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Summary of the report

Regulating Lifestyles in Europe

How to Prevent and Control Non-Communicable Diseases Associated with Tobacco and Unhealthy Diets?

Alberto Alemanno and Amandine Garde

In May 2013, the World Health Assembly unanimously adopted a Global Action Plan for the Prevention and Control of Non-Communicable Diseases for 2013–2020. This plan recognizes that NCDs such as cardiovascular diseases, cancers, chronic respiratory diseases and diabetes are largely preventable, and calls on all parties to take concrete steps to achieve specific targets to reverse current trends. As NCDs account for nearly 86% of deaths and 77% of the disease burden in the WHO European Region, the EU has started to reflect on the measures it could put in place to contribute to the NCD agenda.

In the last decade, the EU has adopted several strategies aimed at reducing the impact of the four main NCD risk factors: smoking, excessive alcohol consumption, unhealthy diets and physical inactivity. In line with WHO recommendations, these strategies recognize that NCDs can only be dealt with effectively if a broad range of sectors that impact on the different aspects of our daily lives are involved in the NCD agenda. However, these strategies differ significantly in nature: the EU tobacco control policy is characterized by a very strong command-and-control approach based on the adoption of legally binding rules to discourage smoking, whereas the EU Alcohol Strategy relies above all on the exchange of best practices between relevant actors and the adoption of self-regulatory standards by industry operators to prevent the harmful use – rather than preventing the consumption – of alcoholic beverages. The EU Obesity Prevention Strategy relies on an intermediate approach, mixing both the adoption of binding rules

with calls on the food industry to regulate itself via the adoption of self-regulatory standards.

After briefly discussing the complexity and multifactorial nature of the causes of NCDs and highlighting the contested nature of any form of regulatory intervention aimed at changing individual behaviour, this report examines the different opportunities that ‘lifestyle’ regulation offers for the EU and its Member States to promote healthier lifestyles. A typology of the different categories of possible interventions (including disclosure requirements, marketing restrictions, the adoption of fiscal measures or the regulation of product composition) leads to the conclusion that the law provides significant and diverse opportunities for promoting healthier lifestyles and therefore reversing current NCD trends.

However, these opportunities will only be maximized if the constraints that the law imposes on policy-makers are understood and given due consideration. Without framing the relevant issues in legal terms and on the basis of existing evidence, the public health community is unlikely to succeed in using the law effectively. This seems especially true in the light of the legal challenges that the tobacco, alcoholic beverages and food industries have systematically mounted against rules intended to regulate them. Three categories of rules must be given sufficient attention when regulating lifestyles. First, the EU can only act if it has the required powers to do so and it can only exercise them in conformity with the principles of subsidiarity and

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proportionality. Second, the EU must comply with international trade rules, and in particular uphold its obligations under WTO law. Finally, the EU legal order is founded on the rule of law and must, as such, respect the fundamental rights protected by the EU Charter, the European Convention on Human Rights and the general principles of EU law. If these principles are relatively straightforward to grasp, the case law of the CJEU shows that their applica-

tion in practice has proven extremely difficult: they require that fine lines be drawn between legitimate and illegitimate EU intervention. The public health community in Europe must engage with this body of case law if the rules adopted by the EU and its Member States in order to promote healthier lifestyles are to withstand judicial review and thus effectively contribute to the NCD prevention and control agenda at global, regional and national levels.