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Position Statement by the German Advertising Industry

on the

**Communication from the Commission to the Council, the European Parliament,
the European Economic and Social Committee and the Committee of the
Regions**

**An EU strategy to support Member States in reducing alcohol related harm
(COM(2006) 625 final)**

The German advertising industry is conscious of the harmful effects and in particular the social impacts of excessive alcohol consumption. ZAW therefore welcomes the Commission's aim of countering alcohol abuse jointly with Member States – all the more so given that the Commission has now abandoned initial plans to replace national legislation in this area with Community measures.

Producers, vendors, advertising agencies and the media have long been actively engaged in combating the social problem of irresponsible attitudes towards alcohol. Commercial communication by alcohol producers is subject in EU Member States to effective systems of advertising self-regulation. The various national self-regulatory codes have a common basis in the International Chamber of Commerce (ICC) International Code of Advertising Practice. They are regularly updated in line with changing conditions in advertising, ensuring that they continue to serve as an adequate complement to national law.

ZAW welcomes the Commission's acknowledgement in principle of the voluntarily adopted industry codes and that the Commission underscores their importance for a well-ordered advertising market. There are different cultural habits relating to alcohol consumption in the various Member States. ZAW agrees with the Commission on this finding and also in concluding that EU legislative harmonisation is not a suitable means of preventing alcohol-related harm. The subsidiarity principle enshrined in Article 152 EC is thus applied in full: The Community is not engaging here in health policy of its own that might take the place of Member State policies.

At the same time, the Commission sees a case for action with regard to commercial communication by producers of alcoholic beverages. The Commission considers that it has identified a state of affairs which needs to be remedied by establishing a new EU-wide code of commercial communication.

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The ZAW's criticism is primarily directed at the Commission's unsubstantiated case for action and its plans for regulating advertising based on this case for action.

Advertising and harmful alcohol consumption

The Communication from the European Commission is clearly based on an assumption that advertising is a cause of harmful alcohol consumption. Yet the Commission fails to show that anything is amiss with commercial communication or to provide scientific or factual evidence of a causal relationship.

The asserted linkage between advertising and overall alcohol consumption has been disproved by market research and numerous studies and expert reports – most recently in Germany by a study on alcohol and advertising commissioned by the German Health Ministry.¹ The primary determinants of alcohol abuse are to be found in the complex personality structure of the individual and factors in people's social surroundings. Alcoholics are frequently characterized by very low self-esteem, a depressive general outlook and the desire to escape reality. Research also shows every third alcoholic in Germany to have a significant history of alcohol abuse. Advertising by producers of alcoholic beverages can only influence behaviour within the bounds set by consumers and their behaviour patterns. It is a misconception that human behaviour can be changed or even directed by selective advertising bans. Where advertising has been banned in the past, there has been no change in the prevalence of product abuse or its consequences.

In view of these scientific findings and the facts, the German advertising industry is unable to see the case for action posited by the Commission.

EU code on alcohol advertising

Commercial communication for alcoholic beverages does not take place in a legislative vacuum. Advertising by the industry is subject to a wide range of detailed legislation at both European and national level. This statutory framework is supplemented by systems of advertising self-regulation throughout the EU Member States. The German government considers the existing mix of statutory restrictions and voluntary self-regulation in alcohol advertising to be sufficient, and expressly said so in answer to a recent German Green Party parliamentary question on the EU alcohol strategy (*Bundestags-Drucksache* 16/3424 of 15 November 2006).

The work of the German Advertising Standards Authority, the self-regulatory body of the German advertising industry, is highly regarded across Europe. This is frequently borne out in comments from policymakers, the media and the public. Recognition is also accorded to the up-to-dateness and quality of its code on alcohol advertising. The Member States incorporated this self-regulatory code into the EU Television Directive adopted in 1989.

¹ *Alkohol und Werbung – Auswirkungen der Alkoholwerbung auf das Konsumverhalten bei Kindern und Jugendlichen*, ZEUS GmbH, Zentrum für angewandte Psychologie, Umwelt- und Sozialforschung, Bochum; expert report commissioned by the German Federal Ministry of Health, 2002, p. 48, Nomos Verlagsgesellschaft, Baden-Baden.

The Commission's proposals for an EU strategy to reduce alcohol-related harm, however, are not based on instruments of industry self-regulation. Instead, the declared objective is for Commission services to reach agreement with representatives from a range of sectors (hospitality, retail, producers, media/advertising) on a code of commercial communication applicable throughout the EU. It is proposed that independent parties monitor the efficiency of the code and advertising industry compliance, above all in connection with impacts on young people's drinking.

In linking statutory requirements with industry action, this approach is based on an underlying notion of **co-regulation**: Sovereign bodies and private-sector organisations are expected to set joint rules on alcohol advertising, with the state taking a controlling and supervising role in a state/subject relationship.

From the standpoint of the German advertising industry, co-regulation can theoretically represent a suitable policy instrument only if certain conditions are fulfilled: The adoption of co-regulation must also have a deregulatory effect. Industry must be provided with an incentive to take part voluntarily in the co-regulatory system. Among other things, this is a matter of the cost and effort that participation inevitably entails. Co-regulatory arrangements must not be allowed to reduce the advertising industry to the status of an enforcing arm of the state, but must leave it freedom to act on its own initiative. Industry does not see itself as an "agent" of the state.

The ZAW advocates making use of **mechanisms of independent self-constraint** that are already successfully established in various sectors, including alcohol advertising. Their core feature of non-state involvement is not an end in itself: it is a prerequisite for such a system to benefit society as a whole. Voluntary self-regulation mechanisms free of state intervention are widely acknowledged to have advantages over other forms of regulation: Unbureaucratic procedural structures ensure timely and effective pursuit of infringements while saving state expenditure on monitoring and administration. Business enterprises or sectors of industry can also voluntarily surrender legal positions that the state is not allowed to touch (for example under the right to freedom of opinion).

ZAW expressly opposes the Commission's proposal of establishing an **EU-wide code on alcohol advertising**. The Commission's own finding that there are different circumstances relating to alcohol consumption in the various Member States applies not only to cultural habits, but also with regard to national limits on alcohol advertising set by law and by self-regulatory bodies. In this light, EU harmonisation is inappropriate, whether in legislative or in self-regulatory form.

Concluding remarks

Alcohol abuse is a social problem. The effectiveness of preventive measures must be scientifically proven. The German Advertising Federation (ZAW) advocates objective further debate on the topic and is available as a point of contact at all political levels for this purpose.

Berlin, 19 February 2007