

Position Paper for a new TAD

WP8 TAPS: Tobacco Advertising,
Promotion and Sponsorship
Joint Action on Tobacco Control 2
(JATC-2) -Deliverable 8.3



Co-funded by the European Union's Health Programme under Grant Agreement No. 101035968/ JA-01-2020 (HaDEA)"

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Date	Activity	Responsibility /Actors
End January 2024	D8.3. Position paper for a new TAD (draft)	NIJZ
9th February	2nd draft with comments from NTAKD, XQNS, ICO to be received and updated by NIJZ 15th or 19th send comments to second draft to Helena for her to agree and produce 3rd draft by 23rd Fe	NIJZ
23rd February	3rd draft sent to core group by Helena	NIJZ
29th February	ICO sends to all WP8 partners to receive comments by 8th March	ICO
	Feed-back received from OKPI, NPHO, UIC, IRFMN, NIPH	ICO shares with NIJZ
12th March	ICO sends to NPHO the final document	ICO and NPHO
15th March	ICO receives D8.3 from NPHO and: - sends it to coordination WP1 and WP8 partners - places the document in CIRCABC	ICO

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Abbreviations

AI	Artificial Intelligence
AVMSD	Audiovisual Media Service Directive
CSR	Corporate Social Responsibility
e-cig	Electronic cigarette
EC	European Commission
EU	European Union
EU MS	European Union Member State
HTPs	Heated tobacco products
JATC-2	Second Joint Action on Tobacco Control
POS	Points of sale
TAD	Tobacco Advertising Directive

TAPS	Tobacco advertising, promotion and sponsorship
TPD	Tobacco Products Directive
WHO	World Health Organization
WHO FCTC	World Health Organization Framework Convention on Tobacco Control

Definitions

Advertising and promotion

World Health Organization Framework Convention on Tobacco Control (1): Tobacco advertising and promotion is defined as any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.

Tobacco Advertising Directive (2): Advertising is defined as any form of commercial communication with the aim of directly or indirectly promoting a tobacco product.

Audiovisual Media Service Directive (3): Audiovisual commercial communications are defined as images, which are designed to promote, directly or indirectly, the goods, services, or image of a natural or legal person pursuing an economic activity. Forms of audiovisual commercial communication include TV advertising, sponsorship and product placement. TV advertising is defined as any form of announcement, broadcast in order to promote the supply of goods or services.

Sponsorship

World Health Organization Framework Convention on Tobacco Control (1): Tobacco sponsorship is defined as any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.

Tobacco Advertising Directive (2): Sponsorship is defined as any form of public or private contribution to any event, activity or individual with the aim of directly or indirectly promoting a tobacco product.

Audiovisual Media Service Directive (3): Sponsorship is defined as any contribution made by public or private undertakings or natural persons not engaged in providing or producing: - audiovisual media services, - video-sharing platform services, - user-generated videos, - programmes with a view to promoting their name, trade mark, image, activities or products.

Brand stretching and brand sharing

WHO Guidelines on Article 13 of FCTC (4): “Brand stretching” occurs when a tobacco brand name, emblem, trademark, logo or trade insignia or any other distinctive feature (including distinctive colour combinations) is connected with a non-tobacco product or service in such a way that the tobacco product and the non-tobacco product or service are likely to be associated. “Brand sharing” occurs when a brand name, emblem, trademark, logo or trade insignia or any other distinctive feature (including distinctive colour combinations) on a non-tobacco product or service is connected with a tobacco product or tobacco company in such a way that the tobacco product or company and the non-tobacco product or service are likely to be associated.

Plain packaging

WHO Guidelines on Article 13 of FCTC (4): Plain packaging: black and white or two other contrasting colours, as prescribed by national authorities; nothing other than a brand name, a product name and/or manufacturer’s name, contact details and the quantity of product in the packaging, without any logos or other features apart from health warnings, tax stamps and other government-mandated

information or markings; prescribed font style and size; and standardized shape, size and materials. There should be no advertising or promotion inside or attached to the package or on individual cigarettes or other tobacco products.

Product placement

WHO Guidelines on Article 13 of FCTC (4): The inclusion of, or reference to, a tobacco product, service or trademark in the context of communication, in return for payment or other consideration. It refers to communication through audio, visual or audiovisual means: print (including newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs), TV and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (computer games, video games or online games), other digital communication platforms (including the Internet and mobile phones) and theatre or other live performance.

Audiovisual Media Service Directive (3): Product placement means any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service or the trademark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration.

Counter-advertising

Tobacco Atlas (5): Counter-marketing consists of strategies that limit the industry's ability to use deceptive TAPS and include proactive efforts to inform consumers about the harms of tobacco use and unethical behaviour by the tobacco industry.

Centers for Disease Control and Prevention: Tobacco counter-marketing is defined as the use of commercial marketing tactics to reduce the prevalence of tobacco use. Counter-marketing activities can play a role in increasing smoking cessation, reducing smokeless tobacco use, decreasing the likelihood that people will begin smoking cigarettes, and reducing nonsmokers' exposure to secondhand tobacco smoke. Counter-marketing messages can also substantially influence public support for tobacco control interventions and increase support for school and community efforts

Executive Summary

Background:

Advertising, promotion and sponsorship of tobacco and related products (TAPS) increase products' use, especially initiation of use and progression to regular use. Comprehensive TAPS bans are effective measures resulting in reduced product consumption. In the EU, there are currently important loopholes in TAPS regulation and citizens are not adequately protected from TAPS.

The JATC-2 aims to identify the TAPS loopholes in the EU and propose necessary TAPS control measures. This position paper aims to provide comprehensive recommendations on the update of TAPS regulation in the EU, based on the activities within Work Package 8 of the JATC-2, such as a comprehensive consultation with national experts and a systematic review of the literature.

Recommendations:

In the EU:

1. A **comprehensive TAPS ban** should address **all forms of communication, recommendations or actions and contributions** to any event with the aim, effect or likely effect of promoting any type of product (tobacco, related, nicotine or herbal), devices, accessories or imitations of

products directly or indirectly, and should apply to all possible marketing channels. It should address all persons or entities involved in TAPS (production, placement, dissemination).

2. **Media production with depictions of smoking or use of any type of product should be ineligible for public subsidies and tax concessions;** production incentives or subsidies for any entertainment product or service should be withdrawn in case of breach of the regulations. Cooperation with the media industry to reduce products' depictions in entertainment media should be ensured. On EU level, digital media monitoring systems to track and analyse tobacco TAPS are necessary.
3. **Internet and other technology-based sales of any type of tobacco/nicotine products, device, accessories for use, and imitations of products, should be banned.** The ban should apply to all legal and natural persons engaged in any transaction and preferably include also ban on such purchases with confiscation of purchased products. An important challenge to this ban is the registration of retailers' domains abroad, so relevant activities to prevent internet sales from countries outside the EU should be identified and implemented.
4. **Ban on TAPS at POS for any type of product, devices, accessories or imitations of products** including display and vending machines should be implemented and include ferries, airplanes, ports and airports.
5. **Promotional communications between manufacturers and retailers should be banned,** requiring payments from manufacturers to retailers be made publicly available. Licensing of all entities in the supply chain should be implemented, as measures for decreasing retail availability and bans on product sale at educational, hospitality, sporting, entertainment, music, dance, social venues or events and healthcare facilities.
6. **Plain packaging should be implemented across EU MS** for any type of tobacco/nicotine products, devices and accessories for use. Health warnings should be updated and changed at the time when plain packaging is introduced and should also be added on individual cigarettes. Size and shape of packs and cigarettes should be regulated and slim, super slim and extra-long cigarettes should be banned. Sales of attractive and specifically designed cases or boxes for plain packs should be prohibited.
7. Besides a **comprehensive ban on CSR actions and corporate promotion,** there is a need for stronger implementation of Article 5.3 of the WHO FCTC, measures **to ensure transparency of interactions between all parts of government and the tobacco industry** and measures for increasing awareness of policy makers about the real objectives of tobacco industry actions. Some countries report that it is difficult to determine in court when a CSR action represents TAPS, so there is a need for guidelines in this respect.
8. The comprehensive TAPS ban should include a **total ban on TAPS in tobacco trade, a total ban on brand stretching and brand sharing** and a ban on production and distribution of items such as sweets, snacks and toys or other products resembling and product, device or accessory.
9. Comprehensive TAPS ban should be **accompanied by effective monitoring, enforcement and dissuasive sanctions, collaboration** among EU MS, formalized at EU level, international collaboration, civil society involvement, strong public education and community awareness programmes. **A wide definition of responsible entities** is necessary. Tobacco industry should be **required to disclose all expenditures associated with TAPS.** Decrease in administrative burden and delay in addressing violations should be ensured and EU harmonized enforcement system and compliance tool.
10. The ban should be defined in the way that it **anticipates further new industry approaches,** strategies and products. The **legislation should be continuously updated** in order to counteract emerging approaches by tobacco companies.

Conclusions:

An update of current TAPS regulation and implementation of a comprehensive TAPS ban encompassing all products, marketing channels and existing loopholes in the regulations is necessary in the EU in order to protect the citizens from TAPS, especially youth, and decrease consumption of

tobacco, related and nicotine products in EU.

Background

The relationship between tobacco marketing and smoking behaviour has been extensively researched (6) (7). The accumulated evidence base shows a strong causal relationship between tobacco advertising, promotion, and sponsorship (hereinafter referred to as TAPS) and smoking initiation (7) (8) (9), and progression of tobacco use among young people (7) (8), and increased tobacco use (6) (7). The key target group of tobacco industry's TAPS is youth (7) as smoking is usually initiated in adolescence and young adulthood (8) (10). TAPS is associated with the uptake by new users and reinforces use among young adults (8). The rationale for a **comprehensive TAPS ban** includes health effects of tobacco use, deceptive or misleading nature of TAPS, unavoidable exposure of youth, targeting at-risk populations, and the ineffectiveness of partial bans (7).

Comprehensive TAPS bans reduce exposure to TAPS (11) and tobacco consumption (6) (7) (11) (12), while partial bans generally have a minimal or undetectable effect on consumption (7) (12). **Counter-advertising** reduces cigarette consumption and **taxation of advertising** should be used to fund it (12).

There is a paucity of research regarding the effects of TAPS and TAPS bans on perceptions, intention to use and consumption of new tobacco and nicotine products (e-cig, HTPs, nicotine pouches), but it suggests the association between exposure to e-cig TAPS and lower harm perceptions, increased intention to use and trial of e-cig (13), (14). Adolescents exposed to TAPS of e-cig were more likely to start smoking, even though the marketed product was not cigarettes (13).

The WHO FCTC in its Article 13, encourages countries to undertake a comprehensive ban of all TAPS, which includes a comprehensive ban on cross-border TAPS originating from the country's territory. Keeping in mind the definitions of TAPS, WHO FCTC also encourages the implementation of measures beyond the obligations required by this Convention (Article 2.1) and its protocols and cooperation among Parties in the development of technologies and other means necessary to facilitate the elimination of cross-border TAPS (1) (4) (6).

The key objective of JATC-2 is to identify and share **actions undertaken by EU MS to address challenges in the application of the EU bans on cross-border and internet TAPS**. Another of its goals is to create and disseminate a **position paper on the need to update the TAD**. To address this objective, Work Package 8 conducted a consultation in 2023 (15), engaging 38 TAPS experts from 20 EU MS and Norway. Additionally, a systematic literature review of TAPS loopholes in Europe was conducted (16).

Issue Criteria

To provide recommendations for developing a new TAD in the EU, we conducted an online consultation with national TAPS experts, a systematic literature review and considered the WHO recommendations, previous reports from EU, and we focused not only on cross-border issues but also on all other issues on TAPS (POS, packaging).

Regulation and current situation in the EU regarding TAPS

In the EU, TAPS is regulated by the Tobacco Advertising Directive 2003/33/EC (2), Tobacco Products Directive 2014/40/EU (17), and Audiovisual Media Service Directive 2010/13/EU, amended in 2018 (3).

TAD	Introduces EU wide ban on cross-border advertising and sponsorship in print media, radio and internet. It also bans sponsorship of events involving several EU countries or having cross border-effects (includes ban on free distribution of products in the context of sponsorship).
AVMSD	Bans audiovisual commercial communications, sponsorship and product placement for tobacco products, e-cig and refill containers in all forms of audiovisual commercial communications and defines that programmes should not contain product placement.
TPD	Covers e-cig and refill containers and includes the same prohibitions for these products as TAD for tobacco products; also, product placement is prohibited in audiovisual sector.

Individual EU MS have transposed the TAPS bans described above in their national legislation and most have successfully implemented and monitored rules and provisions on TAPS from the current directives. Compliance with existing TAPS regulations is high for traditional smoking tobacco products for smoking, but low for new tobacco and nicotine products (18) (19). EU MS have additional national TAPS regulations, which differ between countries (18) (20), and these differences are the main problem for cross-border TAPS.

The existing EU TAPS regulations do not fully protect people from TAPS (20) (21). Numerous TAPS regulation loopholes are present in the EU (15) (16) (18) (19) (20) (21) and are presented in Table 1.

Table 1: TAPS issues and loopholes in regulation in the EU, as identified in JATC2 review, consultation with TAPS experts and in previous reports for the EU (15) (16) (18) (19) (20) (21).

GENERAL	
Existing TAPS regulations do not protect people from TAPS, leading them to initiate product use, especially for e-cig and HTPs. (EC 2021 cons). The number of people exposed to TAPS for tobacco or related products is decreasing but increasing for e-cig (data for HTPs not available) (20) (21).	
Current TAPS regulation is not comprehensive, not adapted to the fast-evolving new dimensions of TAPS, new emerging products, and new approaches of the industry. EU TAPS regulation has not been updated for a long time. Exploitation of exceptions in regulations is widespread; tobacco industry is circumventing the regulation. If only certain types of advertising are banned, the tobacco industry moves to another medium (15) (19) (20).	
Gaps in regulation regarding new products (e-cig, HTPs and their devices, nicotine products, herbal products, flavour cards). Nicotine pouches are not yet regulated in EU (are advertised and free samples are being given out) (15) (18) (19) (20).	
Fast development of e-cigs and HTPs, so that the regulation may be out of date for the newly developed versions (18).	
Challenges with defining and regulating sponsorship. Indirect sponsorship activities persist and challenge implementation (15) (18).	
Differences in national TAPS regulation and differences in regulation of different products among EU MS (18).	
EU Directives and Recommendations focus only on cross-border TAPS within EU while issues can arise from outside EU (19) (20).	
Discrepancies in definitions of tobacco products, advertising and sponsorship by TAD, AVMSD, TPD and FCTC (18) (19).	
Lack of specific definitions, such as commercial communication in TDP, definition of specialist shops, while e-cig definition needs to be updated (15) (19).	
ENTERTAINMENT AND ONLINE MEDIA	
Internet communications and products' depictions in entertainment media content, TV shows, films, online social networks or blogs, non-retailer websites and streaming services are a major TAPS loophole in EU. There is a widespread online TAPS (direct or indirect), especially for new tobacco and nicotine products (15) (16)(18) (19) (21).	
Widespread influencer marketing on social media, with many posts looking like festivals and summer scenes (15) (18) (19).	
TAD and TPD prohibit TAPS in information society, but whether this includes the internet in general is a grey area, also not all social media fall under AVMSD. The scope of regulation of social media is mostly left unclear (private groups, accounts linked to tobacco industry with posted promotional materials, friend to friend advertising etc.) (19) (20).	
Parties and contests with cigarette brand sponsorships with encouraging participants to post on their social media accounts (18).	
Direct engagement of consumers and interaction with them by the tobacco companies (18) (19) (20).	

Nature of social media allows both consumers and commercial organizations to create content with TAPS, the distinction between paid advertisements and posts of consumers or influencers is blurred (15) (20).
Covertness of online advertising – use of unbranded posts and hashtags (18) (19).
Low compliance to existing TAPS regulation, especially for e-cig, HTP (19).
INTERNET SALES
Internet sales involve elements of TAPS (15) (18) (19).
POINTS OF SALES
Points of sales (POS) are a major TAPS loophole in EU. Products are visible on display at POS (shops, supermarkets and other retail outlets). Promotional items, sales promotion and free trial of products are used (15) (18) (19) (21)
Agreements between tobacco industry and retailers are present (15).
Duty free sales are often exception to TAPS bans (15).
CSR
Different CSR campaigns and actions are present in the online and offline media, scientific and professional events/ journals. (15) (20).
TRADITIONAL FORMS OF TAPS
Sponsorship of events in other countries which are broadcasted in EU (festivals, races), advertising at sports (motor sports, Olympic Games etc.), and cultural events (direct or indirect TAPS), also with free distribution of products (15) (16) (18) (19).
Frequently mentioned sources of TAPS: billboards, posters, other types of advertising in public spaces, newspapers or magazines, railway stations, airports, inflight magazines and national or local TV advertising (15) (19) (21).
References to tobacco brands, which do not directly violate TAD (18).
BRAND STRETCHING, BRAND SHARING
There are instances of brand stretching and brand sharing (18) (19).
MONITORING AND ENFORCEMENT
Challenges with enforcement of TAPS bans when entities are located outside of the country and is difficult to conduct inspections and determine responsibilities for regulation (15) (18) (19).
Lack of financial and human resources (15) (18).
Administrative burdens or delays in addressing violations, high litigation costs, dealing with internationally operating companies with their own legal departments (15) (18) (19).
Difficulties in monitoring online content, social media (15) (19).
Difficulties in recognizing parties responsible for the content on the internet (20).
Low compliance rates (15).

Despite the numerous problems listed in Table 1, only four EU MS countries (Finland, Germany, The Netherlands and Sweden) and Norway reported changes in TAPS legislation during the last three years (incl. outdoor advertising ban for tobacco products for smoking, new tobacco products and e-cig (with exceptions for specialist POS), restriction on visibility of tobacco products at POS, extension of display ban to HTPs devices, ban on free supply of tobacco products and ban on drawings for tobacco products and EC). Few EU MS are striving to include new nicotine products under the same regulation as other tobacco and related products. The proposals to solve the problems with TAPS seem to face challenges in the political landscape. TAPS experts believe that international issues should be addressed at EU level through directives (15). Individual countries have difficulties fighting with TAPS problems and need to be supported on EU level. Some suggestions have been made on what should be done regarding the above-mentioned TAPS issues and loopholes (Table 2).

Table 2: Summary table on how to address TAPS issues and loopholes in regulation in EU, as identified in JATC2 review, consultation with TAPS experts and in previous reports for EU (15) (16) (18) (19) (20)

GENERAL
Clear, comprehensive legislation closing the current loopholes, keeping pace with rapidly evolving products and TAPS methods (15) (19).

Comprehensive EU level regulations to harmonise and strengthen existing laws, more harmonious regulation in EU (15) (19).
Regulation covering all emerging products and devices, channels (15) (18).
Broader definition of smoking, including behaviour of smoking (15) (18) (19).
Mandatory reporting of tobacco industry promotional expenditures (15) (19).
Strong regulation of lobbying and registering the lobbying activities (19).
ENTERTAINMENT AND ONLINE MEDIA
Regulation should cover social media advertising more clearly; specific and stricter provisions for social media (15) (18) (19).
Guidance for and cooperation with social media, regulation of influencer TAPS (15).
Active inspections of non-compliant content (19).
INTERNET SALES
Bans on online sales (15).
POINTS OF SALES
Display bans (15).
PACKAGING
Plain packaging (15).
PUBLIC AWARENESS
Raising public awareness on TAPS (15).
MONITORING AND ENFORCEMENT
Improved efficiency of monitoring and enforcement systems, with adequate resource allocation (human and financial), reduced administrative burdens, increased enforcement power and administrative decisions, sanctions (15) (18) (19).
Harmonized enforcement system (19).
EU level compliance tool (15) (18) (19).
Greater cooperation among EU MS, exchange of best practices, EU coordination (15) (18) (19).
Cooperation with other relevant stakeholders (civil society organisations, citizens, audiovisual services regulators etc.) (15) (19).
International collaboration (15) (19).
Notifying the industry and other relevant entities about the regulation (15).

The findings from the JATC 2 project consultation with TAPS experts highlight **insufficient political will and suggest harmonization of TAPS regulation at EU level as an important measure to decrease the differences among the EU MS in TAPS regulation and cross-border TAPS. These findings emphasise the need for an update of the EU and national TAPS regulation.**

Recommendations and rationale behind these

1. Comprehensive ban on TAPS encompassing all forms of communication, recommendations, actions and contributions, emerging marketing channels, new products, devices and accessories, and all persons and entities involved in TAPS

A ban on TAPS is effective only if it has a broad scope, otherwise the tobacco industry inevitably shifts to other TAPS strategies (4). TAPS bans can become quickly outdated, if not updated and appropriately designed for future innovations in TAPS, so TAPS legislation needs to evolve continuously (22). The tobacco industry should be required to disclose all expenditures associated with TAPS (23) and in case of a comprehensive TAPS ban, there should be no such information to disclose (20). In EU, over 70% of citizens with little to no experience with e-cig or HTPs in 2021 thought that e-cig and HTPs should be regulated as strictly as traditional cigarettes (21). Currently, nicotine pouches are not included in the TAPS bans with some exceptions, for example Hungary where nicotine pouches are also included in the TAPS ban since February, 2023.

2. Comprehensive ban on TAPS in entertainment and online media

Entertainment and online media

The global landscape of entertainment media has changed in the last decades with expansion in cross-border digital entertainment media (23) (24). Digital media is used for TAPS (23) and is highly effective because it is ubiquitous, interactive, personalized (24) and has a vast reach to young people (23). In July 2022, there were 90% of internet users among inhabitants of European countries (25). Users of digital media communication platforms can create, engage and interact with content, and publicly endorse TAPS. Digital content is cross-border in nature, given that content created, uploaded or broadcasted in one country may be consumed or shared in another and service providers can be located in a different country than the country where the service is accessed. Cross-border digital media consumption provides emerging channels for TAPS that are outside of existing regulatory control for governments. The channels for entertainment media to cross borders include but are not limited to Internet-based devices (smart phones, apps, tablets, smart TV), cable TV, transnational flight entertainment and public lounges. These channels facilitate online streaming of films, TV series, music videos, sporting, music, dance and other entertainment events; enable access to electronic versions of international and domestic newspapers and magazines; and in addition to containing tobacco depictions, they may also deliver embedded advertising content. Digital media communication platforms can contain various forms of TAPS, those that are funded directly or indirectly by the tobacco industry (23) and those occurring independently of any tobacco industry involvement. Importantly, the latter does not diminish the potential impact such portrayals have on smoking uptake (6). Next-generation digital technologies (e.g. virtual reality, augmented reality and block chain technology) and the growth of new digital spaces like the metaverse, will offer evolving opportunities for TAPS. In this new digital reality, TAPS may occur further out of regulators' eyesight and in spaces where jurisdiction is unclear, posing additional challenges to regulation (24). Internet communications and depictions in media entertainment content are the major TAPS loopholes in EU today (16) (18) (19) (20).

Digital media communication platforms have to apply and enforce existing TAPS bans and adopt measures in accordance with national laws (23). Certification stating that no benefits have been received for any tobacco depictions, ban on the use of identifiable tobacco brands or imagery, counter advertisements and implementation of a rating or classification system that takes tobacco depictions into account (4) have to be required for entertainment media, including music videos and video games (6) (36). Media production with smoking should be ineligible for public subsidies (36). It is important to note that self-imposed policies of social media platforms are insufficient to restrict TAPS (22) (33).

Product placement

Product placement is a fast-growing TAPS technique (16). Investigation of product placement and smoking in TV series is complicated, especially when series are produced abroad (20). Tobacco imagery in films has declined in the past but continues to occur on TV programmes, streaming services (Netflix, Amazon Prime etc.) and reality shows at an unacceptably high level, also in films categorised as suitable for children and youth. The depiction of tobacco in entertainment media products can strongly influence tobacco use, particularly among youth (4) (8) (23). Even brief exposure to tobacco advertising influences adolescents' attitudes, perceptions about smoking, and intentions to smoke (6) (7) (11) (16). Longitudinal studies provide evidence that exposure to cigarette advertising in the media influences non-smoking adolescents to initiate smoking and to move towards regular smoking (6). There is a causal relationship between depictions of smoking in the movies and the initiation of smoking among young people (7) (8). There is a significant association reported between exposure to TAPS of e-cigs in social media and ever use of e-cigs (16). In countries that have banned TAPS, up to one third of adolescents, regardless of whether they had smoked before or not, reported having seen TAPS online which implies that regulations of TAPS

currently do not adequately protect youth from such exposure (26).

Product placement is completely banned for traditional tobacco products for smoking and e-cigs and HTPs in majority of EU MS, while total bans on TAPS in wider sales channels, non-retailer websites, social media, app stores or apps downloaded from app stores for mobile devices for these products are implemented in more than half of EU MS. Compliance to the bans is moderate to high for traditional tobacco products, but low for both e-cigs and HTPs (18) and there is no control for private social media groups, accounts located outside the country, common tobacco impressions in music videos. There are difficulties in differentiating commercial advertisements from unpaid content and difficulties in regulating photos of celebrities or influencers using products on social media (20).

Influencer marketing

Influencer marketing on social media, through online platforms and foreign websites and direct and indirect TAPS in entertainment media are the main problem in TAPS entering the countries, such TAPS is an effective way to reach young audiences and can be challenging to regulate (15). Tobacco companies are engaging popular social media influencers to promote their products and influencers' posts do not disclose such cooperation (22). Influencers can be regarded as highly popular and admired peers. Due to their perceived "likeability", their messages are perceived as highly credible word of mouth, rather than advertising (27). Influencers with a number of young followers share "private" images depicting smoking at social events, 'tobacco and/or nicotine use, such as vaping and nicotine pouch (white snus) use', among friends, during leisure moments, portraying a cosy and positive image. Such TAPS blur the line between freedom of expression and promotional content, infiltrate public debates and media and represent a challenge (15).

TAPS of e-cigs is widespread on different social media, such as YouTube, TikTok and Instagram (16) and is disseminated by the industry and vaping proponents (28) (29). YouTube and Instagram content about e-cigs promotes their use (30) and does not contain age and/or health warnings (30) (31). Social media made it easier than ever before to directly link customers with sales channels (32) (33) (34). Instagram is a global venue for unregulated e-cig sales. TAPS for waterpipes on Instagram and menthol cigarettes on X (previously known as Twitter) is reported (15). Algorithms are designed to expose the audience to homogenous content over time, so a person who encountered tobacco-related TAPS may be in the future exposed to such content even more (33). All the major tobacco companies have also launched websites for their major brands. They require age identification, but this is easily overcome, so youth is able to access these websites, which show current products, announce upcoming products and provide different promotional opportunities, including games, contests and other content that changes daily to attract people to the website on a regular basis (35).

The use of new technologies assist in eliminating cross-border TAPS (37). Digital media monitoring systems already exist, such as the Tobacco Enforcement and Reporting Movement (TERM), which is an AI-powered, human-expertise-driven digital media monitoring system built in response to the tobacco industry's exploitation of the power of digital platforms. It tracks and analyses tobacco marketing online and packages findings into reports for governments, media, tobacco control advocates and others. It is currently operating in India, Indonesia and Mexico (24).

3. Comprehensive ban on internet sales

Internet sales of tobacco inherently involve TAPS and a ban on tobacco sales on the Internet is recommended (4) (6), also by the Protocol to Eliminate Illicit Trade in Tobacco Products, ratified by EU in 2016 (38). The ban should apply not only to entities that sell the products (4) (38), but also to all legal and natural people engaged in any transaction (38), including credit card companies that

facilitate payment and postal or delivery services for the products (4). TPD allows EU countries to prohibit internet sales of tobacco and related products (17) and at least 16 EU MS have implemented bans on online sales of traditional tobacco products for smoking and e-cig and HTPs by specialist retailers (18). Compliance to these bans is high for traditional tobacco products, but low for e-cigs and HTPs (18). Through online sales, products, such as snus, are available to customers in EU MS, where the sales of these products are banned, and so the industry contravenes legislation and profit from unlawful sales (39). Internet sales pose additional problems, such as sales to minors and problematic monitoring and enforcement. Verification systems for underage users are easy to overcome and are not effective (20) (40) (41) (42) (43). The enforcement of these bans is challenging especially when companies/domains are registered in another country (15) (20). A few EU MS intend to extend the bans or introduce new ones (20).

4. Comprehensive ban on TAPS at points of sales (advertising, display, promotion, retailers' incentives/agreements) without exceptions, decrease in retail availability

Tobacco retailers are not neutral tobacco purchasing outlets, they are the key pillar in TAPS (22). TAPS at POS have the effect of promoting tobacco and related products use and is related to smoking behaviour and use of these products among youth and adults (13) (16) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54). In countries with POS advertising bans, current smoking, daily smoking and regular smoking in the past month is significantly lower among adolescents, suggesting that these bans can potentially reduce youth smoking (54). Full ban on any form of tobacco advertising at POS is recommended, including display and visibility of the products and vending machines, which should also apply to ferries, airplanes, ports and airports (4). TAPS of smoking accessories such as cigarette papers, filters and equipment for rolling cigarettes, as well as imitations of tobacco products, may also have the effect of promoting tobacco products or tobacco use (4). Only the textual listing of products and their prices, without any promotional elements, should be allowed (4). TAPS at POS is not covered by the TAD, AVMSD or TPD (2) (3) (17) (20). In Europe, exposure to TAPS on POS is shown to be high and tends to increase in countries with no or partial regulation, but there are also issues with compliance in countries with such bans (16).

Advertising at points of sales

Not all EU MS have banned advertising for traditional tobacco products for smoking and e-cigs and HTPs and there are EU MS without bans or with partial bans (18) (55). Bans have high level of compliance for traditional tobacco products for smoking, but lower for e-cigs and HTPs (18). Around a quarter of EU MS intend to extend current bans or introduce additional bans (20).

Display of products at points of sales

Display of tobacco products at POS in itself constitutes TAPS. POS display bans decrease exposure to TAPS at POS (56) (57) and leads to a reduction of smoking (58) (59) (60). Among youth, display bans at POS were followed by a reduction in smoking susceptibility (61) (62), a decrease in exposure to tobacco products and smoking initiation (62), a decrease in experimental smoking (58) and a decrease in regular smoking (60). **At least 8 EU MS have already implemented total bans on the display of traditional tobacco products for smoking and e-cigs and HTPs at POS**, but almost half of EU MS have no such bans or partial bans with exemptions in certain retail outlets (18) (20). In certain countries, HTPs are available at supermarkets, where they are placed alongside sweets, which raises concerns about consumer awareness on the safety of these products, and some duty-free sales do not have display bans (15). Some studies also show that display bans had very little impact on the visibility of tobacco storage units, which are mostly located in prominent positions behind the service counters with large generic signage (62). As tobacco sales units remain highly visible,

further restrictions in this direction are necessary, allowed content and appearance of the price lists and signage should be clearly set by the law.

Vending machines

Vending machines constitute a means of TAPS (4), so far at least 6 EU MS have implemented **bans on vending machines** (63) (64).

Promotion at points of sales for consumers

Free samples, free gifts, promotional items, free trials of products and competitions or prize draws are **totally banned for traditional tobacco products for smoking and e-cigs and HTPs in most of EU MS**, others have total bans for some of these products or partial bans. Some EU MS allow free samples, free gifts and promotional items only at POS, some with age restrictions (20). Compliance to the regulation is high for traditional tobacco products for smoking, but lower for e-cigs and HTPs (18) (20). There seems to be a particular issue with HTPs in this respect in some EU MS. A few EU MS intend to extend current bans or introduce additional bans (20).

Retailers' incentives/agreements

Tobacco industry with the objective of increasing sales and market share, offers retailers secretive contractual agreements (65) (66) (67) (68) (69), which are legally binding (66). These contracts are shown to be present in more than half of the retailers. The contracts provide the retailers with generous incentives, require strict retailer compliance and enable substantial manufacturer control of tobacco product availability, placement, pricing and promotion in the retail setting. This makes the retail environment more conducive to tobacco use and initiation and undermines tobacco control efforts in the retail setting through discounted prices, promotions and highly visible placement of marketing materials and products (66). Retail strategies include the provision of financial incentives, such as price promotions, cash payments and rebates, free promotional materials, gifts and other items, the provision of experiential incentives, such as all-expenses paid vacations, exclusive parties and events, targeted marketing, education etc. (66) (67). Manufacturers also encourage verbal promotion of products (66) (69). In countries with display bans, tobacco companies continue to incentivise retailers to sell and promote their brands and they have developed new promotional strategies and tools (62) (69). In Australia, they found that even the price lists are arranged in such a way that the brands belonging to a particular manufacturer are at the top (70). **The promotional activities to retailers should be banned** (66) (67) (69). Currently, we are not aware that any country in EU has implemented a ban on promotional activities to retailers. One of the few examples is the restriction on incentives from tobacco manufacturers to retailers in Quebec, Canada, which prevents manufacturers from providing price-related incentives to retailers (66).

Retail availability

Widespread retail availability of tobacco weakens actions to reduce TAPS connected to retail (22), and **retail availability should be reduced**. Tobacco sale at educational establishments, hospitality, sporting, entertainment, music, dance and social venues or events should be banned (65).

5. Plain packaging

Packaging is an important element of advertising and promotion (8) (75) (76) (77) (78) (79), particularly where other channels are banned (75). Packaging or product features are used in various

ways to attract consumers, to promote products and to cultivate and promote brand identity (4). Plain packaging removes the advertising and promotional elements from the tobacco packaging (4) (77) (4,79). It decreases the attractiveness of the products, eliminates tobacco packaging as a form of TAPS, eliminates misleading information by addressing package design techniques that may suggest that some products are less harmful than others and increases the noticeability and effectiveness of health warnings (4) (77) (79). By this, it contributes to decreased demand for the products (79), decreased initiation of use and also promotes cessation (77) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100) (101) (102) (103) (104) (105) (106) (107) (108) (109) (110) (111). However, experience from different countries show that implementation of plain packaging with new health warnings will increase effectiveness of plain packaging. plain packaging in combination with outdated warnings may not increase noticeability and effectiveness of health warnings (81) (94) (109) (112).

TPD sets the legal framework to pursue plain packaging for tobacco products (17). Plain packaging is currently implemented in at least 9 EU MS (113), mostly for tobacco products for smoking (cigarettes and roll-your-own tobacco). In some, the measure also applies to other tobacco and related products, such as snus, hookah and tobacco molasses, herbal products for smoking and e-cig (79). National TAPS experts reported that some EU MS are considering the implementation of plain packaging and several of the consulted experts advocate for plain packaging regulations (15). In Canada, plain packaging regulations define also the shape and length of the cigarette, slim, super slim and extra-long cigarettes are banned (22) (114) and health warnings will also be mandatory on individual cigarettes (115). In countries with implemented plain packaging, the tobacco industry intensifies activities for reducing the effect of this measure by increasing the number of brands and their variants, using colour variant names, evocative and descriptive brand names, introducing extra-long and slim cigarettes and also different variants of packaging etc. (110) (116) (117) (118) (119) (120). As the tobacco industry uses different new and innovative approaches to decrease the effectiveness of plain packaging, these should be anticipated and included in the regulatory provisions.

6. Implementation of public education and community awareness programmes on TAPS

Public awareness of the need to eliminate TAPS, the laws against it, and how the members of the public can act on breaches of these laws should be promoted and strengthened in all sectors of the society (4), including political decision makers. National TAPS experts also find informing and educating relevant parties about the regulations to be the part of the strategy to combat TAPS issues and in some EU MS this is already ongoing (15).

7. Supporting strong enforcement and monitoring of TAPS bans in all EU MS by ensuring adequate financial and human resources, decrease in administrative burdens and delays, EU harmonized enforcement system and compliance tool, and cooperation on EU and international level and with other relevant stakeholders, especially civil society

The effectiveness of **efforts to eliminate cross-border TAPS depends** first and foremost on the comprehensiveness of TAPS bans and their enforcement in each country. **Strong enforcement in the source country of TAPS is thus the most efficient way to eliminate cross-border TAPS** (23). For effective enforcement and monitoring of TAPS bans, WHO recommends that a competent, independent authority with the necessary powers and resources should be designated to monitor and enforce the laws. **Civil society and citizens should be involved** in the monitoring and effective enforcement of the ban, **legislation should specify that members of the public may initiate complaints**. The enforcement programme may include a **toll-free telephone complaint hotline**, an Internet website or a similar system to encourage the public to report violations. National law should enable any interested person or nongovernmental organization to **initiate legal action against illegal**

TAPS. Given the covert nature of TAPS and the difficulty of identifying and reaching wrongdoers, special domestic resources are needed to make these measures operational (4). Most EU MS have provisions in place for mechanism and/or infrastructure to ensure monitoring and enforcement of national TAPS rules by dedicated agencies, inspections, collaboration with civil society or other procedures. Challenges in monitoring and enforcement are mainly lack of financial and human resources, administrative burdens or delays and instances in **cross-border TAPS in which it is difficult to conduct inspections and determine responsibilities for regulation** (18).

Dissuasive penalties

Prescribed penalties for violations of TAPS bans should be effective, proportionate and dissuasive, should be graded and commensurate with the nature and seriousness of the offence(s), and should outweigh the potential economic benefits to be derived from the TAPS. **Repeat infringements should incur a highly significant penalty for a manufacturer or responsible entity.** Sanctions should also include the obligation to remedy the infringement. If deterrent sanctions are in place, enforcement authorities might be successful in putting an end to illegal practices without court proceedings (e.g. by contacts, meetings, warnings, administrative decisions and periodic penalty payments) (4).

8. Comprehensive ban on corporate social responsibility actions and corporate promotion

It is increasingly common for tobacco companies to seek to portray themselves as good corporate citizens by making contributions to deserving causes or by otherwise promoting “socially responsible” elements of their business practices (4). CSR is an important tool for companies to improve their image (6) (7) (71) (72) (73). For its CSR agenda, the tobacco industry uses corporate websites, social reports and social media (6) with activities such as CSR messaging, foundation campaigns, funding of science and research, political and lobbying efforts, paid editorial in news media, unpaid posts on social media from company branded accounts and employees (22), smoking prevention programs, supply chain management, voluntary marketing standards, and an acknowledgement of some of smoking’s harms (74). For example, industry founded Foundation for a Smoke-free World has a strong online presence including a collection of promotional videos and active social media accounts (6). Some tobacco companies make financial or in-kind contributions to organizations, such as community, health, welfare or environmental organizations, either directly or through other entities. Tobacco companies may also seek to engage in “socially responsible” business practices (e.g. good employee–employer relations, environmental stewardship), which do not involve contributions to other parties (4).

CSR activities, contributions, promotion to the public of these activities, public dissemination of such information (except for the purposes of required corporate reporting or necessary business administration) and public education campaigns, including “youth smoking prevention campaigns” should **be banned**, as they all constitute TAPS (4). Tobacco company CSR strategies also enable access to and dialogue with policymakers for the tobacco industry to influence policy making, which underlines the need for **stronger implementation of Article 5.3 of the WHO FCTC** (71) (72).

The majority of EU MS have already implemented bans on CSR actions, corporate promotions and other public relations tactics for traditional tobacco products for smoking and e-cig and HTPs, while some have no bans. Compliance is high to moderate (18). Some countries report that **it is difficult to determine in court when a CSR action represents TAPS.** Very few EU MS intend to extend current bans or introduce additional bans (20).

9. Comprehensive ban on traditional forms of TAPS

Most EU MS have implemented total bans on **billboards, posters and other types of advertising**

outside the home, advertising in printed media, TV and radio and product placement, most often for traditional tobacco products for smoking, less often for e-cigs and HTPs (18) (20). But there are still important gaps in the legislation for traditional forms of TAPS, there is a lot of TAPS still allowed within individual EU MS and **new nicotine products are not yet regulated in EU**. High levels of compliance to the bans is present for traditional tobacco products for smoking, while for e-cigs and HTPs compliance is low or moderate. The level of compliance to national or local TV or radio advertising bans is generally reported to be high, but other data show that it might be lower in reality. **Non-compliant advertising appeared on public transport, posters in public, on billboards and at sports facilities, on the outside of the shops or by cars/vans** (20). Paid newspaper articles advocating for HTPs or **supporting harm reduction approaches** in connection with HTPs are examples of tobacco industry's marketing strategy (15). The objective of banning TAPS can be achieved without banning communications within the tobacco trade (4). EU MS rarely ban print advertising in the trade press (18), as this type of communication is mostly not considered as advertising (20). The current gaps in the regulation of traditional types of TAPS and differences among different EU MS should be overcome. Total ban on TAPS in tobacco trade is also justifiable, as the tobacco industry always finds new approaches to avoid current TAPS regulation.

10. Comprehensive ban on “brand stretching” and “brand sharing”

“Brand stretching” and “brand sharing” should be regarded as TAPS as far as they have the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly (4). In the EU, just over a half of EU MS have implemented total bans on brand stretching and imitation products for traditional tobacco products for smoking and e-cig and HTPs, others mainly have partial bans. The compliance to these bans is high (18). Very few EU MS intend to extend current bans or introduce additional bans (20).

11. Comprehensive ban on production and distribution of items such as sweets, snacks and toys or other products that resemble cigarettes or products, devices and accessories

Candy products that mimic packaging of tobacco brands may promote smoking in young people (121) and may play a role in the development of children's attitudes toward smoking as a socially acceptable, favourable, or normative behaviour (122). The use of candy cigarettes in childhood is associated with increased risk of ever and current smoking (121) (123) and odds of smoking increase with increasing use of candy cigarettes (121). Elimination of such products may protect children from products that promote the social acceptability of smoking and may help achieve public health goals of reducing tobacco use in young people (121) (122) (123). WHO recommends banning production and distribution of items such as sweets and toys or other products that resemble cigarettes or other tobacco products (4). In EU, at least 6 EU MS have already introduced such bans. In half of them, manufacturing or selling sweets, snacks, toys or other items resembling tobacco products intended for people under 18, are banned (63).

12. EU wide and international collaboration in prevention of cross-border TAPS

Enforcement of TAPS bans can be improved by **international cooperation**, especially when regulating digital entertainment media, which is generally cross-border by nature (23).

13. Wide definition of entities, responsible for TAPS

The responsible entities for TAPS should be defined widely. **Primary responsibility should lie with the initiator of TAPS (tobacco manufacturers, wholesale distributors, importers, retailers and their agents and associations)**. Other entities involved in TAPS should also be held responsible according

to their involvement in the production, placement and dissemination of TAPS. In the case of tobacco sponsorship, the responsible entities are those **that make any relevant** form of contribution, those **that receive any relevant** form of contribution and **any intermediaries that facilitate** the making or receiving of any relevant form of contribution. The way in which entities should be held responsible depends on their role in TAPS and the possibilities they have to control it. **Responsible entities or individuals**, such as those that produce or publish content (e.g. advertising agencies, designers, publishers of newspapers and other printed materials, broadcasters and producers of films, TV and radio programmes, games and live performances, Internet, mobile phone, satellite and game content producers) or media and event organizers, sportspeople, celebrities, film stars and other artists **should be banned from engaging in TAPS**. Particular obligations (e.g. remove or disable access to content) should be applied to other entities involved in analogue or digital media and communication (e.g. social networking sites, Internet service providers and telecommunication companies), once they have been made aware of TAPS. In the case of legal entities, the responsibility should normally lie with the company, not individual employees (4).

14. Licensing of tobacco manufacturers, wholesalers, importers, retailers

Licensing of tobacco manufacturers, wholesale distributors, importers and retailers can be an effective **method for controlling TAPS**. A licence would be granted or renewed only if the applicant could ensure compliance with the legal requirements. In cases of noncompliance, the licence could be withdrawn for a certain time or cancelled (4) (11). In EU, at least 8 EU MS have already introduced some sort of licensing of retailers (63).

Conclusions:

There is an urgent need to address the current gaps in the regulation of all types of TAPS in the EU and ensure collaboration among EU MS

EU MS should implement harmonised comprehensive TAPS bans encompassing all products and marketing channels.

EU MS should ensure strong coordinated monitoring and enforcement of the legislation, involving civil society, including dissuasive penalties for responsible entities, in order to counteract cross-border TAPS, protect the EU citizens, especially youth, from TAPS and decrease consumption of tobacco, related and nicotine products.

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