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Tackling harmful gendered content and gender stereotypes in advertising and the media in Europe: new challenges and opportunities

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Tackling harmful gendered content and gender stereotypes in advertising and the media in Europe: new challenges and opportunities

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List of Acronyms

ARCOM – Autorité de régulation de la communication audiovisuelle et numérique (Regulatory Authority for Audiovisual and Digital Communication, France)

ARPP – Autorité de Régulation Professionnelle de la Publicité (self-regulatory organisation for advertising in France)

ASA – Advertising Standards Authority (self-regulatory organisation for advertising in the UK)

AVMSD – Audiovisual Media Services Directive

BPfA – Beijing Platform for Action

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CSA – Conseil Supérieur de l'Audiovisuel (audiovisual media regulatory body in French-speaking Belgium)

DCO – Forbrugerombudsmanden (Danish Consumer Ombudsman)

DSA – Digital Services Act

EASA – European Advertising Standards Alliance

EESC – European Economic Social Committee

EWL – European Women's Lobby

FEMM – Women's Rights and Gender Equality Committee in the European Parliament

FIM – Fagutvalget for influencermarkedsføring (specialist committee for influencer marketing in Norway)

ICC – International Chamber of Commerce

IHREC - Irish Human Rights and Equality Commission

MCA – Market Control Authority (Norway)

NCCD – National Council for Combating Discrimination (Romania)

RO – Reklamombudsmannen (self-regulatory organisation for advertising in Sweden)

SRO – self-regulatory organisation

SWL – Swedish Women's Lobby

VAW – Violence Against Women and Domestic Violence Directive

Executive Summary

This thematic report focuses on the various efforts to combat harmful gendered content and gender stereotypes in advertising and the media across the 27 EU Member States, Iceland, Norway, Liechtenstein and the UK. This report aims to 1) identify the gaps in the current EU legislative framework, including the Goods and Services Directive 2004/113/EC, the Audiovisual Media Services Directive 2018/1808/EU, the Digital Services Act (Regulation (EU) 2022/2065) and the Violence Against Women Directive (EU) 2024/1385; 2) identify national legal instruments that tackle gender stereotypes and harmful gendered content in advertising and media content, including enforcement bodies, soft law, policy and self-regulation; 3) evaluate the measures that have been implemented at national level to address gender stereotypes and harmful gendered content with a particular focus on algorithmic advertising; and 4) propose recommendations and possible ways forwards for the European Union and Commission to take actions on these issues.

1. Scope and key concepts

Chapter 1 provides scope and the parameters of the thematic report by contextualising the legal problem of harmful gendered content and gender stereotypes in advertising and media and defining the key concepts that underpin the report. To provide a working definition of gender stereotypes, three international human rights instruments (the United Nations Convention on the Elimination of All Forms of Discrimination (CEDAW), Beijing Platform for Action (BPfA) and the Istanbul Convention) are evoked. Each of the legal instruments obliges state parties to tackle the use of gender stereotypes across all areas in society including advertising and media content. However, there is a lack of a comprehensive definition within the legal instruments. CEDAW connects harmful gender stereotypes with sex discrimination and violence against women. Articles 2(f), 5(a), 5(b) and 10(c) provide scope for the definition of harmful gender stereotypes. Article 5(a) obliges parties to eliminate gender stereotypes based on superiority and inferiority and the pretext that women's role in society is inherent. Article 5(b) stresses the significance of the way in which gender roles emerge within the family and obliges parties to make efforts to redefine such stereotypes so that they reflect the shared responsibilities that men and women have in domestic life. Article 5(b) also emphasises the need to avoid discriminatory gender stereotypes that suggest that women are solely responsible for parenting.

The Beijing Platform for Action (BPfA) also shows how harmful gender stereotypes in advertising and media content can have a detrimental effect on men and women in society and can also be linked to violence against women and gender-based violence. The BPfA obliges state parties and media organisations to promote non-stereotypical and balanced portrayals of women in advertising and media and to establish national guidelines and ethical codes of conduct that 'address violent degrading or pornographic materials concerning women in the media, including advertising'. Similarly, the Council of Europe's Istanbul Convention highlights how gender stereotypes in advertising and media content contribute towards violence against women and domestic violence. Article 12(1) of the Convention cements the definition of gender stereotypes stipulated in CEDAW by calling on state parties to 'eradicate... practice based on the idea of inferiority of women or on stereotyped roles for women and men'. Article 14(1) and (2) obliges parties to include non-gender stereotypical gender roles in educational materials and media content.

Whilst international human rights legal instruments fail to provide a clear definition of the term, soft law has provided some scope. The Council of Europe's Gender Equality Strategy (2018-2023) prioritises and defines gender stereotyping as '...preconceived social and cultural patterns or ideas whereby women and men are assigned characteristics and roles determined and limited by their sex'. The strategy extends the definition of

gender stereotyping to include reference to patriarchy and hegemonic masculinity as particular concerns for young boys and men as well portrayals of masculinity in advertising and media. The current Council of Europe's Gender Equality Strategy (2024-2029) develops the concept of gender stereotypes by stating how they can limit 'in all aspects and at all stages of their lives, the development of the talents and abilities of girls and boys, women and men, their educational and professional preferences and experiences, and life expectations, preventing them from achieving their full potential and limiting their life opportunities in general.' The EU Gender Equality Strategy 2020-2025 also prioritises the prevention and combating of gender stereotypes and their connection to EU strategy, including in respect of the gender pay gap, the gender education and training gap, the impact on the labour market and how they limit aspiration and freedom.

From an academic perspective, the report draws upon the work of Rebecca Cook and Simone Cusack and their wide-ranging research on the legal definition of gender stereotypes. Their definition is highly regarded and is widely employed within legal academic literature. Cook and Cusack define gender stereotyping as a 'generalised view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group' (i.e. men and women).¹ Their definition distinguishes between two dominant forms of gender stereotyping: *descriptive* assumptions based on sex and *prescriptive* assumptions made about men and women and how they ought to behave in society (breadwinners, strong, hyper-masculine / homemakers, mothers, carers).

The second concept, harmful gendered content, is also defined and contextualised in Chapter 1. The report notes how harmful gendered content in advertising and media has intensified in recent years due to numerous coalescing forces: the proliferation of social media, user-generated content and insufficient legislation or regulation. Harmful gendered content is given a comprehensive definition, which incorporates a wide lexicon of terms, including images and messages that are misogynistic, sexualise or objectify men and women, cyberbullying, hypermasculinity, emotional stoicism and traditional gender stereotypes. The proliferation of social media platforms has meant that online content is easily and readily available, which has inevitably led to increased levels of exposure to harmful gendered content and messages. Social media platforms have also introduced new markets and forms of advertising such as influencer marketing (influencers) allowing content users to create and disseminate reductive binary gender narratives (i.e. narrow beauty standards for women or hyper-masculine images and messages aimed at men to engage with their audiences. As the influencer market becomes increasingly interlinked with brands – such as those that promote weight loss or dietary supplements – these narratives are perpetuated, and harmful gendered content (i.e. objectification and sexualisation) becomes the norm or mainstream. Harmful gendered content is also connected to gendered viral trends on social media that are rewarded with likes, views, shares or subscriptions. Chapter 1 of the report identifies some of these viral trends that promote unrealistic body types, pressure users to conform to narrow beauty standards or promote misogynistic and toxic masculinity narratives such as incel views, emotional stoicism and men's rights.

¹ Cook, R. and Cusack, S. (2011), *Gender stereotyping: transnational legal perspectives*, University of Pennsylvania Press, p. 9.

2. EU legislative framework

Chapter 2 of the report provides an analysis of the EU's competence in this area (gender equality, anti-discrimination), the current EU legislative framework and soft law approaches to tackling harmful gendered content and gender stereotypes in advertising and the media. The bulk of Chapter 2 is a discussion of the Goods and Services Directive and the European Commission's initial ambitious goal to provide a comprehensive piece of legislation to implement CEDAW and BPfA-inspired objectives that tackle anti-discrimination outside of the workplace, such as in the representation of gender in various areas including education, the media and advertising (these are now exemptions in Article 3(3) of the Goods and Services Directive). The analysis subsequently examines how these provisions were removed during the drafting process of the Directive, resulting in a significant dilution of the legislation. This weakened framework is widely regarded as a missed opportunity to effectively address gender stereotypes and harmful gendered content in advertising and the media.

The report then looks at the amended Audiovisual Media Services Directive (AVMSD) and reflects on the regulatory parameters of this legislation. The Directive is a somewhat limited tool in combating the issues set out in this report, however, it does contain guidance (Article 9.1(c)) on what types of advertising and media content are deemed harmful and how Member States should protect minors, respect human dignity (Article 1 of the Charter), and ensure advertising and media content do not promote or include sex discrimination (Article 21 of the Charter). Article 29 of the AVMSD establishes the Contact Committee which sets guidelines on advertising between the Commission and the Member State competent authorities (i.e. co-regulation). It is noted that the AVMSD has limited effect on regulating harmful gendered content and gender stereotypes in advertising and media and instead supports and promotes self-regulation at national level. The amended AVMSD obliges video-sharing platform providers (VSPs) to protect the general public from media (including advertising) content that amounts to incitement to violence or hatred against a group of persons or a member of that group as referred to in Article 21 of the Charter.

The final pieces of legislation, the Digital Services Act (DSA), the Artificial Intelligence (AI Act) and the Violence Against Women and Domestic Violence Directive (VAW Directive) are also briefly explored in this part of the report. As with the AVMSD, the DSA has limited scope when it comes to regulating harmful gendered content and gender stereotypes in advertising and media. However, the DSA does introduce 'due diligence' obligations (Article 17) for very large online platforms (VLOPs) such as social media platforms and very large online search engines (VLOSEs) such as search engines (i.e. Google and Bing) to address a range of societal risks posed by their services (Articles 23-33). Article 28 protects minors from online algorithmic advertising by prohibiting the use of data aggregation and profiling or targeted adverts towards children but does not regulate the contents of such advertising. As with the AVMSD, the DSA encourages Member States to create and promote new regulatory codes for advertising and media content that should prohibit targeted advertisements to minors, and advertising based on sensitive data (i.e. gender, sexuality, race).

Where there is a lack of EU secondary legislation, soft law and policy has been created and used by a variety of actors to advance the issue of tackling harmful gendered content and gender stereotyping in advertising and the media. This section of Chapter 2 brings together the work of EU institutions, governmental organisations and non-governmental organisations that have sought to keep the topic on the agenda. The Committee on Women's Rights and Gender Equality (FEMM), with the backing of the European Parliament,

have contributed towards two important pieces of soft law, the Svensson report and the Liotard report, both of which call for further action to prevent the dissemination of gender stereotypes in advertising. The thematic report also notes here how EU presidencies (in conjunction with the European Women's Lobby) and Parliamentary Opinions have also been instrumental in maintaining soft law and policy in this field. Finally, Chapter 2 concludes with the work of the European Advertising Standards Alliance (EASA) and its role in creating and promoting advertising and media regulatory standards across Europe. Based on the International Chamber of Commerce (ICC) Code of Advertising and Marketing Communication Practice, the EASA's Self-Regulation Charter (code of conduct) lays out commitments for members, including the rules on 'taste and decency' and 'social responsibility'.

3. Key findings

Legislation, enforcement and self-regulation

Chapter 3 of this thematic report critically reviews the legal instruments, enforcement bodies, and self-regulatory organisations that operate on a national level to tackle harmful gendered content and gender stereotypes in advertising and the media. This includes legislative and regulatory responses to emerging issues such as algorithmic advertising, the influencer market, issues related to body image, cyberbullying and online harassment. In addition to legislative and regulatory attempts to tackle harmful content, this part of the report considers examples of NGO good practice, creative responses and local initiatives. Finally, Chapter 3 reflects on enforcement issues and how states balance the fundamental right to gender equality with other rights such as freedom of expression or media plurality.

This chapter highlights the significant absence of national legislation that explicitly prohibits the use of gender stereotypes or harmful gendered content in advertising and media with the majority of states having no specific legal framework to address the issues outlined in this thematic report. Nonetheless, there are some examples of legislation that seeks to combat harmful gendered content and gender stereotypes in advertising and the media, which can be divided into three groups: i) marketing or advertising laws ii) gender-based violence laws iii) gender equality or discrimination laws.

The first group can be neatly attributed to a cluster of states in Northern Europe (Denmark, Estonia, Finland and Norway) all of which included sexist or discriminatory advertising in their marketing and advertising legislation. This type of legislation features a clear assessment of what amounts to gender stereotypes or harmful gendered content in advertising and the media. Norway, Finland and Denmark set high standards in their legislative instruments, explicitly prohibiting sexist advertisements with a comprehensive definition that includes content that is in any way offensive, derogatory, or objectifies, sexualises or treats men and women as sex objects. The second group of countries, exemplified by Spain and France, have approached legislation through the lens of gender-based violence. This perspective recognises intrinsic connections between harmful gendered content and gender stereotypes in advertising and media, and their role in perpetuating violence against women. Both France and Spain have bolstered their legislation with auxiliary self-regulation (ARCOM and Autocontrol) which creates a two-pronged approach to catching advertising and media content that is harmful in any way. The third group (Croatia, Greece, Iceland, Malta and Romania) include provisions on discriminatory or sexist advertisements in their gender equality acts. This broad approach is more attenuated than the other forms of legislation considered in this section of the report and offers little guidance or assessment as to what amounts to harmful gender stereotyping or content in advertising and the media.

In addition to legislative measures, certain states have supplemented or, in some cases, replaced national legislation with state enforcement bodies. These bodies are explicitly tasked with interpreting the law, overseeing its implementation, and monitoring harmful gendered content and gender stereotypes in advertising and media. In nearly all of the national reports, there is acknowledgment of a body dedicated to upholding gender equality or non-discrimination. However, this section of Chapter 3 foregrounds state or public entities that are explicitly tasked with regulating harmful gendered content or gender stereotypes in advertising and media. Enforcement bodies differ across countries – some specialise in gender equality or non-discrimination (Croatia and Romania), while others are primarily focused on advertising, marketing or consumer regulation, with dedicated subsidiaries responsible for overseeing harmful gendered content (Belgium, Denmark, Finland, Norway, and Spain).

Due to a lack of legislation on harmful gendered content or gender stereotypes, some states have opted for a self-regulatory model to tackle the issues outlined in this thematic report (Austria, Czechia, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Poland, Portugal, Slovenia, Sweden, Netherlands and UK). Other states (France, Finland, Norway, Spain and Slovakia) have supplemented national laws with self-regulation to ensure a watertight approach to tackling harmful gendered content and gender stereotypes in advertising and the media. The self-regulatory organisations broadly follow the ICC's Code of Advertising and Marketing Communication Practice on 'taste and decency' and 'social responsibility'. This has resulted in a spectrum of self-regulatory codes with some that explicitly capture harmful gendered content, include typologies of harm and what amounts to gender stereotypes (Sweden, UK).

Emerging issues

The rapid rise of the influencer market is increasingly being monitored through self-regulation, encouraging influencers to conduct themselves in a socially responsible way on social media and digital platforms. There are notable examples of good practice here (Austria, Denmark and Norway). Good practice in this sense is to ensure that content is honest and not misleading, socially responsible (in particular for younger audiences), show age appropriate content, and clear ethical boundaries, such as ensuring unhealthy or risky lifestyles are not promoted (i.e. eating disorders, unproven medical treatments, such as weight loss pharmaceuticals, unhealthy diets and harmful or unrealistic beauty standards). Algorithmic advertising (targeted and personalised advertising), is increasingly subject to regulation across Europe. Estonia, Ireland, Malta and Spain have initiated the drafting of legislation to regulate such advertising practices in various capacities. In Germany and the Netherlands, active legislative frameworks already address algorithmic advertising. Additionally, France and Denmark have engaged in extensive debates regarding potential measures to combat algorithmic bias, sex discrimination and the challenges posed by algorithmic advertising. This section of Chapter 3 of the report indicates that despite examples of good practice, there is hesitancy in this field especially in light of the forthcoming Artificial Intelligence Act and the implications it may have with this type of advertising and media content.

The thematic report shows that body image, cyberbullying and online harassment are pervasive issues within advertising and media content. In the UK and Austria, there are examples of good practice in soft law measures foregrounding unrealistic body images as a specific risk and harm for young women and girls. The issue of cyberbullying, cyberviolence and online harassment is also perceived as significant risk, specifically for women and girls. In Austria, Ireland, France, Malta and the UK, there have been varied attempts to engage with the issue and responses range from a proposed bans to further research on the topic.

4. Recommendations

In order to address the issue of harmful gendered content and gender stereotypes in advertising and the media, this thematic report makes the following specific recommendations:

- Revisit and amend the Goods and Services Directive and reinstate the content of media and advertising within its scope (i.e. Article 3(3) of the Directive);
- Revisit and amend the Audiovisual Media Services Directive to widen the scope of online harm (Article 9.1.c) to explicitly include harmful gendered content and gender stereotypes in advertising and media content;
- Adopt a new directive that is based on the exemptions in Article 3(3) of the Goods and Services Directive;
- Encourage Member States to join the European Advertising Standards Alliance, and to establish a self-regulatory organisation and an ethical code that includes media-neutral rules and guidelines on harmful gendered content and gender stereotypes in advertising;
- Encourage Member States to draft self-regulation guidelines and ethical codes that reflect the comprehensive and interlocking typologies of harmful gendered content including: sexualisation, objectification, dehumanisation, nudity, body image, violence against women and content that encourages eating disorders, promotion of toxic masculinity, emotional stoicism, and the mocking of gender non-conforming or LGBTQ+ identities; and
- Expand and promote soft law that encourages Member States to tackle gender stereotypes and harmful gendered content in advertising and media content. Soft law measures should include guidelines, codes of conduct and voluntary standards.

These recommendations underline the two distinct pathways available for the EU to address the pervasive nature of harmful gendered content and gender stereotypes in advertising and media. The first pathway is a more long-term approach, which foregrounds the need to reinforce and expand the existing EU legislative and regulatory framework. This would involve introducing provisions aimed at addressing and mitigating the risks posed by harmful content. Such measures would not only clarify the EU's stance on these issues but also ensure a cohesive and comprehensive strategy across Member States. By incorporating targeted provisions into existing legislation or drafting new directives, the EU could establish a more robust and effective framework for combating the propagation of harmful gendered narratives in advertising and media. This would provide a clear legal basis for action and ensure that Member States are equipped with the tools necessary to enforce these measures consistently.

This could be achieved through widening of the scope of the Goods and Services Directive, reintegrating the advertising and media sectors within its remit or by amending the Audiovisual Media Services Directive by introducing a stronger regulatory code for advertising and media content that reflects and aligns with both the ever-evolving digital landscape and societal shifts occurring across Europe. This thematic report has found that addressing the persistent issue of harmful gendered content and gender stereotypes in advertising and media requires the harmonisation of regulatory frameworks, the establishment of legal certainty and the provision of a robust legal basis to enable Member States to legislate effectively on this matter. The second pathway is a more short-term approach and relates to encouraging self-regulation and further soft law by strengthening the relationship between non-governmental actors and national self-regulatory organisations to create ethical codes, guidelines and rules to tackle the issues addressed in this report.

1 Introduction

1.1 Scope of the report

It is 20 years since Directive 2004/113/EC² (the Goods and Services Directive), much heralded as a significant step in the European Union's efforts to advance gender equality, came into force. Yet, despite the Commission's ambitious goals, the final text excluded provisions addressing education, advertising and the media – three critical areas where gender stereotypes are deeply entrenched and perpetuated. The failure to incorporate these areas reflects the tension between regulatory ambition and political compromise, leaving a gap in the EU legal framework for tackling cultural narratives that shape societal perceptions of gender. According to some scholars at the time, the failure to include these provisions was a missed opportunity.³ The EU has since then attempted to tackle these issues through piecemeal, ad-hoc soft law and policy measures, such as action programmes, gender strategies, roadmaps, opinions and parliamentary reports.⁴ More recently, the Commission have reignited this goal in the Gender Equality Strategy (2020-2025) through the development of a campaign to tackle harmful gender stereotypes and the limitations that they (re)produce.⁵ The current EU anti-discrimination legal framework is yet to return to the issue of tackling gender stereotyping beyond the workplace and despite efforts via soft law and secondary legislation, harmful gender stereotypes and gendered content in advertising and the media remain a powerful instrument in (re)producing a reductive binary in individual's lives. The regulation of harmful gender stereotypes, sexism and misogyny in advertising and media is managed at national level, leading to divergent legislation, regulatory standards and enforcement practices across the EU. This divergence reflects the inherent differences in cultural, societal and legal priorities and concerns amongst the Member States, thus resulting in a somewhat inconsistent approach to addressing harmful gendered content and gender stereotypes in advertising. Most European countries are yet to introduce legislation on these issues and chiefly rely on self-regulatory organisations (SROs) and their ethical codes to regulate such harmful gendered content. Amongst numerous flaws, SROs across Europe lack ethical codes or guidelines on a range of issues, such as, but not limited to: sexualisation, objectification, dehumanisation, nudity, body image, violence against women, eating disorders, toxic masculinity and the mocking of gender nonconforming or LGBTQ+ identities.⁶

Legal academics have consistently argued that harmful gender stereotypes remain embedded in structures across all of society, including education, healthcare, criminal trials, and for the purposes of this thematic report,

² Council Directive 2004/113/EC of 13 December 2004 implementing the principles of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L 373.

³ Caracciolo Di Torella, E. (2005) 'The Goods and Services Directive: Limitations and Opportunities' *Feminist Legal Studies* 13, 337-347 and Masselot, A. (2007) 'The state of gender equality law in the European Union' *European Law Journal*, 13(2), pp.152-168. See also (unpublished) Masselot, A. (2007), 'The Future of Gender Equality Outside the Workplace', in S. Millns and M. Mateo Diaz (eds.) *Gender Equality and the Future of the European Union*; McColgan, A. (2009) 'The Goods and Services Directive: a curate's egg or an imperfect blessing?' *European Gender Equality Law Review*, pp. 16-24.

⁴ See for examples, part 5.3 in the Roadmap to Equality (2006-10), The Opinion of the European Economic and Social Committee and follow up strategy [2010/C354/0] and Advisory Committee on Equal Opportunities for Women and Men (2008) Opinion 'Breaking Gender Stereotypes in the Media, The Parliament Resolution (3 September 2008) on how marketing and advertising affect equality between women and men [2008/2038] and 'The Liotard Report' on eliminating gender stereotypes in the EU [2012/2116 (INI) 06.12.12].

⁵ Communication from the commission to the European Parliament, The Council, The European economic and social committee and the committee of the regions A Union of Equality: Gender Equality Strategy (2020) 2020-2025 COM/2020/152 final.

⁶ Antoniou, A. and Akrivos, D. (2020), 'Gender portrayals in advertising: stereotypes, inclusive marketing and regulation' *Journal of Media Law*, 12(1), pp. 78-115. Davies, D. (2025) *Regulating Gender Stereotypes in Europe*, Routledge (forthcoming).

media and advertising.⁷ Recent literature suggests that harmful gender stereotypes in advertising and media are increasingly problematic,⁸ especially in confirming gendered expectations and traditional gender norms in society.⁹ Stereotypical portrayals of women and men frequently reinforce certain attitudes or behaviours which can contribute to restricting individuals' choices and aspirations. This thematic report therefore focuses on the range of harmful gendered content and gender stereotypes that are embedded in advertising and media in both the analogue and digital worlds. The dissemination of such harmful content has become increasingly augmented over the last decade largely due to the emergence and increased use of new technologies and platforms such as smart phones, tablets and social media. It is also apparent that such harmful content disproportionately causes physical and psychological harm to women and young girls.¹⁰ As new technologies and platforms evolve, so too does the risk of harmful content and gender stereotypes reaching audiences, especially online, which is a space that is increasingly harder to regulate.¹¹ As digital media platforms increasingly use algorithms that personalise content based on the mass aggregation of audience data (i.e. browser history, age, gender, ethnicity, location, lifestyle, taste and consumption habits etc.) this intensifies the dissemination of harmful gendered content and gender stereotypes online. This mass data-aggregation driven approach can reinforce pre-existing gender stereotypes. For example, women are targeted with advertisements for cosmetic products, cleaning or childcare products whereas men may receive adverts that include sports, technology, cars or finance. Mass data aggregation can also lead to more acute harms including targeting young women and girls with advertisements for weight loss drugs and pro anorexia content,¹² or for men and young boys with misogynistic, emotional stoicism or male-supremacist content.¹³ This type of (targeted or personalised) advertising maintains traditional gender roles by continually feeding audiences content that aligns with stereotypical assumptions (about their interests). As a result, algorithmic advertisements produce a confluence of ethical and legal issues, particularly in relation to gender equality, identity, privacy, surveillance, data bias and, most significantly for this thematic report, the ability to categorise users into a reductive male/female binary and diminish audiences to a single statement or gender stereotype (i.e. 'mother of two', 'young girl interested in make-up', or 'young boy interested in cars'). The pervasive use of algorithmic advertising and harmful gender stereotypes in advertising and the media raises pertinent questions, most

⁷ See for example Cook, R. and Cusack, S. (2011), *Gender stereotyping: transnational legal perspectives*. University of Pennsylvania Press; Holtmaat, H.M.T. and Naber, J. (2011), *Women's Human Rights and Culture: From Deadlock to Dialogue*, Intersentia; Cook, R. and Weiss, C. (2016). Gender stereotyping in the military: Insights from court cases.; Frańczak, O (2022) '(Stereo)typical law: challenging the transformative potential of human rights' in Guney, G, Davies, D. and Lee, P.H. (eds) *Towards gender equality in law*, Palgrave; Lacey, N. (1998) *Unspeakable subjects: Feminist essays in legal and social theory*, Hart; MacKinnon, C.A. (1987), *Feminism Unmodified: Discourses on Life and Law*, Harvard UP.

⁸ 'Harm' in this context has a broad definition. For example: women and men portrayed in traditional professional or domestic roles whereby women are represented disproportionately as mothers, care providers, carrying out gendered chores such as cooking, cleaning and men in manual work or business settings. Other examples of harm may be where women and girls are disproportionately portrayed in a sexualised, objectified, or in a dehumanised way, women are disproportionately portrayed as neurotic, infantilised, or non-conforming identities are mocked or ridiculed.

⁹ See for example Antoniou, A. and Akrivos, D. (2020) 'Gender portrayals in advertising: stereotypes, inclusive marketing and regulation' *Journal of Media Law*, 12(1), pp.78-115 and Davies, D. (2025) *The Regulation of Gender Stereotypes in Advertising: Law and Policy in Europe*, Routledge.

¹⁰ See for example, Santoniccolo, F., Trombetta, T., Paradiso, M.N. and Rollè, L. (2023), 'Gender and media representations: A review of the literature on gender stereotypes, objectification and sexualization', *International journal of environmental research and public health*, 20(10), p. 5770. Roth-Cohen, M. et al (2023) 'Gender roles in online advertising', *Journal of Gender Studies*, 32(2), pp. 186-200.

¹¹ López Jiménez, D., Dittmar, E.C. and Vargas Portillo, J.P. (2021), 'Self-regulation of sexist digital advertising: From ethics to law', *Journal of Business Ethics*, 171(4), pp.709-718. See also Davies, D. (2025) *The Regulation of Gender Stereotypes in Advertising: Law and Policy in Europe*, Routledge.

¹² Gerrard, Y. (2020) 'TikTok has a Pro-Anorexia Problem', *Wired* <https://www.wired.com/story/opinion-tiktok-has-a-pro-anorexia-problem/> (accessed 5 November 2024). See also Sharp, G. and Gerrard, Y. (2022), 'The body image "problem" on social media: Novel directions for the field' *Body Image*, 41, pp. 267-271.

¹³ Baker, C., Ging, D. and Andreasen, M.B. (2024), *Recommending Toxicity: The role of algorithmic recommender functions on YouTube Shorts and TikTok in promoting male supremacist influencers*, DCU Centre, Dublin City University.

notably how suited the current EU legal framework is to protecting audiences, particularly women and girls, from these new forms of advertising and the harmful gender stereotypes. Recent literature suggests that the EU legal framework is insufficient and calls for tighter regulatory responses to gender stereotypes in advertising more broadly.¹⁴

In recognising the social damage that harmful gendered content and gender stereotypes in advertising and media can cause, it is imperative for this thematic report to critically analyse the existing EU legislative framework. This examination incorporates an assessment of exemplary practices within Europe, focusing on the diverse range of legislative instruments, soft law, policy, self-regulation and enforcement mechanisms to help develop a comprehensive and nuanced understanding of effective strategies that tackle harmful content in advertising and media. The first objective of this thematic report is to identify the gaps in the current EU legislative framework, beginning with the decision to exclude advertising and media from the Goods and Services Directive but also the limited effect that both the Audiovisual Media Services Directive 2018/1808/EU (AVMSD)¹⁵ and the Digital Services Act (DSA)¹⁶ have had on the regulation of harmful gendered content.¹⁷ In the light of these gaps, the report addresses the ways in which the Commission may wish to revisit the Goods and Services Directive and reintegrate measures that would regulate harmful gendered content and gender stereotypes across all advertising and media content. The second objective of this thematic report is to identify the diverse range of legal instruments that aim to tackle harmful gendered content and gender stereotypes in advertising and the media that operate at the national level across Europe and to assess how some countries have gone beyond the remit of the Directive by implementing the exemptions under Article 3(3).¹⁸ The scope of legal instruments identified in this report varies from national legislation that specifically aims to combat harmful content in advertising to ‘soft law’ approaches, such as advertising self-regulatory organisations (SROs), their ethical codes and guidelines that include (in some instances) rules on harmful gendered content and gender stereotypes in advertising and the media.¹⁹ Beyond legislative instruments, the report incorporates current case law emanating from the national courts or from the self-regulation organisations that include harmful gendered content or gender stereotypes in advertising. The report identifies and reflects upon examples

¹⁴ See for example Adams-Prassl, J., Binns, R. and Kelly-Lyth, A., (2023), ‘Directly discriminatory algorithms’, *Modern Law Review*, 86(1), pp.144-175; Antoniou, A. and Akrivos, D., (2020), ‘Gender portrayals in advertising: stereotypes, inclusive marketing and regulation’, *Journal of Media Law*, 12(1), pp. 78-115. Xenidis, R., (2020), ‘Tuning EU equality law to algorithmic discrimination: Three pathways to resilience’, *Maastricht Journal of European and Comparative Law*, 27(6), pp. 736-758; Roth-Cohen, M. et al (2023), ‘Gender roles in online advertising’, *Journal of Gender Studies*, 32(2), pp. 186-200.

¹⁵ Council Directive 2018/1808/EU of 4 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities OJ [2018] L 303/69 28 November 2018.

¹⁶ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

¹⁷ Trzaskowski, J.J., Savin, A., Lindskoug, P. and Lindqvist, B. (2015), *Introduction to EU internet law*; Savin, A. (2020), *EU internet law*; Ranaivoson, H., Micova, S.B. and Raats, T. eds. (2023), *European Audiovisual Policy in Transition*, Routledge.

¹⁸ Article 3(3) expressly excludes advertising (media and education) from Directive 2004/113/EC: ‘This Directive shall not apply to the content of media and advertising nor to education’. This is in contrast to the Racial Equality Directive 2000/43/EC, which is comparably marginally enhanced and includes an explicit list of areas that are covered within ‘social protection’ such as social security, healthcare, social advantage, education, access to and supply of goods and services which are available to the public, including housing. It is unclear why these areas were not included in the Goods and Services Directive, when compared to the Racial Equality Directive.

¹⁹ See for example the UK’s Advertising Standards Authority rules on ‘taste and decency’ and gender stereotypes in advertising. Advertising Standards Authority Advertising Codes (2019) <https://www.asa.org.uk/codes-and-rulings/advertising-codes.html>; see also Advertising Standards Authority (2017), ‘Depictions, Perceptions and Harm’, <https://www.asa.org.uk/resource/depictions-perceptions-and-harm.html>.

of good practice coming from the national legal systems such as legislative instruments, the work of state regulatory bodies, self-regulatory organisations and NGOs.

The third objective explores what is new about online advertising, including algorithmic (targeted/personalised) advertising and assesses what work is being done at national level to tackle harmful content that permeates this form of advertising and media content.

Finally, the fourth objective of this report is to provide recommendations for potential future EU legislation and soft law on harmful gendered content and gender stereotypes in advertising and the media, and what a potential revision of the Goods and Services Directive or AVMS Directive might look like.

To carry out this investigation, this thematic report is based on an analysis of information collected from the 31 national reports submitted by the legal experts of the European network of legal experts in gender equality and non-discrimination (EELN).²⁰ The legal experts were tasked with completing a detailed questionnaire covering the following areas: legal instruments (legislation, soft law/self-regulation), case law, examples of good practice, legal, political and societal discourse, debate and discussion. The national legal experts were asked to provide examples of legislation, state regulators, soft law measures, self-regulation, ethical codes, guidelines, watchdogs and the work of NGOs that seek to tackle harmful gendered content and gender stereotypes in advertising and the media. The data and information garnered from the legal experts was analysed using thematic analysis²¹ and the comparative legal method as data analysis methods.²²

The thematic report is organised into four chapters. Chapter 1 sets out the aim and scope of the report, introducing key concepts that underpin the report (gender stereotypes, harmful gendered content) as well as mapping some of the international law, EU law and soft law/policy approaches to the issues. Chapter 2 lays out the EU legal instruments and soft law approaches through which the EU institutions have sought to regulate the use of harmful gender stereotype and gendered content and discusses how the Member States have implemented those measures. Chapter 3 presents an analysis of data and information garnered from national reports: the legislative instruments, national enforcement bodies and self-regulatory organisations (including watchdogs, NGOs and political debate) that seek to tackle the issues in this report. Finally, Chapter 4 concludes the report and provides recommendations on the issues covered within.

1.2 International approaches and key concepts

This section of the thematic report examines the central concepts and frameworks explored throughout the report, focusing on harmful gender stereotypes, and the ways in which international law and EU soft law and policy contribute to clarifying and defining the notion of harmful gender stereotypes. In defining harmful gendered content, this section adopts a broader and more comprehensive understanding of 'harm,' extending its scope beyond harmful gender stereotypes to include objectification, sexualisation, misogyny, hypermasculinity, the manosphere, toxic masculinity and the promotion of unrealistic body ideals or eating disorders.

²⁰ A list of members of the network is included at the start of this report.

²¹ See Clark, T., Foster, L., Bryman, A. and Sloan, L. (2021), *Bryman's social research methods*, Oxford university press. See also Bryman, A. and Burgess, R.G. (eds.), (1994), *Analyzing qualitative data* (Vol. 11). London: Routledge.

²² Van Hoecke, M. (2015) 'Methodology of comparative legal research', *Law and Method*, pp. 1–35.

Throughout this thematic report, gender is used to signify all forms of gender identities, including LGBTQ+ identities. Gender is also distinguished from biological sex and is defined as socially and culturally constructed through norms, roles and expectations that diverge across societies and histories. The conceptual framing of harm is taken from a zemiological perspective.²³ A zemiological lens allows for a wider set of range of social, economic, physical and emotional injustices that arise from systemic inequalities and social structures, rather than being limited to acts recognised by legal systems. When it comes to the portrayal of gender in advertising and media content, some depictions of gender will be zemiologically harmful as they perpetuate gender stereotypes, reinforce systemic inequalities or contribute to the normalisation of discriminatory attitudes, leading to broader social harms such as asymmetrical power dynamics, the perpetuation of gender-based violence, economic inequalities, body dysmorphia and eating disorders.

1.2.1 Harmful gender stereotypes

To begin with, it is worth distinguishing what a harmful gender stereotype refers to. A gender stereotype is generalised assumption or expectation about an individual based on their perceived gender. These stereotypes often dictate how individuals *ought* to behave, think, or appear, such as assuming women are naturally nurturing, or men are inherently strong. Although such stereotypes can be perceived as reductive or limiting, they are not always legally or socially recognised as unlawful or harmful. In contrast, a harmful gender stereotype is one that reinforces gender inequality, limits opportunities, development or perpetuates sex discrimination. Legal academics have distinguished harmful stereotypes from general ones by examining their consequences. A stereotype becomes harmful when it undermines fundamental rights, creates or perpetuates systemic disadvantages or causes tangible or intangible harms. When defining harmful gender stereotypes, Cook and Cusack contend that not all forms of gender stereotyping are inherently harmful. Gender stereotypes only become harmful or ‘problematic when [they ignore] individual’s characteristics, needs, wishes and circumstances in ways that deny individuals their human rights and fundamental freedoms and when [they] create gender hierarchies’.²⁴

International human rights instruments offer a framework for defining harmful gender stereotypes. Most human rights instruments oblige state parties to address gender stereotyping in society in one way or another, and in some instruments, this includes traditional or cultural stereotypes but some instruments – and most significantly for this thematic report – oblige state parties to tackle gender stereotypes in all forms of media and advertising as well as educational materials. To begin with, the most influential human rights instrument that includes gender stereotyping is the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW, which has also been highly significant in establishing a connection between harmful gender stereotypes and discrimination and violence against women,²⁵ in Articles

²³ Zemiology is the wider study of social harms that are felt by individuals, groups or communities which are often caused by social, economic or cultural practices. Such social harms may not be recognised in law, but nonetheless may cause a variety of issues. For a further discussion on the topic see Canning, V. and Tombs, S. (2021), *From social harm to zemiology: A critical introduction*. Routledge.

²⁴ Cook, R. and Cusack, S. (2011), *Gender stereotyping: transnational legal perspectives*, University of Pennsylvania Press, pp. 9-11.

²⁵ Frańczak, O. (2022) ‘(Stereo) typical Law: Challenging the Transformative Potential of Human Rights’, in Guney, G, Davies, D. and Lee, P.H. (eds) *Towards Gender Equality in Law*, Palgrave Macmillan, pp. 15-33. See also CEDAW’s Finnish opinion (FIN CEDAW/C/FIN/5 (2008)) in which the Committee identified the eradication of gender stereotypes in advertising and the media as a priority, specifically advertising that uses sexualised and objectified bodies to promote goods and services. The Committee found that these advertisements were linked to increased rates of violence against women, segregation in the labour market, eating disorders, low self-esteem and deteriorating mental health.

2(f), 5(a) and (b) and 10(c), obliges state parties to prevent the proliferation of harmful gender stereotypes across all society. Article 5(a)²⁶ has two facets: obliging signatory parties to a) eliminate gender stereotypes based on superiority and inferiority b) eliminate the pretext that women's role in society is fixed. In its *Burundi* recommendations,²⁷ the CEDAW Committee states that Article 5(a) should be seen as a tool to remove gender stereotypes in all structures of society, indicating that the article's reach has no bounds. Article 5(b)²⁸ emphasises that gender roles within the family should be redefined and reflect the shared responsibilities that men and women have in domestic life. In particular, the gender stereotype that women are solely responsible for parenting should be avoided. The article therefore reinforces the idea that both men and women should equally participate in the upbringing of children, aiming to dismantle stereotypes that can limit the roles of men and women in society. The Beijing Platform for Action (BPfA)²⁹ builds upon the CEDAW by making concrete demands concerning media and advertising organisations. Section J of the instrument is rather distinctive compared to other human rights instruments as it singles out media and advertising as contributing to creating harmful gender stereotypes. The BPfA obliges all state parties and media organisations to promote non-stereotypical, balanced and diverse portrayals of women in media (including advertising) and emphasises the significant role that the media plays in perpetuating harmful gender stereotypes.³⁰ The BPfA also obliges parties to establish guidelines and ethical codes of conduct that address 'violent degrading or pornographic materials concerning women in the media, including advertising'.³¹

The Council of Europe's Istanbul Convention³² is an equally significant human rights instrument when it comes to gender stereotypes in advertising and the media. The Convention provides a legal framework to address 'in parallel' violence against women and domestic violence, linking all forms of gender-based violence to the structural inequalities and discrimination faced by women.³³ Due to its unique focus on gender-based violence, the Convention provides a holistic set of measures to tackle violence against women and includes state and non-state actors (i.e. the media and advertisers).³⁴ The Istanbul Convention's approach to tackling gender stereotypes is particularly noteworthy as it addresses the media (including advertising), and gender stereotypes that contribute towards gender-based discrimination that are used to justify violence against young women and girls. Amongst the Istanbul Convention's general obligations, Article 12(1) obliges all parties to take measures 'that eradicate ... practices based on the idea of the inferiority of women or on stereotyped roles for

²⁶ CEDAW, Article 5(a): 'Modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.'

²⁷ CEDAW (2008) Concluding comments of the Committee on the Elimination of Discrimination against Women CO Burundi CEDAW/CBDI/CO/4 (2008).

²⁸ CEDAW, Article 5(b): 'Family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.'

²⁹ United Nations, Beijing Declaration and Platform for Action, UN Doc A/CONF.177/20 (1995).

³⁰ Section J of the Beijing Declaration and Platform for Action is a standalone segment of the BPfA dedicated to 'Women and The Media': J.1. 'Increase the participation and access of women to expression and decision-making in and through the media and new technologies of communication'. J.2. 'Promote a balanced and non-stereotyped portrayal of women in the media.'

³¹ United Nations, Beijing Declaration and Platform for Action, Section J, para. 244(b).

³² Council of Europe Convention on preventing and combating violence against women and domestic violence (adopted 7 April 2011, entered into force 1 August 2014) CETS No 210. The Council of Europe has adopted the Istanbul Convention.

³³ Hagemann-White, C. (2014), 'Protecting women and children from violence: Whose responsibility, whose rights, whose decisions?' in Smedslund, K. and Risse, D. (eds.), *Responsabilités et violences envers les femmes* (Violence Against Women: Individual and Collective Responsibilities), pp. 315-330.

³⁴ Guney, G. (2022), 'One Step Forward, Two Steps Back: An Analysis of Turkey's Implementation of the Istanbul Convention in Addressing Gender-Based Domestic Violence' in *Towards Gender Equality in Law: An Analysis of State Failures from a Global Perspective*, pp. 133-152.

women and men'. Article 14(1) and (2) obliges parties to include, amongst other things, the issues of gender equality and non-stereotypical gender roles in educational materials as well as in the media. Taken altogether, the Convention foregrounds the idea that gender-based violence stems from entrenched societal norms and stereotypes that normalise or excuse harmful behaviours against women.

Although international human rights instruments aim to address and combat gender stereotyping, they do not provide a precise or universally agreed upon definition of the term. That is not to say that there are no definitions of gender stereotyping within international law or indeed EU law. In recent years there have been some developments within Europe when outlining the term. The Council of Europe's Gender Equality Strategy 2018-2023³⁵ prioritised gender stereotyping in its strategic objectives and provided a definition of the term: 'Gender stereotypes are preconceived social and cultural patterns or ideas whereby women and men are assigned characteristics and roles determined and limited by their sex'.³⁶ The Council of Europe's strategy identifies gender stereotypes, patriarchy and hegemonic masculinity as particular concerns for young boys and men and notes how the representations of masculinity within the media can contribute to harmful gender stereotypes.³⁷ The strategy focused on providing tools and guidelines to Member States to address gender stereotyping in media, education and the workplace, all as part of a comprehensive human rights approach to gender equality. The current Council of Europe Gender Equality Strategy 2024-2029³⁸ further develops the objective by emphasising how gender stereotypes can limit 'in all aspects and all stages of lives' and 'life expectations, preventing [girls and boys, women and men] from achieving their full potential'. The current strategy also strengthens its focus on intersectional perspectives including the unique experiences of marginalised/socially excluded groups (LGBTQ+ women, Roma and Traveller women, women belonging to national, ethnic or religious minorities, women with disabilities, migrant and refugee women, older women) in relation to gender stereotypes and discrimination. The strategy expands on dismantling stereotypes by incorporating inclusive policies that promote diverse gender representations and focus on reducing stereotypes in all public domains, including newer digital and media landscapes. The EU Gender Equality Strategy 2020-2025³⁹ also prioritises the prevention and combating of gender stereotypes and whilst there is no definition of the term, the strategy points towards a number of EU-related priorities that harmful gender stereotypes are connected to, such as the gender pay gap, the gender education and training gap, the impact stereotypes have on the labour market and the ways in which they limit aspiration and freedom.⁴⁰

³⁵ Council of Europe (2018), 'Gender Equality Strategy 2018-2023' <https://rm.coe.int/strategy-en-2018-2023/16807b58eb> (accessed 2 October 2024).

³⁶ Council of Europe (2018), 'Gender Equality Strategy 2018-2023', para. 38.

³⁷ Council of Europe (2018), 'Gender Equality Strategy 2018-2023', para. 41. Para 44 of the Gender Equality Strategy foregrounds the role that social media plays in creating and disseminating harmful gendered content and gender stereotypes and the ways in which these are particularly harmful for women and young girls who are most often subjected to threats of violence and abuse online.

³⁸ Council of Europe (2024) 'Gender Equality Strategy (2024-2029)', para. 38: 'Gender stereotypes are preconceived social and cultural patterns or ideas whereby women and men are assigned characteristics and roles determined and limited by their sex. Gender stereotyping presents a serious obstacle to the achievement of real gender equality and feeds into gender-based discrimination. Such stereotyping can limit, in all aspects and at all stages of their lives, the development of the talents and abilities of girls and boys, women and men, their educational and professional preferences and experiences, and life expectations, preventing them from achieving their full potential and limiting their life opportunities in general.'

³⁹ See objective 1: 'Being free of from violence and stereotypes', Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *A Union of Equality: Gender Equality Strategy 2020-2025* (COM 2020 152).

⁴⁰ The EU Gender Equality Strategy also emphasises the role that the media and other cultural sectors play in shaping harmful gender stereotypes.

The reluctance to provide a definition of harmful gender stereotyping reflects an anxiety that such a definition would render the term rigid or fixed, especially as gender stereotyping is so heterogeneous in character. A definition of gender stereotyping that is too narrow would limit the innovative potential of what might be caught by the term but if gender stereotyping is defined too broadly, it would be open to misinterpretation and might catch a number of unrelated issues that are not considered harmful gender stereotypes.⁴¹ This thematic report therefore draws upon Rebecca Cook and Simone Cusack's extensive research on the legal definition of gender stereotypes. Cook and Cusack's definition is helpful here as it captures the malleable nature of the term gender stereotyping. Their definition is also frequently recognised and adopted within the legal context and legal analysis,⁴² has been considerably influential within legal scholarly debate and continues to shape legal academic discourse.⁴³ Cook and Cusack outline gender stereotyping as a 'generalised view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group' (i.e. men and women).⁴⁴ In this sense, gender stereotyping is a way of simplifying the complexities of the social world and in so doing, it maximises simplicity and predictability, assigns binary difference between two distinct genders and scripts identities (i.e. how certain groups *ought* to perform).⁴⁵ Cook and Cusack's definition goes on to make a distinction between two dominant forms of gender stereotyping: *descriptive* assumptions about what women and men are or how they behave based on their sex, and *prescriptive* assumptions about what women and men should do or how they ought to behave. For example, men ought to be breadwinners and strong, while women should be homemakers and mothers etc. Considering this definition, gender stereotypes can be seen as highly generalised beliefs or views of men and women that are based on socially produced ideas around binary constructions of gender, that consider certain behaviours to be intrinsically masculine and others to be intrinsically feminine.

1.2.2 Harmful gendered content

Over the past decade or so, there has been a marked increase in harmful gendered content online⁴⁶ and in gender stereotypes in advertising and the media.⁴⁷ This increase has been driven by interlocking factors such as the rapid proliferation of social media and user-generated content and the lack of meaningful regulation. Harmful gendered content appears in many forms, from reinforcing traditional gender stereotypes, to misogyny, sexualisation and objectification of women and girls and cyberbullying. The reasons for the increase are complex but can be summarised through the following explanations and factors. The proliferation of digital and social media platforms such as TikTok, Instagram, Snapchat and YouTube have led to increased levels of

⁴¹ Davies, D. (2025) *The Regulation of Gender Stereotypes in Advertising: Law and Policy in Europe*.

⁴² See for example Cook, R. and Cusack, S. (2011), *Gender stereotyping: transnational legal perspectives*. University of Pennsylvania Press; Cook, R. (1990) 'Reservation to the Convention on the Eliminations of all forms of Discrimination Against Women', *Virginia Law Journal*; Cusack, S. (2013), *Gender stereotyping as a human rights violation*, Office of the High Commissioner for Human Rights, pp.13-30.

⁴³ Timmer, A. S. H. (2016) 'Gender Stereotyping in the case law of the EU Court of Justice', *European Equality Law Review* (1); Brems, E. and Timmer, A. (2016), *Stereotypes and human rights law*, Intersentia; Fredman, S. (2016) 'Substantive equality revisited: A rejoinder to Catharine MacKinnon', *International Journal of Constitutional Law*, 14(3), pp.747-751; Caracciolo di Torella, E. and Masselot, A. (2020), *Caring responsibilities in European law and policy: Who cares?*, Routledge; Masselot, A. (2015), 'The EU childcare strategy in times of austerity', *Journal of Social Welfare and Family Law*, 37(3), pp.345-355.

⁴⁴ Cook, R. and Cusack, S. (2011), *Gender stereotyping: transnational legal perspectives*, p.9.

⁴⁵ Cook, R. and Cusack, S. (2011), *Gender stereotyping: transnational legal perspectives*, pp.14-19.

⁴⁶ See Kaitlyn Regher's ongoing research, <https://www.ucl.ac.uk/news/2024/feb/social-media-algorithms-amplify-misogynistic-content-teens> (accessed 12th September 2024).

⁴⁷ Antoniou, A. and Akrivos, D., (2020), 'Gender portrayals in advertising: stereotypes, inclusive marketing and regulation' *Journal of Media Law*, 12(1), pp.78-115; Roth-Cohen, M et al (2023), 'Gender roles in online advertising' *Journal of Gender Studies*, 32(2), pp.186-200.

exposure to harmful gendered messages in advertising and user-generated content. The rise of social media platforms has introduced new forms of advertising such as influencer marketing (influencers) enabling users to rapidly create and disseminate content that often promotes binary narratives: narrow beauty standards for women and hyper-masculine ideals for men. The influencer market has been conducive to the normalisation of harmful gendered portrayals for both men and women, as influencers will more often than not rely on hyper-stereotypical gender roles or 'retrotypes' to engage with their audiences. Retrotypes are increasingly used in social media and advertising (particularly the influencer market) to evoke nostalgia or desire for a bygone age. Retrotypes come in many forms: the font, filter or language used in an advertisement, or for the purpose of this report, stereotypical behaviour of what it is to be a traditional man or woman.⁴⁸ The use of retrotypes in advertising and the media comes with a romanticisation or indeed promotion of societal norms and values.⁴⁹ In creating such content, influencers often rely on reductive heteronormative standards of men and women, for example rigid representations of beauty and lifestyle for women and hyper-masculine representations of wealth, strength and power for men. As influencers are entwined with big brands, these narratives are reinforced allowing harmful gendered content and gender stereotypes to appear normal and become mainstream. As will be discussed in Chapter 3 of this report, it is not just the level of exposure to harmful gendered content but also the lack of regulation and/or guidelines for the influencer market that allows for more harmful content to slip through the net. Online platforms are also permeated with content that normalises the objectification and sexualisation of women and in particular young girls;⁵⁰ this is especially true with advertisements that appear on social media platforms. Trends on these platforms reward visual content through algorithms and such content is measured by likes, views, shares or subscriptions.⁵¹ For example, TikTok's algorithm actively prioritises viral trends that garner attention through sexualised performances and content such as the #WAPchallenge⁵² or #bussitchallenge.⁵³ As these trends develop, the pressure for women and young girls to conform to narrow physical standards intensifies, leading to the normalisation of unrealistic body types and body shaming. Beyond social media platforms, there has also been an increase in misogynistic and toxic masculinity narratives appearing on online communities such as 4chan, 8chan, Reddit and Discord. The manosphere is broadly made up of four distinct spheres: pick-up artists, men going their own way, men's rights activists and incels (involuntary celibates).⁵⁴ The incel community is the most contemporary and recognised sphere and comprises of a collection of anti-feminist online forums or communities that engage with misogyny, harassment

⁴⁸ For example, the Austrian legal expert refers to this topic and how the 'trad wife' trend has reached social media platforms.

⁴⁹ For further discussion on retrotypes see Pickering, M. and Keightley, E. (2014) 'Retrotyping and the Marketing of Nostalgia' in Niemeyer, K. (ed) *Media and nostalgia: Yearning for the past, present and future*, London, Palgrave Macmillan, pp. 83-94.

⁵⁰ Soriano-Ayala, E., Bonillo Díaz, M. and Cala, V.C. (2023) 'TikTok and child hypersexualization: analysis of videos and narratives of minors', *American journal of sexuality education*, 18(2), pp.210-230.

⁵¹ Suárez-Álvarez, R., García-Jiménez, A. and Urbina Montana, M.L. (2023) 'Sexualising characteristics of adolescents on TikTok. Comparative study Great Britain–Spain' *Convergence*, 29(5), pp.1262-1282.

⁵² The WAP Challenge is a notorious viral dance trend that gained traction on TikTok and is inspired by a song called 'WAP' by the artist Cardi B (2020). The song features provocative lyrics and features themes of women's empowerment and sexuality. The challenge asks users of the platform to perform a complex dance routine to the song, record themselves, and share the content on TikTok. The WAP challenge has received considerable criticism for its overtly sexualised performances and arguably inappropriate content for younger audiences.

⁵³ Similar to the WAP challenge, the 'Buss it challenge' began on TikTok in 2021 and then moved to Instagram later in 2022. The challenge is inspired by the song 'Buss It' by Erica Banks and the challenge asks users to choreograph their video beginning in their everyday clothing (i.e. messy) before switching to more 'party ready' clothing when the beat drops in the song. 'Buss it' has multiple meanings and is slang for twerking/dancing energetically, performing sexual acts or stripping off your clothing entirely. The 'Buss it challenge' has been applauded as it provokes humour and creativity (in particular video editing, fashion and beauty) but has also received criticism as the choreography tends to sexualise and objectify users who are predominantly young girls.

⁵⁴ Radical Awareness Network (2021) 'Incels: A First Scan of the Phenomenon (in the EU) and its Relevance and Challenges for P/CVE', European Commission.

campaigns and sometimes violence. Incel communities have become a Petri dish for toxic masculinity: harmful gendered content is created, shared and celebrated by incel digital communities.⁵⁵

1.2.3 Algorithmic advertising

Algorithmic advertising (also previously referred to as ‘targeted’ or ‘personalised’ advertising) in this context refers to online advertisements that target specific demographics based on the user’s ‘digital footprint’. This form of advertising relies on mass data-aggregation based on an accumulation of the targeted audiences’ identity and personal interests (i.e. age, gender, ethnicity, location, lifestyle, taste and consumption habits). Algorithmic advertising has rapidly increased on digital platforms and social media (i.e. YouTube, Facebook, Instagram and TikTok). Digital platforms reflect advertisements that they believe the user will be interested in seeing based on the user’s digital footprint. As algorithmic advertising advances, the emergence of discrimination or ‘algorithmic bias’ has raised many concerns relating to algorithms’ tendency to discriminate based on, amongst other things, gender.⁵⁶

As algorithmic advertisements target audiences based on characteristics such as gender and age, the pervasiveness of harmful gendered content in advertising and the ease with which it is consumed can exacerbate a multitude of risks of harm to women and men such as anxiety, eating disorders, body dysmorphia and self-harm.⁵⁷ The mode in which audiences ritually consume media in their everyday lives (i.e. through smartphones, social media apps, on-demand TV) compounds the risks of harm and increases the frequency of exposure to harmful gendered content and stereotypes in advertising. Over the past decade, advertising has rapidly shifted from an analogue (offline) to a digital (online) landscape, and with that shift, so too has the use and development of algorithmic decision-making systems that generate ‘targeted’ or ‘personalised’ advertisements. Algorithmic advertising has become an ubiquitous and everyday part of most web users online experience.⁵⁸

There is no agreed definition of what constitutes a digital or online platform but according to the European Commission, a digital platform ‘refers to an undertaking operating in two (or multi)-sided markets, which uses the internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups’.⁵⁹ Generally, a digital or online platform is a digital service that connects two or more audiences on different sides of the market; these audiences are individuals, groups of customers or businesses that use the platform to create commercial or social networking opportunities. Examples of digital or online platforms include (but are not limited to) i) transaction or sharing platforms (e.g. Amazon, Etsy, eBay, Airbnb), ii) social networking platforms (e.g. Facebook, Instagram, X), and iii) content-

⁵⁵ Kennedy-Kollar, D. (2024), *Extremism and Radicalization in the Manosphere: Beta Uprising*, Taylor & Francis. See also Regehr, K. (2022) ‘In(cel)doctrination: How technologically facilitated misogyny moves violence off screens and on to streets’, *New Media & Society*, 24(1), pp.138-155.

⁵⁶ Eren, E., Hondrich, L., Huang, L., Imana, B., Kettemann, M.C., Kuai, J., Mattiuzzo, M., Pirang, A., Stefanija, A.P., Rzepka, S. and Sekwenz, M.T. (eds.) (2021), *Increasing Fairness in Targeted Advertising. The Risk of Gender Stereotyping by Job Ad Algorithms*, Alexander von Humboldt Institute for Internet and Society.

⁵⁷ See for example Åkestam, N., Rosengren, S., Dahlén, M., Liljedal, K.T. and Berg, H. (2021), ‘Gender stereotypes in advertising have negative cross-gender effects’, *European Journal of Marketing*, 55(13), pp.63-93. See also (generally) Wolf, N. (1990) *The Beauty Myth*, Toronto Vintage.

⁵⁸ See Bishop, S. and Kant, T. (2023), ‘Algorithmic autobiographies and fictions: A digital method’, *The Sociological Review*, 71(5), pp.1012-1036.

⁵⁹ European Commission (2015) ‘Public Consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy’ (September 2015).

creating platforms (e.g. YouTube, Instagram and Spotify). The Digital Services Act (DSA)⁶⁰ provides a further definition of very large online platforms (VLOPs) or very large online search engines (VLOSEs) as platforms with 45 million users per month in the EU.

1.3 Interim conclusion

Chapter 1 of this thematic report has identified gender stereotypes and harmful gendered content in advertising and media as a distinct legal issue, one that has been significantly amplified in the past decade due to technological advancements and societal changes. This section has also consolidated the fundamental concepts that form the foundation of this report, providing a distinction between gender stereotypes and harmful gendered content, and exploring how these phenomena should be understood within the context of the online environment. The definition of harmful gender stereotypes is derived from international legal instruments, specifically the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Beijing Platform for Action (BPfA), and more recently, the Istanbul Convention. Additionally, the definition is aligned with European policy and soft law, namely in the gender equality strategies of both the European Commission and the Council of Europe. From an academic legal standpoint, the report draws upon the scholarly contributions of Cook and Cusack, particularly their significant body of work in this field.

The definition of harmful gendered content encompasses a much broader spectrum of harms that are increasingly prevalent, particularly (but not exclusively) within the online world. The rapid expansion of digital platforms has enabled widespread accessibility and indeed the normalisation of harmful gendered content, especially within advertising and media content. An expansive definition of harmful gendered content extends beyond the scope of gender stereotypes, incorporating objectification, sexualisation and misogyny. Harmful gendered content also captures trends and problems that permeate the online world, such as hypermasculinity, the manosphere, toxic masculinity and the promotion of unrealistic body types or eating disorders.

To confront these new challenges, there is a clear necessity for a more harmonised EU approach that addresses these types of harms that are prevalent in both the online and offline world. As will become apparent in the next section of this report, there are gaps in the EU legislative framework concerning the regulation of gender stereotypes and harmful gendered content, signifying the need for a renewed strategy which should involve a blend of secondary legislation, policy and soft law so that these new challenges are tackled. To address these concerns, Chapter 2 of this thematic report examines the previous and current efforts by the EU to combat such content through secondary legislation and, more notably through policy and soft law mechanisms.

⁶⁰ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

2 EU legislative framework on harmful gendered content in advertising and media

This section of the report provides a discussion of the gaps in the current EU legislative framework and the failure to provide legislation on harmful gendered content and gender stereotypes in advertising and media. To begin with, there is a brief discussion of the gender equality competence, then an overview of the shortcomings of three pieces of legislation – the Goods and Services Directive, the Audiovisual Media Services Directive and the Digital Services Act. Finally, there is a discussion on how this gap has been filled through soft law and policy.

2.1 Gender equality competence

The regulation of advertising and media content is primarily a Member State competence, particularly for cultural and content-related issues. EU law does not explicitly allow for the Commission to legislate or regulate on cultural content (including the use of gender stereotypes in advertising and media) unless it is somehow linked to either the internal market or anti-discrimination (in this case, sex discrimination). However, EU law does wield some influence via frameworks including gender equality (anti-discrimination competence) and soft law. In terms of the gender equality competence, the introduction of Article 13 TEC (now Article 19 TFEU) at the Treaty of Amsterdam (1999) allowed for the first time for the EU to legislate on equality outside of the workplace. Article 19 TFEU has since then laid the groundwork for a stronger gender equality framework within the EU and a legal basis for equality legislation such as the Racial Equality Directive 2000/43/EC and the Goods and Services Directive 2004/113. Since its inception, Article 19 has been highly influential in EU gender equality law and expanded the legislative and policy making competence in numerous ways including the promotion of positive action, a framework for soft law and policy guidance.

Since *Mangold v Helm*⁶¹ the CJEU has articulated that the principle of equal treatment is a general principle of EU law, and that EU equality directives are expressions of this central principle. According to some EU law academics, such as Sandra Fredman, this is a striking development, one that recognises equal treatment on the grounds of gender (as well as age, race, religion, disability and sexual orientation) as a fundamental right. Gender equality as a fundamental right is also bolstered by the Charter of Fundamental Rights, which is now legally binding and reinforces the EU's commitment to gender equality and non-discrimination. However, whilst EU gender equality law is a dynamic and ever evolving field that encompasses a broad range of protections, there are indeed new challenges or blind spots that require addressing.⁶²

Harmful gendered content and gender stereotypes in advertising and media fall within this category. As an anti-discrimination competence issue, they have for the last decade been part of the EU's wider 'wish list' of contemporary forms of gender inequality it aspires to tackle and form a priority objective in the current Gender Equality Strategy (2020-2025). These new(er) societal, private-sphere inequalities are a departure from what can be deemed as the old(er) EU legislative agenda that has espoused a lengthy list of directives, action programmes and policy frameworks that ensure gender equality is viewed only through an economic prism. The recognition of new forms of gender inequality in itself seems to denote progress. The 'old' and 'new'

⁶¹ CJEU, judgment of 22 November 2005, *Mangold*, C-144/04, ECLI:EU:C:2005:709, ECR I-9981.

⁶² Fredman, S. (2016), 'Pasts and futures: EU equality law' in *Research handbook on EU labour law*, Edward Elgar Publishing, pp. 391-421.

inequalities are arguably two sides of the same coin – one cannot be solved without the other. With this in mind, harmful gendered content and gender stereotypes in advertising and media are a form of discrimination that promote traditional conservative gender roles that markedly affect education, career choices and a segregated job market, increasing the pay gap between men and women throughout Europe. Although legally and habitually considered as a private sphere issue, gender stereotypes in advertising have a direct effect on the labour market gender equality concerns of the EU.

2.2 The Goods and Services Directive

During the initial drafting of the Goods and Services Directive, the European Commission's goal was to tackle gender discrimination issues the labour market and implement CEDAW-inspired goals such as gender stereotyping in education, advertising and the media. The journey of the Goods and Services Directive begins at the Treaty of Amsterdam (1997), which repositioned gender equality as a priority such that it now enjoys an elevated position amongst the other EU goals and values.⁶³ The elevation of gender equality has had an important impact on the initiation of gender stereotyping as a policy area, which is rooted in the wide scope of Article 19 TFEU. Article 19 allowed the Council of the European Union to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. The introduction of Article 19 was seen as a new non-discrimination competence that has the scope to prohibit discrimination beyond economic limitations of the internal market.⁶⁴ Article 19 can also be viewed as an extension of Article 157 (ex-Article 141 TFEU) but there are some understated differences here, which explain the shortcomings of the Goods and Services Directive, which, in its final version, failed to incorporate advertising (media and education). Firstly, there is a much more tangible link between gender equality and the internal market in Article 157 TFEU as it brings together the interrelated goals of fostering economic integration, social justice and gender equality. The main focus of Article 157 is economic in that men and women are to receive equal pay for equal work, but it also provides a foundation for gender equality within the EU. Article 157 TFEU has also been picked up and developed by the CJEU through the single market ideology within the provision. Its usage can be felt in the jurisprudence of two early gender equality cases, *Sabbatini*⁶⁵ and *Defrenne*⁶⁶ which, incidentally, both foreground the same overarching issue: how outdated gender stereotypes are both a persistent problem and have a direct effect on women in the workplace. Secondly, Article 157 is more effective as it refers to adopting measures that safeguard equal treatment between men and women, whereas Article 19 carries a more generic undertone to merely 'combat discrimination'. Finally, there are legislative procedural differences between the two articles. An adopted measure under Article 19 requires unanimity from the Council whereas Article 157 requires a qualified majority vote, which increases the chance of any such adoption. By comparison, the European Parliament would have limited participation in the process via Article 19 TFEU as its only requires consent rather than its full legislative involvement. This stems from the unanimity requirement from the Council. As the legal base for the Goods and Services Directive was Article 13

⁶³ Gender equality is now perceived as an 'aim' and 'task' of the EU under Article 8 TFEU (ex-Article 3 EC). Article 10 TFEU confirms this approach by applying gender equality principle horizontally: 'in defining and implementing its policies and activities, the union shall aim to combat discrimination based on sex, racial or ethnic origin, religion, belief, disability age or sexual orientation'.

⁶⁴ Carraciolo Di Torella, E. (2005) 'The Goods and Services Directive: Limitations and Opportunities', *Feminist Legal Studies* 13. 337-347 at p. 339.

⁶⁵ Judgment of 7 June 1972, *Sabbatini (Nee Bertoni) v European Parliament* Case 20/71, ECLI:EU:C:1972:48 [1972].

⁶⁶ Judgment of 15 June 1978, *Gabrielle Defrenne v Société Anonyme Belge de Navigation Aérienne Sabena* Case 149/77, ECLI:EU:C:1978:130 [1978].

TEC, requiring unanimity in the Council and only a consultation of Parliament, it was clear from its inception that there was a slim chance that advertising and media would be included in the final version.

The European Commission's aim was a comprehensive piece of secondary legislation that implemented CEDAW-inspired goals that tackle anti-discrimination objectives that fall outside of the workplace, such as the stereotyping and representation of gender in various areas including education, the media, advertising, taxation and social security. Initiated by the Directorate General of Social Affairs (now DG employment, social affairs and inclusion) with guidance from NGOs and legal academics, the Commission moulded the Directive, taking inspiration from CEDAW and BPfA provisions such as the connection between stereotyping and gender-based violence (Article 5a CEDAW) and guidance for media and advertising industries that perpetuate gender stereotypes (Section J 244(b) BPfA). The roots of the Directive can be traced back to 2000 when the Commission consulted interested parties including the European Women's Lobby (EWL) who put forward 10 distinct objectives that should form part of the draft directive, including, 'images of women and men portrayed in advertising and the media'.⁶⁷ By February 2002 the EWL and the Advisory Committee on Equal Opportunities prepared an opinion with the majority of the original 10 proposals from EWL – including advertising and the media – remaining unscathed.⁶⁸ Simultaneously, the Commission produced an alternative draft with a narrower tone and attenuated content. Nonetheless, both the opinion and draft legislation preserved some of the core areas such as education, taxation and gender stereotypes in advertising and the media. Inclusion of these areas is on a par with the contents of the Racial Equality Directive⁶⁹ – the Goods and Services Directive's nearest comparable piece of secondary legislation. During the drafting process, the contents of the Goods and Services Directive were leaked to both the media and industry with vested interest (i.e. insurance companies), which resulted in both expressing hostility towards the gender representation proposal.⁷⁰ The media and advertising industries provided the strongest reaction claiming that the inclusion of gender stereotypes in advertising in the legislation was one step away from complete censorship, clashing with the fundamental principle of freedom of expression, a cornerstone of EU law. The insurance industries also protested, citing the proposal to remove sex difference as a factor in the calculation for car insurance, claiming this would have a catastrophic effect on industries and consumers across the EU. Insurance companies resisted the Directive primarily because it sought to removed gender-based tactics used by the industry when assessing insurance policies. Prior to the Directive, insurance companies commonly used gender as a category and consideration when calculating car insurance premiums and benefits. In particular, younger men (perceived high risk) generally paid higher car insurance when compared to young women (low risk). Women also paid lower annuity payments due to their usual longer life expectancy across Europe. Insurance companies therefore believed that the Directive would bring with it a financial impact on the industry and that removing gender as a factor would lead to increased cost for insurance companies, which would raise prices for the consumer or lead to uneven costs, making some policies unattractive or affordable for certain groups. Moreover, the industry argued that gender-based pricing was supported by actuarial science, which relies on statistical data that indicates the aforementioned risk

⁶⁷ Masselot, A (2007), 'The state of gender equality law in the European Union', *European Law Journal*, 13(2), pp.152-168.

⁶⁸ Caracciolo di Torella, E. (2005) 'The Goods and Services Directives: Limitations and Opportunities', *Feminist Legal Studies* pp. 337-347.

⁶⁹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180.

⁷⁰ Caracciolo di Torella, E. (2005) 'The Goods and Services Directives: Limitations and Opportunities'; Masselot, A (2007), 'The state of gender equality law in the European Union'; (unpublished) Masselot, A. (2007), 'The Future of Gender Equality Outside the Workplace', in S. Millns and M. Mateo Diaz (eds.) *Gender Equality and the Future of the European Union*.

factors, life expectancy, health and accident rates for men and women. In *Test-Achats*,⁷¹ the CJEU ruled that gender-based pricing was incompatible with the principle of equal treatment and that under EU law, gender-based discrimination in insurance premiums could not be justified, even if it is proven statistically that men and women have different risk levels.⁷² To conclude, it was held that insurers in the EU were required to implement unisex pricing, further cementing the impact of Directive 2004/113/EC.⁷³

Prominent Commissioners such as Mario Monti, and larger Member States (UK and Germany) also raised strong opposition to the inclusion of advertising and the media in the Directive for similar reasons. A coalition of Members of the European Parliament (the 3 – FEMM), the European Women Lawyers Association (EWLA), the EWL, the Association of Women in Southern Europe (AFEM) clung on to the core demands set out initially: insurance, social benefits, education, advertising and the media. The EWL argued that the Goods and Services Directive ought to retain the core areas covered in the Racial Equality Directive (education, taxation and advertising and the media) but these were eventually dropped during the drafting and the Commission was left with no choice but to re-draft a new directive and withdraw all of its initial proposals. The exclusion of education, and advertising and the media contradicts the Racial Equality Directive which not only does not contain similar exemptions but even goes as far as to explicitly list the areas that are covered. The redrafted Directive and narrow scope of its content was criticised by the FEMM Committee in the European Parliament, which disputed the decision to go ahead with the Directive due to lack of proper consultation and not being informed of the changes.⁷⁴ During this period, the Commission did not take on board FEMM's recommendations, nor were they considered by the Council with the majority of discussion spent on the (gender) insurance policy question. The Directive was finally agreed by the Commission, Parliament and Council on 13 December 2004 with the requirement for all Member States to transpose the legislation into national law no later than 21 December 2007. Thus, after a flurry of leaks, exposés and lobbying from the UK and Germany, the final outcome of the draft resulted in a much-diminished directive when compared to the original CEDAW/BPfA inspired goals.

The final version of the Goods and Services Directive offers limited protection of gender equality outside the workplace (where little secondary legislation exists) and its protection is restricted to certain types of goods and services and excludes advertising and the media.⁷⁵ Article 12(1) has a more practical tone ensuring that Member States harmonise the implementation process of gender equality by creating bodies that 'may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, or the implementation of the principle of equal treatment'. The Directive is also not in line with the other equality directives (Racial Equality Directive 2000/43/EC and Employment Equality Framework Directive 2000/78/EC) that were born out of Article 19 TFEU, which sought to encourage proactive rather than reactive gender equality legislation (i.e. preventing gender discrimination before it occurs, rather than addressing discrimination after it has taken place). By comparison, the Racial Equality Directive is more wide-reaching in terms of scope, including a provision on employment, public bodies, social protection, education, hate speech

⁷¹ Judgment of 1 March 2011, *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres*, C-236/09, ECLI:EU:C:2011:100, [2011] ECR I-00773.

⁷² *Test-Achats*, C-236/09, paragraph 32

⁷³ Caracciolo di Torella, E. (2012) 'Gender equality after Test Achats', ERA forum (Vol. 13, pp. 59-69). Springer-Verlag.

⁷⁴ See for example FEMM and EWL's Annual report 2003 www.womenlobby.org. FEMM eventually proposed 34 amendments on the draft directive which received a strong backing in the European (2005) Parliament plenary session on 30 March 2004 (313 votes for, 141 against 47 abstentions). Accessed 7 June 2023.

⁷⁵ Calvero, S. and Galligan, Y. (2012) 'Justice, Democracy and Gender' in Galligan, Y. (ed) *Deliberative Processes and Gender Democracy* (No. 1/12). Case Studies from Europe, ARENA Report.

and positive action, which in effect establishes a hierarchy of discrimination when compared to the Goods and Services Directive. The Racial Equality Directive by comparison protects individuals against discrimination (race and ethnic origin) both in and outside the market whereas the Goods and Services Directive does not. Some commentators have stated that due to the omission of advertising and media in the Directive, gender equality takes a back seat in the wider equality programme and is less important than other forms of discrimination.⁷⁶ The removal of these provisions is particularly vexing as in the 20 years following the adoption of the Goods and Services Directive, the Commission, along with Parliament, has persistently attempted to rely on the adoption of soft law and policy measures to combat gender stereotypes in advertising and the media, and approach which will be looked at later in this report.

In the last few years, the issue of harmful content and gender stereotypes in media and advertising has returned to the agendas of both the Council of Europe and the European Commission. Harmful gender stereotypes in the media features in the current Council of Europe's Equality Strategy 2024-2029 and 'challenging gender stereotypes' is an objective in the current European Commission's Gender Equality Strategy 2020-2025.⁷⁷ Analysis of the Goods and Services Directive and the gaps therein has also been foregrounded in the recent EELN report, *In search of the potential of a forgotten Directive*, which recommends revisiting the Directive and expanding its scope, specifically to areas included in exemption Article 3(3) of the Directive: education, media and advertising. The report provides the Commission with a raft of recommendations ranging from providing Member States with examples of good self-regulatory practice to full inclusion of Article 3(3).⁷⁸

2.3 The Audiovisual Media Services Directive

The original Audiovisual Media Services Directive (AVMSD)⁷⁹ has had a relatively limited effect on regulating advertising content and in particular harmful gendered content.⁸⁰ The primary aim of the original AVMSD was to co-ordinate national laws on all audiovisual media content, incorporating traditional broadcast and emerging contemporary digital services. The main aim of the first AVMSD derives from the Commission's target in the Lisbon Agenda (2000-2010) to remain buoyant in the expanding market and demand for online, on-demand and 'catch-up' TV through emerging technologies such as smartphones, tablets and laptops. The second aim was to monitor the free circulation of the audiovisual services that vary from each Member State.⁸¹

⁷⁶ Caracciolo di Torella, E. (2005) 'The Goods and Services Directives: Limitations and Opportunities'; Krois, C. (2005) 'Directive 2004/113/EC on Sexual Equality in Access to Goods and Services: Progress or Impasse in European Sex Discrimination Law?' *Colum. J. Eur. L.*, 12, p.323.

⁷⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *A Union of Equality: Gender Equality Strategy 2020-2025* COM/2020/152 final: Objective 1 reads 'Everyone should be safe in their homes, in their close relationships, in their workplaces, in public spaces, and online. Women and men, girls and boys, in all their diversity, should be free to express their ideas and emotions, and pursue their chosen educational and professional paths without the constraints of stereotypical gender norms'.

⁷⁸ Caracciolo di Torella, E. (2021), *Directive 2004/113/EC on Gender Equality in Goods and Services – in search of the potential of a forgotten Directive*, European network of legal experts in gender equality and non-discrimination.

⁷⁹ Council Directive 2018/1808/EU of 4 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities OJ [2018] L 303/69 28 November 2018.

⁸⁰ Trzaskowski, J.J., Savin, A., Lindsoug, P. and Lindqvist, B., (2015) *Introduction to EU internet law*. Ex Tuto Publishing; Savin, A. (2020) *EU internet law*, Edward Elgar Publishing.

⁸¹ Little, V. (2008) 'Audio Visual Media Services Directive: Europe's Modernization of Broadcast Services Regulations', *Journal of Law, Technology and Policy* 223-236 at p.232.

The Commission's first report on the implementation of the AVMSD was in 2012⁸² and it actively addressed the issues around gender stereotypes in two ways. First, it acknowledged that the AVMSD's methodology of using qualitative data is similar to previous monitoring techniques,⁸³ however, the AVMSD sets out to assess the content and presentation of the advert and, more importantly, the effectiveness of implementation at Member State level – effectively acting as a watchman over state regulators. Secondly, the report sets aside the aims of Article 6(1)(a)⁸⁴ of the Directive by stating that discrimination amounts to 'the systematic association of a certain category of the population with specific roles or attitudes'. The Commission's report provided analysis of 'advertising spots' (advertisement periods during TV programmes) across all 27 Member States and found that stereotyped representation amounted to 21 % to 36 % of all advertising time, with no Member States resistant to the portrayal of gender stereotypes. The report also found that women fill the majority of 'subordinate' positions and 'sexual presentation' – the sexualisation of the product is characterised using a female body, unconnected to the product itself, therefore rendering the female body as the commodity itself.⁸⁵

The AVMSD was revised in 2018 with the most significant revision to explicitly include certain types of advertising and media content that are deemed harmful (for example advertisements that feature alcohol or foods that high in fat, salt or sodium and sugars).⁸⁶ These and others are listed within the amended AVMSD, which stipulates that Member States' audiovisual communications regulators must protect minors, respect human dignity, and ensure that advertising and media do not promote or include sex discrimination. The introduction of Article 9.1(c) ensures that advertisements do not prejudice human dignity or promote discrimination based on sex. This is a fairly broad approach. Protecting the fundamental right of human dignity will be interpreted and applied differently from state to state with varied approaches and regulatory benchmarks. Although human dignity is a universally recognised term, enshrined in international law, the Charter of Fundamental Rights and most European constitutions, the scope of the term and its meaning will differ due to cultural and societal divergence across Europe.⁸⁷ Article 9.1(c) can be read in conjunction with Article 29, which established a Contact Committee, composed of Member State representatives and chaired by a representative of the Commission to set guidelines on exchanges of information on advertising between the Commission and the Member State competent authorities. This Commission can be viewed as the regulator of the transposition and implementation process of the AVMSD, however, the Member State 'monitoring groups' will be paramount in reporting back to the Commission with the findings on advertisements. The AVMSD is clear that the Contact Committee should also tackle issues related to gender equality and gender stereotypes, inviting experts to an exchange of views. Article 27 relates to the protection of minors but only in as far as protecting mental health and moral development which is linked to certain harmful content such as pornography and violence and not gender stereotypes sexualisation and objectification in advertising and media. The wider aim of the amended AVMSD is reflected in the 'light touch' tone of the EU's approach in that

⁸² First Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2010/13/EU Audiovisual Media Service Directive 7 May 2012, COM (2012) 203.

⁸³ Council Directive 89/552, Television Without Frontiers Directive, Recital, 1989 O.J. (L 298).

⁸⁴ 'Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality'.

⁸⁶ See: <https://eur-lex.europa.eu/EN/legal-content/summary/audiovisual-media-services-directive-avmsd.html>.

⁸⁷ Cole, M.D. and Etteldorf, C. (2023), *Future Regulation of Cross-border Audiovisual Content Dissemination: A Critical Analysis of the Current Regulatory Framework for Law Enforcement Under the EU Audiovisual Media Services Directive and the Proposal for a European Media Freedom Act*, *Schriftenreihe Medienforschung der Landesanstalt für Medien NRW*, Vol. 84, p. 272.

it merely sets out to liberalise the media market, support self-regulation over legislation and to adjust the rules only when there is a market failure.

The final significant revision of the AVMSD is the widening of the Directive's scope to hold video-sharing platforms (VSPs) responsible for preventing harmful content. This is an important development as the hope of the Commission at the time of drafting was to prevent social media platforms from inciting violence and hatred online.⁸⁸ It remains uncertain as to which digital platforms are deemed as VSPs and regulated by the Directive and indeed it is unclear whether or not the AVMSD regulates all social media content. Moreover, whilst VSPs might be held responsible for such content, they are not liable for the harmful content. The AVMSD defines VSPs through their functionality and a platform will be deemed a VSP if its sole objective or purpose is to provide video content to the general public.⁸⁹ Relevant harmful content is defined by the AVMSD as content that is likely to incite violence or hatred against a group of persons or a member of a group of persons based on particular grounds (i.e. sex). As with other media within the AVMSD's scope, advertisements that appear on VSPs must respect human dignity, not include or promote discrimination based on sex, and they must not cause physical, mental or moral detriment to persons under the age of 18.

2.4 The Digital Services Act

In more recent years there have been some positive steps made by the EU to address gender stereotypes and harmful gendered content in advertising and the media. The Digital Services Act (DSA)⁹⁰, the Artificial Intelligence Act (AI Act)⁹¹ and the Violence Against Women Directive (VAW Directive) each have the potential to provide a legal basis for tackling the issues in this thematic report. To begin with, the DSA may have the capacity to tackle the issue via the 'due diligence' obligations within the regulation.

The DSA is broadly akin to the AVMSD in that it has a somewhat limited capacity to regulate harmful gendered content and gender stereotypes in advertising and media. The general scope of the DSA is to ensure that platforms adhere to principles of transparency and accountability, and remove all illegal and harmful content. However, there are some notable facets of the DSA that are relevant to this thematic report. Article 28 of the DSA explicitly protects minors from online algorithmic advertising by prohibiting the use of data aggregation and profiling or targeted adverts towards children but does not regulate the content of such advertising. The DSA introduces new mandatory 'due diligence' obligations for very large online platforms (VLOPs) such as TikTok and Instagram and very large online search engines (VLOSEs) such as Google and Bing to address a range of societal risks posed by their services. Moreover, Article 34 of has the potential to regulate harmful gendered content in advertising and media content, specifically on VLOPs. The article obliges VLOPs to conduct regular risk assessments in order to identify and reduce any future potential harms that their platform may cause to users and society. However, according to some academics, it remains unclear what these risk

88 Kuklis, L. (2020) 'Media regulation at a distance: Video-sharing platforms in Audiovisual Media Services Directive and the future of content regulation', *MediaLaws-Law and Policy of the Media in a Comparative Perspective*, 2(2), pp. 95–110.

89 Ranaivoson, H., Micova, S.B. and Raats, T. eds. (2023) *European Audiovisual Policy in Transition*, Routledge.

90 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

91 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance OJ L, 2024/1689).

assessments will entail or indeed how effective they will be in addressing societal harms.⁹² Article 34(1)d refers to some of the risks that are connected to harmful gendered content in advertising and the media: gender based violence, public health and physical or mental wellbeing.⁹³ The current VLOP risk assessments were released in November 2024 and whilst there is limited assessment of rules on harmful gendered content, this is an area that shows potential in the future. Finally, the DSA provides some scope on how Member States should ensure that new (self) regulatory codes for advertising content are established, prohibiting targeted advertisements to minors and advertising based on sensitive data (i.e. gender, sexuality, race).

2.5 The Artificial Intelligence Act

Like the Digital Services Act, the new EU Artificial Intelligence Act (AI Act) does not directly address harmful gendered content or gender stereotypes (or indeed algorithmic advertising) in advertising and media content. However, the Act places a strong emphasis on non-discrimination and gender equality as well as other protected characteristics.⁹⁴ Article 5 of the AI Act prohibits certain types of AI practices that are deemed unacceptable due to their potential to cause significant harm to individuals. The following AI practices are prohibited under the Act: manipulative systems that use subliminal or deceptive techniques to influence users, systems that exploit certain vulnerabilities (i.e. age, disability, socioeconomic status), systems that use 'social scoring' from a public authority if such scoring leads to harmful or damaging treatment to individuals and real-time biometric identification systems. The most significant feature of the AI Act is the risk assessment framework, which throws up potential implications of advertising and media content and indeed the harms within. The risk assessment framework operates by classifying AI systems into levels of risk posed, with the highest, (unacceptable risk) prohibiting systems that breach fundamental rights, such as safety or manipulate behaviours or exploit vulnerable users. It is at this juncture where harmful gendered content in advertising and media might be caught by the AI Act. Whilst the risk assessment does not classify harmful gendered content or gender stereotypes in advertising as a specific risk, it may possibly capture such content if that content intersects with the broader concerns within that risk categorisation, namely manipulation, discrimination or infringement of EU fundamental rights. The first risk assessment category (unacceptable) prohibits AI systems that manipulate users' behaviour, such as subliminal techniques. If advertising or media content uses AI to manipulate users' behaviours (such as harmful content) then the system might fall under this risk categorisation. A more likely pathway is the second risk assessment category, which identifies high-risk systems if they impact fundamental rights, safety or wellbeing. In practice, if the AI system (i.e. AI-generated advertising) discriminates on the grounds of sex or violates gender equality, then it may fall under the high-risk category.

2.6 The Violence Against Women Directive

The VAW Directive does not explicitly mention advertising and media content, although it does draw a link between the perpetuation of harmful gender stereotypes and violence against women (preambles 75 and 79).

⁹² Eder, N. (2023) 'Making systemic risk assessments work: how the DSA creates a virtuous loop to address the societal harms of content moderation', *German Law Journal*, pp.1-22. See also Broughton Micova, S. (2021) *What is the Harm in Size: Very Large Online Platforms in the Digital Services Act*.

⁹³ Józwiak, M (2024) 'The wait is almost over! First risk assessment and audit reports', <https://dsa-observatory.eu/2024/11/22/the-wait-is-almost-over-first-risk-assessment-and-audit-reports-what-will-be-published-when-and-the-way-forward/>.

⁹⁴ Lütz, F. (2024) 'The AI Act, gender equality and non-discrimination: what role for the AI office?', *ERA Forum* (pp. 1-17). Berlin/Heidelberg: Springer Berlin Heidelberg.

Article 36 calls on Member States to establish media and training activities to address the role the media plays in perpetuating gender stereotypes of men and women, particularly images that may lead to violence against women. More significantly, Article 36 also encourages the use of media and advertising self-regulation (see section 3.4 of this report) and the adoption of self-regulatory measures and codes of conduct that have the capacity to prevent the dissemination of harmful content. Article 36 enhances the current EU legislative framework as it focuses on the media's role in perpetuating and disseminating harmful gender stereotypes and acknowledges the media's influence on shaping attitudes towards gender-based violence. There are some potential challenges when it comes to implementing the VAW Directive, specifically the need to balance the fundamental rights of gender equality and freedom of expression or media plurality. Moreover, there are questions surrounding the effectiveness of self-regulation as a means to combat gender stereotypes in advertising and the media. Nonetheless, Article 36 of the VAW Directive is a considerable step in bridging the gap between harmful gendered content and gender stereotypes in advertising and the media and violence against women.

2.7 The role of soft law and policy

This section of the report focuses on various pieces of soft law and policy approaches that have been initiated by governmental and non-governmental organisations since the removal of advertising and media from the Goods and Services Directive. This is particularly relevant as soft law and policy have played a central role in maintaining the topic of the regulation of harmful gender stereotypes on the EU Commission's agenda. Here, the report seeks to demonstrate how soft law and policy have been used in different ways by EU institutions to continue the pursuit of tackling the use of harmful gender stereotyping in advertising and the media and to encourage Member States to act.⁹⁵ This section brings together how EU institutions (Parliament, Commission) have worked together with governmental organisations and non-governmental organisations (the European Women's Lobby (EWL), the European Advertising Standards Alliance (EASA)) and addresses how they have advanced the issue of gender stereotyping in advertising and the media.

Article 17(1) TFEU provides clear grounds for the use of soft law and policy.⁹⁶ In general, it is well known for lacking what hard law upholds: 'obligation, uniformity, justiciability, sanctions, and/or an enforcement staff'⁹⁷ and is effective in establishing 'objectives, guidelines to bring about changes in social policy, relying on shaming'.⁹⁸ It is the pillory, or 'naming and shaming' dimension of soft law that is the most important in this instance, as it has been most effective when it comes to influencing countries to regulate the use of harmful gender stereotypes in advertising and media. The soft law instruments discussed in this report reflect the Commission's efforts to remain on course with the task of adopting measures to remove negative gender stereotypes in advertising. Soft law instruments do not so much develop a new EU legal order but instead clearly fill a void where legislation has been relatively weak. Soft law is considered here as mechanisms that go beyond legislation and that aim to make advancements in respect of gender stereotypes.

⁹⁵ See for example the recent European Commission campaign #EndGenderStereotypes which is part of the Gender Equality Strategy (2020-2025) https://end-gender-stereotypes.campaign.europa.eu/index_en (accessed 2 October 2024).

⁹⁶ Article 17(1) states that the Commission shall 'promote the general interest of the Union and take appropriate initiatives to that end'.

⁹⁷ Trubek, D.M. and Trubek, L.G. (2005) 'Hard and soft law in the construction of social Europe: the role of the open method of co-ordination', *European Law Journal*, 11(3), pp. 343-364.

⁹⁸ Shelton, D. (2009) 'Soft law' in Armstrong (ed.) *Routledge handbook of international law* p. 68.

Soft law measures vary but generally reflect the European Commission's long-term intentions on most policy areas and 'test the ground' in Member States for future legislative measures,⁹⁹ of which advertising and media regulation is one. This generalisation of soft law's pre-emptive quality is echoed in processes that are adopted by reluctant Member States that initially refuse to enter into legally binding obligations but eventually agree to the wide-reaching goals, principles and targets.¹⁰⁰ Ultimately, soft law plays a significant role in the field of regulating gender stereotypes in advertising and the media. This void is where soft law in advertising and media regulation flourishes; it is encouraging rather than coercive, even towards the most unwilling of Member States, it is self-regulatory in nature and provides for ample flexibility as well as the awareness that no single Member State will face formal sanctions. Finally, and most importantly, the space between the economic and social sphere that soft law occupies is a mirror to the future of EU policy and reveals the current gaps in the current EU legal framework that would need to be addressed in any future legislation on the issue.

To begin with, the Committee on Women's Rights and Gender Equality (FEMM) has played a vital role in tackling gender stereotypes in advertising and the media through the influential soft law and policy it has produced. In 2008, the European Parliament overwhelmingly adopted the Svensson report commissioned by FEMM on how advertising affects women and young girls.¹⁰¹ The Parliament responded with four recommendations aimed at encouraging EU institutions and Member States to monitor harmful and degrading images of women and girls in advertisements and media. Paragraphs 9 and 25 of the recommendations call for better regulatory control of the industries and recommend that national media and advertising monitoring bodies and an EU-wide 'Code of Conduct' are established by the Commission. Paragraph 18 calls for more education, training and employment of women and equal access for women in all areas of the advertising and media industry. The report links the use of harmful gender stereotypes and their significance to the functioning of the single market, in that they contribute to the gender pay gap, divide the labour markets and (re)produce gendered professions. Recital R criticises certain Member States' weak national advertising codes and ethics, where rules are either not respected or non-existent and calls for more action in this area.

The Council adopted conclusions on the Svensson Report on 'Eliminating Gender Stereotypes in Society',¹⁰² assessing the influence gender stereotypes in advertising have on society, and concluding that industry 'contributed in the reproduction of culturally transmitted stereotypes and images'.¹⁰³ The Council concluded that the onus would be on Member States to improve education materials at all levels in schools and engage with the mass media (including advertising agencies) on the detrimental effects that gender stereotypes have on young people. The Council conclusions are weakened by the uncertainty surrounding exactly how the right balance can be struck between fundamental principles of freedom of expression, the right to a free press and gender equality, and it is also unclear how this can be achieved at Member State level. In response to the Svensson report, the Commission produced its own Gender Equality Report (2008), which refers to the negative

⁹⁹ Beveridge, F. (2016) 'Implementing Gender Equality and mainstreaming in Enlarged EU: Prospects and Challenges' in Beveridge and Velluti (2016) *Gender and the Open Method of Coordination* p. 14.

¹⁰⁰ Snyder, F. (1993) 'The Effectiveness of European Community Law: Limitations, Processes, Tools and Techniques' (1993) *Modern Law Review* 56:1 p. 33.

¹⁰¹ European Parliament resolution of 3 September 2008 on how marketing and advertising affect equality between women and men (2008/2038(INI)).

¹⁰² European Council (2008), 'Council Conclusions on Eliminating Gender Stereotypes in Society', https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/lsa/101020.pdf (accessed 28 October 2024).

¹⁰³ European Council (2008), 'Council Conclusions on Eliminating Gender Stereotypes in Society'.

use of gender stereotypes and their barrier to gender equality.¹⁰⁴ Listed in the report's challenges is 'tackling stereotypes, support for individuals', which reflects the European Commission's intent to remove negative stereotypes in certain areas such as media and advertising. The Commission also lays out significant (but vague) strategic actions – the removal of targeting of gender stereotypes at younger audiences, access for men and women to non-traditional work roles (including decision-making positions), adoption of two-way training schemes where the guidance and the trainee disregard gendered roles and the promotion of 'realistic images' of men and women in the media.

The second report (Liotard Report) by FEMM¹⁰⁵ provided the Parliament with a further opportunity to strengthen its position on combating gender stereotypes in advertising and the media. The report included two additions. First, it appeals to the EU to provide new legislation to ensure equality between women and men in advertising, media and education and secondly, urges the Member States to establish ombudsmen and/or advertising authorities to ensure ethical codes of conduct are put in place to monitor media and advertising agencies. With cross-party support from the Parliament, the report is still considered as one of the strongest positions that any EU institution has taken since the Goods and Services Directive. Compared to the first FEMM report, the resolution's content is much improved, emphasising the need for advertising industries to take a proactive role. Embedded in the report are 12 areas that require attention and action by the EU and Member States. These areas include the removal of outdated gendered representations in advertisements (such as women disproportionately depicted as caregivers, carrying out domestic labour, housework, cleaning and cooking; advertisements that are aimed at young children that often feature outdated gender norms and values; the need for stronger educational content rather than self-fulfilling gender roles in adverts; the removal of objectification and sexualisation in advertising; tackling the dehumanisation of women that promotes violence against women and finally, the 'pornification' of advertising or 'mainstreaming of pornography' in advertising.¹⁰⁶ The theme that runs throughout the report is that national advertising regulators must acknowledge that gender stereotypes in advertising are linked to a multitude of economic and societal harms such as the gender pay gap and domestic violence. The language of the report is also very distinctive in comparison to other soft law measures from the same period. With firm undiminished targets aimed at Member States and state actors, the report signals the need for a change in how self-regulatory bodies operate to combat discrimination in the media and advertising to ensure effective sanctioning for those who promote the sexualisation of women. Since the Committee's referral in Parliament, the report was somewhat overshadowed by the media across Europe reporting that the report made reference to pornography in the draft version and although this reference was eventually removed, the report lost its original momentum.¹⁰⁷

¹⁰⁴ Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 23 January 2008, Equality between women and men – 2008. COM(2008) 10 [Not published in the Official Journal].

¹⁰⁵ The Liotard Report - European Parliament Resolution 06 December 2012 on eliminating gender stereotypes in the EU 2012/2116 (INI) and the subsequent adoption of the report on 12th March 2013.

¹⁰⁶ 'Pornification' or mainstreaming of pornography is the process where advertisements aimed at young audiences feature quasi-pornographic content or porn-themed content. This content is slowly normalised, accepted and idealised (Rossi, M. (2007), 'Outdoor Pornification: Advertising Heterosexuality in the Street' in Nikunen, K., Paasonen, S. and Saarenmaa, L (eds), *Pornification: Sex and sexuality in media culture*).

¹⁰⁷ See: McDonald-Gibson, C. (2013) "Attempt to ban porn" discovered in EU report', *The Independent*, 8 March 2013, <https://www.independent.co.uk/news/world/europe/attempt-to-ban-porn-discovered-in-eu-report-8527202.html>.

EU Presidencies have equally been influential when encouraging debate, providing a platform for research and transforming the issue into mainstream dialogue. In conjunction with the European Women's Lobby (EWL),¹⁰⁸ the Slovenian Presidency of 2008 hosted Conference 'Mission (Im)possible', which presented the need for eliminating stereotypes in early childhood (i.e. gendered toys, colours, fonts) that appear in advertising. Identifying various forms of gender stereotypes that hinder gender equality and the link that harmful content has with gender-based violence, eating disorders and self-harm, the fundamental theme running throughout the EWL and Slovenian Presidency conference is the need to combat stereotypes from the very beginning – from conception, birth, early childhood and then at primary education level. The trend for placing the onus on educators rather than advertisers is once again sustained, and, not for the first time, discourse surrounding a ban on gender stereotypes used in the media and advertising takes a back seat and early intervention is seen as crucial. The Czech Presidency of 2009 and the EWL conference 'New Ways in Overcoming Gender Stereotypes' considered the role that the advertising industry has in shaping gender stereotypes as well as the role soft law mechanisms can play in European education systems and advertising (self-)regulation agencies. One of the main conclusions from the conference was the importance of self-regulation and increasing citizen's awareness of state regulation mechanisms and enforcement bodies. More recently, in 2024, as part of the Liechtenstein Presidency of the Council of Europe, the Council ran a conference on 'Breaking down gender stereotypes in media and advertising' calling for Member States to take action on advertising that 'tolerates and trivialises "everyday" sexism'.¹⁰⁹

European Parliament opinions have played a significant role in debating the issue and setting current agendas. The first opinion delivered by the European Economic Social Committee (EESC) in 2010 provided economic-based recommendations for the Commission on gender stereotypes in the media, education and advertising.¹¹⁰ None of the recommendations were unexpected or new and merely a repetition of previous communications: the need for education and training at all levels within the advertising industry, eradication of stereotypes in the workplace and the link between gender stereotypes and domestic violence against women. In the recommendations, the EESC dedicates an entire section on eliminating sexist stereotypes and provides further nuanced recommendations for the Commission on how to tackle gender stereotypes in the workplace. Amongst other things, the EESC recommends the eradication of sexist stereotypes from the media and advertising industry with reference to violence and degrading images of women.

The Advisory Committee on Equal Opportunities for Women and Men also provided an opinion for the Commission on 'Breaking gender stereotypes in the media'.¹¹¹ Unlike the EESC recommendations and FEMM reports, the Advisory Committee's position provides a comprehensive analysis of how the media and advertising

¹⁰⁸ The European Women's Lobby (EWL) has had a big impact on continuing efforts to better regulate gender stereotypes in advertising and the media. The EWL is the largest network of women's organisations in Europe with over 2 000 member organisations across all EU Member States. Just one year after the Goods and Services Directive, the EWL approved its 'Roadmap to Equality Programme 2006-2010' and included efforts to encourage progress in regulating gender stereotypes in advertising at a national level. Amongst the EWL roadmap's six priority areas, the removal of gender stereotypes in advertising and media (6.2) is positioned alongside other EWL goals such as the eradication of gender-based violence and equal representation in decision-making.

¹⁰⁹ Catalyst for Change Breaking down gender stereotypes in media and advertising <https://rm.coe.int/prems-031524-gbr-2573-flyer-declencheur-du-changement-a4-web/1680aea979>.

¹¹⁰ Opinion of the European Economic and Social Committee on 'The Roadmap for equality between women and men (2006-2010) and follow-up strategy'. (2010/C 354/01).

¹¹¹ Advisory Committee on Equal Opportunities for Women and Men Opinion on "Breaking gender stereotypes in the media" 28th December 2010.

industries could work in collaboration with the EU institutions rather than relying on a blanket ban on gender stereotypes. The opinion is more prescriptive, identifying how the media and advertising industries can learn from the good practice set by Member States that are spearheading action to address harmful gendered content and stereotypes in advertising. Part 5 of the opinion reflects this tone through proactive gender equality measures such as the inclusion and promotion of more ‘realistic images’ of women and men through actively promoting women into senior positions in media and advertising companies. Throughout the opinion the committee states that an EU-wide monitoring group should have the ability to set benchmarks for defining degrading, ‘sexist’ and stereotypical images with the competence to ‘receive and consider’ individual complaints from the general public as well as women’s groups, NGOs and charities.

Both opinions unquestionably reignited the regulation of gender stereotypes in advertising and the media as part of the EU’s remit. Equally, both opinions place some emphasis on the recognition that a comprehensive ban on gender stereotypes in advertising and the media is unfeasible considering the two industries’ lack of desire and will to collaborate during the Goods and Services Directive’s drafting. This shift towards a more *laissez-faire* approach to regulating media and advertising practices is indeed appealing to the EU institutions, governments and the advertising industry alike, as it speaks to a common ground where advertisers can engage with contributing to the regulation rather than feeling obliged to eradicate harmful types of gender stereotypes. The tone of the opinions is also highly significant in that both centre on the self-regulation of the industries with calls for minimal legislative interference. This again can be traced back to the reality that the Commission has no precedent of legislative competence with respect to media or advertising content. The tone of the opinions and FEMM’s reports chime with the theoretical approach that the ‘gender regime’ has woven in the last two decades.¹¹² The shift from reactive to pro-active is reflected in some of the soft law instruments, for example, in the technique of pillory where Member States are ‘named and shamed’ for poor regulatory practice or legislation in the area of gender stereotypes.

The European Advertising Standards Alliance (EASA) is a private non-governmental self-regulatory organisation that operates within a framework that is compatible with EU legal standards and self-regulation standards set out in the AVMSD. In the past it has been endorsed by the Commission to pursue self-regulatory solutions to harms in advertising rather than using ‘hard law’.¹¹³ The EASA has played a key role in shaping policy around the regulation of gender stereotypes in advertising across Europe. The EASA is a not-for-profit co-ordination body for cross-border advertising complaints across Europe. Whilst its main purpose is to serve as a co-ordination point redirecting complaints between one state and another, it has over the last two decades become more influential, particularly in promoting socially responsible advertising and guidance to its 27 members.¹¹⁴ The EASA follows the International Chamber of Commerce (ICC) Code of Advertising and Marketing Communication Practice, which sets the international standard for honest and responsible advertising.¹¹⁵ Following the Goods and Services Directive, the EASA has incorporated ‘gender portrayal’ as one of its key

¹¹² The EU ‘gender regime’ is a theoretical approach that foregrounds the significance of supranational/ EU laws and policy whilst at the same time allowing Member State divergence. See for example: Von Wahl, A. (2021) ‘The EU as a gender equality regime: A core research concept’ in *The Routledge handbook of gender and EU politics* (pp. 17-29).

¹¹³ Gray, O. (2005) ‘Responsible advertising in Europe’, *Young Consumers*, 6(4), pp.19-23.

¹¹⁴ Full list of members are available on the EASA website: <https://www.easa-alliance.org/members/>.

¹¹⁵ A consolidated version of the ICC advertising code can be found on its website: <https://iccwbo.org/publication/advertising-and-marketing-communication-practice-consolidated-icc-code/>.

issues¹¹⁶ and since June 2004 the 'portrayal of gender' featured as one of the key issues in the EASA's first Self-Regulatory Charter (2004). The Charter is not legally binding and is voluntary in nature, however, in the wake of the Goods and Services Directive, it was presented to the Commission and the EESC as a form of pan-European guidance for the growing emergence of self-regulation.¹¹⁷ Effectively, the Charter provides a set of commitments for all EU Member States, endorsing moral and financial support for the creation of an advertising self-regulatory framework and network. The Charter's commitments can be viewed as a code of conduct that reflects technological and societal changes across Europe. What is significant about the Charter and the EASA is that the Commission has in the past been willing to accept the role the organisation can play in making self-regulation a more palatable framework as an instrument to combat gender stereotypes in advertising and media than less malleable secondary legislation. The Charter's code is furthered by the EASA's portrayal of gender report, which provides an overview of how the self-regulatory organisations (SROs) across the EU combat the issue of harmful gender stereotypes in advertising. The gender report targets four main issues that arise from the analysis of Member States that participated in the report. The concept of gender stereotypes, which fall under Article 2 of the ICC's advertising code under the heading of 'social responsibility', has been interpreted widely by the Member States. Most states have 'taste and decency' and 'social responsibility' embedded in their national self-regulatory codes. The report has some interesting findings: increased sexualisation and 'dumbing down' portrayals of men in advertising and the 'pornification, nudity and sexual innuendo' of women. The common theme present within all Member States included in the report is objectification, sexualisation and outdated ideas around motherhood and caring. The EASA gender portrayal report throws out some other insightful observations that are common amongst Member States. First, self-regulation is the norm within Europe and there are few legislative initiatives with sanctions (with the exception of **Denmark, Finland, Norway** and **Spain**). Secondly, there is a significant number of complaints made towards SROs on gender portrayal, the sexualisation/objectification of women and gender violence. SRO 2010 statistics place gender portrayal in 'taste and decency', which overall generated 21 825 complaints across the EU, with gender stereotypes amounting to 19 %. In more recent years the number of complaints has jumped to 49 % (2019) but has remained at 24-25 % since 2020. Thirdly, most Member State regulators appear to be sceptical not just towards EU legislative instruments but what constitutes 'taste and decency'. These findings from EASA are not surprising considering the lobbying process from the media and advertising industries during the drafting of the Goods and Services Directive.

2.8 Interim conclusion

This section of the thematic report has analysed EU secondary legislation and piecemeal soft law that have evolved over the past two decades concerning the mitigation of gender stereotypes and harmful gendered content in advertising and the media. This analysis reveals a significant blind spot within the EU legislative framework and despite numerous soft law initiatives, a legal void persists in this area. As a result, citizens remain without formal legal protection, leaving harmful gendered content and gender stereotypes in advertising and media largely unchallenged in legislation.

¹¹⁶ The EASA guidance is based on Article 2 of the ICC advertising code and encourages members to regulate the use of harmful gender stereotypes in advertising. See: <https://www.easa-alliance.org/issues/portrayal-of-gender/>.

¹¹⁷ See: Euroactiv (2004) 'Advertisers claim code of conduct is self-regulation', 5 October 2004, <https://www.euractiv.com/section/public-affairs/news/advertisers-claim-code-of-conduct-is-an-example-of-self-regulation/>.

The Treaty of Amsterdam allowed the EU to legislate for the first time on equality outside of the workplace. The Racial Equality Directive and the Goods and Services Directive are good examples of this, however, as has been indicated, the Racial Equality Directive has gone much further than the Goods and Services Directive, which is much more limited in scope.¹¹⁸ In many ways excluding advertising and media from the Directive was a missed opportunity especially when it comes to tackling CEDAW-inspired goals and deep-seated gender equality issues such as gender stereotypes. Equally, the AVMSD has had a relatively limited effect on regulating gender stereotypes and harmful gendered content in advertising and the media. The AVMSD has some measures in place that protect children from certain types of harm, however there are no provisions that address gender stereotypes, harmful gendered content or other forms of discriminatory content in audiovisual media. Whilst the AVMSD sets minimum standards to address discriminatory content, it falls short in effectively combating gender stereotypes and harmful gendered content. Instead, the AVMSD focuses primarily on restricting explicit hate speech and illegal content and does not impose strict regulations against gender stereotypes or harmful gendered portrayals in audiovisual media content. This regulatory gap allows such content to persist, particularly in digital spaces where self-regulation by platforms is inconsistent and insufficient. Similarly, the Digital Services Act has set minimum standards to protect children from certain types of harmful content, but this is not extended to adults. To conclude here, neither directive includes legal tools that can challenge the production and dissemination of gender stereotypes and harmful gendered content in advertising and instead rely heavily on the industry to self-regulate.

Given the absence of legislation in this field, the EU has relied on soft law measures to address gender stereotypes and harmful gendered content in advertising and media. These measures primarily encourage Member States to adopt voluntary frameworks aimed at regulating such content. Notably, both the EU's and the Council of Europe's gender equality strategies provide guidance and recommendations, urging Member States to implement policies that challenge gender stereotypes and promote equality. However, these approaches lack formal enforcement mechanisms or sanctioning power. As a result, compliance remains discretionary, and as will become apparent in the next part of this thematic report, action is often inconsistent across Member States, thus reflecting the limitations of a voluntary, non-binding approach in effectively addressing these issues. Similarly, industry-led self-regulation operates on a voluntary model, relying on the willingness of stakeholders to implement and adhere to self-regulatory ethical codes, guidelines and frameworks. This approach places the responsibility for oversight and compliance on industry actors, often without binding obligations or external enforcement mechanisms. As a result, the effectiveness of self-regulation is contingent upon the commitment and accountability of individual organisations, leading to inconsistencies in implementation and outcomes across the sector.

¹¹⁸ See Caracciolo di Torella, E. (2021) *Directive 2004/113/EC on Gender Equality in Goods and Services – in search of the potential of a forgotten Directive*, European network of legal experts in gender equality and non-discrimination.

3 National legal instruments

Chapter 3 of the report analyses the diverse range of legal instruments that have been used by states to tackle harmful gendered content and gender stereotypes in advertising and the media. It begins by briefly looking at the transposition of the Goods and Services Directive and whether or not the states have made use of the advertising and media exemptions as set out in the Directive.¹¹⁹ It then moves on to look at the specific legal instruments, state regulatory bodies and ombudsmen that seek to tackle harmful gendered content and gender stereotypes in advertising as well as any legal instruments that seek to regulate the use of algorithmic, targeted advertising and digital platforms. Chapter 3 also looks at the ways in which self-regulatory organisations (SROs) have supplemented these legal instruments at state level and the ways in which SROs produce ethical codes that include the regulation of gender stereotypes, objectification, sexualisation, body shaming as well as new emerging issues such as the influencer market and cyberviolence. This section of the report also reflects on some of the case law that has emerged both from national courts and some of SRO rulings that have developed the regulatory standards and norms. Finally, by drawing upon good practices developed within the national legal system, SROs, NGOs and consumer protection organisations, the report seeks to build a catalogue of tools and approaches that may help further to tackle the use of harmful gendered content and gender stereotypes in advertising and the media at EU level.

3.1 The transposition of the Goods and Services Directive.

Before embarking on analyses of national legislation, regulatory bodies and industry-led self-regulation of harmful gendered content and gender stereotypes in advertising and the media, the extent to which the states transposed the Goods and Services Directive and included advertising and media should be addressed. As discussed in Chapter 2 of this report, Article 3(3) of the Goods and Services Directive provides that states may exclude the content of media, advertising and education. The national reports indicate that quite a number of EU and EEA (and UK) Member States have made use of the exclusions. This is the case in **Austria, Cyprus, Estonia, Finland, Germany, Greece, Iceland, Italy, Liechtenstein, Poland, Portugal, Romania, Slovenia, Sweden** and **UK**. Romania and Finland had legislation *preceding* the Directive which cover harmful gendered content and/or gender stereotypes in advertising and media. The national reports also show that many states have gone beyond the requirements stipulated in the Directive and included in their legislation a prohibition of discrimination on grounds of sex in *all* areas of society, including advertising and media, when transposing into national law (**Belgium, Bulgaria, Croatia, Czechia, Denmark, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg** (only recently in 2024),¹²⁰ **Malta, Norway, Slovakia** and **Spain**).

¹¹⁹ Article 3(3) excludes the content of advertising, media (and education). The focus of this report is primarily on whether the state has legislated on advertising. For further analysis of the Directive's full scope (including insurance and education) see EELN report, Caracciolo di Torella, E. (2021) *Directive 2004/113/EC on Gender Equality in Goods and Services – in search of the potential of a forgotten Directive*.

¹²⁰ According to the state report, advertising, media and education are no longer excluded from the scope of national legislation. The repeal of the exclusions was motivated by various arguments: gender equality enjoys less protection than the principle of equality between persons on other grounds, legal standards were not coherent with constitutional principle of equality between men and women and citizens were not protected against discrimination in media and advertising grounded on sex, while these discriminations were particularly present.

3.2 Legal instruments tackling harmful gendered content and gender stereotypes in advertising and the media

Across the national reports there are some significant pieces of national legislation that have spearheaded the issues within this report, the tackling of harmful gendered content and gender stereotypes in advertising and the media. These legal instruments predominantly emanate from the countries that do not have to apply the exemptions from Article 3(3) of the Goods and Services Directive. For example, the wide framing of **Croatia's** Gender Equality Act¹²¹ compels all forms of media to promote awareness of equality between men and women in all programme content, and any public display (for example, 'advertising' includes both offline and online, influencer marketing, user-generated videos, covert advertising and content that may not be instantly recognisable as adverts) that depicts men or women in an offensive, degrading or humiliating manner with regard to sex is also prohibited¹²² and sanctionable through a fine.¹²³ Moreover, harmful gendered content is not deemed as a distinct type of discrimination and falls under the general prohibition of sex discrimination in equal treatment and gender equality legislation. **Norway** strictly regulates gender discriminatory and sexist advertising (both online and offline) to a high standard via its Marketing Control Act (MCA),¹²⁴ which explicitly prohibits 'sexist advertising', which is advertising that exploits the body or is 'offensive' or 'derogatory' towards women or men.¹²⁵ Sexist adverts are assessed objectively (what the average consumer would deem offensive/derogatory), and the advert may not contravene the principle of equality between men and women. The term 'derogatory' is related to the extent to which a person's dignity has been affected. This can include foregrounding in the advert or marketing any outdated gender(ed) roles and utilising the women's body as the focal point of the advert. Whilst the Norwegian law seeks to protect men and women, the MCA has mainly applied to advertising where women are subjected to derogatory and sexist representations. 'Offensive' advertising is also covered by the MCA and includes when men and women are depicted as sex symbols/objects, their bodies are exploited, or when they are in no way related to the product or service advertised (i.e. the product is shown in an unnatural situation, the body is emphasised over the product and its function). The MCA also demarcates gender stereotypes from gender(ed) roles, and the advert will only be deemed unlawful if the gender stereotype is in any way degrading, unequal or deemed old fashioned/traditional in style or approach. There are indeed limits to the Act, for example, complainants wishing to use the MCA have tried to argue that advertisements aimed at certain boys' and girls' toys (princesses/cowboys), colours (pink/blue) and fonts associated therein are sexist. However, the national Consumer Authority (National Ombudsman) have deemed this type of advertising as non-discriminatory.

Adopted in 2004, **Spain's** progressive legislation (Organic law 1/2004) predates the Directive's transposition and covers harmful gendered content and gender stereotypes in advertising. The remit of the legislation is

¹²¹ Croatia, Gender Equality Act (*Zakon o ravnopravnosti spolova*), NN Nos. 82/2008 and 69/2017.

¹²² Croatia, Gender Equality Act, Article 16(1).

¹²³ Croatia, Media Act, Article 59(1)(4) and Electronic Media Act Media Act, Article 98(1)(45), (*Zakon o medijima*) NN Nos. 59/2004, 84/2011, 81/2013 and 114/2022.

¹²⁴ Norway, *Lov om markedsføring og avtalevilkår mv* (Marketing Act) 09.01.2009, Section 2.

¹²⁵ The provision is a direct continuation of Act of 16 June 1972 Section 1 second paragraph, cf preparatory works. Ot.prp. No. 55 (2007-2008) p. 46. The state reports note that the main motivation for the act was to combat discrimination towards women.

wide-ranging and includes measures of comprehensive protection against gender-based violence.¹²⁶ Amongst those measures, harmful gendered content and stereotypes in advertising and media are linked to and included in combating gender-based violence. In this regard, the law states that advertising must respect women's dignity and not portray them in a stereotypical, humiliating or discriminatory way and allows the capacity to rectify or stop 'illicit advertising'¹²⁷ campaigns via the court. The legislation also provides for a public administrator¹²⁸ and self-regulatory organisation to monitor compliance with the law and promote the self-regulation of advertising.¹²⁹ The Spanish legal expert also indicates that there has been more recent anti-discrimination legislation that has focused on the dissemination of media and advertising and as such maintains a 'comprehensive' approach against discrimination. Article 22 of Law 15/2022¹³⁰ has been adapted to combat more contemporary forms of advertising that permeate social media by asking social networks to respect the right to equal treatment and avoid discrimination. The law calls for public administrations to promote the self-regulation agreements for social media, advertising, internet, social networks and IT and communication firms in order to comply with equality and non-discrimination law and to promote a non-stereotyped image of different people and groups. Spain's General Law on audiovisual communication¹³¹ (transposed from the AVMS Directive 2018/08) states that all audiovisual content must respect human dignity, must not incite violence or hatred and must communicate an egalitarian and non-discriminatory image of women and men, and must not favour directly or indirectly situations of discrimination on grounds of sex, women's inequality or that incite gender or sexual violence. The law calls for tighter self-regulation of audiovisual content to ensure that advertisements neither convey sexist language, images or include gender stereotypes. Finally, Article 27 of Law 4/2023¹³² is specifically dedicated to upholding equal treatment and non-discrimination in advertising and social media, calling on social media to respect the right to equality of LGBTQ+ persons, and public administrations to promote adequate measures for the elimination of content that might incite hatred, discrimination or violence against LGBTQ+ persons or their families.

Similarly, **France** has gone beyond the scope of the Directive and perceives harmful gendered content and gender stereotypes in advertising through a gender-based violence prism. There are a number of French legal instruments to mention here. First, French advertising laws on freedom of communication¹³³ and amended legislation on gender equality¹³⁴ oblige the newly merged national administrative authority (ARCOM)¹³⁵ to monitor representations of men and women on TV and digital programs, including combating stereotypes, sexist prejudice, degrading images, violence against women and domestic violence.¹³⁶

Example of Good Practice regarding gender representation on TV – France

The law introduces quantitative and qualitative indicators on gender representation for television corporations which are then published in a report by ARCOM¹³⁷. French law also obliges ARCOM to monitor gender in advertising, ensuring that images of women respect dignity.¹³⁸

¹²⁶ Spain, Law 1/2004 on Comprehensive Protection against Gender-Based Violence (*Ley Orgánica 1/2004 de medidas de protección integral contra la violencia de género*), 23 December 2004, <https://www.boe.es/buscar/act.php?id=BOE-A-2004-21760>.

¹³⁷ France, Act n° 86-1067 of 30 September 1986, Article 20-1.

In **Denmark**, the Marketing Practices Act provides clear guidance and (non-exhaustive) examples of whether an advert might be considered to discriminate based on gender. The act transfers some of its legislative powers to the regulator, the Danish Consumer Ombudsman, and prohibits advertisements that represent men or women in a derogatory or condescending way. This includes alluding that one gender is socially, financially or culturally subordinate to the other, one gender is less competent, intelligent or equipped to perform certain tasks that can be performed by both genders and finally alluding to outdated ideas that one gender innately has a negative personality trait or characteristic.¹³⁹ Similarly, **Slovakian** advertising legislation prohibits advertising that includes nudity in a derogatory way.¹⁴⁰ In the national report from **Malta**, it is stated that gender stereotypes in advertising are considered as a form of discrimination in Malta and therefore fall under the Gender Equality Act, which stipulates that it is unlawful to publish or display any advertisement that promotes discrimination, or which otherwise discriminates.¹⁴¹ According to a pending amendment to the Equality Act, the legal instrument catches both online and offline content.¹⁴²

From the countries that have made use of the Article 3(3) exclusions set out in the Goods and Services Directive 2004/113/EC, there are some legal instruments that explicitly combat the use of harmful gendered content or gender stereotypes in advertising and media. Like its Nordic neighbours, Norway and Denmark, **Finland** has prohibited discriminatory advertisements, and this predates the Directive. This has been achieved through the Consumer Protection Act,¹⁴³ which legislates against adverts that are perceived as unfair or contrary to good practice. The legislation prohibits advertising and marketing that prejudices human dignity or features discrimination on the grounds of gender. Amendments to the act in 2008 – along with case law from the Market Court – provides further meaning as to what is deemed discriminatory advertising. For example, advertisements may be contrary to good practice if they in any way objectify or sexualise either gender; where sex is used in a degrading, disparaging or derogatory manner, one gender is depicted as socially, economically or culturally inferior compared to the other; or if the advert presents reductive gender stereotypes that are perceived as 'typical' for either gender regarding their work, personality or manner. Whilst Finnish legislation prohibits

¹²⁸ Observatory of the Image of Women (Observatorio de la Imagen de las Mujeres).

¹²⁹ Autocontrol Association for the self-regulation of commercial communication (Asociación para la autorregulación de la Comunicación comercial), <https://www.autocontrol.es/>.

¹³⁰ Spain, Article 22 of Law 15/2022 on equal treatment and non-discrimination (*Ley 15/2022 integral para la igualdad de trato y la no discriminación*), 12 July 2022, <https://www.boe.es/buscar/act.php?id=BOE-A-2022-11589>.

¹³¹ Spain, Law 13/2022 General Law on audiovisual communication (*Ley 13/2022 General de Comunicación Audiovisual*), 7 July 2022, <https://www.boe.es/buscar/act.php?id=BOE-A-2022-11311>.

¹³² Law 4/2023 for the real and effective equality of trans people and of guarantee of the rights of LGBTI persons (*Ley 4/2023 para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGBTI*), 28 February 2023, <https://www.boe.es/buscar/act.php?id=BOE-A-2023-5366>.

¹³³ France, Act of 30 September 1986 n° 86-1067.

¹³⁴ France, Act of 4 August 2014 n° 2014-873.

¹³⁵ The Regulatory Authority for Audiovisual and Digital Communication (*Autorité de régulation de la communication audiovisuelle et numérique*; ARCOM) is the French independent administrative agency resulting from the merger on 1 January 2022 of the High Audiovisual Council (CSA) and the High Authority for the Distribution of Works and Protection of Rights on the Internet (Hadopi). See Act : Loi no 2021-1382 du 25 octobre 2021 relative à la régulation et à la protection de l'accès aux œuvres culturelles à l'ère numérique. ARCOM is responsible for both audiovisual and digital communications.

See amendment of Section 4 of Article 3-1, Act n°86-1067 of 30 September 1986.

¹³⁶ France, Act n° 86-1067 of 30 September 1986, Article 20-1.

¹³⁸ France, 27 January 2017, Act n° 2017-86 on equality and citizenship.

¹³⁹ The Danish Consumer Ombudsman (2012) *Guidelines on gender-related advertising*.

¹⁴⁰ Slovakia, Act No. 147/2001 on Advertising and on change and amendments to certain acts (*Zákon č. 147/2001 Z.z.o reklame a o zmene a doplnení niektorých zákonov*), 5 April 2001, effective from 1 May 2001. Available in Slovak at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/147/20240701.html>.

¹⁴¹ Malta, Article 10 of Chapter 456 Equality for Men and Women Act, <https://legislation.mt/eli/cap/456/eng>.

¹⁴² Malta, Equality Bill, see: <https://parlament.mt/media/101105/3-bill-96-equality-bill.pdf>.

¹⁴³ Finland, Consumer Protection Act, https://www.finlex.fi/en/laki/kaannokset/1978/en19780038_20050029.pdf.

discriminatory advertisements and provides some context for gender stereotypes, there is no definition of harmful gendered content except by prohibiting marketing that prejudices human dignity or is discriminatory on the ground of gender. In a similar way, **Estonia's** Advertising Act provides some fundamental requirements for discriminatory advertising, however, the definition is somewhat lacking and less comprehensive when compared to other Nordic approaches. Article 3 of the Advertising Act states that advertising ought not to ignore the principle of gender equality from the Gender Equality Act and not degrade or depict one gender as dominating – or subordinate – to the other and adverts should not objectify or sexualise (treat as sexual objects). According to the national report, **Iceland** takes a gender mainstreaming approach to the issue, which is reflected in its legislative framework and identifies harmful gendered content and gender stereotypes as a form of discrimination. Both harmful gendered content and gender stereotypes are prohibited in the Gender Equality Act¹⁴⁴ and the Act on equal treatment outside the labour market.¹⁴⁵ The Gender Equality Act has a rather broad scope and the objective of the act aims both for gender mainstreaming in all policy areas as well as working towards combating all negative stereotypes about men and women in society.¹⁴⁶ The legislation defines harmful gendered content in advertisements as instances when the representation is 'belittling' or 'disrespectful' to *any* gender, which may not be published in the media.¹⁴⁷ **Greece**, too, has sought to tackle harmful gendered content and gender stereotypes in advertising and the media in a similar way through the introduction of gender mainstreaming as a way to bring about substantive gender equality in all parts of society.¹⁴⁸ From an advertising and media approach, Article 24 of the Gender Equality and Preventing and Combating Gender-Based Violence Act regulates the use of gender stereotypes and images in mass media and advertising. These are regulated through self-regulatory codes which are discussed later in this report in section 3.4.

Example of Good Practice regarding gender representation on TV – Greece

Resembling France's approach to ensuring equal representation on TV, Greek legislation also promotes gender equality through increased representation of women on TV and radio and asks for the elimination of sexism and gender-based stereotypes.¹⁴⁹ The Greek code of conduct for TV and Radio addresses the removal of 'sexist messages and characterisations' on TV and radio and promotes the representation of women in all areas of life, including economics and politics.¹⁵⁰

¹⁴⁴ Iceland, Gender Equality Act, No. 150/2020.

¹⁴⁵ Iceland, Act on equal treatment outside the labour market, No. 85/2018.

¹⁴⁶ Article 1a provides that 'by observing gender equality perspectives and working towards gender and equality mainstreaming in policy-making and decision-taking in all spheres of society' and Article 1j 'by changing traditional gender images and working against negative stereotypes regarding the roles of men and women'.

¹⁴⁷ Iceland, Article 22 of the Gender Equality Act No. 150/2020 and the Act on equal treatment outside the labour market No. 85/2018.

¹⁴⁸ Greece, Article 2(1) Substantive Gender Equality and Preventing and Combating gender-based violence Act 4604/2019 gives, for the first time, the definition of 'gender mainstreaming': 'the strategy for the realisation of substantive gender equality, which includes gender mainstreaming in the preparation, the planning, the application, the follow-up and the evaluation of policies, regulatory measures and expense programmes for the achievement of equality between women and men and the fight against discrimination'. See EELN flash report (Greece), 1 July 2019 'New Act 4604/2019 on substantive equality entered into force on 26 March 2019', <https://www.equalitylaw.eu/downloads/4907-greece-new-act-4604-2019-on-substantive-equality-entered-into-force-on-26-march-2019-pdf-102-kb>.

¹⁴⁹ Greece, Article 24(1)(a),(b) Act 4604/2019, OJ A 50/26.3.2019.

¹⁵⁰ Greece, Presidential Decree (P.D.) 77/2003 ratified the Code of Conduct for News and Other Journalistic and Political Broadcasts.

Romania's Gender Equality Act now explicitly prohibits the use of gender stereotypes in advertising.¹⁵¹ The Act defines gender stereotypes as 'the organised systems of beliefs and consensual opinions, perceptions and prejudices in relation to the attributes and characteristics, as well as the roles that women and men have or should fulfil'.¹⁵² Romania's law has been further interpreted and developed by the state regulator, the National Council for Combating Discrimination.¹⁵³

Example of Good Practice - Italy

Under **Italian** law, there are some examples of good practice worth noting. First, the Italian Traffic Code¹⁵⁴ prohibits advertising on cars and roads that contains sexist or violent messages including the perpetuation of harmful gender stereotypes. Secondly, on a local level there are attempts to curb the use of harmful content and sexist advertising in public spaces. The cities of **Milan** and **Siena** have advertising regulations protecting the dignity of women. In **Milan**, there are five types of messages that are deemed incompatible with human dignity.

'Images that represent or incite physical and moral violence, vulgar or indecent images that deviate from what people perceive as normal, messages discriminatory or degrading messages which through stereotypes place women in roles of inequality and subordination, the commodification of the body and cultural and social prejudices based on gender discrimination, ethnic belonging, sexual orientation, religious belief'.

The city of **Siena** has issued a manifesto ensuring that advertisers

'avoid messages that involve direct or indirect discrimination ... incitement to hatred or contains elements that, evaluated in their context, approve and glorify violence against women; refrain from proposing sexually suggestive slogans and from reducing human bodies to mere sexual objects, to be combined with a product in an incongruous and specious way, for the sole purpose of making the latter desirable on the basis of sexual allusions or stimuli; articulate images and slogans within a variety of registers and a more modern conception of roles, with respect to both women and men, the stereotype being bilateral; refrain from proposing female images that are reductive either in terms of intelligence or because they are associated with limited, repetitive and segregating stereotypes; promote a diversification of female and male images that includes different cuts, proportions and ages without promoting a single type of image and without proposing an aesthetic canon that celebrates beauty as an absolute value'.

¹⁵¹ Romania, Law 229/2015 on the amendment of the Law 202/2002 regarding equal opportunities for women and men (*Legea 229/2015 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați*), Art.I, point 8.

¹⁵² Romania, Law 229/2015 on the amendment of the Law 202/2002 regarding equal opportunities for women and men (*Legea 229/2015 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați*), Art.I, point 4.

¹⁵³ Romania, NCCD, Decision No. 79 of 29.01.2019, para.44, available at <https://www.cncd.ro/wp-content/uploads/2021/01/Hotarare-79-2020-1.pdf>.

¹⁵⁴ Italy, Art. 23, par. 4 bis, of Decree No. 285/1992 (Traffic Code), as modified by art. 1, par. 1, lett. a-*quater*, n. 1, of Decree No. 121/2021, converted into Law No. 156/2021.

Across the national reports there is a clear lack of legislation that explicitly prohibits the use of gender stereotypes or harmful gendered content in advertising and the media. Indeed, the majority of the states reported that there were no legislative instruments that covered the issues in this thematic report. However, across the national reports there are some forms of legislation that seek to combat harmful gendered content and gender stereotypes in advertising and the media. **Spain** and **France** have sought to legislate on the issue through a gender-based violence prism, noting that gender stereotypes and harmful gendered content in advertising and the media are inextricably linked to violence against women. Making such a link indicates the gravity and harms that are entangled with sexist and gender stereotypical images and messages that appear in advertising and the media. The legislation in both states is bolstered by a self-regulatory organisations (Autocontrol and ARCOM) and ethical codes that proactively pursue harmful content in advertising. Designing a two-pronged approach to tackle the issue symbolises an impermeable standard that ought to be replicated in other states. The Nordic cluster of states, **Denmark, Estonia, Finland** and **Norway** have taken a different approach by including discriminatory or sexist advertising in their marketing and advertising legislation. There appears to be a much clearer assessment in these states as to what amounts to a harmful gender stereotype in advertising and the media. Norway, Estonia, Finland and Denmark set rather high standards in their legislative instruments, explicitly prohibiting sexist advertisements – the definition of which is comprehensive and includes messages and content that are in any way offensive, derogatory, objectifies, sexualises or treats men and women as mere sex objects. **Croatia, Iceland** and **Malta** have included discriminatory advertisements in their gender equality acts. This approach is more attenuated when compared to other forms of legislation in this section of the report and offer little guidance or assessment as to what amounts to harmful gender stereotyping or content in advertising and the media.

3.3 Enforcement bodies

Across the national reports, it is apparent that some states have supplemented or replaced national legislation with state regulatory bodies that explicitly interpret the law, regulate and observe harmful gendered content and gender stereotypes in advertising and the media (**Belgium, Croatia, Denmark, Finland, Norway, Spain, Romania**). State regulators vary from state to state, some are gender equality or non-discrimination bodies (**Croatia** and **Romania**) while others are exclusively advertising, marketing or consumer regulators with a subsidiary that regulates harmful gendered content (**Belgium, Denmark, Finland, Norway** and **Spain**). In almost all the national reports there is recognition of a body that upholds gender equality or non-discrimination, however this section foregrounds state or public bodies that explicitly regulate harmful gendered content or gender stereotypes in advertising and the media.

As was expressed in the previous section, **Spain's** legislative framework has spearheaded the tackling of harmful gendered content and gender stereotypes in advertising and the media through a gender-based violence prism. The Organic Law of 2004 (Comprehensive Protection against Gender-Based Violence) introduces both a public administrator and self-regulatory organisation to monitor compliance of the law and promote the self-regulation of advertising. The main public administrator, the Observatory of the Image of Women (previously more candidly named the Observatory of Sexist Advertising) regulates the use of sexist images across advertising, the media, the internet or any other form of educational, cultural or recreational

promotion and dissemination.¹⁵⁵ The objectives of the body are numerous but can, for the interests of this report, be reduced to the following: analyse the images and representations of women in media and advertising, assess whether these representations are sexist, deliver actions that can suppress the dissemination of gender stereotypical images, collect complaints from the general public (content that is considered sexist), monitor the general and current representation of women in media, take action to modify or withdraw the most harmful stereotypical advertising and media campaigns (i.e. illicit campaigns) and deliver training and awareness campaigns to reduce discriminatory representations of women in the media and advertising. Based on the sexist advertising element in the Organic Law of 2004, the Observatory can decide whether or not content is sexist or discriminatory based on clear criteria. The advert will be deemed sexist if, amongst other things, the content:

- justifies behaviours or attitudes that imply in any form violence against women;
- subordinates women with lesser capabilities, ridicules activities or values attributed to women, ridicules or devalues women in a humiliating way;
- uses and reduces women's bodies as exclusively a sexual object and passively at the service of men's sexuality and desire;
- uses women's bodies to capture attention or as an ornament that is unrelated to the product/service in the advert; or
- promotes models of beauty based on youth and/or an unrealistic body type.¹⁵⁶

Spain's legal expert notes that whilst the Observatory's approach to monitoring and establishing standards of assessment is to be applauded, some have argued that the law has its limitations and can be criticised for its generic wording which causes difficulties when prosecuting. In light of this, the legal expert notes that the law ought to be reviewed, and the regulation of that law redrafted to make it more effective.

Romania's National Council for Combating Discrimination (NCCD) and the National Audiovisual Council (online content) have broadly interpreted the Gender Equality Act which now includes explicitly the prohibition of gender stereotypes in advertising and media. In interpreting the law, the NCCD has reviewed images of women that are deemed discriminatory or sexist. In a 2019 ruling, the NCCD stated that an 'advertising campaign of Alka products aims to promote the products by associating them with images in which women are predominantly found, images accompanied by messages that clearly have a sexual undertone, promote a degrading and offensive image on women and affect the dignity of women by promoting sexism and their objectification'.¹⁵⁷ In addition to this, the NCCD assesses and defines harmful gendered content in advertisement through its case

¹⁵⁶ There is a more comprehensive list of the types of harmful gendered content and stereotypes that are covered by the observatory's remit: <https://www.inmujeres.gob.es/observatorios/observimg/home.htm>.

¹⁵⁷ Romania, NCCD, Decision No.79 of 29.01.2019, para.44, available at <https://www.cncd.ro/wp-content/uploads/2021/01/Hotarare-79-2020-1.pdf>.

law as the use of negative gender stereotypes,¹⁵⁸ objectification,¹⁵⁹ degrading treatment,¹⁶⁰ treating women as sexual objects.¹⁶¹ Both the NCCD and National Audiovisual Council have some powers, for example, the NCCD may punish the company that created the discriminatory advertisement and the company for which the advertisement was created.¹⁶² The National Audiovisual Council may ask the audiovisual platform to no longer run advertisements that are discriminatory on the ground of sex or that is affecting human dignity and public morals.¹⁶³ **Croatia's** Ombudsman for Gender Equality is the most significant public body that seeks to eliminate and prevent gender discrimination in all fields, including media and advertising. The Ombudsman is responsible for investigating cases involving sexism and gender stereotypes in advertising and media and receives complaints from the public or via NGOs.¹⁶⁴ Over the years, it has investigated cases involving sexism and gender stereotypes in advertising and media, acting either on behalf of the Ombudsman, complaints made by individuals or by NGOs and can issue non-binding recommendations to remove the harmful gendered content, which are usually complied with.¹⁶⁵ Other activities include increasing public awareness (which has led to increased complaints) writing annual reports and engaging with advertisers who realise that sexist content is 'bad for business'.¹⁶⁶ The annual reports of the Ombudsman come with a chapter explicitly detailing the work done around gender stereotypes, including public and NGO complaints, public awareness campaigns, recommendations and guidelines. In addition, the Ombudsperson issues public statements concerning specific issues or cases which are relevant for raising public awareness whenever particular circumstances so require. For example, in 2023 and 2024, it has issued several public statements concerning advertising campaigns that perpetuate harmful gender stereotypes and gender inequality. When assessing whether or not the content of an advert is discriminatory, or includes harmful gender stereotypes, the Ombudsman refers to some of the EU's soft law and policy detailed in section 2.7 of this report: European Parliament Resolution of 3 September 2008 on how marketing and advertising affect equality between women and men (2008/2038(INI)), the European Parliament resolution of 12 March 2013 on eliminating gender stereotypes in the EU (2012/2116(INI)), and the Council of Europe Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism. Similarly, **Denmark** transfers the legislative powers from the Marketing Practices Act to its public regulator, the Danish Consumer Ombudsman to interpret and monitor harmful

¹⁵⁸ Romania, NCCD, Decision No.332 of 10.06.2019, para.10, available at <https://www.cncd.ro/wp-content/uploads/2020/12/hotarare-332-19.pdf>. The advertisement consisted of a banner with an illustration of a woman with her legs spread out wide and the slogan: 'Always open'.

¹⁵⁹ Romania, NCCD, Decision no.113 of 07.02.2023, available at <https://www.cncd.ro/wp-content/uploads/2023/06/Hotarare-113-2023.pdf>. Women depicted as sexual objects in a commercial where they were posing in underwear or covered only by a white sheet in coffins, or suggesting they were engaging in sex with other women to advertise for funerary products.

¹⁶⁰ Romania, NCCD, Decision No.549 of 21.09.2022, available at <https://www.cncd.ro/wp-content/uploads/2023/01/hotarare-549-2022.pdf>. The idea of violence in a commercial whose characters are a man and a woman does not automatically qualify for harmful gendered content, the degrading aspect and the use of gender stereotypes must be present with the aim of positioning women as inferior to men. For example, the NCCD did not find discrimination in this case where the secretary (a woman) was to be punished by her boss (a man), because she forgot to fill the cartridge.

¹⁶¹ Romania, NCCD, Decision No.113 of 07.02.2023, available at <https://www.cncd.ro/wp-content/uploads/2023/06/Hotarare-113-2023.pdf>.

¹⁶² Romania, Government Ordinance No. 137/2000 regarding the prevention and sanctioning of all forms of discrimination (*Ordonanța Guvernului nr.137 din 31 august 2000 privind prevenirea și sancționarea tuturor formelor de discriminare*), Art.16, republished in *Official Journal* No. 166 of 7.3.2014.

¹⁶³ Romania, Law 504/2002 on Audiovisual (*Legea 504/2002 a audiovizualului*), Art.10, published in the *Official Journal* no.534 of 22.07.2002.

¹⁶⁴ See, e.g. Croatian Ombudsperson for Gender Equality (2024), *Annual Report for 2023*, pp. 158-172: <https://www.prs.hr/cms/post/1210>.

¹⁶⁵ See, e.g. Croatian Ombudsperson for Gender Equality (2024), *Annual Report for 2023*, pp. 158-172: <https://www.prs.hr/cms/post/1210>.

¹⁶⁶ See, e.g. Croatian Ombudsperson for Gender Equality (2024), *Annual Report for 2023*, p. 171: <https://www.prs.hr/cms/post/1210>.

gendered content and gender stereotypes. The Ombudsman's guidelines further define good marketing practices and provides a non-exhaustive list of examples where an advert might be considered to be sexist or discriminatory.¹⁶⁷ **Finland's** Consumer Protection Act transfers powers to the Consumer Ombudsman who monitors the legislation, and the Market Court has a mandate to decide cases concerning marketing that is contrary to good practice. According to the national legal expert, very few cases on harmful gendered content or gender stereotypes are brought before the Court.

Norway has two public bodies, the Consumer Protection Authority¹⁶⁸ and the Market Council¹⁶⁹ which are both regulated by the Marketing Control Act (MCA) and are the most significant bodies when it comes to harmful gendered content and gender stereotypes in advertising. If the Consumer Protection Authority concludes that content contravenes the provisions in the MCA, the Authority is to seek to persuade the trader to enter into a voluntary settlement to terminate the practice. If no voluntary settlement is reached, the Consumer Authority may submit the case to the Market Council for a decision. According to the MCA, the Market Council is to deal with cases submitted to it by the Authority. If the Authority decides not to submit a case to the Market Council, the case may be submitted by a trader or a consumer who is affected by the advertisement, or by a group of traders or consumers. In most cases, the Authority enters into a dialogue with the advertiser and the matter is solved without any sanctions. If voluntary settlement does not work, both the Consumer Authority and the Market Council may either impose a prohibition, an order or an enforcement penalty (fine) if they conclude that intervention is required. Section 42 of the Marketing Control Act enforces a penalty if the decision is breached. Decisions made by the Consumer Authority can be appealed through the Market Council. Thereafter, decisions made by the Market Council can be appealed in the district court. The Market Council issues decisions for cases that are in breach with the MCA. Most companies comply with the Authority's request to withdraw the advertisement in question, as was the case with the *Monkey's Bubble Waffle* ad¹⁷⁰ from 2020. If the company does not comply, the Authority can take the matter further to the Market Council. The Norwegian legal expert has identified a critique of the current arrangement of regulating sexist advertising and which body is better placed to challenge advertisers. In 2016 it was suggested by the Consumer Ombudsman (now the Consumer Authority) that sexist advertising ought to be regulated by the Equality Ombudsman as it is better equipped to deal with such claims and is better funded.¹⁷¹ Despite discussions, so far the matter has not been advanced, and the Authority and the Equality Ombudsman have not prioritised evaluation of the matter in recent years.

At present, discriminatory advertising is still dealt with by the Consumer Protection Authority in Norway, as it ultimately has the capacity and power to issue sanctions whereas the Equality Ombudsman cannot. Despite this, it is the legal expert's opinion that the Consumer Protection Authority does not always seem to have the capacity to prioritise cases on sexist advertising and only decides on a handful of cases each year.¹⁷² Moreover, whilst the Marketing Control Act and the two regulatory bodies have had success in combating certain types of sexist advertising (i.e. offensive, derogatory, objectifying adverts have been removed from the advertising

¹⁶⁷ The Danish Consumer Ombudsman (2012) [Guidelines on gender-related advertising](#).

¹⁶⁸ See: <https://www.forbrukertilsynet.no/english>.

¹⁶⁹ See: <https://www.klagenemndssekretariatet.no/markedsradet/om-oss>.

¹⁷⁰ See the ad here <https://www.nettavisen.no/livsstil/forbrukertilsynet-monky-s-bubble-waffle-med-klart-brudd-pa-markedsforingsloven/s/12-95-3424007868>.

¹⁷¹ Swedish Women Lobby (2016) 'Sexist advertisement in the Nordic Countries': <https://sverigeskvinnoorganisationer.se/wp-content/uploads/2020/05/Sexist-advertisement-in-the-Nordic-countries.pdf>.

¹⁷² Since 2020 the Authority has received around 25 cases on 'gender decimation cases' and of these cases only a few have been considered by the authority (email from the Consumer Authority of 1 August 2024).

landscape in Norway) some adverts slip through the regulatory net. Adverts that portray gender stereotypes that are not considered degrading¹⁷³ are often not caught by the act and therefore not by the regulators. This can be compared to more overtly degrading adverts,¹⁷⁴ such as an advert where alcoholic drinks were placed between a woman's breasts, which are caught by the Authority.

Example of Good Practice - Wallonia- Brussels

In 2022, **Belgium's** audiovisual media regulatory body, the Conseil Supérieur de l'Audiovisuel (CSA) published an ethical code of conduct on sexist, hypersexualised advertising and advertising based on gender stereotypes as part of the implementation of the Women's Rights Plan 2020-2024 (Government of Wallonia-Brussels Federation) and provided a practical guide that accompanies the amendment to the code.¹⁷⁵ The CSA code provides a helpful glossary and typology of sexism and sexist stereotypes which advertisers should avoid. There is also a practical guide available that illustrates these definitions.¹⁷⁶ The numerous definitions in the code are based on the recommendations of the Council of Europe: gender assignment, hypersexualisation, intersectionality, objectification, idealised representation of the body, sex, sexism, stereotypes, sexist stereotypes, gender stereotypes, physical, moral or psychological, sexual, verbal or economic violence, gender-based violence against women and domestic violence. Altogether the CSA code and its guidelines are comprehensive compared to most other countries. The code not only defines gender stereotypes (including sexualisation, objectification, and idealised representation), but covers all types of advertising (online, offline – private/public sphere) and prohibits sexist advertising, which is defined as:

'Any act, gesture, visual representation, oral or written comment, practice or behaviour based on the idea that a person or group of persons is inferior because of their sex, committed in the public or private sphere, online or offline, with the purpose or effect of: harming the dignity or inherent rights of a person or group of persons; or causing physical, sexual, psychological or socioeconomic harm or suffering to a person or group of persons; or creating an intimidating, hostile, degrading, humiliating or offensive environment; or hindering the emancipation and full realisation of the human rights of any person or group of persons; or maintaining or reinforcing gender stereotypes.'¹⁷⁷

The presence of a state-mandated enforcement body signifies the sincerity of the Member State's ambition to regulate gender stereotypes and harmful content in advertising and media. This section has shown that these bodies are often tasked with monitoring, assessing, and ensuring compliance with established norms and regulations aimed at promoting gender equality and preventing discriminatory portrayals in media content. The

¹⁷³ See for example, Case MR-2013-1116 *Synsam* where a sunglasses advert depicts a man at a poolside glancing at a woman's legs and high heels. The authority found this not to breach the legislation and that the advert should be read in a wider context that it is quite natural for a man to behave in this way. See further: Kosunen, N., Asikainen, A.R., Gústafsdóttir, G., Haggrén, H. and Lång, K (2017). *Regulation of gender-discriminatory advertising in the Nordic countries*. Nordic Council of Ministers p.79.

¹⁷⁴ Case *Ballinciaga* (23/11988).

¹⁷⁵ CSA, Code of conduct on hypersexualized, sexist and gender stereotyped advertising: <https://www.csa.be/document/codepubssexistes/>.

¹⁷⁶ CSA (2023) *Genre & publicité. Le guide pratique pour des publicités non sexistes*, 2023. Accessible in French at https://www.csa.be/wp-content/uploads/2023/11/GENRE_ET_PUB_CSA_GuidePratique.pdf.

¹⁷⁷ See the CSA's ethical code's guidelines: CSA (2023) *Genre & publicité. Le guide pratique pour des publicités non sexistes*.

existence of these agencies indicates a recognition by the state of the detrimental effects that gendered stereotypes and harmful representations can have on societal norms and individual behaviours.

For example, as mentioned in section 3.2, **Spain's** legislative framework is strengthened by a public oversight mechanism, the Observatory of the Image of Women, which functions as an additional safeguard, providing a secondary layer of scrutiny that helps to ensure media representations align with gender equality principles. This approach not only addresses immediate concerns about harmful content but also aligns with the broader goal of reducing gender-based violence, highlighting the importance of having a comprehensive regulatory strategy that links media representation to societal outcomes.

Other enforcement bodies such as those in **Romania** and **Croatia** which emanate from gender equality acts, show the importance of having legal redress via an ombudsman where the public can file a complaint. As is seen in the Nordic cluster of states (**Denmark, Finland** and **Norway**) transferring legislative powers to a state regulator can often mean that some types of advertising or media content 'slip through the net'.

3.4 Self-regulatory organisations and ethical codes

Across the national reports, self-regulation appears to be the most prevalent way to address harmful gendered content and tackle gender stereotypes in advertising and the media (**Austria, Belgium, Cyprus, Czechia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden**, the **Netherlands** and **UK**).¹⁷⁸ Self-regulatory organisations (SROs) are relatively diverse in character and reflect the unique legal, cultural, and market contexts from some of the states in this thematic report. These bodies co-operate with the European Advertising Standards Alliance (EASA) to ensure that advertising across Europe adheres to coherent ethical standards, particularly around harmful gendered content, gender stereotypes and messages aimed at vulnerable populations such as children.¹⁷⁹ SROs follow the ICC Code of Advertising and Marketing Communication Practice, which sets the international standard for honest and responsible advertising.¹⁸⁰ The ICC's advertising code provides a set of guidelines that SROs loosely follow. For the purposes of this thematic report and the issues within it, the main areas are Article 2 (social responsibility), which stipulates that advertisers should not discriminate on the grounds of sex and that adverts avoid harmful stereotypes and objectification.¹⁸¹ Article 3 (decency) states that advertisers should avoid offensive content and respect social norms. Typically, SROs are industry-led organisations intended to ensure that advertising practices align with cultural and ethical standards but also to ensure that advertisers comply with national laws, guidelines and EU law (i.e. AVMSD, DSA). SROs are distinct from the public bodies outlined in the previous section and are independent from government or parliamentary control. Some SROs, such as the UK's Advertising Standards Authority (ASA), are well established dating back to the 1960s and have developed, in a piecemeal way, a wide-ranging monitoring and enforcement ethical

¹⁷⁸ According to the European Advertising Standards Alliance there are 27 active members across Europe, 23 of which are included in [organisations/](#).

¹⁷⁹ See for example The European Advertising Standards Alliance which has 27 active Members across Europe: <https://www.easa-alliance.org/about-ad-standards/the-benefits/>.

¹⁸⁰ A consolidated version of the ICC advertising code can be found on its website: <https://iccwbo.org/publication/advertising-and-marketing-communication-practice-consolidated-icc-code/>.

¹⁸¹ According to the ICC, 'Stereotyping is the practice of referring to or playing on an oversimplified and untrue notion of a particular group, sometimes employing archetypal traits. Objectification means representing people not as persons or individuals but as objects of sexual or other templating character'.

code for advertising. An SRO will often produce a code of conduct or ethical code that advertisers and traders must comply with. The codes vary from state to state reflecting the legal-cultural-social diversity and in some way or another will include provisions that seek to tackle harmful gendered content or gender stereotypes in advertising and the media. The codes included in this report reflect some of the zemiological language used in the legislative instruments in the previous section, for example, content may be perceived as harmful if it is 'offensive', 'derogatory', or includes the 'objectification', 'sexualisation' of women and girls, or promotes unrealistic body types, beauty standards or indeed features negative, harmful or traditional gender stereotypes or reductive gender roles. Some SROs are, by design, inclined to rely on consumer and NGO complaint mechanisms, where both can report harmful or problematic content, while others focus on a 'pre-clearance' or 'pre-screening' mechanisms where content is checked by the SRO before it is placed in the public domain. Complaints are often reviewed by the SRO, which then decides either by a jury of experts or industry insiders whether the advertisement violates their codes on gender representation. If there is a violation of the ethical code then the SRO has various powers ranging from cease-and-desist orders, asking the advertiser to withdraw/modify the advert, to the ability to 'name and shame' advertisers through public rulings, or to impose financial sanctions (fines, damages). Like the public enforcement bodies, SROs deliver education and training for advertisers on how to avoid harmful content and gender stereotypes and awareness campaigns for consumers on how to spot a harmful advert and how to complain. In addition to their ethical codes, SROs also issue guidelines; these are often on a specific topic such as body image or increasingly, the influencer market, and are designed to inform and offer support to advertisers – or increasingly influencers – on how to create non-discriminatory or harmful gendered content.

3.4.1 The benefits and burdens of self-regulatory organisations

Self-regulatory organisations have an abundance of beneficial qualities; they are malleable and can react to the elasticity of the advertising and media market but also to the cultural and societal shifts of their country. Reactions to these shifts are often much quicker (and easier) than those prompted by legislation, which can take time to formulate and for national Parliaments to approve. Amendments to the ethical codes – or the issuing of new guidelines – can take place fairly quickly, bolstering the malleability of the SRO's character. SROs are also swift when it comes to responding to the public mood or to an illicit media campaign or particular advert. However, SROs (and their codes) are also problematic in terms of their framework, content and delivery. They are sometimes reactive rather than proactive, relying on individual complaints (or NGOs) rather than monitoring adverts. Some SROs lack the power to enforce national legislation or impose financial fines on advertisers that breach the ethical codes. Rather than fines, these SROs rely on pillory, good will, voluntary compliance or at worst, reputational damage. This makes it hard for SROs to prevent large, elusive companies or illicit campaigns from continuing repeated problematic practices. As SROs are typically funded by industry and voluntary, there is an obvious risk of a conflict of interest, lack of objective oversight and a case of 'who's watching the watchman'. Whilst SROs broadly follow the ICC's advertising code, there are inevitable inconsistencies when the national ethical codes are drafted and applied in each state. Such inconsistencies can lead to divergent practices with some states setting a higher regulatory standard and stricter rules on what is deemed offensive, harmful or sexist content, whereas other states – with more lenient codes – will fail to capture such harmful material. This may lead to an unequal level of gender equality protection for European citizens. More explicitly, some SROs have adopted clear rules and guidelines on harmful gendered content in advertising and media, providing illustrative examples and broadening the language that is required to express the depth of the harm (i.e. objectification, sexualisation, toxic influencer). This all-encompassing approach to

self-regulation may be due to the state's lack of legislation on the issue (**Slovakia, Sweden, UK**), or because the state wants to set a gold standard, allowing for both the legislation and self-regulation to catch the harmful content (**Finland, Norway, Spain**). Finally, as is the case across most of the national reports, SROs are struggling to adapt to the new forms of advertising on social media and digital platforms such as the influencer market and advertising (however there are some good examples of good practice in **Austria** and **Norway**, targeted advertising and algorithmic bias). SROs are only now coming to terms with these new types of adverts and the platforms on which they disseminate information, therefore making it easier for harmful gendered content, gender stereotypes and sexist advertising to slip through the net.

3.4.2 National ethical codes

The majority of the national reports indicated that there is an SRO within their legislative framework to tackle harmful gendered content in advertising and the media. In some instances, such as **Spain** (Autocontrol) and **France** (ARPP), the SRO is seen as an auxiliary facet of the legislative instrument and designed to tackle harmful content, in other cases, such as **Germany** (Deutscher Werberat) and the **UK** (Advertising Standards Authority) the SRO exists due to a lack of legislation – or if there are enforcement issues when previous attempts are made by government to legislate. This is the case in **Sweden** (Reklamombudsmannen), which has struggled to pass a legislative instrument due to the country's constitution, which foregrounds the fundamental principle of freedom of expression. Each of the SROs have interpreted the ICC advertising code and have within their ethical codes some basic rules on social responsibility and decency, whereas others have specifically sought to tackle harmful gendered content and gender stereotypes in advertising (**Cyprus, France**) sexualisation (**Austria, Germany**) and objectification (**Poland, Slovakia**). In other states the SRO has not adopted a code or rule that tackles harmful gendered content and, in some instances, there is no functioning SRO at all (**Czechia, Estonia, Iceland, Liechtenstein, Malta, Portugal** and **Slovenia**).

This section brings together the SROs that have gone above and beyond the ICC advertising code benchmark by adopting ethical codes that tackle the issues on which this thematic report is based. This includes SROs that have developed rules explicitly designed to capture sexist advertising with a lexicon that spans sexualisation, objectification, gender stereotypes, body image, etc. The Code of Conduct on Communication developed by the **Cyprus** Advertising Regulation Organisation is a good example of an SRO setting guidelines and principles on the prohibition of gender stereotypes in advertising and the media.¹⁸² The Cyprus SRO along with the national gender equality body provides definitions of both gender stereotypes and harmful gendered content. Accordingly, adverts should not portray women and men in traditional roles, professions or behaviours in ways that make this depiction seem innate or natural, nor should adverts demean individuals that do not conform (or put pressure on individuals to conform) to gender norms. Tackling gender stereotypes was prioritised by **France's** self-regulation organisation ARPP during its overhaul and transition to ARCOM.¹⁸³ The regulation of gender stereotypes and harmful gendered content are now covered by the public body ARCOM.¹⁸⁴ The recommendations made by ARPP suggest that adverts should refrain from using gender stereotypes in advertising and that includes reducing women to objects, endorsing ideas of inferiority based on their gender,

¹⁸² Cyprus Advertising Regulation Organisation: <https://fed.org.cy/el/kodikas-info>.

¹⁸³ Recommendations of ARPP (2017) <https://www.arpp.org/nous-consulter/regles/regles-de-deontologie/image-et-respect-de-la-personne/>.

¹⁸⁴ France national report.

or content that promotes sexism.¹⁸⁵ Similarly in **Germany**, the national SRO (Werberat) has begun to regulate the use of sexist advertisements since 2014 through its code of conduct under ‘degrading’ portrayal of gender and violations of human dignity.¹⁸⁶ By framing sexist advertising as degrading, the German ethical code distinguishes between ‘empirical realities and prescriptive stereotypes’ meaning that adverts that suggest that one gender exclusively carries out a particular task is problematic. The code’s guidelines also identify amongst other things, particular cases, for example slogans or images that ridicule a gender (i.e. erectile dysfunction, the insignificance or worthlessness of older women), the objectification of women’s bodies, or reduce a gender to their sexuality or sexual availability; however, adverts that depict scantily dressed women/body parts are more acceptable (i.e. weight loss, gym advertising). **Slovakia’s** SRO Rada Pre Reklam ethical code of conduct does not substitute the legal regulation of advertising but acts as a supplementary safety net as well as providing further ethical standards.¹⁸⁷ Harmful gendered content and gender stereotypes are covered in the code which prohibits discrimination based on sex and promotes human dignity (Article 5). Article 11(1) of the code prohibits sexist advertising including degrading depictions of women, the use of the body as a mere sexual object and the use of gender stereotypes. However, there is little scope within the code for what constitutes harmful gendered content. **Sweden’s** constitution foregrounds the principle of freedom of expression, and therefore any legislation that seeks to tackling tackle harmful gendered content and gender stereotypes in advertising has been impeded over the last 30 years. The ramifications of this are that Sweden relies solely on a self-regulatory framework when it comes to tackling harmful gendered content and gender stereotypes in advertising and the media. The Swedish regulator (Reklamombudsmannen)¹⁸⁸ applies the ICC rule on social responsibility when regulating harmful gendered content and gender stereotypes in advertising. When deciding whether an advert has breached an SRO rule, the Reklamombudsmannen identifies three areas. First, does the advert objectify (i.e. portray individuals as sex objects) – this can include the position of the body, the clothes, environment and whether or not the portrayal has anything to do with the product or service. Secondly, does the advert contain within it gender stereotypes, for example when an advert portrays either gender in a stereotypical role or in a degrading way. Thirdly, is the advert manifestly sexist or degrading in any way that it may breach the ICC advertising code. Similarly, the **UK** relies entirely on a self-regulatory system that has in recent years been revamped to include harmful gendered content and gender stereotypes.¹⁸⁹ The Advertising Standards Authority’s codes (the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP)) now explicitly prohibit the use of gender stereotypes in all marketing communications. In 2019, the new rules on gender stereotypes in advertising were introduced and more recently in 2022, supplemented with additional guidelines to underscore what harmful gender stereotypes are *not* – adverts that feature ‘glamorous, attractive, successful, aspirational or healthy people or lifestyles; one gender only, including in ads for products developed for and aimed at one gender; or gender stereotypes (when they are used) as a means to challenge their negative effects.’¹⁹⁰ The guidelines also identify what potentially

¹⁸⁵ Recommendations of ARPP (2017) <https://www.arpp.org/nous-consulter/regles/regles-de-deontologie/image-et-respect-de-la-personne/>.

¹⁸⁶ Deutscher Werberat (2014), *Verhaltensregeln des Deutschen Werberats gegen Herabwürdigung und Diskriminierung von Personen*. Available in German at: https://werberat.de/wp-content/uploads/2023/06/dwr_flyer_diskriminierung_2019.pdf.

¹⁸⁷ Available in Slovak at: <https://rpr.sk/sk/eticky-kodex/>.

¹⁸⁸ See Swedish SRO Reklamombudsmannen code: <https://reklamombudsmannen.org/en/>.

¹⁸⁹ UK, Advertising Standards Authority, (undated) *Depictions, Perceptions and Harm*, <https://www.asa.org.uk/static/uploaded/e06425f9-2f9f-44c3-ae6ebd5902686d44.pdf>.

¹⁹⁰ ASA, (undated) ‘Advertising guidance on depicting gender stereotypes’, <https://www.asa.org.uk/static/6c98e678-8eb7-4f9f-8e5d99491382c665/guidance-on-depicting-gender-stereotypes.pdf>, p. 2.

harmful stereotypes are and provide scenarios/examples that are likely to be perceived as problematic.¹⁹¹ Problematic gender stereotypes are 'attributes or behaviours that are usually associated to a specific gender'. The new rule does not ban all forms of gender stereotypes per se, only those that have problematic characteristics or roles that are always uniquely associated with one gender; the only options available to one gender; or never carried out or displayed by one gender (see image 1). In **Hungary**, the SRO (Önszabályozó Reklám Testület) and its ethical code¹⁹² prohibits amongst other things, advertising that discriminates based on sex, objectifies the body, reduces persons to sexual objects or depicts individuals as sexually available.¹⁹³



Image 1: Philadelphia advert. The advert was one of the first adverts to be banned under the UK's ASA guidelines. The advert suggested that men cannot look after children properly.

¹⁹¹ See ASA website: <https://www.asa.org.uk/advice-online/harm-and-offence-gender-stereotypes.html>.

¹⁹² See: Az Önszabályozó Reklám Testület és a Nemzeti Média- és Hírközlési Hatóság Médiatelepítői Hivatala által, médiaigazgatási feladat ellátására 2011. július 6. napján kötött közigazgatási szerződés 1. számú melléklete az önszabályozó reklám testület Társzabályozási Magatartási Kódexe.

¹⁹³ Hungarian Advertising Code of Ethics (Magyar Reklámetikai Kódex), adopted jointly by the Hungarian Advertising Association and the Advertising Self-Regulatory Board, in effect from 30 June 2023. The English version of the code is available: https://www.ort.hu/wp-content/uploads/2024/05/hungarian_advertising_code_of_ethics.pdf.

Example of Good Practice - Austria

In **Austria**, the SRO (Österreichischer Werberat) has established an anti-sexism board, which is composed of renowned gender and non-discrimination experts and is consulted when investigating complaints that include gender discrimination. The board's remit is wide when compared to other similar SROs and covers distinctive aspects of sexist advertising such as adverts that promote an ideal body type, advertising that disseminates unhealthy behaviours connected to eating disorders (especially anorexia, bulimia) and adverts that depict psychological and physical harm (i.e. stalking, cyber mobbing and bullying). The SRO code has a specific rule ('special rules of conduct') on sexist advertisements and the definition is again fairly wide in comparison to other states.¹⁹⁴ Sexist advertising includes, depicting any gender in a pejorative, derogative or deriding way, depicting subjugation, exploitation, promoting any form of violence or that violence should be tolerated. Also included are adverts that devalue individuals that do not conform to 'mainstream' binary expectations of gender, i.e. portrayals of transgender, non-binary or intersex. The code also covers similar areas to those mentioned already in this section: reducing the individual in the advert to a mere sexual object at the centre of the ad and over-sexualisation that is irrelevant to the product or service.

As with state enforcement bodies, SROs play a significant role in providing an additional layer of oversight when monitoring and addressing harmful gender stereotypes and gendered content in advertising and media. SROs operate through industry-driven ethical codes of conduct or guidelines ensuring that advertising and media content adheres to ICC rules of decency and social responsibility. By reviewing and assessing complaints, they help ensure that media content adheres to standards that prevent the perpetuation of gender-based discrimination.

Self-regulatory bodies, such as **Sweden's** *Reklamombudsmannen* and the **UK's** ASA, function as mechanisms that, in part, substitute for formal legislative instruments in the combating of gender stereotypes and harmful gendered content in advertising and media. Although Sweden and the UK are often regarded as exemplary models of self-regulation, these organisations operate without the binding sanctioning powers typical of Government bodies. Their effectiveness relies on industry adherence to voluntary codes of conduct rather than legal mandates, limiting their ability to impose direct sanctions. Nevertheless, these self-regulatory bodies exert significant influence on industry practices by setting ethical standards, raising awareness of the harmful effects of gender stereotypes, and providing a forum for public accountability. Through their work, they contribute to the broader societal goal of mitigating gender-based discrimination in media representations, despite the absence of legal enforcement powers.

Some self-regulatory organisations are clearly spearheading the issues that this thematic report seeks to address and there are lessons to be learned in how their ethical codes are defining gender stereotypes and harmful gendered content but also how they are pushing the margins by identifying new types of harm, for

¹⁹⁴ See, Austria, Österreichischer Werberat Special Code on Sexist Advertisements https://www.werberat.at/show_4274.aspx.

examples toxic influencers, hyper- masculinity, the mocking of non-conforming identities and pro-eating disorder/body dysmorphia content.

3.4.1 Harmful gendered content and the influencer market

The influencer market featured frequently in the country reports and numerous SROs have in recent years amended their ethical codes to reflect how influencers ought to conduct themselves on social media and digital platforms (**Austria, Cyprus, Denmark, Germany, Greece, Netherlands, Norway** and **Slovakia**). In general, the influencer market is regulated by SROs as they seek to ensure that influencers are transparent, (sponsorships/endorsements), are honest and not misleading, socially responsible (in particular for younger audiences), show age appropriate content, and have clear ethical boundaries such as ensuring unhealthy or risky lifestyles are not promoted (i.e. eating disorders, unproven medical treatments (such as weight loss pharmaceuticals), unhealthy diets and harmful or unrealistic beauty standards). In the country reports, the legal experts indicated that some SROs have begun to regulate some of the aforementioned content. The **Austrian** SRO has a specific rule for the influencer market and according to the rule, influencer marketing must, amongst other things, portray realistic body types and avoid using images (i.e. selfies) that propagate behaviours or promote a body type/image that is unhealthy or connected in any way to promoting eating disorders, an unhealthy or risky lifestyle.¹⁹⁵ Moreover, influencers must refrain from physical or verbal forms of violence or threats including humorous forms of violence such as ‘pranking’. In both **Cyprus** and **Denmark**, vague guidelines have been issued to influencers but not specifically on harmful gendered content. In **Cyprus**, the change to the advertising regulatory code in 2020 was intended to be media neutral and therefore aimed at the influencer market as much as other forms of advertising. The new code seeks to create an advertising culture free of gender stereotypes and harmful content. In **Denmark**, the influencer market trade association *Kreatiitet og Kommunikation* (Creativity and Communication) have adopted guidelines¹⁹⁶ for its members ensuring that ‘Marketing communications should respect human dignity and should not incite or condone any form of discrimination, including that based upon ethnic or national origin, religion, gender, age, disability or sexual orientation’. In **Greece**, the SRO (Communication Control Board) updated its code in 2023 to ensure that it applies to influencers (including vloggers, bloggers) when targeting vulnerable groups such as children and teenagers. The code does not quite cover harmful gendered content and stereotypes but instead follows the general rules conveyed in the ICC advertising code (honesty, transparency, social responsibility etc).¹⁹⁷ In the **Netherlands**, the SRO (Stichting Reclame Code) has extended the advertising code to content creators and influencers on social media platforms. The Dutch Media Act confers powers on the SRO and stipulates that all media organisations and individuals must join the Advertising Code and are obliged to comply with the Dutch Advertising Code.¹⁹⁸ Embedded within the code is the Advertising Code for Social Media & Influencer Marketing, which states that ‘Social Media is understood to mean online platforms on which users generate their own content and interaction is possible between the users, such as YouTube, Facebook, Instagram and TikTok.’ If there is advertising via social media aimed at children, the Children’s and Youth Advertising Code applies in addition to the Advertising Code for Social Media & Influencer Marketing and the Dutch Advertising Code. Despite a clear intention to grapple with influencer and content creators’ output, the SRO is fairly limited in its

¹⁹⁵ Austria, Österreichischer Werberat basic code 1.8 <https://www.werberat.at/Influencer.aspx>.

¹⁹⁶ See: <https://www.dmjx.dk/uddannelser/kreativ-kommunikation>.

¹⁹⁷ See Greece’s advertising code from the Communication Control Board: <https://www.see.gr/%cf%83-%ce%b5-%ce%b5/>.

¹⁹⁸ Netherlands, Media Act, Article 2.92(1) and 3.6(1). Available at: <https://wetten.overheid.nl/BWBR0025028/2020-04-01>.

powers and there is no specific rule within the code that tackles harmful gendered content and gender stereotypes in advertising and media.

Examples of Good Practice – Norway and Slovakia

In Norway, a self-regulatory committee has been established by the advertising industry to specifically regulate the influencer market. The target of the Committee are those influencers that operate on digital platforms and social media and have a wide reach. The committee 'FIM' is made up of the influencer market's various organisations and representatives regulate how influencers conduct themselves online.¹⁹⁹ According to the legal expert, the remit of the committee covers influencers as well as the networks and advertisers and all members that sign up are bound by the code. Those that do not wish to sign up can still follow the code, however they are not granted a certificate or emblem and therefore not immediately recognised by the audience. The committee's code states that influencers should refrain from promoting certain goods and services that include messages that may lead to dissatisfaction with the body or appearance of children and young adults. The code is applied to influencers, and those especially involved with certain goods and services such as cosmetic and beauty products, dietary medical supplements (i.e. weight loss) and similar products. The committee has issued several rulings whereby influencers have breached the code, for example in *Sofie Karlstad og Norisma*,²⁰⁰ where an influencer advertised for dietary supplement 'Sunny Bears' beta-carotene wearing a bikini (See image 2). The Committee stated that the influencer had an online profile and a campaign in which they appear stripped down to a bikini and therefore focused heavily on the body, so much so that it could objectively 'create body pressure for youth'. The influencer had many young followers, and therefore had to follow due diligence when posting and to exhibit extra responsibility and accountability for their posts. In several cases the Committee highlighted that the influencers in question had many young followers and must therefore be aware of their power to influence young people. The effectiveness of the FIM Committee is however unclear since it does not have a mandate to impose sanctions. Moreover, some influencers/product owners comply with its decisions whilst other do not respond to the Committee's decisions.

¹⁹⁹ See FIM's website <https://fim.as/>.

²⁰⁰ See decision from the FIM Committee <https://fim.as/62559-Norisma-og-influencer-Sofie-Karlstad-felt-i-Fim>.



Figure 2: Advert featuring former Paradise Hotel participant Sofie Karlstad promoting 'Sunny Bears' for the company Norisma. The advert was found to have violated FIM's influencer advertising guideline.

Example of Good Practice - Slovakia

Slovakia's SRO now includes a specific rule and code of conduct for influencers²⁰¹ and was adopted by the IAB Slovakia.²⁰² The aim of the code is to create some basic ethical standards, guidelines and support for influencers and content creators that operate on digital platforms and social media. The IAB is a self-regulatory initiative and ensures that influencers' advertising and media content is ethical and responsible. Within the code there are numerous recommendations for influencers with topics, themes, images and ideas that ought to be avoided, for example, avoid socially harmful expressions that may breach human dignity, or abuse the trust of children (i.e. promoting goods and services that may endanger physical or mental health or moral development).

²⁰¹ Available in Slovak at: https://kodexinfluencermarketingu.sk/wp-content/uploads/2022/09/KODEX_INFLUENCER_MARKETINGU_final.pdf.

²⁰² Interactive Advertising Bureau Slovakia (IAB Slovakia) is a partnership of Slovak companies operating in internet and advertising, established in 2005. The mission of the IAB is to provide standardisation of ethical and legal rules for internet advertising, support the development of the internet as an advertising medium, ensure the internet's professionalisation as an advertising medium by presenting solid data on visitors to and the demographical structure of Slovak internet media. Available in English at: <https://iabeuropa.eu/directory/iab-slovakia/>.

3.5 Algorithmic, targeted or personalised advertising

As discussed in the Chapter 1 of this report, the role that algorithmic advertising (also previously referred to as ‘targeted’ or ‘personalised’ advertising) plays in perpetuating harmful gendered content and gender stereotypes in advertising and the media is a growing concern. At the EU level there is very little comprehensive law that explicitly targets this issue, however, there are several legislative initiatives that address the broader context of algorithmic bias and discrimination, including in advertising. These regulations aim to promote fairness, transparency, and non-discrimination, which indirectly affects how gender stereotypes are handled in algorithmic advertising. The Digital Services Act (DSA) is aimed at creating a safer and more transparent online environment across the EU. In doing so, it addresses algorithmic bias, transparency and accountability, particularly for large online platforms that use algorithmic advertising. However, the DSA only includes gender-based violence as part of its risk assessment²⁰³ and therefore, there are no measures in place to tackle gendered harmful content or gender stereotypes in advertising and the media. The General Data Protection Regulation (GDPR) provides users with the right to object to automated decision making (including algorithmic advertising) if they feel that these decisions are harmful, discriminatory or disproportionately target a particular gender with stereotypical content. Finally, the current EU Gender Equality Strategy (2020-2025) calls for better regulation of the digital environment and recognises the role that algorithmic bias (including algorithmic advertising) can play in reinforcing gender stereotypes in advertising and media. This section of the report focuses on states that have begun to integrate legislative instruments or guidelines that tackle the use the role algorithms play in reinforcing gender stereotypes and harmful gendered content in advertising and the media. To begin with, there are some states that have begun initiating legislation that in one way or another regulates algorithmic advertising (**Spain, Ireland and Malta**).

At the time of writing, **Spain** has no specific legislation that prevents the dissemination of harmful gendered content or gender stereotypes in algorithmic advertising, however the legal expert has identified pending legislation that covers gender equality, non-discrimination within advertising and AI. The recent Spanish Royal Decree (729/2023) establishes a Spanish Agency for the Supervision of AI.²⁰⁴ Amongst its provisions, Article 4(1) provides that the responsibility of the Agency is the ‘supervision, advice, sensitising and training activities provided to public and private entities in their implementation of national and EU laws on the adequate use of AI, in particular algorithms’. Among the Spanish Agency’s objectives is to ‘eliminate or reduce the risks for integrity, privacy, equal treatment and non-discrimination, particularly between women and men, and fundamental rights that might be affected by the wrongful use of these systems [AI]’.²⁰⁵ The competencies of the Agency include the support in development and use of AI systems with a gender-sensitive perspective, and the promotion of impact assessments to identify discriminatory biases (on all grounds protected by the Spanish legal system), with the aim of ‘eliminating discriminatory biases of any kind, in particular, gender biases and ethnic-racial biases’.²⁰⁶ Moreover, Article 3(a) of Law 34/1988 on advertising and Article 124(2) of Law 13/2022 on Audiovisual Communication contain specific provisions on advertising of products for minors (e.g.

²⁰³ Article 34(1)(d) states: any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person’s physical and mental wellbeing.

²⁰⁴ Spain, Royal Decree 729/2023 that approves the Statute of the Spanish Supervisory Agency of Artificial Intelligence (*Real Decreto 729/2023 por el que se aprueba el Estatuto de la Agencia Española de Supervisión de la Inteligencia Artificial*), 22 August 2023, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-18911.

²⁰⁵ Spain, Royal Decree 729/2023, Article 4(2).

²⁰⁶ Spain, Royal Decree 729/2023, Articles 4(1)-(10).

toys). Law 13/2022 prohibits the use of data on minors for commercial purposes, such as direct merchandising, profiling or behavioural targeted advertising. There is also pending legislation that covers AI and algorithmic advertising in **Ireland**. In 2023, the submission of the Irish Human Rights and Equality Commission on the review of the Equality Acts refers to a number of key issues that will be reviewed ‘in order to achieve comprehensive, fit for purpose equality legislation that promotes equality and combats discrimination into the future’.²⁰⁷ Amongst these key issues are AI, algorithmic discrimination and the digital divide in the access to digital technology and the potential expansion of the Human Rights and Equality Commission’s powers of enforcement regarding discriminatory advertising.²⁰⁸ The legal expert notes that at present the Commission’s review of the Equality Acts has not resulted in any draft legislation which is due, in part, to the forthcoming general election and formation of a new Government. In **Malta** a similar initiative has been introduced through the Ethical Artificial Intelligence Framework. The Maltese framework aims to ensure that the development of AI is ethically aligned, socially responsible and transparent.²⁰⁹ One of the key objectives of the framework is fairness and the strategy states that development, use and operation of AI systems must be fair. The collection of data as well as design and development processes should involve diverse individuals that represent likely end users and other affected groups. The objective entails that AI systems should not (directly or indirectly) produce discriminatory or biased outcomes or increase biases and inequalities. Another important aspect mentioned is that the end user should have freedom of choice and not be deceived and that there must be clear processes to ensure that a human is held accountable for the operation of an AI system. Moreover, accessible complaints and resolution processes should be implemented to ensure effective redress for individuals harmed by AI systems.²¹⁰ **Estonia** has recently cancelled a proposed regulation of algorithmic systems (AI Regulation Intent) due to the forthcoming EU legislation on AI. However, Article 6(6)(3) of the draft of the Act on Gender Equality and Equal Opportunities²¹¹ provides a definition of algorithmic discrimination, where decisions about an individual are made partially or entirely based on outputs generated by an automated system, causing or contributing to unjust differential treatment of individuals or adversely affecting an individual based on a protected characteristic.

Recent **German** legislation (*Medienstaatsvertrag* - Interstate Media Treaty, October 2024)²¹² provides a legal framework that governs media services, including broadcasting and online platforms. In terms of algorithmic advertising, the new law prohibits discrimination and encourages transparency in online media such as video-sharing platforms (i.e. YouTube, TikTok and Instagram) that are determined by algorithms. As such, the new law prohibits discrimination (Section 8) and encourages transparency to ensure a diverse range of opinions in two ways: the criteria to decide on the access of content to a media intermediary and on its whereabouts, the central criteria for aggregation, selection and presentation of content and their weighting, including information on the functioning of the algorithms used in understandable language. The *Medienstaatsvertrag* emphasises that platforms using algorithms for content curation or advertising must ensure transparency. Digital platforms including social

²⁰⁷ See, Irish Human Rights and Equality Commission (2023) ‘Submission on the review of the equality acts’, July 2023 pp. 16 and 17. ²⁰⁸ Irish Human Rights and Equality Commission (2023) ‘Submission on the review of the equality acts’.

²⁰⁹ See: Artificial Intelligence Strategy and Vision for AI in Malta 2030 <https://www.mdia.gov.mt/malta-ai-strategy/>.

²¹⁰ See: https://malta.ai/wp-content/uploads/2019/10/Malta_Towards_Ethical_and_Trustworthy_AI_vFINAL.pdf.

²¹¹ The draft of the Act on Gender Equality and Equal Opportunities was submitted for consultation and comment on 23 May 2024. Source: File No. 24-0529/01, eeinoud.valitsus.ee.

²¹² Germany, *Medienstaatsvertrag* (Interstate Media Treaty) <https://www.die-medienanstalten.de/service/rechtsgrundlagen/medienstaatsvertrag/>.

media networks and search engines are required to provide clear information about how their algorithms work when it comes to the selection, ranking, and recommendation of content, including advertisements. The intention of the law is to provide users with more insight and context as to why and how they are seeing specific advertisements or media content based on their mass aggregation of data or online behaviour.

The legal expert in **France** indicates that there has been wide reaching debate on the issue of algorithmic sex discrimination, algorithmic bias as well as the cause of such forms discrimination – the pervasive problem of under-representation of women within the AI sector. The Defender of Rights report to denounce different forms of algorithmic discrimination (including in targeted advertisements) produced recommendations to institutions and companies for more transparency and accountability.²¹³ According to the legal expert there is a general debate on the risks posed by algorithmic sex discrimination.²¹⁴ In the private sector, algorithms have been used by companies in recruitment tools (in matching mechanisms),²¹⁵ and have also been used by human resources management to develop biased model candidates, which are based on previous male candidates for employment.²¹⁶ Online prompts can guide male and female consumers differently²¹⁷ and there is also the issue of profiling in enabling access to insurance and bank credits.²¹⁸ Other algorithms can also increase the risk of sex discrimination by raising prices for gendered products designed for menstruation (female consumers are easy targets for predatory prices).²¹⁹ In 2018, President Macron promised to follow the recommendations of Villani Report on AI²²⁰ which includes several initiatives that aim to develop: more inclusiveness of women in the (male dominated) tech industry, more ethical AI through tools to ‘track biases’, more ‘transparency’ in the use of algorithms and ‘avoid decision-making exclusively on the basis of algorithms’. The idea is to promote interdisciplinary research in the field through the national research institute in the digital field (INRIA).²²¹ President Macron called for a specific commitment to non-discrimination and the development of a code of

²¹³ Defender of Rights (2020) *Algorithmes: prévenir l'automatisation des discriminations* (Algorithms: preventing the automation of discrimination), <https://www.defenseurdesdroits.fr/rapport-algorithmes-prevenir-lautomatisation-des-discriminations-283>.

²¹⁴ Mercat-Bruns, M. (Ed.) (2020); *Nouveaux modes de detection et de prevention de la discrimination et accès au droit: action de groupe et discrimination systémique, algorithmes et préjugés, réseaux sociaux et harcèlement*, Société de législation comparée, Collection Trans Europe Experts, <https://www.lgdj.fr/nouveaux-modes-de-detection-et-de-prevention-de-la-discrimination-et-acces-au-droit-9782365170925.html>.

²¹⁵ See experiment which was quickly terminated with Vera, Robot HR at L'Oréal selecting candidates for employment or Meteojob and its matching algorithm, similar to a head-hunter for companies, <https://www.lesechos.fr/2018/03/meteojob-optimize-le-recrutement-987260>.

²¹⁶ Coron, C. (2007), 'Le big data RH: vers une nouvelle convention de quantification?', *Annales des Mines-Gérer et comprendre* No. 3, 2007, p. 177.

²¹⁷ Attempts have been made in France to avoid the traditional navigators, <https://www.ladn.eu/tech-a-suivre/data-big-et-smart/needle-extension-web-naviguer-sans-algorithme-google/>.

²¹⁸ Gadhoum, Y., Gueyie, J-P., Siala, M.K. (2007), 'La décision de crédit: procédure et comparaison de la performance de quatre modèles de prévision d'insolvabilité', *Revue des Sciences de gestion* 2, p. 177.

²¹⁹ On the cost of products for menstruation: https://www.allodocteurs.fr/maladies/gynecologie/pourquoi-les-regles-coutent-cher_26235.html; on how competition law must also be analysed to understand how algorithms also reflect abuse of dominance, Chellet, P. (2020), 'Prix personnalisé sur internet: la rencontre de la discrimination, de la concurrence et des données personnelles', p. 94 in Mercat-Bruns, M. (Ed.) (2020); *Nouveaux modes de detection et de prevention de la discrimination et accès au droit : action de groupe et discrimination systémique, algorithmes et préjugés, réseaux sociaux et harcèlement*, Société de législation comparée, Collection Trans Europe Experts, <https://www.lgdj.fr/nouveaux-modes-de-detection-et-de-prevention-de-la-discrimination-et-acces-au-droit-9782365170925.html>.

²²⁰ Élysée (2018) *Discours du Président de la République sur l'intelligence artificielle* (Speech by the President of France on artificial intelligence), available at: <https://www.elysee.fr/emmanuel-macron/2018/03/29/discours-du-president-de-la-republique-sur-lintelligence-artificielle>.

²²¹ INRIA, Institut national de recherche sur les sciences du numérique (French national institute for the digital sciences), <https://www.inria.fr/>.

ethics linked to the digital world and its impact.²²² In France it is argued that the underrepresentation of women within the industry has an impact on not only algorithmic bias but also online harassment, violence and cyberbullying (see section 3.8.2 of this report). In 2023, the High Council on Equality published the report, *The Invisible Women in the digital sphere: the vicious circle of sexism*.²²³ The report looks at how women are simultaneously diminished in the digital industry and suffer from online harassment. This is due to many factors including the lack of help and encouragement at a young age to engage in professions connected to STEM subjects such as science and technology, which culminates in algorithmic discrimination (or bias) and affects sifting and hiring processes to the disadvantage of women in the digital sectors that are already male dominated. The report also considers that this underrepresentation of women in the digital industry is also due (1) to stereotypes against women on social networks, who are seen as unqualified for these types of jobs at high level, and (2) a lack of training to ensure that women can benefit from an equal opportunity to apply for these positions. The report considers solutions to make the digital environment more inclusive, such as creating gender balance in admissions to engineering schools. The High Council provides a long list of insightful and helpful recommendations aimed at both the sector and education to better promote and regulate the representation of women in digital content including applying the provisions set out in the EU Digital Services Act, especially on content that is sexist, degrading or violent.²²⁴ Finally, in 2022 the **Danish** Government established a group of experts to investigate the various ‘digital problems’ and issues related to the platforms’ mechanisms and outputs. For example, the group of experts is concerned with, amongst many other issues, the addictive nature of the mechanisms that platforms incorporate within their interface, algorithmic bias and discrimination and harmful gendered content aimed at children. In February 2024, the Government published the group’s findings and recommendations that include that digital platforms run regular impact analyses of their new algorithms, ensure that algorithms are not biased or discriminate against certain groups (including women and girls) and that the Government should be able to hold the tech companies responsible when their algorithms automatically share illegal content.²²⁵

3.6 Examples of NGO good practice

Across the country reports, NGOs, watchdogs and campaigners have been praised by the legal experts for their efforts in both highlighting the issue of harmful gendered content and stereotypes in advertising and media as well as calling for legislative and regulatory reform. Good practice across the states has already been foregrounded in this report in terms of legislative instruments, regulatory bodies and soft law. This section provides a summary of the work and practice of NGOs, watchdogs and the third sector and how campaigns, research and guidelines have helped fill the gap of legislative reform.

²²² Macron said : ‘Et au cœur de cette réflexion, nous devons inscrire des engagements de non-discrimination sociale, ethnique, sexuelle et l’Etat, pour ce qui le concerne, rendra donc par défaut public le code de tous les algorithmes qu’il serait amené à utiliser’ (We must make a commitment to working to avoid social, ethnic and sexual discrimination and the default position of the state will therefore be to make public the code for all the algorithms it uses), see: <https://www.elysee.fr/emmanuel-macron/2018/03/29/discours-du-president-de-la-republique-sur-lintelligence-artificielle>.

²²³ High Council on Equality (2023) Rapport - La Femme Invisible dans le numérique : le cercle vicieux du sexisme, (Invisible woman in the digital world, the vicious circle of sexism), www.haut-conseil-egalite.gouv.fr/parite/travaux-du-hce/article/rapport-la-femme-invisible-dans-le-numerique-le-cercle-vicieux-du-sexisme.

²²⁴ High Council on Equality (2023) The invisible woman in the digital world, the vicious circle of sexism, recommendations.

²²⁵ Altinet (2023) [Recommendations from the government’s tech expert group](#). See also; Ministry of Digital Government and Gender Equality (2024) (Grænser for tech-giganternes udvikling og anvendelse af kunstig intelligens) [Limitations for the tech giants’ development and use of artificial intelligence](#).

3.6.1 Childhood studies

In some countries (**Austria, Spain, UK**), NGOs have shown that the issues within this thematic report are an enduring problem across Europe and highlight how gender stereotyping and gendered harmful in advertising formulate at a young age in childhood and teenage years.

In the **UK**, the Fawcett Society has also explored the theme of gender stereotypes in early childhood with its research on ‘Closing the Gender Play Gap’²²⁶ and ‘Gender Stereotypes in Early Childhood’.²²⁷ In 2021, the Fawcett Society produced a paper on ‘Smashing Stereotypes in Advertising’, jointly published with the charity LIONS.²²⁸ The joint paper draws upon the Fawcett Society’s previous research into gender stereotypes in childhood and provides guidance to advertising and marketing professionals to actively challenge gender stereotypes throughout the creative process.²²⁹ These resources were accompanied by a 2019 literature review on gender stereotypes in early childhood and provide scope for how stereotypes remain an enduring problem in the UK.²³⁰ A further UK campaign ‘Let Toys be Toys’ addresses the practices within the toy industry and how they stifle children’s interests at a relatively young age, for examples certain toys or books are gendered or deemed more appropriate for one gender. The campaign calls for more mixed gender-neutral toys, to end the binary boys/girls’ sections within the market, end the use of colour and the stereotypes associated with colour (i.e. pink/blue) and for more work to be done towards enabling children to play outside narrow reductive gender stereotypes.²³¹

In **Austria** the responses to sexist online content in advertising and the media has come from the mental health community with the focus in particular on young girls. There are, according to the national legal expert, a number of initiatives offering psychological, pedagogical and psychiatric help to girls affected by harmful social media content by trying to strengthen their resilience, offering information and help, and creating awareness.²³² **Spain** too has focused on stereotypes in early childhood through the Association of Communication Users, which has been active in bringing cases to court and managing harmful gendered content in advertising and the media. There is a particular focus (and reports) on sexist stereotypes in online advertising that is aimed at young children and teenagers.²³³

3.6.2 Creative responses

Creative responses to the issue have shown that resistance to harmful gendered content and gender stereotypes can be communicated by alternative means. In **Germany**, the organisation ‘Pinkstinks’ has successfully run awareness-raising online campaigns including the reporting of harmful content, educational materials and aimed at schools, pubs and clubs with the intent to convey the message that gender stereotypes

²²⁶ For the full analysis, see Fawcett Society (2023) ‘Closing the gender play gap’, <https://www.fawcettsociety.org.uk/closing-the-gender-play-gap>. Gender Stereotypes are fully explored.

²²⁷ See: <https://www.fawcettsociety.org.uk/the-commission-on-gender-stereotypes-in-early-childhood>.

²²⁸ See: LIONS (2021) ‘LIONS and the Fawcett Society release new advertising guide’.

²²⁹ See: Fawcett Society and LIONS (2021), ‘Smashing stereotypes in advertising guide’.

²³⁰ Fawcett Society and LIONS (2021), ‘Smashing stereotypes in advertising guide’.

²³¹ See: <https://www.lettoysbetoys.org.uk/retailers-just4asks/>.

²³² See, e.g., <https://www.gesundheit.gv.at/news/aktuelles/aktuell-2023/hbsc-jugendstudie.html>.

²³³ Asociación de Usuarios de la Comunicación (2022) La reproducción de estereotipos sexistas en comunicaciones comerciales dirigidas a la infancia, la adolescencia y la juventud: Influencers, redes sociales y mensajería digital.

(like racist stereotypes) are outdated. The campaign also delivers a ‘pink poodle’ award to organisations that have gender equitable advertising content. Aside from Pinkstinks there are also comical booby prizes awarded for negative advertising and media content, such as the Angry Cactus²³⁴ (awarded by the women’s rights campaign Terre des Femmes) and the Golden Fence Post for ‘absurd’ gender marketing (awarded by klische*esc e.V.), which serve to remind the advertising industry of its social responsibility. This year the Golden Fence Post award went to abdominal pain relief tablets (Buscopan *Plus Pink*) that were targeted at women through pink packaging rather than blue packaging (see image 4).²³⁵ Similarly, the Sexist Blunder award in **Slovakia** is a competition with expert judges that award prizes to advertising that uses harmful gendered content and gender stereotypes. As well as a negative prize, the competition awards advertising campaigns that are reflecting positive gender stereotypes.²³⁶ In 2023, the Hellenic League of Human Rights and the Gender Alliance Initiative also used humour in **Greece** to shine a light on deconstructing gender stereotypes. The campaign has produced two videos and a project ‘A new gender era’, which portray two young people who ‘play’ with the dominant gender stereotypes, deconstruct them in a humorous and modern way and invite the audience to ‘take them out’ of our lives (see image 3).²³⁷



Image 3: frame taken from ‘A new gender era’, a short film from Hellenic League of Human Rights and the Gender Alliance Initiative (Greece).

²³⁴ See: <https://campaignsoftheworld.com/digital/terre-des-femmes-unhatewomen/>.

²³⁵ See: [Startseite - Der Goldene Zaunpfahl \(goldener-zaunpfahl.de\)](https://www.startseite.de/Startseite-der-Goldene-Zaunpfahl).

²³⁶ Available in Slovak at: <https://www.sexistickykix.sk/priklady-pozitivnej-praxe>.

²³⁷ Hellenic League for Human Rights (2023) ‘A new gender era’, directed by Alexis Koukia-Pandelis, <https://www.hlhr.gr/anewgenderera/a-new-gender-era/>.



Image 4: The Golden Fence Award for the most absurd gendered advert in 2024 was awarded to Buscopan Plus Pink. © klische*esc eV, Nadine Ginzel.

3.6.3 Encouraging consumers

There are numerous campaigns from states, SROs and NGOs that aim to both educate citizens about harmful gendered content and gender stereotypes and encourage citizens to lodge formal complaints about such content. In a 2016 study from **Slovakia** entitled ‘Sexist ads in Slovakia’,²³⁸ the Slovak National Centre for Human Rights (the national equality body) attempted to do both. The publication points to various forms of sexism in Slovakian society, particularly targeting women. The study indicated that there is a popular idea in Slovakia that ‘sex sells’ and that might be the reason for the continuing prevalence of harmful gendered content, gender stereotypes and male dominance in the country. Based on this study, the Centre has proposed to amend the law on advertising. The new law should also deal with vulgar words and innuendos, as well as with the use of the female body as an object of presentation. Since 2013, the **Swedish** Women’s Lobby has encouraged people to report sexist advertising, starting with a successful campaign in the Stockholm metro (see below), and then more recently a campaign aimed at complaining about harmful content social media platforms. Together with a group of activists called Anything is possible (Allt är möjligt), the Swedish Women’s Lobby runs a digital initiative called *Reklamera against sexist advertising* (the name is pun: in Swedish ‘reklam’ means advertisement, whereas ‘reklamera’ means to complain about a product). People are invited to send advertisements that they perceive as sexist to Reklamera. The advertisement will then be published on Reklamera’s Facebook and Instagram and will be reported to the Advertising Ombudsman. In addition, the

²³⁸ See: Kršková, M., Pániková, N. (2016) ‘Sexistické reklamy na Slovensku alebo čo má spoločné sťahovanie, prášková lakovňa a bankové služby’ (Sexist ads in Slovakia or what moving, powder coating and banking services have in common), Bratislava: Slovenské národné stredisko pre ľudské práva. Available in Slovak at: http://www.snslp.sk/wp-content/uploads/Sexisticke_reklamy_na_Slovensku_2016.pdf.

company behind the advertisement will be contacted and informed that people have reacted to their advertisement and want it removed. In **Norway**, the Ottar Women's Group also engages with citizens encouraging them to complain about adverts that are derogatory or sexist.²³⁹ In **Austria** there are a number of watchdogs and NGOs (for example Werbewatchgroup Wien²⁴⁰ and Watchgroup Salzburg²⁴¹) that encourage citizens to complain to the national SRO about sexist advertising and harmful gendered content both in digital and analogue spaces. The immediacy of complaints is apparent in the watchdog's work as adverts and media content can be reported via their apps.

3.4.2 Local initiatives: tackling gender stereotypes in public spaces

This report has already underscored examples of good practice at a local level in **Italy** (3.2 Legal instruments: Siena and Milan), but beyond municipal laws and regulations some states have begun to adopt local initiatives aimed at curtailing the use of harmful gendered content in public spaces. In **Germany**, the Berlin Senate adopted a Framework against discriminatory and sexist advertising in 2020.²⁴² The framework establishes a jury (appointed by the senator of the Senate Administration responsible for anti-discrimination for a term of three years) that presides over cases of discriminatory and sexist advertising. The jury is reactive and accepts complaints from citizens, watchdogs/NGOs and scrutinises the advert in question to decide whether it is discriminatory or sexist. The focus of the framework and jury is awareness raising, public relations and unequivocal communication with the advertising companies within the city.²⁴³ The assessment of the content is based on a catalogue of criteria that is based on the prohibition of discrimination in the Basic Law, the General Equal Treatment Act and the Berlin State Anti-Discrimination Act. If an advert is considered discriminatory or sexist and appears in private spaces the Senate can communicate this to the advertisement company. If the discriminatory content on advertising spaces that fall under the contracts of the State of Berlin for advertising on public road land, a procedure for the removal of the advertisement can be initiated at the suggestion of the jury.²⁴⁴ In **Sweden**, the City of Stockholm piloted the aforementioned 'reklamera' project and issued guidelines against sexist advertising that are in public spaces. Following the SRO's guidance (Reklamombudsmannen) the city can instruct advertisers to remove any advert that breaches the SRO guidelines. Similar local regulations have been introduced in a couple of other municipalities in Sweden. This has been done following citizen initiatives to the city council.²⁴⁵ Also in this regard, Reklamera has contributed to the development, in that it has promoted citizen initiatives through information campaigns and a template for a citizens' proposal for ethical guidelines against sexist advertising that people can submit to their municipality, in line with strategies presented in the digital activist kit provided by the Swedish Women's Lobby. Finally, in the **UK**, in response to a large petition over a body shaming advert, the Mayor of London, instructed the London underground operator (Transport for London) and its commercial partners (Exterion Media and

²³⁹ See The Ottar Women's Group.

²⁴⁰ See: <http://www.werbewatchgroup-wien.at/>.

²⁴¹ See: www.watchgroup-salzburg.at.

²⁴² Berlin, Framework on discriminatory and sexist advertising, [rahmenkonzept-diskriminierende-und-sexistische-werbung_210324ub2 \(1\).pdf](#).

²⁴³ [Diskriminierende Werbung - Berlin.de](#).

²⁴⁴ Berliner Jury gegen diskriminierende und sexistische Werbung (2022) Tätigkeits Bericht [Diskriminierende Werbung - Berlin.de](#), p. 9.

²⁴⁵ The possibility to allow for citizen initiatives was introduced through Government Bill prop. 2001/02:80. It is applied in almost all Swedish municipalities to increase the political participation of the citizens.

JCDecaux) to monitor and ban adverts that convey images that promote unrealistic body types and sexist advertisements (see image 5) .



Image 5: Advert from Protein World weight loss supplement. London's Transport for London have banned adverts in and around its services that promote unrealistic body types.

3.7 Enforcement issues and balancing fundamental rights

As mentioned in section 3.4.2 of this report some EU Member States, such as **Sweden**, have indeed expressed an explicit commitment to freedom of expression within their constitutions, or under EU and international law.²⁴⁶ The extent to which such negative expressions such as harmful gendered content or gender stereotypes in advertising and the media should be accepted in society is unclear. When it comes to regulating advertising and media, artistic licence, creativity or free speech is often invoked by the industry to defend harmful or controversial content. In recent years this debate has become more heightened, especially when it comes to regulating online spaces. As the digital world is increasingly saturated with harmful gendered content, this poses the question whether or not online platforms ought to remove content and promote gender equality, or whether doing so is a violation of freedom of expression. This is a somewhat legally uncertain area, and generally, EU law leaves such decisions to the discretion of Member States, either through legislation, state regulators or encouraging self-regulation.

²⁴⁶ For example, in the case of Sweden see: Svensson, E.M. and Edström, M (2015) 'Freedom of expression vs. gender equality', *Tidskrift for Rettsvitenskap*, 127(5), pp.479-511.

There is some legal debate in the country reports that resonates with this dilemma. For example, when balancing fundamental rights, in some states (**Czechia, Denmark, Finland, Greece, Hungary, Ireland, Lithuania, Norway, Spain**) gender equality (or human dignity in **Czechia** or **Hungary**) prevails when it comes to prohibiting harmful gendered content in advertising and the media. In other states (**Germany, Netherlands** and **Slovakia**), governments routinely emphasise the significance and importance they place on freedom of expression as a constitutional certainty when it comes to regulating advertising and the media. In some instances, such as in the **UK** and **Sweden**, it would seem that self-regulation and ethical codes have been used as a replacement for legislative instruments. In the countries where gender equality and human dignity trump freedom of expression rights it is worth foregrounding some interesting arguments put forward by the state. In **Czechia**, when applying the proportionality test in cases of sexist advertisements, the protection of human dignity prevails. As adverts carry not only promotional messages but also cultural messages that will inevitably impact citizens, it is seen as important that those messages do not include sexist gender stereotypes.²⁴⁷ In **Denmark**, the Danish Consumer Ombudsman's (DCO) guidelines takes into consideration freedom of expression rights from the European Convention on Human Rights, however this freedom is conditional upon social considerations and if need be, can be restricted if prescribed by law having regard to public interests. Moreover, as the Danish Marketing Practices Act does not specify what harmful gendered content is, there is a wide margin of interpretation when considering what constitutes such harm(s). The legal expert notes here that the legislation and the DCO is open to societal shifts and what might be considered harmful gendered content or indeed a gender stereotype.²⁴⁸

According to the Dutch legal expert, in the **Netherlands**, the Government regularly stresses the importance of freedom of expression/speech as a significant constitutional right when considering advertising and media regulation. As a result, the Dutch preference is to utilise the self-regulatory organisation rather than drafting legislation. The legal expert puts forward two examples to explain this. First, the Dutch Government's response to the CEDAW reports on discrimination and stereotyping in advertising and the media²⁴⁹ and secondly, the Ministry of Education, Culture and Science's response to how it aims to tackle the lack of diversity (of women and ethnic minorities) in public life.²⁵⁰ Despite relying on its self-regulation organisation (Stichting Reclame Code) and the Dutch Advertising Code, the SRO tends to invoke freedom of expression and the restrictions

²⁴⁷ The significance of this was overlooked in the Hungarian 'Chef Market' case (Budapest Environs Regional Court, Judgment No. P.20485/2017/11) which was about an ad that portrayed women's bodies wrapped in meat and described them as 'meat products'. In this case human dignity was interpreted at an individual level (i.e. being professional models, the women consented to the depiction, and it was therefore not to be considered degrading) rather than as an abstract concept. For further discussion on interpretation of human dignity in Hungary see: Koltay, A. (2016), 'Az emberi méltóság védelme a médiajogban' (The protection of human dignity in media law), *Jogelméleti Szemle* (Journal of Legal Theory), No. 4, pp. 38–80.

²⁴⁸ The DCO guidelines state: 'Good marketing practice is a legal standard evolving over time in line with trends in society. One of the consequences of this is that advertising previously contrary to good marketing practice is not necessarily contrary to it today – and vice versa.' See the Danish Consumer Ombudsman (2012) *Guidelines on gender-related advertising*, p. 12.

²⁴⁹ When gender stereotyping is addressed in the state reports by CEDAW, the Dutch response has in recent years stated that its obligation to respect press freedom limits its role in combating gender stereotyping of women in the media. See: National CEDAW report CEDAW/C/NLD/Q/6/Add.1, para 55. See also the Dutch CEDAW Network (2015) 'Unfinished Business-Women's Rights in The Netherlands', p. 24, https://www.vn-vrouwenverdrag.nl/wp-content/uploads/Schaduwrapportage-2.0_19-sept-2016_DEF11.pdf.

²⁵⁰ The Dutch Minister of Education, Culture, and Science states that 'both traditional and new media present a limited view of our society. For example, women and ethnic minorities are not represented proportionately, and they, like LGBTI persons, are often portrayed in a stereotypical manner.' In explaining how the government aims to address this issue she states that '(f) or the media, the constitutionally guaranteed freedom of expression remains fully applicable; this requires significant restraint from the Government. However, the media, including the advertising sector, operate within a societal context. It is important that they are aware of changing views regarding (sexist) stereotypes and of their own influence in this area. This means that the Ministry of Education, Culture, and Science (OCW) encourages and facilitates self-regulation within the media sector where necessary, desirable, and possible.' See further Kamerstuk 2017-2018, 30420, nr. 270.

therein when presiding over cases of advertising that include harmful content or gender stereotypes. For example, in the Suit Supply case, the SRO's Board of Appeal held that the framework for assessment of the case was formed by Article 2 of the Dutch Advertising Code.²⁵¹ This provision lays down that 'advertising must be in accordance with the law, the truth, good taste and decency.' The BoA noted that it 'applies this provision while considering the freedom of expression' of the retailer and held that '(t)his principle entails that Suit Supply may be recommended to cease advertising in the manner in question if necessary, in relation to one of the interests listed in Article 10(2) of the European Convention on Human Rights, including the protection of health or morals and the protection of the rights of others.'²⁵²

In **Germany**, in 2016, the Minister of Justice proposed a ban on advertisements that reduce women or men to sexual objects in order to establish a 'modern gender image'.²⁵³ The proposal was met with substantial criticism (especially from the Liberal Party,²⁵⁴ and the advertising industry in general) and was perceived to be a particular threat to freedom of expression and speech that is enjoyed in Germany. At the time it was suggested that the proposed ban on sexist advertising would lead to legal uncertainty and that the current rules are sufficient.²⁵⁵ Therefore, the self-regulatory organisation, the Werberat (see section 3.4.2 of this report) has taken precedence. At present, the current coalition (SDP, Green and FDP) have not indicated that the ban on harmful gendered content or gender stereotypes in advertising should be revisited and have instead called for more self-regulatory style monitoring through the Pinkstinks Werbemelder²⁵⁶ to determine how widespread the problem is and to develop educational and awareness-raising materials to reduce tolerance for sexist advertising in Germany.²⁵⁷ Under German law there is limited scope to tackle harmful gendered content and gender stereotypes in advertising and there is a concern that very few sexist advertisements are caught or indeed monitored. According to the German legal expert there are serious concerns about enforcement.

There are some areas within German law where such content might be challenged. First, academic discourse suggest that Section 3 of the Unfair Competition Act should be interpreted in light of Article 1 of the German Basic Law (human dignity) which could potentially capture some extreme forms of sexist advertising.²⁵⁸ Secondly, Article 7(1) of the Broadcasting Treaty (*Rundfunkstaatsvertrag*) ensures that advertising must not violate human dignity or contain or promote discrimination based on gender. However, both require significant

²⁵¹ Netherlands Board of Appeal, 2016/00193-CvB, 18 May 2016. Available at: <https://www.reclamecode.nl/uitspraken/suit-supply/kleding-schoenen-en-accessoires-2016-00193-cvb/156357/>. The case advert contained a photomontage of two reduced-size men depicted on the breasts of a woman in a swimsuit.

²⁵² Netherlands Board of Appeal, 2016/00193-CvB, 18 May 2016. Available at: <https://www.reclamecode.nl/uitspraken/suit-supply/kleding-schoenen-en-accessoires-2016-00193-cvb/156357/>. The Dutch SRO regularly checks for morality issues but not sexism.

²⁵³ Heiko Maas: Justizminister will sexistische Werbung verbieten | ZEIT ONLINE.

²⁵⁴ Sexistische Werbung verbieten? - FDP-Fraktion Charlottenburg-Wilmersdorf (fdp-fraktion-cw.de).

²⁵⁵ Henning-Bodewig, F. (2023) "Sexistische Werbung" – ein Fall für den Gesetzgeber? https://werberat.de/wp-content/uploads/2023/05/dwr_2017_gastbeitrag_henning-bodewig.pdf.

²⁵⁶ See <https://werbemelder.in/pages/projekt> for more information. The association is independent but is funded by the Ministry for Family Affairs. According to the website the association has repeatedly been confronted with the accusation that the problem of sexism in advertising is a perceived one. It is impossible to say exactly and, besides, it is all just a matter of personal taste anyway. In response, the advertising reporter said 'Sexism in advertising is real and can be identified and combated using criteria. Your reports will be reviewed and assessed as sexist, non-sexist or stereotypical according to the criteria of the categorization system we have developed. Where the advertisement was seen will be shown on a map of Germany.'

²⁵⁷ The results and the report of the monitoring of harmful content in advertising can be found on their website. See here for more information: Pinkstinks (2019) *Wie verbreitet ist sexismus in der Werbung* https://pinkstinks.de/wp-content/uploads/2010/09/Broschüre-Sexismus-in-der-Werbung-in-Deutschland_Web-AKTUALISIERT.pdf.

²⁵⁸ Engelsing, S. (2018), Sexistische Werbung im 21. Jahrhundert – nach wie vor nur eine Frage des Geschmacks?' 54(2) *Recht und Politik* 296–306.

judicial development if they are to prohibit harmful gendered content and gender stereotypes in advertising and the media.²⁵⁹ In any case advertisers are able to invoke and rely upon freedom of expression/press (both enshrined in the constitution) and satire (freedom of art, Article 5 of German Basic Law) which is to be balanced against the individual rights of the claimant that has been discriminated against.²⁶⁰

As noted at the start of this section – and in a similar vein to Germany and the Netherlands – **Sweden's** constitutional history is entangled with the freedom of expression and freedom of speech. The Free Press Act (1776) – the earliest recorded act on free speech – is consistently reticent when providing for legislation that prohibits harmful gendered content in advertising and the media. According to the legal expert, the prohibition of sexist advertisements has been discussed since the 1970s through numerous Government proposals, inquiries, reports and statements. Despite this, the dominant discourse amongst the relevant actors (legislative, judiciary and academia)²⁶¹ is that the constitutional right to freedom of expression hinders any form of legislation that prohibits harmful gendered content of gender stereotypes in advertising and media.

In **Slovenia**, any attempt to regulate or control the media is interpreted by the public at least as an encroachment on the freedom of the media and/or the constitutional guaranteed right to freedom of expression/speech. Slovenia frequently witnesses mergers and acquisitions in the media sector, further intensifying the monopolisation of media ownership. As the law and regulations on harmful gendered content are so scattered in **Poland**, there is little room for interpretation of the law. The underlying legal rights such as violation of human dignity or ‘contrary to good morals’ that would prevent harmful gendered content in advertising and media are, according to the legal expert, too vague. More importantly, there is a lack of Polish legislative instruments that tackle the issues covered in this thematic report head-on and as such, due to the vagueness of these principles (dignity and morality) it would be difficult or indeed near impossible to prove that harmful gendered content in advertising and media breaches these principles.²⁶² Finally, and in contrast to Poland, the **Slovakian** legal expert identifies a balancing of rights, namely the right to advertise (freedom of expression, right to information) and protection of public health and morals.²⁶³ The Slovakian constitutionally guaranteed freedom of expression is not absolute and when deciding on gendered harmful content it is restricted.

3.8 Political discourse

This report has provided some commentary on political discourse and legislative proposals in section 3.4.3 on the influencer market and section 3.5 on algorithmic advertising and how these modes of advertising are

²⁵⁹ German Country Report (2024).

²⁶⁰ Antidiskriminierungsstelle des Bundes (Nomos) Handbuch Rechtlicher Diskriminierungsschutz https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Handbuch_Diskriminierungsschutz/Vorleseversion.pdf?__blob=publicationFile&v=2, p. 134.

²⁶¹ See, for instance Edström, M. and Svensson, E.M. (2023) ‘Promoting Gender Equality in Media Content: A Limitation or Extension of Freedom of Expression?’ *The Handbook of Gender, Communication, and Women's Human Rights*, pp. 193-211, and Sweden Women's Lobby (2020) *Sexist Advertising in the Nordic countries. An Evaluation of Regulations and Implementation* (Sexism på köpet. Lagstiftning, praxis och förslag till åtgärder mot könsdiskriminerande reklam i Norden), available (in English) at <https://sverigeskvinnoorganisationer.se/wp-content/uploads/2020/05/Sexist-advertisement-in-the-Nordic-countries.pdf>.

²⁶² Polish Country Report (2024).

²⁶³ Act No. 460/1992 Constitution of the Slovak Republic (*Zákon č. 460/1992 Zb. Ústava Slovenskej republiky*), 1 September 1992, effective from 1 October 1992. Article 26 Section 4. Available in Slovak at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1992/460/>. Available in English at: <https://www.nrsr.sk/web/Static/en-US/NRSR/Constitution%20of%20the%20Slovak%20Republic%202023.pdf>.

augmenting harmful content and gender stereotypes in social media and elsewhere. In this section, attention is drawn to some of the more miscellaneous – yet significant – themes emerging across Europe. In some of the country reports the legal expert has indicated draft legislation and policy on harmful gendered content and perpetuation of harmful gender stereotypes. In others, there has been debate on how advertising and media content promote unhealthy body types, behaviours or lifestyles; and how social media accentuates the dissemination of these messages. Finally, in some of the reports, the topic of cyberbullying or cyberviolence has been debated with some states beginning to address the issue through legislation.

3.8.1 Legislation and statutory guidelines

Both the **UK** and **Republic of Ireland** have raised the issue of clearer statutory guidelines on gender discrimination for advertising and marketing industries. In the **UK**, a Government consultation in 2022 on the regulation of online advertising looked at a wide range of harms (discriminatory advertising on grounds of gender and other characteristics) and raised the issue of striking an appropriate balance between statutory regulation and self-regulation through the national SRO, the Advertising Standards Authority. Respondents to the consultation cited gender stereotyping and body image as potential harms that should be addressed, others raised concerns around alcohol that reinforce gender stereotypes and evidence indicating such adverts were targeted at children. Since the consultation, a Government task force was established to explore potential legislation but has since been paused due to the recent general election in July 2024.²⁶⁴ A similar position has formed in the **Republic of Ireland**. In March 2020, the Irish Human Rights and Equality Commission (IHREC) made a submission²⁶⁵ to the Citizens Assembly on Gender Equality on the topic of the portrayal of women in advertising and the media.²⁶⁶ IHREC emphasised the ways in which media and advertising disseminate gender stereotypes across all mediums (offline, in print, billboards, posters but also online on social media, digital platforms) and how the representation of women in the media is habitually ‘tied up’ with perpetuation of gender stereotypes and more specifically portraying women’s work as care, domesticity or as being sex objects. According to the submission, negative media and advertising portrayals of women and girls are similarly conducive to poor health outcomes, low self-esteem and body issues. IHREC’s recommendations are twofold in this field, first that the Government introduces statutory guidelines on gender equality for the advertising and marketing industry and that the Government establishes a media monitoring project that encompasses a wide scope including social media, in order to assess the portrayal of women. It also calls for an action plan to combat sexist imagery, language and practices in Irish media. The Citizen’s Assembly Report (2021) recommendations are threefold, that all media and advertising (with emphasis on social media organisations) should: a) be more strongly regulated and avoid gender discrimination and stereotypes and take action when such a breach occurs b) publish annual monitoring and reports and compliance with gender equality c) improve the visibility of men performing caring and domestic roles.

The notion of body image is frequently referenced in the country reports. It is most commonly mentioned amongst the concepts in the self-regulation ethical codes and legislative instruments (see 3.4.2). The topic has

²⁶⁴ The focus of the task force seems to be aimed at criminal advertising and the protection of children rather than a broader context of gendered harms online or gender stereotyping. [Government response to Online Advertising Programme consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/online-advertising-programme-consultation).

²⁶⁵ IHREC (2020) Submission to the Citizens Assembly on Equality, March 2020 https://www.ihrec.ie/app/uploads/2020/03/IHREC-Submission-to-the-Citizens-Assembly-on-Gender-Equality-March-2020_fin.pdf see pp. 10-13.

²⁶⁶ See: <https://citizensassembly.ie/overview-previous-assemblies/assembly-on-gender-equality/>. See pp. 76-77.

also been fervently discussed in political and public discourse both in **Austria** and in the **UK** where the issue has been foregrounded as a specific risk and harm for young women and girls. According to the legal expert in **Austria**, there have been debates regarding unrealistic body imagery in advertisements and the effects the (toxic) influencer market culture has. The promotion of such imagery can, at times, project an unhealthy body image of women and girls and affect their mental health. In Austria, these images have been connected to eating disorders, in particular bulimia and anorexia, but also more broadly affecting the mental health of young girls. The focus of the debate in Austria is the role that social media platforms have in disseminating these images and lifestyles. The new ways in which unrealistic body types are disseminated in different forms of advertisements and media (i.e. targeted advertising, influencer advertising and lifestyle media) is, according to the expert, increasingly difficult to regulate and the current Austrian legal framework, including the self-regulation organisation (the Advertising Council), is ill equipped to tackle the more fluid and pervasive forms of sexist advertising that dominate social media platforms.

In the **UK**, a similar political discussion on the role social media plays in distorting women and girls body image has taken place. The Women and Equalities Committee of the House of Commons has recently concluded an inquiry on body image and how digital advertising (and traditional analogue advertising) affect how women and girls feel about their body.²⁶⁷ Amongst other areas, the inquiry highlighted the connection between body image and eating disorders, obesity, BMI and body, dysmorphia and a lack of diversity in advertising and media representations of women. One of the key findings of the inquiry foregrounds the substantial rise in eating disorder rates in the UK and the way in which body images are depicted online. The Commons inquiry also links the rise of social media usage to negative body image and calls for the (currently pending) Online Harms Bill to address harmful gendered content including unrealistic/unhealthy body ideals depicted in advertising and social media. The recommendations are wide-reaching and include that the Government should: work with digital platforms, advertisers and the national SRO (ASA) to encourage a wider representation of images in advertising; provide legislation that bans (or restricts) altered images in advertising; ensure that social media companies enforce their advertising rules and community guidelines; and introduce strong sanctions for failing to do so, including – but not limited to – significant fines. The Government committed to continue to work closely with the ASA on these issues but has so far not committed to legislation that would ban such content. At the time it was implied that the Online Safety Bill would impose obligations on social media and digital platforms to protect children from content that may risk significant adverse physical or psychological impact.²⁶⁸ However, in relation to advertising, the Online Safety Act (passed in October 2023) is a much more watered down piece of legislation and includes obligations on social media and digital platforms only in relation to fraudulent advertisements.²⁶⁹

3.8.2 Cyberviolence

The Violence Against Women and Domestic Violence Directive 2024/1385/EU (VAW Directive) identifies cyberviolence as a form of gender based violence and recognises distinct behaviours such as cyberstalking, the non-consensual sharing of intimate images, online hate speech and online harassment of women. The Directive, which is to be implemented by 2027, sets minimum EU standards for criminalising forms of cyberviolence.

²⁶⁷ House of Commons Women and Equalities Committee (2021) 'Changing the perfect picture: an inquiry into body image' <https://committees.parliament.uk/publications/5357/documents/53751/default/>.

²⁶⁸ committees.parliament.uk/publications/6387/documents/70402/default/.

²⁶⁹ See: https://www.legislation.gov.uk/ukpga/2023/50/pdfs/ukpga_20230050_en.pdf - see chapter five.

Cyberviolence is mentioned in some of the country reports (**Austria, France, Malta** and the **UK**) and considered as an emerging issue that Governments, regulatory bodies and SROs are grappling with. While this is not the focus of the report as such, it is worth mentioning here, due to the fact that sexist stereotypes in advertising and the media can play a role in increasing certain forms of online gendered violence. In **Ireland**, the aforementioned IHREC's submission to the Citizens Assembly on Gender Equality also included questions on cyber harassment and abuse. The IHREC makes reference to previous work on the topic from the Law Reform Commission,²⁷⁰ which had in 2016 proposed amending harassment offences to include a specific reference to online or digital harassment. Such an amendment would provide both legal certainty and recognise the significance online harmful communications have had in the rise of cyber harassment. The IHREC recommends that the Law Reform Commission's proposals be reconsidered when developing a legal response to the issue of cyber harassment and abuse.²⁷¹ In **Austria**, recent law reform on hate speech now prohibits online hate speech. Related to this area, the legal expert emphasises that cyberviolence and cyberbullying are periodically discussed in Austria as well as how sexist stereotypes in advertising and the media play a role in online gendered violence. In **Malta**, gender based cyberviolence or cyberbullying is a growing threat and has become the most common form of aggressive act perpetuated in online communications and spaces.²⁷² In 2019, the National Commission for the Promotion of Equality featured a survey of 9-16 year olds and found that 45 % of respondents had faced negative online experiences including cyberbullying. In reaction to these figures, the national strategy on gender-based violence and domestic violence included measures to combat gender-based cyber violence through more surveillance and policing, research and capacity building.²⁷³ In the **UK**, the aforementioned inquiry by the Women's and Equalities Committee of the House of Commons cites online or cyberbullying as one of the contributory reasons for the rise of body dissatisfaction in the UK and states that online bullying should be included within the scope of the Online Safety Act.²⁷⁴ In **France**, the Law for a Digital Republic (2016)²⁷⁵ aims to develop a more inclusive digital society and prohibits amongst other things, the circulation or dissemination without the consent of the individual, an image or their voice in a public or private setting (including online) that is sexual in character (including revenge porn).²⁷⁶ Moreover, the recent law reinforcing the fight against sexual and sexist violence²⁷⁷ banned cyber harassment.²⁷⁸

²⁷⁰ Irish Law Reform Commission (2016) *Report on Harmful Communications and Digital Safety*.

²⁷¹ IHREC (2020) Submission to the Citizens Assembly on Equality, March 2020 https://www.ihrec.ie/app/uploads/2020/03/IHREC-Submission-to-the-Citizens-Assembly-on-Gender-Equality-March-2020_n.pdf, see p. 13.

²⁷² See: Laiviera, R (2021) 'Cyberviolence against women and girls', *Times of Malta*, 18 June 2021, <https://timesofmalta.com/article/cyber-violence-against-women-girls-renee-laiviera.880088>.

²⁷³ See: Maltese National Commission for the Promotion of Equality (2023) *Unite, engage, elevate: National strategy on gender-based violence and domestic violence*; <https://www.stopviolence.gov.mt/wp-content/uploads/2023/11/VIOLENCE-STRATEGY-ENG.pdf>.

²⁷⁴ See: <https://committees.parliament.uk/publications/5357/documents/53751/default/> see paragraphs 95, 104 and 107.

²⁷⁵ France, Act No. 2016-1321 of 7 October 2016 on the Digital Republic (Loi n° 2016-1321 du 7 octobre 2016 pour une République numérique).

²⁷⁶ Infringement of the law may result in an up to two year prison sentence or up to EUR 60 000 fine.

²⁷⁷ France, Act No. 2018-703 of 3 August 2018 reinforcing the fight against sexual and sexist violence, (*loi n° 2018-703 du 3 août 2018 renforçant la lutte contre les violences sexuelles et sexistes*).

²⁷⁸ Infringement of the law may result in EUR 45 000 fine and up to three years imprisonment.

4 Conclusion and Recommendations

4.1 Conclusion

This report has provided a comprehensive overview of the various approaches adopted by 31 European states to address the prevalence of harmful gendered content and gender stereotypes in advertising and media content. The aim of the concluding part of the report is to synthesise and critically reflect upon the key findings and themes that have emerged from the analysis of legislation, self-regulation and soft law. This report began by critically examining the existing EU legislative framework, and considering to what extent harmful gendered content and gender stereotypes have been addressed within EU law and policy. It is 20 years since the Goods and Services Directive came into force and it is clear that the failure to include advertising and the media in the Directive was a missed opportunity that has left a hole within the legislative framework. This gap has ultimately been filled by soft law and policy, primarily from the Parliament but also the Commission, ensuring that the topic remains alive and on the gender equality agenda. The Audiovisual Media Services Directive (AVMSD) remains somewhat limited when it comes to the issues that are central to this report. Whilst the AVMSD seeks to protect minors, respect human dignity, and ensure adverts do not promote or include sex discrimination, this is largely left to Member States to implement and enforce. Similarly, the Digital Services Act is equally limited in scope when it comes to the regulation of harmful gendered content and gender stereotypes in advertising.

The report has also identified national legislation that tackles harmful content and gender stereotypes in advertising and the media. However, although some states report that legislation covering harmful content was already in force in their countries prior to the Directive or that the state had gone beyond the Directive and implemented laws to tackle harmful content, the overwhelming majority of countries have no legislation in place. Indeed, numerous legal experts submitted that harmful gendered content or gender stereotypes in advertising and the media were not on the radar of their respective Governments – nor had been in the past.

Amongst the legislative instruments there are examples of good practice, such as **Spain** and **France's** legislation, which links gender stereotypes and harmful gendered content in advertising to gender-based violence. In **Denmark, Estonia, Finland** and **Norway**, the prohibition of sexist advertising has been in place for a considerable amount of time and there is a clear assessment as to what amounts to harmful gendered content or what a harmful stereotype is. In these countries there seems to be little discourse that would suggest that providing legislation on sexist advertising or media content would contravene the EU fundamental rights such as freedom of expression – in fact those states that have legislative instruments in place have successfully argued that gender equality issues set aside arguments from industry that are based on freedom of expression. However, in some of the country reports, this is a major issue for concern, most notably in **Sweden** and **Germany**, where previous attempts to provide legislation on the matter have been rebutted with freedom of expression/press protests from industry and opposition parties.

For the most part, self-regulation is the main tool that states have relied upon when it comes to challenging harmful gendered content and gender stereotypes in advertising and the media (see section 3.4 of this report). Most states have a self-regulatory organisation (SRO) and ethical code in place, however, not all SROs have explicit rules or guidelines that fully cover the concepts within this thematic report. There are certainly some examples of good practice within this area of soft law, however there are differences within the make-up of the SROs their respective codes and harms that are covered within. For example, not all codes explicitly cover

gender stereotypes in advertising and the media. There is a need to incorporate some of the assessment criteria that certain states have touched upon and expand what amounts to a gender stereotype with clear guidance and examples of content.

The third aim of the report was to unravel the ways in which algorithmic advertising has impacted advertising and media and the effect it has had on online content and audiences. There is an example of legislation in this field (**Germany**) and pending legislation, soft law and guidelines (**France, Ireland, Malta** and **Spain**). However, by and large, work in this area remains thin on the ground across most countries.

4.2 Recommendations

To resolve the pervasive issue of harmful gendered content and gender stereotypes in advertising and media content in both a meaningful and feasible way at the national level, there are two pathways available for the EU. The first involves enhancing the current EU legislative and regulatory framework so that it explicitly addresses and mitigates the risks posed by harmful content. This could be achieved through a widening of the scope of the Goods and Services Directive, reintegrating the advertising and media sectors within its remit and amending the Audiovisual Media Services Directive (AVSMD) by introducing a stronger regulatory code for advertising and media content that reflects and aligns with both the ever-evolving digital landscape and societal shifts occurring across Europe. The second pathway relates to self-regulation and further soft law and the relationship between non-governmental actors such as the European Advertising Standards Alliance, national self-regulatory organisations and their ethical codes to tackle harmful gendered content in advertising and media content.

4.2.1 Amendment of Secondary Legislation

1. To initiate amendments to legislation, a logical starting point is the Goods and Services Directive. It has been 20 years since the legislation was adopted and at the time, the Directive was designed for a completely different context in which goods and services were predominantly accessed through traditional means and offline channels and advertising and media content predominantly emanated from more traditional forms of technology.

The emergence of new technologies has dramatically reshaped consumer behaviour, such that goods and services are now predominantly accessed via digital and online platforms. This shift has further been accelerated by the propagation of personalised devices that integrate with consumers' lives, such as smartphones, smart TVs, tablets, wearables (i.e. health / smart watches) and smart home technologies, and the growth of interactive mediums such as digital billboards, game consoles and virtual reality. These rapid shifts have introduced novel challenges within the fields of gender equality and non-discrimination, including the regulation of online advertising, the implications of targeted advertising practices, and the risks of algorithmic bias, which were not altogether imagined in the original drafting of the legislation. These new challenges are particularly acute in the fields of advertising and media, where the perpetuation of harmful gendered content and stereotypical portrayals of men and women significantly interrupts and affects consumers' day-to-day lives. Such portrayals not only reinforce societal biases but also have tangible impacts on the physical and mental wellbeing of both men and women, perpetuating asymmetrical power dynamics and limiting opportunities for personal and professional growth. Therefore, revisiting the Goods and Services Directive and

widening its scope to include education and advertising and media content in the access of goods and services (i.e. the exemptions laid out in Article 3(3) of the current Directive) could be one way forward.

As discussed throughout this report, (see sections 3.2 and 3.3) there is a lack of legal protection across Europe and very few legislative instruments that explicitly tackle harmful gendered content and gender stereotypes in advertising and the media. The scope of the Directive could be widened to explicitly include measures that address harmful gendered content, gender stereotypes and discriminatory portrayals of men and women in all forms of advertising and media content. This would increase the scope of the Directive beyond the access to goods and services and into the cultural and content-driven aspect of these two industries. The advantage of this approach would be to ensure that when transposing the changes to the Directive, Member States would be obliged to extend combating discrimination based on sex and ensuring equal treatment between men and women in the access to and supply of goods and services in these two areas. Including measures that address harmful gendered content, gender stereotypes and discriminatory portrayals of men and women would provide Member States the legal basis for national legislation or regulation in this area. The amended Directive could also strengthen national equality bodies (or similar) to proactively monitor and address harmful gendered content and gender stereotypes that appear in advertising and media content. Within this report there are examples of good practice that reflect the benefits such an amendment. For example, in **Spain**, the Observatory of the Image of Women monitors harmful gendered content and gender stereotypes in advertising and media content and decides whether or not such content is sexist or discriminatory based on clear criteria (see section 3.3 of this report).

The amended Directive could also provide a clear definition of what constitutes – or amounts to – harmful gendered content and gender stereotypes in advertising and media content. This would be a significant advantage because in general, differences in interpretation and application of directives often leads to inconsistencies between the national law of Member States. Establishing a harmonised framework with guidance would resolve such inconsistencies. This has been reflected throughout this report where national legislation on harmful gendered content and gender stereotypes leads to divergent typologies of harm (see section 3.2) within the legislation. For example, some states define harmful gendered content and gender stereotypes in advertising and media content as ‘derogatory’, ‘offensive’, while other examples of legislation in the report include the concepts of ‘objectification’, ‘sexualisation’ or indeed make direct reference to gender stereotypes. The amended Directive could clarify such ambiguities by providing guidelines that provide comprehensive definitions of harmful gendered content and gender stereotypes (see section 1.2 of this report). Such a definition could also be gleaned from existing soft law and policy (i.e. the EU and Council of Europe’s current gender equality strategies), national legislation (see section 3.2) and national self-regulation organisations (see section 3.4), reflecting the depth and breadth of the typologies of harm and gender stereotypes that are discussed in this report.²⁷⁹ Incorporating a definition within the Directive and having a set of guidelines would provide a foundation for interpretation and enforcement at Member State level.

²⁷⁹ ‘Harm’ in this context has been broadly interpreted in this thematic report and can include: women and girls disproportionately portrayed in a sexualised, objectified, or in a dehumanised way, women and girls disproportionately portrayed as neurotic, infantilised, or non-conforming identities are mocked or ridiculed. Men and boys portrayed as hypermasculine or emotionally stoical. ‘Gender Stereotypes’ can include but is not limited to women and men portrayed in traditional professional or domestic roles whereby women are represented disproportionately as mothers, care providers, carrying out gendered chores such as cooking, cleaning and men in manual work or business settings.

Considering this discussion, amending the Directive presents significant advantages; however, expanding its scope to encompass advertising and media content poses the challenge of balancing the regulation of harmful gendered content and gender stereotypes with the safeguarding of fundamental rights, such as media plurality and freedom of expression. For instance, in **Sweden**, there is notable hesitance to enact legislation addressing this issue, as the nation prioritises the protection of freedom of expression above gender equality and anti-discrimination. This tension highlights the complexity of aligning regulatory measures with fundamental freedoms.

2. A potential alternative to revising the Goods and Services Directive is an amendment to the current Audiovisual Media Services Directive so that it aligns with the evolving digital landscape and societal shifts that have occurred across Europe.

One significant advantage of this approach is that the AVMSD was previously amended in 2018 to incorporate substantial adjustments to address technological and societal transformations. The amendments from 2018 included additional protection of minors from harmful content in advertisements (i.e. unhealthy foods and alcohol) on TV and online platforms, the allocation of advertising periods for broadcasters, bringing video-sharing platforms (including some social media platforms) under regulatory control to adopt measures to combat hate speech, violence, and harmful content and emphasising the need for more co-regulatory approaches, encouraging Member States and platforms to adopt self-regulatory codes of conduct to combat hate speech and harmful content effectively. A further amendment would ensure the AVMSD remains receptive to the rapidly evolving digital landscape, which is characterised by significant changes in how audiences engage with content compared to almost a decade ago. Such updates would enhance the AVMSD's relevance and effectiveness in addressing these contemporary challenges.

An amended AVMSD could incorporate more stringent regulation of online platforms, requiring Member States to actively oversee and address harmful gendered content and gender stereotypes within the digital environment. This approach would strengthen accountability mechanisms and promote gender equality by addressing the systemic perpetuation of stereotypes in online media and advertising. In its current form, Article 9.1(c) of the AVMSD already ensures that advertisements and media content should not prejudice human dignity or promote discrimination based on sex²⁸⁰ (see section 2.3 of this report). Article 9.1(c) is very broad and as transposition of the AVMSD has been left to Member States to interpret how to regulate such content, there are clear gaps in legislation and regulation at national level when it comes to regulation of harmful gendered content and gender stereotypes in advertising and the media. This has been reflected in this report (see section 3.2), which shows that the Directive has not equipped Member States with the impetus to legislate such content and instead less stringent approaches such as soft law and self-regulation have filled this chasm at national level (see section 3.4). Moreover, it is for Member States to decide what content is considered discriminatory or prejudices human dignity. An amended AVMSD could provide clear language on the typologies of harmful gendered content, harmful gender stereotypes and on what types of content are discriminatory or violate human dignity. As discussed in the previous recommendation on amending the Goods

²⁸⁰ Article 9 1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements: (c) audiovisual commercial communications shall not: (i) prejudice respect for human dignity; (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.

and Services Directive, this report reflects that such ambiguity leads to divergent typologies of harm (see section 3.2) in national legislation on harmful gendered content and gender stereotypes. An amended AVMSD regulatory code could clarify such ambiguities by providing guidelines through co-regulation of national self-regulatory organisations, or European regulatory organisations such as the European Advertising Standards Alliance or the European Regulators Group for Audiovisual Media Services. A stronger advertising and media regulatory code through the AVMSD could introduce new obligations for online platforms to protect users (particularly minors) from harmful gendered content. Such mechanisms could include: i) content-flagging for material or messages that are deemed harmful, sexist or discriminatory; ii) moderation systems that filter harmful gendered content; and iii) age verification for social platforms. Finally, the amended AVMSD could introduce a specific regulatory and enforcement body that regulates online platforms and covers the content set out in this report: gendered harmful content and gender stereotypes in advertising and the media. In **Spain** there is an example of good practice in this regard, the Observatory of the Image of Women, which decides whether or not content is sexist or discriminatory based on clear criteria (see section 3.3 of this report).

There are benefits to this approach, namely that the AVMSD has previously been amended to protect minors from harmful content, demonstrating its adaptability. Introducing an additional amendment to broaden the definition of harmful content to include harmful gendered content and gender stereotypes, while extending these protections to adults, could present a feasible and pragmatic extension of its current scope. Such an amendment would align with the AVMSD's evolving commitment to safeguarding individuals against contemporary media challenges. There are of course some challenges, too. The most evident is that the AVMSD regulatory framework would only apply to online content and digital platforms, leaving traditional or analogue environments with little legal oversight and open to harmful gendered content and gender stereotypes in advertising and media content. Similar to the aforementioned proposed amendments to the Goods and Services Directive, changes to the AVMSD would necessitate careful consideration of the balancing fundamental rights, such as media plurality and freedom of expression. This challenge would be further complicated by the fact that the amended AVMSD targets video-sharing platforms including social media, which may present greater resistance to such regulatory changes.

3. A final and more radical method would be to propose a new directive that would address the issue of harmful gendered content and gender stereotypes in advertising and media content.

Such a directive would incorporate the aforementioned legal protections, garnering definitions of harmful gendered content and gender stereotypes from examples of best practice from the country reports. A new directive would incorporate a comprehensive definition of harmful content and be media-neutral, covering online and offline content, including digital platforms and social media platforms.

The advantage of this approach is that there has been increased interest in both safeguarding gender equality and in addressing harmful gender stereotypes and gendered content in media and advertising content within Europe. This shift can be seen in the current gender equality strategies of both the Council of Europe and the European Union (see section 1.2 of this report), which foreground the objective of eradicating harmful gender stereotypes particularly within digital media environments. The EU's current Gender Equality Strategy (2020-2025) specifically highlights the need for better regulation of the digital environment and recognises the role that algorithmic bias (including algorithmic advertising) can play in reinforcing harmful gender stereotypes in advertising and media content. Moreover, the overall landscape of the EU has transformed in recent years resulting in the foregrounding of gender equality as a fundamental right in EU law. This can be seen in the now legally binding European Charter of Fundamental Rights and the European Pillar of Social Rights action plan,

both of which underscore the importance of gender equality and the need to eradicate gender stereotypes. These shifts have already proven crucial in accelerating the development of new gender equality directives, particularly those that tackle gender equality outside of the workplace such as the recent Work-Life Balance Directive.²⁸¹

There are indeed significant pitfalls that come with this approach. Introducing a new directive aimed at addressing harmful gendered content in advertising and media content involves significant complexities, including extensive negotiations among Member States and industry, the alignment of diverse legal frameworks, and adherence to EU competencies. Moreover, the legislative process for adopting a new directive can potentially be protracted and resource-intensive, raising concerns about its feasibility as a timely and practical solution. As with the drafting process of the Goods and Services Directive, a new directive might be met with hostility from Member States but will almost certainly be met with hostility from the advertising and media industries who may wish to use the EU fundamental principle of freedom of expression to defend their interests. Finally, this approach would take a considerable amount of time from drafting and transposition to implementation and enforcement.

4.2.2 Promotion of Self-Regulation and Soft law

The second pathway relates to the realm of self-regulation and soft law. These two approaches focus on the relationship between EU institutions, Member States, non-governmental stakeholders, including the European Advertising Standards Alliance (EASA), and national self-regulatory organisations (SROs) in addressing harmful gendered portrayals in advertising and media content. These state and non-state actors should continue to collaborate to develop and implement voluntary guidelines and codes of conduct, providing an alternative mechanism to mitigate harmful gendered content and gender stereotypes and promote responsible advertising and media practices.

1. When comparing this approach to amending or proposing a new directive, self-regulation has numerous benefits, which have been discussed in this report (see section 3.4.1).

The main advantage of supporting and promoting self-regulation at Member State level is that it requires little to no interference with or amendments to the current EU legislative framework and would therefore be more palatable for industry and Member States alike. Moreover, encouraging self-regulation through mechanisms such as ethical codes and industry standards offers a relatively expedient and practical approach when compared to the complexities and protracted process of amending or proposing a new directive. This pathway enables quicker implementation whilst fostering flexibility and adaptability within the regulatory framework.

There are other benefits to this approach; self-regulation is incredibly flexible and swift in responding to the rapidly evolving nature of advertising and media content as well as cultural and societal shifts. Self-regulation is also quick in reacting to public mood or to a particularly harmful advertising or media campaign. There are nonetheless problems with this tactic, as self-regulation is often reactive rather than proactive, relying on individual complaints (or NGOs) rather than monitoring adverts. Self-regulation often lacks the capacity to apply

²⁸¹ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU PE/20/2019/REV/1, OJ [2019] L 188.

national legislation or fines to advertisers that breach guidelines and instead frequently relies on pillory, good will and voluntary compliance, making it difficult to regulate harmful gendered content and gender stereotypes with some typologies of harm slipping through the net.

To ensure that self-regulation of advertising and media content is robust and effective, the EU could work more closely with the European Advertising Standards Alliance (EASA) and require EU Member States to establish a self-regulatory organisation (SRO) and draft an ethical code (see section 3.4 of this report). The SRO should implement the International Chamber of Commerce's Advertising and Marketing Communication Code of Practice, and its guidelines. In particular, the SRO could implement Article 2 (social responsibility), which stipulates that advertisers should not discriminate on, among other grounds, the ground of sex and that adverts avoid harmful stereotypes and objectification,²⁸² as well as Article 3 (decency), which states that advertisers should avoid offensive content and respect social norms. The SRO should be media-neutral and therefore capable of capturing all forms of content regardless of platform or content (i.e. algorithmic advertising, social media platforms and influencer advertising etc). SOR ethical codes should provide clear rules and guidelines specifically aimed at capturing gendered harmful content and gender stereotypes in advertising and marketing (see for example, the **UK's** Advertising Standards Authority current guidelines on harmful gender stereotypes). Guidelines or ethical codes should reflect at least the following interlocking typologies of harmful gendered content including: sexualisation, objectification, dehumanisation, nudity, body image, violence against women and content that encourages eating disorders, promotion of toxic masculinity and the mocking of gender non-conforming or LGBTQ+ identities. The SRO should have a competent jury, panel of experts or advertising board that can sufficiently investigate harmful content that breaches the ethical code (see for example good practice in **Austria's** SRO Österreichischer Werberat and its anti-sexism board). The SRO should also have a public-facing remit that educates audiences through public campaigns on how to spot harmful gendered content and gender stereotypes in advertising and media. The national SRO should, in tandem with public campaigns, run awareness-raising campaigns, training and education programmes for advertising, marketing and media companies. Finally, the SRO should provide clear guidelines for the influencer market on how to create socially responsible advertising, including guidance on unhealthy beauty standards, unhealthy behaviours (i.e. unrealistic body types, body image and eating disorders) and transparency; see, for example, **Norway**, where the self-regulatory body FIM has worked on these issues and **Slovakia's** SRO's code and guidelines for the influencer industry (see section 3.4.3 of this report).

In addition to self-regulation, the EU should continue to expand and promote soft law and policy measures such as the Gender Equality Strategy in the eradication of gender stereotypes and harmful gendered content in advertising and media content. The use of soft law and policy measures, for example the SROs, ethical codes and voluntary standards, have the potential to provide an abundance of benefits in this field of regulation. They are also much more flexible and adaptive frameworks when it comes to encouraging advertising and media industries to tackle gender stereotypes and harmful gendered content. Moreover, they can complement the aforementioned legal mechanisms and do the groundwork before such legislation is drafted. Efforts should be made to reinforce these approaches, and the EU can begin to collaborate more with organisations such as the

²⁸² According to the ICC, 'Stereotyping is the practice of referring to or playing on an oversimplified and untrue notion of a particular group, sometimes employing archetypal traits. Objectification means representing people not as persons or individuals but as objects of sexual or other templating character'.

EASA (and other stakeholders) to promote examples of best practice to develop new standards within the advertising and media sectors.

2. When using soft law, the EU could take more proactive steps to regulate a broader spectrum of gender stereotypes in advertising and media content.

This is an area that has been somewhat neglected in the national jurisdictions and indeed within the academic and legal discourse. Attention has been given to the portrayal of women and the gender stereotypes, however, there is a clear lack of regulation on representations of masculinity (i.e. hypermasculinity, emotional stoicism), which continues to contribute to wider societal problems. The EU could do more to encourage Member States to develop soft law and policy that address these specific representations of masculinity in advertising and the media and ensure that the industries present more diverse representations of masculinity. This approach could be achieved by updating existing legal and self-regulatory frameworks to include masculine gender stereotypes as a specific category of focus but also include clear guidelines, examples of harmful types of gendered content, as well as training and public campaigns.

In addition to addressing gender stereotypes and harmful gendered content that affects men, the EU could take more steps to regulate the portrayal of LGBTQ+ and non-binary people in advertising and media content. This could be achieved by encouraging Member States to implement guidelines and examples of harmful content that ensure that a more diverse portrayal of LGBTQ+ and non-binary is reflected in advertising and media content. Such guidelines and examples should encourage positive and nuanced depictions that are based on dignity and not mock LGBTQ+ and non-binary identities.

In conclusion, the two pathways outlined in this section represent both short-term and long-term solutions to addressing harmful gendered content in advertising and media. Pursuing amendments to the existing EU legislative framework or proposing a new directive offers a long-term solution. While such initiatives require time and substantial effort, they have the advantage of providing a solid legal foundation and harmonised set of rules for prohibiting harmful gendered content across all Member States. In contrast strengthening self-regulation and soft law remains an expedient approach. By advancing existing guidelines, ethical codes and soft law measures, this pathway provides a pragmatic interim solution that, while not exhaustive, addresses persistent challenges posed by gendered biases in such content. This method allows for the immediate mitigation of some adverse effects, complementing broader, long-term legislative frameworks.

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