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**Annex: Regulering van  
voedingsreclame gericht op Kinderen  
Landenrapporten voor 11 EU lidstaten**

Zoetermeer, 19 februari 2015

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# Inhoudsopgave

<b>1</b>	<b>België</b>	<b>5</b>
1.1	Description of Current national approach to regulating food advertising aimed at children	5
1.2	Context in which the current national approach was developed and implemented	7
1.3	Evaluating the outcomes and effectiveness of policies	9
1.4	Transferability	11
<b>2</b>	<b>Denmark</b>	<b>13</b>
2.1	Description of Current national approach to regulating food advertising aimed at children	13
2.2	Context in which the current national approach was developed and implemented	14
2.3	Evaluating the outcomes and effectiveness of policies	17
2.4	Transferability	21
<b>3</b>	<b>Finland</b>	<b>23</b>
3.1	Description of Current national approach to regulating food advertising aimed at children	23
3.2	Context in which the current national approach was developed and implemented	25
3.3	Evaluating the outcomes and effectiveness of policies	30
3.4	Transferability	31
<b>4</b>	<b>France</b>	<b>33</b>
4.1	Description of Current national approach to regulating food advertising aimed at children	33
4.2	Context in which the current national approach was developed and implemented	37
4.3	Evaluating the outcomes and effectiveness of policies	42
4.4	Transferability	45
<b>5</b>	<b>Germany</b>	<b>47</b>
5.1	Description of Current national approach to regulating food advertising aimed at children	47
5.2	Context in which the current national approach was developed and implemented	53
5.3	Evaluating the outcomes and effectiveness of policies	55
5.4	Transferability	57
<b>6</b>	<b>Luxemburg</b>	<b>59</b>
6.1	Description of Current national approach to regulating food advertising aimed at children	59
6.2	Context in which the current national approach was developed and implemented	60
6.3	Evaluating the outcomes and effectiveness of policies	61
6.4	Transferability	61



<b>7</b>	<b>Norway</b>	<b>63</b>
7.1	Description of Current national approach to regulating food advertising aimed at children	63
7.2	Context in which the current national approach was developed and implemented	66
7.3	Evaluating the outcomes and effectiveness of policies	71
7.4	Transferability	74
<b>8</b>	<b>Slovenia</b>	<b>75</b>
8.1	Description of Current national approach to regulating food advertising aimed at children	75
8.2	Context in which the current national approach was developed and implemented	81
8.3	Evaluating the outcomes and effectiveness of policies	87
8.4	Transferability	90
<b>9</b>	<b>Spain</b>	<b>93</b>
9.1	Description of Current national approach to regulating food advertising aimed at children	93
9.2	Context in which the current national approach was developed and implemented	97
9.3	Evaluating the outcomes and effectiveness of policies	103
9.4	Transferability	109
<b>10</b>	<b>Sweden</b>	<b>111</b>
10.1	Description of Current national approach to regulating food advertising aimed at children	111
10.2	Context in which the current national approach was developed and implemented	114
10.1	Evaluating the outcomes and effectiveness of policies	117
<b>11</b>	<b>United Kingdom</b>	<b>119</b>
11.1	Description of Current national approach to regulating food advertising aimed at children	119
11.2	Context in which the current national approach was developed and implemented	121
11.3	Evaluating the outcomes and effectiveness of policies	124
11.4	Transferability	128



# 1 België

## 1.1 Description of Current national approach to regulating food advertising aimed at children

### 1.1.1 How is food advertising towards children defined in the country? Do different actors use different definitions?

The Media Decree defines children as being 12 years and under. Minors are those individuals under 16 years and under. However there are no specific stipulations on food advertisements aimed at children. There is however a definition of what constitutes a children's programme in the Flemish media decree, Article 2.19. This states that a children's programme is one which "is aimed predominantly at children, which can be apparent from the content, the time at which it is broadcast, the design of the programme, the presentation and the way in which the programme is announced"<sup>1</sup>.

The advertisements aimed at children are monitored and interpreted on a fairly common sense basis. The Flemish Media Regulator (VRM) adopts a case by case approach when it receives complaints or during its monitoring activities. If a radio or television advertisement appears to have childish appeal (judged by the VRM using common sense and intuition, examining the apparent intent behind an advertisement) and which is not compliant with the decree, it can step in.

The FEVIA self-regulatory code also understands children to be those of 12 years and under, as does the more recent national Belgian Pledge on food advertisements aimed at children. Minors are also considered and these are 16 years of age and under. The code and the pledge use several broad criteria where the apparent appeal of an advertisement towards children is based on the interpretation of the monitoring and enforcement bodies.

### 1.1.2 System of regulation followed by country for regulating food advertising towards children

The media decree, "Media Decreet", which regulates broadcast media in Flanders, was introduced in 2009. This decree was formed to implement the EU regulations on broadcast media, namely the Audio-visual Media Services Directive (AVMS) (which was introduced in 2007 and codified in 2010). In transposing this EU regulation to Flemish law, the Flemish Regulator for Media Services (the VRM) was established by the Flemish government. This body is the formal but independent regulator for all broadcast media in Flanders.

Besides this the Belgian federation for the food industry, FEVIA, has its own advertising code as well for marketing food products. In this code advertising towards children specifically is addressed as well. This was developed with the Belgian Union of Advertisers (UBA) in 2004. In 2005 representatives from the FEVIA, the UBA, and the Association of Communication Companies (ACC) and the Belgian Jury for Ethical Advertising Practice (JEP) presented and explained this food advertising code to food producers and actors in the marketing chain.

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<sup>1</sup> Flemish media decree, 2009



Additionally, a Belgian Pledge was introduced which takes up the rules and stipulations in the EU Pledge. In Belgium as a whole some 37 companies signed and these promises were made public. This pledge carries the agreement that no advertising will be carried out aimed at children less than 12 years of age for foods which do not fulfil appropriate nutrient profiles. This Belgian Pledge was introduced in 2009 and launched in 2012. It was developed at the initiative of FEVIA, the UBA and the Belgian federation of trade and services, COMEOS. This Pledge is monitored by the JEP.

The regulatory agreements in Flanders take the shape of statutory regulation, namely in the form of the Media Decree. This is supplemented by the specific, self-regulatory code developed in the name of FEVIA. Besides this the self-regulatory Belgian Pledge was also launched in an effort to involve as many food producers and marketers and to get them to commit to not advertising unhealthy foods using any media towards children under 12.

The Media Decree focuses on broadcast media. It does not contain any specific clauses on advertisements about food aimed at children. Instead the Decree contains more general clauses on how enterprises can advertise towards children. It broadly contains stipulations on dangerous, violent or overly sexual advertising content and that this should not be aimed at children. Advertisements are only allowed to be shown for children when the programme is more than 30 minutes long. Furthermore, advertisements should not undermine the authorities and social values in a child's life; advertisements should be constructed bearing the "necessary social responsibilities" in mind when being aimed at children and young people. The clauses are thus quite broad for the most part in the media decree. They do not concern the content as much as the general form, shape and timing of advertisements.

In the FEVIA code there are stipulations on the content of the advertisement in that this must be clearly separate from programming. The code covers all advertising forms, including online media. Promotions or sales must be clearly explained as well so that a child can understand the conditions attached to the promotions or sales. Furthermore concerning the content of advertisements, promotional or children friendly characters should not be used to mislead children about the nutritional values of food products advertised. Advertisements should also not make any child feel inferior by not having the product being advertised. Additionally, advertisements may not undermine social values, the authority of parents or teachers, or invite children to persuade their parents to buy the products for them.

The Belgian Pledge also regulates the content of all forms advertisements. No advertisements should be made of any kind aimed at children under 12 which do not fulfil the appropriate nutrient profiles.

The Media Decree implements the EU Audiovisual Media Services Directive and concerns advertisers and media organisations broadly. The FEVIA code targets producers of food products and advertisers and media organisations. The indirect target groups of the Media Decree are all consumers of media, while for the FEVIA code these are all people who consume food products, with a specific focus on children and minors.

### 1.1.3 When was the approach implemented

The Media Decree was implemented in its current form in 2009. It transposes the AVMS Directive which was codified in 2007 and implemented in 2010. The FEVIA code was developed and implemented in 2005. The Belgian Pledge was implemented in September of 2012.

## 1.2 Context in which the current national approach was developed and implemented

### 1.2.1 Problem recognition

The Media Decree was developed to regulate broadcast media initially, but it was amended to its current form in order to transpose the AVMS Directive in 2009. This new directive and the amendments to the Media Decree were in response to technological developments which changed the structure and transmission of broadcast media.

The FEVIA code was developed in response to increasing pressure on food producers and the role they play in contributing to obesity and overweight in Belgium. Its first version, in 2004 was developed in response to the ICC Consolidated Code on Advertising Practices.

As a response to the pressure on the food industry, the food and advertising industries decided to proactively take measures to regulate the advertisement of food more strictly. The rationale for the industry was that self-regulation is the best approach and wished to demonstrate their commitment to advertising food responsibly.

The Belgian Pledge in turn was in response to the EU Pledge for food producers and companies. The driving idea behind a national version of this pledge came from the food producers, trade and services organisations and the Belgian association for advertisers. The idea was to sharpen the commitment and responsibility of food producers when it comes to advertising food towards children specifically.

By introducing more formal responsibility for Belgian food, media and advertisement producers, the Belgian Pledge and the FEVIA code were implemented to regulate the Flemish media without resorting to statutory regulations. By making food advertisements more responsible, with special emphasis on children, these aimed to contribute to more socially responsible advertising with less emphasis on unhealthy foods.

### 1.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?

There are other policies on promoting healthy lifestyles and an awareness of the pervasive nature of media. In this vein there are movements from the Ministry of Public Health, Well Being and Family to increase the "reclame wijsheid" or "advertising wisdom" amongst children.

The activities on promoting better advertising of food, to children amongst other groups, have strong ties with national policies on healthier living. In 2006 Belgium launched a Plan on Nutrition and Health covering the period 2005–2010. In line with the principles of this plan the FEVIA code was developed. In 2007, a White Paper for Belgium on the advertising of food and non-alcoholic beverages to children was also developed into this Nutrition Plan and was partially also implemented in the FEVIA code.<sup>2</sup>

<sup>2</sup> WHO, *Overview of implementation of statutory and self-regulatory codes in the area of marketing foods and beverages to children in European Union Member States*, 2010.



Additionally, the Belgian Pledge also contains stipulations concerning primary schools. Advertisements for food products should not be shown here unless the school expressly asks for this.

*1.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?*

The Belgian Federation for Food producers, FEVIA, was one of the main instigators of the FEVIA code and the Belgian Pledge. In both these self-regulatory instruments however, the Belgian Union of Advertisers (UBA), and the Association of Communication Companies (ACC) were involved in the development as well. For the FEVIA code, Belgian Jury for Ethical Advertising Practice (JEP) was involved in the development and implementation process.

The Ministry of Public Health, Well Being and Sport and the Ministry of Culture, Youth, Sport and Media were involved in transposing the AVMS Directive into the Media Decree, along with the VRM.

*1.2.4 Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

The current FEVIA code was developed in collaboration with advertising, food and related business sectors. The JEP which monitors and enforces the code has been in place since 1974 as the independent self-regulatory body for the advertising sector. The Belgian Pledge was developed at the initiative of several industry bodies and has been sanctioned by the Belgian government who felt this was a favourable initiative. The Media Decree was already in place and was amended. The VRM was also already in existence in accordance with previous EU Directives, namely the Television without Frontiers Directive (the predecessor of the AVMS Directive).

The main contextual factors which affected the development of this approach can be categorised into political, social and technological structural factors. The political debate concerning healthier living reflects a social concern about increasing trends in obesity and overweight. This is common across Europe and the nature of this debate is quite similar in other countries. Society and representatives of different societal groups express concern about rising obesity and overweight, especially amongst children, coupled with concerns about the increasingly pervasive and subtle styles of advertising. This concern, especially with obesity and overweight has been the subject of debate at the political level for some time as well, reflected in the first Belgian moves to make a self-regulatory code (2004) and the Nutrition Plan 2005 – 2010. Indirectly, economic considerations from the food and advertising industries seem to have played a role. While the proactive stance of food and advertising industries to self-regulate advertisements about food is also based on health and social concerns, statutory regulation tends to be more expensive and inflexible. Stricter regulations and the economic impacts of having to operate in a more restrained manner may also have contributed to the development of self-regulatory codes in collaboration with governmental bodies.

Technological advancements regarding the internet and its effect on converging media technologies (in the shape of digital media, social media, advergames, direct marketing etc.), influenced the revision of the EU AVMS Directive which consequently also led to amendments of the Media Decree in Belgium.

#### *1.2.5 Implementation of the approach: how was this done?*

The Media Decree was already in place in a different form and hence the amendments were applied and came into force in 2010. The VRM is the independent regulator appointed by the Flemish government to monitor and enforce this Decree.

The FEVIA code was developed by several actors. Before implementing it, in 2005, representatives from the FEVIA, UBA, ACC and the JEP came together to present the new FEVIA code on advertising food products to the industry companies and enterprises. The JEP is the monitoring and enforcement body and consists equally of advertising sector representatives and civil society representatives. Specifically, the civil society half consists of actors such as the national consumer body (TEST AANKOOP), other consumers and citizens elected by the King Boudwijn charity, the institute for equal treatment of men and women, and members from the academic and research communities.

The Belgian Pledge was implemented by the FEVIA, UBA, and the COMEOS (the representative for Belgian trade and services). Food producers and distributors are invited to act more responsibly by signing the Pledge.

For all three of these regulatory forms, preventative measures in the shape of advice and information provision to advertisers and food producers also form part of the activities of the enforcement organisations.

The VRM has a budget of around 6,400,000 euro per year.

### **1.3 Evaluating the outcomes and effectiveness of policies**

#### *1.3.1 Has there been any review/evaluation of the approach so far?*

The activities of the VRM are published annually in its annual reports. These reports detail the main decisions of the VRM across a range of areas beyond just advertising aimed at children or advertising about food. The VRM contains a general chamber and a chamber for the protection of minors but this concerns protection against sexual, violent or other influences which undermine the social values and responsibility in Belgium.

A second annual report is also developed on the compliance with the Media Decree and this is sent to the Flemish Parliament. The VRM however cites little to know complaints when it comes to food advertising, let alone regarding food advertising aimed at children.

FEVIA produces annual reports of its activities as well, but the FEVIA advertising code is not featured specifically or regularly. The monitoring of the code is carried out by the JEP however, which does produce annual reports containing its decisions. There is no real increase in the number of complaints regarding food and drink advertisements according to the report for 2013. Cases where the JEP establishes a breach in compliance with the Code amongst others are rare.

#### *1.3.2 Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*

The VRM is in charge of implementing the media decree and making sure it is upheld by broadcasting companies and organisations. They do not form policy but make sure it is upheld properly and complied with.

The VRM works on a monitoring basis and on a complaints basis. Complaints are not received often, but in these situations the VRM general chamber invites the non-compliant broadcaster to explain and correct their commercial message. If this does not happen the chamber discusses and takes a decision regarding what kinds of sanctions to implement.



The monitoring of the VRM consists of screening activities of different types of broadcasts. When the VRM discovers a broadcast which does not comply with the media decree the VRM can then start a procedure at their own initiative. (This monitoring constitutes a screening process which involves taking a sample of broadcasts which take place within a given space of time and examining these for compliance with the media decree rules). The VRM administration and legal departments analyse the screened broadcasts and make a report of their findings which is then presented to the general chamber of the VRM who then decide what kind of action (if any) is required.

The VRM works with an external organisation "Nielsen" which records broadcasts between given times and helps the VRM in its screening activities. Nielsen makes a general overview of programming and this overview also gets sent to the administrative and legal departments of the VRM which create the reports on potentially non-compliant broadcasters. The VRM defines a specified number of screenings to carry out in a year but beyond this no targets or objectives are set for the media decree of the VRM to achieve.

The FEVIA code is monitored and enforced by the JEP (See above for more information). This happens on a complaints based system for the most part.

The Belgian Pledge is monitored by different organisations on regular though not annual basis. In the first quarter of 2010 independent monitoring took place of advertising in primary schools, carried out by Gent University. TV spots were analysed by the organisation "Mindshare" and the JEP analysed websites. The monitoring was based on samples for the different advertising venues and compliance overall was said to be very high, namely 96% and over for these three advertising forums.

*1.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

The VRM can undertake a number of actions to enforce compliance. The VRM can address and inform the non-compliant advertiser of their transgression and opt for a voluntary resolution. Should this not work, a warning can be issued, the non-compliance advertisement and the VRM's decision on it can be broadcast, advertising licenses can be suspended or withdrawn, and fines can be issued.

(See above for monitoring of the FEVIA code and Belgian Pledge).

*1.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

The Media Decree and the way it is monitored and enforced appears to be effective. In its 2013 annual report the VRM reports increasing numbers of requests for information on the VRM, suggesting an increasing awareness and interest in the VRM's activities amongst the public. There have also been increases in the satisfaction which consumers feel towards the VRM and its communication activities. The VRM indicates it receives little to no complaints concerning the advertisements on food, let alone food advertisements aimed at children.

From the VRM's perspective a positive aspect of this approach is the independent nature of the regulators as they stand above policy and can operate relatively freely from bias.

### 1.3.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?

From the VRM perspective some of the main challenges were as follows:

- A challenge for media regulators specifically is the convergence of different media types and how best to regulate this. This is an issue which concerns the VRM but does not constitute enough of a large problem to focus too much time and energy on dealing with. At the moment, these cases of converged media are examined on a case by case basis when the VRM encounters them in their monitoring activities.
- Another challenge constitutes the broadcasts which come in from outside the Belgian borders; these form a big challenge for all regulators. For example, RTL being situated in Luxembourg where the commercial broadcasting rules are more lenient, NETFLIX and how to classify and regulate this form of media, satellite broadcasts, etc.
- Commercial communication also has many categories within it: for instance product placement, advertising, infomercials, packaging etc. There is something of a grey zone which broadcasters make as much use of as they can. This makes categorising a broadcast and then knowing how to deal with it problematic for regulators.
- Additionally, there are multiple pressures at work from advertisers, large companies, the economic crisis, and consumer interests which make it necessary to employ a case by case approach to regulating broadcasts.
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## 1.4 Transferability

### 1.4.1 Discussion on transferability of approach

From a self-regulatory perspective, the Belgian approach to regulating food advertisements aimed at children seems quite transferable. The self-regulatory code and the Belgian Pledge carry intuitive appeal in that actors from the food and media industry voluntarily came together to address a societal issue (namely obesity and overweight) with governmental and civil actors.

Financially speaking, these approaches do not contain high levels of extra costs, nor would the human resources involved prove an obstacle to transferring these approaches according to interviews held for this case.

Institutionally speaking, a self-regulatory code is recommended by the EU and as such many countries have a code of some kind and a self-regulatory body to monitor this. The form of the regulating body is interesting in that it is autonomous and includes private and governmental interests in its activities. The Belgian Pledge is monitored by the same organisation which monitors the self-regulatory code in Belgium. However, for monitoring compliance with the Belgian Pledge, a number of different organisations were also involved. The regulating body, being a hybrid of sorts between public and private interests could also be implemented in other countries, as could outsourcing certain types of monitoring to organisations with enough expertise to do so, as was done by the JEP in monitoring the Belgian Pledge.

The statutory approach is relatively easy to implement in other countries as the normal process for introducing a new law was followed in Belgium. This could therefore also presumably be done in other countries; the Media Decree is relatively broad and is complemented by the self-regulatory approaches.



#### *1.4.2 Potential obstacles to transferring this approach to other national contexts*

The Belgian Pledge may, according to interviews, prove a challenging approach to enforce. This is because the stipulations are stricter than in the EU Pledge and because it came about due to the voluntary and committed efforts of a large number of Belgian food producers. Replicating this attitude amongst private stakeholders for responsible and committed advertising will prove difficult.

## 2 Denmark

### 2.1 Description of Current national approach to regulating food advertising aimed at children

#### 2.1.1 How is food advertising towards children defined in the country? Do different actors use different definitions?

##### *The Danish approach*

Denmark has a self-regulatory and voluntary approach to food advertising aimed at children developed and maintained by the industry. A partnership between the full marketing value chain including producers, the media branch, retail food vendors, internet media and broadcasting stations has formed the 'Forum of Responsible Food Marketing Communication' (see 'Forum for fødevarereklamer') with the aim of relieving children for advertisements for food products with a high degree of sugar, salt and fat. They have issued a central Codex (see 'Kodeks for Fødevarereklamer') that encourage partners to not show advertisements for food products containing high quantities of sugar, salt or fat to children in medias that are targeted to children under 13 years of age.

#### 2.1.2 System of regulation followed by country for regulating food advertising towards children

Three aspects are to be considered if advertisement of a food product qualifies to the restrictions in the Codex: 1) if the food product that is advertised for has sufficient levels of salt, sugar or fat as specified in the guide following the Codex (see 'Kodeks for fødevarereklamer'), 2) if the marketing happens through a medium (currently all mediums are included), and 3) if parts of that medium can be described as a childrens medium. A childrens medium is based on the character of the language, effects, persons, themes, age of actors, the date and time of the publication. The member organisation responsible for the advertiser judges whether or not the media is to be considered a childrens media.

The Codex applies to broadcast, online media, and printed media. The Forum of Responsible Food Marketing Communication do not consider the products themselves as marketing; ie. The wrapping and appearance of the physical object itself is not considered. Other grey zones that the interviewees discussed were examples of children using app-games on adult's computers. This is an area that is not possible to account for in the Codex.

##### *The partnership*

The partnership is made up of branch organisations for different parts of the industry. The partnership is voluntary for the organisations, but enterprises that are members of organisations in the partnership is obliged to follow the Codex. The partners are invited to join in to create the structure, content and control of the Codex. The advertisers bear the responsibility of not market unhealthy food products to children, and the organisations in the partnership bear the responsibility of monitoring their part of the value chain and take action if breaches occur. In addition to the Codex, the partnership has created a guide to the senders of advertising that clarifies which food products, mediums and types of marketing that is subject to the Codex (see 'Kodeks for Fødevarereklamer').



The food products are judged as included in the Codex on the level of sugar, salt and fat in accordance to the Danish Nutrition Guide. The forum has created several food categories to which different nutrition criteria applies (see "Kodeks for fødevarereklamer").

The Codex was effective of from January 1<sup>st</sup> 2008. The partnership consists of:

- The Danish Food and Drink Federation in the Confederation of Danish Industry;
- Danish Chamber of Commerce;
- Association of Danish Media;
- TV2 Denmark (broadcasting);
- Danish Brewer's Association;
- Creativity and Communication, Danish Association of Communication and Creative Agencies;
- Association of Danish Advertising;
- Federation of Retail Grocers;
- Horefsta, Branch organisation for Hotel, restaurants and tourism.

#### *The target group*

The Codex applies to children under 13 years of age. It applies to all types of media that children under 13 years are in contact with and to all media equally. It is limited to media, however, and does not take into consideration other forms of marketing as for an example the wrapping of products. The codex encourage, but do not regulate, that special care is taken when marketing to teenagers over 13 years old as well.

The target group of the Codex is the senders of advertisement of unhealthy food to children as well as the full media value chain. Both the senders of advertisement as well as the media organisations are obliged to follow the codex. The indirect target groups that are ultimately affected by this model is children under 13 years of age, who are not exposed to marketing of unhealthy food products through medias.

#### *2.1.3 When was the approach implemented*

The Codex came into effect on January 1<sup>st</sup>, 2008.

## **2.2 Context in which the current national approach was developed and implemented**

### *2.2.1 Problem recognition*

#### *Danish context*

It is important to note that Denmark has a quite low level of marketing of unhealthy food products to children compared to other EU member states. This is true both before and after initiatives were taken to limit the marketing to children. Interviewees has pointed out that Danish consumers largely react negatively on heavy marketing aimed at children, which does not stimulate a great number of this kind of marketing.

The years 2007 and 2008 saw a strong political discussion of the marketing of unhealthy food products to children in Danish public debate. There was discussions of the possibilities of legislating on the area in the Danish parliament, but there was not reached a majority to legislate. As a consequence of the debate, the industry took initiative to create the Forum of Responsible Food Marketing Communication.

Interviews with the industry pointed to the fact that it would be more beneficial for the industry to be involved in the crafting of a solution themselves. In this way the industry would show responsibility on the area as well as not enduring legislation. The Forum of Responsible Food Marketing Communication was thus created on the backdrop of a luring governmental legislation on the area. The Danish Food and Drink Federation took initiative to start the Forum and invited the branch organisations covering the value chain of marketing in Denmark. They involved the partner organisations by the most important players first, but eventually included the complete valuechain in marketing as well as industry organisations. Of notable exceptions, The Danish Consumer Council and the The Danish Patient Association chose to stand outside the partnership as they did not view the Codex discussed to be sufficiently strict in its regulation. They still meet with the Forum regularly to discuss the Codex. The Consumer Council and Patient Organization choose to stay out because they did not find the Codex to be sufficiently strict in its definitions of 'unhealthy food products' and age-definition of 'children'. They do meet with the Forum regularly, as part of a group of Consumer organizations consisting of The Danish Cancer Society, The Danish Diabetes Association, the Danish Heart Association and The Danish Consumer Council. No consumer organization or representative is formally part of the Codex, but the forum meets with these organisations as well as The Patient Association on a regular basis to discuss their views.

The organisations have been positive towards the self-regulatory approach in the Codex, but they do have objections concerning definitions as well as the extent of the Codex and the degree of monitoring. The Forum has viewed the dialogue between consumer/patient organisations and the Forum as constructive.

From a policy debate perspective, the issues have largely disappeared, as there is very limited marketing of unhealthy products to children at all. This is not a topic of public debate today.

#### *Objectives of policy*

The main objectives of the Codex is to create a safe space for children where they will not be confronted by advertising for unhealthy food products. The rationale behind this objective was to stop the increasing weight gain of Danish children to enhance their life quality of their whole life as well as decreasing public expenses to obesity-related sicknesses. By increasing focus on protecting the health of children, the Codex falls into a Danish tradition of protecting vulnerable consumer groups.

The second objective of making a industry led Forum and a Codex was to involve and engage the industry from all aspects of marketing in developing a solution instead of making governmental legislation. This process was industry led and headed by The Danish Food and Drink Federation.

#### *2.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?*

Denmark has a strong tradition for emphasis on good nutrition for children with a strong political focus on the area. This is among other aspects a consequence of the strong institutions regarding children that Danish children are largely exposed to; kindergartens, schools, youth gardens, and their long established roles of shaping the children as healthy individuals.



During the early 2000s a number of articles shows a growing interest in the number of children affected by obesity. Emphasis was put on the health risk the children would experience for the most of their life as well as the expenses it would put on the Danish society in terms of sickness, hospitalizations and early retirement from work.

*2.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?*  
(Please see Section 2.1.1 on Problem Recognition)

*2.2.4 Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

#### *Development of Forum and Codex*

The Codex, like the Forum, was developed in negotiations between the partners of the Forum and initiated by The Danish Food and Drink Federation. Interviews pointed to these negotiations between different industry organisations as tough because there would inevitably be limits to some organisations members marketing strength. The negotiations centered around key definition questions like which nutrition criteria to be used to judge which food product as unhealthy. The Forum eventually chose to use the nutrition criteria from a previous official food guide developed by The Danish Veterinary and Food Administration and consisting of a green, yellow and red category. The Forum then used the red category, the unhealthy category, as defining what food products were not allowed to market. The industry thus took independent initiative to start the Forum for Food Advertising, but based part of the criteria on earlier governmental efforts.

The Codex is not based on any governmental legislation, but has references to the Marketing law chapter 3 (Law number 1216 of 25. September 2013) that states that marketing aimed at children must be crafted with special thought to the natural trust and lack of critical experience of children that make them easy to influence. In addition, marketing aimed at children and young people under 18 years can not legally make references to euphoric substances, including alcohol, nor use violence, fear or superstition as basis for marketing. The official consumer service, the 'ombudsmand', regularly issues guidances about the interpretation of the law on behalf of businesses. The first guide was issued about children and marketing in 1998.

The development of the codex prompted the Danish Veterinary and Food Administration to take a standpoint on the issue of marketing of unhealthy food products to children. They ordered a report on the extent of the marketing of unhealthy food products in Denmark (named "Usund indflydelse", currently only available in Danish). The report concluded that the extent of marketing of unhealthy food products in Denmark is quite low compared to other European memberstates, as well as marketing of unhealthy food products is an area that is very hard to legislate upon as the platforms for the marketing is constantly changing.

The policy of the governmental institution Danish Veterinary and Food Administration towards the codex at the time of development was following the line of the Minister of Food, Agriculture and Fisheries at the time. His opinion was that the Ministry should await the development of the Codex and see how effective it was before pursuing legislation. It followed from interviews that if the Administration was to make legislation on the area, it would try to align it with EU-level legislation. National legislation would not be enough to sufficiently stop marketing of unhealthy food products to children, as it has no authority over non-Danish internetshops.

This priority made the effort to pursue legislation a greater effort than if it would be a question of national legislation. The minister chose to follow the area by having yearly meetings with the Forum of Food Advertising to monitor its effectiveness. The public debate that was very present in 2008 and 2009 has largely decreased since then.

#### *2.2.5 Implementation of the approach: how was this done?*

The multiple partnership posed challenging to the formulation of the Codex in the negotiating phase, but it was very effective in implementing the Codex among the partners members when it was crafted. Interviews mentioned that because the partners involved represented the branch organisations of the whole marketing value chain, they had the possibility to implement the Codex among their members very efficiently. The partners had very direct access to their members and were in an already established position to inform and guide their members from other fields. The implementing process initially required a change in some of the web pages of enterprises that were members of The Danish Food and Drink Federation to correspond to the Codex.

It was important for the partners to include the full marketing value chain in both the development and implementing of the Codex. As well as committing and engaging all the partners, it also added a great dynamic to act fast on challenges to the codex faced by new media platforms. As examples of new media platforms discussed is online games and social media platforms aimed at children.

The development of the Codex involved all who had a part in the marketing of the products: producers, the media branch, retail food vendors, internetmedia and broadcasting stations. The Danish Industry Food Product branch initiated the process of developing the codex. It is rare, but possible for branch organisations to stand outside of the partnership, as for an example the Branch Organisation for Danish Cinemas have done.

## **2.3 Evaluating the outcomes and effectiveness of policies**

### *2.3.1 Has there been any review/evaluation of the approach so far?*

#### *Evaluating the self-regulating model*

After the implementation phase, the Forum has found only four instances of violations of the Codex. Based on the monitoring work by the Forum the model has been very successful.

There is no governmental program for evaluating the work of the Forum or the effect of the Codex. According to interviews, The Ministry for Food, Agriculture and Fisheries is working towards a system of independent evaluation. The Ministry is in dialogue with other Nordic countries about developing an independent evaluation. This dialogue is still in very early stages. Now, The Ministry and the Forum meet yearly for a dialogue on the effectiveness of the Danish model.



*2.3.2 Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*

No government controlled or independent monitoring of the enterprises adherence to the Codex exists. Instead, the partners in the Forum have obliged themselves to monitor the part of the value chain that they are in contact with. The monitoring of adherence to the codex is thus conducted internally in the codex. There is currently no external monitoring of enterprises adherence to the Codex.

Each of the partners in the Forum represents a different part of the value chain and thus monitors different parts of the media using different practices. For three examples, we mention here The Danish Food and Drink Federation, TV2 Broadcast and The Association for Danish Media. The Danish Food and Drink Federation monitors the web pages of their member enterprises for marketing that violates the Codex. TV2 monitors the marketing on their own broadcast. The Association for Danish Media makes a yearly test of all the print media targeted at children to monitor that the marketing adheres to the codex.

The monitoring process is both reactive and proactive as different actors at the various stages of the supply chain employ different monitoring schemes. As an example, The Danish Media Association employs a proactive approach by monitoring parts of the media among their member enterprises that are most likely to reach children. The Forum of Responsible Food Marketing Communication has a complaint hotline and acts reactionary based on complaints. They have not yet received any complaints. The actors in the supply chain generally employs a proactive approach while the Forum employs a reactive approach.

The Forum is in principle open for an independent monitoring scheme in the future to assist the internal monitoring schemes. They stress, though, that there is a very important discussion about the allocation of further resources to a problem that they view as largely solved. The Forum emphasises that it would not be fruitful to use excessive resources to document that there is indeed a very limited marketing of unhealthy food products to children. The Forum could potentially monitor the Danish marketing on foreign broadcasting to the Danish market in order to detect marketing that violates the Codex. However, from the point of view of the Forum, the reward, if any, would not match the effort that they put into it.

*2.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

In instances of violation of the Codex the advertiser is made aware of the violation with regard to their specific advertisement. This has so far been sufficient in order for the advertiser to pull back the advertisement and/or relocate it to a media that are not considered targeted to children. For instance, the Danish Industry Food Agency went through the homepages of 85 Danish food product enterprises and found violations of the Codex in three of them. In this case it was sufficient for the partnership to inform the enterprises of the violation of the Codex in order to make a change in the marketing.

In cases of doubt on whether the marketing violates the Codex, the advertisement is brought to the Forum and discussed among the partners. If the advertisement is thought to violate the Codex the organisation representing the member takes contact to the enterprise and starts a dialogue where the enterprise are informed about the violation and the guidelines in the Codex. This has been sufficient to make the enterprise correct violation so far. This happens usually by the enterprise taking the advertisement down. Interviews hinted at certain webbased and semi-automatic procedures for placing marketing on web pages, that did not necessarily filter through an employee at the web page in question. Violations usually stemmed from these instances, where the transgression usually happened due to ignorance of the Codex on the part of the placers of marketing, and they were thought to be easily resolved. Only if the dialogue does not lead to a change in marketing will the enterprise be reported. This has not happened so far since the introduction of the Codex.

All in all however, the process of enforcing compliance is not clear in the Danish case as enforcement has yet not been necessary. The system of actual sanctions is thus not well-defined at this time. The most commonly applied sanctions are simple approaches to the senders of marketing to inform them that the advertisement is not compliant with the codex. These instances are rare after the first implementation period, and so far they have proved sufficient. No actual sanctions have thus been put to use. The different actors in the value chain judges whether an advertisement is compliant with the Codex. According to the Codex two things are to be taken into account: whether the advertisement 1) contains high degrees of sugar, fat and salt, and 2) if the media is directed at children under 13 years old. A guide with exact definitions is available to the actors in the supply chain.

#### *2.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

Oxford Research views the Danish model of industry led self-regulation is a very effective model in terms of resources and prevention of marketing of unhealthy food products to children.

The Danish Veterinary and Food Administration views the self-regulatory model as a very cost-efficient model for the Administration. From their perspective, the model solves 70-80% of the problem with marketing of unhealthy food product to children, but does so with a minimal drain on governmental resources. The administration is relieved of the responsibility of maintaining the model and answer questions to the industry in cases of doubt.

The Forum also views the Danish model as cost-effective on their side. The responsibilities of monitoring and informing their members has become an integrated part of the Forum partners work and generally falls in line with the daily work of these member organisations. Having developed the model themselves, the Forum expressed a proud attitude to the fact that they were able to take a social responsibility on the subject of children's health without having to be forced by legislation. The Forum furthermore added that this industry led model was much more effective in monitoring the media landscape for marketing that violates the Codex, than a governmental board would have possibility to be. This stems from the partnerships broad contact with the whole value chain of marketing, and the fact that the industry discusses the Codex and potential violations internally.



This last aspect on the Forums discussions of violations of the Codex also makes the Danish self-regulation cost-effective. This brings member organisations from the marketing value chain together to discuss the limits of marketing to children. During so, the Forum observed that the member organisations took responsibility for their member enterprises priorities in monitoring that other parts of the value chain did not violate the Codex. The partnership thus has an eye on each other to a certain degree, and will point out any marketing that violates the codex. These mechanisms also happen at enterprise-level. This self-regulation in practise is viewed across industry and governmental institutions to be far more effective in monitoring the marketing than a governmental monitoring based on top-down legislation can ever be. This point was echoed as a positive and unintended effect of the self-regulatory model by all interviewees.

Marketing in Denmark generally adheres to the Codex. It is both true that marketing of unhealthy food products to children has never been as great as in many fellow EU Member States, and that the implementation of the Codex has had an immediate effect in decreasing the number of this marketing. Interviewees ranging from industry to government representatives all expressed satisfaction with the Danish model in terms of effectiveness in solving the problem and cost-effectiveness in relation to resources. The industry has expressed satisfaction with the model that balances their social responsibility with the commercial freedom of speech on the field. The Danish Veterinary and Food Administration view the Codex as largely preventing marketing of unhealthy food products to children using a minimal of governmental resources. The Danish Consumer Council, standing outside the partnership, has expressed positive views concerning the final Codex, but critical to specific elements (see "Statusrapport").

The effectiveness of the Codes is, in part, viewed as a result of the monitoring at each level of the value chain. The Danish Food and Drink Federation monitors members webpages, the Danish Association of Communication and Creative Agencies monitors the advertising industry, and the media organisations monitors the content of their media platforms. The unintended effect of the partnerships monitoring of each others members marketing campaigns has further secured an effective monitoring model.

Instances of violation of the Codex has showed a very smooth system based on information and dialogue between the forum and the violators, which has been completely effective in readjusting the marketing to adhere to the Codex.

Oxford Research views the Danish industry led and self-regulating model as highly effective and highly cost-effective. It has close to eliminated marketing of unhealthy food products to children under 13 years of age in Denmark, without an excessive use of resources. The industry represented by the Forum did not express the work of maintaining and monitoring adherence to the Codex as an burden, but as a desirable model compared to governmental legislation. It must be noted that the industry did take initiative and continues to develop the Forum in respect to the possibility that the government administration might legislate on the area if they deem the current practice ineffective.

It is widely agreed that the self-regulating model creates a mental attitude among the industry that is more proactive and determined to make an impact in reducing the marketing of unhealthy food products to children, than they would have if they were subject to top-down legislation.

Oxford Research views the Codex as having had an effect on the area, but this is also to be seen in the context of the rather limited marketing of unhealthy food products in Denmark in general.

*2.3.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?*

The challenges in initiating and developing the self-regulative model stems from disagreement in the criteria to be used in the Codex. The Danish Veterinary and Food Administration expressed concern with the differences in criteria for sugar, salt and fat in different food categories. Their concern was mainly that producers could market their product in a different food category, if their product was judged 'unhealthy' in one food category. Furthermore, they questioned the definition of children as under 13 years old, discussing whether 15 years of age might be more fitting. Finally, they see an ideal model viewing marketing in a broader perspective than the marketing in media alone.

Additionally, it posed a challenge, and was ultimately unsuccessful, for the Forum to include the Danish Consumer Council and The Danish Association for Patients in the development in the codex due to too big of a gap in definitions of criteria for the Codex.

## **2.4 Transferability**

*2.4.1 Discussion on transferability of approach*

The Danish model of voluntary self-regulation is in principle easily transferable as it is very light on 'hard structure' like financial requirements and legal prerequisites. However, it does rely heavily on a set of 'soft' contextual factors to function. It requires willingness in mind-set and attitude for all partners (the marketing value-chain and government administration) to have an open dialogue on the area. This requires the industry to be willing to discuss limiting their marketing reach. It also requires the official legislator's willingness to trust that a loose model of self-regulation can solve the problem, and a trust that industry can participate in formulating the principles behind a Codex without losing sight of the problems to be solved. Interviews pointed to the Danish tradition of dialogue between industry and government as an important contextual factor for the success of the self-regulatory approach in Denmark. The dialogue has created an understanding between industry and government based on trust. Interviewees all hints at this tradition for dialogue and trust as a prerequisite for the self-regulatory model to work.

Experts (Professor Birgitte Tufte, CBS in "Statusrapport december 2010) have also spoken of these trends as typically Danish, seeing it as another example of a Danish way of promoting dialogue and information before strict legislation. This should point to the fact that the model is not readily transferable as it is rooted in a historical framework of dialogue and engagement between industry and government, which is vital to its functioning.

These factors have been made possible by an established tradition in Denmark of collaborating across boundaries and previous good experiences for the government to use a voluntary and holistic approach in solving complex challenges like childhood obesity.



Additionally, the Danish model was made possible by a strong initiative from the branch organization Danish Industry Food Products that had the capacity to act as initiator and secretariat of the Forum of Responsible Food Marketing Communication. If this model is to be transferred, Oxford Research views it as vital that the full value chain of marketing is involved in the development and continued monitoring of the market. This has been one of the key factors to success in the Danish model.

The factor that made the industry develop a Forum on Food Product Advertising was the possibility that legislation would be developed on the area. This had been the key contextual factor that made the industry take action.

Oxford Research considers the model of voluntary self-regulation as an example of a successful model. The principles of self-regulating ensures a very efficient and dynamic model that can readily respond to shifting trends in the media landscape. It also ensures a high degree of commitment and engagement from the full value chain to the current Codex, as well as a dynamic model that can act when new media platforms emerge.

#### *2.4.2 Potential obstacles to transferring this approach to other national contexts*

To be successfully transferred, it is important to note the key points that made the model succeed in Denmark: established and trustful dialogue between industry and government, a strong industry initiator and alluring government legislation on the area.

## 3 Finland

### 3.1 Description of Current national approach to regulating food advertising aimed at children

#### 3.1.1 *How is food advertising towards children defined in the country? Do different actors use different definitions?*

Consumer Protection Act (38/1978) and National Food Act (23/2006) constitute the legislative framework for food advertising aimed at children in Finland. The advertising in general is also monitored by Finncham through the Ethical Council of Advertising, who follow the guidelines of International Chamber of Commerce (ICC), Finnish Competition and Consumer Authority, The Consumers' Union of Finland and The Market Court. There aren't specific laws for food advertising towards children, instead laws of Consumer Protection Act and the articles of marketing of Food Act concentrate on securing the rights of all consumers without concentrating specifically on certain consumer groups or product types. The laws of Consumer Protection Act have acknowledged the minor customers for the first time in 2008. Even though policies define what is considered allowable advertising and what is considered to be advertising against good practices, but they don't concentrate specifically on minors. With the term underage or minor, we mean a person who is less than 18 years old. In practice in Finland, the advertising towards minors is divided into two different groups based on target groups; minors in general (less than 18-years-old) and children (less than 15-years-old).

#### 3.1.2 *System of regulation followed by country for regulating food advertising towards children*

The regulation of food advertising towards children is mainly statutory regulation, but co-regulation and self-regulation also exist. Regulation in Finland also follows the principles of The European Charter on Counteracting Obesity, Global Strategy on Diet, Physical Activity and Health by World Health Organization (WHO) and FoodDrinkEurope. Many other parties, such as Finnish Competition and Consumer Authority, The Consumer's Union of Finland, The Mannerheim League for Child Welfare, Ombudsman for Children in Finland and Finnish Food and Drink Industries' Federation and Finnish National Board of Education have presented their support and their own guidelines based on acts of Consumer Protection Act and National Food Act. In addition the Ethical Council of Advertising and the Association of Finnish Advertisers also have conducted their guidelines for advertising towards children. Each guideline entails the same principles, but each organization follows their own guidelines. This means also that each organization gives statements about advertising and advertisements in general but also in case of laws or regulations change, or in other relevant issues. There is no general self-regulatory code for food advertisements aimed at children although the principles of each guideline are the same. The regulation is strongly based on finding violations of good practices (regardless of whether adverts are food or children focused) instead monitoring advertisements before their launch. In Finland, generally, companies follow the regulations carefully.



According to Finnish Competition and Consumer Authority, there are four types of advertising that children are exposed to. (1) Either the advertisement which advertises product for children is aimed at under-aged, but the decision to buy the product is made by an adult. (2) Or an advertisement that is aimed at under aged person and she/he can make the decision to buy it by her/himself. (3) On the other hand, there is also advertising aimed towards adults, where the product itself is targeted towards adults (such as alcohol), but also minors are exposed to it. (4) There is advertising towards adults, the content of which can be interesting to minors. (Finnish Competition and Consumer Authority)

In Finland, the advertising towards minors is divided into two different groups based on target groups; minors in general (less than 18-years-old) and children (less than 15-years-old). The difference of target groups also dictates the requirements and demands for the advertisement itself. At the end, power of decision of the parents of shouldn't be ignored or questioned by the advertisement (Consumers' Union of Finland, Finnish Competition and Consumer Authority).

Finnish Competition and Consumer Authority has stated following regulations for advertising towards small children: It is allowed to advertise in children's programs if the program lasts more than half an hour, but these advertisements are now allowed to include characters of the same children's program shown. Advertisements that are made with same graphic style as the program are not allowed as they might blur the difference between the program and advertisement. Also, as the picture is in the main role, it shouldn't be misleading and other games, play and other entertainment must be separated clearly from advertising (advergames). This is considered extremely important on Internet advertising as on Internet the advertisements usually have bright colours and moving pictures together with interactive contents.

The main role of the advertisement can't be given to children – only if children are naturally linked to the advertised product. Children on the advertisement are not allowed to present direct suggestions to buy a product or present them to other children. Also subliminal advertising is prohibited. With food advertising aimed towards children, one must be careful also with free gifts/toys that come with the product itself as small children are not capable to evaluate the value of the free gift in the same way than adults. For this reason, the free toy/gift can't be emphasized when advertising. This also applies in advertisements where a product is linked to collectables, as collecting might become the main reason for a child to want certain product.

Nowadays in Finnish schools and academies might have vending machines for pupils and students to buy beverages and snacks. Sometimes the vending machine already might include some advertising. Same rules of food advertising aimed towards children apply also on vending machines. For this reason Finnish Competition and Consumer Authority, Finnish National Board of Education and the National Public Health Institute of Finland have set recommendations on what the vending machines of schools should sell. Advertising shouldn't give faulty image of the wholesomeness of the food. (Finnish Competition and Consumer Authority)

In general, audio-visual advertising shouldn't cause physical or moral harm to minors and it shouldn't contain direct requests or orders to buy a certain product. Audiovisual advertising shouldn't take advantage of inexperience or credulity of minors or encourage them to persuade their parents or other people to buy advertised goods, or take advantage of the position of trust of guardians, teachers or other people.

In addition it shouldn't be presenting minors in dangerous situations without a reason. All these actions are considered to be against good practices of advertising. (Consumer Protection Act, 2 § 29.8.2008/561)

When considering the target groups of food advertising towards children, also parents and legal guardians are affected. Advertising is considered to be against good practices if it disregards the responsibility and possibility of parents to act as educators for their own children, or if it takes advantage of inexperience or credulity of minors. Suitable advertising is decided based on the age of minors reached by the advertisement and their level of development with other conditions. (Consumer Protection Act, 2 § 29.8.2008/561.) The most important part about advertisement towards children is to make sure that the commercial meaning is clear – the children understand the commercial purpose of advertising only when they are about 8 years old (The Consumers' Union of Finland). Other parties affected by regulation of food advertising towards children are f. ex. the Association of Finnish Advertisers and the producers of food.

The actors involved in the implementation processes are mostly consumer protection groups, health institutions and other NGOs. They have been the actors who have created the definitions of policies and specified which kind of advertising is acceptable, if the advertising is aimed towards children.

#### *3.1.3 When was the approach implemented*

The last component of this approach came into force in 2008.

### **3.2 Context in which the current national approach was developed and implemented**

#### *3.2.1 Problem recognition*

Main objective behind the regulation of food advertising towards children has been the growing concern for adolescents and childrens obesity that is increasing with alarming rate, and for their health. Finland, as a member of WHO, has agreed to follow WHO's strategies of 2004 to challenge obesity and to promote healthy nutrition and exercise. Healthy nutrition and exercise have been seen more likely to improve national health than any other remedies. After 2004, Finland has paid additional attention on healthy nutrition, especially among adolescents and children as studies have shown that early-childhood obesity is linked to obesity in later stages of life, which causes not only severe health problems but also social difficulties. The Consumers' Union of Finland has also stated that food advertising is also one direct reason for obesity and overweight, with lack of exercise and unhealthy nutrition. For these reasons, also food advertising aimed especially towards children has been under scrutiny. (The Consumers' Union of Finland).

According to The Consumers' Union of Finland minors are liable to impressions and to the influences of advertising. Children usually don't have needed skills to separate advertisements from reality and they don't have enough information about the health problems caused by excess sugar, salt or fat. Food advertising aimed towards children also causes pressure to parents who should have the right and the responsibility to decide about acquisitions of the family. Usually advertising also creates images of trendy lifestyles and ways of life which might be unhealthy, that advertisers want consumers to keep after becoming adults. (The Consumers' Union of Finland)



This approach to regulate food advertising aimed at children connects several policy areas such as health policy priorities and consumer protection. Especially important are health policy priorities such as obesity that is becoming more common among adolescents and children, and it causes severe health problems at later stages of life.

*3.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?*

The organizations that started giving guidelines how to design food advertising towards children were Finnish Competition and Consumer Authority together with The National Public Health Institute of Finland although their guidelines follow guidelines set by WHO in 2004. Based on these guidelines also legislation of Finland was modified in 2008, to state that it is against good practices of advertising to effect to a child in a negative way. (Finnish Competition and Consumer Authority, The National Public Health Institute.) There has been no major changes to the regulation in response to the WHO 2004 strategies.

*3.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?*

Current approach of regulating food advertising aimed at children has been developed by following WHO's strategies to challenge obesity (2008) but already in 2004 Finnish Food and Drink Industries' Federation set self-regulation guidelines for advertising aimed at children based on guidelines of ICC. In 2008 an article was added to national Consumer Protection Act that targeting advertising, that exploits inexperience and credulity of children, harms their development or questions the right of parents to raise their children, is against good practices. Nowadays Finland is trying to protect adolescents and children also in Internet, but establishing regulations and laws specifically for that area has been difficult.

*3.2.4 Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

Political factors affecting national policies on food advertising towards children are mostly concentrating on children seeing food advertisements of products that are targeted for adults and special concern has been paid to advertising alcohol. Currently in Finland direct and indirect advertising and sales promotion of spirits is prohibited and products can be presented only with a price list, but advertising mild alcohols has been allowed since 1995. In 2015 the legislation of advertising mild alcohols will change and advertising of mild alcohols is limited in public places and alcohol advertising shouldn't be linked to games, lotteries or competitions. According to the Ministry of Social Affairs and Health the legislation is changed mainly for reducing situations in which children and young are exposed to advertising of alcohol. The Ministry of Social Affairs and Health has considered that according to several surveys, being exposed to alcohol advertising advances the age of starting to drink alcohol, increases the consumption of alcohol and increases drinking aiming to intoxication. Use of alcohol among minors also increases risks of violence and accidents, harms the development of the young, and prefigures addiction and excess consumption of alcohol in later stages of life. (Ministry of Social Affairs and Wealth)

Alcohol policies have been always debated subject in Finland both in politics as among consumers and the regulation of alcohol and advertising have always received a lot of attention. Some people argue that regulation is too paternalistic but others agree with it and believe that regulation is needed to improving the health of the nation.

Also the regulation of sweets, ice-cream and soft drinks has caused a lot of discussion. In Finland additional taxes have been added to products that fall under these categories and this is reflected in the price of the products. (Ministry of Social Affairs and Wealth) These taxes could have been set by keeping health benefits in mind, but Finnish Competition and Consumer Authority has questioned the purpose of them as the health benefits have only been weakly justified. Most likely taxes have been set for the reason that sweets and ice-cream are popular products especially in Finland, and collecting taxes on these products has increased the tax income of the state.

Finnish Food and Drink Industries' Federation has represented interests of food and drink industries in Finland for years and it has 270 member companies. Food and drink industry is the fourth biggest industry in the country and its gross production value is valued at EUR 11.6. Largest food and drink industry sectors in Finland are meat processing, dairy farming and bakery products. Dairy products and ice-cream cover almost 25% of the whole production, meat processing covers 23% and other food including sugar, candy, chocolate, cocoa and convenience food that covers 15 %. Finnish Food and Drink Industries' Federation has agreed to follow the European food industry's principles of ethical marketing. (Finnish Food and Drink Industries' Federation.)

In Finland, every 5<sup>th</sup> person is overweight. Since 1970's the amount of overweight men has increased and since 1980's the amount of overweight woman has increased. Although the development has slowed down, obesity is still a major problem in Finland especially among children, whose obesity has become more common. (National Institute for Health and Welfare.)

In Finland, overweight of 12-18-year-olds has become threefold in last four centuries and the obesity is more severe than before. According to School Health Promotion study 20 % of 14-15 years old boys are overweight and of the girls of same age, 13 % are overweight. In high school, 18 % of the boys and 11% of the girls are overweight and in professional institutes, 26 % of the boys and 17 % of the girls are overweight. Study suggests that overweight is more common in countryside than in population centers. Children's obesity is also linked to the socioeconomical status of the parents; overweight is more common among children whose parents have less education. (National Institute of Health and Welfare.)

Promoting healthy lifestyle is also important from the point of view of the welfare state, as obesity causes several health problems such as type 2 diabetes. In Finland, even younger children get diabetes than before. Healthy lifestyle also includes exercise and this recommendation has been added to Nutrition Recommendations 2014 of The National Nutrition Council of Ministry of Agriculture and Forestry. (The National Nutrition Council)



What comes to regulation of food advertising towards children when advertising is online or outside of traditional media channels, the regulation doesn't change. The difference between online marketing and marketing in general has been recognized, but online marketing of food towards children isn't regulated with specific legislation or articles. Same principles of marketing apply no matter if the advertising is aimed towards children and no matter the media channel. The Consumers' Union of Finland has stated that in online marketing games, and other entertainment must be clearly separated from advertising content and they shouldn't be interrupted with advertising. If the entertainment is sponsored, the name of the sponsor has to be mentioned but advertising of the sponsor that might interest children is not allowed. Internet pages for children usually have services with what children can connect their friends, such as e-cards or messages – these messages should not have advertising included. (The Consumers' Union of Finland 2014).

It is also important to consider the role of media education in Finland. Finnish Society on Media Education's (Metka's) aim is to develop and support the field of research and practices concerning media education. Media education is usually merged together with first language education. During the education, children and adolescents learn how to read advertising and evaluate advertising from an objective point of view. The main goal of the media education is to attain critical media literacy. (Metka)

Through Metka Media Education center, media education can be provided even to children less than 8-years old. Other parties, such as parents and teachers can also learn, why media education is so important. Media education material is also provided by several other institutions such as the Mannerheim League for Child Welfare and Save The Children –organization. Media education has been seen as essential part of early childhood education as it should build understanding on how to read and interpret advertising and what ways of influence it uses.

### *3.2.5 Implementation of the approach: how was this done?*

The advertising principles for food advertising towards children are same principles and guidelines that are set to any advertising towards children. As mentioned before advertising that abuses the inexperience of children and their lack of understanding of boundaries between reality and advertising is considered to be against the good practices of marketing. The main purpose of the Consumer Protection Act is to prohibit advertising that can be considered inappropriate and misleading from the point of view of the consumer (Virtanen 2010).

The authority making sure that the Consumer Protection Act is followed is Consumer Ombudsman, who works under the Finnish Competition and Consumer Authority. When inappropriate advertising has been brought to the attention of Consumer Ombudsman, he tries to convince the trader to stop using the advertising voluntarily. The trader can also give his/her statement about the controversial advertising, in case he feels that the standpoint of Finnish Competition and Consumer Authority is different than his. If trader's opinion is justified well or the advertising is stopped, the matter is settled. In case the matter isn't settled, Consumer Ombudsman can continue investigating the matter.

Consumer Ombudsman can prohibit the trader to continue inappropriate advertising or give a notification to the trader. Last option for the Consumer Ombudsman is to prohibit all advertising of the trader, and heighten the ban by setting a fine. (Virtanen 2010)

The Market Court handles most cases linked to advertising that is against Consumer Protection Act. The cases go through The Market Court in 3 cases: (1) if Consumer Ombudsman is dealing with advertising that is so substantial that he himself cannot ban the advertising or (2) if the trader has opposed the ban set by Consumer Ombudsman or (3) if consumer associations want to ban advertising that hasn't been agreed with Consumer Ombudsman. In Finland the last case is almost impossible to happen as there aren't as strong consumer associations in Finland that would have enough resources to fight a case in The Market Court. The Market Court is the strongest party to apply sanctions, such as heavy fines and other sanctions, when the consumer ombudsman can only prohibit the trader to continue inappropriate advertising or give notifications and set a lighter fine. Although the consumer ombudsman is the party that can define what is considered to be inappropriate advertising when The Market Court cannot do that.

The Consumer Ombudsman is the person who is mainly responsible for monitoring the advertising content, but rather being an active monitor, the consumer ombudsman is the party to whom consumers can turn if they have noted inappropriate advertising. Also FCCA can receive notifications from consumers about inappropriate advertising, but it mainly concentrates on issues of competition. It is though important to know that the consumer ombudsman works under FCCA and concentrates on securing the rights of the consumer and monitors that the Consumer Protection Act and other regulations are being followed.

According to our interviewee from The Consumers' Union of Finland, the initiative for controlling food advertising towards children has been strongly based on guidelines of WHO and European Union, and the initiator who would have been especially active on this isn't clear. It almost seems that the guidelines have been applied in Finland only for following the guidelines, but not for actually and actively improving the control of food advertising towards children. The same has happened with objectives as they have been formed based on guidelines of other organizations that want to improve health, but applying the objectives actively hasn't happened although all the parties involved in controlling the advertising aimed towards children agree on the importance of it. Many organizations and institutions, such as several NGOs, consumer unions, industry associations and media associations, have given their instructions of food advertising towards children based on the principles of WHO. (Marniemi.) In contrary to interviewee of The Consumers' Union of Finland, the interviewee of Finland Chamber of Commerce saw the regulation of advertising very extensive, as it covers all the medias. (Paloranta)

There hasn't been a specific budget on controlling advertising aimed towards children as the main investments seem to have been the actual guidelines. Although there are several actors controlling the advertising, there isn't any actor that controls the advertising more proactively. According to our interviewee from The Consumers' Union of Finland, most complaints usually come to The Consumers' Union of Finland or to Finnish Competition and Consumer Authority from consumers. This also means that there isn't a specific budget for controlling the advertising towards children as several parties are held responsible for it, but as a part of their job with other duties and not proactively.



Current organizations that represent and control food advertising aimed towards children haven't changed since 2008 when minors were considered in the regulation of advertising. There hasn't been any changes to the regulation and guidelines. According to our interviewee from The Consumers' Union of Finland, there is a clear need to adapt these guidelines to the present for reaching better also the modern media such as social media and games and Internet. (Marniemi.)

### **3.3 Evaluating the outcomes and effectiveness of policies**

#### *3.3.1 Has there been any review/evaluation of the approach so far?*

This far in Finland there are several actors following the regulation of advertising, but there isn't any actor that would monitor proactively advertising in general. There is also a lack of critical evaluation of the approach and it is not clear if regulating the food advertising aimed towards children has helped to reduce obesity rates or improved health of children. The compliance of the guidelines and laws are monitored by several organizations mentioned before such as The Market Court, Consumer Ombudsman, Finnish Competition and Consumer Authority and The Consumers' Union of Finland. Although in Finland not many organizations have received the prohibition to advertise at all, but many advertisements have received a notification from the Finnish Competition and Consumer Authority to stop using certain advertisement as it has been breaking the principles of good practices. Usually the matter has been settled at this point and recently there hasn't been many advertisements breaking the rules. (Paloranta.)

#### *3.3.2 Is there any system for monitoring the effect of this approach to regulation?*

*If so, which organisations or actor carries this out?*

(Please see Section 3.2.5 on Implementation of the approach)

#### *3.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

(Please see Section 3.2.5 on Implementation of the approach)

#### *3.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

When considering the efficiency of this measure, it is effective in regard to applying guidelines and laws for advertising in general. Actors that make sure that guidelines and laws are being followed, have also other tasks, so that they don't concentrate only on following the content of advertising. In this way, it is very efficient from financial and human resources point of view as the regulation doesn't require many resources. On the other hand the measure lacks efficiency because no actor is following proactively that the guidelines and laws are really followed. As mentioned before, in Finland mostly the consumers pay attention to advertising and they are the ones to complain about marketing that is against good practices. According to interviewee from The Consumers' Union of Finland, there should be more proactive institutions in following advertising not only on traditional media but on new types of media as well.

One obvious success factor is that based on the guidelines of WHO and European Union, the acts of the Consumer Protection Act have been updated and many other important institutions have adopted these guidelines as their own. This means that adopting the guidelines and laws has been easy and efficient and many actors have agreed to follow them. One important aspect to be improved is that there isn't any actor to follow these guidelines more proactively and measuring the efficiency of following the guidelines hasn't been done as extensively as it could be. It has become difficult to follow children on Internet and even if the regulations still apply, it's increasingly hard to find all the channels through which children are exposed to advertising. Controlling advertising of food aimed towards children on Internet, social media and other new marketing channels requires very vast resources even though the regulation of advertising in Finland has been considered media-neutral. These new media forms also pose additional challenge for controlling the advertising aimed towards children. It is also interesting, that according to our interviewee from The Consumer's Union of Finland questioned if anything should be marketed towards children in general. (Marniemi.)

*3.3.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?*

It is important to notice that the guidelines and laws have worked well without proactive monitoring of the practices because in Finland people are in general very law-abiding. They follow the rules and laws applied and it is not very common to break the rules, even if there wouldn't be very severe repercussions for certain actions. For this reason, the way of controlling the advertising in Finland has been arranged can be considered efficient as it is followed relatively well.

## **3.4 Transferability**

*3.4.1 Discussion on transferability of approach*

The measures of controlling (food) advertising are media-neutral in Finland, which means that they can be applied to any media. This is also seems extremely efficient, as there aren't different rules and regulations to each type of media, and this type of approach also increases the flexibility to apply the law to any new situation, media or environment. According to the interviewee of Finland Chamber of Commerce, Finland also follows the regulation applied by ICC very carefully. ICC regulation hasn't been separately customized to Finnish Legislation, but they are rather used intertwined and the problems are solved case by case.

The regulation of advertising in Finland is also considered to be very general as there isn't regulation for each type of product such as food, but the regulation applies to all the advertising, no matter if one is advertising products or services. All the interviewees considered the Finnish approach to control advertising as culture-neutral; it could be applied to any other country also, but in case the regulation of advertising is very detailed, it could be more difficult to apply more general approach. Financial requirements for this type of regulations are not substantial and this was agreed with the interviewee of the Ethical Council of Marketing. The only costs are based most likely to the change of legislation, but as the general guidelines apply to all the situations and all the media, the details won't be a burden to the budget. Interestingly, Finland has also adopted the marketing guidelines of ICC, but it hasn't changed the guidelines to Finnish culture, they have been kept untouched.



According to the interviewee of the Ethical Council of Marketing, other countries following the guidelines of ICC have applied them by modifying them closer to the culture and legislation of each country, which has needed additional financial requirements.

#### *3.4.2 Potential obstacles to transferring this approach to other national contexts*

The fact that Finland follows ICC guidelines and has put together a media-neutral legislation, applying to all the media and advertising, makes the other capacity requirements minimal. Only setting up the guidelines can be considered laborious, but otherwise the process itself is relatively straightforward. In this light, also the legal and institutional requirements are relatively small. Once the laws have been set as media-neutral and applicable to all products and services, there is no need to specify legislation to apply to different cases or situations as the same principles are always valid.

The key feature of this approach that make it easily transferable is the fact that it isn't tied strictly to the culture or cultural norms, or to a certain media or certain products or services, but the regulation of advertising applies to all advertising, to all consumer groups and advertisers and it is media-neutral. The only obstacle would be the fact, that the Finnish approach to the regulation of advertising is so flexible, that it might not work in a country, where the regulation in general is very detailed at the moment.



## 4 France

### 4.1 Description of Current national approach to regulating food advertising aimed at children

#### 4.1.1 How is food advertising towards children defined in the country? Do different actors use different definitions?

In the two charters aiming to promote healthy food behaviors and physical activities conducive to health, we find that the approach to regulating food advertising aimed at children is based on these definitions.

- Food advertising: all types of advertisements representing eating behaviours. Every food sector is concerned by. Source: AARP (professional regulator authority of advertising grouping advertiser, advertising agencies and medias);
- Children: 3-11 years old. Source: PNNS (Health and Nutrition National Program).

When signing charter, signatories accept definitions specified in the charter. There is no disagreement or discussion on this.

However, some actors, among which industry actors, use a less precise definition for ads diffusion rules. They use two criteria:

- 1- ads with children acting;
- 2 -ads dedicated to children. This second criteria is not defined more precisely. There is no definition of how a commercial qualifies as ads dedicated to children.

#### 4.1.2 System of regulation followed by country for regulating food advertising towards children

The current national approach to regulating food advertising aimed at children is defined in a charter signed in 2013 for a period of 5 years (2014-2018). Its aim is to promote healthy eating and activity, physical health promotion in programmes and advertisements broadcast on television.

It continues, specifies and completes the objectives of a first charter, signed in 2009 for the period of time 2009-2013 called the "Charter to promote supply and a favorable physical activity to health in programs and advertisements broadcast television".

The second charter has expanded the scope of work of the first one by including new programme distribution methods (Internet, TV called "catch up", delayed viewing) in addition to traditional TV broadcast. It also now concerns 36 channels (TNT, ultramarine television and local television...) compared to 19 previously. It concerns advertising broadcasted on television, video-on-demand ("VOD"), (whether in dedicated services or Websites headings), Catch-up TV services ("Catch-Up TV"), online services offering audiovisual content, professionals and "editorialized" services.

The second charter was signed by 33 structures, among them 6 ministries of government, 16 media groups or media associations, 1 association of communication agencies, 6 advertisers or associations of advertising producers and 2 food industry association.



France has adopted a system of self regulation.

Since 2001, public authorities established the PNNS (Health and Nutrition National Program). It aims to:

- Reduce obesity and overweight in the population;
- Increase physical activity and reduce sedentary lifestyles for all ages;
- Improve dietary practices and nutritional intake, especially among at-risk populations;
- Reduce the prevalence of nutritional diseases.

One of the ways to achieve these aims is to reduce the effects of advertising pressure by continuing reflections in order to succeed in limiting the advertising pressure on children for the consumption of foods which are fatty, sweet, or salty. Two complementary ways exist to achieve it: regulating ads contents and regulating ads diffusion.

### **1. First attempt regulating ads diffusion:**

Self regulation had begun before the signature of the first charter in 2009 by trying to regulate ads diffusion. Since 2004, the ANIA (National Association of food industry) has recommended its adherents to begin with eradicating food ads directly associated with children programmes on TV except if those ads are for goods with nutritional interest.

Some unions (such as those for chocolate or sweets) ask their members to stop promotion during children's programmes. Ferrero for instance, defines a rule to: not promote foods products when a TV program is watched by an audience constituted by at least 25% of children of less than 10 years old.

In 2006, the Higher Audiovisual Council (CSA) adopted a recommendation for television service editors, forbidding a programme dedicated to children from being interrupted, proceeded, or followed by advertisements for products or services using the image of the programme protagonists. Thus, the message can't be broadcast in the last position in the break before the start of the work and first in the screen of the end of the work.

The main problem of this attempt to self regulate ads diffusion is that it is based on recommendation. Nothing was made compulsory and there were no regulation procedures. Each food industry actor does what he expects it to be advantageous to do.

### **2. Second step: regulating Ads contents:**

In 2009, the Health Ministry found the results of such engagements insufficient to reduce obesity and overweight in children. Therefore the French Ministry of Health envisaged the elimination of advertising for food products around children's programming at the time children are in front of tv.

The audiovisual sector and the Higher Audiovisual Council (CSA<sup>3</sup>) responded by explaining that the removal of food advertising would undermine the economic model (which irrigates cinema, fiction, animation, sports etc.), or even the sustainability of many television channels.

Negotiations following this resulted in a compromise with the first charter to promote nutrition and physical activity in health-promoting programmes and advertisements broadcast on television. Therefore, the focus of self-regulation changed from ads diffusion to ads contents.

The ads diffusion topic is not written in the two charters of 2009 or 2014 but remains an objective for self-regulation coming from the food industry alone.

The first charter was signed in February 2009 for a period of five years and the second one was signed in December 2013 to continue, specify and complete the objectives of the first charter. The second charter covers the period 2014-2019 and the first commitment is related to food advertising towards children even if it is wider than the specific age group. In this commitment, it is written that:

*Advertisers are committed to enhancing the "quality" approach to advertising on the content of food advertising.*

*Advertisers (by ARPP<sup>4</sup>) agree to a reassessment of ethical rules on the content of advertisements aimed at children in the light of their new advertising undertaking. This reassessment should in particular consider the following topics:*

- *Updating the development of good eating habits and lifestyle;*
- *Attitude and vocabulary limits of humor with respect to a child audience;*
- *Reference to equivalence and nutritional comparisons with fruits and vegetables etc...;*
- *Directed messages (not maximalists' presentations and performances related to the product, rigorous staging of components of the product ...)*
- *Relations with educators and parents (respect for authority etc.);*
- *Guidelines to the attention of traders on communication on nutritional guidelines of the National Health Nutrition Program.*

*After the consultation work and writing required to finalise these rules, advertisers will present the new text to the Ministry of Health and Sports, and the Ministry of Culture and Communication. This proposed reassessment must be made within a maximum of 6 months to the Ministry of Health and Sports, in consultation with the Ministry of Culture and Communication.*

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<sup>3</sup> Created by the law of 17 January 1989, the Higher Audiovisual Council (CSA) is to ensure the freedom of audio-visual communication France. It has broad responsibilities, including: **protection of minors**, respect for the pluralist expression of opinion trends, organization of election campaigns on radio and television, rigor in information processing, allocation of frequencies to operators, respect for the dignity of the human person, **consumer protection**. In addition, the Council is responsible for "ensuring defence and illustration of the French language and culture" on antennas. More recently, it has received new assignments: making television programs accessible to people with hearing or visual disability; ensure representation of the diversity of our society in the media; **contribute to actions for the protection of health**. CSA consists of a college of nine members appointed by decree of the President of the Republic. Three of them, including the President, were appointed by the President of the Republic, three by the President of the Senate and three by the President of the National Assembly. The Council consists of senior clerks of the State, journalists and audiovisual professionals.

<sup>4</sup> Professional regulator authority of advertising grouping advertiser, advertising agencies and medias, which has signed charters.



In December 2013, a new charter was signed because the first charter was coming to an end. The scope of work was expanded by including new programme distribution methods (Internet, TV called "catch up", delayed viewing). The charter now concerns 36 channels (TNT, ultramarine television and local television ...) compared to 19 previously.

The main interest of such charters is not to emphasize food ads exclusively, but try to work on the ways TV programs and ads can promote food behaviours conducive to health. In the first charter, in addition to the first commitment, there were seven others. In the second charters, there were fourteen.

In the charters, the AARP<sup>5</sup> elaborated a collection of ethical rules submitted to the Ministers in charge of health and culture. Advertising must:

- Still represent a balanced meal;
- Not encourage excessive consumption;
- Oppose snacking;
- Not to represent a scene in front of screen consumption within a household (this rule can rule any image that would combine the consumption of food and beverages to a sedentary leisure-related vision Screen).

The code of practice also reinforces the prohibition of advertising featuring children, or for children, which would leave them believe that taking a food can produce an effect of nature making them access exceptional performance.

Finally, the advertising should not devalue or minimize authority or undermine adults surrounding consumer products, in terms of children, or suggest their resignation.

This charter concerned television (national or local, generalist or thematic). Since 2014, 36 notional channels plus local channels. It concerns linear TV + internet websites of those channels and television on demand.

For both charters, the regulation is shared by public and private actors. The AARP (professional regulator authority of advertising) defines the rules. The rules are then discussed by public authorities (Ministries); rules are taken in place by the Union of advertisers. The respect of rules is assessed by the CSA (Higher Audiovisual Council) each year in a report.

#### 4.1.3 *When was the approach implemented*

In December 2013, a new charter was signed because the first charter was coming to an end. The approach with charters was implemented since 2009 even though these were in preparation since the beginning of 2000's.

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<sup>5</sup> Op cit.

## 4.2 Context in which the current national approach was developed and implemented

### 4.2.1 Problem recognition

The main objectives of this approach is to promote good practices in food ads so that ads don't contribute to or encourage food behaviors unfavorable to health, especially given the growth of obesity on children. This is also especially relevant for children belonging to lower social classes who look at TV more than others.

There is a lack of data on children and teenagers' obesity. In 2009, the prevalence of obesity in children of 5-15 years was higher for 14-15 year old than for 5-6 years old. Male children seems to be more concerned by obesity than female children.

**Prevalence of obesity among age**

Âge	Male	Female
5-6	2,9	3,3
9-10	4,1	3,7
14-15	4,1	3,8

Sources : school health surveys, French Health Ministry, 2009. for 5-6 : school year 2005-2006. For 9-10 : 2007-2008. For 14-15 : 2008-2009.

Some articles write that obesity regressed among children of the upper classes and progressed among the children of the lower classes. However, the evidence on this is insufficient to draw definitive conclusions. For teenagers, school health surveys show that obesity has grown on teenagers coming from household of managerial staff and employees but not for teenagers belonging to workers households. Nevertheless, obesity was higher for those teenagers.

**Prevalence of obesity and weight among teenagers**

Social group of parents	Overweight			Obesity		
	2001	2004	2009	2001	2004	2009
Managerial staff	11,3	11,0	12,5	0,7	1,9	2,3
intermediate professions	15,2	15,1	14,7	2,8	3,5	2,1
Farmers and retailers	17,9	21,1	19,2	2,3	5,1	3,9
Employees	17,0	18,9	19,9	3,9	5,2	5,0
Workers	19,8	21,4	22,2	6,8	7,2	6,5
Others	23,4	21,0	17,2	6,1	3,8	3,4

Sources : school health surveys, French Health Ministry, 2009.

In France, in 2006, 10% of programs watched by children (4-10 years old) were ads. This is more than for adults (7%) (source: Bureau de Vérification de la Publicité). A number of studies on advertising and children focus on misleading advertising, children not knowing the difference between advertising and other television programs. Children are often not able to understand the commercial purposes of advertisements when they are under 7, 8 or even 11 years of age.



The impact of advertising on children's health is the subject of a large number of international studies involving scientists concerned with the issue of childhood obesity, including the WHO (World Health Organization). According to the French Agency for Food Safety of food, "exposure to television advertising has a major direct impact on a balanced diet of children. First, the time spent watching TV contributes to settle the child. On the other hand, the proportion of food commercials aimed at children is 62% on an averaged Wednesday. For adults, only 42% of advertisements are for food. Half of these ads are for high-calorific products. »

By regulating the contents of ads children can watch, private and public actors expect to contribute to better children food behaviors.

#### *4.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?*

The link between food ads and health policy is explicitly written in charters and is present since the first PNNS (2001).

#### *4.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?*

In the two charters, the initiating organisation is the same. The AARP (professional regulator authority of advertising) defines rules. Rules are discussed by public authorities (Ministries); rules are implemented by advertisers (Union of advertisers). The respect of rules is assessed by the CSA (Higher Audiovisual Council) each year in a report. In this way, every actor is involved and the assessment of charter impact can be widely shared.

Debates involved Food industry, public actors and consumers associations. ANIA (Food Industry association) and UFC-Qu Choicer (Consumer association) are particularly actives on these debates.

#### *4.2.4 Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

Before the charters, rules and laws, based on European directives and agreements were signed between operators and the Higher Audiovisual Council (CSA).

The first texts are written in the Law of 30 September 1986. It frames the appearance of the first private television channels (Canal Plus and TV5). Advertisements shall in no case exploit the inexperience or credulity of children and adolescents.

- Children and adolescents may not be prescribing the product or service being advertised;
- They may not be key players if there is a direct relationship between them and the product or service involved.

As noted by the CSA, "the decree prohibited the use of children and adolescents as prescribers of a product or service and as the main actors of an advertisement for a product not on directly, that is to say, not for family consumption or not mostly consumed by them.

These provisions are being eased with a 1992 decree that incorporates the terms of Article 16 on the protection of children, from the EU Directive "Television without Frontiers" of 3 October 1989. Television advertising shall not cause moral or physical detriment to minors and must therefore respect the following criteria for their protection:

- it must not directly encourage minors to buy a product or service by exploiting their inexperience or credulity;
- it must not directly encourage them to persuade their parents or others to purchase the goods or services;
- it must not exploit the special trust minors place in parents, teachers or other persons;
- It shall not unreasonably show minors in dangerous situations.

In addition, "advertising must not cause moral or physical harm to minors. To this end, it must not:

- Directly encourage minors to buy a product or service by exploiting their inexperience or credulity (...) ";
- directly encourage them to persuade their parents or others to purchase the goods or services;
- operate or alter the special trust minors place in parents, teachers or other persons;
- Submit without reason, minors in dangerous situations. "

The 1992 decree prohibits commercial breaks of programmes for children less than 30 minutes. As for Article 14, it imposes a clear separation between advertising pages and the rest of the programs broadcast: "Advertising messages or sequences of advertisements must be easily recognizable and clearly separated from the rest of the program before and after release by screens recognizable by their optical and acoustical characteristics".

In 2001, on the occasion of the renewal of the agreements of the private channels TF1 and M6, CSA, "anxious to avoid excessively commercialized in children's programming and to alleviate the advertising pressure in the programs designed for them" has incorporated specific provisions in agreements of private channels "the company ensures a clear identification of advertising screens in programs for youth. To this end, it uses for all of these programs, generic advertising screens with a minimum duration of 4 seconds composed of audio and visual elements to the young audience to easily identify them. "(Article 50 of the Convention M6, TF1 Article 45 of the Agreement).

The Higher Audiovisual Council (CSA) adopted the following recommendation in 2006 to television service editors, to frame these practices: "In order to protect the fragile public that are minors, the Council draws the attention of all television services on the need to ensure a framework for programming animation and fiction for minors who, featuring characters who are the subject of a separate business operation can help to promote products or services using the image of these characters, maintaining a real confusion in the minds of the young viewer between the field of advertising and that of fiction. In the case of animated films and fiction which have experienced a significant success and whose characters are exploited to create oriented products to the young audience: school supplies, video, toys and games, etc., to avoid any confusion in the minds of the young viewer between editorial content of a work and the advertisement promoting the products derived from it, these advertisements must be clearly separated as chronologically as possible from the work.

As a result, the work can't be interrupted, preceded, or followed by advertisements for products or services using the image of its protagonists.



Thus, the message can't be broadcast in the last position in the break before the start of the work and first in the screen of the end of the work.

The current approach is thus more a continuation than a change. As private sectors had begun to define rules on ads dedicated to children before 2009. BVP (now AARP) specifies in 2002, deontological rules on ads dedicated to children. 2005, National Association of food industries creates a guide of good practices on nutritional communication.

*Contextual factors:*

- **Political & social:** The link between ads, food behaviors and health is determinant in the approach chosen in France. In France, there was a growth in obesity amongst children from lower socio-economic classes.
- **Economic:** In 2010, around 50% of commercial revenues of youth chains are linked to advertising revenues related to food (source UFC Que Choisir et IREP). In 2008, 26.8% of commercial revenues of youth chains are linked to advertising revenues related to food. A ban on advertising on food for children could threaten the financial stability of TV channels.

#### 4.2.5 Implementation of the approach: how was this done?

**The Authority professional regulation of advertising (ARPP)** is the professional regulatory body for advertising in France. In everyday life, its actions can be reactive (reacting to complaints for instance) or a proactive process. The ARPP missions result in different types of actions:

- **Development of Recommendations:** Advertising professionals voluntarily give rules - say Recommendations from the ARPP - for advertising in France is exemplary, beyond the mere application of laws that may already regulate it. The rules of ethics and mission ARPP cover only the content of the advertising message (that is, is it likely to mislead? Likely to shock? Irresponsible? Etc.)
- **Compliance before broadcast:** Operational teams within the ARPP ensure that daily advice requested by its members who wish to verify the compliance of their advertising projects with applicable regulations and ethics before the broadcast commercials. It concerns every type of Medias (television, radio, Internet...):
  - The Media Council before finalizing advertisements: members of the ARPP can seek advice on their projects in order to verify compliance with professional rules.
  - Opinions ("favorable", "modify", "not to broadcast") are issued before publication systematically on all completed films for television advertising boards and audiovisual media services on demand (SMAD). During 2012, a total of 22,529 pre advice on messages for television, 22 reviews modifying concerned the application of ethical recommendation entitled Effective Eating behavior on 1 January 2010. Notification before distribution procedure is compulsory for commercials for Audiovisual Media Services on demand (SMAD). Specifically, these are commercials broadcasted on video-on-demand ("VOD"), whether dedicated services (e.g. TF1 Vision, Canalplay video Club SFR ...) or Websites headings (e.g. headings VOD TF1.fr , M6.fr), Catch-up TV services ("Catch-Up TV"), e.g.

M6 Replay, Pluzz (ditto: Dedicated services or sites headings), online services offering audiovisual content, professionals and "editorialized" (e.g. BFM TV channel on YouTube, M6 channel on Daily motion).

- **Interventions for failure after diffusion:** Once the advertisement is broadcast , ARPP may also intervene in various ways:
  - Teams ARPP may on their own initiative note a failure found after diffusion of advertising and intervene with the professional at the origin of the message.
  - The public, if shocked by a broadcast advertising, can enter the Advertising Ethics Jury who will then decide on the merits of the complaint and issue a decision.
- **Interface with public advertising:** In order to properly carry out its mission of regulating advertising, ARPP must be responsive to requests, concerns and sensitivities of society. This part of its business has expanded considerably in recent years.
- **Development of professional regulation:** The ARPP ensures a good spread of professional ethics (conferences, publications ...), works in the permanent widening of the circle of its members and supports the national and international levels, the promotion of advertising self.

Before or after dissemination of advertising, ARPP can intervene with the advertising manager asking them to justify certain allegations, to make changes or not to broadcast advertising or stop its spread. In case of refusal, the ARPP members can approach the media. For members, consequences of refusing to follow our decisions can go all the blame or to radiation.

Penalties may also be taken by JDP (Advertising Ethics Jury) against advertisements that have been subject to a complaint. JDP's mission is to rule on public complaints against advertisements which have been broadcast. Advertising Jury opinion follows a gradation indexed on the gravity of the offense and the response by the professional (depending on whether or not to accept to withdraw or amend its advertising).

Penalties may be up for the immediate cessation of diffusion in the relevant media form. The first level of publication is the on-line reviews, as and when they are taken to the website dedicated Jury. The second level of publication is the press release, quoting the brand of the advertiser and the agency name (when there is one) to the breach. In cases where the violation of ethical rules is particularly serious, publication of an advertisement in the press is made. If campaigns constitute breaches of professional rules, sanctions can impose an immediate cessation of broadcast request to the media.



**The Union of Advertisers (UDA)** implements and complies with procedures in place since the adoption of the Charter to ensure optimum consideration of the rules of the recommendation of the ARPP on eating behaviors:

- Implementation of best practice sheets summarizing all the rules related with the recommendation. These good practice sheets were distributed to all teams and have been posted on the portal for newcomers to the marketing team (intranet);
- Training for with the different teams in charge of communication, including, for some cases, through exchange meetings with ARPP teams at the advertiser;
- Internal validation involving multifunctional teams (e.g. regulatory, communication, legal ...) and, for some, development of specific tools and / or responsible communication committee to monitor these validations;
- Others continued to include the need to respect these rules in contractual clauses between their agencies;
- Some advertisers, signed the UDA charter for responsible communication, reported on their actions to comply with the rules of the recommendation, on the website of the UDA in the area dedicated to the Charter ([www.uda.fr](http://www.uda.fr) / communication section manager / UDA charter).

**The Higher Audiovisual Council (CSA)** is responsible for monitoring the implementation of this charter for editorial aspects of the programs as well as the legal content of advertisements. The Board monitors and evaluates the implementation of commitments relating to the content of the advertisement. CSA established three evaluation reports (2010, 2011, and 2012).

## 4.3 Evaluating the outcomes and effectiveness of policies

### 4.3.1 Has there been any review/evaluation of the approach so far?

#### 1. Ads contents:

Since 2009, **CSA** assesses the compliance with commitments by the signatories of the Charter.

In 2013, the CSA noted:

Four years after the implementation of the Charter to promote nutrition and physical activity favourable to health in programs and advertisements broadcast on television, the Higher Audiovisual Council finds from year to year, efforts and will of all signatories to participate in the fight against obesity by encouraging good behaviour in specific programs.

In terms of advertising, ARPP, UDA continued to evolve the content of the messages in the right direction, asking the advertising agencies and advertisers to respect the commitments of the charter.

In 2014, the **Environmental, Economical & Social Council (CESE-EESC)**<sup>6</sup> welcomes the most ambitious scope of the new charter (2014) and approves in particular of the efforts brought to account for specific problems such as obesity in overseas territories.

It also seems useful, in this regard, to educate parents and children concerning the influence of advertisements on their eating behavior and encourage them to discuss these issues as well as on the different food production systems in close collaboration with the women, men and territories.

Beyond advertising, strictly speaking, television series, very popular with children and adolescents, may induce effects on dietary patterns of them through the process of imitation or identification. For our meeting, it is necessary to make rules on the matter so that these programs are privileged eating behaviors to promote such as preparing meals together and use of fresh and healthy products instead of snacking and consumption systematic little health food (chips, pizza ...). The EESC questions the possibility of prohibiting reprehensible practices nutritionally in programming for young people, like what has been done to fight against smoking or alcoholism. Indeed, product placement practice (except tobacco, alcohol or drugs), usually called "hidden advertising" is permitted in France since 2011, in television series and other film productions other than those for children. It would seem sensible to draw all the consequences of this legislation in the light of the objectives of NFHP and public health concerns on this issue.

**Consumer organizations:** In 2006 and 2010, UFC Que Choisir realizes a study on TV Marketing for food products dedicated to children. This consumer organization wrote that commitments taken by public and private actors are these recommendations are the minimum that one is entitled to expect from the makers of advertisers.

## 2. Ads diffusion:

In 2014, the **Environmental, Economical & Social Council (CESE-EESC)** considers that certain rules of conduct should be applied to all the commercials on food, regardless of the time of publication. Indeed, if the limitations and prohibitions are respected in niche programs for youth, there is a larger number of children are present in front of screens in prime time, for example at night when family dinner, during which they are a prime target. It also seems useful, in this regard, to educate parents and children to the influence of advertisements on their eating behavior and encourage them to discuss these issues as well as on the different food production systems in close collaboration with the women, men and territories.

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<sup>6</sup> The Economic Social and Environmental Council (CESE) is a consultative constitutional assembly. CESE is a consultative constitutional assembly. Made up of representatives of the main economic, social and environmental activities, CESE encourages cooperation of different socio-professional categories between them and ensures their participation in the definition and evaluation of public policies.

CESE is mainly invested five tasks:

- Advising Government and Parliament and participating in the development of the economic, social and environmental;
- Promoting, through its composition, dialogue between occupational groups whose concerns, different in origin, are similar in the development of proposals of general interest;
- Contributing to evaluation of public policies on economic, social and environmental;
- Promoting constructive dialogue and cooperation with Advisory assemblies created with local authorities and with its European and foreign counterparts;
- Contributing to information for citizens.



Consumer organization: UFC Que choisir shows that food ads budget remains one of the most important budget for TV channels, commitments on ads diffusion are very different from one firm to another, a large majority of ads (80%) during children products promoting goods with fat, sugar, salt, a carry of advertisements touting food for children in "all age slots" watched by a number of children even more important than during "children slots".

*4.3.2 Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*  
(Please see Section 4.2.5 on Implementation)

*4.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*  
There are no consequences, except for ads contents. If they don't follow rules of charter, ads are not authorized to be published.

*4.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

In adults, the scientific journal articles on the impact of an advertising ban shows that it is of no effect on behaviour change (e.g. alcohol or cigarettes). Social Marketing shows that behavioural changes in the field of food are not that combining nutrition education, action on the ground (especially among small populations) and change access to products. If children are undoubtedly more likely to be influenced by the contents of the advertisements as adults, the fact remains that shares knowledge and changes in the supply of food products or its access are decisive. Researches in this area are all based on experimental methodologies. Carried out in very different cultural and temporal contingencies, they gave mixed results.

The NFHP plays on more research on this subject, the other commitments of the charter to promote nutrition and physical activity favourable to health in programs and ads on television as well.

Study results therefore do not allow to rule on the existence of a significant impact of advertising on food consumption of the child. This raises the question of the relevance of the regulations of the food commercials broadcast during programs for children or for children. In addition to advertising, solicitation many sources exist outside of the television medium: retail outlets and planning, sales promotion, Internet, peer pressure ... Particularly, according to Bolton (1983), the impact of behavior and eating habits of the family would be much more consistent than that of television advertising. These solicitations and importance elements of education tend to limit impact of food television advertising on nutritional balance of the child. If everything is not resolved in terms of running advertisements on food for children, it seems more important to focus on education, access to the supply and field work.

There do not appear to have been any assessments or public studies measuring the audience of children on TV or in front of computers.

*4.3.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?*  
(Please see Section 4.4.2 on Potential Obstacles)

## 4.4 Transferability

### 4.4.1 Discussion on transferability of approach

This approach is readily transferable if:

- you can find in this country : food industry organisation, TV channel organisation, public actors, regulating TV channels, managing health policy;
- those actors are able to/use to discuss together and find an interest to do it (for industry being able to continue to promote food goods, for public actors, finding the way to finance TV industry).

This approach has many advantages:

- Asking every actor to be responsible for its actions;
- Asking Food industry to regulate its ads practices. It can continue to promote its goods;
- Allowing Public actors to prevent food behaviours bad for health with the financial support of food industry;
- Asking people to act for their health by good food practices.

### 4.4.2 Potential obstacles to transferring this approach to other national contexts

This approach has limits as well:

- Food industry seeks to adopt the least possible binding rules and the best suitable for promotion of their products, which is not always synonymous with the rules more effective in terms of health prevention;
- The key to change consumer behavior factors are multiple, difficult to identify long to evolve. The impact of such policies is therefore bound to be evaluated in a long time and be regularly attacked.





## 5 Germany

### 5.1 Description of Current national approach to regulating food advertising aimed at children

*5.1.1 How is food advertising towards children defined in the country? Do different actors use different definitions?*

*Code of conduct commercial communication for foods and beverages ZAW:*

In 2009 the Zentralverband der deutschen Werbewirtschaft / Organisationen der Lebensmittelindustrie, des Handels und der Medienwirtschaft (ZAW) developed 'the German standards advertising council code of conduct on commercial communication for foods and beverages'.

For the purposes of this code of conduct the following definitions are used:

- Commercial communication is the use of any communication instrument by an enterprise with the primary objective of promoting the sale of goods or services, excluding editorial content;
- Children are persons under 12 years old.

*5.1.2 System of regulation followed by country for regulating food advertising towards children*

#### **Legislation**

Advertising in Germany is regulated by national and European legislation and according to Zentralverband der deutschen Werbewirtschaft (ZAW) the relative high protect level benefits children in a special way. The University of Hamburg considers regulation of advertisements directed at children in Germany however liberal. Advertising containing emotionalising elements like celebrities or cartoon characters is generally allowed and commercials are sometimes described as 'educational' by helping children learn about media.

Several German laws are relevant with respect to advertising aimed at children<sup>7</sup>

- Gesetz gegen den unlauteren Wettbewerb (UWG);
- Lebensmittel- und Futtermittelgesetzbuch (LFGB);
- EU-Verordnung über Nährwert- und gesundheitsbezogene Angaben über Lebensmittel (VNGA);
- Nährwertkennzeichnungsverordnung (NKV);
- Jugendmedienschutz-Staatsvertrag der Bundesländer (JMStV);
- Jugendschutzrichtlinien der Landesmedienanstalten;
- Rundfunkstaatsvertrag der Bundesländer (RStV);
- Werberichtlinien der öffentlich-rechtlichen und privaten Rundfunkveranstalter; - EU-Fernsehrichtlinie bzw. Richtlinie über audiovisuelle Mediendienste;
- Telemediengesetz (TMG);
- Jugendschutzgesetz (JuSchG).

<sup>7</sup> ZAW Zentralverband der deutschen Werbewirtschaft / Organisationen der Lebensmittelindustrie, des Handels und der Medienwirtschaft, Kinder / Werbung / Ernährung, Fakten zum gesellschaftlichen Diskurs, oktober 2012.



With respect to young people and children some restrictions are relevant. According to federal law, marketing must comply for example with the legal framework established to control unfair competition (*Gesetz gegen den unlauteren Wettbewerb*, UWG, 3 July 214)<sup>8</sup>. The law prohibits any type of advertising that directly invites children to buy a marketed product themselves or to take up a marketed service themselves, or cause their parents or other adults to do so.

For all other restrictions we refer to code of conduct presented below which comprises almost all legislation.

### **Code of conduct commercial communication for foods and beverages ZAW**

In 2009 the Zentralverband der deutschen Werbewirtschaft / Organisationen der Lebensmittelindustrie, des Handels und der Medienwirtschaft (ZAW) developed 'the German standards advertising council code of conduct on commercial communication for foods and beverages'<sup>9</sup>.

In the code is indicated that producers of food and beverages are responsible for the quality of their products and their advertising. In addition is indicated explicitly that advertising of food and beverages is not the determining explanation for the societal problem of overweight as shown by numerous scientific findings. The causes of overweight are considered to be complex. In particular, socio-economic factors (level of education, social status, descent) play a role in its development, together with lack of physical activity, unhealthy dietary behaviour, genetic predisposition and psycho-social aspects. In comparison to adults, children and adolescents in principle require special care and protection. Dietary education, encouragement of physical activity, comprehensible information on nutritional values and freedom of choice among a wide range of food products on offer are points of departure in seeking to avoid overweight in children and adolescents. Children's dietary habits are formed under the influence of their social environment, above all of the family. The parents have a key function in conveying correct dietary habits, physical activity and interactive skills.

The organisations of the food and beverage industry, retailers, the media, communication agencies and advertising professions which are members of the German Advertising Federation (Zentralverband der deutschen Werbewirtschaft - ZAW e.V.), are of the opinion that commercial communication has a crucial role in free, fair and open competition. Commercial communication makes the connection between enterprises advertising their products and their customers and helps to create and maintain well-ordered markets to the advantage of all concerned.

<sup>8</sup> The Act Against Unfair Competition. Federal Law Gazette (BGBl), 2010, Part 1:254 ([http://www.gesetze-im-internet.de/englisch\\_uwg/englisch\\_uwg.html](http://www.gesetze-im-internet.de/englisch_uwg/englisch_uwg.html), accessed 24 July 2013).

This Act serves to implement Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to consumer commercial practices in the internal market This Act further serves to implement Article 13 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201 of 31.7.2002, p. 37), as last amended by Article 2 Number 7 of Directive 2009/136/EC (OJ L 337 of 18.12.2009, p. 11). There has been compliance with the obligations under Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204 of 21.7.1998, p. 37), as last amended by Directive 2006/96/EC (OJ L 363 of 20.12.2006, p. 81).

<sup>9</sup> German Standards Advertising Council Code of Conduct on Commercial Communication for Foods and Beverages. Berlin, German Advertising Federation, 2009 ([http://www.werberat.de/sites/default/files/uploads/media/dw\\_commercial\\_communication\\_on\\_foods\\_2009.pdf](http://www.werberat.de/sites/default/files/uploads/media/dw_commercial_communication_on_foods_2009.pdf), accessed 22 July 2013).

#### *Organisations involved:*

The organisations of the food and beverage industry, retailers, the media, communication agencies and advertising professions which are members of the German Advertising Federation (Zentralverband der deutschen Werbewirtschaft - ZAW e.V.) have agreed to follow the code of conduct. In total 42 organisations are participating (November 2014).

#### *Organisations responsible*

The Deutschen Werberat<sup>10</sup> (German Advertising Standards Council) is responsible for surveillance on compliance with this code of conduct, the organisation of the complaints procedure and the assessment of complaints. Deutscher Werberat is an institution of the 42 organisations of advertisers, the media, advertising agencies, the advertising professions and research establishments represented by the German Advertising Federation (Zentralverband der deutschen Werbewirtschaft - ZAW). It is funded by all relevant participants in the advertising market. The ZAW Presiding Committee elects the ten members of Deutscher Werberat from among its members every three years.

Since May 2009, enterprises can ask ZAW to assess the planned advertising on the three basic criteria a) to legal correctness; b) in accordance with rules and decisions of the Werberat; c) on political and social acceptance.

#### *Legislation covered:*

In the code of conduct the members have stipulated that: *to ensure, to the full extent of their abilities, compliance with the legal requirements in the area of food and beverage advertising, in particular the provisions of the Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb - UWG), the Food and Feed Act (Lebensmittel- und Futtermittelgesetzbuch - LFGB), the Regulation on nutrition and health claims made on foods (Verordnung über Nährwert- und gesundheitsbezogene Angaben über Lebensmittel) and the law for the protection of minors (Jugendschutzgesetz/JuSchG and Jugendmedienschutz-Staatsvertrag/JMStV).*

#### *Contents of the code*

For the purposes of this code of conduct the following definitions are used:

- Commercial communication is the use of any communication instrument by an enterprise with the primary objective of promoting the sale of goods or services, excluding editorial content;
- Children are persons under 12 years old.

In the design and execution of commercial communication for foods and beverages general principles are formulated and principles specifically aimed at children:

#### *General Principles:*

The following general principles stipulated: Commercial communication for foods and beverages:

- Should be designed in a way that does not abuse the consumers' confidence in the quality of the advertised product;
- Should not undermine a healthy, active lifestyle;
- Should not undermine a balanced, healthy diet;
- Should not encourage excessive or one-sided consumption of the advertised products;

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<sup>10</sup> <http://www.werberat.de/>



- Containing nutrients and substances with a nutritional or physiological effect, of which excessive intakes in the overall diet are not recommended, should not represent avoidance of consumption of this item in a negative manner.

### *Children*

In commercial communication directed at children, in addition to the general principles, the following rules are to be observed. Account must be taken of the commercial inexperience and the need for protection of persons of this age group.

Commercial communication for foods and beverages:

- Should contain no direct demand for purchase or consumption addressed to children;
- Should contain no direct demand to children to induce their parents, other adults or other children to purchase the advertised product;
- Should not exploit the special confidence which children place in persons of trust such as parents and teachers;
- Should not employ inducements to purchase (e.g. add-ons) and aleatory advertising (e.g. lotteries and prize competitions) in a way which exploits children's commercial inexperience. In particular, commercial communication for foods and beverages should not attract children with excessive advantages in a non-objective inappropriate manner;
- Should not suggest to children that the consumption of a particular product is irreplaceable in a complete and balanced meal;
- Beverages should not deter children from acquiring a healthy, active lifestyle.
- Should not deter children from acquiring balanced, healthy dietary habits.

To summarise: The general rules of the code emphasise that advertising should not: (a) abuse consumers' confidence; (b) undermine a healthy and active lifestyle; (c) undermine a balanced and healthy diet; or (d) encourage excessive consumption. The code stipulates that there should be: (a) no direct demand for children to purchase; (b) no direct demand for children to convince their parents to purchase; (c) no exploitation of children's confidence and; (d) no inducements to purchase.

### *Complaints*

Anyone can submit a complaint on commercial advertising to Deutscher Werberat. Complaints can be submitted by telephone, fax, email ([werberat@werberat.de](mailto:werberat@werberat.de)) or postal mail. Anonymous complaints are not processed. The Deutscher Werberat can also instigate proceedings itself. Complainants' names are treated confidentially and the proceedings are free of charge to the complainant. The advertiser subject to complaint is given an opportunity to respond. If a complaint is upheld, the advertiser is notified and asked to modify or discontinue the advertisement. If a breach of the law is suspected, the executive office passes on the case without delay to the responsible authorities – for example the public prosecution service, the Wettbewerbszentrale (Centre of Protection against Unfair Competition) in Bad Homburg, or Integritas (the self-regulatory body for pharmaceutical advertising) in Bonn.

### *Sanctions*

If an advertiser fails to modify or discontinue an advertisement, the Deutscher Werberat issues a reprimand and makes the case public. Mass media editorial departments are sent a release on the reprimand which is then reported and commented upon in the press. In parallel with a reprimand, the media are requested no longer to carry the advertisement in question.

A public reprimand is rarely necessary. If a complaint is upheld, the advertiser generally complies with the Deutscher Werberat's request to modify or discontinue the advertisement.

#### *Cross border advertising*

Problems involving cross-border advertising are addressed by the European Advertising Standards Alliance (EASA) based in Brussels ([www.easa-alliance.com](http://www.easa-alliance.com)). This institution, largely founded at the initiative of ZAW, forwards complaints relating to foreign advertisements to the national advertising standards authority in the country concerned. Through the EASA, the Deutscher Werberat is also in constant exchange with other self-regulatory bodies of the European advertising industry.

#### **Radio and television including teleshopping**

The code of conduct does not include the:

- Rundfunkstaatsvertrag der Bundesländer (RStV);
- Werberichtlinien der öffentlich-rechtlichen und privaten Rundfunkveranstalter; - EU-Fernsehrichtlinie bzw. Richtlinie über audiovisuelle Mediendienste;
- Telemediengesetz (TMG).

In 1998, the Deutsche Werberat has set up the follows rules of conduct regarding radio and television with and for children<sup>11</sup>.

The TV and radio commercials should not:

- Lecture children about particular advantages and characteristics of the product, which is not in accordance with the natural expressions of children;
- Contain any direct requests for purchase or consumption of the product by children;
- Contain any direct calls to children and/or from children, to stimulate others to buy a product;
- Abuse the special trust children have in certain individuals who exploit abusive.

In addition:

- Aleatory advertising materials (e.g. lotteries, prize draws, prize competitions and riddles) should not mislead potential buyers, not attract them to buy based on undue advantages and not exploit the urge to gamble;
- Criminal activities or other serious misconduct that may be jeopardise people, may not be presented less worse;
- For TV Commercials with young people and/or advertising specifically aimed at young people including teleshopping, also the provisions of the EU Television Directive has to be taken into account;
- No direct stimulation should be made to youngsters, making used of their inexperience or credulity;
- Youngsters should not be asked directly to persuade their parents or others to purchase the goods or services;
- No use should be made of the special trust young people have in parents, teachers or other persons;
- Youngsters should not be put in dangerous situations without a reason.

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<sup>11</sup> See <http://www.werberat.de/kinder-und-jugendliche>



### *Telemedia*

Also in Telemedia - especially websites and Internet services such as e-mail - advertisement should be identifiable by the user without much effort. This holds also for vulnerable groups, which include children. In case it is not clear that it is an advertisement on the basis of the design of the advertising message, the service provider must add an appropriate indication (See Telemediengesetz/Tele Media Act). The need of the recognisability of advertising applies also to radio and TV. Programs for children are particularly affected by advertising rules. (Rundfunk-Staatsvertrag/Broadcasting State Treaty).

### *Agreement commercial TV stations*

The Verband Privater Rundfunk und Telemedien – VPRT (Association of Commercial Broadcasters)<sup>12</sup> is a federation of commercial TV stations in Germany. They have agreed on a voluntary basis that:

- Advertising blocks during or around children's programs, start and end with an insert making clear that this is an advertisement. In this way, the commercial providers work in line with the rules of the Landesmedienanstalten (regional government), which includes an obligation to have a clear marking between a programme for children and an advertisement.
- In addition the commercial TV stations also include an auditory identification at the start of the advertising block around children's programs especially for younger children who cannot read yet.

VPRT is also a member of ZAW.

### **Other codes**

In addition there are other codes to particular industries or enterprises that are relevant. Also relevant for Germany is the EU pledge under which a number of large industries have agreed to constrain its commercials for food to children under 12 years of age to those that 'fulfil[s] specific nutrition criteria'.

The ICC Framework of responsible Food and Beverage Marketing Communication is also relevant in this respect. ICC – stands - for International Chamber of Commerce and they have also developed guidelines for marketing to children.

See <http://www.icc.se/reklam/english/food2006.pdf> and <http://www.iccwbo.org/> and <http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/marketing-and-advertising/marketing-and-advertising-to-children/>

### **Recent developments**

The "business community" has a special responsibility when it comes to advertising particularly when it is targeted at children and adolescents. As a consequence of the current amendment to the Act against Unfair Competition (UWG), new binding standards will be established in conjunction with the implementation of the Unfair Commercial Practices Directive. Together with the business community, the Federal Government will discuss what additional rules are needed that could be set out in a code of conduct. One of the goals will be:

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<sup>12</sup> <http://www.vprt.de>

- To forego advertising targeting children under the age of 12;
- For older children and adolescents the Federal Government, together with the business community and the German Advertising Council, will set down in a key issues paper the main rules for advertising activities. In this context, the German Advertising Council (DW) and the Zentralverband der deutschen Werbewirtschaft (ZAW) have already done important groundwork;
- All the media are to be covered by the additional rules;
- Besides the classical advertising channels, rules must also be drawn up for advertising on mobile phones and the Internet.

#### 5.1.3 When was the approach implemented

Since May 2009, enterprises can ask ZAW to assess the planned advertising on the three basic criteria a) to legal correctness; b) in accordance with rules and decisions of the Werberat; c) on political and social acceptance.

## 5.2 Context in which the current national approach was developed and implemented

### 5.2.1 Problem recognition

In the code of conduct of ZAW is described *that producers of foods and beverages are responsible for the quality of their products and their advertising*. In addition, it is indicated that *advertising of foods and beverages is not the determining explanation for the societal problem of overweight, as numerous scientific findings have shown. The causes of overweight are complex. In particular, socio-economic factors (level of education, social status, descent) play a role in its development, together with lack of physical activity, unhealthy dietary behaviour, genetic predisposition and psycho-social aspects. In comparison to adults, children and adolescents in principle require special care and protection. Dietary education, encouragement of physical activity, comprehensible information on nutritional values and freedom of choice among a wide range of food products on offer are points of departure in seeking to avoid overweight in children and adolescents. Children's dietary habits are formed under the influence of their social environment, above all of the family. The parents have a key function in conveying correct dietary habits, physical activity and interactive skills.*

### 5.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?

#### *Government policy regarding obesitas and overweight*

The main objective of the Federal government of Germany health and nutrition policy is the promotion of healthy lifestyles, placing strong emphasis on reducing overweight and obesity. An important basis for this policy is the Federal Government's National Action Plan "IN FORM – German national initiative to promote healthy diets and physical activity"<sup>13</sup>. The plan is aimed at bringing about lasting improvements in dietary and exercise habits in Germany by 2020. Regarding children, the plan states: *children should be brought up more healthily and benefit from a higher quality of life and better physical and mental ability in their education, jobs and private lives*. IN FORM is therefore aimed at much more than just preventing overweight. It is about promoting a healthy lifestyle with a well-balanced diet and sufficient physical activity.

<sup>13</sup> [http://www.bmel.de/EN/Food/Healthy-Diet/\\_Texte/IN%20FORM.html](http://www.bmel.de/EN/Food/Healthy-Diet/_Texte/IN%20FORM.html)



### 5.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?

In November 2014, around 100 projects have been supported by the Federal Ministry of Food and Agriculture (BMEL) and the Federal Ministry of Health (BMG) under the IN FORM initiative. The coming years (consolidation and dissemination phase) the activities will focus on:

- Establishing (and stabilising) measures and projects supported under the IN FORM initiative in the longer term;
- Disseminating findings and results, and
- Promoting both the exchange of experiences and networking between the actors in the projects.

IN FORM thus acts as a "dialogue" for policy-makers, industry, the science community and civil society with regard to all questions concerning a healthy lifestyle. This is, for example, reflected in the initiative's Internet platform. [www.in-form.de](http://www.in-form.de)

The objectives of the Platform is to avoid the further spread of overweight and obesity amongst children and adolescents up to 2020 through prevention and health promotion. The proportion of overweight children should be reduced to the level of 1990 by 2020. The Action Areas of the Platform are part of the national strategy. The Action Areas of the Platform are:

- Using appropriate media children of pre-school and primary school age know to inform them on a healthy diet and the importance of physical activity.
- Parents and their influence on children are important aspects as well. Socially disadvantaged parents with a low level of education and families with a migration background require special attention and support.
- Day-care centres for children play a key role. The platform (PEB) aims to bring about improvements to the framework conditions for more nutrition education and for more physical activity for children in their daily lives. The platform examines whether and how primary schools can offer stimulus for more physical activity periods, more school sport and more physical activity in daily life (which is seen as having major potential to help solve the problem), and for extending nutrition knowledge and experiential learning whilst eating.

The best chances of success in promoting a healthy lifestyle are when local initiatives implement local measures and develop them further. That is why the Platform is also involved in creating networks of local institutions, identifying their mechanisms of action, strengths and weaknesses, and disseminating the findings. The platform is active in both areas – diet and physical activity. An expert advisory board, consisting of recognised scientists and experts, advises platform.

This plan also involves –inter alia – meetings with industry aimed at preventing any advertising targeting children aged under 12 years of age and formulating a voluntary code of conduct for advertising activities targeting older children and adolescents.

“IN FORM draws on existing national action plans and federal programmes. It supplements and builds on them and promotes cross-topic and cross-stakeholder synergy effects. Mention should be made here of the National Cycling Plan (2002 – 2012), the National Action Plan „A Germany Fit for Children 2005 – 2010“, the strategy of the Federal Government to promote children's health (2008), the Federal Government-Länder Programme „Socially minded City“ (since 1999) and the investment programme „Future Education and Care“ (2003 – 2009).

5.2.4 *Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

(Please see Section 5.2.1 on Problem Recognition)

5.2.5 *Implementation of the approach: how was this done?*

(Please see Sections 5.2.1, 5.2.2 and 5.2.3)

## 5.3 Evaluating the outcomes and effectiveness of policies

5.3.1 *Has there been any review/evaluation of the approach so far?*

### *Code of conduct ZAW*

Only a very small part of the complaints that the Werberat receives refers to 'children and advertising' (only one percent of the complaints in 2010). The reason is that due to the voluntary character the code of conduct, the enterprises also consider, next to the legislation, issue that are politically or socially not acceptable. This system of control over the legal framework has earned respect in Germany. For example, the Federal Minister of Justice Leutheusser-Schnarrenberger said in 2010: "Especially the advertising industry has demonstrated how self-responsibility and self-regulation can work. The Werberat has been for over 30 years an important and well-known instrument to ensure even beyond legal limits for integrity and fairness in advertising.

At the EU level, Member States have adopted the Code of Conduct of the German Advertising Council for advertising with and against children in radio and television in the EU Television Directive (transposed in the Jugendmedienschutz-Staatsvertrag/ Youth Media Protection State Treaty).

5.3.2 *Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*

### *Organisations involved:*

The organisations of the food and beverage industry, retailers, the media, communication agencies and advertising professions which are members of the German Advertising Federation (Zentralverband der deutschen Werbewirtschaft - ZAW e.V.) have agreed to follow the code of conduct. In total 42 organisations are participating (November 2014).

### *Organisations responsible*

The Deutschen Werberat<sup>14</sup> (German Advertising Standards Council) is responsible for surveillance on compliance with this code of conduct, the organisation of the complaints procedure and the assessment of complaints. Deutscher Werberat is an institution of the 42 organisations of advertisers, the media, advertising agencies, the advertising professions and research establishments represented by the German Advertising Federation (Zentralverband der deutschen Werbewirtschaft - ZAW). It is funded by all relevant participants in the advertising market. The ZAW Presiding Committee elects the ten members of Deutscher Werberat from among its members every three years.

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<sup>14</sup> <http://www.werberat.de/>



Since May 2009, enterprises can ask ZAW to assess the planned advertising on the three basic criteria a) to legal correctness; b) in accordance with rules and Decisions of the Werberat; c) on political and social acceptance.

*5.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

(Please see Section 5.3.4 on Effectiveness below)

*5.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

#### *Television advertisement - EU-pledge*

In January 2012, the German consumer organisation Verbraucherzentrale Bundesverband (VZBV) has called for stricter rules on food advertising to children, based on a study carried out by the University of Hamburg<sup>15</sup>. The objective of the study was to examine whether the German food industry directs commercials for unhealthy products to children and whether self-administered voluntary restrictions on the promotion of less healthy foods (the EU Pledge) are effective to mitigate this exposure. By analysing German data from 3 commercial TV channels (MTV, Pro7 and Nickelodeon), advertised products were categorised and food products classified as core foods (healthy) and non-core foods (less healthy). Marketing techniques used were documented. Food commercials were furthermore compared with commercials for toy products, and comparisons were made between advertising patterns before and after the EU Pledge.

In 2007–2008, 14.5 % of commercials of the three private channels were for food products, of which 88.2 % were for non-core foods. Commercials for unhealthy foods were broadcast significantly more often during children's peak viewing and in children's programmes, with a higher use of promotional characters and premiums than found in commercials for non-food products. In 2010, analysis of the three specified channels showed that 18.5% of commercials were for food products, of which 98.2 % were for non-core foods. While the use of premiums (competitions, games, gifts) decreased compared with other commercials, the use of promotional characters (celebrities, sports persons and cartoon characteristics) in non-core food commercials increased, especially during children's programmes. The conclusions of the study were that children in Germany are exposed to large numbers of food commercials. The exposure to commercials for non-core foods and the use of techniques attractive to children are widespread and appear to have remained unaffected by the announcement of the EU Pledge. The researchers conclude that the industry's voluntary agreement has failed to fulfil its declared purpose.

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<sup>15</sup> Institute for Commercial Law, University of Hamburg, Tobias Effertza and Ann-Christin Wilcke, Do television food commercials target children in Germany?

## 5.4 Transferability

### 5.4.1 Discussion on transferability of approach

In Germany the advertisement regarding children is arranged through self-regulation. The code of conduct that includes all relevant legislation is developed by the German Advertising Federation (Zentralverband der deutschen Werbewirtschaft – ZAW).

This organisation represents 42 organisations of advertisers, the media, advertising agencies, the advertising professions and research establishments. ZEW has also set up the Deutschen Werberat (German Advertising Standards Council) that is responsible for surveillance on compliance with this code of conduct, the organisation of the complaints procedure and the assessment of complaints.

This system is transferability to other countries in which self-regulation is a well-accepted tool to arrange surveillance of compliance with regulation. In addition the sector involved should be open to organise themselves and set up an institution responsible for surveillance of compliance, able to decide independently and advice the sector if needed.

ZAW is one of the founders of the Advertising Standards Alliance (EASA).

The Verband Privater Rundfunk und Telemedien – VPRT (Association of Commercial Broadcasters) is a federation of commercial TV and radio stations broadcasting in Germany. They have also agreed on a voluntary basis rules regarding advertisement to children on television and radio. This agreement could easily be transferred to other countries. A large number of the organisations that are member of the VPRT are also broadcasting in other countries worldwide.

The Federal government of Germany has developed a policy to promote healthy lifestyles, placing strong emphasis on reducing overweight and obesity. An important basis for this policy is the Federal Government's National Action Plan "IN FORM – German national initiative to promote healthy diets and physical activity". The plan is aimed at bringing about lasting improvements in dietary and exercise habits in Germany by 2020. This plan is also easily transferable to other countries. .

### 5.4.2 Potential obstacles to transferring this approach to other national contexts

There do not appear to be any major obstacles to transferring this approach to other national contexts. However given the mixed conclusions regarding the performance of this approach to regulating food advertisements aimed at children, lessons should be drawn from this approach with caution.





## 6 Luxembourg

### 6.1 Description of Current national approach to regulating food advertising aimed at children

#### 6.1.1 How is food advertising towards children defined in the country? Do different actors use different definitions?

In Luxembourg there is no special definition or approach for food advertising towards children. One of the main reasons is simply the fact that there is no company in Luxembourg producing a food product, targeting specifically children and having the need to air commercials for their product. If there is a company active in the food industry, it is aiming at a larger group of potential customers in their advertisement. The rules/codes/guidelines which do exist are focused on advertising in general or advertising towards children in general, with no real difference made between a burger and a toy car. Due to the size of Luxembourg, it is rather rare that an internationally established company produces a commercial just for the Luxembourgish market. For example: you will not find a commercial from Coca Cola in Luxembourgish on a Luxembourgish TV-Channel. What you will find is a commercial from Germany or France or made for BENELUX in cinemas (question/problem with the language) but again not in Luxembourgish. So most commercials (especially for the cinemas) come from abroad and since they passed the rules/criteria from Germany or France, they will not be rejected by Luxembourgish rules or similar because Luxembourg does not have stricter rules than its neighbours.

#### 6.1.2 System of regulation followed by country for regulating food advertising towards children

Luxembourg adopts a system of self-regulation, in alignment with the rules applied by EASA, European Advertising Standards Alliance which are again based on the Consolidated Code of Advertising and Marketing Communication Practice of the International Chamber of Commerce (ICC)

The EASA says for instance: "Freedom of commercial speech in the sale of legal products is a fundamental principle of free markets. However the exercise of this freedom comes with obligations, and an essential element in the freedom of speech is responsibility, so the ICC encourages all food and beverage communicators to adhere to the principles of responsible consumer communication, above and beyond compliance with laws and regulations, especially when communicating to children."

There are two associations in Luxembourg, supervising commercials in general, for all types of media (television/cinema, print, radio, online media, etc.): the "Conseil de la Publicité du Grand-Duché de Luxembourg a.s.b.l." (CPL) and the "Commission luxembourgeoise pour l'éthique en publicité" (CLEP).

The CPL (Council for advertisement Luxembourg) is composed by actors of the sector, (for example advertiser, advertising agencies, seller of commercials) and counts around 150 members today. The mission of the CPL is to promote the liberty and the creation of advertising but also the auto discipline based on a code of conduct/code of ethics (code de déontologie). The CPL was founded in November 2008 and has the legal form of a non-profit organization (NPO).



In 2009 the CPL has created the CLEP (Commission for ethnic in advertising Luxembourg). The mission of the CLEP is to observe the right usage of the code of conduct and to act as an adviser. Even though the CLEP has been created by the CPL, the CLEP is working independently to the CPL.

The principles of the code of conduct are: truthfulness, decorum, honesty, fairness, being social responsible, environmental responsibility and the respect of privacy. Along with these principles the code of conduct adopts the Code of Advertising and Marketing Communication Practice of the International Chamber of Commerce (ICC).

Since the rules in Luxembourg make no specific difference between an adult and children in food advertising (or elsewhere), there are no age groups to whom a certain rule would apply or not. There is also no real limitation in terms of content that a commercial can show, as long as it respects the code of conduct and obviously does not contain any acts of violence or racism for instance.

#### *6.1.3 When was the approach implemented*

## **6.2 Context in which the current national approach was developed and implemented**

### *6.2.1 Problem recognition*

The CPL has not been founded because there was a problem in the sector but because the different actors had the will to regroup and make sure certain principles in advertising (in general) were respected in Luxembourg. Out of this will emerged the CPL in form of a non-profit organisation. The CPL is completely financed by the contributions of its members.

### *6.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?*

Not in particular no. The current approach in Luxembourg ties to general rules in consumer protection and upholding good commercial practices.

### *6.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?*

(Please see Section 6.1.2 on the System of Regulation)

### *6.2.4 Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

As is indicated above, there were not many contextual factors triggering an approach. Luxembourg appears to have followed the recommendations of organisations such as the EASA to attempt to regulate the area of advertising as a whole in a better manner.

### *6.2.5 Implementation of the approach: how was this done?*

By creating the CLEP, the CPL also gave consumers (private and non-profit organizations NOT companies) the ability to go against the producer of a certain commercial, if they think this commercial was abusive. In that case the CLEP will reunite (usually 7 members) and discuss the content of the advert. If the content is considered abusive, the CLEP writes a letter to the advertising company with a recommendation what needs to be changed. So far all the advertising companies reacted accordingly to the letter and the CLEP never had to take other measures.

The CLEP however is not in charge when two companies have an argument about a commercial spot that would have a negative effect for one of the two. These two companies will have to go to court and let a judge decide. Also the CLEP cannot impose a fine or even a prison sentence in any case.

Advertising companies in Luxembourg and/or members of the CPL can ask the CLEP's advice whenever they have a doubt about the content of a commercial they would like to produce/sell/air.

### **6.3 Evaluating the outcomes and effectiveness of policies**

#### *6.3.1 Has there been any review/evaluation of the approach so far?*

So far there has not been a real evaluation of the system. But if you look at the number of complaints the CLEP has to treat every year on a national level, you can understand why no such evaluation has been made. In average the CLEP has 4 to 5 complaints a year regarding commercials, produced and aired in Luxembourg.

#### *6.3.2 Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*

(Please see Section 6.1.2. on the System of Regulation)

#### *6.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

(Please see Section 6.1.2. on the System of Regulation)

#### *6.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

The approach appears relatively effective in that it is proportionate in severity with the size of the problem in Luxembourg, that is to say, not a very large problem.

#### *6.3.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?*

A slight problem in the system is in the case of an international company. If the headquarter of a company is based in Luxembourg, all complaints go through Luxembourg, even if the Luxembourgish consumer never was confronted with the commercial spot. If for example, iTunes in England airs a commercial that British consumers would find offensive, the complaint would end up with the CLEP in Luxembourg, who would then have to return the complaint to the competent organism in England.

### **6.4 Transferability**

#### *6.4.1 Discussion on transferability of approach*

The self-regulating system in Luxembourg works, but the way it works is also due (once again) to the size of the country. It is uncertain that the same system could work in a bigger country with different or more levels of authority.

#### *6.4.2 Potential obstacles to transferring this approach to other national contexts*

(Please see Section 6.4.1. above)





## 7 Norway

### 7.1 Description of Current national approach to regulating food advertising aimed at children

#### 7.1.1 *How is food advertising towards children defined in the country? Do different actors use different definitions?*

In Norway there is a statutory regulation on advertising, the Norwegian Marketing Control Act and a system of self-regulation of concerning the marketing of food towards children specifically.

Within the statutory regulation for this area, the Marketing Control Act, implements the EU directive 2005/29/EC on unfair commercial practices. The law has a broader focus on good, fair marketing practices rather than a specific emphasis on children or specific products. The Marketing Act does however, refer to children in a special section (Section 19) but this focuses on how children should be viewed in the context of upholding fair advertising practices. Children are defined as individuals under the age of 18 and in practice; the provisions are interpreted more strictly when children are involved.

The Marketing Control Act covers all forms of media and all products across all consumers and is thus relatively broad in its focus. If it can be argued that a marketing form is somehow misleading or unfair then it falls under the mandate of the Marketing Control Act

Other laws which have bearing on how food and drinks are advertised towards children include the Norwegian Broadcasting Act and the Norwegian Education Act. The Broadcasting Act applies to "the transmission of speech, music, images and the like by wire or over the air, intended or suitable for direct and simultaneous reception by the public" and involves a general ban on all advertisements aimed at children via broadcast media. Within the Act section 3.1 specifically refers to children, stating that "advertisements may not be broadcast in connection with children's programmes, nor may advertisements be specifically directed at children" and that "advertisements may not be broadcast 10 minutes directly before or after children's programmes".

The Norwegian Education Act, introduced in 2007, states that a responsible school owner must assure that pupils are not exposed to marketing of any kind; this constitutes a general ban on advertisements aimed at children in schools.

The system of self-regulation supplements the statutory regulations and focuses very specifically on the advertising of food towards children. There is a Code in effect and in this code children are defined as individuals less than 13 years of age. This Code is implemented using a set of Guidelines, both of which were developed by the Food Industry Council (MFU) and other stakeholders (for more detail see Part 2 of this country report).

#### 7.1.2 *System of regulation followed by country for regulating food advertising towards children*

Norway follows a combined approach to regulating food advertisements aimed at children by supplementing a broad overall all Marketing Act with self-regulation from the food and advertising industry.



There is a self-regulatory approach which is based on a code for marketing of food and drink aimed at children. This code was first introduced in 2007 and has been renewed and updated as of June 2009.

The code contains six points which detail:

1. The background of the code;
2. What sort of marketing towards children is prohibited;
3. The products which may not be marketed to young people (by referring to a product list which has been established for this purpose),
4. How infringements will be assessed;
5. Which organisation supervises the code;
6. And when the code will be put into force.

The code has been translated into a set of guidelines which provide more detail and insight as to how to implement the code. Examples of cases are provided in the actual guidelines which provide help on how to interpret marketing as a principle in practice when it is aimed at children and on assessing when marketing is specifically aimed at children.

Sections 2 and 4 are particularly interesting as they form more concrete, practical stipulations regarding what is and is not considered appropriate advertising of foods and drink for children:

#### **2. Prohibition on marketing to children**

Marketing of the products on the Product List must not be specifically aimed at children less than 13 years. The word marketing means initiatives for promoting sales.

The following are not to be regarded as marketing:

- a) The actual product, including packaging.
- b) Ordinary display of products at the point of sale
- c) Sponsorship which only includes the use of the sponsor's name, the sponsor's trademark or the product trademark, including the distribution of samples with the consent of parents and other responsible persons.

TV advertising broadcast after 21:00 hours will not be regarded as marketing specifically aimed at children.

*Source: MFU Code, 2009*

#### **4. Assessment of infringements**

When assessing whether marketing is specifically aimed at children, an overall assessment must be made, with emphasis on the following:

- a) To what extent do the media used have particular appeal for children?
- b) To what extent do the advertising elements used have particular appeal for children?
- c) To what extent do the marketed products have particular appeal for children?

It should be clarified that a product and its packaging etc. will not in themselves be regarded as marketing, see para. 2a.

*Source: MFU Code, 2009 (sub-section labelling taken from online version of Code)*

The criteria from these two sections, along with a product list of which foods and drinks may not be marketed towards children form the main bases for evaluating whether an advertisement or commercial communication of food or drink is aimed at children.

The form the regulations take are mainly that of codes which have been translated into guidelines: industry and other stakeholders (from food, health and advertising areas) came together during the development phase and still do to discuss the implementation of the code and which areas require closer attention or more work.

There is a general consensus amongst stakeholders from all corners that no one really wants to advertise certain products to children. From a self-regulatory perspective there is also an agreement amongst industry stakeholders that therefore unhealthy food form one of these product areas that should not be advertised specifically for children. The enforcing body, the Food Industry Council, has a product list of foods and drinks which should not be advertised towards children.

The code contains stipulations on the basic principles for marketing towards children. There is a product list which may not feature in any advertisements aimed at children less than 13 years of age.

In the statutory regulations there is a general aim of upholding good marketing practices; any marketing practice which is considered to be misleading or unfair is therefore not allowed. Children are considered a special group of consumers in that they are more credulous and impressionable than regular consumers and thus warrant special consideration in advertising. For the most part however, the statutory approach only concerns marketing aimed at children when it can be demonstrated that the commercial communication somehow violates good advertising practices.

The self-regulatory Code on the other hand refers specifically to a number of elements of a commercial message which mean its focus is on children. The emphasis of the Code and the Guidelines are on:

- Children ( who are defined as individuals under the age of 13);
- Specific foods and drinks which should not be marketed towards children;
- The media used to advertise to children, where a number are deemed particularly appealing to children such as: social media, games, internet sites with products aimed at children, children's programmes on TV and radio, e-mail, certain mobile phone apps, and printed media aimed at children;
- Advertising elements aimed at children, which can include for instance whether childlike language is used, whether cartoons or animation with particular appeal to children is used, whether children appear in the marketing and whether people who have particular appeal to children are used;
- The extent to which the marketed products have specific appeal to children, which can include whether the product has a shape or packaging which appeals to children, or whether the product is primarily consumed by children.

The direct target groups of the self-regulatory approach are producers of food and drinks and advertising and marketing enterprises. The indirect target groups are children below the age of 13 through the self-regulatory Code, and all consumers, including children of various ages therefore, who are affected by the Marketing Act.



### 7.1.3 When was the approach implemented

The self-regulatory Code was revised and updated in 2009. It was implemented in 2013 and became binding in January 2014.<sup>16</sup>

## 7.2 Context in which the current national approach was developed and implemented

### 7.2.1 Problem recognition

The Ministry of Healthy and Care initiated a new set of Draft Regulations for stricter regulation of marketing of food and drinks towards children, citing the reduction of overweight and obesity as the trigger.

The self-regulatory code for food advertisements aimed at children, updates in response to the Ministerial invitation to change the self-regulatory approach, cites as its rationale the protection of children from advertisements aimed specifically at them as children as seen as a “particularly vulnerable group”.

Several large Norwegian industry players, the ANFO (Association of Norwegian Advertisers), Virke (the Enterprise Federation of Norway), and the NHO (Norwegian Federation for Employers) came together and reached agreement on three main areas regarding food and drink production and marketing. These organisations Food and Drink Industry Professional Practices Committee (MFU)

It was agreed that:

- A debate on diet is of major importance;
- Obesity and overweight are serious social problems;
- The marketing of specified food and drink products aimed at children is no acceptable.

A united industry of food and drink producers and suppliers opted to back and support the MFU as a designated body to regulate and enforce a Code of practices regarding the marketing of food and drinks to children.

The discussion regarding the latest version of the Code and its accompanying Guidelines also involved the Ministry of Health and Care Services, the Ministry of Children, Equality and Social Inclusion, the Norwegian Directorate of Health, and LO. This was in response to the fact that the previous form of the Code did not include any references to sanctions and was not very precise.

The Consumer Ombudsman in Norway suggested an all-round ban on all product marketing aimed at children which was unacceptable to many Norwegian manufacturers and suppliers. In response, the Norwegian food and drinks industries and advertising stakeholders came together to improve the current system of self-regulation instead. A product list was also agreed on which should not be marketed to children at all, in line with the three principles listed above, which the larger industry organisations established.

There is evidence that children are more vulnerable consumers and more susceptible to advertisements in general. Certain food and drink products have also been banned from being advertised to children from within the industry. In this way especially unhealthy products do not reach children and there is less stimulation aimed at children to eventually consumer such products, thus contributing to countering obesity and overweight as well as helping to promote a healthier diet.

<sup>16</sup> MFU, the Code, available at: <http://mfu.as/37542-Guidance-on-the-Code-for-marketing-of-food-and-drink-aimed-at-children>

No formal objectives have been established for the statutory or self-regulation approaches beyond the general aims of both regulatory forms. The general aims are to reduce the advertising of unhealthy food and drinks to children so as to reduce overweight and obesity. The recent revisions of both the statutory regulations and the self-regulatory Code reflect the view however that current approaches have not done enough to reduce advertising exposure and this is thought to be connected to the lower reduction in obesity and overweight than hoped for by Norwegian policy makers.

*7.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?*

This approach builds on a general mentality that certain forms of advertising aimed at children should not be allowed; this is prevalent amongst the public, the governmental level and the industry organisations.

*7.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?*

The Ministry of Health and Care was the main organisation re-initiating the discussion on marketing of food and drinks towards children in 2012. Following this, the Ministry of Health and Care, the Ministry of Children, Equality and Social Inclusion, the Directorate of Health and industry organisations from the food and beverage, and advertising industries came together to discuss a new approach.

The Ministry of Health and Care proposed tightening the regulations on marketing unhealthy food and drink to children and young people in 2012. The revisions which the Ministry proposed where to tighten the marketing of these products to anyone less than 18 years of age. The food and beverage industry however feared that this would pave the way to an all-out ban on marketing towards children under that age and proposed revising the system of self-regulation. Additionally a number of clauses in the draft regulations were not clear, the classification of unhealthy foods for instance was not clear and seemed to cover many product areas (catfish for instance would have been banned for being too fatty, yoghurts for containing too much sugar)<sup>17</sup>.

The Ministry argued in turn that the ban concerned marketing and not the production, the placement or store placement of goods. In any case, in July of 2013, the Ministry issued a letter inviting the Norwegian food industry to develop proposals for a self-regulation scheme, after having already having carried out a public consultation in 2012 on the draft regulations which tightened food marketing. These consultation results were taken up in a new set of Draft Regulations on the Marketing of Food and Drink to Children.

These Draft Regulations defined unhealthy foods as anything high-energy, salty, sweet, or nutrient-poor. Furthermore, section 4 of these draft regulations ban the marketing of such unhealthy foods to children and establish criteria for what constitutes marketing in this area; namely, using language, colours, children in the advertisement, gifts or using another form of promotion which appeals particularly to children.

Though these draft regulations have been circulated in 2013, the industry has been allowed to continue a trial of its new, revised self-regulatory code until 2015. In 2015 the approach of self-regulation will be evaluated with a consultation between the relevant ministries and industry organisations to see whether the approaches have led to less marketing of unhealthy foods and drinks to children.

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<sup>17</sup> Interview Kreativit Forum.



Another area of debate which arose with the Draft Regulations was the link between marketing of food and drinks towards children and overweight and obesity amongst this group. The evidence on this front is somewhat mixed and the role of the food marketing area to reduce overweight and obesity appears limited; regulating this area and banning unhealthy food marketing will not solve the problem. However, from a political perspective, a ban has the appearance of political action being taken on a social problem.

It should be noted here however that the Norwegian National Institute for Consumer Research reported “surprisingly little advertising” of unhealthy food and drinks aimed at children. Qualitative evidence from the industry also indicates that there is not much advertising of unhealthy food and drinks towards children at the moment as it is in industry organisations’ own interests as well to not go against prevailing public opinion on the desirability of advertising certain products to children<sup>1819</sup>.

#### *7.2.4 Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

The current statutory approach, where the Marketing Control Act takes precedence. This law implements the EU directive on unfair commercial marketing practices and was transposed into Norwegian law. The Draft Regulations of 2012 were developed through a public consultation and circulated amongst industry organisations in 2013 to allow for feedback. These Draft Regulations also sparked the invitation from the Ministry of Health and Care to food and drinks industries to develop a new self-regulatory approach. This new code has been implemented as a two year trial and will be evaluated in 2015. A central body, the MFU was appointed by industry stakeholders to enforce this Code and the MFU was crucial in leading the discussions relating to the revision of the Code.

The self-regulatory Code was established in discussion with several relevant governmental bodies as well as industry bodies representing the food and beverages sectors, the advertising enterprises and employer organisations. In consultation sessions these groups came to a self-regulatory Code which improved upon the 2007 version.

The political forces at work from the Ministry of Health and Care and of the Ministry of Children, Equality and Social Inclusion drove the desire for stricter regulation on the marketing of unhealthy food and drinks towards young people. The aim of industry marketing restrictions, from the perspective of the Ministry of Health and Care was also to prevent children from becoming overweight. The Ministry cites the link between childhood obesity and the likelihood of overweight children “contracting serious illnesses later in life”. At the time of this discussion, in June 2013, everyone on in six eight year olds in Norway was obese, helping to spark the policy debate on further marketing restrictions.<sup>20</sup>

In 2012 a study was also conducted on the consumption of junk food by children in Europe which expressed serious doubts about the effectiveness of self-regulation; this may also have compounded existing doubts regarding the self-regulatory approach.

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<sup>18</sup> Interview Kreativit Forum

<sup>19</sup> Interview MFU

<sup>20</sup> Norway: Tightening of Restrictions on Unhealthy Food Ads Aimed at Youth, August 2013  
[http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403682\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403682_text)

The economic considerations of industry organisations mean that they were opposed to more restrictions in marketing of unhealthy food and drinks, namely covering marketing aimed at children up to 18 years old. The industry organisations feared an all-out ban on such advertising would soon follow. There is also a common fear that with too many restrictions on marketing of food and drinks that introducing new products in these areas becomes very difficult, thus undermining competitiveness.

In Norway the issue of child overweight and obesity has been on the policy agenda for some time, as is clear from several of the developments regarding food and drink advertising in recent year. As early as 1992, the Norwegian Broadcasting Act banned the advertisement of food and drink to children under the age of 13<sup>21</sup>. In 2007, Norway headed up an action network of other European states to reduce the exposure of children to advertising featuring unhealthy foods<sup>22</sup>. This action network enjoyed the support of the Norwegian government at the time. The action network was involved in adopting the World Health Organisation (WHO) recommendations and actions on protecting children from the effects of undesirable marketing practices.

Besides this, there is also a general perception it seems in Norwegian culture that children as a social group should be protected from advertising practices more so than adults as they are more susceptible to (undesirable) commercial communications. This general, social perception is reflected in the views of the food and drinks industry enterprises as well; these recognised that no one really wants unhealthy products to be marketed towards children and in keeping with public opinion, the industry organisations do not feel it is appropriate to market certain products to children. This is in their own business interests it seems as industry organisations are also keen to avoid negative publicity or associations from advertising in a manner which is not entirely socially acceptable. The fact that there are not many advertisements in circulation on unhealthy food and drinks aimed at children, nor many complaints on such advertisements, seems to suggest that there is an overall mentality across various actor groups in Norway that it is taboo to market unhealthy food and drinks to children.<sup>23</sup>

The rise of social media, the internet, increasingly digitalised mobile phones mean that there are increasing media which can reach children more easily. This leaves more room for children to be exposed to unhealthy food and drinks advertising and requires consideration in the regulatory approach. In the Marketing Control Act, the stipulations are relatively broad and framed in such a way that if sufficient components of an advertisement (including its medium) constitute unfair advertising, or violate good marketing practices, it should not be allowed. From a self-regulatory perspective, these new forms of media are also covered in the Guidelines which describe how to interpret and implement to the Code.

The rise of new media, satellite TV and the internet in general mean that certain previous regulations lose some of their strength, such as the Broadcasting Act for instance, which does not apply to satellite TV. Additionally, cross-border advertising using such new forms of media can also pose a challenge when it comes to enforcement; which rules do foreign advertisements shown in Norway need to adhere to for instance?

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<sup>21</sup> WHO, 2011

<sup>22</sup> WHO, Norway leads Europe in protecting children from "unhealthy" food marketing, 2012, <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/news/news/2012/06/norway-leads-europe-in-protecting-children-from-unhealthy-food-marketing>

<sup>23</sup> Interview Kreativit Forum; interview MFU



An impetus for the renewed self-regulatory Code in Norway was the looming Draft Regulations on the Marketing of Food and Drink to Children, as well as discussions at the political level to increase the restrictions on marketing unhealthy food and drinks to children up to 18. In an effort to avoid such an escalation in regulation, it was in the food and beverages industries' own interests to develop a Code of self-regulation which better addressed the concerns regarding unhealthy food and drinks being marketed to children.

An added factor is that the Marketing Control Act and the Broadcasting Act, with the focus on good marketing practice and bans on advertising towards children respectively, have led to a much more cautious environment relating to marketing unhealthy food and drinks to children. As such there is a relatively high degree of regulation, including self-regulation, in Norway due to such laws being in place.<sup>24</sup>

#### *7.2.5 Implementation of the approach: how was this done?*

The statutory regulatory approach, headed by the Marketing Control Act, has been implemented by the Market Council, which is a body within the Ministry of Children, Equality and Social Inclusion. This court was set up in 1974 and is financed by the Ministry.

The Market Council also enforces the advertising regulations in the Broadcasting Act and in the Norwegian Tobacco and Alcohol Act as well. The organisation forms an administrative court of law and is involved in judging those cases where a breach in the advertising regulations were not resolved voluntarily between the advertising enterprise and the Consumer Ombudsman, which deals with complaints from consumers and traders.

The self-regulatory approach has been implemented by industry organisations for a two year trial, under the supervision of the MFU. This organisation has been selected by the industry organisations to monitor and enforce the compliance with the Code. There is a judging committee within the MFU which consists of several individuals who combined provide marketing, legal, food related, governmental, and public expertise and perspectives. These individuals within the committee (around 7 in total) judge cases of non-compliance with the Code.

The Code has also been translated into practical Guidelines and these are readily and publicly available on the website of the MFU. These Guidelines provide insights into how certain cases can be interpreted using the Code. The MFU held 15 consultations with Norwegian enterprises on understanding and applying the details of the Code and the Guidelines in 2013, and 10 consultations with foreign enterprises that operate in the Norwegian market (including Cocoa-Cola for instance).

The industry organisations, the ANFO (Association of Norwegian Advertisers), Virke (the Enterprise Federation of Norway), and the NHO (Norwegian Federation for Employers) were all involved in the implementation process as they are represented by the MFU, the Food and Drink Industry Professional Practices Committee in Norway. The MFU is the main body involved in implementing the self-regulatory Code. The self-regulatory approach was triggered by a hearing at the Ministry of Health and Care on the new draft regulations, after which representatives from advertising agencies and the big food industry producers came together to plan a self-regulatory approach through a series of consultation meetings.

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<sup>24</sup> Interview Kreativit Forum

The statutory regulations regarding marketing of food and drink towards children, namely the Marketing Control Act and the Broadcasting Act, are implemented at the national level and fall under the remit of the Ministry of Children, Equality and Social Inclusion. The Consumer Ombudsman is involved in the enforcement process as it fields the complaints from consumers and traders; where no voluntary solution can be found to complaints the Market Council makes a ruling.

For the self-regulation approach, the MFU activities are funded by industry contributions from the ANFO, Virke, and the NHO. The budget for the MFU is around 1.4 million Norwegian kroner.

The current approach of regulating food and drinks advertising aimed at children is a continuation of a generally more strict approach in Norway. This area has received policy attention and has seen relatively strict regulation compared to other European countries since the early 1990s. The current Marketing Control Act and self-regulation approaches reflect the Norwegian mentality that children are vulnerable consumers how must be more protected from advertising influences, and that advertising unhealthy food and drinks to children is not deemed to be socially or politically acceptable.

### **7.3 Evaluating the outcomes and effectiveness of policies**

#### *7.3.1 Has there been any review/evaluation of the approach so far?*

There do not appear to have been any formal evaluations for the statutory approach adopted in Norway to regulating advertising of unhealthy food and drink aimed at children. There has not been a formal evaluation of the self-regulatory Code on practices relating to the marketing of food and drink towards children. However, based on other indicators, the current approach in Norway is not considered adequate by the Norwegian Consumer organisations and political sphere. The fact that obesity and overweight levels amongst children is still considered too high, combined with the (though debated) link between advertising of unhealthy products, stricter regulations are thought to be necessary.

#### *7.3.2 Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*

There does not appear to be a systematic form of monitoring of either the stator or self-regulatory approaches. In both forms of regulation an organisation receives complaints regarding advertisers or producers who do not comply with either the laws or the self-regulatory Code. However this form of monitoring is more to help enforcement in both cases, rather than systematic form of monitoring to track the progress towards any particular stated objectives for either the legal regulations or the Code. In the case of the Marketing Control Act, the Consumer Ombudsman and Market Council monitor and enforce the regulation, while the MFU does so for the self-regulatory Code.



*7.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

Compliance with the self-regulatory Code is considered to be very good from qualitative evidence. There are not many complaints submitted and this is considered as an indication of the high levels of compliance. In 2014 for instance there were 11 complaints concerning breaches with the self-regulatory code, of which the MFU judging committee felt 3 cases were indeed non-compliant and in need of adjustment. The consequences of non-compliance however, seem to centre on bad-publicity and shaming within the industry areas and publicly. While this may not seem particularly strict, few food or beverage producers appear to wish to run the risk of receiving such bad publicity and compliance is high overall with the Code.

*7.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

The practice of self-regulation is deemed quite efficient; there are few cases of non-compliance in Norway. Additionally, self-regulation is generally deemed a relatively flexible and cheap way of regulating any given policy area as it is easier to adapt to new developments or legislative changes in a sector or policy area.

The statutory regulations are relatively broad and concern marketing practices as a whole. If it can be argued that a marketing practice is somehow in violation of good marketing practices, by being unfair or misleading, there is a basis for intervening with the advertising organisation. An advertisement can be in violation of good marketing practices in a number of ways and as such there are a number of ways in which the Marketing Control Act can be used, making it a flexible law.

The self-regulatory Code is considered quite effective though it has not changed much in form compared to the version from 2007<sup>25</sup>. There were not many advertisements regarding unhealthy food to begin with according to the Norwegian National Institute for Consumer research<sup>26</sup> and based on feedback from the food and marketing industry associations<sup>27</sup>. The approach in place prior to the new statutory Draft Regulations on Marketing of Food and Drinks towards Children developed in 2012 and the revised self-regulatory Code could therefore be interpreted as being effective.

The current Marketing Control Act and the self-regulatory Code have not been evaluated, but are considered effective as they raise the level of caution and awareness amongst advertising and food industry associations concerning marketing towards children<sup>28</sup>. There are few cases of non-compliance and few complaints are reported to the MFU for the self-regulatory code.

The approach is also considered effective because industry enterprises are more inclined to comply with regulations they themselves have helped to agree upon on the one hand, and which promote what are considered to be desirable, socially accepted marketing practices when it comes to food and beverages being advertised towards children.

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<sup>25</sup> Interview Kreativit Forum

<sup>26</sup> Norway: Tightening of Restrictions on Unhealthy Food Ads Aimed at Youth, August 2013  
[http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403682\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403682_text)

<sup>27</sup> Interview Kreativit Forum; Interview MFU

<sup>28</sup> Interview Kreativit Forum

For the self-regulatory code the consultation procedure to develop the self-regulatory guidelines are considered successful aspects; the industry, public, health and governmental interests were represented. Having all these interests represented helped to reach a solution which made as many factions as possible happy. This consensus element is deemed particularly important in coming to an effective regulatory approach<sup>29</sup>. Other successful elements of self-regulation are that it involves less financial and administrative burden to develop, monitor and enforce than statutory regulations, not to mention their being more dynamic and adaptable. Indeed with statutory regulations organisations and enterprises more often seek out the grey areas within the legal clauses for loop holes. This is less the case with self-regulation where the spirit behind the codes is important.

A further successful aspect is the pervasive seeming notion in Norway across a variety of stakeholders that advertising certain products to children is not desirable. This is reflected in the Product List created by the industry organisations of product which are not allowed to be advertised to children. This satisfies certain concerns from the governmental, health and consumer voices regarding health and safety of children, but this list does not include any new products and thus from an industry perspective this practice does not overly restrict competition.

#### *7.3.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?*

Self-regulation to supplement the laws in place is a good approach. The area of marketing unhealthy food and drinks towards children was deemed too specific an area to formally regulate in statutes and as such using a Code of self-regulation as well is deemed a successful approach. Self-regulation is thought to be cheaper and more efficient than implementing statutes.

Another lesson is that as industry groups do not wish for more statutory regulations and given that they themselves are involved in the development process of these practices, they are more likely to comply with the self-regulatory Code; it is in their own interest to do so to avoid further, more stringent regulation.

An added strength in the Norwegian approach is the involvement of the public sector stakeholders in the consultations and discussions on why and how the self-regulation Code was to be adapted.

Some lessons however include the difficulty in establishing what marketing elements have "particular appeal to children". This is often cited in the Code and can be interpreted differently; as such the Guidelines offer examples of what the MFU would interpret as having a particular appeal to children. Though this is a useful step, issues surrounding the definitions of "particular appeal to children" or "aimed at children" remain contentious issues in both the statutory and self-regulatory approaches.

The Consumer Ombudsman, formed something of an obstacle to the current combined approach of using laws on good practice marketing, supplemented by self-regulations on the specific area of marketing unhealthy food and drinks to children. The Consumer Ombudsman felt and still feel that the approaches do not go far enough in protecting children from the marketing of these products and that they are still vulnerable.

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<sup>29</sup> Interview Kreativit Forum



## 7.4 Transferability

### 7.4.1 Discussion on transferability of approach:

The system of statutory regulations in place is considered to be quite transferable in that it involves transposing an EU directive into national law.

From the self-regulatory perspective, this approach is also thought to be transferable. There is an intuitive appeal to consulting with the public, governmental, health and food and drink industries for a solution which on the one hand protects children from overweight and obesity and helps to maintain competitiveness on the other.

The financial and organisational requirements are not extremely high; the MFU was established by industry stakeholders in discussion with public and government bodies (CHECK). The organisation of the MFU is headed up by one secretary and the judging committee consists of experts from different backgrounds which are elected into the committee. Organisationally therefore the MFU is not particularly large or complex and does not seem to require any systems which would prevent a similar organisation being set up in another country.

Setting up the revised self-regulatory code itself took around one year and involved regular meetings every two weeks or so with industry and other stakeholders.

(Question: double check the stakeholders involved).

Regarding the self-regulatory approach, a key element is the consensus based, cooperative element to developing the self-regulatory Code and Guidelines.

### 7.4.2 Potential obstacles to transferring this approach to other national contexts

In Norway the current approach is considered quite efficient and effective; the statutory approach is complemented by the rather specific self-regulations on marketing of food and drinks towards children. However the self-regulatory approach may be considered effective due to the few complaints and few advertisements aimed at children regarding unhealthy food and drinks. This in turn may also be attributable to some degree to the relatively pervasive attitude in Norway that marketing towards children should be done carefully as this is a vulnerable group. This cultural attitude may form a successful component to this approach and this should be borne in mind when transferring it to other countries.

From the self-regulatory perspective, there were not really any large obstacles to implementation; it was seen as a good solution by all the stakeholders involved. This may also be related to the Norwegian mentality of not regulating where it is not necessary and to allow for competitiveness to remain in the food and drink sector.<sup>30</sup>

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<sup>30</sup> Interview Kreativit Forum

## 8 Slovenia

### 8.1 Description of Current national approach to regulating food advertising aimed at children

#### 8.1.1 How is food advertising towards children defined in the country? Do different actors use different definitions?

There is no unique, general and (sufficiently) clear **definition of food/beverage advertising** towards children in Slovenia that would apply to all possible forms and means of advertising.

The most elaborated definition of food advertising is included in the **Audiovisual Media Services Act** (adopted in 2011) concerning audio-visual commercial advertisements for foods in broadcasts intended to children. The definition reads as follows: „ foods containing nutrients and substances with nutritional or physiological effects, in particular fat, trans fatty acids, salt or sodium and sugars, excessive intakes of which are not recommended in overall diet...” (Article 23). This piece of legislation, however, applies only to audio-visual media services.

In other acts, advertising to children is limited to prohibition of harmful or inappropriate items to children in general, such as: „Advertising ... shall not include elements that cause or might cause physical, psychological or other harm to children, or elements that abuse or might abuse their trusting nature and lack of experience...” (Consumer Protection Act, Art. 15), which might imply also unhealthy foods and beverages.

The same applies to definition on **advertising is intended to children**. There is no clear definition of that issue. It is generally considered that advertising is focused on children if it concern products/services (typically) used by children. Limitations apply for advertising of harmful and inappropriate contents in general, to different consumers, including children.

**Use of different definitions:** Since the regulation (both legal acts and guidance documents) of advertising of food/beverages to children in legal acts and policy documents is not sufficiently clear, and e.g. precise definitions (standards) on what is food is considered unhealthy, a vast space is left for various interpretations, for instance:

- Age of target population - children and youth: age is defined in national RTV code, i.e. children and under aged (up to 18 years of age);
- The contents of fat, trans fatty acids, salt or sodium and sugars (what contents is allowed, recommended?);
- Advertising place/media: Advertising in schools is recommended to be banned (Guidance for Nutrition in Educational Institutions), which means that schools independently bring decisions related to food/beverage promotion actions by industry/trade companies in schools and school events (e.g. through sponsorships);
- Due to loose criteria, advertisements can be found even in schoolbooks and journals intended for children (frequently in disguised forms such as crosswords, puzzles, games), not to mention internet and other media of information society.



**Criteria to judge whether advertisements are focused to children:** Slovenian legal acts and self-regulating documents do not include any specific criteria to judge whether advertisements are children focused. According to interviewed organisations, advertisements are considered focused to children where advertisements include products or services (typically) used by children.

#### *8.1.2 System of regulation followed by country for regulating food advertising towards children*

Slovenia applies a combined system of statutory and self-regulation which means:

- **General issues**, i.e. prohibition of advertising harmful and inappropriate goods (which implies also unhealthy foods and beverages) to children, are regulated by several laws applicable for all media (e.g. Consumer Protection Act);
- **Advertising unhealthy food/beverages to children in audio-visual media** is regulated in an indirect manner, namely, the Audiovisual Media Services Act imposes on audio-visual media to adopt their own codes concerning advertising food and beverages to children;
- **Audiovisual media** have to have their own codes (e.g. National RTV Code), which is mandatory but applicable of course only for such media; and
- **Slovenian Advertising Chamber** (SOZ) that brings together three parties: industry, advertising agencies and media (so-called „Slovenian Advertising Triangle“), has in place the Slovenian Advertising Code (SOK), which regulates, among other, advertising foods/beverages to children. This code is mandatory for members of SOZ (industry, media and advertising agencies) and recommended to non-members.

It should be also pointed out that public bodies/institutions (e.g. the National Institution of Public Health) and NGOs (e.g. the Consumer Organisation) pay increasing attention to advertising to children in general and advertising of unhealthy food /beverages specifically, through development of guidelines and recommendations for regulation and self-regulation, and by carrying out awareness raising and information campaigns and healthy food promotion campaigns for children, parents, educators and other professional staff involved in work with children and youth.

*Forms which regulations take:*

#### **Legal acts:**

As mentioned above, Slovenia has no special laws covering advertising of food/beverages to children in general in all media, but has adopted laws and regulations in related fields. General issues of inappropriate and potentially harmful or misleading advertising to consumers in general are regulated by several legal acts, e.g. Consumer Protection Act, Consumer Protection against Unfair Commercial Practices Act, Media Act, which was partially replaced by the Audiovisual Media Services Act (see below), and, indirectly, the Protection of Competition Act, which prohibits unfair practice.

Only the **Audiovisual Media Services Act** (adopted in 2011) is clearly focused on advertising of foods to children and under aged (i.e. up to 18 years of age). However, it should be pointed out that this Act only applies to audio-visual media (having the most important role in terms of accessing and persuading consumers), but does not cover all forms and means of advertising.

It has to be pointed out that recently amended **School Meals Act** (adopted in 2010, amended in 2013) that regulates meals in educational and related institutions (from kindergarten to secondary school level) introduces a healthy alternative (i.e. healthy foods/beverages) as an important element of positive fight against obesity and related physical / psychological conditions in children and youth. The Act is a result of common efforts of ministries, public institutions and NGOs to deal with this problem in a comprehensive manner, based on the view that prohibition of unhealthy foods/beverages would not produce suitable results, if children and their parents are not properly informed and aware of suitable alternatives to unhealthy foods, and provided with easy access to such alternatives. The Act banned food/beverage vending machines (providing mostly unhealthy food and beverages) from schools. It introduces subsidised healthy meals to educational institutions, together with organisational, educational and awareness raising measures for children, parents, educators, school staff and other stakeholders.

It is a common opinion of all the organisations interviewed for this study, that Slovenian legal framework covering advertising (of unhealthy foods/beverages) to children is too dispersed (in different laws) and thus insufficiently transparent on the one hand, while it lacks some fundamental regulations (national standards concerning the contents of unhealthy ingredients in specific foods and beverages) on the other hand. As such, it allows different interpretations, which, inter alia, result in increased exposure of children to advertisements of unhealthy food/beverages in Slovenia (by 26 % during recent few years according to the research carried out by the Consumer Association of Slovenia).

**Codes of conduct, ethical codes:** Since compliance with the legislation does not necessarily imply ethical behaviour, advertising agencies (i.e. their association), media and industry started developing mechanisms of self-regulation in the form of ethical codes and codes of conduct in order to induct and support ethical advertising in advertising agencies, media and industry.

- The first Slovenian Advertising Code was adopted in 1994 by the Slovenian Advertising Chamber – SOZ (previously Slovenian Advertising Association), a voluntary association of industry, media and advertising agencies. The most recently updated version of SOK was developed in 2009, by the National Code Task Force, which also included the Ministry of Health, National Institute for Public Health, Consumers Association and the Slovenian Advertising Chamber. SOK covers all means of advertising and regulates methods of advertising (how to advertise), but has no competence in regulating the time and products (what to advertise). SOK is mandatory for SOZ members and recommended for other providers. Incompliance with the Code is dealt with by the SOZ's Court of Honour;
- The National RTV Code was developed in 2000 by the national Radio and TV Company. It is a code of conduct for the national broadcast company as a whole, covering thus several fields of operations, including advertising, promotion and sponsorship in RTV broadcasts. The Code introduces ethical criteria for advertisements at national RTV. Special attention is paid to advertisements intended to children, including various forms of engagement of children in advertisements. Advertisements have to comply with the International Convention on Protection of Children. The Audiovisual Media Services Act (Article 21) imposes (Article 23) on advertisement industry to adopt their own codes of conduct relating to inappropriate commercial advertisements included in or accompanying broadcasts intended for children about unhealthy food/beverages.



**Policy resolution and guidance:** Slovenia has no specific strategy or political guideline on advertising of food to children. However, based on the Resolution on the National Programme of Dietary Policy 2005-2010 (Ministry of Health) where special attention is paid to promotion of healthy foods and life style, several guidance documents were developed related to the promotion of health among different groups of population, including children and youth - from kindergarten to primary and secondary schools. This document primarily promote healthy diets in educational institutions, including recommendations and instructions, calls for harmonised action of all the stakeholders involved, recommends to prohibit advertising of unhealthy food in schools and calls for awareness raising and information campaigns. It should be emphasised, however, that recommendations are not mandatory and schools are independent in bringing their decisions as to allowing advertising actions in schools or not.

*How do the agreements, policies or legislation in place regulate advertising of food towards children?*

**Legal documents:** As indicated above, legal documents (except Audiovisual Media Services Act) prohibit in general advertising of harmful and inappropriate goods and services to children, e.g.: „Advertising ... shall not include elements that cause or might cause physical, psychological or other harm to children, or elements that abuse or might abuse their trusting nature and lack of experience...” (Consumer Protection Act, Art. 15), under which also unhealthy foods and beverages could be considered. The Audiovisual Media Services Act is more precise; it defines (to some degree of accuracy):

- Age, i.e. children and under aged population (up to 18 years of age); namely it protects children and under aged population against advertising that might affect their physical, psychological or moral development or arbitrarily and illegally intervene with their private lives, family and home (Article 10);
- Advertising time: Advertising of inappropriate or harmful elements at TV is limited to „... properly chosen time and technical protection aimed at preventing access to children and youth in normal circumstances...” (article 14);
- General limitation of TV advertising and sales in broadcasts likely to be watched by children: Advertising is not allowed during broadcasts for children up to 30 minutes in length, and in case of broadcasts exceeding 30 minutes; terminations of the programme for advertisements have to comply with the requirement on the „properly chosen time”(Article 28). And further: TV shops must not offer under aged people a possibility to enter into purchase or lease agreements for goods and services;
- Types of products: This is the only act at all that specifically regulates advertising of foods in broadcasts intended to children, though indirectly, by imposing on advertisement suppliers (industry, agencies, media) to adopt their codes of conduct regulating „... inappropriate commercial advertisements that accompany or are included in broadcasts intended for children about ... foods containing nutrients and substances with nutritional or physiological effects, in particular fat, trans fatty acids, salt or sodium and sugars, excessive intakes of which are not recommended in overall diet...” (Article 23). Such codes of conduct have to be published and sent to the ministry responsible for media and the national Agency for Communication Networks and Services;

- Contents of advertisements: The Act explicitly prohibits any contents that stimulate under aged people to purchase or lease goods and services due to their lack of experience or credulity; or convince their parents to do so, or to abuse trustfulness of under aged in their parents, teachers or other persons (Article 21);
- However, this Act only applies to audio-visual media and does not regulate other forms of advertising or media (e.g. direct sponsorships, sales promotion in schools and events, printed media, etc.).

As shown, in the legal framework, age groups of children are not considered, appropriate time is not further explained, and products are not defined (e.g. criteria for foods „excessive intakes of which are not recommended in overall diet“are missing).

**Codes** are in some items more detailed:

- The Slovenian Advertising Code (SOK) includes special rules in advertisements intended for children and youth (age is not defined), as well as advertisements involving children as actors or mannequins. SOK prohibits advertising practice where children are directly invited to buy goods or services or to push their parents to do so. It is also prohibited to encourage children and young people to collect special stickers, envelopes, coupons, etc. Special Article (18.15) is devoted to advertising of foods and beverages to children. Key elements of SOK include prohibition of advertising high-energy and low-nutrition value foods and beverages that contain excessive salt, sugar and fats, limitation of advertising of foods with inappropriate nutrition profile in schools, on radio and television between 6 and 9 p.m., and prohibition of involvement of celebrities and cartoon characters, promotion through free gifts, and competitions that include prizes in the form of inappropriate foods. It also requires that advertising should not allow or encourage bad diets, such as to eat sweets and snacks, to eat excessively, and should not mislead children as to any potential physical, social or psychological benefits resulting from intake of specific products. Advertising of alcohol drinks should not be intended to people under 25 years of age and should not present such people drinking alcoholic beverages. In addition, advertising of low-calorie foods and diet supplements (they are classified as food) must not be intended to children and youth. As for advertising of food in general and soft drinks, SOK includes general requirements (i.e. not specifically focused to children), such as: healthy life style shall not be underestimated; ingredients in foods and beverages have to be indicated accurately and not misleading, and any potential benefits for health have to be scientifically grounded and provable;
- The National RTV Code pays special attention to advertisements intended to children, including various engagements of children in advertisements. The Code does not specifically consider advertising of food and beverages to children. It generally requires that advertisements shall be rejected if their content or illustration does not comply with International Convention on Protection of Children, if they directly encourage children to purchase the product, and if they encourage or lead up to actions that could endanger health, safety and life of an individual or specific social groups.



As shown, age groups within the general group of under aged (up to 18 years of age) are not defined in detail. Products are not defined (though, some unhealthy foods are mentioned in SOK, such as sweets, snacks, high-energy and low-nutrition foods, and soft drinks), while appropriate time is more precisely defined. However, as pointed out by SOZ, the code can only regulate and recommend methods of advertising; it cannot define products or media and time where no applicable national standards are adopted.

**Guidance:** The Guidance for Nutrition in Educational Institutions (2010) recommends prohibition of all kinds of advertising in school premises and events. However, following of guidance recommendations is not mandatory, and some schools (particularly due to lack of funds) might agree on one or another open or disguised advertising.

According to the interviewed organisations, there is a vast „grey area“, which is not adequately defined and allows different interpretations of existing legal and self-regulation documents, together with practices of industry and trade in different forms of (open or disguised) advertising, e.g. in schools (such as sports events sponsored in the form of free T-shirts making children advertise a specific unhealthy food article; advertisements are found in school workbooks, energy drinks were distributed free in front of school premises, free gifts for first-year schoolchildren included diet supplements, etc.).

**Policies considering contents of advertisements:** As mentioned above, legislation and self-regulating documents require that the contents of advertisements targeted to children, in general, should not be in conflict with the International Convention on Protection of Children and should not:

- Include the contents that might affect children’s physical, psychological or moral development or arbitrarily and illegally intervene with their private lives, family and home;
- Abuse natural credulity and lack of experience in children;
- Create a feeling that children would feel inferior or less popular among their peers, or considered to have no courage, sense of duty or loyalty, if they do not buy/have a specific product;
- Directly urge children to collect certain stickers, envelopes, coupons, etc.;
- Involve celebrities or cartoon characters;
- Directly encourage children and their parents to purchase the goods and services concerned;
- Encourage or lead up to behaviour that could jeopardise their or other persons’ health, safety or life;

And specifically, advertisements on foods and beverages for children must not:

- Excuse or encourage bad eating habits or unhealthy life style;
- Encourage children to eat or drink more frequently or to consume larger quantities of food or beverages;
- Mislead children as to any potential physical, social or psychological benefits resulting from taking certain foods.

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**Media considered:** As indicated above, advertising in different forms and in different media is regulated by laws only generally (the Consumer Protecting Act), while advertising of food and beverages to children and youth is regulated only for audio-visual media.

### **Target groups:**

- Advertisement providers: Legislation does not specify different groups of advertisement providers; the term „advertisement providers“ includes industry (e.g. food, beverages), advertising agencies and media;
- Target users (audience): Direct target groups concerned in legal and self-regulating documents are children and their parents or guardians. In some cases (but more frequently in promotion campaigns on healthy food/beverages and life style – see School Meals Act and campaigns below) also educators (kindergarten staff, school teachers at primary and secondary level) and other stakeholders are targeted.

#### *8.1.3 When was the approach implemented*

Self-regulation of advertising was introduced in 1994 by the Slovenian Advertising Code (SOK) adopted by the Slovenian Advertising Chamber – SOZ (Slovenian Advertising Association at that time), which placed Slovenia among the first „new“ European countries introducing the system of self-regulation comparable to developed countries. Advertising to children was regulated generally (i.e. it was not food-oriented).

The most recent update of SOK, which regulates advertising of food to children, was adopted in 2009.

National RTV Code was adopted in 2000 (it is still in use) and included general regulation of goods and services for children and under aged (i.e. not food oriented); The first legal regulation of advertising, the Consumer Protection Act, was adopted in 1998 and regulated advertising to children in general manner, which is still in force although the Act has been amended several times. The Consumer Protection Act is currently under revision.

The Audiovisual Media Services Act was adopted in 2011 and includes advertising of food to children.

The amended School Meals Act prohibiting food/beverage vending machines and promoting health food in educational organisations attended by children and youth was adopted in 2013.

## **8.2 Context in which the current national approach was developed and implemented**

### *8.2.1 Problem recognition*

The main objectives of this approach were to suppress the factors that affect unhealthy eating habits, i.e. taking high-energy foods with low-nutrition value and high contents of fats, sugar and salt (HFSS), and life style in children and young population that result in fast increasing obesity and related health conditions in Slovenian young population. Namely, according to WHO, the trend of increasing weight in children is more intensive than in other countries. Every fourth Slovenian child has obesity problems and Slovenian children are ranked first in consuming sugar added soft drinks among 39 countries (OECD, 2014).



According to the experts interviewed for this study from institutions that monitor this issue, advertising of HFSS directly affects behaviour of children. They are a particularly interesting target group for media, since they are more susceptible to advertisements than adults. The main problem in advertising lays in the fact that mostly unhealthy, HFSS food is advertised. Several Slovenian institutions involved in monitoring of food advertising (NIJZS, SOZ, ZPS) believe that marketing of HFSS foods and obesity in children are correlated.

### *8.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?*

- The approach was clearly connected with a policy of increasing healthy life style and individual care of health in individuals of all ages and all social groups, including children and under aged people, as set up by the Resolution on the National Programme of Dietary Policy 2005-2010 (Ministry of Health).
- The approach is also connected with a broader objective of protecting consumers in general against advertising unhealthy food/beverages and life style.
- Another objective, already present in the current SOK, is protection of children and their parents' personal data through advertising intended to children, which applies particularly to advertising through the information society media.

Further actions in this field will additionally include efforts for prohibition of (all kinds) of advertising in schools and immediate vicinity of schools and in schoolbooks, and might focus also on reducing advertising intended to children in general, or at least on increasing ethical components in advertising to children.

### *8.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?*

- The main initiators of the current concept were the line ministries (Ministry of Health, Ministry of Economic Development and Technology, Ministry of Education; Science and Sports, Ministry of Agriculture, Forestry and Food), the National Institute for Public Health (NIJZ - a public body), Consumers Association of Slovenia (ZPS - NGO), Slovenian Advertising Chamber (SOZ - linking industry, advertising agencies and media), media and some other stakeholders.
- Responsibilities and roles:
  - In general, ministries are responsible for preparation of proposals of acts (bills) and for monitoring and enforcement of compliance with laws and regulations;
  - NIJZ is responsible for a broad area of monitoring public health and public health care system. It is involved in national and international research in health and health-related factors, provides information necessary for development of public health measures and proposes such measures. As such, NIJZ has been involved in the development of the SOK Code, and in several actions and campaigns aimed at promotion of positive alternatives to unhealthy foods;

- SOZ coordinates and bridges together interests of industry, media and advertising agencies, e.g. in the development of the current Slovenian Advertising Code (adopted 2009). SOZ works closely with its members and monitors the conditions in the advertising market. It prepares suggestions for measures, laws and regulations, which are harmonised among the three main actors (industry, media and advertising agencies);

ZPS is a NGO, working on behalf of consumers. It advocates for consumer protection, monitors and tests goods and services in order to discover non-ethical and misleading practice. It has been involved in monitoring advertising to children for several years. It suggests measures, and initiates and implements awareness campaigns. It was involved in the development of the SOK Code and the Consumer Protection Act.

#### *Formulation of objectives*

- Objectives are usually formulated based on some results from monitoring and/or national and international research. Objectives, proposals for laws and recommendations for actions are usually discussed in a group of involved actors (e.g. the Task Force set up for development of SOK) and then forwarded to the line ministry.
- The line ministry is responsible for the development of bills, which are then – if necessary – harmonised among other associated ministries and published for comments (public consultation), before being forwarded to the National Assembly for adoption.
- Recommendations for actions are agreed among actors and go into implementation.

However, it is quite common recently in Slovenia that laws are adopted without independent research background, sufficient discussion with stakeholders, with no test (e.g. on a smaller sample of potentially affected target groups) and by fast adoption procedure in the National Assembly. All interviewed experts point out that regulation of advertising to children should not skip any of these stages.

#### *Policy debates between relevant actors and stakeholders*

- There is no information available about policy debates for the current concept, which has been in force since 2009 (except the Audiovisual Media Services Act, which was adopted in 2011, aimed at transposing the Directive 2010/13/EU to the national laws).
- Currently, there are policy debates undergoing about a new Consumer Protection Act. The current Act was adopted in 1998 and amended several times. It is foreseen that the Act will also regulate advertising of HFSS foods to children. As shown by the international research funded by the European Commission (PoIMark, 2009, Slovenia was one of 11 participating countries), stakeholders agree that advertising of foods to children has to be regulated, but they do not agree on how to regulate it. If we try to summarise interviews with organisations, the key topics of current debate include the following:
  - Age: The experts agree that the target group should be divided to children and youth and further to sub-groups, because they have different needs and perceptions. Apparently, they disagree on the upper age limit. Some of them would set up the limit at 18 years of age, other would decrease it to 16 years or less;



- Standards: All experts agree that adequate standards should be in place, defining what is and what is not an HFSS food, in order to ease decisions of advertisement providers and consumers. It was also pointed out that standards should be agreed at EU level (at least), because having such regulation exclusively at national level might affect local industry (decreased competitiveness compared to producers from other countries) at the one hand, while it will not provide satisfactory results in consumers (foreign products available through e.g. services of the information society);
- Broadcasts and time: Experts agree that advertising should be banned in broadcasts specifically intended for children, but do not agree about other broadcast programmes and on appropriate time;
- Advertising in schools: Experts agree that advertising in any form, including disguised advertising e.g. in form of free gifts or sponsorships, should be banned from school premises, their immediate surroundings and school events, from schoolbooks and children's magazines;

Statutory regulation or self-regulation: There are different viewpoints observed between SOZ and other interviewed organisations. SOZ primarily claims that Slovenian industry should not suffer due to regulation that would be more stringent than in other countries, and therefore, they should not experience a worse position compared to other countries with less regulated environment. On the other hand, experts from ZPS and NIJZ advocate for more stringent, more transparent regulation of food advertising to children by law, which would enable enforcement and penalising of incompliance.

#### *8.2.4 Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

Please, note: the procedure described below was summarised from interviews and is not based on proven facts. During the time concerned, there were several organisational and staff changes in line ministries and competences were transferred from one authority to another. As assumed, the process was carried out approximately as follows:

- The „basic“ act (Consumer Protection Act) was adopted in 1998. It generally regulated advertising to children (not specifically oriented to food) by prohibiting elements that could be harmful to children. This issue was also generally regulated in the National RTV Code (2000).
- The Resolution on the National Programme of Dietary Policy 2005-2010 (adopted by the Ministry of Health in 2005) defined in its principles on dietary policy, among others, the need of healthy food for groups with special needs (including children) and the need to respect ethical principles by all stakeholders involved in dietary chains, including marketing. The Resolution also pointed out the need for active participation of professional and general public and NGOs in the implementation of the Resolution.

Based on the Resolution, several guidance documents were prepared for different risky groups, including children, i.e. Guidance for Nutrition in Educational Institutions (2010), which promotes healthy food and drinks for children in kindergartens, primary and secondary schools, and recommends prevention of advertising HFSS foods in schools.

- Based on increasingly frequent warnings of medical experts, competent public institutions and NGOs concerning obesity and related health problems in Slovenian children, the National Code Task Force was established (2008), which involved representatives of the Ministry of Health, National Institute for Public Health, Consumers Association, the Slovenian Advertising Chamber and other stakeholders and other experts. The Task Force developed the Slovenian Advertising Code (SOK), which was adopted in 2009. In SOK, advertising of HFSS food to children was regulated in a comprehensive way for the first time, and harmonised between three main parties (industry, media and advertising agencies) and other main stakeholders.
- A significant step forward was made by the adoption of the Audiovisual Media Services Act (2011) that prohibits in general advertising of harmful and inappropriate goods and services to children.
- In 2013, the amended School Meals Act introduced the principles of healthy diet in educational institutions and banned out food/beverage vending machines. The Act has not managed to prohibit advertising in schools in spite of pressure made by NGOs.

Accompanying activities:

It should be pointed out that along with the efforts aimed at regulation of advertising HFSS foods to children, public bodies (particularly NIJZ) and NGOs (Consumer Association) in cooperation with line ministries, schools and other stakeholders, initiated raising awareness campaigns about advertising to children and unhealthy food among children and their parents, educational staff and other stakeholders, such as:

- Marketing Foods to Children – Whose Responsibility it is? (ZPS, 2009). The aim was to initiate adoption of a national code. SOK was actually presented and promoted at one of thematic tables organised during the campaign;
- For School without Advertisements is another ZPS action (2012– still undergoing), which is not exclusively focused on food. It was publicly supported by numerous parents, several ministries and the National Institute for Public Health.

In line with a common standing that the problem of unhealthy food and life style in children has to be dealt in a comprehensive manner, i.e. that prohibition of unhealthy foods/beverages would not produce suitable results, if children, their parents and other stakeholders are not properly informed and aware of suitable alternatives to such foods, and such alternatives are readily accessible. Several actions and campaigns of this kind were organised recently, for instance:

- School Fruit Scheme a measure of common EU agricultural policy aimed at reversing negative trends in consumption of fruits and vegetables. The measure is aimed at raising awareness on the importance of fruits and vegetables in diet. The scheme is implemented by the Ministry of Agriculture, Forestry and Food (2012-2014);
- Traditional Slovenian Breakfast is a joint effort of several ministries, NIJZ, Slovenian Chamber of Commerce and Industry and several food-processing companies. The aim is to encourage consumption of locally produced foods and healthy food;



- A web portal School Pot aims at removing fast food and sweet beverages from schools. The portal provides e-contents and e-tools associated with healthy diet and physical activity in schools (including regulations, guidance, recommendations, research, etc.). The portal was developed by NIJZ and the Josef Stefan Institute and financed by the Ministry of Health.

It should be pointed out, however, that current concept of HFSS advertising regulation is considered far from being satisfactory. The volume of food advertising to children is growing fast; industry and advertisement providers have found their way to advertise through children magazines, school workbooks, advertising panels in the vicinity of schools, free gifts, sponsorships, etc.

Consequently, the interviewed organisations call for further harmonised and focused actions in order to improve the quality and transparency of statutory regulation of advertising HFSS food to children and youth, introduce more strict control and penalties for incompliance, improve self-regulation in media codes, introduce active cooperation with industry, and not least, implement systematic raising awareness and education of children, parents, teachers and other stakeholders about healthy diet.

*Contextual factors affecting current approach:*

Overview of structural factors that influenced the development of the current approach to regulating food advertising to children:

- Political factors: Slovenia has no specific strategy or policy on food advertising to children.
- Economic: Actors involved in efforts for regulation of food advertising to children are well aware of consequences resulting from reduction of such advertising to national food industry. The food sector (both agriculture and food/beverage production) accounts approximately for 2.5 % of national GDP and 10 % of total employment (National Statistical Office, 2013). Trade sector is quite strong (about 4 % of GDP) and international retail food chains are significantly represented in the country. Limitation of advertising and reduction of HFSS contents only for national products could affect competitiveness of local products, while consumers would still have direct access to products imported from other countries, possibly with less restricted concepts. Consequences could also include major loss of jobs in food/beverage industry.

Therefore, institutions and NGOs involved in initiatives for more stringent regulation of food advertising to children insist that restrictive measures have to be developed hand-in-hand with local industry, and that simultaneously with any restrictions/prohibitions, it is necessary to develop opportunities for local producers of healthy food. The actions described above (School Pot, Traditional Slovenian Breakfast, School Fruit Scheme) have been developed and implemented with this aim.

- Social: Obesity in children has been growing very fast recently. Since 2008, Slovenia has been affected by a severe economic crisis that resulted in loss of over 100,000. Available research works have not investigated correlation between economic recession and obesity in Slovenia, but according to WHO, recession has contributed to worsening quality of food consumed by children, since they cannot afford healthy food. It is assumed that these findings can also apply to Slovenia. On the other hand, mostly as a result of public campaigns, it seems that awareness about healthy food and life styles gradually increases.

- **Technological:** According to the interviewed experts, food advertising towards children through internet and other non-traditional media (e.g. mobile phones) has been growing fast, and it is difficult to control it. The issue can be handled only through systematic education of children, and the role of parents and guardians in this field is crucial.
- **Legal:** Definitions used in Slovenia are indicated at the beginning of the study (see: Chapter 1, Definition of food advertising towards children in Slovenia). Enforcement is described in Chapter 3 below.
- **Ecological:** In the campaigns mentioned above, environmental factors are clearly considered, for instance by emphasising short supply chains in local products (less transport).

#### 8.2.5 Implementation of the approach: how was this done?

- The **implementation** of the approach is described in detail, together with the development of the approach, under the item „How was the current approach to regulating food advertising aimed at children developed“ (see above).
- **Actors** involved in the implementation process: As mentioned earlier, legal acts were prepared by the line ministries and adopted by the National Assembly. Inspection services are responsible for enforcement of compliance with legal provisions. In recently adopted acts, liable entities are provided with a period of adjustment in order to ensure compliance of their practice with new requirements. The National Advertising Code (SOK) was adopted by SOZ members and put into force immediately.
- **Data on budgetary funds** spent on development and implementation of the concept is not available and costs cannot be assessed.
- **Continued or new approach:** The current concept was actually started in 2009. It is built on previous acts and self-regulations concerning advertising of potentially harmful products and services to children (HFSS food was not considered earlier). Therefore, regulation of HFSS food advertising is a **new element** in the former concept of co-regulation.

## 8.3 Evaluating the outcomes and effectiveness of policies

### 8.3.1 Has there been any review/evaluation of the approach so far?

- There has been no formal evaluation carried out of the approach. Since there is no special policy on food advertising to children set up in Slovenia and the concept was not started and implemented as a project, there is neither systematic monitoring and evaluation nor funds for such monitoring put in place.
- NIJZ and ZPS, however, monitor the issue of food advertising to children based on their routine and contacts with stakeholders. According to them, number of food advertisements to children is growing, and industry finds new ways to approach children.
- SOZ has no budget available to monitor its implementation among its members. If any violation is notified, it is dealt with the Honorary Court.
- A research carried out by ZPS recently has shown that in recent years exposure of Slovenian children to HFSS advertisements has increased by 26 percent. In addition to audio-visual media, for instance, advertisements are found in children's magazines (e.g. full page advertisements, mainly for less recommended HFSS foods, often including prize competitions, a strip or a game, and appealing characters, thus quickly attracting children's attention; advertisements are often in disguised form, hidden in journalist articles, etc.), in school workbooks, in the form of sponsorships at school sports events, free gifts at the first school day, etc. etc.



*8.3.2 Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*

**Enforcement** of compliance with statutory provisions is carried out by inspection services, where competences are divided between the Market Inspectorate (advertising in general, concerning misleading, potentially harmful contents, unfair business practices, etc.), the Health Inspectorate (dealing with health adequacy of foods, i.e. dietary supplements, ingredients in foods for babies and small children, etc., and not advertising), and for audio-visual media services, enforcement is carried out by the national Agency for Communication Networks and Services.

*8.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

**Violation of the Code** (SOK) is dealt with by the Honorary Court at SOZ based on received notifications of violation. In case of grounded complaints, the Court has the right to request correction or withdrawal of respective advertisement, to inform competent authorities (market inspectorate and others) and to suggest criminal prosecution. Since 2009, the Court ruled in 10 cases.

**As for sanctions:** Penalties are foreseen for incompliance with statutory provisions (e.g. in audio-visual services, penalty of EUR 6,000 to 60,000 is foreseen for incompliance with all provisions aimed at protecting children; in the law on misleading business practice, EUR 3,000 do 40,000 is foreseen for all types of misleading business practice, including misleading of children, etc.). However, according to some of the interviewed experts, penalties are too small and should be more stringent and increased, while SOZ claims that penalties are very high and advocates for lower penalties.

Self-regulations by codes, however, have no penalties. Violations of ethical code are dealt by the Honorary Court (SOZ) as indicated above.

*8.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

**Efficiency in terms of costs and benefits in practice:** As mentioned earlier, efficiency of the concept cannot be judged, as there is no data available on the cost of development, implementation, monitoring & evaluation and enforcement of the co-regulation concept.

According to the interviewed experts, a thorough evaluation, if it were carried out, should have taken into account cost and benefits in a broader context, i.e. not only cost of public authorities and bodies involved in development, implementation and enforcement of the concept, but also costs induced by the concept in industry, media, advertisement providers, etc. on the one hand, and benefits to health in children on the other hand, which can be measured only in a longer-term, provided that parameters of correlation between food advertisements and e.g. obesity in children were scientifically proven and systematically measured.

**Effectiveness of the current co-regulating concept:** According to interviewed experts, the whole concept of food advertising to children in Slovenia apparently does not work properly, as the number of advertisements has been growing, and the same applies for the „grey area“ of disguised advertisements (journalist articles, prizes and games, adds in schoolbooks, etc.).

As mentioned earlier, recent research carried out by ZPS reported the growth of 26 %; and growing of food advertisement to children was also mentioned by other interviewed experts.

All interviewed experts agree that crucial elements should be regulated by law (e.g. standards defining the HFSS foods; definition of children, definition of products/services intended to children, time windows, etc.), which would also ease self-regulation by the Slovenian Advertising Code – as pointed out, the Code can regulate only methods of advertising and not the product, the time or other things that are not clearly defined.

**Effectiveness of sanctions and penalties:** Any sanctions and penalties should be considered in a broader context, i.e. sanctions and penalties might not be efficient in all cases, for instance, according to some interviewed experts, larger good-standing companies might pay them with no trouble and continue violations.

However, as pointed out by SOZ, advertising is not the only problem for bad eating habits in children and youth, and cannot be solved only by prohibition and sanctions. It needs a systematic and broader concept, and involvement of all stakeholders

### *8.3.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?*

**Lessons learned:** Main lessons learned can be summarised as follows:

- The current concept of co-regulation apparently does not work properly, as the number of food advertisements to children and youth is growing in all media;
- Key elements of the concept (such as: products - standards, age groups in view of their different needs and perception of advertising, advertising time in audio-visual media; advertising place – e.g. school premises, immediate vicinity of schools, etc.) should be clearly, uniquely and in a transparent manner regulated by law, preferably by a single act in order to prevent possible different interpretation and practice induced by other laws. Clear and transparent statutory regulation would also ease self-regulation of methods and ethics in advertising to children;
- Effective combination of restrictions, awareness raising / education and promotion of alternatives: As pointed out by all the interviewed experts, only restriction of HFSS food advertising to children does not provide suitable results. Children, their parents and other target groups of consumers have to learn about harmful characteristics of such food and have to get easy access to suitable healthy alternatives. It means that awareness raising and information campaigns, that also appear in the most influential media (TV) have to be implemented at least simultaneously with the efforts to regulate (restrict) advertising of HFSS foods to children. Public campaigns carried out in Slovenia have shown good results in rising awareness among parents, teachers and other targeted consumers;
- A comprehensive and harmonised approach has to include industry, advertising agencies and media, and other stakeholders. An independent and forced approach might have serious adverse effects on the „advertising triangle“ (industry, media and advertising agencies) and result in loss of jobs, which in turn might affect behaviour of population (according to WHO, for instance, there is a correlation between lower purchase power and the HFSS food);



- **Scientific background:** Interviewed experts also pointed out that any measure should be based on thorough investigation of the context, including specific national features, and potential key enabling-driving factors and obstacles to introduction of measures, which was not exactly the case in Slovenia.

**Obstacles** encountered in developing and implementing the approach: As mentioned above, the current concept of co-regulation is not satisfactory. Main obstacles could be summarised as follows:

- **Existing legal environment** includes several acts the adoption of which range within the period of over 15 years. Several elements are regulated by several acts, which allows different legal interpretations and different business practice, and contributes to difficulties in enforcement, particularly so, as there are different inspectorates and other public bodies responsible for enforcement of different laws;
- **National regulation vs. global context:** Due to the global nature of production, advertising and trade, certain key elements cannot be effectively regulated at national level, for instance HFSS standards. An example: a national producer of cereals, following recommendations by health institutions, reduced the sugar contents in their products. However, they soon faced decreased sales results, because consumers preferred sweeter products of foreign producers available in shops in Slovenia.

**Factors of success and risk factors:**

- **Factors of success:** It is difficult to discuss factors of success for the current concept of co-regulation, since it, as mentioned above, does not produce satisfactory results in terms of volume and means of food advertising to children. However, a **combination** between discouraging (restrictive) measures (e.g. prohibition of HFSS food in schools) and **positive, enabling promotion** focused on raising awareness, information and provision of easy access to **suitable healthy alternatives** has proven to be a successful approach;

**Risk factors:** Slovenia has been introducing its co-regulation concept in the conditions of a severe economic crisis (steadily present since 2008), which resulted in significantly lower purchase power of consumers, affecting both, industry (lower sales) and consumers (they cannot afford healthy, often more expensive foods). According to WHO, economic crisis and consumption of healthy foods are related. It is uncertain how these circumstances, if they persist, would affect advertising to children (taking into account desperate efforts of industry to increase their sales) on the one hand, and to what degree the results of positive campaigns would be affected, on the other hand.

## 8.4 Transferability

### 8.4.1 Discussion on transferability of approach

- **Transferability of the concept:** We are not sure whether the current Slovenian co-regulation concept as a whole is readily transferable to any other region/country. Namely, even the best practices do not necessarily work in other countries with different legal and business environments, different business practice, different consumer behaviour, etc. In terms of required elements, we could summarise as follows:

- Intuitive appeal: Although the Slovenian concept as a whole apparently does not work properly, it is obvious that the combination of discouraging (restrictive) measures (restriction, prohibition) and positive promotion (awareness raising, information and provision of easy access to suitable healthy alternatives) implies a highly logical structure and so far proves to be a successful approach;
  - Financial requirements: As indicated above, introduction of the concept has not been set up and implemented as a project with all necessary elements (e.g. finance) planned. Therefore, no data is available in this area;
  - Other capacity requirements: The explanation concerning finance applies also to other requirements (e.g. specific skills, human resources, administrative capacity).  
It should be pointed out, however, that development, introduction and implementation of a new concept would necessarily need multi-disciplinary approach, bringing together advertisement experts, industry, food experts, health experts, experts in children's behaviour, officials from competent public authorities, educational experts, etc. etc.
- **Legal requirements:**
    - First, this element vitally depends on respective national legal framework already in place (what is already regulated, where and how; which are connections between individual legal acts); and
    - Second, it is necessary to decide, upon agreement of all main stakeholders, what needs to be regulated by law. In Slovenia, interviewed experts suggest that the law should regulate at least the product (standards for HFSS foods), the consumer (several age groups of children and youth based on their needs, perception and behaviour), the time and/or the type of broadcast (in audio-visual media) where advertising is not allowed, and the place (e.g. prohibition of advertising in schools and similar institutions).
  - **Institutional requirements:**
    - Monitoring and enforcement: In case of statutory regulation, it is, however, necessary to organise proper monitoring and enforcement by public authorities, prosecution bodies and courts;
    - Independent research & scientific capacities: They should be involved in all stages, i.e. in development, introduction implementation, evaluation and eventual revision of the approach. They should provide scientifically proven information in all related fields, e.g. health conditions, advertising (means, products, methods, target groups, etc.), behaviour of consumer target groups, etc.
  - **Self-regulation**: Although self-regulating bodies usually follow and use examples of good international practice, it is inevitable that they also consider national specifics; among others, legal and business environment, characteristics of industry, media and advertisement providers, and business practice used in the country.



#### 8.4.2 Potential obstacles to transferring this approach to other national contexts

- **Key features in terms of transferability:** As indicated above, we do not believe that the concept as a whole is readily transferable to other regions/countries. There are, however, certain features of the concept that could have significant role in terms of transferability, namely The „holistic approach“ as a combination of regulation/self-regulation and encouragement of awareness, information and education of target groups (children and youth, parents, teachers and other staff in educational institutions) and positive promotion of suitable alternatives on the one hand, and involvement of all stakeholders including consumers, industry; advertising agencies, media, scientific institutions, on the other hand.
- **Key obstacles:** As mentioned above, key obstacles in transferring the approach to other regions/countries would be the national context (legal and business environment and practice, economic and social characteristics, specific characteristics, habits and behaviour of target population, etc.) that have to be considered in both, „transferring“ and „recipient“ countries.

#### **EU dimension:**

- According to the interviewed experts, certain elements cannot be effectively regulated at national level, due to global nature of local industry and access of consumers to global products in local shops and to global markets through internet and other non-traditional media. Consequently, it is suggested that standards defining HFSS foods should be regulated (at least) at the European level, which would ensure a level field of play of all industries involved in or associated with food advertising to children.

## 9 Spain

### 9.1 Description of Current national approach to regulating food advertising aimed at children

#### 9.1.1 How is food advertising towards children defined in the country? Do different actors use different definitions?

In Spain, the main guidelines regulating food advertising aimed at children are included in the **Code of co-regulation of food and beverage advertising directed at children, prevention of obesity and health (PAOS Code)**. This code contains the definition and criteria of food and beverage advertising for children, which are as follows:

An advertisement is considered to be directed at children under 12 years of age (in audio-visual and printed media) or to children under 15 years of age (on the Internet) according to the following criteria:

(a) **The type of food product being promoted:** it shall be deemed to be directed at children under 12 years of age (or, if applicable, to children under 15 years of age), if it objectively promotes a food product primarily (*measured by IRIHomescan or KantarWorldpanel*) addressed to the audience of said age;

(b) **The design of the advertisement:** any commercial shall be deemed to be directed at children under 12 years of age (or, if applicable, to children under 15 years of age) when designed in such a way that the content, language and/or images are particularly suited to raise the attention or interest of the audience of the mentioned age.

(c) **The circumstances in which the dissemination of the advertisement is carried out:** any commercial shall be deemed to be directed at children under 12 years of age whenever it is transmitted through audio-visual or printed media, either in a media or medium objectively and mainly addressed (*measured by Sofres*) to the audience of the mentioned age, or by means of general communication media when inserted in timetables, programming blocks, sessions or spaces which are either directed at children under 12 years of age or with an audience composed mostly of children under 12 years of age.

Moreover, advertising is considered to be directed at children under 15 years of age, when it is broadcasted on the Internet, either uploaded onto a website or to a section of a website where more than 50% of its audience are children under 15 years of age (*measured by Comscore or another similar independent organisation, appointed by the Monitoring Commission of the present Code*).

These criteria establish the age for child protection at the age of 12 in audio-visual and printed media, whereas the age limit for Internet contents is 15 years. These age limits have been criticised 'considering that the limit of 15 years of age should be extended to all areas' (Megías y Cabrera, 'Ética y Derecho en Publicidad', 2013).



In this regard, Mr Alejandro Perales, President of the Association of Communication Users ('Asociación de Usuarios de la Comunicación, AUC' in Spanish), states the following: 'We argue that the Code should apply to children up to 15 years, independently of the form (audio-visual or printed media, Internet), used in the dissemination of the advertising. We also believe that the criteria to decide which advertising is aimed at children should be reviewed. Furthermore, it would be necessary to review some aspects related to the use of celebrities or popular characters with children'.

#### *9.1.2 System of regulation followed by country for regulating food advertising towards children*

With regard to the regulatory system adopted in Spain, Spanish Public Administrations chose to endorse a **system of self-regulation** of food and beverages advertising directed at children, based on the favorable approach of the European Commission towards voluntary regulation.

Specifically, this advertising is regulated by the PAOS Code, Code of co-regulation of food and beverage advertising directed at children, prevention of obesity and health. This Code was adopted in 2005, and subsequently amended in 2012. In particular, it was developed in line with the 'Principles of Advertising of Food and Beverages' of the EU Confederation of Agro-Food Industries (FoodDrinkEurope), approved in February 2004.

The PAOS Code is the result of an agreement signed by AECOSAN (Spanish Agency for Consumption, Food Safety, and Nutrition, assigned to the Ministry of Health, or 'Agencia Española de Consumo, Seguridad Alimentaria y Nutrición' in Spanish), FIAB ('Spanish Federation of Food and Drinks Industries', or 'Federación de Industrias de Alimentación y Bebidas' in Spanish), AUTOCONTROL (Spanish advertising self-regulation organisation, or 'Asociación para la Autorregulación de la Comunicación Comercial' in Spanish), the distribution/supply sector (ANGED – National Association of Large Supply Companies-, ASEDAS – Spanish Association of Distributors, self-services and supermarkets - and ACES- Association of Spanish Supermarket chains-), hospitality (FEHR- Spanish Federation of Hospitality-) and restaurant industry/ catering (FEHRCAREM, Business Association of Modern Restaurant Chains).

The Companies and Associations that sign the Code, also accept the criteria included in it.

The code was **promoted in 2005 by FIAB** and sponsored by the **Spanish Agency for food safety and nutrition (AESAN)**. The main objective of the PAOS Code was to establish a set of rules to guide the companies adhering to it in the development, implementation and broadcasting of their advertising messages directed at children up to 12 years old.

In any case, food and beverage advertising aimed to children is also subject to the following general framework (in addition to the self-regulation guidelines of the PAOS Code):

- General Law 34/1988 of 11 November, on Advertising;
- Law 3/1991 of January 10, on Unfair Competition and its modification in Law 29/2009, which recognizes and expressly encourages self-regulation systems;

- Royal Decree 1334 / 1999, 31 July, approving the General Standards of Labelling, Presentation and Advertising of Food Products;
- Law 44/2006, of 29 December, improving the protection of consumers and users, which extended the competencies of the Agency in the field of nutrition (AESAN);
- Law 7/2010 of 31 March, on Audio-visual Communication;
- Law 11/2011, of 5 July, which creates the Spanish Food Safety Agency;
- Law 17/2011, July 5, on Food Safety and Nutrition;
- European Parliament Resolution of 15 December 2010 on the impact of advertising on consumer behaviour.

In particular, article 46 of Law 17/2011 on Food Safety and Nutrition, under the heading 'Advertising on food products addressed to consumers under 15 years of age', requests the establishment of codes of conduct that regulate the commercial communications on food and beverages directed at children under 15 years of age.

As a result, in 2012, **the PAOS code was reviewed**. In particular, the commitment to self-regulation concerning the advertising of food and beverages was expanded to include children under 15 years of age on the Internet, taking into account the increasing use of this means of communication in this segment of population, and thus responding to the new Law 17/2011.

**The application of the rules of the PAOS Code is affected by the age of the audience of the specific advertisement.** This is not groundless, given that the younger the audience to whom the advertisement is addressed, the greater is their credulity and vulnerability, and therefore, the greater the need to offer them special protection. For this purpose, extra caution will be required in advertisements directed at children younger than 12 years of age.

In this sense, it is worth clarifying that there is a specific Code of self-regulation on Television content and children, which sets protected viewing times for children. This code establishes a protection timetable as established in article 7.2 of the General Law on Audio-visual Communication. The protected viewing times established by both the Code and the Law on weekdays are as follows: between 8:00 am - 9:00 am and 17:00-20:00 pm for children under 12 years of age; whereas during the rest of the time between 6:00h and 22:00h, relative protection for minors of between 13 and 18 years of age is applied.

On the other hand, the scope of the PAOS Code involves the type of food product being promoted, the design, and the conditions (circumstances) of dissemination (these are the 3 main criteria applied, as previously mentioned). Meanwhile, no restrictions on the emission frequency of commercials are made.

The **target groups** of this regulation are those who have voluntarily adhered to the PAOS Code (previously listed). Meanwhile, other stakeholders are also directly involved in this regulation, as part of the Monitoring Commission: the Spanish Agency of Consumption, Food Safety and Nutrition; the Ministry of Agriculture, Environment and Food; the Secretary of State of Telecommunications and Information Society; the Consumer and Users Council; the Spanish Advertisers Association, and the Spanish advertising self-regulation organisation (AUTOCONTROL).



Interestingly also, in order to reinforce the application of the PAOS Code, in September 2009, two institutions adhered to it: FORTA (Federation of Radio and Television Organisations of the Spanish Autonomous Regions) and UTECA (Associated Trade TV Union).

As well as this, in practice, the application of the code affects children and their families, and ultimately, the society as a whole, given that the objective is the prevention of obesity and health. Moreover, it should be noted that the Code falls within the framework of the **NAOS Strategy** launched in 2005 by the Spanish Ministry of Health and Consumption, which aimed at reducing the prevalence of obesity and overweight and their health and social consequences.

On the other hand, although the PAOS Code was approved in 2005, it was subsequently amended in 2012. In particular, the following milestones should be mentioned:

- **2005: The PAOS Code** was signed by AESAN, FIAB and AUTOCONTROL. 32 companies adhered to it;
- **2012 (December): New Agreement** for adjusting the PAOS Code to recent regulations. Signed by: AESAN, FIAB, AUTOCONTROL, ACES, ANGED, ASEDAS, FEHR and FEHRCAREM;
- **2013** (before the Monitoring Commission - 22 May-): ratification of the current member companies and joining of new companies from food and beverage, catering and distribution sectors.

Concerning the procedure for companies to adhere to the PAOS Code, companies have to sign a document of accession that commits them to:

- (a) Comply with the rules of the PAOS Code;
- (b) Comply with the resolutions of the Advertising Jury and Copy Advice reports;
- (c) Participate in monitoring activities;
- (d) Financially contribute to the management of the program by paying the established annual fees.

Finally, it can be said that companies which should adhere to the PAOS Code are those companies that, in one or another form, carry out food advertising (TV, radio, brochures, internet...) aimed at children.

According to latest data available, a total of 44 companies have joined the PAOS Code. They agglutinate 95% of all the investment made in food and beverage television advertising in children's protected viewing times. These 44 companies take part in the following economic sectors:

- 32 in the food and beverage industry;
- 4 companies in the catering and restaurant industry;
- 8 distribution and supply industry.

### 9.1.3 When was the approach implemented

The PAOS Code falls within the framework of the **NAOS Strategy** launched in 2005 by the Spanish Ministry of Health and Consumption, which aims at '**reducing the prevalence of obesity and overweight and their consequences**, both concerning the area of public health and social repercussions'. This goal is shared by the World Health Organisation and EU institutions.

## 9.2 Context in which the current national approach was developed and implemented

### 9.2.1 Problem recognition

The PAOS Code falls within the framework of the **NAOS Strategy** launched in 2005 by the Spanish Ministry of Health and Consumption, which aims at '**reducing the prevalence of obesity and overweight and their consequences**, both concerning the area of public health and social repercussions'. This goal is shared by the World Health Organisation and EU institutions.

One of the main **objectives of the NAOS strategy** is to provide a framework of collaboration with food industry companies to promote the production and distribution of products that contribute to a healthy and balanced diet. Although there is not enough scientific evidence to prove that the advertising of food and drink for children is mostly responsible for its selection, the prescriptive effect that advertising can have on the elements chosen to make up the diet should not be forgotten.

### 9.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?

Childhood obesity is a multifactorial problem requiring a coordinated response from all agents involved, including not only the industry, distributors, hotel traders, restaurant businesses and the advertising sector, but also health authorities, parents and educators, amongst others. Measures must go beyond the mere control of the promotion of food products, which is a necessary measure, but not enough when taken in isolation on its own.

In addition, it is a fundamental need to protect minors as a segment of consumers who are still forming their personality, and therefore are especially vulnerable to commercial messages. In fact, commercial messages can lead them to assume certain behaviours as normal, even if they are harmful for their health.

### 9.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?

The **Spanish Food and Drink Industry Federation (FIAB)** agreed to take a constructive and proactive role in the complex and collective battle against obesity, setting high levels of social responsibility in advertising activities, **in particular those directed at children**, so that they contribute to promoting the adoption of healthy diets and physical activity with a positive effect on their health and well-being.

When the first PAOS Code was launched in 2005, it was estimated that children used to watch TV for an average of 2 hours and 30 minutes every day; as a result, it was estimated that, **a child under twelve years watched about 54 advertisements per day**.



The approach developed in Spain tries to make advertising addressed to children serious and responsible, and make it contribute to promote healthy habits so as to reduce prevalence of obesity and overweight.

It was decided to bet on self-regulation, with the conviction that it would be a useful and effective instrument, complementary to other approved regulations. This was a pioneering initiative in Europe.

On the other hand, the increase in the use of Internet among children and teenagers, and the significant increase in advertising aimed at children and teenagers in this medium, created the need for regulation also in this area, by modifying the PAOS Code. Internet is a secondary medium where children spend 40 minutes a day on average (36% fewer minutes a day than the rest of the population).

On the other hand, and as previously mentioned, Law 17/2011 on Food Safety and Nutrition, under the heading 'Advertising on food products addressed to consumers under 15 years of age', requests the establishment of codes of conduct that regulate commercial communications on food and beverages directed at children under 15 years of age. For this reason, the new PAOS Code was modified and adjusted to new regulations in 2012.

According to the Spanish advertising self-regulation organisation AUTOCONTROL, 'Systems of self-regulation in Spain are subject to permanent review; the more sensitive the target sector is (as in the case of food advertising aimed at children), the more the system must be reviewed.' (Ms Patricia Zabala, Legal Director of AUTOCONTROL).

#### *9.2.4 Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

The PAOS Code is of **free membership**. Companies **voluntarily** declare their adherence to this self-regulation Code. These companies must sign an accession document, which reflects their commitment to respect the rules of the Code in the exercise of their advertising activities.

The main factors that have influenced the development of this regulation are mainly **social motives**, linked to the significant increase of obesity and overweight in the Spanish population. The prevalence of obesity and its upward trend during the last two decades have made the term 'epidemic obesity' a familiar term in Spain. Compared to the rest of Europe, Spain is located in an intermediate position regarding the percentage of obese adults. However, looking to the youngest population, Spain has one of the highest rates, only comparable to other Mediterranean countries. Therefore, the main factor that motivates this regulation is health.

From a technological perspective, Spanish regulation has taken into account the increase of the use of Internet by children, and advertising regulation in this medium aimed at children has been extended up to the age of 15.

Companies participating in the self-regulation PAOS Code must ensure that their advertising messages meet a set of **25 rules**, as follows:

1. Infraction of the **Principle of Legality**: 'The advertising of food products and beverages directed at children will be in accordance with the current legislation, whatever the content, the media or the form adopted'. In particular, any direct or indirect advertising or promotion of food products shall be in accordance with the prohibitions contained in articles 44.3 and 44.4 of the Law 17/2011, on Food Safety and Nutrition'.
2. Infraction of **Principle of truthfulness** (misleading advertising):
  - 2.1. Written, sound and visual features shall not mislead children about the characteristics of the product promoted
  - 2.2. Advertisements shall not mislead about the benefits derived from the use of the product.
  - 2.3. Advertisements shall not mislead children by suggesting that the food product being promoted has special characteristics, when all similar products have such characteristics.
  - 2.4. Ads shall not exploit children's imagination.
  - 2.5. Lack of required additional information.
  - 2.6. Illegible or incomprehensible indications for children.
  - 2.7. Infraction of Principle of truthfulness: others.
3. **Avoid the use of frightening presentations** to children (e.g. excessively violent or aggressive presentations).
4. **Sales pressure**:
  - 4.1. Direct appeal to children under 12 years of age to purchase the advertised product by exploiting their inexperience or credulity or to encourage them to ask or persuade their parents or other individuals to purchase the advertised product.
  - 4.2. Urge children to obtain the advertised product, to create a feeling of urgency or exclusivity, or resort to the use of terms susceptible to generate such a feeling of urgency or exclusivity.
  - 4.3. Give the impression that acquiring or consuming food products or beverages will make the child more acceptable among his/her friends.
  - 4.4. Use reductionisms such as 'only' or 'no more than' concerning the price.
  - 4.5. Sales pressure: others
5. Infraction of **restrictions in the use of famous characters**. Included in article 16.1.b of LTVSF (Law of the Television without Frontiers): 'In no event advertising shall exploit the special trust that these children have in their parents, teachers or other persons, such as professionals from children's programmes, or characters (real or fictitious) from films or TV'.
6. **Unambiguous identifiability** of advertising as such.



7. **Promotions:**

- 7.1. The main product advertised should be clearly shown.
- 7.2. The essential conditions of the special offers in audio-visual and printed media must be clearly and easily expressed in the advertisement.
- 7.3. Advertising/promotional draws included in advertisements shall not generate unreal expectations regarding the possibilities of winning or the prize which may be obtained.
- 7.4. Rules about references to children's clubs.

8. **Unsafe situations or harmful acts** for children:

- 8.1. Encourage a dangerous or inappropriate use of the product
- 8.2. Show adults or children in unsafe situations.

9. **Nutritional education:**

- 9.1. Present unhealthy food habits or lifestyles, such as eating or drinking excessively, compulsively or without moderation, or foster, approve or present sedentary life habits.
- 9.2. Product shall not be shown as a substitute for any of the three main meals (breakfast, lunch and dinner).
- 9.3. Undervalue the importance of healthy eating habits.

*9.2.5 Implementation of the approach: how was this done?*

As previously mentioned, the global framework for the exercise of voluntary regulation on advertising is managed by the **Spanish advertising self-regulation organisation (AUTOCONTROL)**. AUTOCONTROL is a non-profit institution created by advertisers, agencies and media. It is a private organisation, but recognised by the Ministry of Health, Social Services and Equality and by the European Commission. AUTOCONTROL is part of the European Advertising Standards Alliance (EASA), and it is recognized by the European Union as a forum for extrajudicial dispute resolution in this area.

AUTOCONTROL is a public-private commitment to collaboration and is an 'advertising self-regulation organisation'. AUTOCONTROL has signed various agreements with relevant statutory authorities in order to set up co-operation schemes (self-regulation within a co-regulatory framework), in which advertising self-regulation co-operates with regulators by providing with a helpful additional complement to statutory mechanisms in place. For instance, in January 2013, the Spanish Minister of Health approved and signed the new PAOS Code (reviewed and amended in 2012). The Minister explained that this Code is a very useful tool for preventing obesity among children, and she said that the voluntary adhesion of other stakeholders (such as associations of the food and drinks industries or the HORECA and the retail sector) was a 'success'.

AUTOCONTROL the entity responsible for the control and monitoring of compliance of the PAOS Code is AUTOCONTROL. In particular, the **PAOS Code** includes:

- Self-regulation of advertising aimed at children under 12 years of age (audio-visual and print media) and children under 15 years of age (Internet), according to Law 17/2011 (arts. 45 and 46);
- Recommendations and prohibitions to reduce commercial pressure on children, both in audio-visual media and the Internet;
- Ads Control prior to their broadcast (Copy Advice);

- Ex-post control;
- Evaluation by the Monitoring Committee (AECOSAN, MAGRAMA, SETSI, and consumers, advertisers, manufacturers, distribution and catering businesses organisations).

In order to ensure that advertising meets the criteria of the present Code of Co-Regulation, the adhering companies agree to submit to the **Technical Office of AUTOCONTROL**, for prior examination through the confidential and binding Copy Advice Procedure, all the advertisements directed at children under 12 years of age, and food and beverage television advertisements which are to be broadcasted on children's protected viewing times (these viewing times are established by the Code of Self-regulation for Television Content and Children and the Agreement for the Promotion of Self-Regulation of Television Content and Children, signed by television operators and the Spanish Government in December 2004).

Regarding the above-mentioned **Copy Advice System**, its characteristics and stages are as follows:

- The Technical Office of AUTOCONTROL checks compatibility with Code and legislation, prior to broadcasting;
- It is compulsory and binding for advertisements aimed at children up to 12 years of age, and for advertisements broadcasted on children's protected viewing times;
- It is confidential;
- The advertisement can be presented once filmed or in previous phases (story board);
- The evaluation report is issued within a period of three days (unless it is required to provide further documentation);
- In case of disagreement with the report, it is possible to appeal to the Advertising Jury.

Regarding the **Extrajudicial ruling of disagreements and claims System**, it can be said that:

- Claims can be filed by consumer associations, FIAB and other sector associations, companies, administrations, the Monitoring Committee, etc.;
- The Advertising Jury of AUTOCONTROL, after listening to the arguments of the parties, values the advertisements claimed for breach of the code and adopts a resolution;
- The resolution is appealable in second instance to the Jury;
- According to the Code, in case of infringement, the Jury should impose economic sanctions (of between 6,000 and 180,000 Euros);
- It is possible to appreciate good faith (and no sanction is imposed even if the Jury considers the claim) if the advertisement had positive copy advice;
- The costs are imposed on the loser party;
- All resolutions are binding, and they are made public.

On the other hand, concerning advertising directed at children under 15 years of age on the Internet, and given the special characteristics of the Internet which do not allow for a regulated system of mandatory copy advice, it has been agreed to develop a specific monitoring mechanism, which will allow for a periodical, agile and efficient follow up and evaluation. Such monitoring will be carried out once a year by AUTOCONTROL. This specific methodology is explained next:



**Methodology for monitoring advertising of food and beverages to children under 15 years of age on the Internet (approved in May 2013):**

AUTOCONTROL examines the compatibility with the rules of the PAOS Code; this experience is pioneer at European level. To this end, AUTOCONTROL analyses:

- **The most relevant web content product aimed to children under 15 years of age of each member company.** If the company does not have product websites directed at children under 15 years of age, the advertising contents of the corporate web site addressed to this target are examined.
- **The most relevant advertisement campaigns directed at children under 15 years of age** broadcasted on the Internet by member companies that are subject to the PAOS Code.

Using tools provided by Infoades and Comscore Institutes, AUTOCONTROL looks for brands that invest in advertising aimed at children under 15 years of age on the Internet.

The **process of monitoring** of Internet advertising is as follows:

1. Obtaining the initial sample of web sites and Internet advertisement campaigns aimed at children under 15 years of age to be launched by member companies adhered to the PAOS Code.
2. First detailed legal analysis of the final sample of web sites and advertisement campaigns on the internet. AUTOCONTROL will cross-check such information between products and web-sites/formats using a license to access the ADMETRIX data base to look for the most relevant campaigns/adverts for this target according to the PAOS Code.
3. In depth legal analysis to determine the compatibility of web pages and advertisements broadcasted on the internet where the PAOS Code is applicable. AUTOCONTROL will examine the resulting advertising pieces and will carry out its legal analysis to verify if they are compatible with the PAOS Code and its ethical standards.
4. If AUTOCONTROL detects any eventual infractions of the PAOS Code, it will issue a communication informing about it to the Company concerned, demanding for the presentation of the corresponding allegations, or an undertaking to cease and/or immediately rectify.
5. With all the information generated in this process, AUTOCONTROL will present the corresponding report to the PAOS Code Follow up Commission, which, once analysed, will adopt whatever agreements it will deem necessary.

**Infractions and fines:**

The resolution of the Jury which determines the infringement for the advertising activity claimed, shall fine the company when appropriate.

Infringements can be classified as **minor, serious or very serious** according to the following criteria:

- a) Importance or repercussion of the infringement as regards consumers.
- b) Impact of the advertising: duration of the advertising activity claimed against, scope of the media used and number of consumers reached.
- c) Unfair competition.
- d) Damage to the image of the food industry or to one of its parts or sectors.

Having classified the infringement as minor, serious or very serious in accordance with the above criteria, there may be aggravating factors which will be taken into consideration by the Jury when imposing the relevant fines. The accumulation of aggravating factors may also cause an infringement to pass from an initial classification of 'minor' to 'serious' or from 'serious' to 'very serious'.

Such aggravating factors can be as follows:

- a) Degree of intentionality.
- b) Non-compliance with prior warnings.
- c) Generalisation of the infringement.
- d) Recidivism.
- e) Concurrence of various infringements in the same event, or promotional or advertising activity.
- f) Financial profit for the advertiser derived from the infringement.
- g) Broadcasting during children's protected viewing times, or using media or supports specifically directed at children under 12 years of age.
- h) Lack of collaboration with the control bodies of the Code.

In accordance with the above-mentioned criteria, the Jury will accord the imposition of the following fines:

- a) Minor infringements: from 6,000 to 30,000 Euros.
- b) Serious infringements: from 30,001 to 90,000 Euros.
- c) Very serious infringements: from 90,001 to 180,000 Euros.

A special fund will be established by the FIAB with the amounts collected from said fines, which will be used to finance the cost of the programme for the control and application of this Code, and to carry out educational and public health campaigns promoting healthy eating habits and physical activity in collaboration with the competent authorities.

## 9.3 Evaluating the outcomes and effectiveness of policies

### 9.3.1 *Has there been any review/evaluation of the approach so far?*

The Spanish advertising self-regulation organisation **AUTOCONTROL** ensures the compliance with and correct application of the Code, as it is the entity that manages the self-regulation system in Spain.

AUTOCONTROL is a non-profit association, founded in 1996, made up by main advertisers, advertising companies, media and their corresponding associations. AUTOCONTROL has more than 449 direct and 4,000 indirect members.

### 9.3.2 *Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*

Moreover, **according to the agreement signed with UTECA** (Association of Freeview Broadcast Commercial Televisions) **and FORTA** (Federation of Regional Radio and TV Organisations), televisions cooperate in the process of monitoring and control of the PAOS Code compliance. Thus, televisions can ask AUTOCONTROL to issue a copy advice. Once the copy advice is elaborated, AUTOCONTROL sends the report to all adhering televisions.



The objective is to manage the system of self-regulation of commercial communication on the basis of three instruments:

- A **Code of Conduct**.
- An independent body (the **Advertisement Jury** of AUTOCONTROL), which is responsible for resolving disputes and complaints. As is explained on the website of AUTOCONTROL, the Jury is fully composed of independent prestigious professionals in the areas of Law, Commercial Communication and Economy, who develop their activity guided by the principles of independence and transparency. In order to ensure their impartiality, the Jury and its members are independent from the Association and from the entities adhered to it. The National Institute of Consumer Affairs (INC - Instituto Nacional de Consumo) is involved in the selection of 25% of its members (i.e. 25% of the Jury's members are appointed in common agreement with the INC). Applying the Code of Conduct and the rules governing its activity, the Jury resolves all the complaints and controversies submitted against specific promotional material.
- A **Technical Office** which provides assistance prior to ad broadcasting through Copy Advice. It is non-binding assessment of advertisements (before their public emission), requested by the advertiser. As well as this, the Technical Office also provides information and assessment on legal issues, solving brief queries related to the judicial framework. As a whole, the Technical Office works as a legal and technical team, composed of experts on law and advertising ethics, in charge of attending legal requests, answering prior consultations or issuing Copy Advice reports on advertisements or advertising projects and creating reports on legal and ethical issues related to commercial communication.

In order to follow-up the effective implementation of the assumed compromises within the framework of the PAOS Code, a **mixed Monitoring Commission** is established, made up of:

- One representative of the Ministry of Agriculture, Environment and Food;
- One representative of the Secretary of State for Telecommunications and Information Society (SETSI);
- Three representatives of the Consumers and Users Council;
- One representative of the Spanish Advertisers Association (AEA);
- Three representatives of the Spanish Food and Drink Industry Federation (FIAB);
- One representative of the Commercial Retailing Sector;
- One representative of the Hotel Trade and Modern Restaurant Businesses and
- One representative of AUTOCONTROL who will act as Secretary.

The Monitoring Commission chaired by the AESAN (Spanish Agency for Food Security and Nutrition) and made up of representatives from FIAB, AEA and the Board of Consumers and Users. AUTOCONTROL acts as Secretary of this Commission. The Monitoring Commission is in charge for carrying out the following tasks:

- a) Evaluating the application of the Code regarding the objectives established by the NAOS Strategy.
- b) Proposing improvements and reviews of the Code deemed necessary to the FIAB /they must be also informed about the projects to modify the content of the Code if FIAB reviews it).
- c) Regularly reviewing the reports on the compliance of the Code presented by AUTOCONTROL.

- d) Presenting claims before AUTOCONTROL's Advertising Jury (if it is considered that there has been an infringement of the standards of the Code).
- e) Examining the claims or complaints presented by individual consumers or by any other individuals, bodies or collectives, so as to clarify if there are signs of infringement of the Code.
- f) Applying for information whether certain advertisements, already publicly available, were the object of copy advice by AUTOCONTROL's Technical Office, and their result.

The Monitoring Commission must hold meetings periodically. The frequency of these meetings depends on the requirements for the correct development of its functions.

**The functions of the Monitoring Commission** are as follows:

- a) The Commission will regularly evaluate the application of the Code in relation to the goals established by the NAOS Strategy.
- b) The Commission will propose improvements and reviews of the Code deemed necessary to the FIAB, and will be aware of the projects to modify the content of the Code when FIAB carries out reviews.
- c) The Commission will regularly review the reports presented by AUTOCONTROL concerning the compliance with the Code.
- d) The Commission, when it estimates that there has been an infringement of the standards contained in the Code, may decide to present the claims before AUTOCONTROL's Advertising Jury.
- e) The Commission will also examine the claims or complaints presented by individual consumers or by any other individuals, bodies or collectives, in order to clarify whether there are indications of infringement of the standards contained in the Code of Co-Regulation, and to decide, in each case, whether or not to send them to the Advertising Jury.
- f) The Commission may apply to **AUTOCONTROL** for information whether certain advertisements, publicly available as broadcasting has commenced, were the object of copy advice of AUTOCONTROL's Technical Office of and the result of it.

All this work of control and monitoring results is published in annual reports, which show that Spain is the EU country where more advertising campaigns are subject to voluntary control before its broadcast, and that there is a low number of complaints against already broadcasted campaigns.

The European Advertising Standards Alliance (EASA), the European advertising self-regulation organisation that promotes responsible advertising via best practices in self-regulation, publishes annual reports on activity data achieved by national advertising self-regulation bodies.

According to the 2012 Report, 'the Spanish system of self-regulation AUTOCONTROL, shows a high level of activity and an excellent performance, ranking for the second consecutive year as the second national body (behind the United Kingdom) that has received more voluntary requests for copy advice from the advertising industry'.

Looking at the results of this report, 'the Spanish advertising industry enjoys a good ethical health. AUTOCONTROL says that the self-regulatory system works and the copy advice and claim system implemented help ensure the compliance of the responsibility assumed by the Spanish advertising industry.'



Also, it should be noted that the extension of the PAOS Code to the Internet is unique at European level, and it is a useful and highly valued tool by national and international agencies.

*9.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

(Please see Section 9.5.2 on Implementation)

*9.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

Although data on the reduction of obesity and overweight children due to advertising regulation is not available, a reduction in exposure of children to advertising has been noted. At the least, it can be observed that the quality of advertisements shown is better. For instance the PAOS Code takes into account children viewing times, and tries to make advertising addressed to children serious and responsible, and contribute to promote healthy habits. Moreover, the PAOS Code includes a collection of rules, such as avoiding misleading advertising (principle of truthfulness) or sales pressure, and promoting healthy habits and nutritional education.

#### **Some data from the activity of AUTOCONTROL in monitoring the implementation of PAOS Code:**

**The number of copy advice requested**, before its broadcast, on food advertising aimed at children is estimated at 3,689 (2006-2013). Of these, 2,931 have been positive, 609 have required modifications and 149 have been negative.

The main reasons why the copy advice have led to negative results or modifications have been the following ones:

- Restrictions on the presence and participation of famous people (237);
- Obligation to indicate the essential terms for the promotion in a simple, clear, readable and understandable way for children (188);
- Written, audio or visual presentations, etc. that may induce to error on the characteristics of the product (168);
- Direct appeal to children to buy the product, or encourage them to persuade parents (152).

#### **Conclusions related to web monitoring:**

With regard to the results of the control and monitoring of advertising on the Internet by AUTOCONTROL, the following conclusions can be extracted:

- The legal analysis of 44 web pages has been made;
- In 30 of the 44 web pages there have been no signs of incompatibility with the PAOS Code (68%);
- There have been observations made in relation to 14 websites (32%);
- The main reasons for eventual non-compliance detected on the website have been the presence of celebrities, the incorrect reference to promotions (without highlighting its duration), and the incitement or direct appeal to purchase;
- Concerning the 14 communications made to companies: in 12 cases companies have responded by committing themselves to the immediate termination or rectification of the website or campaign/advertisement in question; meanwhile, allegations have been made only in 2 cases.

### **Conclusions related to the monitoring of campaigns/advertisements:**

- Advertising has been reviewed in 97 sites;
- Initially, a total of 99 creativities have been analysed (among all the campaigns of the brands adhered to PAOS). Out of them, 51 advertisements have been considered, a priori, aimed at children under 15 years of age. Amongst these 51, finally 22 creativities were selected after strictly applying the methodology;
- These 22 campaigns have been subject to legal analysis and only 5 have been considered to be aimed at children under 15 years of age (thus, only those fall within the scope of PAOS);
- No infringement of the PAOS Code has been detected.

On the other hand, the Spanish Agency of Consumption, Food Safety and Nutrition of the Ministry of Health, Social Services and Equality, publishes the report 'Evaluation and Monitoring of the NAOS Strategy: minimum set of indicators'. There are 3 indicators which refer to the PAOS Code, as follows:

- Percentage of food and beverages advertising (PAB) directed at children aged 4 to 12;
- Percentage of food and beverages advertising by companies adhering to the PAOS Code (PABPAOS) aimed at children aged 4 to 12;
- Percentage of food and beverages advertising (PAB) directed at children aged 4 to 12 in children's protected viewing times (HPR).

Finally, these are the conclusions made by the heads of the coordination of the NAOS Strategy in terms of the results of the application of the PAOS Code in July 2014:

- a) The companies adhering to the PAOS Code have carried out a considerable effort over the last years to adapt their campaigns to this ethical code. This is evidenced by the large number of copy advice requests received by the Technical Office of AUTOCONTROL, their adaptation to the indications received, and the low number of claims presented.
- b) The implementation of the PAOS Code has resulted in the improvement of advertising addressed to children, reflected in practices such as:
  - Adoption of greater precautions to avoid the risk of misleading children.
  - Reduction of sales pressure on children. This is evident in the significant reduction in the use of fictional characters and celebrities in advertisements, the ending of the inclusion of posts creating a feeling of urgency to purchase, and the greater presence of the food or beverage promoted together with the corresponding promotional gift, etc.
  - More educational contents, from a nutritional and health perspective. Thus, as an example, it can be mentioned that food is not presented as a substitute of main meals, and also we can see advertisements with children doing sports, no sedentary activities, etc.

#### *9.3.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?*

However, there are other studies that show less favourable results. In particular, the Doctor in Medicine Miguel Ángel Royo, in collaboration with two other researchers, has led an evaluation study on the compliance degree of the PAOS Code on television. According to this study 'only 30% of advertisements comply with all the requisites included in the PAOS Code'.



Furthermore, according to Dr Miguel Angel Royo (the author of the evaluation), 'Self-regulation Codes do not reduce substantially the high volume and the strong impact of advertising of fattening foods and beverages on children, even when they strictly meet the requisites. The only food advertisements that should be allowed for children are those who contribute to encourage a healthy diet. Only the food industry discusses the need of legal restrictions and argues that self-regulation systems work well. The model to follow should be that of Sweden and Norway, where they do not allow any type of advertising aimed at children under 12 in television'.

Other conclusions reached by this evaluation study are as follows:

- Advertisements of dairy foods and meat and derivatives, infringe the code more often;
- Advertisements broadcast during the weekend showed a worse code compliance than those issued during school hours;
- There was a similar level of compliance among companies which had adhered to the Code and those which had not;
- The vast majority of food advertised in children's viewing times is highly energetic and nutrient-poor;
- The PAOS Code is especially ineffective in reducing commercial pressure on children. This objective can only be achieved through restrictive measures on advertised products (highly energetic and nutrient-poor food and beverages) and broadcasting frequency.

Moreover, there is also criticism concerning the self-regulation system by **VSF (Global food justice)**, arguing that the main problem with this Code is that none of the points included refers to the nutritional quality of foods advertised. Thus, the PAOS Code does not follow the recommendations given by the OMS. It only addresses the ethics of advertising and not the nutritional quality of the product advertised, or the emission frequency.

Additionally, according to the experts Megias and Cabrera, authors of the 'Study of Ethics and Law in Advertising. 2013': 'most of the claims submitted in relation to the PAOS Code have been dismissed by the Jury, after considering that, although the food advertised is for children, the advertising itself was aimed at adults, usually their parents'.

According to Mr **Alejandro Perales, President of the Association of Users of Communication**: 'Self-regulation should not be an alternative to positive regulation, but a complement. There should be a clear legal regulation to provide a framework for voluntary regulation models, self-regulation or co-regulation, which could even apply the regulation in a more agile way than administrative and judicial procedures, as well as add complementary commitments'.

Moreover, Mr Alejandro Perales says that 'Generally speaking, adhering companies are meeting the PAOS Code, especially thanks to the previous work done by AUTOCONTROL via the copy advice system. With regard to non-adhering companies, they are not obliged to comply with the code, which is voluntary, although occasionally they do follow it, taking into account its prestige. Overall, it is necessary to count on a legal rule that forces companies and protects children in a general way'.

Concerning the monitoring and control system and the work carried out by AUTOCONTROL, Mr Alejandro Perales says that 'AUTOCONTROL plays a very important role in the resolution of advertising disputes out of the administrative and judicial spheres. It guarantees a contradictory procedure for the parties and acts quickly. The monitoring system is suitable since it boasts the participation of all stakeholders involved in the Monitoring Committee'.

Finally, it is worth mentioning the study 'Vulnerability of minors in advertising: application of the PAOS Code' (by Ms María Zambrano, in June 2014). According to this study 'even if the number of sanctions is really low, nowadays, illicit advertisements are broadcasted. Thus, the Code is not being implemented in a correct way, and it can be said that it is breaking its own rules' (Ms Maria Zambrano).

Also, a frequent problem in advertising directed at children is that 'we found products aimed at children, but with advertisements addressed to adults, so they can use celebrities' (Ms Maria Zambrano).

In addition to this, an important error found in the Code is that it says that 'any product can be presented as a substitute of any of the three main meals (breakfast, lunch and dinner); while it is recommended that a child under 12 years should have five meals a day. In this way, an unhealthy product could be presented as a substitute for an afternoon snack; this could encourage the consumption of these products every day, which does not fall within the parameters of the NAOS Strategy against childhood obesity'.

## 9.4 Transferability

### 9.4.1 Discussion on transferability of approach

According to Ms Sara GIL (Communication Manager of AUTOCONTROL, the Spanish advertising self-regulation organisation), the PAOS Code has meant a great advancement in the regulation of advertisements addressed to children, not only because it establishes the principles that guide their design, implementation and dissemination, but also because it determines the mechanisms that guarantee the control and fulfilment of the rules established.

On the other hand, according to a study carried out by the Professor in Communication Esther Martínez and the President of the Association of Users of Communication Alejandro Perales (see 'Voluntary regulation on advertising. Analysis and proposals from the PAOS Case'), 'The evaluation of the performance of the PAOS Code highlights the enormous potential of these systems to avoid bad practices in the market, when the corresponding mechanisms are provided and those are under the supervision of the Administration. But also, there is an excessive dependence on the points of view of advertisers when determining the rules of the game and their interpretation evidence, which set limits to the whole process. In any case, despite its shortcomings, the self-regulation system seems to be working in Spain with a high level of consensus. In the cases studied, the resolutions of the Jury are normally complied with'.

Furthermore, this same study states that 'although in practice AUTOCONTROL is approaching the equivalent jurisdictional process, it lacks some elements which would make it an actual legal model'.



There are many European countries that have a self-regulation system. The European Advertising Standards Alliance (EASA), based in Brussels, is a body that gathers all European advertising self-regulation agencies, and it is formed by 34 self-regulation bodies from the EU, as well as by international organisations from countries such as Brazil, Switzerland, Canada, South Africa, and Turkey..., and 16 associations of the European advertising industry.

According to Mr Alejandro Perales, 'the weaknesses of the PAOS Code lie in its voluntary nature, although the Spanish law has evolved towards turning into infraction the breach of the code by adhering companies. Meanwhile, the main strengths are associated with the agility of the system, and the complementary criteria established. Overall, we believe that the Code is effective, but it could be improved'.

The analysed information suggests that the self-regulation system can be an effective system, provided that the most delicate aspects (particularly those which can affect the most the vulnerability of minors) are perfectly regulated by mandatory legislation. More precisely, the most delicate issues would be as follows: the definition of advertising aimed at children, the extension of the age of protection regardless of the medium in which the advertising campaign is broadcasted, viewing times and the frequency with which ads can be issued'.

In conclusion, it is estimated that a system which combines self-regulation with a mandatory legal norm could be the most convenient one.

#### *9.4.2 Potential obstacles to transferring this approach to other national contexts*

In principle, the functioning and the implementation of the Spanish system is simple; according to this system, involved companies adhere voluntarily to the PAOS Code, and its implementation is financed by the contributions/fees paid by adhering members, as well as by the amounts collected via sanctions.

However, in practice, the effectiveness of the system concerning the main objective pursued (i.e. childhood obesity control) is dubious, since there are no restrictions on the quality of the food advertised or the frequency of advertisement broadcasting.

## 10 Sweden

### 10.1 Description of Current national approach to regulating food advertising aimed at children

#### 10.1.1 *How is food advertising towards children defined in the country? Do different actors use different definitions?*

In Sweden radio and television advertisements of any type are banned under the Radio and TV Law, enacted in 1996. Advertising aimed at children has however been legally banned in Sweden since 1991. Within Swedish legislation, children are defined as those under 12 years of age .

In addition to these statutory restraints, there is also a measure of industry led self-regulation on marketing as a whole. The self-regulatory code followed here by Swedish marketing companies is based on the International Chamber of Commerce (ICC) Consolidated Code on Advertising and Marketing Practice. This code also defines children as being under 12 years of age .

In Sweden the General Marketing Act, introduced in 2008 covers all forms of marketing practices across all forms of media. The Act implements the EU Unfair Commercial Practices Directive (2005/29/EC). This act supersedes amongst others the Radio and Television Act (implemented 1996). The General Marketing Act does not specifically refer to children nor define who is considered as a "child". It does however mention good marketing practices as well as marketing practices which are deemed unacceptable, and these clauses indirectly cover marketing aimed at children.

Therefore if the Swedish Consumer Agency can show that a marketing practice is not a fair one, it can intervene. This breadth in the General Marketing Act means it can be quite widely applied to different product areas and advertisements in different forms of media. Though the neither the Act nor the Directive define children explicitly, there remains an understanding at the Swedish Consumer Agency that a child in Sweden is below 12 years of age.

In Sweden the idea of advertisements being "aimed" at children used to be the qualifying factor for intervening and banning an advertisement which was broadcast using TV or radio. However, this idea of being "aimed" at children has been the subject of some contention in that it is difficult to definitively prove when something is aimed at children. This was the case under the RTVA which is now superseded by the General Marketing Act (GMA).

The GMA has a number of criteria which it uses to judge whether a marketing practice is good and fair. Clauses have been introduced which ban aggressive marketing practices and which prohibit misleading marketing practices. These are defined in sections 5 to 7 of the GMA, under the section no "Unfair Marketing":

#### **Good marketing practice**

##### **Section 5**

Marketing shall be consistent with good marketing practice\*.

##### **Section 6**

Marketing that contravenes good marketing practice under Section 5 is to be regarded as unfair if it appreciably affects or probably affects the recipient's ability to make a well-founded transaction decision.



### **Aggressive marketing**

#### **Section 7**

A trader may not use aggressive marketing.

Marketing is to be regarded as aggressive if it involves harassment, coercion, physical violence, threats or other aggressive ways of bringing pressure to bear.

Aggressive marketing is to be regarded as unfair if it appreciably affects or probably affects the recipient's ability to make a well-founded transaction decision.

Aggressive marketing as specified in points 24–31 of Annex I to Directive 2005/29/EC are always to be regarded as unfair.

\* Under the GMA, section 3 provides a series of definitions and **good practice marketing** is defined as: "generally accepted business practices or other established norms aimed at protecting consumers and traders in the marketing of products"

Source: *Swedish General Marketing Act, 2008*

#### *10.1.2 System of regulation followed by country for regulating food advertising towards children*

Sweden adopts a statutory approach to regulating advertising through the General Marketing Act. This does not however focus on specific product areas, forms or media or specific groups of society. The focus is on preventing unfair marketing practices and this can include food advertisements aimed at children.

The EU Regulation on Nutrition and Health Claims Made on Food, EC 1924/2006 also has an influence on the regulation of food advertising aimed at children. The regulation concerns all commercial communications, including their advertising campaigns and also indicates that advertising to vulnerable groups such as children should be closely monitored when it comes to food advertising<sup>31</sup>. This regulation is monitored and enforced by the Swedish Food Ombudsman, but for those advertisements where children are concerned the pertinent authority remains the Swedish Consumer Agency.

Besides this statutory approach, there is also a self-regulatory approach in place where the Swedish Advertising Ombudsman regulates advertising across all channels in accordance with the ICC Code.

#### *Form of the regulations in place*

These regulatory approaches take the shape of a formal law on the one hand and a set of guidelines based on a larger code on the other.

- **How do the agreements, policies or legislation in place regulate advertising of food towards children? Please describe the emphasis or focus of the approach in place. Consider for instance:**
  - *Are there policies or regulations concerning certain age groups? (0-7 years of age or 7-13 for example).*
  - *Are there policies or regulations concerning different types of products?*
  - *Are there policies or regulations on during which time periods advertising may be carried out?*

<sup>31</sup> EU Regulation (EC) No 1924/2006 on nutrition and health claims made on foods

- *Are there policies concerninig the content of the advertisements?*
- *Are there policies or regulations in place for different forms of media? (i.e.: television, print, radio, online media, in the shop itself, etc).*
- *Are there any policies or regulations stipulating the number of advertisements which may be shown in a given time period?*

The self-regulatory guidelines which are used to assess the advertisements in other forms of media follow the ICC code. The ICC code has as one of its four main objectives to: "to enhance overall public confidence in marketing communications; to respect privacy and consumer preferences; to ensure special responsibility as regards marketing communications and children/young people". There is thus a focus on advertising in an ethical and fair way towards children in general.

The consolidated ICC Code also refers to children as those individuals under 12 years old. The code also indicates that when advertising to children their "natural inexperience and credulity" should be considered when designing and showing advertisements. In the code, Article 18 specifically addresses children and young people. To summarise, advertisements should not take advantages of the inexperience and credulity of children, nor contain any elements which might lead to a young person or child to come to physical, mental or other harm, and should not undermine the social values of the cultural context or the authority of parents or other authority figures in a child's life. The Swedish Advertising Ombudsman regulates and interprets to what extent these guidelines are upheld in advertisements.

In summation, the ICC Code, which forms the basis for the Swedish self-regulatory guidelines, restrict the content of advertisements, apparently regardless of product, in such a way that no form of harm or undermining of social values and authority can occur.

From the statutory perspective of the General Marketing Act, the focus is on unfair marketing practices as a whole. Depending on which element of an advertisement makes it in any way misleading or aggressive, violates good marketing practices, or in anyway can be considered as unfair marketing, the Swedish Consumer Ombudsman can legally take action. Therefore the General Marketing Act has a very broad focus which can be applied in a relatively flexible manner.

The direct target group under the General Marketing Act are any companies which advertise products commercially. The EC regulation on nutrition and health claims made on foods covers any company producing and communicating about its products; this includes product labelling and establishing nutrient profiles and targets the food industries. The self-regulatory code of the advertising industries is one which targets advertising companies to uphold certain standards and good practices regarding marketing and advertising.

The General Marketing Act affects all consumers in its scope and enforcement. Children however, forming a special group within consumers are paid close attention by the Swedish Consumer Agency, which monitors advertisements aimed at children within the food industry as well, as part of its activites in enforcing the General Marketing Act.



From the self-regulatory perspective, the indirect, end target group are also consumers as a whole. Swedish advertising companies and organisations undertaking commercial communications should adhere to the ICC Code which covers all consumers, though it contains special stipulations on the vulnerability of children. In Sweden therefore, consumer as a whole are targeted by the regulatory approaches and children form a group in need of special consideration and protection when monitoring and enforcing good advertising practices.

#### 10.1.3 *When was the approach implemented*

The General Marketing Act was implemented in 2008, transposing the EU Directive on Unfair Consumer Practices. The self-regulatory guidelines upheld by the Swedish Advertising Ombudsman are based on the ICC Code of which the most recent version was published in 2011. The Ombudsman itself was founded in 2009 by the Association of Swedish Advertisers, along with the Confederation of Swedish Enterprise (NDM), Swedish Advertising Association, ICC, Swedish Direct Marketing Association and Swedish Newspaper Publisher Association.

## 10.2 **Context in which the current national approach was developed and implemented**

#### 10.2.1 *Problem recognition*

Regarding the initial ban on advertising towards children in 1991 (where the RTVA was adapted and implemented in 1996), the rationale of the Swedish government was to reduce the exposure of children to any form of advertisement. This position was based on the idea that children can not distinguish between advertising messages and programme content, coupled with the fact that children are thought to be more impressionable making them more susceptible to changes in behaviour encouraged by advertisements<sup>32</sup>. Children are not thought to be able to distinguish advertisements from regular programming until the age of 10. In the face of increasing commercial pressure on children, the Swedish government at the time opted for a statutory ban. This ban has now been complemented by the General Marketing Act, introduced in 2008. This law sought to implement the EU Unfair Commercial Practices Directive. The self-regulatory code in place translated the ICC code to the Swedish context. This regulation applies to all media and aims to ultimately promote, in line with the ICC's position, to responsible marketing and advertising. The latest revision in 2011 encompasses digital media as well and this has also been taken up in Sweden. The code is regulated by the Swedish Advertising Ombudsman.

By reducing exposure to advertisements around children's programming and times when children watch television, the law aims to protect children from commercial influences as much as possible.

#### 10.2.2 *Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?*

The approach in Sweden is driven more by human rights considerations than obesity or health related considerations. The statutory ban on broadcast media, which is one of the main regulatory instruments in Sweden, seeks to protect children from commercial influences as much as possible. The General Marketing Act now encompasses this broadcasting ban, but this newer law also guards against unfair marketing practices, which indirectly also covers advertisements aimed at children as they are considered to be a vulnerable group in this context.

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<sup>32</sup> Oomen and Anderson, 2008.

The self-regulatory ICC code which has been adopted in Sweden also aims above all to achieve responsible advertising and marketing. In this context children are named as a special interest group though there are no detailed provisions on how to regulate advertisements aimed at this group in practice.

*10.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?*

The initial ban on broadcast advertisements aimed at children came into force in 1991 in response to research demonstrating that children under 10 years of age could not distinguish between advertisements and programming. This law has since been encompassed in the General Marketing Act, which transposes the EU directive on Unfair Commercial Practices. The governmental sphere was therefore involved in initiating this statutory regulations.

The Swedish Advertising Ombudsman is responsible for the regulation of the ICC Code. In this case therefore the ICC seems to have been responsible to a certain extent, as well as the organisations which founded the Advertising Ombudsman in 2009. The actors involved in this included the Association of Swedish Advertisers together with Confederation of Swedish Enterprise (NDM), Swedish Advertising Association, ICC, Swedish Direct Marketing Association and Swedish Newspaper Publisher Association<sup>33</sup>.

The overall goals of the General Marketing Act is to protect consumers' economic interests from harmful or unfair commercial practices. It encompasses the Radio and Television Act and goes further to also cover digital media. That said, there are no more specific objectives formulated beyond this general aim. The same applies to the self-regulatory Code which has a general aim of promoting responsible advertising and marketing, but does not offer more specific objectives than this.

Some of the main policy debates concern the impact of the advertising bans on advertising revenue. This in turn was expected to have an impact on the ability of Swedish broadcasters and media companies to create and broadcast programme for children. From the governmental and consumer perspective, the need to protect children from harmful or unfair influences was the leading rationale for the policy debate on regulating advertisements.

*10.2.4 Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

The statutory approach was developed by the Swedish Ministry for Culture initially. This body initiated the Radio and Television Act and its ban on advertisements aimed at children. This then came to fall under the General Marketing Act in 2008 which also involved the Ministry for Culture as this regulation transposed the EU directive on unfair commercial practices.

The self-regulatory aspect of the Swedish approach was initiated by a number of organisations, the Association of Swedish Advertisers together with Confederation of Swedish Enterprise (NDM), Swedish Advertising Association, ICC, Swedish Direct Marketing Association and Swedish Newspaper Publisher Association. These came together to then set up the Swedish Advertising Ombudsman in 2009.

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<sup>33</sup> Reklamombudsmannen, 2009, <http://reklamombudsmannen.org/eng/about>



*Structural factors influencing development:*

The political factors at work here are the desire of the Swedish government to protect children from harmful or unfair commercial influences. The realisation of children's comparative vulnerability towards advertising when compared with adults led in part to the advertising ban in the early 1990s. This approach did not change much in the following years, nor when a more right wing government came into power in 2006. This suggests that the notion of protecting children from unfair commercial practices is an idea which transcends political ideological divides in Sweden. The main role of the political sphere has been to push for further stricter regulation, though this no major changes to the approaches have been incorporated<sup>34</sup>.

Economic considerations in Sweden are similar to those in other nations; namely that enterprises and companies producing advertisements claim that bans and regulations restrict their activities. This in turn is said to reduce how competitively enterprises can perform which damages their overall revenue.

From a social, cultural perspective, the Swedish national mentality towards children and advertising is also an important factor here. There is a strong mentality in society that children should be protected from unfair commercial influences as a matter of basic human rights more than anything else. Advertising towards children is therefore not so generally accepted and as such, the public seems to support the current regulatory approach, evidenced to a certain extent in the unchanging nature of the ban on advertising aimed at children.

Besides these factors, the development of the internet and media are also important factors contributing to the current regulatory approach. The internet and digital media led to an expansion of the scope of the General Marketing Act from its first version to its current form; now digital media are included as media which can be regulated under this act. The ICC also revised its code and the definition of marketing which was published in 2011. This was to incorporate these media into self-regulatory codes as well.

**10.2.5**      *Implementation of the approach: how was this done?*

The statutory regulation was implemented as any other law is in Sweden. This started with the Radio and Television Act, which is regulated by the national authority in the media sector, the Swedish Radio and Television Authority (the Radio – och- tv-verket). The General Marketing Act is regulated by the Swedish Consumer Ombudsman and the implementation of this act followed the transposition procedure for incorporating EU directives into relevant national legislation. The self-regulatory approach on the other hand, takes up the ICC Code into a Swedish self-regulatory code. This code is regulated by the Swedish Advertising Ombudsman.

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<sup>34</sup> Widmark, S., 2008, *International report - New Marketing Practices Act comes into force*, <http://www.iam-magazine.com/reports/Detail.aspx?g=41e8d65d-c66c-465a-8914-ddebd1a2a1e>



## 10.1 Evaluating the outcomes and effectiveness of policies

### 10.1.1 *Has there been any review/evaluation of the approach so far?*

From a qualitative perspective this Act is considered quite effective due to its breadth and flexibility. Due to the concepts of “misleading” or “aggressive” marketing practices, covered within the chapter on “unfair marketing” practices, a wide variety of advertising and marketing practices can potentially fall under the enforcement of the Swedish Consumer Ombudsman. This is said to be a positive aspect as it provides for a relatively flexible legal mandate for the Ombudsman<sup>35</sup>.

For the self-regulatory approach the Swedish Advertising Ombudsman does not appear to monitor the effects of the guidelines specifically, but the organisation develops annual reports describing its activities, the numbers of complaints received, across which types of media these complaints arose and which activities the Ombudsman took in response.

### 10.1.2 *Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*

The self-regulatory approach is not monitored formally, but the number of complaints received for advertisements is tracked, along with the actions taken in response. The Swedish Advertising Ombudsman monitors this and does so with the help of advertising industry companies as it is a self-regulatory system after all.

### 10.1.3 *How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

The Swedish Advertising Ombudsman enforces compliance with the self-regulatory guidelines. These are based on the Consolidated ICC Code and include a series of possible sanctions

The General Marketing Act is monitored by the Swedish Consumer Ombudsman and this act also contains a series of measures which the authority can undertake should the Market Court (the judiciary body which decides upon advertisement complaints) deem it appropriate. These measures include the payment of a financial penalty by the traders, the prevention of the marketing practice, or an order to the trader to supply more information. The size and reason for the fines imposed on a trader engaging in unfair marketing practices can vary depending on how the Market Court rules; charges may however be no less than 5000 kronor and no more than 5 million kronor<sup>36</sup>.

### 10.1.4 *How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

The self-regulatory is considered efficient in that it is quite a flexible way of regulating advertisements. To cite the Swedish Advertising Ombudsman, “through self-regulation, it is easier to adapt codes of conduct quickly to a changing reality and they can thus be more modern, flexible and relevant compared to laws which take longer to amend and which may be deemed to be too general and not adapted to changes over time. Additionally, rules which have been produced by the industry itself lead to greater understanding, respect and increased compliance.”<sup>37</sup>

<sup>35</sup> Interview Swedish Consumer Ombudsman

<sup>36</sup> Swedish General Marketing Act, 2008

<sup>37</sup> Swedish Advertising Ombudsman, *Annual Report – English*, 2011.



The statutory approach is also considered to be quite efficient in that its breadth and focus on identifying unfair practices as a whole means many advertising practices fall under its jurisdiction. The process of enforcing the Act however can potentially be quite time consuming when cases must go to court to decide upon further action. This is something which is difficult to estimate beforehand and can vary substantially.

The Swedish Consumer Ombudsman considers the General Marketing Act to be effective and given its scope across any advertising form, content or audience, this includes children as well. The implication is therefore that this is also an effective approach to protecting children from unfair exposure to advertisements.

The Swedish Advertising Ombudsman finds the system of self-regulation of advertising companies an effective practice as well given the flexibility and adaptability of the approach to new legislation. As the system is developed by industry members, there is a higher level of interest in producing and adhering to regulations and compliance tends to be good<sup>38</sup>.

*10.1.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?*

In both the statutory and the self-regulatory approaches the flexibility and breadth of the approaches have been cited as successful components.

Additionally, the combination of the two, with the self-regulatory approach complementing the legislative approach is seen as a good combined approach, covering the main advertising activities and players<sup>39</sup>.

In the case of the General Marketing Act, this is the transposition of an EU Directive and as such this followed a relatively straight forward development process.

Cross-border advertisements are seen as one of the major obstacles to the current Swedish approach to regulating advertisements aimed at children. The Swedish Market Court (which rules on behalf of the Ombudsman) can only rule against broadcasting channels which carry non-compliant advertisements, not against the producer of advertisers themselves. This is possible under the Swedish law which bans advertising aimed at children. Therefore, voices have sounded from within the Swedish government that the Swedish ban will only truly work if the rest of Europe follows suit with a similar ban on advertising for children, and to expand the ban to online areas as well<sup>40</sup>.

Additionally, the definition of what is "aimed" at children is also the subject of substantial discussion. Several cases were lost by the Consumer Ombudsman in the Swedish Market Court when it concerned food products which were not necessarily healthy but which could also be consumed by adults and not children exclusively. There has been a shift it seems in the emphasis which the Market Court used in judging cases, namely from advertising form to the content and product being advertised<sup>41</sup>.

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<sup>38</sup> Wistrand piece

<sup>39</sup> Wistrand piece

<sup>40</sup> Wall Street Journal, 2001: <http://www.commondreams.org/headlines01/0529-05.htm>

<sup>41</sup> Caraher, M., Landon, J. and Dalmeny, K., 2005, Television advertising and children: lessons from policy development, *Public Health Nutrition*: 9(5), 596–605.

# 11 United Kingdom

## 11.1 Description of Current national approach to regulating food advertising aimed at children

*11.1.1 How is food advertising towards children defined in the country? Do different actors use different definitions?*

- *What sort of criteria are used to judge whether a food advertisement is children focused?*

The UK has regulations in place for broadcasting and non-broadcasting media. In the case of broadcast media there is a system of co-regulation, between the independent regulator Ofcom (British Office of Communications) and the ASA (the Advertising Standards Authority) which is an industry body. In the case of non-broadcast media, a system of self-regulation is in place which is monitored and enforced by the ASA as well. In both areas of regulation, children are defined as those individuals of 16 years of age and under.

When judging whether a food advertisement is focused on children, broadcast media are judged on the content on the one hand and the scheduling of the advertisement on the other. These scheduling restrictions are based on statutory regulations in the Communications Act of 2003 also known as "the Act"). The scheduling rules include full bans on HFSS food advertising in and around all children's programming, on dedicated children's channels and on programmes with particular appeal to children. In this case particular appeal to children is established by indexing the audience of a programme. Ofcom and the ASA follow the "120 index", where if the proportion of children in a programme's audience is more than 20%, it is considered to have particular appeal to children.

Content rules also apply and these stipulate that in when advertising HFSS products aimed at children outside the scheduling rules, any advertisements shown around those times should not use techniques which are used due to their particular appeal to children. This includes for instance, the use of licensed cartoon characters, promotional offers or celebrities popular with children.

For non-broadcast media, there is a system of self regulation. There are no scheduling restrictions but similar restrictions apply to the content of food advertising. In connection with this, Nutrient Profiles have been defined by the Food Standards Agency (FSA) for Ofcom. These profiles classify HFSS foods amongst others. This helps the ASA in regulating the content of food marketing aimed at children. The industry, regulators and government use the same definition of HFSS and non-HFSS foods.

*11.1.2 System of regulation followed by country for regulating food advertising towards children*

Regarding broadcast media there is a co-regulatory approach. Ofcom, the independent regulator, and its regulatory partner, the ASA together monitor broadcast media. There is thus a system of co-regulation between government sanctioned organisations and the advertising industry.

For non-broadcast media, there is a system of self-regulation, under the supervision of the ASA.



The broadcast regulations are based on the UK Code of British Advertising, which is owned by the Broadcast Committee of Advertising Practice (BCAP). The ASA enforces this code. For non-broadcast media, the Committee of Advertising Practice (CAP) writes and enforces a Code for advertising; the CAP falls within the ASA.

While there is a statutory ban on the timing of advertisements about HFSS to be around programmes and channels which appeal to children, this is strictly speaking for the age group of 16 years and under. That said, in practice, there are provisions which concern children under 12 years of age specifically. This is because research by Ofcom demonstrates that younger children are not able to screen advertisements for their persuasive intent as older children and adults are. From a self-regulatory perspective, children under the age of 16 are considered to be in need of protection from marketing of HFSS foods.

There are Nutrient Profiles which define which foods are HFSS and which are not. HFSS foods may not be marketed to children on broadcast media around certain times and the content of any marketing pieces are monitored by Ofcom and the ASA. The self-regulatory CAP Code acknowledges the need to protect children from marketing influences, with specific provisions against misleading advertising, the protection of children, and social responsibility in advertising. There are also statutory restrictions on scheduling of marketing about HFSS food and drink to children.

The BCAP and the CAP Code both contain provisions on the content of advertisements; regardless of whether an advertisement is on broadcast or non-broadcast media certain content rules apply. For instance techniques with particular appeal to children should not be used, nor should licensed cartoon characters or celebrities popular with children.

The BCAP Code and the Communications Act 2003 refer to broadcast media while the CAP Code refers to non-broadcast media.

The BCAP Code and the Communications Act 2003 refer to broadcast media while the CAP Code refers to non-broadcast media. The indirect target groups and ultimate beneficiaries of this approach are children under the age of 16 who these regulations seek, amongst other things, to help protect. Children under the age of 12 receive special consideration under both the BCAP Code and CAP Code, based on research by Ofcom.

### 11.1.3 *When was the approach implemented*

The CAP Code was recently revised to extend the remit of the CAP to include digital media in 2011<sup>42</sup>.

The statutory Communications Act was introduced in 2003<sup>43</sup> and the BCAP has been responsible for the Television Advertising Code since 2004. This was in response to the Communications Act recommendation that Ofcom devolve some of its regulatory power to other organisations, such as the BCAP and the CAP.

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<sup>42</sup> CAP, *Extending the Digital Remit of the CAP*, (2010), available at: [http://www.cap.org.uk/News-reports/~/\\_media/Files/CAP/Misc/CAP\\_Digital\\_Remmit\\_Extension.ashx](http://www.cap.org.uk/News-reports/~/_media/Files/CAP/Misc/CAP_Digital_Remmit_Extension.ashx).

<sup>43</sup> Ofcom, *Television Advertising of Food and Drink Products to Children*, available at: [http://stakeholders.ofcom.org.uk/consultations/foodads\\_new/statement/](http://stakeholders.ofcom.org.uk/consultations/foodads_new/statement/).

## 11.2 Context in which the current national approach was developed and implemented

### 11.2.1 Problem recognition

After investigating the connection between children's preferences, consumption and behaviour of unhealthy food and the role which marketing plays here in 2004, Ofcom reviewed its restrictions on advertising of HFSS foods to children. A consultation process was held on the suggested new restrictions in 2006 and in 2007, Ofcom decided on its new regulatory objectives. These were to:

**Revised regulatory objectives for Ofcom<sup>44</sup>:**

- reduce significantly the exposure of children under 16 to HFSS advertising, as a means of reducing opportunities to persuade children to demand and consume HFSS products;
- enhance protection for both older and younger children as well as parents by appropriate revisions to advertising content standards, so as to reduce children's emotional engagement with HFSS advertisements, and reduce the risk that children and parents may misinterpret product claims, and to reduce the potential for pester power;
- avoid disproportionate impacts on the revenue of broadcasters;
- avoid intrusive regulation of advertising during adult airtime, given that adults are able to make informed decisions about advertising messages; and
- ensure that any measures that are put in place are appropriate and sufficiently timely to enable Government to observe changes to the nature and balance of food promotion by early 2007.

For the CAP and the CAP Code, the main objective is that all UK advertisements in the non-broadcasting area be responsible<sup>45</sup>.

In 2003 the then Secretary of State for the Ministry of Culture, Media and Sport, Tessa Powell, requested that Ofcom look into further strengthening its restrictions on certain forms of food advertising aimed at children on television. Healthy eating and the obesity and overweight in the UK is a relatively prevalent issue in the UK. Growing research on child obesity from bodies such as the FSA, the National Audit Office, the Chief Medical Officer and the Department of Health sparked this call for a different stance on advertising food and drinks to children.

This led to Ofcom carrying out research into the effects of marketing of food on children's food choices, consumption and behaviour. This research demonstrated that marketing of food had a modest, direct effect on children's food preferences and that marketing alone could not change eating habits. The report also considered other research which also indicated that obesity is a product of several factors and that marketing alone could not change dietary habits in children (or adults for that matter).

Ofcom tightened some of its regulatory restrictions but was opposed to an all out ban on advertising of food to children. There was insufficient evidence concerning the connection between unhealthy eating and obesity amongst children with food marketing and as such, no warrant for such a ban. Such a ban formed quite a contention issue between governmental, health and consumer actors on the one hand, and advertising and food industry stakeholders on the other.

<sup>44</sup> Ofcom, *Television Advertising of Food and Drink Products to Children*, available at: [http://stakeholders.ofcom.org.uk/consultations/foodads\\_new/statement/](http://stakeholders.ofcom.org.uk/consultations/foodads_new/statement/).

<sup>45</sup> CAP, *Good Regulation*, available at: <http://www.cap.org.uk/About-CAP/Good-regulation.aspx>



As such a system of co-regulation continues to exist for broadcast media and a system of self-regulation has been implemented for non-broadcast media.

There is said to be a direct, modest effect from food marketing on the behaviour and consumption of HFSS food and drink by children. As such, a system of co-regulation and self-regulation was thought to be the most dynamic and flexible approaches which would uphold the spirit behind the regulations as well as their technical specifications regarding food marketing.

*11.2.2 Does this approach to regulating food advertisements aimed at children connect with priorities from other policy areas?*

This approach was informed in part by the UK government White Paper, published by the Department of Health specifically, in 2004. This White Paper indicated that there was evidence for stricter regulation of advertising of food aimed at children. This fit in with the broader health policy concerns within the government.

*11.2.3 Which actors or organisations are responsible for initiating the current organisation of food advertising aimed at children?*

The Ministry of Culture, Media and Sports initiated the revision of the regulatory approach in the UK by requesting that its independent regulatory body, Ofcom, change its regulatory approach. In parallel, the FSA developed nutrient profiles for defining HFSS versus non-HFSS food to introduce a standardised definition of which food would be subject to closer advertising restrictions.

Ofcom, as the regulatory body, undertook research to refine its regulatory objectives and rules. A public consultation was held in 2007 with consumer groups, advertising stakeholders, food manufacturers, broadcasters and health groups. Ofcom then collated and examined these responses to come to a set of new revised rules regarding advertising in broadcast media.

For non-broadcast media, the self-regulatory approach has been in place for some time (almost 50 years). However the CAP Code was recently revised and the remit of the CAP extended to include digital media due to the changing media landscape in the UK. Independent reports in 2008 (the Bryon Review) and 2009 (the Buckingham Report), pointed to the vulnerability of consumers to marketing in the digital age, especially children. Added to this, between 2008 and 2009 the ASA had to dismiss around 3500 cases of complaints about improper marketing because these complaints concerned digital media which was outside the CAP and the ASA's mandate. The ultimate aim however of the CAP and its objective of making all advertisements in the UK responsible remains unchanged however.

The main policy debate surrounding the tightening of marketing regulations were between governmental, health and consumer groups on the one hand, and advertisers, broadcasters and food manufacturers on the other. The research carried out by Ofcom as the government's independent regulator, demonstrated that there was not sufficient evidence for the effect of food marketing on the eating habits of children. While the consumer, health and governmental perspectives, (specifically stakeholders active on health policies) felt the connection was backed up by research, Ofcom refused to implement a ban on all food products being marketed to children as this would damage food producers and the revenues of advertisers and broadcasters disproportionately, especially given the lack of sufficient evidence regarding the strength of the role of advertising on children's eating habits.

Instead a “proportionate and targeted action” in terms of changing advertising rules was recommended by Ofcom<sup>46</sup>.

The extended mandate of the CAP to also cover online media is related to the recognition that advertising in the UK is increasingly moving online. Food companies increasingly use the internet to connect with children, evidenced in the fact that in 2009, online advertising overtook TV advertising in the UK<sup>47</sup>.

#### 11.2.4 *Development of the approach: which contextual factors influenced the development of the current approach to regulating food advertising aimed at children?*

- *Political:*

The government’s public health objectives led to a political environment where there was a desire for more stringent regulations on food advertising aimed at children. This governmental position was in turn a reaction to the growing societal concern regarding overweight and obesity amongst children.

- *Economic:*

The economic considerations for the food industry and the advertiser and broadcaster stakeholders formed a counter point to the calls for stricter regulation of food marketing aimed at children. Loss of revenue, the impact on privately run TV channels from lack of advertising revenue, and the constraints on bringing new products on to the markets were all cited as negative consequences of stricter advertising. As such, co-regulation and self-regulation, both with revised objectives and mandates, were considered to be the best solution. For Ofcom especially, with the ultimate responsibility for the regulation of communications, this appeared to form an appropriately proportionate and targeted response to the issue of food marketing aimed at children.

- *Social:*

There is a societal concern in the UK about the growing overweight and obesity, especially amongst children; one in three children in the UK was categorised as overweight or obese in 2013. Indeed research demonstrate that parents found the online behaviour of their children particularly worrying as this is more difficult to monitor and influence<sup>48</sup>. There is thus a societal awareness of the role of online marketing and how children are exposed to this, as well as a broader concern with healthy eating for children in particular. This has contributed to the government position calling for increased advertising restrictions, and more recently, in the extended remit of the CAP in its regulation of non-broadcast media.

- *Technological:*

The internet, digital media, and social media form developments which have contributed to the current approach regarding the regulation of non-broadcast media.

No particular crystallizing events appear to have taken place which contributed to the current approach to regulating the marketing of food to children.

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<sup>46</sup> WHO, *Protecting children from the harmful effects of food and drink marketing*, (2014), available at: <http://www.who.int/features/2014/uk-food-drink-marketing/en/> .

<sup>47</sup> The Guardian, *Junk food still marketed to children as companies bypass rules*, (2013), available at: <http://www.theguardian.com/lifeandstyle/2013/jun/18/junk-food-children-marketing-who-tv> .

<sup>48</sup> Sherwin, A., *Advertising ban won't stop 'brand bullying', says childhood expert*, (2011), available at: <http://www.independent.co.uk/news/media/advertising/advertising-ban-wont-stop-brand-bullying-says-childhood-expert-2354917.html>



#### 11.2.5 *Implementation of the approach: how was this done?*

For broadcast media, the scheduling restrictions were phased in from April 2007 so that broadcasters and affected advertisers had time to adjust their strategies accordingly. By 2009 the scheduling restrictions on HFSS food advertisements aimed at children were fully implemented. The content restrictions on the other hand were introduced in February of 2007 and applied to new advertising campaigns; in July 2007 the content restrictions applied to all advertisements for HFSS foods aimed at children.

For the non-broadcast media, the CAP Code had been in place for some time (nearly 50 years). However the latest form of the CAP Code and the CAP's mandate (to include digital media) was implemented in March of 2011.

For the broadcasting media the implementation involved a range of actors. Ofcom developed the approach of phasing in the new restrictions for scheduling and advertising. The BCAP revised the BCAP Code and the ASA enforces the regulations. Additionally, advertisers and broadcasters were required to work with the organisation Clearcast to categorise foods according to the FSA nutrient profiles to help distinguish between HFSS and non-HFSS foods. Furthermore, the BCAP and ASA also provided support and guidance to advertisers to become used to the new restrictions.

The non-broadcasting media regulation was developed by the CAP into the CAP Code. The CAP falls under the ASA and the ASA enforces this self-regulatory code. As the CAP is a self-regulatory body and receives complaints which it then addresses, it relies on industry contributions to finance the organisation. The organisation ASBOF (Advertising Standards Board of Finance) puts a levy on all non-governmental or private advertisements.

### 11.3 **Evaluating the outcomes and effectiveness of policies**

#### 11.3.1 *Has there been any review/evaluation of the approach so far?*

Ofcom conducted an impact assessment for the statutory television ban on advertising HFSS food and drink to children in 2009. The results of the impact assessment indicate that the effects of the restrictions are significant, noting a 37% reduction in HFSS advertisements aimed at children between 2005 and 2009<sup>49</sup>.

The ASA monitors the complaints and enforces the compliance for both the BCAP and the CAP and their respective advertising codes. The activities of the ASA are published in annual reports. Besides this structural monitoring, the ASA conducted a review of food and drink advertisements appearing on television in 2009; this revealed an overall compliance rate of 99.4%<sup>50</sup>.

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<sup>49</sup> WHO, *Protecting children from the harmful effects of food and drink marketing*, (2014), available at: <http://www.who.int/features/2014/uk-food-drink-marketing/en/> .

<sup>50</sup> Interview OFCOM

*11.3.2 Is there any system for monitoring the effect of this approach to regulation? If so, which organisations or actor carries this out?*

The ASA monitors and enforces compliance with the BCAP Code, the statutory regulations on TV advertising, and the CAP code for non-broadcast advertising. It monitors the compliance with advertising regulations through a number of key performance indicators, including for instance: the numbers of complaints, the costs of cases, costs of investigations, the numbers of advertisements withdrawn, the number of advice and training sessions provided, complaint handling satisfaction, advertiser satisfaction and financial performance.<sup>51</sup>

*11.3.3 How is compliance with these regulations monitored and enforced? What sorts of consequences occur if an organisation/enterprise does not follow the regulatory rules in place?*

Compliance with the statutory TV ban on advertising during and around children's programming is considered to be technically good. However criticisms have arisen that while advertisers comply with the scheduling and content rules, loopholes remain and the proportion of advertising of HFSS foods has shifted to other time slots instead.

The self-regulatory approach, guided by the CAP Code is considered to have good levels of compliance as well. The ASA can enforce compliance through techniques such as naming and shaming of non-compliant advertisers and broadcasters. This works relatively well given that advertisers' public images are extremely important to their everyday business.

The CAP within the ASA receives complaints but also monitors all forms of non-broadcast media proactively<sup>52</sup>. The ASA publishes the named and shamed advertisers on a weekly basis and this is put on their website. The vast majority of non-compliant cases are resolved and in nearly all cases the ASA and advertisers can come to a voluntary resolution. When complaints cannot be resolved voluntarily by the ASA and advertiser, the case is sent and judged by the ASA Council. If advertisers consistently break CAP rules they can also be referred to Ofcom or Trading Standards Authorities (the market surveillance organs in the UK). The CAP can also ask that certain advertisements be removed, online this can be achieved by asking search engines to help with the removal of non-compliant advertisements, members of the industry can intervene or ad alerts can be implemented which draw the media's attention to a non-compliant advertiser by requesting that the media get in touch with the Copy Advice team within the CAP before accepting ads from certain advertisers. In this way the CAP has a variety of tools at its disposal to enforce the self-regulatory code.

*11.3.4 How effective do you feel this practice is in contributing to a good regulation of food advertising aimed at children? Please explain.*

From a self-regulatory perspective, this approach is said to be quite effective because there tends to be more motivation amongst industry and advertiser organisations to comply with the established guidelines. Through consultative procedures, stakeholders from all sides feel at least heard and for the industry especially, avoiding more stringent rules is a good incentive for compliance.

<sup>51</sup> ASA and CAP, *Performance and Objectives – Half-year Statement January – June 2014*, (2014), available at: [http://www.asa.org.uk/~media/Files/ASA/Annual%20reports/Countdown%20to%2050/Half%20year%20Statement\\_Jan%20-%20June%202014.ashx](http://www.asa.org.uk/~media/Files/ASA/Annual%20reports/Countdown%20to%2050/Half%20year%20Statement_Jan%20-%20June%202014.ashx) .

<sup>52</sup> CAP, *About CAP*, available at: <http://www.cap.org.uk/About-CAP/Compliance/Monitoring.aspx>.



Additionally, consumers, advertisers and food manufacturers benefit from a fast and cost-free complaints system which propagates fair competition amongst businesses. In particular, digital media benefits from more flexible monitoring and responses as is the case under self-regulation.

Statutory regulations and the co-regulatory approach to monitoring and enforcing them have the benefit of sharing costs involved amongst organisations. Additionally, by having advertisers certify their own advertisements according to the HFSS nutrient profiles, a further step in the compliance process is out sourced from the regulatory bodies. Advertisers and broadcasters are also obliged to assess which of their own programming can be considered to have particular appeal to children. In this way, by distributing regulatory activities amongst different actors, Ofcom reduces its costs and feels it benefits its costs and balances effectively.

The statutory ban on TV advertising of HFSS foods to children around children's programming has been considered effective when examining the number of advertisements being shown on children's channels and around children's programmes. This is evident in Ofcom's impact assessment. The UK Department of Health also reported that the annual expenditure on "child themed" food and drink across all media decreased by 41% between 2003 and 2007 (103 million pounds to 61 million pounds).

However, despite this compliance with the statutory scheduling regulations, consumer groups and other stakeholders do not necessarily feel that this reduction necessarily means that the ban is effective as there are many programmes which are considered family programmes, but which have a significant proportion of children watching. In some programmes, such as ITV1's X-factor and Britain's Got Talent, though less than 20% of the audiences constitute children, in terms of numbers the amount of children watching is still high. As such, these programmes are not subject to the HFSS ban and children are still reached<sup>53</sup>.

The report by Ofcom also indicates that there has been an overall increase in advertisements on TV for HFSS foods during other times of the day. Furthermore, food manufacturers increasingly use the internet to reach their consumers, including children.<sup>54</sup> Children especially are targeted through mobile phones, computer games, and social media. From this perspective, the statutory ban on TV advertisements of HFSS food only addresses a portion of the overall media landscape in the UK, thus undermining its effectiveness to some degree.

Research by Newcastle University also showed that for instance, the proportion of junk food advertising taking place had barely changed; if anything this increased somewhat from 6.1% to 7%. This suggests that the advertisements are not reduced but are shown at different times instead. Thus companies are officially compliant but the spirit of the regulation is being neglected.

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<sup>53</sup> The Guardian, Junk food still marketed to children as companies bypass rules, (2013), available at: <http://www.theguardian.com/lifeandstyle/2013/jun/18/junk-food-children-marketing-who-tv> .

<sup>54</sup> The Guardian, Junk food still marketed to children as companies bypass rules, (2013), available at: <http://www.theguardian.com/lifeandstyle/2013/jun/18/junk-food-children-marketing-who-tv> .

From a self-regulatory perspective, the ASA and CAP consider the current approach to be effective. The extended remit to digital media has been an important step, evidence by the fact that the proportion of online investigations into complaints is steadily increasing and was at 40% at the time of the Half-year statement by the ASA and CAP in 2014.<sup>55</sup>

From a self-regulatory perspective, successful aspects are that in allowing the industry organisations to regulate themselves as an alternative to legislation, there tends to be more motivation to comply with the established guidelines. Through consultative procedures, stakeholders from all sides feel at least heard and for the industry especially, avoiding more stringent rules is a good incentive for compliance. Additionally, consumers, advertisers and food manufacturers benefit from a fast and cost-free complaints system which propagates fair competition amongst businesses. In particular, digital media benefits from more flexible monitoring and responses as is the case under self-regulation. Additionally, by complementing other regulations, such as those on misleading advertising (transposed from the EC directive 2005/EC on Unfair Consumer practices), the important marketing spheres are covered.<sup>56</sup>

The main lessons from the self-regulatory approach is that when industry organisations are involved in establishing their own Codes and/or guidelines for marketing, especially as an alternative to a new statutory regulations, there tend to be good levels of compliance. The interests of consumers, health organisations and governmental bodies as well as those from industry and advertisers are considered and this appears to propagate a more co-operative spirit amongst industries and inspires them with a drive to indeed regulate each other. In the case of the UK, the ASA also has a range of more tangible sanctions at its disposal, such as removing websites or online advertisements if they are non-compliant. This goes beyond the naming and shaming principle which though effective, is in this case complemented by a range of other measures. Working with other branches and organisations can be helpful in this (such as search engines for instance).

Statutory regulation appears to be less flexible in responding to different forms of media which advertisers can use. Concepts such as "social responsibility" in advertising must be defined in concrete terms in order to enforce them according to the letter of the law. Such more rigid rules can invite companies to actively seek out loopholes within the law. On the other hand, having certain regulations legally established does help to propagate a particular societal attitude as well; in this case having certain laws regarding food advertising towards children helps to cultivate a social attitude that this marketing practice is not acceptable.

*11.3.5 Have there been any obstacles or challenges encountered in developing and implementing this approach to regulating food advertising aimed at children?*

As is the case in other countries, the same type of discussion seems to form in that food industry enterprises, advertising and broadcasting stakeholders resist regulation, especially statutory regulation, while consumer, health and governmental bodies desire more consumer protection and thus often stricter regulations.

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<sup>55</sup> ASA and CAP, *Performance and Objectives – Half-year Statement January – June 2014*, (2014), available at: [http://www.asa.org.uk/~media/Files/ASA/Annual%20reports/Countdown%20to%2050/Half%20year%20Statement\\_Jan%20-%20June%202014.ashx](http://www.asa.org.uk/~media/Files/ASA/Annual%20reports/Countdown%20to%2050/Half%20year%20Statement_Jan%20-%20June%202014.ashx).

<sup>56</sup> CAP, *Extending the Digital Remit of the CAP*, (2010), available at: [http://www.cap.org.uk/News-reports/~media/Files/CAP/Misc/CAP\\_Digital\\_Remmit\\_Extension.ashx](http://www.cap.org.uk/News-reports/~media/Files/CAP/Misc/CAP_Digital_Remmit_Extension.ashx).



This discussion and finding a balance between interests has been a main challenge and helped to lead in 2004, to Ofcom devolving powers to the ASA and entering a co-regulatory approach to food marketing aimed at children.

In an effort to implement proportionate and targeted action, Ofcom relied on research from its own organisation as well as academics on the role of advertising on children's food choices. There is however no consensus on the strength of this impact and as such, with contradictory research, Ofcom felt strong regulation was unwarranted. This discussion concerning the connection between overweight and obesity amongst children and food marketing aimed at them forms a challenge in coming to a regulatory agreement.

A further challenge was developing and implementing the nutrient profiles which help advertisers, broadcasters and regulators to monitor and enforce compliance of appropriate content in food marketing aimed at children.

## **11.4 Transferability**

### *11.4.1 Discussion on transferability of approach*

Self-regulation is considered to be very transferable. Indeed most European countries adopt some form of self-regulation, the approach is deemed quite universal. There exists a European association for self-regulatory bodies, the EASA demonstrating that this approach is relatively wide-spread.

There is an intuitive appeal here in that statutory regulation is often seen as constraining for businesses, competition and innovativeness. As such the ability of the industry to regulate itself has intuitive appeal. Additionally, in an effort to reach a compromise to stave off further regulation, industry stakeholders can be more inclined to make concessions towards consumer, health and governmental bodies which are more likely to push for stricter regulation. Due to the business interests at stake, industry organisations are more inclined to compromise and comply under self-regulation.

Regarding the financial, human and organisational resources this approach is also quite transferable. A central body for monitoring and enforcing compliance is required and in the case of the UK this is fuelled by advertising levies from broadcasters and advertisers. The one body acts as a complaints forum as well, forming a gateway between the industry and consumers. The collaboration with different organisations to enforce compliance is also an efficient way of working which is cost-saving and gives the self-regulatory sanctions more strength as well.

The co-regulatory approach is also relatively efficient in that costs and administrative burden are shared amongst different organisations. The role of the ASA as a help in regulating both statutory broadcast regulations and non-broadcast regulations also centralised the regulatory activities to some degree within Ofcom, which can also be considered an efficient way of organising the regulation of marketing. This collaborative approach to regulation has a certain intuitive appeal.

Ofcom also feels the approach of using nutrient profiles has intuitive appeal. Overall the approach is appropriate given the dual objectives of reducing exposure of children to food focused marketing on the one hand, and avoiding disproportional pressures on food and marketing industries.

*11.4.2 Potential obstacles to transferring this approach to other national contexts*

The main potential obstacle is that Ofcom uses BARB data to establish audience compositions for different television programmes. If similar information on audience demographics is not available, this approach may not be so transferable.

The development and use of nutrient profiles is also a potential stumbling block; these took some time to develop as the contents of these profiles could have huge implications for which of a manufacturer's products are subject to which regulation and how which products can be marketed. Developing these profiles can thus be quite a long, complicated and loaded process.

