation.³¹ In these email conversations self-regulation is implicitly presented as a tool to ‘roll-out’ across the world to prevent policy measures from being introduced on advertising.³²

Positive self-evaluations of self-regulatory initiatives presumably play a valuable role in creating and maintaining this image of effectiveness, which could help explain the widely contrasting assessments between results reported in academic papers and industry-sponsored reports, noted in the previous section.

²⁸ Buse and Waxman (2001) Public-private health partnerships: a strategy for WHO. <http://bit.ly/2g6UdVS>

²⁹ Mialon et al. (2016) A proposed approach to systematically identify and monitor the corporate political activity of the food industry with respect to public health using publicly available information. <http://bit.ly/2gr2rfG>

³⁰ Savell et al. (2016) How does the alcohol industry attempt to influence marketing regulations? A systematic review. <http://bit.ly/2g5J5Za>

³¹ DC Leaks.com (2016). <http://bit.ly/2guTJwR>

³² European Public Health Alliance (2 November 2016) Soft drinks lobby uses self-serving self-regulation to undermine policy on advertising, leaked emails show. <http://bit.ly/2gyf9sO>



The opportunity cost of self-regulation

Evaluations of self-regulatory initiatives are usually limited to assessing the effectiveness of a particular scheme. But self-regulation can also act as a substitute for other policy options that may be far better at reaching desired objectives.

In economics, the value of a chosen option is co-determined by the value of the alternative foregone: the opportunity cost. In as far as self-regulation substitutes for other policy options, the societal values of those options – e.g. legal certainty, equal level playing field for economic actors, healthier workforce, reduced healthcare spending – need to be part and parcel of the evaluation of a self-regulatory initiative. If a government opts for self-regulation, the probable societal benefits foregone of not choosing a more effective option would have to be included in the evaluation of the self-regulatory scheme.

For instance, a systematic literature review of different policy options to reduce the consumption of industrially produced trans fats found that regulatory limits were clearly most effective.³³ A recent study suggests that taxation works, while evidence on the impact of stealth reformulation on obesity is poor.³⁴ It could even be argued that taxation works to boost reformulation efforts before it is even implemented.³⁵ A systematic evidence review that compared regulation and self-regulation to reduce child exposure to unhealthy food marketing, found that while statutory regulation can be successful, less evidence was found for self-regulatory and educational measures.³⁶ Likewise, a literature review by a Dutch government interdepartmental working group found no evidence that self-regulation has been effective in reducing overweight.³⁷

The potential of regulation to prevent piecemeal measures, provide clearer guidance, more certainty, a level playing field and better opportunity to manage reputational risk is at various instances also recognised, and even asked for, by retailers and food manufacturers. Examples include:

- An open letter signed by several major food multinationals with consumer and public health groups calling for an EU-wide legislative limit on industrially produced trans fats in food.³⁸
- Concerns voiced by business participants of a government-led voluntary agreement scheme about being put at a competitive disadvantage:
“perhaps some of the other outlets that are on the high street wouldn’t be meeting the salt targets in the same way and you’re getting quite a difference in playing field and the more that, the bigger the difference, the harder it gets. (business partner)”³⁹
- UK’s major supermarkets “implored” the government to make them sell healthier food in framework of the country’s childhood obesity strategy.⁴⁰

³³ Downs et al. (2013) The effectiveness of policies for reducing dietary trans fat: a systematic review of the evidence <http://bit.ly/2fsbnNR>

³⁴ Popkin and Kennan (2016) Preventing type 2 diabetes: Changing the food industry. <http://bit.ly/2fy6J52>

-Food Navigator (2016) Sin taxes work while stealth reformulation success still ‘anecdotal’, says study. <http://bit.ly/2gfC0J0>

³⁵ Hallsworth (2016) The soft drinks levy is working before it has even been applied. <http://bit.ly/2h5vlce>

³⁶ Chambers et al. (2015) Reducing the volume, exposure and negative impacts of advertising for foods high in fat, sugar and salt to children: A systematic review of the evidence from statutory and self-regulatory actions and educational measures. <http://bit.ly/2gckUJf>

³⁷ BO Gezonde leefstijl (2016) Eindrapportage van de werkgroep “IBO Gezonde leefstijl”. <http://bit.ly/2gqvRcS>

³⁸ BEUC, EHN, EPHA, Kellogg Company, Mars, Mondelez and Nestle (2015) Open Letter: Call for a legislative limit for the amount of industrially produced TFAs in foods. <http://bit.ly/2eU2zEg>

³⁹ Durand et al. (2015) An evaluation of the Public Health Responsibility Deal: Informants’ experiences and views of the development, implementation and achievements of a pledge-based, public-private partnership to improve population health in England. <http://bit.ly/2gvycFt>

⁴⁰ The Sunday Times (19 August 2016) Make us sell healthy food, supermarkets implore May. <http://bit.ly/2bD9ltQ>



What future for self-regulation in public health policy?

Based on available evidence, there is no justification for endorsing self-regulation as policy mechanism to deliver public health objectives.

Voluntary commitments have not delivered the required breakthrough to improve public health outcomes in the area of alcohol harm and unhealthy diet. At the same time, there is growing consensus that the effectiveness of commitments can be improved by ensuring they are fully SMART (Specific, Measurable, Achievable, Relevant, Time-bound) and are accompanied by monitoring systems and appropriate sanctions in case of non-compliance.⁴¹

Implementing such a framework requires affirmative, independent action by public authorities. This involves approving commitments on the basis of quality criteria, monitoring compliance, applying sanctions in case of non-compliance and ensuring proper evaluation. But does such arrangement still qualify as voluntary? Arguably, governance based on such level of public engagement goes beyond what could be considered voluntary self-regulation, and well into the sphere of co-regulation and regulation, where governments are expected to be in the driving seat.

Evolving away from the use of self-regulation in public health policy would be a logical next step. It would help cut ambiguity, allow attention to focus on the most effective ways of dealing with societal challenges and allow a consistent approach to emerge towards the divergent roles and responsibilities of different stakeholders in the process.

While voluntary activities by economic operators can bring positive contributions, there is no ground for anchoring public health policy in self-regulatory initiatives.⁴²

⁴¹ European Commission. Community of Practice on Better Self- and Co-Regulation. <http://bit.ly/2g9wSCP>

-European Commission. Proposal for amendment of the Audiovisual Media Services Directive. COM(2016) 287 final. Recital 7. <http://bit.ly/2fEjR3H>

⁴² Similar conclusions in a review of voluntary schemes covering a range of policy areas: Royal Society for the Protection of Birds (2015) Using Regulation as a Last Resort: Assessing the Performance of Voluntary Approaches. <http://bit.ly/1jTNFeS>



Annex. Some questions to be considered when evaluating the effectiveness of self-regulation:

1. Are self-regulatory schemes effective in complying with their own commitments?

This first question can throw a light on the reliability of an initiative. For instance, a recent campaign by The European Consumer Organisation (BEUC) questioned compliance with the EU Pledge based on practical examples collected by consumer groups around Europe.⁴³

The compliance question should however not be confused with effectiveness: even the highest compliance rates will fail to deliver health benefits if the quality of commitments is low.

2. Are self-regulatory schemes effective in reaching public health objectives?

This is the core question when addressing the effectiveness of a self-regulatory initiative for public health. It essentially asks whether a scheme has the right internal criteria in place to deliver health improvements.

For instance, a recent study on the implementation of the EU Pledge in Germany shows that in 2014, the compliance rate for advertising during children's programmes was approximately 80% when using the EU Pledge nutrient profiles. However, only 20% of the same ads would comply if the Ofcom nutrient criteria were used.⁴⁴ This seems to indicate that the criteria underpinning Pledge commitments are too permissive and not geared at truly delivering for health.

3. Are self-regulatory schemes effective in reaching public health objectives in a way that is proportionate to the scale of the challenge?

This is a necessary extension and clarification of the previous question. Even if a scheme delivers some kind of improvements in terms of (proximate) health indicators, does it deliver anything commensurate to the scale of the challenge it seeks to address? Small steps forward on drivers of overweight may not amount to much when faced with an obesity 'epidemic'.

4. What other policy options are foregone when a self-regulatory approach is favoured?

Probably the most problematic aspect of self-regulation is that it may crowd out more effective policy responses by giving the false promise of delivering for health. Although self-regulation as such will always be practiced, it is important that it should not receive policy endorsement unless it shows to be effective in accordance with tight evaluation criteria. Until now, independent evaluations have found no evidence of significant success.

5. Are voluntary agreements having wider effects on governance that may influence the attainment of public health objectives?

As noted above, there are serious concerns about the systemic implications of over-reliance on self-regulatory schemes. This question, which concerns self-regulation as a governance form, deserves far more scrutiny.

⁴³ The European Consumer Organisation (BEUC) (2016) Food marketing to children – game over? <http://bit.ly/2eEehlr>

⁴⁴ Landwehr and Hartmann (2016) Does self-regulation work? The case of television food advertisement to children in Germany. <http://bit.ly/2fsm8Q2> (under publication in journal during time of writing)

About EPHA

EPHA is a change agent – Europe's leading NGO advocating for better health. We are a dynamic member-led organisation, made up of public health NGOs, patient groups, health professionals, and disease groups working together to improve health and strengthen the voice of public health in Europe.

EPHA is a member of, among others, the Social Platform, the Health and Environment Alliance (HEAL), the Alliance to Save Our Antibiotics, the High Level Forum for a Better Functioning Food Supply Chain, the EU Platform for Action on Diet, Physical Activity and Health, the EFSA Stakeholder Platform, DG AGRI Civil Dialogue Groups, and the Better Regulation Watchdog.

EPHA's Transparency register number is 18941013532-08.

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