

SELF-REGULATION

How the tobacco industry claims to be exemplary in order to better defend its own interests

REPORT

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SUMMARY

Under the guise of social responsibility, the tobacco industry implements so-called voluntary measures, particularly in the area of advertising self-regulation, which it presents as responsible commitments. In reality, these actions are part of an influence strategy aimed at preventing or weakening any binding government regulation. Self-regulation allows the industry to polish its image and to delay the adoption of effective health policies. This report demonstrates that these mechanisms, deliberately ineffective and non-binding, are by no means intended to reduce tobacco use, but rather to safeguard the commercial interests of manufacturers.



1 DEFINITIONS AND THE SITUATION IN SWITZERLAND

Self-regulation refers to a system which defines its own limitations and rules. In our case, the concept covers the action of an economic sector or a company that establishes and publishes its own rules of “good conduct”, which go beyond the regulatory requirements in force. Such self-regulation takes the form of agreements, codes, or charters that emerge for specific reasons, as will be discussed further.

1.1 The Swiss Commission for Fairness

The most significant self-regulation code of the tobacco industry in Switzerland is the agreement concluded between Swiss Cigarette (the umbrella organisation for Swiss cigarette manufacturers) and the Swiss Commission for Fairness (CSL, the self-regulatory body for the advertising sector). Here are some excerpts from its current version:

“1.2 Advertising must not:

a) be specifically aimed at minors or be particularly appealing to them.

(...)

d) suggest that smoking promotes:

- *Sporting or athletic performance*
- *Social success*
- *Professional success*
- *Sexual success*

(...)

1.3 All advertising must clearly display, in at least 10% of the space and in three languages, the official text of one of the general warnings.”^{ab}

The earliest version available to us dates from 1973.⁽¹⁾ This version reproduces verbatim the code of the Swiss Cigarette Manufacturers Association (ASFC, predecessor of Swiss Cigarette) which had already been in force since 1969. A new version was published with considerable fanfare on 1 September 1992 and subsequently revised in 2005 and 2018. In its explanatory report on the 1995 Ordinance on Tobacco and Tobacco Products, the Federal Council aligned itself with the 1992 voluntary agreement, thereby giving it additional credibility:

“As the initiative to reduce tobacco-related problems was rejected by the people on 28 November 1993, the Federal Council continues to have sole authority to issue regulations aimed at protecting young people. The restrictions provided for in Article 15 are therefore based on current law and, insofar as they concern the protection of young people, on the agreement regarding restrictions that the tobacco industry impose on itself in terms of advertising.”^{c(2)}

^a The quotations included in this document are translations from the original French version of the report. For the exact wording, please refer to the original text in French.

^b Quote in original language: “1.2 Une publicité ne doit pas : a) s’adresser spécifiquement aux mineurs ou avoir particulièrement un attrait pour eux. (...) d) suggérer que la fumée favorise : • La performance sportive ou athlétique • La réussite en société • La réussite professionnelle • Le succès sur le plan sexuel (...) 1.3 Toute publicité doit comporter de manière clairement visible, sur 10 % au minimum de la surface et en trois langues, le texte officiel de l’une des mises en garde générales.”

^c Quote in original language: “L’initiative visant à réduire les problèmes liés au tabac ayant été rejetée par le peuple le 28 novembre 1993, le Conseil fédéral continue à avoir uniquement la compétence d’arrêter des prescriptions visant à protéger la jeunesse. C’est pourquoi les restrictions prévues par l’article



The Swiss Commission for Fairness, the self-regulatory body of the advertising industry, was established in 1966, and its funding is derived in large part from a foundation sponsored by the National Advertising Association. Formerly known as Publicité Suisse (Schweizer Werbewirtschaft), it was renamed Communication Suisse (Kommunikation Schweiz) in 2015. The mission of the Swiss Commission for Fairness is to arbitrate disputes concerning the advertising industry. On its website, the stated objective of this commission is as follows:

“It is a neutral and independent institution within the communications sector whose purpose is to ensure self-regulation in advertising. Anyone is entitled to lodge a complaint with the Swiss Commission for Fairness regarding advertising that they consider to be unfair. The Commission is composed of three Chambers with equal representation of consumers, media providers, and advertisers. The Swiss Commission for Fairness does not issue any rulings that are enforceable by the State. It issues recommendations with the aim of ensuring that advertisers apply them in future and thus avoid the legal risks of complaints or criminal proceedings before the state authorities. [...] As a member of the EASA (European Advertising Standards Alliance), the Swiss Commission for Fair Advertising is also represented in the international umbrella organisation for advertising self-regulation bodies.”^{d(3)}

It should be emphasised that the sanctions announced by the Commission are “recommendations intended to ensure that advertisers comply with them in the future and thus avoid the legal risks of complaints or criminal proceedings before the state authorities”. The aim is therefore to protect the advertising industry and, more broadly, the business community from more severe state-imposed sanctions. In this way, the Commission offers several advantages:

“Unlike criminal or civil proceedings, an assessment by the CSL is simple, quick and, in principle, free of charge for individuals, organisations, and businesses. This relieves the burden on chronically overburdened courts and avoids lengthy and costly trials and unnecessary bureaucracy. Thanks to its experienced experts in various disciplines and in the media sector, the Swiss Commission for Fairness has specific industry expertise that is generally lacking in state courts. The CSL is a member of the European Advertising Standards Alliance (EASA).”^e

Furthermore, the Federal Council endorses the concept of self-regulation by the business sector in general and supported the Commission's work in 2006. In response to a motion calling for a legal ban on sexist advertising, it stated:

“The Federal Council approves these efforts, which are in line with the principle of subsidiarity, which tends to rely on the self-discipline of the actors concerned rather than on state regulations to solve problems. When self-regulation and self-control work satisfactorily – as is the case here – there is no need for legislation.”^{f(4)}

15 sont fondées sur le droit actuel et - dans la mesure où elles concernent la protection de la jeunesse - sur la convention relative aux restrictions que s'impose elle-même l'industrie du tabac en matière de publicité.”

^d Quote in original language: “C’est une institution neutre et indépendante de la branche de la communication qui a pour but de garantir l’autocontrôle en matière de publicité. Toute personne est habilitée à déposer plainte auprès de la Commission Suisse pour la Loyauté au sujet d’une publicité qui est à ses yeux déloyale. La Commission est composée de trois Chambres réunissant à titre paritaire des représentants des consommatrices et des consommateurs, des prestataires de médias et des publicitaires. La Commission Suisse pour la Loyauté ne prononce aucun arrêt exécutoire par l’État. Elle édicte des recommandations ayant pour but qu’à l’avenir, les publicitaires les appliquent et qu’ils puissent ainsi éviter des risques juridiques de plaintes ou de procédures pénales devant les autorités étatiques. [...] En tant que membre de l’EASA (European Advertising Standards Alliance), la Commission Suisse pour la Loyauté est aussi présente au sein de l’organisation faîtière internationale des organisations d’autocontrôle de la publicité.”

^e La contribution décisive à la loyauté dans la publicité. Bases, expertise et activités de la Commission Suisse pour la Loyauté, version janvier 2015. [Exhibit 1](#)

^f Quote in original language: “Le Conseil fédéral approuve ces efforts qui sont conformes au principe de subsidiarité qui, pour résoudre les problèmes, tend à faire appel à l’autodiscipline des acteurs concernés plutôt qu’à des réglementations étatiques. Lorsque l’autorégulation et l’autocontrôle fonctionnent de manière satisfaisante - comme c’est le cas ici - il n’y a pas lieu de légiférer.”



This recognition of the benefits of self-discipline over judicial practice also appeared in a 2013 European Union (EU) directive: out-of-court dispute resolution mechanisms are presented as “a simple, effective, rapid and inexpensive means of resolving national and cross-border disputes”.^g(5)

For Communication Suisse, the choice is even clearer. The advertising association takes a stand for self-regulation by attacking bans:

“The sector successfully self-regulates. That is why unnecessary communication bans are merely proxy actions for an ineffective policy that fails to achieve its objectives. They provide solutions without creating them. They do not address the problem that we want to solve, but rather the people who work in the sectors concerned.”^g(6)

The Foundation that funds the Swiss Commission for Fairness is directly affiliated with Communication Suisse, which welcomes this arrangement:

“Thanks to the Foundation for Fairness in Commercial Communication, KS/CS enables the communications sector to communicate its products and services in a fair manner. When self-regulation and self-monitoring have proven their worth, as is the case with the Swiss Commission for Fairness, further legislation is neither useful nor relevant.”^h(6)

The current president of the Swiss Commission for Fairness is Philipp Kutter, National Councillor for The Centre party in the canton of Zurich. In addition to his parliamentary work, Kutter, together with his wife, runs a communications and marketing agency, Kutter Kommunikation.⁽⁷⁾ In 2021, he opposed the “Children Without Tobacco” initiative. Moreover, Kutter serves as co-chair of Alliance Enfance, an organisation that seeks to guarantee “the right of all children to grow up in conditions that allow them to develop fully”. Unlike its co-chair, however, the Alliance has expressed its support for the “Children Without Tobacco” initiative.⁽⁸⁾

Elsewhere on its website, the Commission also states that it consults the guidelines of the International Chamber of Commerce (ICC) in the development of its decisions and operations. The Commission has a set of regulations that apply to all advertising activities in Switzerland, according to its preamble, which states that “all major professional organisations in the Swiss communications industry are members thereof”.⁽⁹⁾

However, the Agreement with Swiss Cigarette is subject to a separate document that adds additional requirements beyond the Commission's general rules. There is one notable exception: Article 6 of the Agreement stipulates that decisions relating to complaints about members of Swiss Cigarette are not published, contrary to the Commission's general practice. In other words, this means that the tobacco industry is exempt from a regulatory practice: when it is formally admonished by the Commission following a complaint, the reprimand and any sanction remain confidential and unknown to the public. In addition, Martin Kuonen, president of Swiss Cigarette, is among the experts regularly consulted by the Commission.⁽³⁾ This situation is not new: the Swiss tobacco industry has been represented among the Commission's experts since at least 1996. This presence dates back to a period when the Swiss Cigarette Industry Association (the former name of Swiss

^g Quote in original language: “Le secteur s'autorégule avec succès. C'est pourquoi les interdictions inutiles de la communication ne sont que des actions par procuration pour une politique inefficace qui n'atteint pas ses objectifs. Ils [sic] donnent des solutions sans en créer. Elles ne touchent pas le problème que l'on voudrait résoudre, mais les personnes qui travaillent dans les secteurs concernés.”

^h Quote in original language: “Grâce à la Fondation pour la loyauté dans la communication commerciale, KS/CS permet au secteur de la communication de communiquer ses produits et services de manière équitable. Lorsque l'autorégulation et l'autocontrôle ont fait leurs preuves, comme c'est le cas pour la Commission pour la loyauté, il n'est ni utile ni pertinent de légiférer davantage.”



Cigarette between 1993 and 2004) recruited Hans Ulrich Hunziker, who was already serving as an expert, though not yet on behalf of the tobacco industry.(10)

1.2 Other examples of self-regulation

There are several examples of self-regulation enacted by the tobacco industry, the e-cigarette industry, and advertisers in general. The following examples will provide points of comparison that will be developed further in the “Analysis” chapter.

First of all, Swiss Cigarette is not limited to the agreement reached with the Swiss Commission for Fairness, as it also participates in the “Codex for the Marketing of Tobacco Products, Electronic Cigarettes, and Other Nicotine-Containing Products” in Switzerland, published on behalf of the Swiss Tobacco Trade Association (Swiss Tobacco, the umbrella organisation for Swiss wholesale and retail tobacco companies and organisations).(11) This codex constitutes a very brief commitment not to, among other things, “promote tobacco products, electronic cigarettes and other nicotine-containing products through advertising specifically directed at minors,” and to refrain from “distributing tobacco products, electronic cigarettes and other nicotine-containing products to minors”.(11) The Codex provides no penalties in the event of non-compliance by stakeholders.

In the United States, the Code of Advertising was promulgated by the tobacco industry in 1964. The date is not incidental: in the same year, the Surgeon General's historic report denouncing the role of cigarettes in lung cancer and various cardiovascular diseases was published. The Code, designed as the industry's showcase, remained in effect for a long time, as it was not until 2009 that authority over advertising decisions was transferred to the Food and Drug Administration.(12)

In Belgium, the Belgian-Luxembourg Federation of Tobacco Industries concluded a voluntary agreement with the Minister of Health in 1971.(13) The cigarette manufacturers renounced “any direct appeal to young people” and introduced warnings on cigarette packaging. However, according to the book of specialist Luk Jossens: “But the agreement is not binding and there are no penalties for retailers who do not participate”.(14) Belgium ultimately banned tobacco advertising and sponsorship in 1997 through legislations, which was very poorly received by the industry and its allies, who succeeded in obtaining delays and exemptions.

On the advertising side, self-regulation is a widespread and widely defended practice. It is praised and credited with many virtues. The preamble of the Consolidated ICC Code on Advertising and Commercial Communication Practices of the International Chamber of Commerce emphasises that:

“Responsible advertising and marketing communications, grounded in widely endorsed self-regulatory codes of conduct, demonstrate the business community's commitment to fulfilling its social and environmental responsibilities. The core value of self-regulation is its capacity to build, strengthen, and maintain consumer trust and confidence in the business sector and, consequently, in the marketplace itself. [...] effective self-regulation serves as a means of safeguarding a company's goodwill and reputation. It can also alleviate the burden on governmental regulatory bodies.”(15)

The same holds true in France at the Autorité de Régulation Professionnelle de la Publicité (ARPP, the French advertising regulatory authority). The ARPP praises self-regulation, especially when it operates within a defined framework:



“The professional regulation process can only be effective if the rules provide guidance and direction while safeguarding freedom of expression. If the body of regulatory and ethical texts becomes disproportionate to the objectives to be achieved, the message is inevitably distorted. Advertising creation is no longer able to fulfil its original purpose, which is to engage with consumers in order to remain economically effective.”ⁱ(16)

The ARPP identifies an “initial purpose” – to remain economically efficient – which it seeks to defend against regulations and other rules. In an earlier version of its website, the ARPP was more explicit in its position, setting itself the goal of “preserving the image of advertising among consumers and helping the profession to protect itself against tighter legislative controls through good ethical practices.”^j

It is this characteristic of self-regulation that is promoted by the European Advertising Standards Alliance, a Brussels-based organisation that defends the interests of advertising and self-regulatory bodies in 25 countries:

“Consumer trust in a brand is crucial to corporate success, which is why brand reputation is extremely important. Advertising self-regulation, through the promotion of responsible advertising, helps build consumer trust in brands, which in turn builds brand loyalty, increases sales, and strengthens market share.”^k(17)

In summary, self-regulation is praised by the economic actors who organise and participate in it, both for its ability to prevent the introduction of new legislation, and for its tendency to reassure and maintain consumer confidence in manufacturers' brands. *Ultimately*, this translates into more profits for companies that engage in such self-discipline.

Gaining or maintaining trust and possessing a good reputation lie at the heart of corporate social responsibility (CSR). This communication strategy, through which a company seeks to demonstrate its exemplary behaviour, is highly valued by the three major tobacco companies: Philip Morris (PM), British American Tobacco (BAT), and Japan Tobacco International (JTI). Each of which publicly declares its commitment to “responsible” marketing.

1.2.1 Philip Morris

PM has a code on the “Design, Marketing and Sale of Combusted Tobacco Products”.⁽¹⁸⁾ The multinational organisation also promotes an equivalent code for its range of heated tobacco products: “Design, Marketing and Sale of Non-Combusted Alternatives”.^k A detailed comparison of these two codes is beyond the scope of this report, but it can be noted that the distinction between the two product types allows for a differentiated and more lenient approach toward the “non-combustible alternatives” offered by PM. For example, the company refrains from advertising its combusted tobacco products on social media, whereas heated tobacco products may be promoted on these platforms provided that such promotion is “expressly authorised by PMI Marketing Review Council or its designee(s)”.⁽¹⁹⁾

Moreover, PM declares its intention to comply with the laws of the countries in which it markets its products and, at a minimum, to adhere to its self-regulatory code when it is more stringent than the

ⁱ Quote in original language: “Le processus de régulation professionnelle ne peut être efficace que si la règle oriente, guide, tout en sauvegardant la liberté d'expression. Si l'ensemble des textes émanant de la réglementation et la déontologie devient disproportionné eu égard aux objectifs à atteindre, le message est nécessairement altéré. La création publicitaire n'a plus la possibilité de conserver son but initial, qui est d'engager une interaction avec les consommateurs pour rester économiquement efficace.”

^j Screenshot of the ARPP website, [Exhibit 2](#)

^k [Exhibit 3](#)



laws in force. The rules, presented over four pages in the code, constitute a set of measures regarding the protection of youth, health warnings, and commercial and governance conditions. In the preamble to the code, PM states that “[r]esponsible marketing principles allow us to lead by example.”(19)

1.2.2 British American Tobacco

The same commitment to responsible innovation is evident in BAT's “International Marketing Principles,” which claim to “Build a better tomorrow.” Five principles and ten key themes are presented in a two-page document, available for download on BAT's website.(20) The five principles are as follows:

- Responsible
- Accurate and not misleading
- Targeted at adult consumers
- Transparent
- Compliant with all applicable laws.

BAT has therefore opted for broad marketing principles that are not overly restrictive, as they are open to interpretation.

1.2.3 Japan Tobacco International

JTI addresses the issue of CSR on a page that outlines the company's six fundamental principles.(21) Even before visitors have access to these principles, which appear when scrolling down the webpage, a statement at the top of the section reads: “We believe in the freedom of adults to choose.”¹ (As will be discussed in the “Analysis” chapter the defence of “freedom” is particularly important to cigarette manufacturers). JTI then publishes five principles concerning marketing, which are very similar to those of BAT. However, JTI provides some clarification regarding actions it does not undertake. Here are two examples:

“In principle, advertise its tobacco products and tobacco brands on television, radio or in cinemas; Contribute to or sponsor events or activities to promote a brand to consumers unless the event has no particular appeal to minors and at least 75% of the attendees or audience is adult;”

It is noteworthy to highlight the breadth of these principles (the use of terms such as “in principle” and “no particular appeal to minors”), as well as the degree of interpretation they allow. At JTI, responsible innovation is expressed through a clear objective: “leading the way in Reduced-Risk Products and new ways of doing business.”(22, 23)

1.3 Self-regulation and reason

A central way of defending and promoting self-regulation is to align it with reason. It is portrayed as the reasonable choice, in contrast to legislation and legal measures, which are decried as unreasonable, extreme, abusive, etc.

For example, according to Publicité Suisse in 1991, it is considered reasonable not to support a ban on tobacco advertising. While the campaign to defeat the twin initiatives of 1993, which sought



to enshrine a ban on the advertising of tobacco and alcohol products in the Constitution, was in full swing among Swiss advertisers and cigarette manufacturers, Publicité Suisse put it as follows:

“To be tolerant is to be strong; to want to regulate shows a lack of trust; to want to ban is an admission of failure.”^m

This “admission of failure” does not follow the reasonable logic that legislators should have sufficient confidence in the tobacco industry to regulate itself effectively in terms of advertising.

It is with the wishful hope of being on the side of reason that Othmar Baeriswyl, spokesperson for the ASFC, opened the press release presenting the 1992 Agreement:

“The Swiss Cigarette Manufacturers Association is going on the offensive. It has just concluded an agreement with the Swiss Commission for Fair Advertising providing for radical self-restraint measures in several important areas of cigarette advertising. The aim of this agreement is to offer a reasonable alternative to the extremist demands for a total ban on advertising.”ⁿ(24)

Two points should be noted here: in 1992, the ASFC fully acknowledged that it was publishing its code with the primary aim of defeating the twin initiatives. In addition, it prided itself on proposing measures that were both “radical” and “reasonable”, in contrast to the “extremist demands” that were, by extension, portrayed as entirely unreasonable.

Jean-Claude Bardy, director of the ASFC, went a step further at the September 1992 press conference announcing the Agreement to the public:

“Through this agreement, the cigarette industry wants, on the one hand, to combat the criticisms raised by certain groups concerning young people. On the other hand, regarding information about its products, it wants to combat the impression of omnipresent advertising noted by part of the population. Finally, the aim of this agreement is to offer all those who are critical of advertising a reasonable alternative to the extremist and inappropriate demands made by certain fanatics. [...] To conclude, I would like to clarify, in order to avoid any misinterpretation, that the cigarette industry is acting in accordance with social policy and not out of a conviction that advertising restrictions are appropriate health policy measures. Today, everyone knows that advertising bans do not reduce cigarette consumption or prevent young people from taking up smoking.”^o

He accepts that if the cigarette industry decides to self-regulate and prohibit certain practices targeting young people, it is not in order to prevent them from taking up smoking nor with the hope of any improvement in public health. The primary purpose of the code is political: it is the image, the “criticisms” and the “impression” that are being addressed.

Following the rejection of the twin initiatives, the Association of the Swiss Tobacco Industry

^m Brochure de Publicité Suisse (SW/PS) : *Interdire ne résoud [sic] rien*, juillet 1992, p. 8. Archives cantonales vaudoise, PP889/147, Fédération romande de publicité.

ⁿ Quote in original language: “L’Association suisse des fabricants de cigarettes passe à l’offensive. Elle vient de conclure avec la Commission suisse pour la loyauté en publicité un accord prévoyant des mesures radicales d’autolimitation dans plusieurs secteurs importants de la publicité pour les cigarettes. Cette convention a pour but d’offrir une solution de rechange raisonnable face aux exigences extrémistes d’une interdiction totale de la publicité.”

^o Quote in original language: “Par le biais de cet accord, l’industrie de la cigarette veut, d’une part, combattre les reproches formulés par certains milieux concernant la jeunesse. D’autre part, pour ce qui est de l’information relative à ses produits, elle désire lutter contre l’impression d’omniprésence de la publicité relevée par une partie de la population. Enfin, cet accord a pour but d’offrir à tous ceux qui sont critiques envers la publicité une variante raisonnable à opposer aux exigences extrémistes et inopportunes émanant de certains fanatiques. [...] Pour conclure, j’aimerais préciser, afin d’éviter toute fausse interprétation, que l’industrie de la cigarette agit ainsi en vertu de politique sociale et non par conviction que des limitations en matière de publicité constituent des mesures appropriées en matière de politique de santé. Car aujourd’hui, tout le monde sait que l’interdiction de publicité ne diminue pas la consommation de cigarettes et n’empêche pas les jeunes de commencer à fumer.”



(Communauté de l'industrie suisse du tabac) praised "Swiss common sense":

"For the second time in 14 years, popular wisdom has rejected proposals to ban advertising for products that are an integral part of everyday life and our culture. This decision reflects the desire of citizens to be considered responsible for their own choices (...) misleading arguments designed to scare citizens are ineffective. The spirit of tolerance and common sense is not an empty phrase in Switzerland; it is a reality that proponents of the ban must keep in mind."^p

The same vocabulary appears several times in the letters responding to complaints filed by OxyRomandie with the Swiss Commission for Fairness between April and September 2013. Pascal Diethelm and Michel Chapalay, respectively president and vice-president of OxyRomandie, denounced the use of promotional ashtrays, advertising campaigns, and sponsorships by Swiss cigarette manufacturers in 15 different complaints submitted to the Commission, targeting PM, BAT, and JTI.^q

In their responses, the cigarette manufacturers invoke the notion of a "reasonable person exercising an average degree of attention".^r The concept of the "reasonable and informed average recipient" is likewise used by the Commission's Legal Secretary, who is responsible for the verdicts handed down by the Commission's chambers.

In defending itself against Oxyromandie's allegations of non-compliance with the Self-Regulatory Agreement, PM accused the activists of failing to interpret the agreement reasonably and even went so far as to accuse the complainants of "querulousness".^s For example:

"The slogans cited by the complainant ('a maybe is not invited' and 'only for those who make decisions') are obviously figurative in meaning and are perceived as such by any reasonable person. [...] No one can reasonably understand these slogans as seeking to segregate smokers and non-smokers or as disparaging to non-smokers."^t

In another complaint, concerning the "Defy the Norm" campaign (which will be discussed later in this report), PM called into question the objectivity and good faith of the complainants:

"An advertisement is misleading if it contains statements which, as understood by a reasonable person exercising an average degree of attention, could be likely to mislead them. [...] As such, an objective person would not in good faith link the image and slogan of the L&M campaign to health warnings."^u

In complaint No. 10,^v BAT was accused of advertising in the newspaper *20 Minutes*, in partnership with the supermarket Denner, promoting discounts on its brands without health warnings. These advertisements violated Article 1.3 of the Agreement, which requires the inclusion of such warnings in promotional offers. Unlike PM, BAT opted less for *ad hominem* attacks and instead appealed to the judgement of the Commission members. However, the vocabulary is notably similar to that

^p Quote in original language : "Pour la deuxième fois en 14 ans, la sagesse populaire a ainsi repoussé les propositions d'interdiction publicitaire pour des produits qui font partie intégrante de la vie quotidienne et de notre culture. Cette décision reflète la volonté des citoyens d'être considérés comme des personnes responsables de leurs choix (...) une argumentation trompeuse destinée à faire peur au citoyen est inefficace. L'esprit de tolérance et de bon sens n'est pas un vain mot en Suisse ; c'est une réalité que les partisans d'interdiction doivent conserver à l'esprit."

^q [Exhibit 5](#), table of complaints.

^r [Exhibit 6](#), complaint 12, p. 2.

^s "In psychiatry, querulousness is a delusion of entitlement that leads to multiple legal actions to redress real or fictitious damage." in <https://fr.wikipedia.org/wiki/Qu%C3%A9rulence>, accessed on 2 November 2022.

^t [Exhibit 7](#), complaint 1, p. 5.

^u [Exhibit 6](#), complaint 12, p. 2.

^v [Exhibit 8](#).



used by PM:

“It is reasonably impossible for us to coordinate with Denner. [...] BAT cannot therefore require Denner to comply with a rule that it has imposed on itself under this Agreement, especially since the spirit of the Agreement has been respected.”^w

These excerpts show that BAT sought to limit the scope of the Agreement (between Swiss Cigarette and the Commission) to advertising originating directly from its services, and that “the spirit of the Agreement” is open to interpretation.

Four of the fifteen complaints were upheld, and three others led to corrective action before being dismissed. The time taken to communicate the decision varied from 13 to 21 months, often long after the conclusion of the advertising campaigns in question.

PM had already used similar terminology in the document entitled “Environmental Tobacco Smoke (ETS) Long Range Plan 1994-1996”.⁽²⁵⁾ Indeed, the multinational organisation's plan sets out an objective of “preventing unreasonable legislation”. To achieve this, it is necessary to develop “pre-emptive legislation” as well as “acceptable” solutions. With regard to rules on secondhand smoke in enclosed workplaces, PM intends to “provide private sector with reasonable and practical solutions.”

Swiss Tobacco takes a similar stance, presenting itself on its website as “committed to upholding and defending the principles of the private economy” and “favouring moderate and reasonable regulation of tobacco products”.⁽¹¹⁾

Finally, it is worth considering the role of the Alliance of Businesses for a Moderate Prevention Policy in promoting self-regulation. This organisation brings together various economic actors such as JTI, the Swiss Union of Arts and Crafts, Communication Suisse, the Federation of Winegrowers and others. Swiss Cigarette is listed as a “sympathetic organisation”. The Alliance counts no fewer than 40 members in the National Council and 12 in the Council of States. This substantial representation gives it considerable influence over legislation. Their positions are consistently opposed to regulations, and it issued a statement during the drafting of the Tobacco Products Act in 2019 criticising the Federal Council for being “on the wrong track.”

Here, once again, moderation and reason are advocated in order to criticise state regulation projects and promote self-regulation by the private sector.

1.4 The "coercive" state

In order to discourage the introduction of disruptive legislation, the tobacco industry and its allies periodically raise the spectre of a state that tends towards becoming overly controlling and coercive. In his speech on 21 March 2021, Philipp Kutter denounced the danger of “state coercion”.^x “That is not our path,” he said, before praising the “Swiss compromise” as a better alternative.^y⁽²⁶⁾ This compromise is achieved through dialogue with companies, and it is in this context that self-regulation, born from discussion and trust between government and business, is presented as more virtuous than state legislation. Olivier Français expressed this sentiment on the *Infrarouge*

^w Exhibit 8, complaint 10, p. 3.

^x Quote in original language: “Staatlicher Zwang”

^y Quote in original language: “Anstelle eines gutschweizerischen Kompromisses, wie ihn die Vereinbarung vorsieht, würden staatlicher Zwang und ein Totalverbot Einzug halten. Das finde ich nicht sehr schweizerisch. Ich empfehle Ihnen: Bleiben wir auf unserem Weg.”



programme on 18 September 2019: “We are in Switzerland here, we talk to businesses, we don't want to regulate the world.”(26, 27)

Switzerland is thus portrayed as the ideal environment for promoting and practising dialogue and compromise between public and private interests. However, political and economic circles opposed to regulation repeatedly assert that this stable arrangement is under threat. Indeed, abuses of a paternalistic state, a “nanny state” (a term revisited in the “Analysis” chapter), are decried by many voices. And this is by no means new. For example, in a text authored by Jacques Simon Eggly of the Geneva Liberal Party, opposing the Bons Templiers initiative, which sought to ban alcohol and tobacco advertising and was rejected in 1979, he stated: “There is a growing tendency to view adults as children who need to be protected and guided.”^z

Fourteen years later, in 1993, during the political campaign against the twin initiatives, a brochure published by Publicité Suisse warned: “The state does not hesitate to create a new, unnecessary and costly bureaucratic apparatus.”^{aa} The committee against the initiatives added: “The only outcome that advertising bans would promote is the excessive growth of a state control and surveillance apparatus.”^{bb} The Fédération Romande de Publicité (French-speaking Swiss advertising federation) further added to the fierce criticism of the 1993 initiatives:

“Either we really consider Swiss citizens to be weak and irresponsible beings who need to be supervised and protected like five-year-olds, in which case we should only allow the sale of tobacco and alcohol – and related advertising – in special, strictly controlled outlets (...); or we admit that these citizens are adults and aware of their choices, that they can therefore have free access to these products and that a few posters, slogans or cowboys on the big screen are not going to push them to drown themselves in alcohol or smoke their lungs away.”^{cc}(28)

Very similar terminology was used by members of the Swiss People's Party (SVP/UDC) in 2016 when criticising the proposed Tobacco Products Act:

“Under the pretext of protecting young people and prevention [...] we are ending up with the development of a state apparatus for control and surveillance activities.”^{dd}(29)

Opposition to a paternalistic state that seeks to interfere in people's lives is also one of the reasons given for rejecting the “Children Without Tobacco” initiative of 13 February 2022, according to the arguments put forward by those opposed to the initiative:

“There is a real risk of being placed under moralistic supervision. This kind of extreme advertising ban comes from people who want to dictate to others how they should live their lives. The civil liberties of adults are thus sacrificed and trampled upon.”^{ee}(30)

^z J.-S. Eggly, *Publicité : l'homme est majeur*. La Gazette de Lausanne, 10 février 1979, https://www.letempsarchives.ch/page/GDL_1979_02_10/1.

^{aa} Brochure de Publicité Suisse (SW/PS) : *Interdire ne résoud [sic] rien*, juillet 1992, p. 8. Archives cantonales vaudoise, PP889/147, Fédération romande de publicité.

^{bb} Association contre la prolifération des interdictions publicitaires, *Inefficaces et même dangereuses*, 1992. Archives cantonales vaudoise, PP889/147, Fédération romande de publicité.

^{cc} Quote in original language : “Ou bien l'on considère vraiment le citoyen suisse comme un être faible et irresponsable qu'il faut encadrer et protéger comme un gosse de cinq ans et alors on n'autorise plus la vente du tabac et de l'alcool – et la pub y relative – que dans des officines spéciales et sévèrement contrôlées (...); ou bien l'on admet que ce citoyen est adulte et conscient de ses choix, qu'il peut donc avoir libre accès à ces produits et que ce ne sont pas quelques affiches, slogans ou cow-boys sur grand écran qui vont le pousser à se noyer dans la bouteille ou à cracher ses poumons.”

^{dd} Quote in original language: “Sous prétexte de protection de la jeunesse et de prévention [...] on aboutit à un développement de l'appareil étatique pour des activités de contrôle et de surveillance.”

^{ee} Quote in original language : “Le risque d'être mis sous une tutelle moralisante existe bel et bien. Ce genre d'interdiction extrême de la publicité nous vient de gens qui veulent dicter aux autres leur manière de vivre. La liberté citoyenne des adultes est ainsi sacrifiée et bafouée.”



The same imagery is invoked once again in 2025 in the “Pas un Bébé” (“Not a Baby”) campaign⁽³¹⁾ launched by an alliance of economic groups to fight against advertising bans in Switzerland (Figure 1).



Figure 1 Poster for the “Not a Baby” campaign, Switzerland, 2025

This repeated assertion of a clear boundary between responsible adults – who are capable of deciding to smoke – and immature children – who are prohibited from doing so – is a recurring argument that serves the interests of the tobacco industry, as will be discussed in the “Analysis” chapter. In any case, for those who denounce it, there is a perceived threat of an authoritarian drift by a state inclined to increase prohibitions, jeopardising self-regulation and, more seriously, the freedom of citizens.

1.5 The conciliatory state

Despite the threat of an autocratic shift raised by defenders of advertising, the ministers in charge of the Department of the Interior have repeatedly affirmed their intention to consult and accommodate the private sector before implementing prevention policies. Federal Councillor Flavio Cotti went even further on 10 July 1989 in a letter addressed to the Swiss Tobacco Industry Federation (la Fédération de l'Industrie Suisse du Tabac): “I would also like to confirm that preventive measures should never directly discriminate against smokers or the industry.”^{ff}

For his part, former Federal Councillor Alain Berset has on several occasions expressed his desire to maintain a balance between health considerations and the economic interests of multinational tobacco companies. In 2014, in an interview about the draft federal law on tobacco products (LPTab), he stated:

“Above all, we have sought to strike a balance by prioritising public health interests with a clear restriction on what is currently possible in terms of tobacco advertising, but



without going as far as a total ban as in other countries, in order to also take economic interests into account.”^{gg}

In the same vein, the federal government's message on the popular initiative “Children and Young People Free From Tobacco Advertising”(32) contains the following statement:

“However, the Federal Council considers that the initiative, which would lead to very broad advertising restrictions, goes too far. It believes that a certain balance must be maintained between health and economic interests. In the context of the 2015 LPTab project, the Federal Council has already expressed its willingness to restrict advertising to a degree that is acceptable to the tobacco industry.”^{hh}

What Flavio Cotti stated in a personal letter, Alain Berset has turned into a maxim and guiding approach to prevention. Such measures must not harm the tobacco industry. In other words, their purpose is not to reduce its profits and therefore its sales.

The statements made by the two health ministers indicate that the alleged threat of a controlling, ambitious state on the verge of an authoritarian drift are largely unfounded. In Switzerland, the majority of politicians instead support and encourage consultation and self-regulation.

1.6 “We do not ban advertising for a legal product.”

Another obstacle used to thwart plans to restrict tobacco advertising is the argument that all legal products have the right to be freely advertised. This refrain is echoed by various actors opposed to state regulation and supportive of self-regulation.

Filippo Lombardi,ⁱⁱ National Councillor for the Christian Democratic Party and President of Communication Suisse, expressed this view in the National Council on 17 September 2019 during the debates on the Tobacco Products Act:

“Our principle [that of Communication Suisse] is: what can be legally sold in Switzerland should also be able to be legally advertised. That is why I am absolutely in favour of the aforementioned restrictions on advertising that may reach minors. [...] For example, the cantons in western Switzerland are generally more restrictive, but statistics show us that people in western Switzerland smoke more than those in German-speaking Switzerland.”^{jj}(33)

For Lombardi, it is fundamental to be able to freely promote a legally sold product. He added that when state regulation is more restrictive, it does not prevent higher smoking rates, as can be seen when comparing the cantons of western Switzerland with those of German-speaking Switzerland. In the remainder of his speech, he praised self-regulation and regretted not being part of the commission that examines matters related to tobacco advertising.

^{gg} Exhibit 10

^{hh} Quote in original language : “Le Conseil fédéral estime toutefois que l’initiative, qui entraînerait de très larges restrictions publicitaires, va trop loin. Il est d’avis qu’un certain équilibre entre les intérêts de la santé et ceux de l’économie doit être maintenu. Dans le cadre du projet LPTab de 2015, le Conseil fédéral a déjà exprimé sa volonté de restreindre la publicité dans une mesure acceptable pour l’industrie du tabac.”

ⁱⁱ Among other things, he was president of Telesuisse. https://fr.wikipedia.org/wiki/Filippo_Lombardi, accessed on 16 November 2022.

^{jj} Quote in the original language: “Unser Grundsatz ist: Was in der Schweiz legal verkauft werden darf, soll auch legal kommuniziert werden können. Deswegen bin ich absolut für die erwähnten Einschränkungen betreffend Werbung, die Minderjährige erreichen kann. [...] zum Beispiel sind die Westschweizer Kantone in der Regel restriktiver, aber die Statistik zeigt uns, dass die Westschweizer mehr rauchen als die Deutschschweizer. »



The maxim of free advertising for a legally sold product also appears in the public arguments of SVP/UDC elected representatives Jennifer Badoux (Vaud) and Céline Amaudruz (Geneva):

Jennifer Badoux on Radio Télévision Suisse (RTS), 31 January 2022: “This initiative will open a breach in the Constitution, because cigarettes are legal, let’s not forget. So we’re going to ban cigarette advertising, and then what next? Alcohol?”(34)

Céline Amaudruz on RTS, 31 January 2022: “Tobacco, although harmful, is a legal product. On that basis, we really must not restrict the right to advertise it, because that would undermine economic and commercial freedom.”(35)

However, asserting the equivalence that a “legal product logically means unrestricted advertising in Switzerland” is factually incorrect, as pulmonologist Rainer M. Kaelin pointed out: “The maxim ‘legal products can be legally promoted’ ignores the Medicines Act [Therapeutic Products Act, Article 32], which, for good reasons, prohibits advertising for addictive medicines.”(36)

What the position of the SVP/UDC elected representatives implies is that the state should take no measures to restrict advertising if the product is legal.^{kk} They thus claim that there is no precedent for restrictions and that economic freedom should be unlimited. This amounts to leaving matters of youth protection to self-regulation.

1.7 If advertising is under threat, it is the market economy that is under attack

Some are sounding the alarm even more directly. In 1993, the Comité Romand Contre les Interdictions Publicitaires Abusives (Romandy Committee against Abusive Advertising Bans) declared: “The widest possible freedom of advertising activity is a fundamental principle on which our free market economy is based.”(37) Essentially, when it comes to regulating advertising, the entire economic system is at stake.

This argument continues to resonate today. On 24 October 2022, Daniel Hammer, who is active in the Centre Patronal, Médias Suisses, and the Fédération Vaudoise des Structures d’Accueil de l’Enfance, commented in an article entitled “Without Freedom in Advertising, No Market Economy” on the Federal Council’s plan to implement the “Children Without Tobacco” initiative:

“For several years now, advertising restrictions have been spreading at an alarming rate in our country. While advertising enjoys economic freedom, which protects all private economic activity from unjustified state restrictions, the state continues to intervene with unnecessary and excessive regulations. [...] This legislative activism is problematic in that it prevents the companies affected from promoting their products and services to the public and consumers from making informed choices in an increasingly complex environment. It also deprives the media of the revenue they need to carry out their mission of providing information, which is essential to the proper functioning of our direct democracy.”^{ll}

^{kk} This statement obviously ignores the fact that, while the sale of tobacco is legal, it is restricted to adults and prohibited to minors. Therefore, the product is not legal for everyone.

^{ll} [Exhibit 11](#)



Hammer warns of dire consequences should advertising bans be implemented: not only does the economic system rely on free advertising, but democracy itself would ultimately be at risk if these bans were imposed by the state. Communication Suisse had made a similar claim a few years earlier in the title of its “Advertising Day” on 29 May 2015: “Without communication, no democracy”. Here, the intended meaning is “without advertising, no democracy”, since on the same day, “the members of Schweizer Werbung and Publicité Suisse decided to name the new umbrella association ‘Communication Suisse’.”⁽³⁾

1.8 Illegal trade

PM in 2004, JTI in 2007, BAT and Imperial Tobacco in 2010 each concluded voluntary agreements with the EU concerning the illicit trade in cigarettes and counterfeits. In 2016, during the debates on the renewal of the agreement with PM, the association Smoke Free Partnership published a fact sheet^{mm} on this agreement. The association described the industry-proposed and EU-approved self-regulation as follows:

“Under this agreement, PMI [Philip Morris International] must make annual payments over 12 years totalling US\$1.25 billion and to combat future cigarette smuggling through the following measures:

- *Control of the distribution system and subcontractors to whom PMI supplies its cigarettes;*
- *Monitoring and traceability measures intended to enable authorities to independently trace contraband cigarettes back to the subcontractor who purchased them from PMI;*
- *Payments relating to seizures, with amounts equivalent to the unpaid taxes due to the fraud system. These payments must be made immediately if the seizures involve PMI cigarette products and the volume of cigarettes exceeds the threshold of 50,000 units;*
- *Sales ceilings to ensure that sales correspond to legitimate demand in the specified destination market. The aim is to avoid oversupply and the diversion of tobacco products to illicit channels.”*ⁿⁿ

Smoke Free Partnership has assessed this agreement and has issued a highly critical opinion on its lack of effectiveness, its opacity, and the advantages it confers on PM. The agreement was not renewed by the EU after 2016. The same situation applies to the agreement with JTI, which ended in 2022. The agreement between the EU and BAT expires at the end of 2025. It should be noted that all three major companies have been implicated for their active role in organising illicit trade, which has provided them with significant benefits.⁽³⁸⁾

mm Exhibit 12

ⁿⁿ Quote in original language: “Dans le cadre de cet accord, PMI [Philip Morris International] doit effectuer des paiements annuels pendant 12 ans portant sur la somme globale de 1,25 milliard de dollars américains et lutter contre la contrebande future de ses cigarettes au moyen des mesures suivantes :●Contrôle du système de distribution et des sous-traitants auxquels PMI fournit ses cigarettes ;●Mesures de suivi et de traçabilité qui censées permettre aux autorités de retracer les cigarettes de contrebande de manière indépendante jusqu’au sous-traitant qui les a achetées à PMI ;●Paiements relatifs aux saisies, dont le montant équivaut à celui des taxes non payées grâce au système de fraude. Ces paiements devront être effectués immédiatement si les saisies concernent les produits du cigarettier PMI dès lors que le volume des cigarettes dépasse le seuil de 50 000 unités ;●Plafonds des ventes afin que celles-ci correspondent à une demande légitime dans le marché de destination spécifié. L’objectif est d’éviter un excès d’offre et un détournement des produits du tabac vers des filières illicites.”



1.9 The situation in other industries

1.9.1 Alcohol

The alcohol industry has likewise enacted self-regulatory codes regarding advertising in various countries. A team of U.S. and Brazilian researchers expressed strong criticism of these codes when evaluating them in a 2016 article:

“Self-regulation has been promoted by the alcohol industry as a sufficient means of regulating alcohol marketing activities. However, evidence suggests that the guidelines of self-regulated alcohol marketing codes are routinely violated, resulting in excessive alcohol marketing exposure to youth and the use of content that is potentially harmful to youth and other vulnerable populations. If the alcohol industry does not adhere to its own regulations, the purpose and design of these codes should be questioned. Indeed, implementation of alcohol marketing self-regulation in Brazil, the United Kingdom and the United States was likely to delay statutory regulation rather than promote public health.”(39)

In Switzerland, the public have voted no fewer than 17 times on issues related to alcohol since the introduction of the right of initiative in 1891.(40) Various pieces of legislation regulate its sale, manufacturing, and marketing. However, there also exists a Code of Ethics issued by the Swiss Branded Spirits Association, the Swiss Federation of Branded Spirits, Fruit-Union Switzerland, and the Swiss Distillers' Association, in agreement with the Swiss Commission for Fairness.(41) Its first version dating back to 2003.

1.9.2 Food industry

The Swiss food industry is also a proponent of self-regulation when it comes to children's health. A revision of the Foodstuffs Act took place in Switzerland in 2014. Anticipating the debates to come, major companies such as Nestlé, Coca-Cola, Kellogg's, Mars, Danone, and others proudly highlighted in 2010 that they had voluntarily launched the “Swiss Pledge”, a commitment to reduce advertising of sugary products to children. During the debates, parliamentarians removed the restrictions on advertising to children that had been included in the draft revision, making the final result adopted by Parliament considerably less ambitious.(42)

The effectiveness of the industry's voluntary commitment was questioned by National Councillor Laurence Fehlmann Rielle of the Swiss Socialist Party in the National Council on 5 June 2018, who notably highlighted the lack of independent experts in the evaluation procedures.(43) Similarly, the Federal Food Safety and Veterinary Office (OSAV) has raised concerns regarding the relevance of such weakly binding voluntary agreements:

“It is always the companies themselves that have set the criteria for promoting products aimed at children and that have monitored the measures. The OSAV is considering renewing this type of action only if the criteria are defined more strictly and, therefore, if the effectiveness of the measures can be increased.” ^{oo}(44)

^{oo} Quote in original language: “Ce sont toujours les entreprises qui ont fixé les critères pour vanter les produits destinés aux enfants et qui ont assuré le suivi des mesures. L'OSAV envisage de ne reconduire ce type d'action que si les critères sont définis de manière plus stricte et donc si l'efficacité des mesures peut être accrue.”



Far from sharing these doubts, on 17 September 2013, as part of the revision of the Foodstuffs Act, Health Minister Alain Berset reaffirmed the government's intention to collaborate with industry on all issues relating to advertising regulation. While members of the Council of States proposed granting the Federal Council the authority to restrict advertising aimed at children, Berset told the Council of States:

“But I must tell you that we would not do this without first discussing it at length with the industry. The idea is certainly not to impose bans or restrictions without first engaging in close dialogue with the industry. As you all know, the practice in this area is to seek a balance between consumer protection and a policy that is favourable to our industry, particularly with regard to imports and exports.”^{pp}(45)

And after the National Council removed all advertising restrictions from the law revision, Berset commented:

“During the debates on this revision, Parliament opposed the regulation of advertising on the grounds that it wanted to give priority to voluntary commitments by the food industry. This message was understood by the Federal Council. It thus felt supported in the way it had been working for several years and in its choice of a voluntary approach that favours collaboration with the food industry.”^{qq}(46)

Berset put this approach into action when he signed the Milan Agreement, in which major food industry companies voluntarily committed to reducing the sugar content of some of their products.(46)

The Federal Councillor demonstrated the same concern for balancing health concerns and the economic interests that he expressed regarding tobacco in 2014. Berset's words again closely echo those of Flavio Cotti in 1989.

In France, too, the food industry, grouped together in the National Association of Food Industries (ANIA), signed a voluntary agreement in 2009 in the form of a charter guaranteed by the Conseil Supérieur de l'Audiovisuel (CSA, the public regulatory body). The agreement was renewed in 2020.(47) The 2020 charter commits the food industry, in agreement with the ARPP, to comply with certain restrictions concerning “eating behaviours likely to cause serious deficiencies”, but the majority of its content consists of promoting balanced diets among children.

1.9.3 Ecology and fossil fuels

The words of Agnès Pannier-Runacher, then French Minister for Ecology and Energy Transition, resonate surprisingly closely with those of Berset and Cotti when they reassured the tobacco industry. On 14 September 2022, as the country was preparing for a difficult end to the year in terms of energy supply, she presented the government's “energy sobriety plan”:

“This is not about imposing a new protocol with coercive measures. [...] And I want to be very clear: the sobriety plan is not about reducing production. We will not ask

^{pp} “Quote in original language: “Mais je dois vous annoncer que nous ne ferions pas cela sans avoir étroitement discuté avec l'industrie. L'idée n'est certainement pas de poser des interdictions ou des restrictions sans avoir eu un dialogue très étroit avec l'industrie. Comme vous le savez tous, ce qui est pratiqué dans ce domaine, c'est la recherche d'un équilibre entre la protection des consommatrices et des consommateurs et une politique qui soit favorable à notre industrie, notamment pour l'importation et l'exportation.”

^{qq} Quote in original language : “Dans le cadre des débats sur cette révision, le Parlement s'est opposé à la réglementation de la publicité au motif qu'il souhaitait que soit privilégié l'engagement volontaire de l'industrie agroalimentaire. Ce message a été compris par le Conseil fédéral. Il s'est ainsi senti soutenu dans sa manière de mener ses travaux depuis plusieurs années et dans son choix de l'approche volontaire qui privilégie la collaboration avec l'industrie alimentaire.”



manufacturers to save energy by shutting down furnaces or production lines. We will launch a public communication campaign on 10 October with a very clear slogan: 'Every action counts'. This campaign will inform the French public about the most effective ways to reduce their consumption." ^{rr}(48)

Like her Swiss counterparts, the French minister is relying on the self-discipline of those involved in the problem she is tasked with managing. On the one hand, she reassures the industries that, for her government, sobriety does not mean a drop in production and therefore profits; on the other hand, she calls on citizens to adopt responsible individual behaviours to solve the collective problem of energy overconsumption. Tobacco companies are particularly fond of such calls for individual responsibility in relation to health issues associated with their products.

A well-known example of this call for individual responsibility serving industry interests is the Heidelberg Appeal. This text was published in 1992 and signed by thousands of scientists (including several Nobel Prize winners). As the United Nations convened for the Earth Summit in Rio de Janeiro, the communiqué urged them to pursue an ecological agenda strictly grounded in science, technology and industry. The text states:

"We emphasise that many essential human activities require the handling of hazardous substances or are carried out in close proximity to such substances, and that progress and development have always been based on increasing control over these hostile elements, for the benefit of humanity." ^{ss}(49)

Journalist Stéphane Foucart analyses the origins of the appeal and exposes the tactics used by industry to ensure that the text aligned with their economic interests. The statement guarantees that the reasonable use of hazardous products is possible. This aligns perfectly with the cigarette manufacturers, who at the time were fighting to maintain social acceptance of their products. Foucart states:

"In the early 1990s, one of the major battles fought by PM and its allies was that of passive smoking, which is precisely about exposure to low doses of carcinogenic substances. The Heidelberg Appeal was intended to demonstrate to the public and decision-makers that the most prestigious members of the scientific community supported the general principle that low doses are not harmful." ^{tt}(49)

^{rr} Quote in original language: "Il ne s'agit pas d'imposer un nouveau protocole avec des mesures coercitives. [...] Et je veux être très claire : le plan sobriété ce n'est pas la réduction de la production. Nous ne demanderons pas aux industriels de faire des économies en arrêtant des fours ou des chaînes de production. Nous lancerons une campagne de communication grand public le 10 octobre avec un slogan très clair : "chaque geste compte". Cette campagne permettra de faire connaître aux Français les gestes les plus efficaces pour réduire leur consommation."

^{ss} Quote in original language: "Nous soulignons que nombre d'activités humaines essentielles nécessitent la manipulation de substances dangereuses ou s'exercent à proximité de ces substances, et que le progrès et le développement reposent depuis toujours sur une maîtrise grandissante de ces éléments hostiles, pour le bien de l'humanité."

^{tt} Quote in original language: "Au début des années 1990, l'une des grandes batailles livrées par PM et consorts est celle du tabagisme passif, qui relève précisément de l'exposition à de faibles doses de substances cancérogènes. L'appel d'Heidelberg est supposé montrer de manière éclatante, au public et aux décideurs, l'adhésion de la part la plus prestigieuse de la communauté scientifique à ce principe général : les faibles doses ne seraient pas nocives."



2 ANALYSIS

2.1 Why do manufacturers practise self-regulation?

2.1.1 To avoid the implementation of a restrictive legislative framework

As stated in the preamble to the International Chamber of Commerce's advertising code⁽¹⁵⁾ and in various declarations of intent from the advertising industry, the primary aims of self-regulation in advertising are to gain consumer confidence and to provide an alternative to state legislation. This makes it possible to delay, or even defeat, attempts at external regulation of industries.

It is therefore not surprising that the publication of codes of good advertising practice come at such carefully calculated moments. In Switzerland, the first code of this type dates back to 1955, just after the publication of the Doll and Hill report in 1954, which definitively established the harmful effects of tobacco. At critical moments for its future, it is in the industry's best interest to present itself as exemplary.

A similar approach was taken in 1992 with the deliberate timing of the publication of the agreement between Swiss Cigarette and the Swiss Commission for Fairness. This agreement was made public just before the opening of parliamentary debates on the twin initiatives, which were put to a popular vote in 1993. As Georges Diserens, vice-president of PM Switzerland, explained:

"The code will be put in force on Sept. 1, 1992, with a transitory period until January 1, 1993 for limitations which cannot be implemented rapidly. The major aim of the code is a reinforcement of youth protection measures, in view of the debates in parliament on the initiative, which will start on Sept. 3, 1992. The objectives of industry and allies are firstly to convince MPs that there is no need for a counter-project and that youth protection can be better achieved through self-regulation within the tobacco and advertising industries, and secondly to push voters to reject the initiative in 1994 because of its uselessness. In order to get maximum credibility, the code will be countersigned by 'Publicité Suisse' and its enforcement controlled by the 'Commission suisse pour la loyauté en publicité', which is composed of representatives of advertisers, agencies, media, and consumers."⁽⁵⁰⁾

It can therefore be said that the tobacco industry primarily employs self-regulation as a political tool to secure specific objectives, such as the defeat of legislative proposals. At the same time, it knows how to present its codes as exemplary and well-intentioned, thereby turning them in to what it calls a "lobbying lever". In a PM memo summarising a meeting on legal affairs in Pakistan and the wider region with representatives from Rothmans and BAT, Colin Goddard, Director of Environmental Policy for the Asia-Pacific, writes:

"An industry code will be written [...] so that it can be used as both a lobbying lever and an argument against not introducing formal legislation. [...] What was very heartening was the determination of the companies to work together actively and creatively to address the challenges facing us. It is very important that this enthusiasm and positive approach be encouraged and maintained by all of us."⁽⁵¹⁾

What is striking here is both the lucidity regarding the real purpose of self-regulation and yet another example of an alliance between competing companies that nevertheless do not hesitate to



work together (Goddard mentions several days of meetings between representatives of the different firms) in order to secure their shared interest: keeping regulation to a minimum.

The following sections illustrate how the tobacco industry opposes stricter measures by defending the idea that self-regulation is sufficient. Since cigarettes are, in its view, a product like any other, any more restrictive regulation is therefore perceived as an infringement on individual freedoms.

2.1.2 The trivialisation of tobacco as a bulwark against regulation

“Who can guarantee that before the year 2000, so-called health missionaries will not want to ban chocolate on the pretext that it can make us fat and that excessive consumption could make us ill?” exclaimed a slogan from Publicité Suisse(37) during the campaign against the twin initiatives of 1993. Associating cigarettes with a familiar and popular consumer product is a tried-and-tested tactic of the tobacco industry and its allies. It allows them to reframe an attack on tobacco as an attack on the culture and way of life of a population. By choosing a product as emblematic of Switzerland as chocolate, the industry ensures the success of this strategy.

Moreover, PM’s 1988 takeover of Kraft Foods (which has owned the chocolate manufacturer Su-chard since 1990) made this association even more tangible. The same was true of the cigarette-shaped sweets for children that were available until recently in all tobacco shops and were often made of chocolate. More recently, in an advertising campaign for its cigarettes aimed at the domestic market, BAT linked its Parisienne brand with an iconic food product, the cervelat sausage, which had been added to the Swiss Culinary Heritage list in 2008 (Figure 2).



Figure 2 Advertisement for BAT’s Parisienne brand, 20 Minutes, 2013

On the 7 November 2021 programme of *Mise au Point*, a former PM executive interviewed by journalist François Ruchti stated: “Currently, PM is doing everything it can to convince the public and decision-makers that IQOS is a normal product, like chocolate.”(52)

Beyond chocolate, the tobacco industry and its allies in Switzerland have associated smoking cigarettes with other activities such as drinking wine, eating meat, hiking, or driving a car, in order to ensure the failure of initiatives aimed at tobacco advertising (Figure 3).





Figure 3 Poster against the initiative “against advertising for products that cause addiction”, 1979

The cervelat sausage (again) took centre stage in the campaign by opponents of the “Children Without Tobacco” initiative (Figures 4 and 5).



Figure 4 Press conference of the cross-party committee against the advertising ban, 6 January 2022





Figure 5 Visuals created by opponents of the “Children Without Tobacco” initiative, January 2022

However, “normalisation”, a key issue for PM, is not limited to its new products. In Switzerland, proponents of advertising free from state constraints are making a similar effort a normalisation, this time in favour of self-regulation itself, with the aim of presenting it as a typically Swiss practice: “Self-regulation is in line with the liberal attitude of self-confidence and self-determination that has done so much for our country's success,”^{uu} declared Filippo Lombardi, President of the Swiss Advertising Foundation for Fairness in Commercial Communication.

It was in a similar spirit that the Swiss Commission for Fairness presented the agreement reached with the ASFC in 1992:

“The efforts of the Swiss Association of Cigarette Manufacturers deserve to be recognised for their true value. It is true that self-restriction measures exist elsewhere, but this is the first time that an industry has entrusted an external, neutral body with monitoring their implementation. From now on, any competitor or consumer can file a complaint free of charge with the Swiss Commission for Fairness regarding a violation of the tobacco industry's self-restraint provisions on advertising. This is yet another Swiss contribution to ensuring effective fair trading without resorting to state-imposed advertising bans. [...] Finally, it is worth noting an interesting detail: in 1978, the Fair Trading Commission and, for that matter, the tobacco industry itself were involved [just before the Bons Templiers initiative] in the revision work, and at the time the Federal Council had incorporated, virtually unchanged, into the Foodstuffs Act the principle already formulated in 1973 by the Fair Trading Commission regarding the protection of young people from tobacco advertising.”(53)

The goal remains the same: if self-regulation is framed as distinctly Swiss, then attacking this practice means attacking Swiss culture itself.



In addition to turning the anti-smoking campaign into an anti-Swiss campaign, equating cigarettes with everyday products allows this campaign to be presented as unreasonable. The media campaign by PM Europe reported by Luk Joossens, Gérard Dubois, and *The Wall Street Journal* is particularly revealing in this regard. In 1996, the multinational company compared the health risks of passive smoking to those posed by biscuits, pepper, and chlorinated water.(54) The slogans were reported in an article in *The Wall Street Journal* on 5 June 1996:

“One of the ads citing the list shows photographs of cookies with the headline: ‘Is everything bad for us? Or are we getting things out of proportion?’ Another ad shows a pepper mill with the headline, ‘Life always involves some risks. You need to decide which ones are important.’ And a third ad, showing simply a glass of water, says, ‘Life can’t be free from risk. But you can decide which are the big ones.’”(55)

This well-established strategy both downplays the risks of passive smoking, reassuring smokers and those around them, and discredits anti-smoking activists, thereby thwarting their initiatives. The industry wants to convince the public that cigarettes are a harmless, everyday product that require no special restrictions. This provides yet another justification for self-regulation over stricter measures.

2.1.3 Cigarette manufacturers, defenders of freedom?

For a long time, cigarette manufacturers have tried to link their product to the theme of freedom. From the slogan “torches of freedom” coined by American Tobacco's public relations expert Edward Bernays to target the female market, to the Marlboro Man roaming alone in wide open spaces, the equation “smoking = freedom” is constantly repeated, entirely ignoring the addictive and thus enslaving nature of the product. The industry recognised the marketing potential of this link early on and now applies it to its new products, which remain just as addictive and therefore equally enslaving.

JTI even goes so far as to talk about the “consumer freedoms that vaping products bring”.(56)

Politically, the “freedom” promoted as one of the tobacco industry's core values does not sit well with restriction measures. In concert with other economic actors, cigarette manufacturers fund organisations that promote a libertarian discourse opposing state intervention in the economy. This is the case, for example, with the Consumer Choice Centre(57) (CCC), which presents itself as a defender of lifestyle freedom, innovation, privacy, science, and consumer choice. This Brussels-based lobby group is financed, among others, by JTI.(58) Its mission is to fight regulation, arguing that “regulators at the local, national, and supranational levels are regulating more and more areas of consumers' lives, [which] reduces consumer choice and makes products more expensive.”(57)

To counter this trend, the CCC employs the concept of the “nanny state” to discredit any government regulatory initiative by equating it with the infantilisation of consumers. The CCC deplores the fact that the “nanny state” phenomenon is too widespread:(59)

“The idea that the consumer needs a centralised authority telling him or her how to behave derives from the fundamental idea that he or she is inept at making rational decisions. It is interesting to see how the topic is addressed, in the example of restrictions on marketing for products: parents are seen as influenced by their own children, who themselves have been brainwashed by companies. As marketing becomes synonymous with manipulation, manipulated consumers need someone to protect them. [...] But the idea of consumer protection remains important for governments because consumers have



been taught to perceive themselves as victims. For this purpose, multiple European countries already have ministries for consumer protection. Much like the Ministry of Truth, it's a question of who gets to decide how the consumer is really protected, instead of leaving that decision up to the individual. [...] If we want to defeat the Nanny State, we need not only to oppose the individual policies that governments introduce, we also need to empower individuals to believe in their ability to act as responsible individuals."

The CCC also awards an ironic "Bureau of Nannyism Award" to call out those entities which, in its view, impose unreasonably and excessive economic restrictions. For example, in October 2018 (13 years after the award was established), the CCC awarded its undesirable prize to the WHO Framework Convention on Tobacco Control because it encouraged a ban on tobacco advertising(60) (Figure 6).



Figure 6 Excerpt from the Consumer Choice Center website, 2018 (60)

The CCC believes that the WHO denies science by not allowing consumers to be properly informed about the tobacco industry's new non-combustible products. The CCC even calls for the dismantling of the WHO(61) claiming it is overly focussed on non-communicable diseases while neglecting the real viral threats. In another article from the liberal news site *Contrepoints*, republished on the CCC website, the introduction of plain packaging in Belgium is described as "infantilising smokers".

The CCC is also a partner of the "Nanny State Index"(62) together with the "Institute for Economic Affairs", (63) a liberal think tank funded by the tobacco industry(64) as well as other liberal groups linked to the private sector. This index ranks European countries based on their legislation regarding various consumer products, including alcohol, food, e-cigarettes, and tobacco. If a country is permissive, and therefore has flexible or even non-existent legislation, it receives a positive rating and is shown in green on the ranking. Conversely, if its legislation more strictly limits the consumption, trade, and/or promotion of these products, it receives a negative rating and appears in red. Regulations are therefore systematically criticised and denounced as excessive and extreme.

For cigarette manufacturers, it is particularly strategic to fund this type of pressure group, which opposes regulations in the name of consumer choice. The tobacco industry has made this a well-



established practice: it identifies, and sometimes creates from scratch, allies whom it financially supports so that they serve as its spokespeople. This allows the industry to position itself as a defender of individual freedoms and to advocate for personal choice (to smoke) rather than restrictions. This tactic is part of a broader strategy that aims to normalise cigarettes by presenting them as ordinary products (and therefore a matter of individual freedom), while minimising the industry's responsibility for the smoking epidemic and emphasising consumer responsibility. By framing regulation as a restriction on individual freedom, it glosses over its marketing efforts to recruit new smokers and, above all, sidelines public health issues in favour of a debate on supposedly threatened freedoms. For this reason, University of Sydney law professor Roger S. Magnusson described to the concept of the “nanny state” as “a weapon that assists tobacco, alcohol and processed food businesses, and their allies, to resist regulatory threats.”(65)

In Switzerland, several groups do not hesitate to work hand in hand with the tobacco industry on these issues. This is the case with the advertising association Communication Suisse, which has already been mentioned several times in this report. The association commented on the Federal Council's proposed implementation of the “Children Without Tobacco” initiative as follows:

“Such a total ban on advertising would be contrary to the freedom of trade and industry enshrined in the Constitution. KS/CS is convinced that the popular initiative can be implemented within the framework of an appropriate balancing of interests.”(66)

This excerpt contains a three-level argument. Firstly, equating tobacco advertising with a broad principle such as the freedom of trade and industry renders it almost untouchable from a moral standpoint. Second, emphasising that this principle is enshrined in the Swiss Constitution gives it considerable authority due to the fundamental status of this text. Finally, calling for an “appropriate balancing of interests” amounts to mobilising the sphere of reason and moderation, framing the most permissive legislation as aligned with good practice, while casting stricter advertising restrictions as “extremist” excesses.

In a 2012 series of advertisements for PM's Liggett & Myers brand, rules and norms are portrayed as obstacles to freedom. The campaign, which appeared in the lifestyle pages of the free newspaper *20 Minutes*, was an opportunity for the cigarette manufacturer to promote its cigarettes with the slogan “Defy the Norm” (Figures 7 ,8 and 9).





Justin se la joue mauvais garçon

LOS ANGELES. Le jeune chanteur de 18 ans s'est un peu trop laissé aller dans un avion d'Air New Zealand. Il a été remis à sa place.

Justin Bieber revenait d'une tournée promotionnelle en Australie. Avec son équipe, il occupait une partie des sièges de la business class dans un vol vers Los Angeles, d'une durée de 12 heures. C'est là qu'il se serait mis à crier et à jurer sans égards pour les autres voyageurs. Une mère de famille outrée,

Le Canadien multiplie les frasques depuis quelque temps. -AFP

accompagnée de ses deux enfants, n'aurait pas hésité à le remettre à sa place: «Arrêtez de crier des mots injurieux et d'utiliser ce genre de langage dans un avion. Ce n'est pas approprié!» a rapporté une source au site TMZ.

Le chanteur canadien se serait alors senti très mal à l'aise. Il s'est immédiatement excusé auprès de la maman, avant de chanter à cappella une version de son titre «Boyfriend». Il venait pourtant d'annoncer dans une interview au magazine «Rolling Stone» «qu'il se sentait beaucoup plus mature et plus homme». Pas facile de devenir adulte!

-NADIA BENS

20 secondes



Mama Solis décédée

LOS ANGELES. «Desperate Housewives» pleure l'une de ses actrices. Celle qui incarnait Juanita Solis, la mama de Carlos, est décédée d'un cancer du foie à l'âge de 69 ans. Son rôle dans la série lui avait valu une nomination aux Emmy Awards.

L'HUMOUR

«Mes goûts n'ont pas changé. Quand j'avais 20 ans, je tombais amoureux de femmes de 20 ans. Aujourd'hui encore je craque pour des filles de 20 ans»

Hugh Hefner, 86 ans, patron de «Playboy», à Zeit Online.

En show, Madonna donne moins qu'elle n'encasse

PARIS. Après son concert à l'Olympia jeudi dernier, la reine de la pop a essuyé la colère de ses fans à cause de places de concert ultrachères (de 80 à 280 euros), pour une prestation de 45 minutes! L'affaire fait un tel bruit que l'attachée de presse de la Madonna, Liz Rosenberg, a dû s'expliquer sur le sujet. «Le show n'a pas été présenté comme un concert complet de la tournée MDNA et des efforts énormes ont été faits pour que le prix des billets reste raisonnable.» Pas sûr que ça suffise!

VISIONNEZ LA VIDÉO
Regardez la mésaventure parisienne de la reine de la pop sur: www.20minutes.ch



Elle a été huée et insultée. -REUTERS

Lady Gaga est triste

LOS ANGELES. L'artiste est en deuil depuis vendredi. Sur Twitter, elle a annoncé le décès d'un être cher, son parrain. Elle a accompagné la nouvelle d'une photo d'elle bébé dans les bras du défunt.

La bague au doigt

LOS ANGELES. Mark-Paul Gosse-laar (Zack dans «Sauvés par le gong») n'est plus un cœur à prendre depuis samedi: il épouse Catriona McGinn en secondes noces. La lune de miel est prévue en Italie.

PUB

EN GENERAL
C'EST SOIT TERRASSE, SOIT BAIGNADE

DÉFIE LA NORME

Rauchen fügt Ihnen und den Menschen in Ihrer Umgebung erheblichen Schaden zu. Fumer nuit gravement à votre santé et à celle de votre entourage. Il fumo danneggia gravemente te e chi ti sta intorno.

Figure 7 L&M (Philip Morris) advertisement, 20 Minutes Suisse, 30 July 2012, page 19



Figure 8 L&M (Philip Morris) advertisement, 20 Minutes Suisse, 23 August 2012, page 23



Figure 9 L&M (Philip Morris) advertisement, 20 Minutes Suisse, 23 August 2012, page 23 (detail)

The Oxyromandie association has filed a complaint against this campaign with the Swiss Commission for Fairness, due to the placement of the injunction to “Defy the Norm” immediately following the visible health warning “smoking kills” on cigarette packets.^{vv}

This encouragement to break existing rules, particularly aimed at young people, is part of a well-established strategy by the tobacco industry. Not only does it associate tobacco consumption with a form of freedom, but it also invites consumers to disregard health recommendations, which are portrayed as obstacles to personal fulfilment and the enjoyment of life. By repeatedly delivering such messages through intensive marketing, the industry directly targets prevention campaigns. Not smoking then becomes a sign of fearful behaviour, of someone unwilling to fully seize life’s opportunities.

The tobacco industry and its allies convey a similar message about government regulations: they are an infringement on individual freedoms and, consequently, an obstacle to living a fully fulfilled life.

^{vv} The Swiss Commission for Fairness rejected OxyRomandie’s complaint and endorsed Philip Morris’ arguments, rejecting any link between the invitation to challenge the norm and the challenge to the health norm concerning the dangers of tobacco.



2.1.4 Appearing trustworthy

To understand the implementation of self-regulatory codes, it is necessary to understand the context that makes them possible. The industry works to create a political climate favourable to their emergence. A prerequisite for the success of the tobacco industry's project is to appear trustworthy and responsible. BAT executives summarised this challenge in a 2000 document.⁽⁶⁷⁾ While they recognise that public opinion currently favours the anti-tobacco movement and is generally hostile to the tobacco industry, they set themselves the mission of reversing this trend. BAT executives have outlined the conditions that must be met to achieve this goal:

“By demonstrating that we operate in a way that is consistent with (reasonable) expectations and beliefs about how a responsible company should operate in the 21st century, to lift the ‘mantle of demonisation’ and renew our licence to operate. [...] Balance perceptions to...

- *Be seen as credible – messages believed;*
- *Be seen as accountable – the ‘show me’ world;*
- *Be seen as reasonable – gain influence;*
- *Be seen as familiar – build favourability;*
- *Kill the ‘secrecy’ bubble;*
- *Reduce litigation risks;*
- *Fire-fighting to fire prevention – resources!”*⁽⁶⁷⁾

Reassuring consumers to be freer to grow is not a new concern for the tobacco industry. In fact, it was precisely one of the four strategic priorities defined by the largest American tobacco companies at their meeting on 14 December 1953, which was aimed at planning how they would respond to scientific research demonstrating a link between smoking and lung cancer.⁽⁶⁸⁾ And this is exactly what François Thoenen, PM's Director of Public Affairs, is trying to accomplish 66 years later when he appeared on the *Infrarouge* programme in 2019⁽²⁷⁾ to comment on the “Children Without Tobacco” initiative in Switzerland. He asserted:

“I fully acknowledge the past, but I believe we must now look to the future. What are we doing and what can we do better?” ^{ww}

PM is implementing what researchers Patricia McDaniel and Ruth Malone call a “narrative shift”.⁽⁶⁹⁾ While cigarette manufacturers relied on filtered cigarettes in 1953 to reassure their customers, it is now “new products” that serve as the industry’s proposed “alternative” to signal its good intentions. Thoenen states:

“Banning advertising to adult consumers who might switch to new products is not, in our opinion, the right approach.” ^{xx}

Cigarette manufacturers know that for their self-regulation to be accepted and even promoted, they must appear beyond reproach. This is what David Ueltschi, spokesperson for the Swiss Cigarette Industry Association (CISC), emphasises in an article in the *Journal de Genève* on 16 February 1995, which refers to the “loyalty agreement”:

^{ww} Quote in original language: “J'avoue pleinement le passé, mais je crois qu'on doit regarder maintenant l'avenir. Qu'est-ce qu'on fait et qu'est-ce qu'on peut faire mieux ?”

^{xx} Quote in original language: “Interdire la publicité au consommateur adulte qui pourrait changer pour les nouveaux produits, ce n'est à notre avis pas la bonne approche.”



“We have our own self-regulation and we are very strict in its application. No one has imposed this on us. We have set our own rules and we stick to them.”^{yy}(70)

The industry claims to have a voluntary approach based solely on the goal of mutual trust, which benefits everyone. It asserts that it is in its own interest to be exemplary and responsible to inspire confidence and thereby promote informed consumption. This is the same credo proclaimed by advertisers in Switzerland:

“As advertisers, we have a strong interest in ensuring that advertising is fair and does not mislead consumers. Only in this way can we earn and justify consumer confidence in our products, our services, and ultimately, in our economy. We are pleased that there is a competent and efficient extrajudicial body that sanctions ‘foul play’ in an environment marked by ever-increasing competition. Our members respect the decisions of the Swiss Commission for Fairness.”^{zz}

Roger Harlacher, President of the Swiss Advertisers Association (ASA), here acts as spokesperson for a slogan echoed in unison by those who advocate for advertising that is as free as possible.

Communication Suisse logically expresses a similar position:

“Use the freedom of communication responsibly: Communication, as commercial communication, benefits from the constitutional protection of economic freedom and freedom of information. Indeed, fair communication contributes significantly to the formation of opinion among an intelligent and responsible population.”^{aaa}(71)

However, it is important to understand that this “exemplary behaviour” operates within a framework that excludes any reduction in sales and profits. Manufacturers and advertisers agree to give the appearance of being serious and responsible players, but without allowing this image to lead to a decline in their profits. As the French Minister for Energy Transition, Agnès Pagnier-Runacher, recently criticised for her family's interests in the oil sector,⁽⁷²⁾ said about energy efficiency: there can be no question of reducing production. This mirrors the guarantees offered to the tobacco industry by Berset and Cotti: if preventive measures are taken, they will not, or will barely, harm the economic interests of cigarette manufacturers.

It is therefore understandable why the tobacco industry is keen to emphasise trust and responsibility. This strategy allows them to win over part of public opinion and political actors while achieving their main objective: avoiding a drop in sales at all costs, even though such a reduction would be crucial from a public health perspective.

2.1.5 Shifting responsibility onto consumers

In its rhetoric and the image it strives to project, the tobacco industry is portrayed as beyond reproach. The responsibility for problems related to the products it sells is placed entirely with

^{yy} Quote in original language : “Nous avons notre propre autoréglementation et nous sommes très stricts dans son application. Cela, personne ne nous l'a imposé. Nous avons fixé nos règles et nous nous y tenons.”

^{zz} Roger Harlacher in The decisive contribution to loyalty in advertising. Foundations, expertise and activities of the Swiss Commission for Fairness, January 2015 version. [Exhibit 1](#)

^{aaa} Quote in original language: “En tant qu'annonceurs, nous avons un grand intérêt à ce que la publicité soit équitable et qu'elle ne trompe pas les consommateurs. Car ce n'est qu'ainsi que nous pouvons gagner et justifier la confiance des consommateurs en nos produits, nos prestations de services et, en dernière analyse, en notre économie. Nous sommes heureux qu'il existe une instance extra-judiciaire compétente et efficace qui sanctionne les “fautes de jeu” dans un environnement marqué par une concurrence toujours plus dure. Nos membres respectent les décisions de la Commission Suisse pour la Loyauté.”



consumers. This reflects a core principle of liberal ideology and appears explicitly in the arguments against the “Children Without Tobacco” initiative of February 2022: “everyone is responsible for their own health”.(30)

Journalist Mickaël Correia analyses a similar process with the invention of the “carbon footprint”, designed to hide the responsibility of major corporations in the climate crisis and shift it onto individuals. He points out that:

“The very concept of 'carbon footprint' was conceived in the early 2000s by the American communications agency Ogilvy & Mather, hired by British Petroleum (BP) [...] to promote the idea that climate chaos is not the fault of businesses but of consumers.”^{bbb}(73)

If responsibility lies primarily with individuals, then generously implemented voluntary self-regulation by the industry, combined with education campaigns, would in theory be enough to mitigate the health problems associated with smoking. And if, by chance, this proves insufficient, the blame would fall solely on consumers.

2.2 Who controls self-regulation?

One thing becomes clear when studying the tobacco industry’s use of self-regulation: it is not afraid of the penalties provided for in its self-regulatory codes. There are numerous examples showing that the industry does not hesitate to violate the rules it sets for itself. In the United States, the first self-regulatory code for tobacco advertising dates back to 1964. At that time, tobacco advertising was under heavy criticism, partly because of the Lucky Strike campaigns mentioned earlier, but mainly because 1964 was the year the Surgeon General's *Report on Smoking and Health* was published, which publicly reaffirmed the harmful effects of tobacco and introduced health warnings on cigarette packets.

In 1996, when evaluating the 1964 code, researchers J.W. Richards, J.B. Tye, and P.M. Fischer Observed:

“It is obvious, however, that the industry does not adhere to its own codes. We have witnessed more than three decades without progress. [...] the situation is probably worse today than it was in 1964.”(74)

The researchers relay the observations of Australian health policy professor Mike Daube, who strongly criticises the concept of self-regulation in tobacco advertising:

“Around the world, voluntary agreements fail and fail again for the simple reason that they were never intended to succeed. The tobacco industry only willingly accepts agreements that it knows to be worthless. These agreements suffer from some or all of the following failings: no body has authority to enforce them; if an independent body is charged with their enforcement, that body (which often includes direct or indirect representatives of the industry) will not take any firm action; the rules do not proscribe some of the industry's worst excesses; the wording of the agreement is loosely phrased, with ‘weasel words’, so as to allow many different interpretations; much depends on interpretation of

^{bbb} Quote in original language: Le concept même d’“empreinte carbone” a été conçu au début des années 2000 par l’agence de communication américaine Ogilvy & Mather, embauchée par la British Petroleum (BP) [...] afin de promouvoir l’idée que le chaos climatique n’est pas la faute des entreprises mais des consommateurs



the 'spirit as well as the letter of the agreements' and the 'spirit' is always interpreted to favour the industry; the agreements cover certain forms of direct brand advertising only and usually not, for example, company advertising, advertising connected with sports sponsorship, or many other forms of sales promotion; the codes are framed without any regard to the extensive literature now available about influences on children and young people; no attention is paid to the quantum of advertising; there are no penalties for breach of the agreements; the agreements are so ill publicised that there are few complaints; investigation of complaints takes so long that the offending advertisements have ceased long before any decision is reached; and in the rare event that a tobacco company is criticised by the controlling body for current advertising, the company simply carries on regardless.”(75)

The relevance of Daube's remarks becomes clear when looking at the details of the agreement between Swiss Cigarette and the Swiss Commission for Fairness. In the event of a breach, Article 6 stipulates that the offending member shall be sanctioned by... Swiss Cigarette itself. In other words, the company whose advertising is deemed fraudulent must pay a fine to the association of which it is a member, which consists of only three members, the country's three leading cigarette manufacturers.

2.3 Criticism of self-regulation

Despite the manoeuvres of cigarette manufacturers, many voices from the medical, international, and even commercial sectors have strongly questioned the relevance of self-regulation by the tobacco industry. In 1967 (just three years after the advertising self-regulation code came into effect), the US Federal Trade Commission noted:

“Self-regulation by the industry has proved to be ineffectual. Cigarette commercials continue to appeal to youth and continue to blot out any consciousness of the health hazards.”(74)

For its part, the British Medical Association stated bluntly in 2012 about self-regulation by industries marketing harmful products:

“Industry does have a role to play, but the primary goal of commercial organisations is to maximise profit. It does not take much imagination to see how giving responsibility for driving public health policy for obesity and alcohol abuse to the food and drink industries can lead to serious conflict of interest. Corporate freedom can be in tension with the health of individuals.”(76)

As for the WHO Framework Convention on Tobacco Control states very clearly in Article 5.3:

“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”(77)

The first “guiding principle” of the 2008 guidelines for implementing Article 5.3 is as follows: “There is a fundamental and irreconcilable conflict between the interests of the tobacco industry and those of public health.”(78) This principle was adopted in 2011 by the UN General Assembly in Article 38 of the Political Declaration of the High-Level Meeting of the General Assembly on the Prevention and Control of Noncommunicable Diseases.(79) It should be noted that Switzerland signed the



WHO Framework Convention on Tobacco Control but never ratified it, thus remaining the only country in Eurasia to have abstained from doing so. However, at the World Health Assembly in May 2013, the Swiss delegation (of which Alain Berset was a member) endorsed the Global Action Plan for the Prevention and Control of Noncommunicable Diseases 2013-2020.⁽⁸⁰⁾ This plan stipulates:

“In order to reduce tobacco use and exposure to tobacco smoke, utilize the guidelines adopted by the Conference of the Parties to the WHO Framework Convention on Tobacco Control for implementation of the following measures as part of a comprehensive multisectoral package:

- Protect tobacco control policies from commercial and other vested interests of the tobacco industry in accordance with national law, consistent with Article 5.3 of the WHO FCTC. [...]*
- Implement comprehensive bans on tobacco advertising, promotion and sponsorship, consistent with Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO FCTC.”*

Thus, when the former Swiss Minister of Health talks about striking a balance between economic interests and preventive measures regarding tobacco control proposals, he is contravening certain fundamental principles he had committed to upholding. Self-regulation in tobacco advertising is problematic because it prevents a genuine ban from being implemented and is a striking example of the tobacco industry's interference in national health policies.

The Director-General of WHO, Gro Harlem Brundtland, stated in 2001: “We see no evidence that tobacco companies are capable of self-regulation.”⁽⁸¹⁾ Seven years later, the WHO's position on self-regulation had not changed. In a publication entitled “Tobacco Industry Interference with Tobacco Control”, the organisation reaffirmed the need to guard against it:

“Another strategy used by tobacco companies is to ‘compromise’ or to propose voluntary agreements that would obviate the need for legislation or regulation. Research and experience have shown, however, that voluntary agreements and compromises with the industry do not translate into public health gains. Therefore, the tobacco industry’s proposal to substitute self-regulation for government regulation is essentially ineffective; governments are more effective in tobacco control when they do not endorse voluntary codes of conduct or self-monitoring by the tobacco industry and do not accept assistance from or direct consultation with the tobacco industry on appropriate language for tobacco control legislation or other legal instruments (apart from legitimate forums, such as public hearings and written submissions).”⁽⁸²⁾

Similarly, a report issued by the University of California in partnership with the WHO concludes that self-regulation by the tobacco industry has a harmful impact on public health:

“This report examines the proposed global standards for tobacco marketing and assesses whether it will lead to the responsible marketing of tobacco products. It concludes that the proposed measures will not lead to any substantive changes in current tobacco advertising practices and will not protect children from tobacco marketing. The report recommends that governments should reject the industry’s overtures, and instead rapidly implement past World Health Assembly resolutions on tobacco marketing and ensure that the Framework Convention on Tobacco Control (FCTC) incorporates scientifically sound measures based on international best practice to protect the health of all – young and old, smokers and non-smokers.”⁽⁸³⁾



Regarding advertising bans, the WHO's *Building Blocks for Tobacco Control* published in 2006 is equally unequivocal. It recommends "NOT accepting compromises on the comprehensive advertising ban. Any compromise solution that limits the advertising ban, whether legislative or regulatory, to places, events, or activities intended for minors, would be very difficult to enforce and must therefore be rejected."⁽⁸⁴⁾

Ultimately, self-regulation in advertising functions less as a genuine commitment to health and more as a political lever serving the tobacco industry. It aims to strengthen the confidence of policymakers and consumers, while serving as a tool to counteract restrictive regulations. Yet, it produces no tangible results for public health and provides for no effective sanctions in the event of a violation of its principles.

In Switzerland, this disastrous situation from a health perspective is further compounded by the fact that complaints filed with the Swiss Commission for Fairness against advertising campaigns produced by members of Swiss Cigarette are not published. Self-regulation of advertising by the tobacco industry is not unique; other sectors of the Swiss economy also participate in this practise. For example, the food industry applies it with advertising aimed at children, and the alcohol industry has likewise concluded an agreement with the Swiss Commission for Fairness. What is striking in the case of the tobacco industry, however, is that self-regulation continues to obstruct the implementation of one of the most effective and proven public health measures: ^{ccc}(85) the ban on tobacco advertising. By explicitly aiming to combat and/or replace legislation, self-regulation runs counter to the general public health interest. The problem is exacerbated by the fact that the highest Swiss authorities advocate dialogue with the tobacco industry when drafting new legislation.

When it comes to tobacco advertising, it is therefore necessary to go beyond the "principle of informed adult choice" invoked by Swiss Cigarette to justify self-regulation.⁽⁸⁶⁾ This concept is highlighted solely to protect the profits of the tobacco industry. Taking the industry self-regulation seriously, engaging in dialogue with it, and incorporating its economic interests into prevention projects are particularly harmful practices. They amount to deliberately ignoring the "fundamental and irreconcilable conflict" that exists between the interests of the tobacco industry and public health.

The "balancing of interests" brandished by economic circles when regulating tobacco advertising has only one goal: to maintain profitability. The Federal Supreme Court has repeatedly emphasised that there may be a conflict between economic interests and public health:

- In 2002, the Federal Supreme Court ruled on an appeal against the Geneva Law on Advertising, which had banned tobacco advertising on posters visible from public spaces: "The protection of public health, which is the main objective pursued by Art. 9 para. 2 LPR/GE, undoubtedly constitutes a matter of public interest that justifies the restriction of fundamental rights, such as economic freedom."⁽⁸⁷⁾
- In 2007, when the pharmaceutical industry was fighting against advertising bans, the Federal Supreme Court established the following principle: "The ban on public advertising for prescription drugs is based on the primacy of the public interest in protecting health over the pharmaceutical industry's need to market them."⁽⁸⁸⁾
- In 2013, in the context of a control clause imposed by the Neuchâtel State Council on the acquisition of heavy hospital equipment, the Federal Supreme Court upheld the validity of the clause with the following statement: "Restrictive measures pursued for reasons of public

^{ccc} In 66 countries that have implemented a comprehensive ban on tobacco marketing, consumption has fallen by an average of 12%. See https://cancercontrol.cancer.gov/sites/default/files/2020-08/m21_complete.pdf, accessed on 18 January 2023.



order, social policy, or measures that do not primarily serve economic interests (e.g. land use planning, environmental policy) are admissible.”(89)

- In 2024, a ruling by the Federal Supreme Court upheld the decision of the Administrative Council of the city of Vernier, whose decision to ban commercial advertising had been challenged. The Court further affirmed the legality of public authorities to take social measures, such as restricting advertising. These social measures are defined as follows: “Case law defines so-called social or social policy measures as measures that aim to provide well-being to all or a large part of the population, or to increase this well-being by improving living conditions, health, or leisure.”

3 CONCLUSION

Below are the key concepts of the “voluntary” measures taken by the industry and its allies:

“Let’s stay on our path”(90)

This phrase, coined by Philip Kutter, suggests that there is a distinctly Swiss way of approaching political issues and matters of public interest. It involves dialogue with economic stakeholders, resulting in a “balancing of interests” and the search for consensus when making decisions that involve economic restrictions. Proponents of this “path” favour self-regulation over strong public health measures. They therefore call for the interests of the tobacco industry to be preserved and taken into account when implementing public health measures.

“Nanny state”

This term criticises a state that is supposedly too paternalistic, infantilising its citizens rather than granting them freedom of choice. Philip Kutter warns against “state coercion” if the “Children Without Tobacco” initiative is accepted by the people.(90) This expression and its equivalents are particularly favoured by Communication Suisse, the Swiss Union of Arts and Crafts, Economie Suisse, and the Consumer Choice Centre. Furthermore, it is intentionally promoted by the tobacco industry, which seeks to equate economic freedom with individual freedom.

Corporate Social Responsibility (CSR)

CSR is a tool used excessively by large companies to demonstrate their “exemplarity” in values such as respect for human rights, employee remuneration, respect for the environment, and sustainability. Cigarette manufacturers thus promulgate codes of ethics and other fundamental principles in a highly publicised manner to attest to their efforts. In a chapter of the 2022 collective book *Greenwashing*,(91) researchers Guillaume Carbou and Marie-Anne Verdier evaluate the CSR efforts of large companies and explain that the companies that claim the most “responsibility” are systematically the ones that, in fact, pollute the most. They also show that effective CSR measures are the first to be sacrificed by hedge funds seeking to increase profitability by cutting “unnecessary expenses”.

Individual Responsibility



Individual responsibility is a key concept, widely shared by conservative parties and the political right, on which the tobacco industry's position on public health is built. By continuously emphasizing individual responsibility and funding libertarian associations and think tanks, tobacco giants seek to shift the burden of the smoking epidemic onto consumers. This stance allows them to avoid accountability and claim that people freely choose to smoke, without acknowledging the millions spent on marketing.

Reason Versus Extremism

The claim to be within the realm of “reasonableness” provides the tobacco industry and its allies with a powerful tool to discredit their opponents and reinforce the normalisation of cigarettes. This claim appears in many of their arguments. To defeat the twin initiatives of 1993, the Swiss Cigarette Manufacturers Association wrote regarding its 1992 self-regulation agreement: “The purpose of this agreement is to offer a reasonable alternative to the extremist demands for a total ban on advertising.”(24) The same claim is made by the Alliance of Economic Businesses for a Moderate Prevention Policy. If the allies of the cigarette manufacturers are reasonable, then the anti-smoking groups are, by contrast, unreasonable and even extremist. In the pro-tobacco narrative, they are labelled as “health missionaries” and “ayatollahs”. Caricaturing their ideas as extremist measures that disregard economic needs stirs fear and sways a portion of public opinion to side with the defence of the tobacco industry’s interests.

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