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EU Law and Obesity Prevention

by

Amandine Garde

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EU Law and Obesity Prevention

EUROPEAN MONOGRAPHS

Editor-in-chief Professor David O'Keeffe

In this series *European Monographs* this book *EU Law and Obesity Prevention* is the seventy-fourth title. *The titles published in this series are listed at the end of this volume.*

List of Abbreviations

AFSSA	Agence Française de Sécurité Sanitaire des Aliments
AG	Advocate General
AVMS	Audio Visual Media Services
BEUC	Bureau Européen des Unions de Consommateurs (European Consumers' Organization)
BMI	Body Mass Index
CAP	Common Agricultural Policy
CIAA	Confédération des Industries Agro-Alimentaires de l'UE (Confederation of the Food and Drink Industries of the EU)
CJEU	Court of Justice of the European Union
CMO	Common Market Organization
CSA	Conseil Supérieur de l'Audiovisuel
DG	Directorate-General
DG SANCO	Directorate-General for Health and Consumer Protection
EASA	European Advertising Standards Alliance
EASO	European Association for the Study of Obesity
EC	European Community
ECHR	European Convention on Human Rights
EFSA	European Food Safety Authority
EC	European Community
EEN	European EPODE Network
EPODE	Ensemble Prévenons l'Obésité des Enfants
EU	European Union
FAO	Food and Agriculture Organization

List of Abbreviations

FCTC	Framework Convention on Tobacco Control
FCC	Federal Communications Commission
FP	Framework Programme
FTC	Federal Trade Commission
FSA	Food Standards Agency
GDA	Guideline Daily Amount
GDP	Gross Domestic Product
HEPA	Health Enhancing Physical Activity
HFSS	High in Fat, Sugar and Salt
HLY	Healthy Life Years
ICC	International Chamber of Commerce
IASO	International Association for the Study of Obesity
IOTF	International Obesity Task Force
MEP	Member of the European Parliament
NGO	Non-Governmental Organization
PARNUTS	Particular Nutritional Uses
PO	Producer Organization
QMV	Qualified Majority Voting
SME	Small- and Medium-Sized Enterprise
TEC	Treaty on the European Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
THE PEP	Pan-European Programme on Transport, Health and Environment
TVWF	Television Without Frontiers
UCP	Unfair Commercial Practices
UFC	Union Fédérale des Consommateurs
UK	United Kingdom
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
US/USA	United States/United States of America
VAT	Value Added Tax
WFA	World Federation of Advertisers
WHO	World Health Organization
WTO	World Trade Organization

Preface

All the Member States of the European Union (EU) face growing obesity rates, notably among children. They have acknowledged the urgency of the situation, and national and EU obesity prevention strategies have started to develop. Yet the development of the problem has not been matched by legal literature dealing specifically with it. So far, lobbyists, advocates and their legal representatives have focused on the issue more than law academics. This book hopefully goes some way towards bridging the gap between theory and practice. Firstly, it provides a coverage of what the EU could do to support Member States in fighting the obesity epidemic, thus making the study of obesity prevention an academic discipline. Secondly, it is intended as a tool for non-academic stakeholders who are involved in the development of the EU's obesity prevention policy and need to place their advocacy and lobbying strategies within the broader framework of EU law to enhance their effectiveness.

I first got involved in the regulatory aspects of obesity prevention in 2005, while I was working in the Food Law group of a City law firm, in their Paris Office. I then discovered that the big players of the food industry were requesting legal advice on how best to manage the 'obesity risk'. As I had already developed an interest in EU law, I decided to work on the role of the EU in preventing obesity.

This book is divided into two main parts. The first part, made up of three chapters, attempts to set the scene:

- Chapter 1 is an introduction that describes the extent to which overweight and obesity have become pressing public health issues;
- Chapter 2 shows how EU institutions, and the European Commission more specifically, have developed an EU obesity prevention strategy;

Preface

- Chapter 3 focuses on the means of action which the EU has at its disposal to tackle obesity and replaces the debate regarding the role of the EU in a broader constitutional perspective.

The second part is more specific and contains five chapters, each dealing with particular EU policies relevant to obesity prevention:

- Chapter 4: food labelling;
- Chapter 5: food marketing to children;
- Chapter 6: food composition;
- Chapter 7: food prices;
- Chapter 8: physical activity.

Some chapters will be more detailed than others, due partly to my own expertise but more importantly to the extent to which a policy area raises regulatory questions. The role of the law is bound to be limited when it comes to influencing individual lifestyles. Moreover, there are still areas characterized by scientific uncertainty. In such areas, I have tried to present existing evidence and the policy developments that might be envisaged in the future, though no firm conclusions have yet been reached.

This book deals with the policy aspects of obesity prevention (i.e. what needs to be done to help people avoid becoming obese); it does not deal with the treatment of obesity (i.e. what should be done to cure already obese patients). This is not to say that the question of treatment is not important for the individuals concerned or for society as a whole. Several policy questions arise concerning the medical treatment of obese patients (marketing authorization of slimming treatments . . .), as well as their treatment by society (discrimination of obese people at the workplace or in relation to the provision of goods and services). Both these aspects call for an EU intervention. However, they are not within the scope of the present study.

This book has taken longer to write than originally anticipated. The sense of urgency that is developing in Europe among policy makers as a result of growing obesity rates has led to the publication of a stream of new material, of which it is extremely difficult, if not impossible, to keep abreast. Moreover, obesity is caused by a multitude of factors, and if one intends to tackle obesity effectively, one must adopt a multi-sectoral approach. I have therefore looked at a range of EU policies through the ‘obesity lens’. There is some frustration in having to accept that this book will already be outdated on the day of its publication, owing to the foreseeable development of new policies on obesity. I nonetheless hope that this work will help readers in their assessment of the problems at stake.

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All Treaty references use the renumbering introduced on 1 December 2009 following the entry into force of the Lisbon Treaty.

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Chapter 1

Obesity and Its Consequences in the European Union

Obesity, or excessive fatness, is not a new phenomenon.¹ What is startling is the recent increase in overweight and obesity prevalence in virtually every country in the world. In some countries, the rates of obesity have more than doubled in the last twenty-five years, and being overweight has become the norm for adults. As obesity carries with it a wide range of health problems, it has also an adverse economic impact, imposing a cost not only on affected individuals and their families, but also on society as a whole. The challenge facing the European Union (hereafter the EU or the Union), national governments and health authorities is to deliver a sustainable response to overweight and the obesity ‘pandemic’.

This chapter is intended to set the scene. It first describes how obesity has become a major public health concern worldwide, and in Europe more specifically (I). It then focuses on the causes likely to explain the current state of play. Obesity is multifactorial: it results from a complex web of biological and environmental factors; and research, which has established that we are inherently vulnerable to gaining weight, questions the stereotypical view that an unhealthy weight is merely the result of an individual’s irresponsible choices on diet, exercise and lifestyle (II).

I. OBESITY: A GROWING PUBLIC HEALTH CONCERN

After defining obesity (A), this section draws on various data to examine the incidence and distribution of overweight and obesity, with a particular emphasis on the situation in EU Member States (B). It then gives a snapshot of the health conditions associated with obesity (C) before evaluating its costs (D).

1. D. Halsam & N. Rigby, ‘The Art of Medicine: A Long Look at Obesity’, *The Lancet* 376 (2010): 85.