

# CONSOLIDATED COMMENTS AND RESPONSES

Public consultation on the draft  
WHO Guideline to protect children  
from the harmful impact of food  
marketing

## Results of the call for comment on the WHO draft guideline on policies to protect children from the harmful impact of food marketing

Comments were received from the following individuals and organizations (all of whom completed declaration of interest forms):

### Government agencies (3)

1. Agastya Bharadwaj, Australian Government Department of Health and Aged Care, Australia
2. Carolina El Debs, Permanent Mission of Brazil to the UNOG and other organizations in Geneva, Brazil
3. Liv Ellin Torheim, Norwegian Institute of Public Health, Norway

### UN agencies (1)

1. UNICEF (Headquarters and country office: Mexico)

### Civil society and consumer organizations and associations (24)

1. Estefania Marti Malvido, Access to Nutrition Initiative, The Netherlands
2. Paula Johns, ACT Promoção da Saúde, Brazil
3. Adefunke Ajenikoko, American Heart Association, United States of America
4. Neena Prasad, Bloomberg Philanthropies, United States of America
5. Clare Hughes, Cancer Council Australia, Australia
6. Julián Gutiérrez Martínez, Center for the Studies on Law, Justice and Society, Dejusticia, Colombia
7. Bill Jeffery, Centre for Health Science and Law, Canada
8. Marie-Jeanne Rossier-Bisaillon, Coalition québécoise sur la problématique du poids, Canada
9. Julissa Chavira Garcia, Contrapeso, Mexico
10. Marisa Macari, El Poder del Consumidor, Mexico
11. Samuele Tonello, EuroHealthNet, Belgium
12. Manuel Moñino, European Federation of the Associations of Dietitians, The Netherlands
13. Nikolai Pushkarev, European Public Health Alliance, Belgium
14. Maria Elisabet Pizarro, Fundación Interamericana del Corazón Argentina [Interamerican Heart Foundation- Argentina], Argentina
15. Sumesh Maharaj, Global Food Consumers' Forum, New Zealand
16. Elizabeth Orlan, Global Health Advocacy Incubator, United States of America
17. Kathryn Reilly, Irish Heart Foundation, Ireland
18. Liz Arnanz, NCD Alliance, Switzerland
19. Katarnya Hickey, Obesity Policy Coalition, Australia
20. Yoanna Nedelcheva, The European Association for the Study of the Liver, Switzerland
21. Rosanna Pike, The Heart Foundation of Jamaica, Jamaica
22. Alexey Kotov, Vital Strategies, United States of America
23. Tim Lobstein, World Obesity Federation, United Kingdom
24. Angela Carriedo, World Public Health Nutrition Association, United Kingdom

## Industries, industry organizations and associations (9)

1. Andres Velez, Estudio Juridico Y De Educacion Sas, Colombia
2. Calisa Lim, Food Industry Asia, Singapore
3. Sibylle Stanciu, International Council for Advertising Self-Regulation, Belgium
4. Katherine Loatman, International Council of Beverages Associations, United States of America
5. Laurence Rycken, International Dairy Federation, Belgium
6. Rocco Renaldi, International Food & Beverage Alliance, Switzerland
7. Masaki Sawaoka, Japan Food Industry Association, Japan
8. Nicholas Hodac, UNESDA Soft Drinks Europe, Belgium
9. Fraser Bridges, World Federation of Advertisers, Belgium

## Academic (9)

1. Swati Jain, Department of Food and Nutrition, Lady Irwin College, University of Delhi, India
2. Valentina Castagnari, Global Center for Legal Innovation on Food Environments at the O'Neill Institute for National and Global Health Law at Georgetown University, United States of America
3. Claudia Nieto, Instituto Nacional de Salud Pública, Mexico
4. Mary L'Abbe, Department of Nutritional Sciences, WHO Collaborating Centre on Nutrition Policy for Chronic Disease Prevention, Temerty Faculty of Medicine, University of Toronto, Canada
5. Simone Pettigrew, The George Institute for Global Health, Australia
6. Francesca Dillman Carpentier, University of North Carolina at Chapel Hill, United States of America
7. Alice Khan, University of the Western Cape, South Africa
8. Bridget Kelly, University of Wollongong, Australia
9. Vivica Kraak, Virginia Polytechnic Institute and State University, United States of America

All comments were reviewed, and key comments paraphrased and grouped according to the following sections:

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## General comments<sup>1</sup>

Summary of comments received	Response
The guideline should explain how it relates to the 2010 WHO <i>Set of recommendations on the marketing of foods and non-alcoholic beverages to children</i> and its 2012 implementation framework, and other relevant guidance. The added value that the guideline brings to previous guidance is unclear and should be clarified.	An explanation of how the guideline relates to other published WHO guidance on policies to restrict food marketing to which children are exposed has been added to the introduction (chapter 1) and summarized in the executive summary.
The guideline should highlight the potential positive impact of “healthy food” marketing. It could cover positive marketing (including food and nutrition education), as studies show an association between nutrition knowledge and food behaviours.	<p>The systematic review on the impact of food marketing on children included studies looking at the marketing of <i>all</i> food. Only a small number of effect sizes were reported for exposure to marketing of healthy foods (1 (of 27 effect sizes) for choice and 1 (of 5) for purchasing). More research is needed to understand whether “healthy” food marketing is an appropriate public health policy option.</p> <p>Food and nutrition education was beyond the scope of this guideline.</p>
The guideline and its recommendations should make clear that the focus is on restricting “unhealthy food” marketing.	For clarity, the good-practice statement and recommendation now specifically refer to marketing of foods “high in saturated fatty acids, <i>trans</i> -fatty acids, free sugars and/or salt” (HFSS). Where relevant elsewhere, the guideline now also refers specifically to ‘marketing of HFSS foods’. As per the recommendation in the final guideline, WHO suggests use of government-led nutrient profile models to classify foods to be restricted from marketing.
<p>The guideline should be framed as a materialization of Member States’ obligations to address noncommunicable diseases under international human rights law and emphasize that food marketing regulation is a suitable measure for fulfilling these obligations.</p> <p>The emergence of new marketing channels, most notably digital marketing, further exacerbates the harmful impact of food marketing, and poses additional threats to children’s rights, including their privacy, for example using artificial intelligence and other tools for targeted marketing.</p>	<p>A more explicit and extensive outline of food marketing as a children’s rights concern has been added to the final guideline’s introduction (chapter 1) and summarized in the executive summary. The impact of policies on human rights is now also mentioned in the rationale to the recommendation.</p> <p>The evidence to decision table (Annex 6 of the draft guideline; now added as Table 1 following the recommendation) noted increasing concerns regarding digital marketing, which is now also mentioned more explicitly in the introduction (chapter 1), and the executive summary.</p>

<sup>1</sup> Changes made in the guideline have been highlighted in green.

Summary of comments received	Response
<p>To strengthen the case for marketing restrictions, the guideline could cross-reference experience from marketing of other products, including tobacco and alcohol.</p>	<p>There are important parallels between the marketing of tobacco, alcohol and HFSS foods, including in the use of persuasive marketing tactics.</p> <p>A detailed review of experience from marketing of other products was, however, beyond the scope of this guideline; this is now noted in the scope and purpose section of the introduction (chapter 1). A sentence was added that policy-makers may draw upon broader evidence on the impact of marketing of other products to further support marketing restrictions (chapter 3)</p>
<p>The issuing of this guideline is questionable, as this is an area where much has already been accomplished through self-regulation.</p>	<p>The scope of this guideline was to assess effectiveness of all policies, and the systematic review on the effectiveness of policies to restrict food marketing to which children are exposed therefore included both mandatory and voluntary measures. Subgroup analysis from the review, included in chapter 3 of the guideline and highlighted in figure 3, showed that studies comparing voluntary policy with no policy were more likely to show undesirable effects than desirable effects for exposure to and power of food marketing; this was not the case for studies comparing mandatory policy with no policy.</p>
<p>This guideline should not focus on a particular type of policy, but on the policy outcomes and acknowledge that the policy objective can be achieved through a variety of approaches.</p>	<p>Whether a selected approach achieves the policy objective may vary. The research question that informed this guideline therefore aimed to assess the effect on the outcomes of interest of implementing a policy that aimed to restrict children’s exposure to food marketing and its persuasive power, compared with not implementing a policy. To determine whether there were policy approaches that were more likely to be effective, the research question included disaggregation by certain policy design elements (i.e. target population, target marketing mediums, approach to defining target foods, voluntary or mandatory approach, and degree and quality of implementation and enforcement).</p> <p>The policy design elements specified in the recommendation reflect the findings of the systematic review, as is now detailed in the rationale for the recommendation.</p>
<p>Any language that could be interpreted as limiting marketing restrictions only to restricting “marketing directed to children” should be avoided, as children are also exposed to and</p>	<p>The recommendation refers to restriction of marketing to which children are exposed – rather than only marketing which is directed to children – with the remarks further clarifying that “Policies should address</p>

Summary of comments received	Response
vulnerable to marketing that is to not directed to them.	children's exposure to food marketing, irrespective of timing, venue or intended audience, and should therefore go beyond children's media."
It would benefit Member States to have access to the unpublished scoping review on food marketing (or its reference list) as it would aid development of country-specific policies.	The reference list of the unpublished scoping review can be shared upon request.

### Scope of the guideline (i.e. population, intervention, comparator and outcome)

Summary of comments received	Response
Population	
The guideline should more clearly define "children", as it is a key concept of the guideline. The definition of children may also vary across Member States. The rationale for defining children as 0–19 years, as the draft guideline does, should be clarified, given the Convention on the Rights of the Child defines children as 0–18 years.	<p>For the purposes of the key questions and systematic evidence reviews, the age range of the target population was 0–19 years, to also include adolescents, defined by WHO as those aged 10–19 years.</p> <p>Elsewhere in the guideline, children are defined in alignment with the Convention on the Rights of the Child given the recognition of food marketing as a child rights issue, as discussed in the introduction (chapter 1) and summary of evidence (chapter 3). A definition of "children", based on the Convention on the Rights of the Child, has been added to the glossary and to the remarks for the recommendation. Where this definition differs (e.g. in the key questions and systematic reviews), the differing definition has been provided.</p>
In the context of self-regulatory pledges, children aged 0–12 and teenagers aged 13–18 are considered two distinct groups. As teenagers can critically process advertising, rules that attempt to treat teenagers aged 13–18 years like children are unworkable. Age 13 provides a well-recognized cut-off between children and teens that is used in the United States' Children's Online Privacy Protection Rule (COPPA) and European Union's General Data Protection Regulation (GDPR) and in key government-led reviews of academic research on food marketing.	The Convention on the Rights of the Child defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". The NUGAG Subgroup on Policy Actions considered food marketing as a child rights issue
The guideline should include within its scope the impact of food marketing – including marketing of breast-milk substitutes – on caregivers who purchase food for children and/or acknowledge this as an area for further research.	Global guidance on regulating marketing of breast-milk substitutes is provided through the International Code of Marketing of Breast-milk Substitutes. The focus of this guideline is on the impact food marketing has on children, and on restricting children's exposure to

Summary of comments received	Response
	<p>marketing of HFSS foods and the power of such marketing.</p> <p>The evidence on the impact of marketing on adults, including those who are caregivers and who purchase food for children, and the evidence on the impact of such marketing on children is limited.</p> <p>This has been acknowledged as an important area for further research in 'Research gaps' (chapter 6) in the final guideline.</p>
Intervention and comparator	
<p>The guideline should make a clear distinction between voluntary and mandatory measures, and the definition of "policies" should be altered to exclude voluntary measures, as these are a tactic used to undermine regulatory measures and leave implementation to the private sector rather than government.</p>	<p>The 2010 WHO <i>Set of recommendations on the marketing of foods and non-alcoholic beverages to children</i> proposed that policies could be implemented through a variety of approaches, including statutory regulation, industry-led self-regulation and co-regulatory mechanisms. The intervention in this guideline, as defined by the NUGAG Subgroup on Policy Actions for use in the research question informing the systematic review on the effectiveness of policies to restrict food marketing to which children are exposed, therefore included both mandatory <i>and</i> voluntary measures to ensure that the effects of all policy approaches were considered.</p> <p>Subgroup analyses were conducted as part of the systematic review to further explore which policy design elements – including whether policies are mandatory or voluntary – may be more likely to be effective and were considered by the NUGAG Subgroup on Policy Actions when formulating the recommendation.</p> <p>Where information included in the guideline relates specifically to voluntary or mandatory policies, this is clearly indicated by the use of "voluntary" or "mandatory".</p>
<p>The guideline should not focus on whether approaches should be statutory or self-regulatory approaches, but rather on proper enforcement of well-designed policies with active involvement of all key players that work across all forms of media and marketing.</p>	<p>As noted above, the NUGAG Subgroup on Policy Actions defined policies as including both mandatory and voluntary measures to ensure that the effects of all policy approaches were considered.</p> <p>As part of the systematic review on the effectiveness of policies to restrict food marketing to which children are exposed, subgroup analyses were conducted to explore</p>

Summary of comments received	Response
	<p>which policy design elements may be more likely to be effective. These analyses indicated that studies comparing voluntary policy with no policy were more likely to show undesirable effects than desirable effects for exposure to and power of food marketing; this was not the case for studies comparing mandatory policy with no policy.</p> <p>Information on monitoring and enforcement and engagement of actors was considered through the review of contextual factors (chapter 3) and is also discussed in 'Implementation considerations' (chapter 5).</p>
Outcomes	
<p>Some of the longer-term important outcomes, such as body weight and diet-related NCDs, have not yet been able to be measured because marketing restrictions are a relatively new policy. The critical outcomes are more readily measurable for newer policies and should be the focus of this guideline.</p>	<p>The critical outcomes were those the NUGAG Subgroup on Policy Actions considered critical for decision-making, while the important outcomes were those considered important, but not critical for decision-making. The NUGAG Subgroup on Policy Actions' judgement on the overall certainty of the evidence was based on that for the critical outcomes. Information further differentiating critical and important outcomes, and noting the challenges to assessing longer-term health outcomes, has been added to chapter 2.</p> <p>In the summary of evidence (chapter 3), the evidence for critical outcomes was summarised ahead of that for important outcomes given its greater importance for decision-making. This has been modified to now also explicitly describe each outcome as either critical or important.</p>
<p>The guideline should include a description of what the outcome "unintended consequences" refers to.</p>	<p>Unintended consequences were considered to be unintended consequences to wider society, such as consequences for revenue and jobs. When defining this outcome, it was agreed to keep the outcome broad to enable inclusion of all possible unintended consequences. This has been clarified in Table 2 in the final guideline and elsewhere in the guideline as needed. For clarity, additional information on these consequences has also been added to the summary of evidence (chapter 3).</p>

## Guideline objectives and target audience

Summary of comments received	Response
<b>Objectives</b>	
Although the guideline is not intended to be an implementation manual, this may not be clear from the first objective.	The first objective has been rephrased to clarify that the guideline aims to provide Member States with implementation considerations rather than “guide Member States in the... implementation of policies”.
The final objective infers a direct relationship between food marketing and the development of healthy dietary practices, which does not reflect the level of evidence discussed in the guideline or the complexity of factors contributing to dietary practices.	The final objective has been rephrased to clarify that the guideline aims to contribute to the creation of food environments that enable healthy dietary practices among children.
<b>Target audience</b>	
The guideline could specify its primary and secondary target audiences and clarify the roles of different actors, including whether they develop, implement and/or comply with policies.	The guideline is intended for a wide audience involved in the development, design, implementation, monitoring and evaluation of policies to protect children from the harmful impact of food marketing, as well as those involved in compliance with, and advocacy for, such policies. Specifying the role of different actors is beyond the scope of this guideline. The 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i> will provide more detail on this.
The target audience should clearly include school administrators, teachers and educators.	School administrators were considered under “implementers and managers of [national] and local health and nutrition programmes”. To be more explicit, and acknowledging that schools are a setting in which food marketing continues to be prevalent, school administrators, teachers and educators have been added to the target audience.
The guideline should better define the role of industry as a target audience to avoid conflict of interest and industry interference.	The food industry, marketing/advertising agencies and related associations are defined as a target audience of this guideline as representatives of the food industry, marketing/advertising agencies and related associations are involved in implementing, or complying with, policies to restrict food marketing.  Information on conflict of interest mechanisms is now referred to in the implementation considerations (chapter 5).

## Guideline development process

Summary of comments received	Response
<b>Contributors to guideline development</b>	
For transparency, all names, affiliations and expertise of contributors to the guideline development process should be mentioned.	As the draft guideline indicated would be done, the names and affiliations of contributors to the guideline development process have been included in the final guideline in the 'Acknowledgements' and in annexes 2–6.
The guidelines should specify whether the contributors to guideline development included human rights experts.	The guideline's Steering Group (acknowledged in the final guideline's 'Acknowledgements' and Annex 3) included experts in human rights and equity.
<b>Evidence grading</b>	
The criteria for evidence grading are not clear.	Chapter 2 of the draft guideline noted that the assessment of the certainty of the evidence was explained in detail in the published reviews. Further information on the GRADE approach has, however, now been included in chapter 2.
The GRADE approach needs adapting for public health, as has been noted by the GRADE Public Health Group. The current approach is biased towards randomized controlled trials, such that research assessing national policies using natural or quasi-experiments results in low certainty of evidence.	WHO develops guidelines on a broad array of clinical, public health, health system, health promotion and implementation interventions. These interventions are often highly context-specific, with multiple factors that directly and indirectly impact health and societal outcomes. The ongoing debate of whether GRADE is fit for purpose for assessing the certainty of evidence of the effect of complex public health interventions is acknowledged, as is the development of other systems. However, GRADE provides a comprehensive, robust and transparent framework for assessing elements of studies relevant for determining the certainty in the evidence regardless of study type, and continues to be recommended in the <i>WHO handbook for guideline development</i> to rate the certainty of evidence in intervention effects. As proposed in a recent chapter of the <i>WHO handbook for guideline development</i> (chapter 18), the evidence to decision framework (EtD) used for complex interventions may need to expand beyond the GRADE EtD, as recommendations on complex interventions often require consideration of a broader range of factors. The review of contextual factors for this guideline therefore considered additional questions, as proposed in the WHO-INTEGRATE framework.
Mandatory and voluntary policies are qualitatively different interventions with variations in the products, content and placement for which marketing is restricted. The GRADE handbook states that interventions	As per the <i>WHO handbook for guideline development</i> , and the GRADE handbook, the PICO question (including defined interventions) can be broad, but should include a priori specifications of possible subgroup effects that

<p>should be separately defined, as a single estimate across interventions will not be useful for decision-makers. It is not clear why the certainty of evidence for the effects of policies combines mandatory and voluntary policies – this should be clarified. We believe this has led to a bias towards lower certainty of evidence.</p>	<p>may explain any heterogeneity found. The intervention defined by the NUGAG Subgroup on Policy Actions was all measures to restrict food marketing to which children are exposed, irrespective of the legal instrument used. As the intervention was defined broadly, the group considered it critical to further define policy design elements that may explain heterogeneity (i.e. differences in policy effectiveness). These were defined a priori as the policy approach (i.e. mandatory or voluntary), the target population, approach to defining target foods, target marketing mediums, and degree and quality of implementation and enforcement. If data allowed, subgroup analyses were conducted to assess which policy design elements may be more likely to be effective.</p>
<p>Formulation of the recommendations</p>	
<p>The use of the GRADE approach to formulate recommendations does not allow the justification for the recommendations to consider that food marketing regulation guarantees human rights.</p>	<p>As outlined in chapter 2, the NUGAG Subgroup on Policy Actions considered a range of factors when formulating the recommendations, including the potential impact of policies on human rights.</p> <p>As per Annex 6 of the draft guideline (now added to follow the recommendation), the NUGAG Subgroup on Policy Actions judged that implementation of policies supports the realization of human rights . This judgement – along with the judgements for other factors that supported the recommendation – has now been included in a rationale section beneath the recommendation to more clearly communicate the factors the NUGAG Subgroup on Policy Actions considered when formulating the recommendation.</p>
<p>A more thorough explanation of how the GRADE approach was used to translate evidence to recommendations is needed, as is a discussion of the weaknesses of the GRADE approach.</p>	<p>Further information on the GRADE approach has now been included in chapter 2.</p>

### Missing information

Summary of comments received	Response
<p>The evidence should be updated as there are additional relevant studies, including those assessing implementation of mandatory policies to restrict marketing, that have been published since the systematic reviews were conducted.</p>	<p>The searches for the systematic reviews were conducted in March and April 2019 and updated in March 2020. Although they were available in the systematic reviews, these dates have now also been added to chapters 2 and 3 in the final guideline.</p>

	WHO recognizes that additional evidence will, and has, become available as more policies are adopted and evaluated. As such, the guideline will be updated regularly as new evidence becomes available, as noted in chapter 8 of the draft guideline (chapter 7 of the final guideline).
The guideline should include additional references on the ineffectiveness of self-regulatory measures (e.g. Kelly B, Vandevijvere S, Ng S, et al. Global benchmarking of children's exposure to television advertising of unhealthy foods and beverages across 22 countries. <i>Obes Rev.</i> 2019;20 Suppl 2(Suppl 2):116-128. doi:10.1111/obr.12840).	The study by Kelly et al. is included in the narrative review, where it provides evidence that, globally, children remain exposed to marketing of HFSS foods. However, due to its study design, it was not eligible for inclusion in the systematic review of the effectiveness of policies to restrict food marketing to which children are exposed.
Studies not included in the guideline demonstrate the effectiveness of voluntary measures.	The systematic review on the effectiveness of policies to restrict food marketing to which children are exposed included both mandatory and voluntary measures. The systematic review followed a rigorous search strategy and predefined criteria for inclusion. (The systematic review protocol was pre-registered and available <a href="#">here</a> ).
Evidence on the effectiveness of self-regulation should not be dismissed as being ineffective. The guideline should not discredit advertising self-regulation.	The systematic review summarizes the available evidence on the effectiveness of a variety of policy approaches. Subgroup analysis, included in chapter 3 of the guideline and highlighted in figure 3, showed that studies comparing voluntary policy with no policy were more likely to show undesirable effects than desirable effects for exposure to and power of food marketing; this was not the case for studies comparing mandatory policy with no policy.
A deeper analysis of digital marketing is needed, both for its greater importance and current impact, as well as for its greater need for research.	<p>In both the key questions and both the systematic reviews, no restrictions were made to the marketing media included. As indicated in chapter 3, subgroup analyses showed no statistical evidence that the marketing medium significantly moderated effect sizes for food preferences, food choice or intended choice or dietary intake. Much of the evidence that met the inclusion criteria was still focused on traditional media. WHO acknowledges that additional studies on digital food marketing have been published since the searches for the systematic reviews were conducted.</p> <p>The new concerns raised by digital marketing (e.g. copious personal data collection, targeted marketing, novel marketing techniques) are now acknowledged in the introduction (chapter 1).</p>

	<p>The 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i> also includes a discussion on digital marketing.</p>
<p>The guideline should include explicit references to the vulnerabilities of children in resource-poor settings to unhealthy food marketing.</p>	<p>Studies included in the review of contextual factors show that, in high-income countries, children of lower socioeconomic status (SES) are more exposed to food marketing than children of higher SES, which can lead to, or worsen, health inequities. As a result, policies to protect children from the harmful impact of food marketing can be expected to reduce health inequities.</p> <p>This is noted in the summary of evidence and now also in Table 1 under “Impact of policy implementation on equity”.</p>
<p>The implementation considerations should highlight evidence related to industry opposition to government-led restrictions, and the tactic of offering voluntary self-regulatory policies as an alternative to mandatory policies.</p>	<p>The summary of the review of contextual factors in chapter 3 highlights evidence related to industry opposition (e.g. “Industry generally opposed government-led restrictions, but offered voluntary self-regulatory policies as an alternative. When initiated by industry, such policies can be considered a strategy to prevent the introduction of strong, legally enforceable government regulations.”).</p> <p>The implementation considerations (chapter 5) now also refer to the 2023 joint WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i>, which provides common arguments used against policies to protect children from the harmful impact of food marketing, and counterarguments based on a child rights-based approach and the available scientific evidence to date.</p>
<p>Additional resources could be included in Box 1 in ‘Implementation considerations’ (chapter 5).</p>	<p>Relevant additional resources have been added to Box 3 of the final guideline (Box 1 in the draft guideline).</p>

## Good-practice statement

Summary of comments received	Response
The good-practice statement should explicitly define the age range covered by the term 'children'. According to the Convention on the Rights of the Child, "a child means every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier".	A definition of 'children', based on the Convention on the Rights of the Child, has been added to the glossary and to the remarks for the recommendation.
The good-practice statement should clarify that it is governments that should protect children from the harmful impact of food marketing.	As it is countries, and not governments, that are State Parties to the Convention on the Rights of the Child, the rationale accompanying the good-practice statement notes that "Countries that are State Parties to the Convention on the Rights of the Child have a legal obligation to protect and ensure the right to the highest attainable standard of health."
The good-practice statement should emphasize that children "must" be protected from the harmful impact of food marketing – rather than "should" be protected from the harmful impact of food marketing – given the legal obligations of governments that have ratified the Convention on the Rights of the Child to uphold children's rights.	The term "must" connotes a legal obligation, which a guideline cannot do. As such, the term "should" has been retained.
The good-practice statement should clarify that children must be protected from the harmful impact of "unhealthy" food marketing.	<p>As noted in the updated rationale accompanying the good-practice statement, children continue to be exposed to marketing of foods that are high in saturated fatty acids, <i>trans</i>-fatty acids, free sugars and/or salt. For clarity, the good-practice statement has been revised to specify that children should be protected from marketing of foods that are high in saturated fatty acids, <i>trans</i>-fatty acids, free sugars and/or salt.</p> <p>The words "harmful impact" were then deleted from the good-practice statement, as stating that "Children of all ages should be protected from the harmful impact marketing of foods that are high in saturated fatty acids, <i>trans</i>-fatty acids, free sugars and/or salt" could be interpreted as meaning that some marketing of HFSS foods may not have a harmful impact.</p>
The good-practice statement should clarify that children must also be protected from the harmful impact of "unhealthy" beverage marketing.	As defined in the glossary, in this guideline, 'food' refers to both foods and non-alcoholic beverages.
The good-practice statement should clarify that children will be protected from harmful impact of	The good-practice statement is distinct from the following recommendation. Good-practice statements

Summary of comments received	Response
food marketing through comprehensive, mandatory policies that address both the exposure of children to marketing and the power of that marketing.	do not involve rating of the certainty of the evidence nor grading of the strength of the statement. An example of when a good-practice statement can be made is when the unstated alternative would clearly not conform to ethical norms.  The recommendation then provides more detail through evidence-based and graded guidance.
The information on digital marketing included in the rationale for the good-practice statement should be expanded to include more detail on the increasing prevalence of digital food marketing.	Digital marketing amplifies the marketing message and the overall impact of marketing. Therefore, children must also be protected from the harmful impact of digital marketing. To give more emphasis to this need, it was added that “digital marketing is of growing concern”.

### Comments on certainty of evidence and conditionality of recommendations

Summary of comments received	Response
The evidence on the scale of the impact of advertising on an individual’s overall diet and health remains inconclusive. This is acknowledged in the guideline, where there is only very low certainty evidence that policies to restrict marketing have a positive effect on children’s dietary intake.	The evidence on the impact of food marketing on dietary intake is clear. As summarized in chapter 3, the systematic review on the impact of food marketing on children found moderate certainty evidence from randomized controlled trials that food marketing is associated with increases in dietary intake.
The certainty of evidence from the systematic review on the effect of policies to restrict marketing to children was rated as very low. The systematic review shows that most mandatory policy evaluations showed effects favouring the intervention, while most voluntary policy evaluations showed effects favouring the control. The very low certainty of evidence is due to inconsistency of effect, which arises from including both mandatory and voluntary policies. WHO could better communicate this (i.e. why the overall certainty of evidence is very low), including under recommendation 1. Focusing on the certainty of evidence of the effect of mandatory policies would also allow WHO to strengthen its recommendation.	In 2010, the WHO <i>Set of recommendations on the marketing of foods and non-alcoholic beverages to children</i> proposed that policies could be implemented through a variety of approaches, including statutory regulation, industry-led self-regulation and co-regulatory mechanisms. The intervention, as defined by the NUGAG Subgroup on Policy Actions for use in the research question informing the systematic review on the effectiveness of policies to restrict food marketing to which children are exposed therefore included both mandatory and voluntary measures to ensure that the effects of all policy approaches were considered. Subgroup analyses were conducted to further explore which policy design elements may be more likely to be effective. The evidence allowed for analysis comparing several policy design elements, including for example the policy approach (i.e. whether policies are mandatory or voluntary), the target age group or approach to defining foods to be restricted from marketing. The NUGAG Subgroup on Policy Actions judged the inconsistency in evidence to be partly due to the policy approach, though their judgement on the

	<p>overall certainty of the evidence from observational studies was very low.</p>
<p>The guideline states that policies restricting food marketing to children have limited results. The guideline should include information on the criteria adopted in this analysis.</p>	<p>The guideline does not state that policies restricting food marketing to which children are exposed have limited results, but rather that the evidence base is limited and uncertain for the reasons explained in the text.</p> <p>Chapter 2 provides information on how the certainty of evidence from the systematic review on the effectiveness of policies to restrict food marketing to which children are exposed was graded using the GRADE approach; this information has been expanded on in the final guideline.</p>
<p>It is concerning that the two recommendations in this guideline are conditional and based on very low certainty evidence.</p> <p>A clear explanation and provision of the rationale for why the certainty of evidence is very low and why the recommendations are conditional should be included in the text beneath the recommendations, rather than in a footnote. The judgement on factors other than the certainty of the evidence (e.g. values, resource requirements, cost-effectiveness, equity, human rights, acceptability, feasibility) should be included beneath the recommendations. A lack of explanation of this and of how to interpret the very low certainty of evidence might hinder adoption of the recommendations.</p>	<p>WHO, together with other organizations, uses the GRADE framework when making evidence-informed recommendations. GRADE takes into consideration the certainty of evidence as well as a number of additional contextual factors (i.e. the desirable and undesirable effects of the intervention; values related to the recommendation in different settings; the cost of the options available to public health officials and programme managers in different settings; feasibility and acceptability of implementing the recommendation in different settings and from the perspective of different actors; and the potential impact on equity and human rights). This allows recommendations to be made when there is less certainty in the evidence and/or when the other factors considered strongly support a recommendation.</p> <p>Conditional recommendations are formulated by the guideline development group when the group is less certain about the magnitude of desirable effects of implementing the intervention.</p> <p>Importantly, the certainty of the evidence as assessed using the GRADE approach is relative to the high certainty benchmark of well-conducted, double-blind, randomized controlled trials. When assessing the overall certainty of the evidence for an outcome, evidence from randomized controlled trials starts at high certainty, whereas that from observational studies starts at low certainty. Because policies to restrict food marketing to which children are exposed are not evaluated using randomized controlled trials, evidence from well-conducted observational studies is an invaluable resource for assessing the potential impact</p>

	<p>of such policies and development of guidance and it is therefore unrealistic to consider only evidence of high or even moderate to high certainty when developing guidance on this intervention.</p> <p>Furthermore, it is important to note that the certainty of the observational evidence on exposure to marketing and power of marketing was further downgraded from low to very low certainty due to inconsistency in effect, which is likely partly because of variation in policy design elements (i.e. the policy approach (i.e. mandatory or voluntary), the target population, approach to defining target foods, target marketing mediums, and degree and quality of implementation and enforcement). This is noted in the NUGAG Subgroup on Policy Actions' considerations in Annex 6 of the draft guideline (now added to follow the recommendation).</p> <p>While the NUGAG Subgroup on Policy Actions' judgements on the additional contextual factors were available in Annex 6 of the draft guideline (now added to follow the recommendation), a 'Rationale' section has now been included beneath the recommendation to more clearly explain the NUGAG Subgroup on Policy Actions' rationale for the strength of the recommendation.</p>
The recommendations state "very low" certainty of evidence despite the systematic reviews showing statistically significant findings.	As outlined in chapter 2, the certainty of evidence was assessed using the GRADE approach. This assessment considers a range of factors that influence the certainty of evidence, including study design, risk of bias, inconsistency, indirectness, imprecision and publication bias. Depending on these factors, a body of evidence can therefore show statistically significant findings but still be of only very low certainty. Further information on the GRADE approach has now been included in chapter 2.
The recommendations use "WHO suggests" rather than "WHO recommends", which could be interpreted as WHO downgrading its position compared with the 2010 WHO <i>Set of recommendations on the marketing of foods and non-alcoholic beverages to children</i> and could undermine the guideline's value.	The guideline was developed in line with the WHO guideline development process. According to the <i>WHO handbook for guideline development</i> , terms or phrases such as "should" or "strongly recommend" are used for strong recommendations, and "suggest" or "consider" for conditional recommendations.

	<p>The WHO <i>Set of recommendations on the marketing of foods and non-alcoholic beverages to children</i>, endorsed by the World Health Assembly, remain an important resource. Since its endorsement, evidence has become available, in particular on policy design elements, which is reflected in this guideline.</p> <p>This guideline will be regularly updated, as the evidence base on the effectiveness of policies to restrict food marketing to which children are exposed grows.</p>
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## Recommendations

The draft guideline issued for public consultation included two recommendations, both based on evidence from the systematic review on the effectiveness of implementing policies to restrict food marketing. Recommendation 2 was further based on evidence from additional analysis of the same body of evidence. To increase clarity and reduce the risk of misinterpretation from having two separate recommendations, they were combined to a single recommendation.

Summary of comments received	Response
Recommendation 2 could be elevated and recommendation 1 removed, or the two recommendations could be combined into one recommendation, to provide countries with a stronger and clearer policy recommendation.	In the final guideline, recommendations 1 and 2 were combined into one recommendation.
Recommendation 1 should explicitly define the age range covered by the term 'children'; according to the Convention on the Rights of the Child, "a child means every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier".	A definition of 'children', based on the Convention on the Rights of the Child, has been added to the glossary and to the remarks for the recommendation.
Recommendation 2 should offer Member States a broader range of policy approaches, given the weak evidence supporting mandatory policies.	Subgroup analysis from the review on the effectiveness of policies to restrict food marketing to which children are exposed, included in chapter 3 of the guideline and highlighted in figure 3, clearly showed that mandatory policies were more likely to show desirable effects than undesirable effects for exposure to and power of food marketing and that, in contrast, voluntary measures were more likely to show undesirable effects than desirable effects for exposure to and power of food marketing. This evidence has now been further highlighted in the rationale beneath the recommendation.
Recommendation 2 suggests that policies "protect children of all ages, including those older than 12 years". For clarity and to avoid	For clarity, "protect children of all ages, including those older than 12 years" has been revised to "protect children of all ages". A definition of 'children', based on

ambiguity, it should explicitly advise that children are those aged 0–18 years or 0–19 years.	the Convention on the Rights of the Child, has been added to the glossary and to the remarks for the recommendation.
Recommendation 2 is unclear as what “broad” policies entail and should include indicative examples of the marketing mediums that a policy should or could cover.	The definition of “marketing” used in the guideline is intended to be broad in its coverage, including of marketing mediums. A box that provides further explanation of the broad interpretation of “marketing” has been added to the guideline’s introduction (chapter 1) and provides some (non-exhaustive) examples of marketing techniques/mediums. The term “broad” has been replaced with “comprehensive” for consistency with other WHO guidance.
Recommendation 2 should specify that policies should apply to all marketing mediums that children are exposed to.	A remark under the recommendation, specifies that policies should address children’s <i>exposure</i> to food marketing, irrespective of timing, venue or intended audience.
In recommendation 2, the suggestion to “restrict the power of food marketing to <b>persuade</b> ” should specify the marketing strategies that impact “the power of food marketing to persuade” and should clarify what is meant by “restrict the power of food marketing to <b>persuade</b> ”.	<p>The power of food marketing to persuade children relates to techniques appealing to and resonating with children, including promotional characters and celebrity endorsements, which should be restricted. This was further clarified in the guideline remarks.</p> <p>Implementation guidance on restricting the power of marketing is provided in the 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i>.</p>
Recommendation 2 should explicitly recommend restricting brand marketing.	<p>Brand marketing is recognized as frequently used in marketing of HFSS foods and marketing, as defined in the glossary, is considered to include brand marketing.</p> <p>Although the evidence from the systematic review did not allow for statements to be made about specific marketing techniques as part of the recommendation, the implementation considerations (chapter 5) introduce possible approaches that countries could use to restrict brand marketing.</p> <p>Research gaps highlight the limited evidence available on brand marketing, and propose further studies on the impact of brand marketing.</p>
Recommendation 2 should specify that policies should consider <b>cross-border marketing</b> . Member States should also be made aware of	Although the evidence from the systematic review did not allow a statement about cross-border marketing to be made as part of the recommendation, the

<p>Resolution 63.14 from the World Health Assembly, which stresses the need “to take active steps to establish intergovernmental collaboration to reduce the impact of cross-border marketing”.</p>	<p>implementation considerations (chapter 5) make reference to addressing cross-border marketing. In the implementation considerations, reference has also been added to the WHO <i>Set of recommendations on the marketing of foods and non-alcoholic beverages to children</i>.</p> <p>Further information is also provided in the 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i>.</p>
<p>Recommendations should be made on:</p> <ul style="list-style-type: none"> <li>• preventing, mitigating and managing corporate influence on policy design, and</li> <li>• monitoring and enforcement.</li> </ul>	<p>The final guideline’s implementation considerations (chapter 5) note steps involved in the policy cycle, including adoption of clear, transparent and robust conflict of interest guidelines and mechanisms and establishment of a monitoring and enforcement system. Further information is provided in the 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i>.</p>
<p>The development of nutrient profile models should consider both nutrients to limit (e.g. saturated fat, trans fat, salt, added sugar, energy) and nutrients to encourage (e.g. protein, fibre, vitamins, minerals), as well as dietary guidelines. Nutrient profile models that only consider nutrients to limit can create a view that specific nutrients are bad.</p>	<p>The focus of the WHO nutrient profile models referred to in ‘Implementation considerations’ (chapter 5) is on restricting marketing of foods that contain high levels of saturated fat, <i>trans</i>-fatty acids, free sugars and/or salt. Excessive intakes of these nutrients are associated with weight gain and/or noncommunicable diseases and are discouraged by dietary guidelines, including those developed by WHO, and the Codex nutrient reference values for the reduction of noncommunicable diseases for saturated fat and sodium.</p> <p>The WHO regional nutrient profile models to support countries in developing and implementing policies to restrict food marketing are in line with dietary guidelines (i.e. limit intake of saturated fat, <i>trans</i>-fatty acids, free sugars and salt).</p>
<p>Making recommendations on low certainty evidence without a proper impact assessment of what the recommended policies could have on the nutrient adequacy of children’s diets appears disconcerting.</p>	<p>The focus of this guideline, and the WHO nutrient profile models referred to in ‘Implementation considerations’ (chapter 5), is on restricting marketing of foods that contain high levels of saturated fat, <i>trans</i>-fatty acids, free sugars and/or salt. Such foods often have low levels of essential nutrients and displace other more nutritious foods. Excessive intakes of saturated fat, <i>trans</i>-fatty acids, free sugars and/or salt are also associated with weight gain and/or noncommunicable diseases.</p>

The guideline should not propose to use solely nutrient profile models to classify foods, as this misrepresents nutritious foods (e.g. milk, cheese and yogurts), due to the focus on nutrients such as saturated fat in isolation.	The WHO nutrient profile models referred to in 'Implementation considerations' (chapter 5) provide different thresholds for different food categories (e.g. 'milk drinks', 'yoghurts, sour milk, cream and other similar foods') and do not focus on individual nutrients.
<p>Recommendation 2 on the use of nutrient profile models should further:</p> <ul style="list-style-type: none"> <li>state that nutrient profile models should be government-led</li> <li>propose use of the nutrient profile models developed by WHO regional offices</li> <li>state that nutrient profile models should align with national dietary guidelines and expectations of the nutritional quality of foods and that the model should be tested and monitored to avoid anomalies in classifications</li> </ul>	<p>The recommendation in the draft guideline to use a nutrient profile model to classify foods to be restricted from marketing was based on evidence from 31 studies on exposure to marketing.</p> <p>Six of the 31 studies assessed marketing restrictions that applied a government-led nutrient profile model. All but one of these studies potentially or clearly favoured the intervention. 25 of the 31 studies assessed marketing restrictions that applied a company specific model. Of these, 8 potentially or clearly favoured the intervention, while 12 potentially or clearly favoured the control.</p> <p>These results were reflected in the final guideline by clarifying in the recommendation that the nutrient profile models should be government-led.</p> <p>Further information on the regional nutrient profile models developed by WHO, and importance of ensuring that nutrient profile models align with national dietary guidelines are noted in the implementation considerations (chapter 5), and further detailed in the 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i>.</p>

## Other sections of the guideline

Summary of comments received	Response
Glossary	
The guideline should define 'nutrient profile model'.	A definition of 'nutrient profile model' has been added to the glossary.
<p>The definition of 'marketing' should be altered to:</p> <ul style="list-style-type: none"> <li>include paid, owned and earned marketing</li> <li>remove the word "commercial", to ensure that the definition captures earned marketing</li> <li>expand "communication or message" to ensure that the definition captures</li> </ul>	<p>Many of the suggestions for changes or additions to the definition are already implicitly included in the definition, as they provide examples of different forms of commercial communications or messages that act to advertise or otherwise promote a product, its related brand or a service, and are designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of particular products and services. A box (Box 1) that</p>

Summary of comments received	Response
<p>corporate social responsibility activity, sponsorship, partnerships, merchandising, brand ambassadors, social media influencer activity, and any promotional activity by celebrities, influencers, athletes etc.</p> <ul style="list-style-type: none"> <li>• recognize marketing beyond advertising (e.g. packaging, product placement, partnerships, sponsorship of scientific articles, corporate social responsibility activity, merchandising, influencer activity)</li> <li>• mention that marketing can occur via any medium, including point of sale, social media, promotions, and endorsements</li> <li>• specify that it includes direct and indirect marketing</li> <li>• specify that it includes all marketing to which children are exposed</li> <li>• include promotion of not only products and services but also brands, parent companies and industries</li> </ul>	<p>provides further explanation of the broad interpretation of “marketing” has been added to the final guideline’s introduction (chapter 1).</p>
<p>The definition of “exposure” should be altered to:</p> <ul style="list-style-type: none"> <li>• read “communication channels, venues, tools, times and settings” rather than “communication channels, times and settings” to account for all forms of marketing</li> <li>• read “see or experience marketing” rather than “see marketing” to account for all forms of marketing</li> <li>• read “a particular message or marketing action” rather than “a particular message” to account for all forms of marketing</li> </ul>	<p>The definition of “exposure” in the glossary has been updated, based on the WHO 2012 <i>A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children</i>. It refers to any “communication, message or action” and people who are “exposed” to a communication message or action to account for all form of marketing.</p>
<p>The definition of “power” should be altered to:</p> <ul style="list-style-type: none"> <li>• read “content and performance of the marketing action” rather than “content of the message”</li> <li>• read “creative and placement strategies used” rather than “creative strategies used”</li> <li>• include “these strategies encompass content and placement in settings and contexts likely to be relevant or appealing to young audiences”</li> </ul>	<p>The definition of “power” in the glossary has been updated, based on the WHO 2012 <i>A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children</i>.</p>

Summary of comments received	Response
<ul style="list-style-type: none"> <li>include further examples of strategies (e.g. graphics and visual design, such as cartoons and brand equity characters; appeals attractive to both child and general audiences such as health, humour, fun, social success, and fantasy; use of childhood or school contexts; celebrity and influencer promotions; competitions, entertainment events, and other mediated and non-mediated events and venues where children are in the audience; and any form of digital interaction or targeting from digital data collection)</li> </ul>	
The glossary should include a definition of 'additives' (e.g. caloric and non-caloric sweeteners).	As the term 'additives' is not used in the guideline, a definition has not been added to the glossary.
The definition of "policies" should be altered to exclude voluntary measures, as these are a tactic used to undermine regulatory measures (as acknowledged by the guideline) and as these leave implementation to the private sector rather than government.	<p>As the WHO <i>Set of recommendations on the marketing of foods and non-alcoholic beverages to children</i> proposed that policies could be implemented through a variety of approaches, including statutory regulation, industry-led self-regulation and co-regulatory mechanisms, the definition of policies determined by the NUGAG Subgroup on Policy Actions for use in the second key question – and therefore used in the glossary – included both mandatory and voluntary measures to ensure that the effects of all policy approaches were considered.</p> <p>As part of the systematic review, subgroup analyses were conducted to further explore which policy design elements – including whether policies are mandatory or voluntary – may be more likely to be effective.</p>
Executive summary	
The first paragraph of the executive summary focuses on childhood obesity. As food marketing influences children's eating habits and preferences, the paragraph should focus on the importance of promoting healthy eating among children, regardless of their weight, as is done in the introduction.	The executive summary has been edited and consequently now focuses on the impact of food marketing on food choices.
The executive summary states the number of countries with mandatory policies. As sources vary on the number of marketing policies enacted worldwide, it would be helpful to clarify what is considered a mandatory policy.	The source used for the number in this guideline is the WHO Global database on the Implementation of Nutrition Action (GINA) and the WHO Noncommunicable Disease Document Repository. The assessment of whether a policy is mandatory is based on the document content and type.

Summary of comments received	Response
	A mandatory policy is one that is government led and stated as being mandatory to implement.
A footnote in the methods section states that “Policy implementation was compared with either not implementing a policy or implementing a “weaker” policy”. It is not clear what a “weaker” policy means.	In response to feedback that the executive summary would benefit from being shorter, the executive summary was shortened, which included deletion of the mentioned footnote. An explanation of the comparators used in the systematic review of the effectiveness of policies to restrict marketing to which children are exposed is provided in chapter 3.
Introduction	
The comparisons of overweight between children aged under 5 years and those aged 5–19 years could be strengthened by using percentages as well as absolute numbers, particularly given the statement that the “numbers escalate by an order of magnitude”, which could simply be indicative of a greater number of children aged 5–19 years.	Given other comments indicating a preference for a shorter guideline, the percentages have not been added and the statement that the “numbers escalate by an order of magnitude” has instead been removed.
Early in the guideline, examples of marketing and marketing strategies should be provided (e.g. brand advertising, sponsorship, packaging, marketing on social media, mascots, toys, cross-promotion, advertising in schools).	A box (Box 1) that provides further clarification on how ‘marketing’ should be interpreted, and which includes examples of marketing, has been added to the introduction (chapter 1).
Summary of evidence	
The guideline should include a more comprehensive and detailed analysis of why voluntary policies are ineffective, also to make the recommendation for mandatory policies clearer and minimize misinterpretation and to provide Member States with evidence to build their case for policy implementation.	The focus of this guideline is on effective policy measures. A detailed analysis of why voluntary policies are ineffective goes beyond the scope of this guideline.
Dairy products should not be related to foods that contribute to unhealthy diets, as is done in the summary of evidence of the narrative review.	<p>The summary of the narrative review in chapter 3 includes ‘dairy products’ in a list of the most frequently marketed foods and does not imply that all of these foods are less healthy. ‘Dairy products’ is used to reflect the terms used in the primary studies included in the narrative review. While some primary studies included further information on the foods included in this category (e.g. specifying that dairy products included yoghurts, sour milk, cream and other similar foods, or separating dairy products into ‘core’ and ‘non-core’), others did not.</p> <p>To clarify that the categories of most frequently marketed foods were as defined by the authors of the primary</p>

Summary of comments received	Response
	studies included in the narrative review, “(as defined by the study authors)” has been added to the text.
Implementation considerations	
The guideline could include more robust guidance to countries on how to develop a monitoring and enforcement system to improve the effectiveness of policies.	The final guideline’s implementation considerations (chapter 5) note steps involved in the policy cycle, including establishment of a monitoring and enforcement system. Further information is provided in the 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i> .
The guideline should include challenges of cross-border marketing.	<p>The implementation considerations (chapter 5) make reference to addressing cross-border marketing. In the implementation considerations, reference has also been added to the WHO <i>Set of recommendations on the marketing of foods and non-alcoholic beverages to children</i>.</p> <p>Further information is also provided in the 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i>.</p>
The guideline should not undermine the capacity of states to address different marketing practices – marketing originating from outside a national jurisdiction will always have aspects that could be regulated by national jurisdictions.	The wording in the implementation considerations (chapter 5) has been revised to make clear that provisions for cross-border marketing can be made.
The guideline should include actions to avoid and prevent corporate capture and interference in the policy-making process	The final guideline’s implementation considerations (chapter 5) note steps involved in the policy cycle, including adoption of clear, transparent and robust conflict of interest guidelines and mechanisms. Further information is provided in the 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i> .
To support Member States to implement the guideline, it would be useful to develop additional resources that have examples of current best-practice policies and practices which Member States can draw on in implementing the recommendations.	<p>Several resources are provided in Box 3 in the final guideline that include examples of current best-practice policies.</p> <p>Examples are also included in the 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i>.</p>

Summary of comments received	Response
<b>Research gaps</b>	
Most of the evidence is from high-income countries. More evidence should be added from low- and middle-income countries in order to make the guidelines more inclusive and applicable.	No restrictions were placed on country in the searches for the systematic reviews or review of contextual factors. WHO recognizes that the evidence included was often predominantly from high-income countries (as mentioned in chapter 3) and that high-quality studies from low- and middle-income countries would enhance the representativeness of the evidence underlying the guideline and provide additional information on contextual factors that may affect the implementation of policies (as mentioned in chapter 6). Nevertheless, the NUGAG Subgroup on Policy Actions noted that it is unlikely that the effects of policies would be substantially different in low- and middle-income countries (as mentioned in Annex 6 of the draft guideline; now added to follow the recommendation).
Future studies should not only assess objective exposure to food marketing, but also perceptions around what and how many adverts children are exposed to. Perceptions of the food environment have been found to better predict dietary intake compared to objective measures, hence exploring perceptions of food marketing exposure as well as 'true' exposure to food marketing is important.	Given studies currently use a range of methods to assess children's exposure to food marketing (including both objective and self-reported measures), and the varying suitability of different methods for answering different research questions, the 'Research gaps' do not specify that particular methods should be used when assessing children's exposure to food marketing.
The guideline mentions that more high-quality studies are needed to measure the impact of restrictions in food marketing on dietary intake. It should be made clear that future studies should assess dietary intake throughout the day, rather than an acute measure of diet following exposure to food marketing. This will account for compensatory dietary intake and provide a more accurate picture of the impact of restrictions in food marketing on dietary intake.	WHO agrees that the impact of food marketing on habitual dietary intake is an important area for further research, as indicated in chapter 6 in the statement "...most studies on the impact of food marketing on dietary intake focused on the impact of acute exposure to marketing on acute dietary intake; studies that consider the sustained effects of food marketing on dietary intake would also be valuable".
There is a need for research assessing differential effects of food marketing appeals based on the age of the child and based on the type of exposure channel. Currently, the sample questions focus on comparisons only against the absence of marketing; examining interactions between appeal, exposure type, and child age are important to identify the	The references to comparison with no marketing have been removed.

Summary of comments received	Response
marketing strategies that are most powerful depending on age group.	
The guideline should encourage more research on brand marketing, including research comparing brand marketing and product marketing and research to understand brand spillover and health halo effects (e.g. marketing for a healthier version of a product within a brand family might create both a brand spillover and health halo effect for a less healthy product within the same family).	WHO agrees that brand marketing is an important area for further research, as indicated in chapter 6. A mention of the need for research to understand brand spillover and health halo effects has been added to chapter 6.
Studies monitoring the potential migration of food marketing to other marketing channels are needed. Broad monitoring of marketing pre-implementation can support this goal and facilitate the detection of shifts in marketing practices after the implementation of marketing restrictions in different countries. Comparisons can also be made through additional natural experiments comparing countries in similar markets where restrictions are implemented versus neighbouring countries without such restrictions.	WHO agrees that marketing migration is an important area for further research, as indicated in chapter 6. Chapter 5 notes the importance of monitoring and evaluation, while chapter 6 also notes that comparative studies that include multiple countries would be beneficial.
The guideline should acknowledge and encourage future studies to use a longitudinal study design to evaluate the effectiveness of food marketing policies and allow a better understanding of the impact of these policies on critical and important outcomes in the long-term.	Chapter 6 acknowledges that research – including long-term studies – on the impact of food marketing and effective of policies on more distal outcomes would be valuable, while also acknowledging the methodological challenges to such research.
Further studies into inequities of food marketing are critical. There has been some evidence of food marketing disproportionately impacting children of lower SES or of racialized backgrounds. It will also be important to examine how other factors associated with food marketing (e.g. price) impact equity.	WHO agrees that disaggregation of data by SES, sex, gender and rurality is important in further research, as indicated in chapter 6. The summary of the review of contextual factors, in chapter 3, also notes that research in HICs shows that children of lower SES are more exposed to food marketing than children of higher SES. A separate guideline on fiscal policies to promote healthy diets is currently under development, which, like this guideline, considers the potential impact of policies on equity.
The statement about the need for disaggregated data, while a correct assessment of a need from a research perspective, is not necessary for this intervention, especially when there is comparable evidence from low- and middle-income countries, by SES, gender and	The NUGAG Subgroup on Policy Actions agreed that policies to protect children from the harmful impact of food marketing probably increase health equity due to children of lower SES's higher exposure to food marketing and the likely effects of low agency public health interventions on health equity (see Annex 6 in the draft guideline; now added to follow the recommendation).

Summary of comments received	Response
geographical location for tobacco and other health harming products.	Disaggregated data would, however, be useful when updating this guideline – and for evidence-informed advocacy for policies – by strengthening the available evidence specific to policies to protect children from the harmful impact of food marketing. Such disaggregation is therefore highlighted as a consideration for the design of future evaluations in chapter 6.
Further research to understand the extent of any relationship between marketing restrictions and obesity and other health-related outcomes is needed, given there is only very low certainty evidence of the effect of policies to restrict food marketing. This research will need to consider the challenges of disentangling advertising exposure from the many factors that contribute to poor health outcomes.	<p>The evidence on the impact of food marketing on dietary intake is clear. As summarized in chapter 3, the systematic review on the impact of food marketing on children found moderate certainty evidence from randomized controlled trials that food marketing is associated with increases in dietary intake.</p> <p>Chapter 6 acknowledges the value of – but also the substantial methodological challenges to – research on the effect of policies to restrict food marketing to children on more distal outcomes. Research on the effect of policies on more proximal outcomes therefore remains valuable, as, following the cascade of effects of food marketing shown in figure 1 of the guideline, policies to restrict food marketing to children that successfully restrict children’s exposure to food marketing are likely to ultimately influence children’s weight status and likelihood of developing diet-related NCDs.</p>
Evidence on the cost-effectiveness of regulation remains to be seen.	<p>The review of contextual factors, summarized in chapter 3 of the guideline, identified a number of modelling studies on the cost-effectiveness of policies to protect children from the harmful impact of food marketing, all of which found that policies would be cost-effective over the long term (generally after 50 years). These included studies modelling a regulatory approach.</p> <p>The recently published Draft updated Appendix 3 to the Global Action Plan for the Prevention and Control of Non-communicable Diseases 2013–2030 (<a href="https://apps.who.int/gb/ebwha/pdf_files/EB152/B152_6-en.pdf">https://apps.who.int/gb/ebwha/pdf_files/EB152/B152_6-en.pdf</a>) further showed that policies to protect children from the harmful impact of food marketing are interventions with an average cost-effectiveness ratio of ≤Int\$ 100 per healthy life year gained in low- and lower-middle-income countries. This information is not included in the guideline’s evidence to decision table as it was not yet available at the time the guideline development met to formulate the guideline’s recommendation.</p>

Summary of comments received	Response
The impact that regulation has on children's diets (including nutritional adequacy) needs to be assessed.	WHO agrees that the impact of food marketing on habitual dietary intake is an important area for further research, as indicated in chapter 6. With regard to nutritional adequacy, the focus of this guideline is on restricting marketing of foods that contain high levels of saturated fat, <i>trans</i> -fatty acids, free sugars and/or salt. Such foods often have low levels of essential nutrients and displace other more nutritious foods. Excessive intakes of saturated fat, <i>trans</i> -fatty acids, free sugars and/or salt are also associated with weight gain and/or noncommunicable diseases.
Annexes	
Annex 7 cites key characteristics of evaluated policies, which include references to outdated initiatives. Adding a column providing references for the studies would put these historical references in context.	Annex 7 in the draft guideline (Annex 9 in the final guideline) is based on the supporting information published as part of the systematic review of policies to restrict food marketing to which children are exposed. The following sentence has been added to Annex 9 in the final guideline to precede the table: "The following table provides the key characteristics of the policies evaluated by studies included in the systematic review of effects of policies to restrict food marketing to which children are exposed. Some of these policies and/or their characteristics may no longer be current."

### Structure, length and clarity

Summary of comments received	Response
The guideline would benefit from being shorter, more concise, and less repetitive and from more clearly presenting its main recommendations. This would allow Member States to easily find the recommendations, mean that important information is not lost within the guideline, and ensure that information within the guideline is not taken out of context.	The guideline has been edited with the aim of being shorter, more concise, and less repetitive while still retaining all critical information.
The executive summary would benefit from being shorter.	The executive summary has been edited with the aim of being shorter while still retaining all critical information.
The guideline would benefit from using simplified, rather than academic, language in order to be more accessible to stakeholders.	While remaining in line with requirements for the structure and content of WHO guidelines, simplified language has been used where possible. Additional derivative products will be developed with simplified language, including the 2023 WHO/UNICEF publication <i>Taking action to protect children from the harmful impact of food marketing: a child rights-based approach</i> .

<p>A summary table could be included that highlights the number of studies conducted in HICs or LMICs, the age groups studied, the study design, sample size, marketing techniques, duration of exposure, and desired outcomes.</p>	<p>More detailed information about the studies included in the narrative and systematic reviews can be found in the published reviews. References for the published reviews are included in the guideline.</p>
<p>Given “channels” often have connotations with television channels, “marketing channels” could be replaced with “marketing mediums”.</p>	<p>For clarity, “marketing channels” has been replaced with “marketing mediums” throughout the guideline.</p>

**COMMENTS  
SUBMITTED**

## Government agencies

- Agastya Bharadwaj, Australian Government Department of Health and Aged Care, Australia
- Carolina El Debs, Permanent Mission of Brazil to the UNOG and other Organizations in Geneva, Brazil
- Liv Ellin Torheim, Norwegian Institute of Public Health, Norway

Submitted by:

Agastya Bharadwaj, Australian Government Department of Health and Aged Care, Australia

## Consultation on the WHO Guideline: Policies to protect children from the harmful impact of food marketing - Comments from Australia

Australia welcomes the opportunity to provide a submission to the consultation on the WHO Guideline: Policies to protect children from the harmful impact of food marketing. Our comments on the draft guideline are outlined below.

### General comments:

The Guideline recommendations strongly aligns with aims and targets of Australia's National Preventive Health Strategy 2021-2030, which includes the policy achievement *"Children's exposure to unhealthy food and drink marketing, branding and sponsorships is further restricted across all forms of media, including through digital media"*

In Australia the regulatory structures in place currently allow for voluntary codes of practice for advertising and marketing communications, which are not government regulated.

Australia recognises that the Guideline is an enduring document and therefore examples of current policies are not appropriate in this document. However, to support Member States to implement the Guideline it would be useful to develop additional resources that have examples of current best-practice policies and practices which member states can draw on in implementing the recommendations in the Guideline.

We recommend that due consideration should be given to the development of other related guidelines that involve or impact on marketing to parents/caregivers, such as the proposed work on digital marketing of breastmilk substitutes.

### Introduction (Section 1)

Considering that definitions of a child including age ranges vary across Member States, we suggest that Guideline clearly defines the target age group for this specific document.

We suggest removing references to 'media channels' and replace with 'mediums/marketing mediums' throughout the Guideline. Considering that channels often have connotations with television channels.

The comparisons of overweight children globally between children aged under 5 years and those 5-19 years on page 19 could be strengthened by using percentages as well as absolute numbers. The claim that the "numbers escalate by an order of magnitude" is difficult to validate by simply comparing 38.3 million under 5 years to 337 million children aged 5-19 years without knowing the rates of overweight amongst these age cohorts (as the increase could just be indicative of the greater number of children aged 5-19).

Objective 1: We recognise that the Guideline is not intended to be an implementation manual however, this may not be clear from this objective. We suggest the re-wording of this objective by providing evidence-based recommendations on measures that can be considered for implementation.

Objective 4: Suggest reframing this objective to “Contributing to the development of healthy dietary practices among children” since this objective infers a direct relationship with development of healthy dietary practices and food marketing. This doesn’t reflect the level of evidence discussed in the Guideline, or the complexity of factors that contribute to dietary practices.

#### How this Guideline was Developed (Section 2)

It would benefit member states greatly to have access to the unpublished report that informed the Guideline, “Food marketing to children and restrictive policies: a rapid scoping review of the evidence”, or a reference list. This would aid the development of country specific policies to protect children from the impact of food marketing.

#### Summary of Evidence (Section 3)

This section introduces the concept of unintended consequences and summarises the evidence on the impacts of food marketing policies on unintended consequences, however there is no description of what is included in unintended consequences here or later in the document. This makes it difficult to understand the implications for Member States in implementing policies, and which unintended consequences may be possible, or have occurred in other country contexts.

#### Good Practice Statement and Recommendations (Section 4)

Australia appreciates that the draft guideline takes into account the fact that any recommendations made in the guideline may require adaptation to the local context of WHO regions and Member States.

We do note that this document is likely to be used by Member States to support the adoption of policies to restrict the marketing of unhealthy foods to children, and one of the strongest barriers to adopting these policies will be opposition from the food industry. Given this, the recommendations may need to be re-framed, as the current wording “conditional recommendation, very low certainty evidence” provides the food industry with a ready-made argument to discredit any potential policies and promote uncertainty and indecision by governments.

A nuance to re-frame the messaging and maintain the credibility of the information could be to include the considerations of the recommendation being conditional and a statement on the quality of the evidence in the remarks. Further highlighting the reasons for why the evidence is very low certainty, i.e. primarily observational studies, small effect sizes, heterogeneity in methods etc., could also add useful context to the section, particularly given there is moderate certainty evidence from RCTs on the effect of exposure to food marketing on food choice, product requests and dietary intake.

Alternatively, acknowledging the greater level of evidence behind the effect of food marketing on the critical outcomes of the documents than the impact of policies to protect children from the impact of food marketing, a recommendation around the need for countries to support further research into effective policies to protect children from the impact of food marketing could be worth considering.

Australia supports the recommendation of using a nutrient profile model for policies along with consideration of broad marketing channels being covered (particularly noting the increase in contemporary marketing practices such as digital marketing for many products).

#### Additional Comments on the Guideline

Annex 7 cites key characteristics of policies previously studied to evaluate the effectiveness of restricting food marketing to children, which includes references to out-dated initiatives, including:

The Australian Food and Grocery Council's Responsible Marketing to Children Initiative and the Quick Service Restaurant Industry Initiative which have been replaced with the Australian Association of National Advertisers (AANA) Food and Beverages Advertising Code, that commenced in 2021.

The Australian Children's Television Standards were replaced by the *Broadcasting Services (Australian Content and Children's Television) Standards 2020* (ACCTS), that commenced in 2021.

The ACCTS defines children as people younger than 15 years of age.

The ACCTS, like the previous standards, prohibits advertising during preschool (P) classified programs on commercial tv.

Adding a column to the table in Annex 7 providing sources/references for the evaluation studies would put these historical references in context, as well as providing a valuable source of information for readers.

Consideration should be given to the development of other related guidelines that involve or impact on marketing to parents/caregivers, such as the proposed work on digital marketing of breastmilk substitutes.

Submitted by:

Carolina El Debs, Permanent Mission of Brazil to the UNOG and other organizations in Geneva, Brazil

#### DRAFT WHO GUIDELINE ON POLICIES TO PROTECT CHILDREN FROM THE HARMFUL IMPACT OF FOOD MARKETING-COMMENTS FROM THE BRAZILIAN GOVERNMENT

The Brazilian government has the following comments on the draft WHO guideline on policies to protect children from the harmful impact of food marketing:

The current text states that the policies for restriction and marketing of food have limited results. Brazil believes that the document should include information on the criteria adopted in this analysis.

The document also proposes to include scientific evidence that demonstrates the impact of positive marketing (food and nutrition education actions) and its effects on the formation and change of children's eating habits, which will serve as reference for the implementation of public policies in this area.

The guideline also suggests the inclusion of a third recommendation aiming at the implementation of food and nutrition educational practices regarding healthy food in public policies for children. Studies undertaken in countries like Brazil, Finland, Japan and Australia showed an association between nutritional knowledge and food best practices, which highlights the importance of education on food and nutrition as a strategy for the health promotion.

Finally, Brazil reiterates that access to adequate and healthy food is essential to promote all the dimensions of health and well-being of individuals and helps protect against malnutrition in all its forms.

Submitted by:

Liv Ellin Torheim, Norwegian Institute of Public Health, Norway

Survey response	
Overall clarity of the guideline	<p>The Norwegian Institute of Public Health (NIPH) welcomes the opportunity to contribute to this online public consultation by the WHO on the “draft guideline on policies to protect children from the harmful impact of food marketing”. WHO invites to comment on specific questions, of which we have addressed some in addition to providing some general comments. - We are impressed with the thorough work that has been put into the development of the guideline and find overall that the guideline is clear and well presented. - However, we have some concerns regarding how the guideline might be perceived by the various stakeholders. Guidelines need to be easy to access and use for the target groups, which in this case are policy makers, food industry and commercial operators, civil society organisations etc. The document is as we see it written in an academic language which might not be very accessible for the relevant stakeholders. We think it is important to use a simplified language and give the final publication an inspiring design. Furthermore, the various end users (policy makers, the food industry, civil society etc) are often not familiar with the GRADE system and might give less emphasis to the recommendations where the evidence is of “very low certainty”. It would therefore be good to give some more explanation on why the evidence has been graded low certainty. It is important to clarify and explain better that the recommendations are strong even if the evidence is weak. - We also miss a more thorough explanation on how GRADE was used to translate the evidence into recommendations, e.g would only findings based on RCTs provide “convincing evidence”? Also, we miss a discussion of potential weakness with using this methodology.</p>
Considerations and implications for adaptation and implementation of the guideline	<p>- As mentioned above, we are concerned that the lack of explanation of how to interpret that the evidence is of “very low certainty” might hamper a broad adaptation and implementation of the guideline. - We support that the Convention on the Rights of the Child is emphasised in the guideline and encourage an even broader use of human rights since it gives a strong impetus for the implementation of the recommendations at country level. • Comments to Recommendation 1 WHO suggests implementation of policies to restrict food marketing to which children are exposed. - We suggest changing «suggests implementation» to «recommend implementation» to strengthen the recommendation. - We also suggest explaining in a footnote under the recommendation what it implies that the evidence is weak – mainly due to inadequate research. • Comments to Recommendation 2 The</p>

	<p>document has used the phrasing «protect children of all ages, including those older than 12 years». - We suggest replacing with the following: «protect children of all ages, 0-19 years».</p> <ul style="list-style-type: none"> <li>• <b>Mandatory vs voluntary policies</b> There is considerable evidence for stating that mandatory regulations are more effective than voluntary regulations: this was a finding in the systematic review and is also reflected in the document. In policy implementation (industry-led) voluntary regulation (guidelines, codes of conduct) was also found to potentially have detrimental effects. However, the remark to Recommendation 2, page 15, only mentions the potential undesirable effect of voluntary measures and fails to point out that mandatory measures are more effective (it says: “Regarding policy design elements, evidence indicates that voluntary measures are more likely to show undesirable effects than desirable effects for exposure to, and power of, marketing (32).”) That mandatory measures have been found to be more likely to show desirable effective compared with voluntary measures, should be mentioned as an additional important argument for mandatory measures. A difficulty here is that the definition of policies, as given in note 6 in the document, also includes voluntary measures. We suggest that the document in general make a clear distinction between the two options of actions (mandatory vs voluntary regulation), and that the recommendation (nr. 1) should recommend Member states to implement mandatory and legally binding regulations.</li> <li>• <b>User involvement</b> In line with a human rights-based approach, the involvement of children and youths should be emphasised in the guideline.</li> <li>• <b>Evaluation</b> The guideline and its implementation should be followed up with a binding evaluation scheme which outlines procedures to facilitate evaluation at country level</li> </ul>
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## United Nations agencies

- UNICEF (Headquarters and country office: Mexico)

Submitted by:

UNICEF (Headquarters and country office: Mexico)

UNICEF- Headquarters

Jo Jewell

UNICEF welcomes WHO's continued work on the marketing of foods to children. The need to protect children from the harmful impact of food marketing has long been recognized as a priority by our two organizations, and is critical to enable children to develop healthy food values and preferences.

The draft guideline is urgently needed as, to date, no country has implemented a comprehensive policy, despite evolving evidence on the harmful impact that food marketing can have on children of all ages, including those aged over 12 years, and despite the lack of evidence that stepwise approaches are effective in reducing exposure to and the power of food marketing. With this guideline there is an opportunity to build on the WHO Set of Recommendations from 2010 and use the growing body of evidence to provide policy-makers with stronger, clearer guidance.

Our response to this consultation focuses on ensuring that the good practice statements and recommendations align with the CRC and also align with and add value to previous statements and recommendations by the organization, including those endorsed by the World Health Assembly.

#### General remarks

UNICEF considers that a policy response that provides protection for all children from the harmful impact of food marketing, in line with Articles 1 and 3 of the Convention on the Rights of the Child (CRC), will be most effective. This means that the policy should be (1) as comprehensive as possible, covering all forms of marketing; (2) aim to reduce both the exposure of children to marketing and the power of that marketing; and (3) cover all children aged under 18 years.

As previously noted in the WHO Set of Recommendations, and consistent with the CRC, governments are in the best position to set direction and overall strategy to achieve population-wide public health goals, and should therefore set the scope of a country's marketing restriction. Indeed, governments are the primary duty-bearers for the fulfillment of child rights and hold primary responsibility for the promotion of healthier food environments. For example, CRC General Comment 16 confirms that "States must take all necessary, appropriate and reasonable measures to prevent business enterprises

from causing or contributing to abuses of children's rights. Such measures can encompass the passing of law and regulation...".

#### Specific comments

UNICEF is pleased to see that many of these elements are addressed in the draft guidelines and the evidence reviews that underpin it, and we congratulate WHO for the robust approach taken. However, based on the above considerations, UNICEF would like to provide the following feedback on the wording of the good practice statement and draft Recommendations:

Rather than use the passive voice, the good practice statement could use the active voice to specify that governments are the actors protecting children. It should also be clear that "all children" are to be protected, based on evidence and child rights obligations that support restricting marketing to all children under 18 years. The good practice statement could also clarify that children will be protected from harmful impact of food marketing, "...through comprehensive, mandatory policies that address both the exposure of children to marketing and the power of that marketing."

It is regrettable that WHO is proposing to use the wording "WHO suggests" rather than "WHO recommends" for both Recommendations 1 and 2. Considering that WHO already issued "recommendations" in 2010, the use of "suggests" risks being interpreted by external audiences (including governments, but also food and beverage sector who resist effective marketing restrictions) as a downgrading of the strength of WHO's position on the issue. Combined with the fact that both are caveated with the sub-script "conditional, very low certainty evidence", it is difficult to see how the wording of this recommendation will not undermine both WHO's and UNICEF's work in this space. This wording could be seen as contradictory to the substantial amount of evidence that exists and the fact that there are desirable effects of these policies, with little undesirable effects, they are cost-effective, help fulfill human rights and are feasible. The current wording risks undermining our joint calls for *effective* marketing restrictions.

It could be more clearly stated under Recommendation 1, for example, that while the evidence from the review on the effects of policies was rated as very low certainty of evidence, this combined studies on mandatory and voluntary (industry) policies. The findings for mandatory policies, separate to voluntary policies, clearly show that mandatory policy evaluations have found an effect favouring the intervention, while voluntary policies mostly favour the control. This is as we would expect and reflects what has been shown in previous reviews - that voluntary (industry) policies simply don't work. The "very low certainty evidence" arises because of inconsistency, which derives from the combination of mandatory and voluntary policy evaluations. The evidence for mandatory policies is strong and in not as low certainty as we see for the combined evidence. WHO could improve communication around this, while at the same time strengthening the case for mandatory policies.

To improve clarity, the opening line of Recommendation 2 should be more explicit that policies be government led. "WHO [*recommends*] that policies are government led and..." As noted in the WHO Set

of Recommendations, governments are in the best position to set direction and overall strategy to achieve population-wide public health goals, and should therefore set the scope of a country's marketing restriction.

Recommendation 2 would also be stronger and more impactful if it explicitly stated that policies should cover all children under 18 years, to align with the evidence and the CRC. Evidence is consistent that adolescents engage with food marketing longer on social media, and like, share, recall, and recognize it more than advertisements for healthier food options or non-food items. Adolescents are strongly influenced by peers; and despite having more developed cognitive abilities than younger children, they possess neurological, hormonal and social developmental factors that can make them particularly susceptible to food marketing. Studies looking at digital marketing find that it influences the dietary choices of both younger and older children, irrespective of their cognitive abilities, relying on their impulsivity, and their attentional bias.

Recommendation 2 should also expand on the fact that nutrient profile models to classify foods should be government-endorsed and aligned with international and/or national dietary guidelines and expectations of the nutritional quality of foods, including the WHO nutrient profile models. It is important that policies are not based on nutrient profile models developed by actors with a conflict of interest.

Finally, Recommendation 2 should say explicitly that policies should cover all forms of marketing communication, consistent with WHO's definition from the WHO Set of Recommendations.

UNICEF- Country office (Mexico)

Survey response	
Family/last name	ESPINOSA
Given/first name	FIORELLA
Considerations and implications for adaptation and implementation of the guideline	For UNICEF, it is essential that this Guidelines protect adolescents from the harmful impact of food marketing, as they are equally or more affected than children under 12 years. We also suggest recommending the use of a nutrient profile aligned with WHO recommendations, as many countries have faced the use of food industry profiles, letting many ultraprocessed food being advertised. The Guideline should give countries the examples of what a broad policy should be as well as techniques. See examples: Broad enough should mean all marketing channels, including, but not limited to: television, radio, press (including outdoor advertising); schools, children's recreation centers, packaging, point of sale and digital media (social networks, app, web pages) to minimize the risk of migration of marketing to other channels, to other spaces within the same channel or to other age groups;" These techniques include but not limited to: graphics and visual

	design, such as cartoons and brand equity characters; humour, fun and fantasy; free samples, sponsorship of charity, entertainment and sporting events, attractive packaging, presence in schools, parks and recreational children's spaces, celebrities and influencers, gifts, discounts, contests, product placement, promoters in supermarkets, brand marketing, interactive elements, such as games visuals or digital downloads.
Errors of fact or missing data	We suggest adding in "Considerations for the design of future evaluations", that the evidence on the impact of regulations may also could be affected by the breadth of this one.
General comments	Recommendations should be strong enough to support advocate in all countries and may consider more details left in the remarks.

## Nongovernmental and consumer organizations and associations

- Estefania Marti Malvido, Access to Nutrition Initiative, The Netherlands
- Paula Johns, ACT Promoção da Saúde, Brazil
- Adefunke Ajenikoko, American Heart Association, United States of America
- Neena Prasad, Bloomberg Philanthropies, United States of America
- Clare Hughes, Cancer Council Australia, Australia
- Julián Gutiérrez Martínez, Center for the Studies on Law, Justice and Society, Dejusticia, Colombia
- Bill Jeffery, Centre for Health Science and Law, Canada
- Marie-Jeanne Rossier-Bisaillon, Coalition québécoise sur la problématique du poids, Canada
- Julissa Chavira Garcia, Contrapeso, Mexico
- Marisa Macari, El Poder del Consumidor, Mexico
- Samuele Tonello, EuroHealthNet, Belgium
- Manuel Moñino, European Federation of the Associations of Dietitians, The Netherlands
- Nikolai Pushkarev, European Public Health Alliance, Belgium
- Maria Elisabet Pizarro, Fundación Interamericana del Corazón Argentina [Interamerican Heart Foundation- Argentina], Argentina
- Sumesh Maharaj, Global Food Consumers' Forum, New Zealand
- Elizabeth Orlan, Global Health Advocacy Incubator, United States of America
- Kathryn Reilly, Irish Heart Foundation, Ireland
- Liz Arnanz, NCD Alliance, Switzerland
- Katarnya Hickey, Obesity Policy Coalition, Australia
- Yoanna Nedelcheva, The European Association for the Study of the Liver, Switzerland
- Rosanna Pike, The Heart Foundation of Jamaica, Jamaica
- Alexey Kotov, Vital Strategies, United States of America
- Tim Lobstein, World Obesity Federation, United Kingdom
- Angela Carriedo, World Public Health Nutrition Association, United Kingdom

Submitted by:

Estefania Marti Malvido, Access to Nutrition Initiative, The Netherlands

## Online public consultation on draft guideline on policies to protect children from the harmful impact of food marketing

July 2022

The Access to Nutrition Initiative (ATNI) is pleased to see the World Health Organization (WHO) draft guideline on policies to protect children from the harmful impact of food marketing.

### About ATNI

ATNI is an independent non-profit organization monitoring and assessing private sector contributions to addressing all forms of malnutrition. Specifically, ATNI aims to encourage food and beverage (F&B) companies to improve the nutritional quality of their products, substantially increase sales of healthier products, and change the ways in which they shape food environments (e.g., through responsible marketing). ATNI does not accept funding from companies it assesses nor from the wider F&B industry.

ATNI believes the WHO recommendations, emphasizing the need for mandatory regulatory measures, are valid and timely to help create a level playing field for the private sector globally and nationally, and drive faster change in responsible marketing practices. ATNI has witnessed in four Global Index iterations (2013, 2016, 2018, 2021) over a 10-year period that progress on this subject has been marginal, although some companies have shown that progress is possible. The same has been observed by ATNI's country-specific Indexes, India Index (2016, 2020) and US Index (2018, 2022), as well as UK Retailers Index 2022.

Through its Indexes, ATNI has witnessed some but limited progress on Responsible Marketing to Children policies and practices of companies. On a scale from 0 to 10, we saw companies still scoring significantly below an acceptable threshold. For example, the average score on this topic in the Global Index 2021 was 3.5 out of 10 for the 25 companies assessed, with 10 representing the best possible practice on this topic (according to guidance by WHO, the International Chamber of Commerce (ICC) Framework for Responsible Food and Beverage Marketing Communications and industry best practices). Higher scores by some leading companies on this topic indicates that they have strong policies and commitments to responsible marketing to the general population and children.

Since 2013, more companies have adopted a global responsible marketing policy covering children. But many companies do not go beyond the guidance of industry associations like the International Food and Beverage Alliance (IFBA), EU Pledge, or Children's Food and Beverage Advertising Initiative (CFBAI) in the U.S. Until recently, these associations used a threshold for their marketing policies to apply to children

under 12 and have moved up one year to 13. These commitments include restrictions to only advertise products to children under the age of 13 years that meet common nutrition criteria. A notable example is Unilever, which recently announced it will increase this threshold to 16 years as of 2023. However, these developments are too incremental to protect children including teens from the impact of unhealthy food marketing.

While most companies ATNI assesses commit either not to market in primary schools (or only market 'healthy' products according to their own definitions), few companies have expanded their policies to include secondary schools or other places where children typically gather (e.g. near primary schools, childcare facilities, other educational establishments, or family and child clinics). While these developments are noticeable, they are not enough to protect children from exposure to the marketing of unhealthy foods. Companies must cover all relevant places where children gather or where children could be exposed to unsuitable food marketing, with special attention to the digital food environment.

Most companies in ATNI's Index do not include all relevant media or channels in their policies (many companies exclude point-of-sale communications, company-owned animation characters, and are unclear about their digital marketing activities), and don't conduct annual independent audits of compliance. Therefore, the recommendation to adopt mandatory policies, covering all existing and emerging marketing channels, is an important step to help ensure all companies are held to the same standards.

*ATNI welcomes the proposed guidelines and suggests WHO be more specific by including the following underlined words:*

protect children of all ages, including those older than 12 years and up to 18 years;

*ATNI's experience is that unless the minimum upper age limit is included, companies would have the liberty to define their own upper age limits.*

use an internationally-recognized and, where relevant, government-endorsed nutrient profile model to classify foods to be restricted from marketing;

*ATNI's Indexes show that very diverse criteria and models are being used globally and within markets, contributing to confusion by consumers and other stakeholders on what defines healthier and nutritious products.*

be broad enough to minimize the risk of migration of marketing to other channels (especially in the digital sphere), to other spaces within the same channel or to other age groups;

*This recommendation could be more specific and advise to cover all existing and emerging marketing channels.*

Submitted by:

Paula Johns, ACT Promoção da Saúde, Brazil

Survey response	
Overall clarity of the guideline	<ul style="list-style-type: none"><li>- Guidelines should recognize marketing beyond advertising, including a broader definition that includes packaging, product placement, partnerships and sponsorship of scientific articles, as well as specifying what is being marketed, where, when, how, and the specific age range. (considering zero to 19 years).</li><li>- The definition of conflict of interest should be more clear and include industry influence/interference. This shall include an improvement of the glossary section with additional concepts and better definitions that bind guidelines from conflict of interest.</li><li>- The information on children under 2 years old and their caregivers should be explicitly stated in the document.</li><li>- Considering the need of transparency, the recommendation section should specify names and affiliations of the authors as well as the Nutrition Guidance Expert Advisory Group.</li></ul>
Considerations and implications for adaptation and implementation of the guideline	<ul style="list-style-type: none"><li>- As the document recognizes voluntary measures as tactics to undermine marketing regulations, policies definition's should be changed in order not to bind voluntary agreements as legitimate avenues to the creation of marketing regulations.</li><li>- The recommendations establish "very low certainty of evidence", despite several reviews with statistically significant findings. This statement runs counter to the stated objective of "supporting evidence-informed advocacy to advance policy action" and is not useful for implementing policy with an evidence-informed approach.</li><li>- Change the expression "restrict the power of food marketing to persuade children" as the industry can easily argue that specific marketing strategies are not intended to convince children.</li><li>- Ensure mechanisms that compel the industry to share information reports on the budget spent on advertising, declarations of advertising channels, as well as sanctions for violating policies; this information should be shared periodically (annually), accurately, and in a transparent and recognized setting.</li></ul>
Context and setting-specific issues that have not yet been captured	<ul style="list-style-type: none"><li>- A general Nutrient Profile Model (NPM) should be recommended, with consistency across NPM categories and adding non-nutritive, non-caloric, and artificial sweeteners.</li><li>- A Human Rights approach and instruments to better explain how absence of compulsory marketing regulations violate a set of rights (health, adequate food, right to children, among others) should be incorporated in the guidelines.</li><li>- Conflict of interests and how to prevent, mitigate and manage the effects of corporate influence in the design or implementation of guidelines should be stated as a set of recommendations.</li></ul>

Errors of fact or missing data	- The evidence should be updated since there are two years lack of references from March 2020. - Should include a more comprehensive analysis of why voluntary or self-regulation agreements coming from industry are not effective from a public health perspective.
General comments	- As a relevant general consideration and conclusion of the guideline, it should state clearly highlight the industry as a target audience that can not participate in policy formulation on which they have conflict of interests. - As the evidence available show a clear significant effect of mandatory policies over voluntary policies, this should be highlighted in the document.



## Submission to the call for comments on the Draft WHO Guideline: Policies to protect children from the harmful impact of food marketing

The American Heart Association (AHA) would like to applaud WHO for developing a guideline on policies to protect children from the harmful impact of food marketing. The food and beverage industry spends billions of dollars annually on marketing and advertising of food and beverages to children.<sup>1</sup> Research shows that the marketing and advertising of high-calorie, low nutrient foods and beverages reduces children's diet quality.<sup>2</sup>

Unhealthy food marketing aimed at children and adolescents is a significant contributor to poor diet quality and an increased risk for chronic diseases such as cardiovascular disease, stroke, and type 2 diabetes.<sup>3</sup> Children and adolescents who have cardiovascular disease risk factors, such as high blood pressure, obesity, and diabetes, are more likely to have these risk factors as adults, putting them at higher risk for heart disease and stroke.<sup>4</sup> The Association promotes the consumption of healthy dietary patterns that promote cardiovascular health across all populations and address the challenges that impede adherence to heart-healthy dietary patterns including targeted marketing.<sup>5</sup> The Association sees no ethical, political, scientific, or social justification for marketing and advertising low-nutrient, high calorie foods to children and supports efforts to diminish this practice.

Globally, progress to restrict marketing of unhealthy food products has been slow. The development of guidelines on policies to restrict food marketing will support efforts in countries to improve the food environment and overall health. The Association supports and aligns with the core themes outlined in the draft guideline. We appreciate the opportunity to respond to the draft document and have provided a few comments for your consideration below.

### *1. Strengthen and Elevate Recommendation #2*

The Association supports the recommendation that the draft guideline has put forth to develop effective food marketing restrictions that are mandatory; protect children of all ages; use a nutrient profile model; are broad to minimize risk of migration of marketing to other channels; and restrict the power of food marketing to persuade. Countries need clear, easy to read, evidence-based guidance on how to effectively implement food marketing restrictions. The Association would like to suggest elevating recommendation #2 and removing recommendation #1. Recommendation #2 provides a stronger and clearer policy message that outlines how effective food marketing policies should look and highlighting it as the main policy recommendation will strengthen the overall document.

Recommendation #2 suggests developing restrictions that are “broad to minimize the risk of migration of marketing to other channels and restrict the power of food marketing to persuade.” Brand recognition and loyalty is one of the biggest issues with marketing. Children and adolescents are regularly exposed to advertising and marketing through television, the internet, social media, magazines, schools, product placements, influencers, video games, cell phones, and other means. Along with advertising unhealthy food and beverages, marketing practices also include in-store promotions, product placements, celebrity endorsements, and incentives. These strategies are designed to boost brand recognition, sales, and loyalty, more often for unhealthy, high calorie foods. The Association would like to suggest recommendation #2 specifically call out restricting unhealthy food marketing in all areas and across all platforms where children are exposed including but not limited to: in and around schools and on educational materials; in grocery stores, supermarkets, and restaurants; and on television, the internet, and across social media platforms.

*2. Incorporate a plan for developing a monitoring and enforcement System into the guidelines*

Under implementation considerations, the guideline supports the development of monitoring and enforcement systems to improve the effectiveness of food marketing restriction policies. The evidence of the effectiveness of food marketing policies are limited due to the inadequate development of monitoring and enforcement systems. The Association would like to suggest the guideline include more robust guidance to countries on how to develop a monitoring and enforcement system to improve the effectiveness of food marketing restriction policies.

## Conclusion

The American Heart Association would like to thank you again for the opportunity to comment on the draft guideline on policies to protect children from the harmful impact of food marketing. The development of this guidance is timely as children and adolescents continue to be targeted by unhealthy food marketing. The Association supports the development of the draft guideline to ensure that effective, cohesive food marketing restriction policies are made globally.

1. Harris J, Fleming-Milici F, Kibwana-Jaff A and Phaneuf L. Sugary drink advertising to youth: Continued barrier to public health progress. *Sugary Drink FACTS 2020*. 2020.
2. Smith R, Kelly B, Yeatman H and Boyland E. Food Marketing Influences Children's Attitudes, Preferences and Consumption: A Systematic Critical Review. *Nutrients*. 2019;11:875.
3. World Health Organization. A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children. 2012.
4. Jackson SL, Zhang Z, Wiltz JL, Loustalot F, Ritchey MD, Goodman AB and Yang Q. Hypertension Among Youths — United States, 2001–2016. *MMWR Morb Mortal Wkly Rep*. 2018;67:758-762.
5. Lichtenstein AH, Appel LJ, Vadiveloo M, Hu FB, Kris-Etherton PM, Rebholz CM, Sacks FM, Thorndike AN, Horn LV and Wylie-Rosett J. 2021 Dietary Guidance to Improve Cardiovascular Health: A Scientific Statement From the American Heart Association. *Circulation*. 2021;144:e1-e17.

**Submitted by:**

Neena Prasad, Bloomberg Philanthropies, United States of America

Survey response	
Considerations and implications for adaptation and implementation of the guideline	<p>Recommendation 1 • The recommendation suggests the implementation of policies to restrict food marketing to which children are exposed. However, in order to protect the youngest children (infants and toddlers), policies should also protect caregivers purchasing on behalf of very young children. Several products like formulas are marketed to caregivers who make decisions that directly affect very young children. Food marketing should be restricted not only when the intended audience is for children or partially intended for children but also to adults who are exposed to marketing for food and beverages intended for young children.</p> <p>Recommendation 2 • The guidelines fall short of emphasizing the importance of mandatory policies over voluntary policies despite existing evidence that supports greater effectiveness of mandatory policies over voluntary policies. The guidelines indicate that voluntary policies are more likely to show undesirable effects than desirable effects for exposure to and power of marketing. It would be useful for the guidelines to cite additional research to support the need for compulsory policies to maximize policy impact.</p> <p>• The guidelines suggest policies to protect children of all ages but fails to explicitly define ages for the target population. The logic model (Figure 2) in the draft guidelines defines a child as being from ages 0-19 and the UN Convention on the Rights of the Child (adopted in 1989) defines children as below the age of 18. The recommendation should explicitly state these well-defined age ranges to ensure that children of all ages are protected under a policy.</p> <p>• Guidelines for policy design and implementation should explicitly emphasize the need to restrict children’s exposure to marketing in a broad array of channels including in the media and digital and physical spaces (television programming, social media, apps, schools, stores, sports arenas, theatres etc.). This is stated in the guidelines but should be strongly emphasized as a critical component of an effective policy.</p> <p>• The suggestion that policies “restrict the power of food marketing to persuade children” is unspecific as the industry can easily argue that specific marketing strategies are not intended to persuade children, while they heavily draw their attention. Taking the precautionary principle into account, this should be articulated as a</p>

	complete ban on any marketing, promotion, and sponsorship to which children are exposed
Context and setting-specific issues that have not yet been captured	<ul style="list-style-type: none"> <li>• There are no specific recommendations on how to prevent, mitigate and manage the effects of corporate influence in the design or implementation of such guidelines, as well as conflict of interest. Food and beverage actors consistently go to great lengths to influence policy design and implementation, presenting a serious obstacle for public health practitioners and governments who wish to advance evidence-informed policy. To maximize the effectiveness of food marketing restrictions, the guidelines should promote the development of policies grounded in the protection of the rights of children rather than the interests of food and beverage industry actors. It would be useful for the guidelines to explicitly support measures to maintain transparency in marketing policy development and mitigate conflicts of interest in the process.</li> </ul>
Errors of fact or missing data	<ul style="list-style-type: none"> <li>• The reviews showed statistically significant findings, however, the recommendations are all “very low certainty of evidence”; given the rapidly rising burden of diet-related diseases, including among children, this is not helpful for countries wanting to implement policies with an evidence-informed approach, and undermines the stated goal of “supporting evidence informed advocacy to advance policy action”</li> <li>• The guideline should specify, for transparency purposes, names and affiliations of the authors as well as the Nutrition Guidance Expert Advisory Group (NUGAG), including whether human rights experts were included. Related to this, the guidelines lack a Human Rights analysis to better explain how absence of compulsory marketing regulations violate children’s rights and represent a key barrier for children to achieve their full development</li> <li>• Several data sources were cited; however, critical evidence was not considered in the guidelines. Additionally, most data presented were from high income countries. It would be useful for the guidelines to draw from evaluations of Chile’s comprehensive legislation that includes strong child-directed marketing restrictions which demonstrated decreased purchasing and consumption of unhealthy foods after implementation.</li> </ul> <ol style="list-style-type: none"> <li>1. Taillie, L. S., Bercholz, M., Popkin, B., Reyes, M., Colchero, M. A., &amp; Corvalán, C. (2021). Changes in food purchases after the Chilean policies on food labelling, marketing, and sales in schools: a before and after study. <i>The Lancet Planetary Health</i>, 5(8), e526-e533.</li> <li>2. Taillie, L. S., Reyes, M., Colchero, M. A., Popkin, B., &amp; Corvalán, C. (2020). An evaluation of Chile’s Law of Food Labeling and Advertising on sugar-sweetened beverage purchases from 2015 to 2017: a before-and-after study. <i>PLoS medicine</i>, 17(2), e1003015</li> <li>3.</li> </ol>

	<p>Jensen, M. L., Carpentier, F. D., Adair, L., Corvalán, C., Popkin, B. M., &amp; Taillie, L. S. (2021a). Examining Chile's unique food marketing policy: TV advertising and dietary intake in preschool children, a pre-and post-policy study. <i>Pediatric obesity</i>, 16(4), e12735. 4.</p> <p>Jensen, M. L., Carpentier, F. R. D., Adair, L., Corvalán, C., Popkin, B. M., &amp; Taillie, L. S. (2021b). TV advertising and dietary intake in adolescents: a pre-and post-study of Chile's Food Marketing Policy. <i>international journal of behavioral nutrition and physical activity</i>, 18(1), 1-11. 5.</p> <p>Dillman Carpentier, F. (2021). "Cambios en marketing de alimentos después de la implementación de la Ley de Etiquetado" Paper presented at the Sociedad Latinoamericana de Nutrición Annual Conference Research findings from the studies cited above on Chile's marketing policies can be used to help strengthen guideline recommendations around restricting unhealthy food marketing to children and adolescents. Furthermore, findings from Chile may be most helpful in framing guidelines for low and middle income countries.</p>
General comments	<ul style="list-style-type: none"> <li>• The guidelines do not appear to build on previous WHO or UNICEF guidelines. It would be useful for the guidelines to reference other relevant public health guidelines like those from Tobacco Control (specifically, FTC, Article 13) and alcohol.</li> <li>• The guidelines should recognize marketing beyond advertising by including a more comprehensive definition that includes packaging and product placement We commend the World Health Organization for taking action on guidelines to protect children from the harmful impact of food marketing. Strong guidance from WHO will be critical in supporting governments to urgently address the rapidly rising burden of diet-related diseases, including among children. We look forward to the finalization of the guideline that considers the feedback provided here.</li> </ul>

**Submitted by:**

Clare Hughes, Cancer Council Australia, Australia



## Submission to the consultation on the draft WHO guideline on policies to protect children from the harmful impact of food marketing

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**Cancer Council Australia**

29 July 2022

## Overview

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Cancer Council Australia welcomes the opportunity to provide input into the consultation on the draft WHO guideline on policies to protect children from the harmful impact of food marketing.

Cancer Council Australia appreciates the opportunity to participate in the consultation to ensure Member States develop best practice policies to protect children from the harmful impact of food marketing. These WHO guidelines provide important evidence-based guidance for governments and public health groups.

Cancer Council is Australia's peak non-Government cancer control organisation. As the national body in a federation of eight state and territory member organisations, Cancer Council Australia works to make a lasting impact on cancer outcomes by: shaping and influencing policy and practice across the cancer control continuum; developing and disseminating evidence-based cancer information; convening and collaborating with cross sectorial stakeholders and consumers to set priorities; and speaking as a trusted voice on cancer control in Australia.

Cancer Council Australia acknowledges the traditional custodians of the lands on which we live and work. We pay respect to Aboriginal and Torres Strait Islander elders past, present and emerging and extend that respect to all other Aboriginal and Torres Strait Islander people.

This submission has been prepared by Cancer Council Australia's National Nutrition Alcohol Physical Activity Committee (chaired by Clare Hughes).

This submission was authorised by:  
Professor Tanya Buchanan,  
CEO, Cancer Council Australia.

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## General comments on the Guidelines

Cancer Council Australia is working to create environments that support healthy eating, including through regulations that protect children from the marketing of unhealthy food and drinks. Cancer Council Australia is advocating to the Australian government to develop a comprehensive food marketing policy framework, embedded in statutory regulation, to reduce children's exposure to food advertising that promotes unhealthy foods. The development of these WHO guidelines will provide the evidence-base and foundation to support our national advocacy efforts to bring Australia up to global best practice.

Cancer Council Australia supports the guideline development process and outcome, including:

- The peer review process and public consultation and commitment to regular review of the guideline.
- The recommendation for a mandated approach.
- The comprehensive nature of the guideline to include food marketing to which children are exposed.
- The protection of children beyond 12 years of age.
- The inclusion of brand advertising.
- The broad definition of forms of marketing across media and settings, including the specification of digital marketing, and acknowledgment of the power of marketing.
- Recognition of the need for long-term political commitment and resource allocation for monitoring and enforcement.

## Opportunities to strengthen the guidelines

Cancer Council Australia have identified the following opportunities for strengthening the guidelines.

- Good practice statement

The good-practice statement could better encapsulate the purpose by being reworded to *“Children should be protected from the harmful impact of all forms of marketing of unhealthy foods and non-alcoholic beverages”*.

- Recommendations 1 and 2

Recommendation 1 and 2 could be worded more strongly as “WHO recommends” rather than “WHO suggests”.

Additionally, the inclusion on the phrase “Conditional.....” beneath these recommendations downplays the evidence supporting mandatory policies and undermines the value of recommendations 1 and 2 in protecting children from exposure to, and power of, unhealthy food marketing.

While the evidence from the review on the effects of policies was rated as very low certainty of evidence<sup>1</sup>, it combined studies on mandatory and voluntary (industry) policies. However, the supplementary material shows most of the mandatory policy evaluations did find an effect favouring the intervention, while voluntary policies mostly favour the control. This means the rating of ‘low certainty’ is largely due to evidence of effectiveness for voluntary policies being poor, with a stronger evidence base for the effectiveness of mandatory policies. A previous review also showed that industry policies are ineffective.<sup>2</sup>

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<sup>1</sup> Boyland E, McGale L, Maden M, et al. Systematic review of the effect of policies to restrict the marketing of foods and non-alcoholic beverages to which children are exposed. *Obesity Reviews*. 2022;23(8):e13447

<sup>2</sup> Galbraith-Emami S, Lobstein T. The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review. *Obes Rev*. 2013;14(12):960-74

The evidence on the effects of marketing, show very clearly that marketing has a deleterious effect on children with moderate certainty of evidence from RCTs on the impact on diet and food choice.<sup>3</sup>

- Recommendation 2 and all other references to children should be specific as to what “older than 12 years” means and specify the definition of a child as under 18 years, aligning with the Convention on the Rights of the Child.
- The term “nutrient profile model” should be defined. The glossary on “food” explains that WHO models classify foods that “belong to a food category with nutrient thresholds and exceed these thresholds or belong to a food category for which all marketing is prohibited (for which no nutrient thresholds are established). Such foods are typically high in fats, sugars and/or salt, and are usually processed.” A definition is important because the term “nutrient” implies the model is nutrient threshold based only when the WHO models include food category-based classifications as well.
- Recommendation 2 “use a nutrient profile model to classify foods to be restricted from marketing” should specify that the model to classify foods is aligned with national dietary guidelines and expectations of the nutritional quality of foods and testing and monitoring of the criteria is required to avoid anomalies in classifications. Suggested wording: “use a nutrient criterion to classify foods to be restricted from marketing that aligns with national dietary guidelines and expectations of the nutritional quality of foods. The criteria should be tested and monitored to avoid anomalies in classifications.”

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<sup>3</sup> Boyland E, McGale L, Maden M, et al. Association of Food and Nonalcoholic Beverage Marketing With Children and Adolescents’ Eating Behaviors and Health: A Systematic Review and Meta-analysis. *JAMA Pediatrics*. 2022;176(7):e221037-e

**Submitted by:**

Julián Gutiérrez Martínez, Center for the Studies on Law, Justice and Society, Dejusticia, Colombia

Survey response	
Overall clarity of the guideline	In these recommendations, there should be a review of what is considered “policy” for implementing this type of measure, taking into account the evidence shown regarding the negative consequences of self-regulatory measures. The human rights approach in these guidelines is not straightforward. There is no detailed analysis of the international obligations of States related to the limitation of advertising directed at children and how the suggested guidelines respond to these. In particular, there should be a rigorous analysis regarding the implications in the rights to health, development (physical and psychological), healthy food consumption, information, and dignity, among others.
Considerations and implications for adaptation and implementation of the guideline	Although the evidence on the implementation of public policies on this issue is qualified as “very low certainty evidence,” which is apparent in the concrete recommendations, the presentation of this could be misleading. It may discourage implementing public policies to combat obesity, overweight, and NCDs. It is suggested that this statement on impact be complimented. It is complicated for the recommendation to be conditional based only on policy impact studies. A balance should also be made considering the studies that, analyzing the impact of these advertising strategies, recommend that it be regulated when directed to children and adolescents.
Context and setting-specific issues that have not yet been captured	Industry involvement in the regulatory process is an issue that should be addressed more directly by the guidelines. The influence of the edible and ultra-processed beverage industry goes beyond self-regulatory issues. It is linked to public regulatory processes in which its participation reduces the standards suggested by international bodies and does not respond to States' international human rights obligations. It is necessary to promote more research around online marketing and brand marketing, as well as a more powerful statement regarding the regulation of digital advertising, understanding that it requires a joint effort between States, as it is a transnational issue. Here some evidence on the first: Anderson, Monica, y Jingjing Jiang. «Teens, social media & technology 2018». Pew Research Center 31, n.o2018 (2018): 1673-89. Bend, Daphne L.M. van der, Tammie Jakstas, Ellen van Kleef, Vanessa A. Shrewsbury, y Tamara Bucher. «Making Sense of Adolescent-Targeted Social Media Food Marketing: A Qualitative Study of Expert Views on Key Definitions, Priorities and Challenges». Appetite 168 (enero de 2022): 105691. <a href="https://doi.org/10.1016/j.appet.2021.105691">https://doi.org/10.1016/j.appet.2021.105691</a> . Boyland, Emma, David

	<p>Thivel, Artur Mazur, Susanne Ring-Dimitriou, Marie Laure Frelut, y Daniel Weghuber. «Digital Food Marketing to Young People: A Substantial Public Health Challenge». <i>Annals of Nutrition and Metabolism</i> 76, n.o 1 (2020): 5-8. <a href="https://doi.org/10.1159/000506413">https://doi.org/10.1159/000506413</a>. De Veirman, Marijke, Liselot Hudders, y Michelle R. Nelson. «What Is Influencer Marketing and How Does It Target Children? A Review and Direction for Future Research». <i>Frontiers in Psychology</i> 10 (3 de diciembre de 2019): 2685. <a href="https://doi.org/10.3389/fpsyg.2019.02685">https://doi.org/10.3389/fpsyg.2019.02685</a>. Fleming-Milici, Frances, y Jennifer L. Harris. «Adolescents' Engagement with Unhealthy Food and Beverage Brands on Social Media». <i>Appetite</i> 146 (marzo de 2020): 104501. <a href="https://doi.org/10.1016/j.appet.2019.104501">https://doi.org/10.1016/j.appet.2019.104501</a>. Goldfarb, Avi. «What is different about online advertising?» <i>Review of Industrial Organization</i> 44, n.o 2 (2014): 115-29. Hsu, Tiffany. «Popular YouTube Toy Review Channel Accused of Blurring Lines for Ads». <i>The New York Times</i>, septiembre de 2019. <a href="https://www.nytimes.com/2019/09/04/business/media/ryan-toysreview-youtube-ad-income.html">https://www.nytimes.com/2019/09/04/business/media/ryan-toysreview-youtube-ad-income.html</a>. Martínez Medrano, Gabriel. «La comunicación publicitaria de 'influencers' en redes sociales. Análisis de la regulación en el Derecho Comparado y panorama en Argentina». <i>DECOMI III</i>, n.o 4 (2021). Radesky, Jenny, Yolanda (Linda) Reid Chassiakos, Nusheen Ameenuddin, Dipesh Navsaria, y COUNCIL ON COMMUNICATION AND MEDIA. «Digital Advertising to Children». <i>Pediatrics</i> 146, n.o 1 (julio de 2020): e20201681. <a href="https://doi.org/10.1542/peds.2020-1681">https://doi.org/10.1542/peds.2020-1681</a>. Roderick, Leonie. «Brands Reluctant to Be Transparent about Influencers as Many Fail to Apply Ad Industry Code». <i>Marketing Week</i> (blog), 7 de abril de 2016. <a href="https://www.marketingweek.com/brands-still-reluctant-to-be-transparent-around-influencers-and-failing-to-adhereto-ad-industry-code/">https://www.marketingweek.com/brands-still-reluctant-to-be-transparent-around-influencers-and-failing-to-adhereto-ad-industry-code/</a>. Stichting Reclame Code. «Kinder- en Jeugd reclamecode (KJC)». Stichting Reclame Code. Accedido 22 de diciembre de 2021. <a href="https://www.reclamecode.nl/nrc/kinder-en-jeugd reclamecode-kjc/">https://www.reclamecode.nl/nrc/kinder-en-jeugd reclamecode-kjc/</a>. ——. «Reclamecode Social Media &amp; Influencer Marketing (RSM) 2019». Stichting Reclame Code. Accedido 22 de diciembre de 2021. <a href="https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/">https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/</a>. Tatlow-Golden, Mimi, y Amandine Garde. «Digital Food Marketing to Children: Exploitation, Surveillance and Rights Violations». <i>Global Food Security</i> 27 (diciembre de 2020): 100423. <a href="https://doi.org/10.1016/j.gfs.2020.100423">https://doi.org/10.1016/j.gfs.2020.100423</a>. Vrontis, Demetris, Anna Makrides, Michael Christofi, y Alkis Thrassou. «Social Media Influencer Marketing: A Systematic Review, Integrative Framework and Future Research Agenda». <i>International Journal of Consumer Studies</i> 45, n.o 4 (julio de 2021): 617-44. <a href="https://doi.org/10.1111/ijcs.12647">https://doi.org/10.1111/ijcs.12647</a>. Zarouali, Brahim, Koen Ponnet, Michel Walrave, y Karolien Poels. «“Do You like Cookies?” Adolescents' Skeptical Processing of Retargeted Facebook-Ads and the Moderating Role of Privacy</p>
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	Concern and a Textual Debriefing». Computers in Human Behavior 69 (abril de 2017): 157-65. <a href="https://doi.org/10.1016/j.chb.2016.11.050">https://doi.org/10.1016/j.chb.2016.11.050</a> .
Errors of fact or missing data	Some important definitions are missing, including the category of additives (including sweeteners, caloric, and non-caloric) and those related to conflict of interest. A deeper analysis of digital advertising is needed, both for its greater importance and current impact, as well as for its greater need for research, understanding that our understanding of the subject is limited. A stronger call for public regulation is also needed. The evidence highlighting the negative impacts of self-regulation on public policies on food, NCDs, and others is essential. There is no human rights analysis of how the absence of this type of policy affects the fulfillment of children's human rights. Although it is generally suggested that the evidence of self-regulation shows adverse effects on achieving public health objectives related to the reduction of overweight, obesity, and NCDs, it is clear that there is no more systematic study on the subject. A more detailed presentation should be made, as it is a recurring theme within the evidence and the WHO guidelines.
General comments	The guidelines are very general, which may lead to low implementation by States. In the same sense, the guidelines should also be focused on suggesting less participation and involvement of the industry of ultra-processed edible and drinkable products, seeking greater protection of public health. It could be helpful to emphasize the need to promote broad research on research gaps so that greater certainty can be achieved regarding implementing this type of public policy.

## Submitted by

Bill Jeffery, Centre for Health Science and Law, Canada



By email to: [NFS@who.int](mailto:NFS@who.int)

**Re: Online public consultation on WHO's draft guideline on policies to protect children from the harmful impact of food marketing, in particular, *Protecting Children from the Harmful Impact of Food Marketing: Policy Brief***

I am writing on behalf of the Centre for Health Science and Law<sup>1</sup> to contribute comments to WHO's consultation on its draft guideline on advertising to children.

This perspective is informed by analysis conducted:

- to participate in Canada's periodic review by the United National Human Rights Council's Committee on the Rights of the Child, 2019-2022;
- in connection with participating in eight previous federal<sup>2</sup> and provincial<sup>3</sup> efforts to expand the scope of the Quebec advertising ban nationally since 2007; and
- to advise governments in Sub-Saharan African on nutrition-related policy and regulations since 2018.

Please consider the following before finalizing the guidance.

**1. Constricted mandates of health (or other) national ministers should not be characterized as unavoidable.**

As a prefatory matter, my impression is that national regulators and ministerial heads often have statutorily restricted legal mandates that compel only partial responses to unhealthy marketing to children, e.g.,

- only television advertising (not all other media),
- only groceries (not restaurants or other products and services), or
- only certain areas of constitutional authority in federated states.

The World Health Organization is not constrained in this way, so should flag these as obstacles that can be overcome by cooperation among national cabinet ministers or levels of government, or by leadership from heads of state, or by parliaments expanding or reassigning roles.

**2. The focus on obesity as a key unit of analysis is misleading and tone-deaf to the plight and vulnerability of the world's children, especially low-income children in low-income countries.**

*Protecting Children from the Harmful Impact of Food Marketing: Policy Brief* places a great deal of emphasis on obesity (which is only one of many adverse impacts of poor diet, albeit sometimes the most visible one) rather the exploitive practice of companies seeking to influence the most vulnerable consumers: children. The term is used 14 times in less than eight pages of analysis and one-third of the sources cited were obesity-themed journals or reports. However, according to the

[\*FAO Statistical Yearbook\*](#), the average adult obesity rates in Africa and Asia are presently lower than they were in countries like Canada long *before* the onset of the so-called “obesity epidemics.”

Focusing on obesity seems to betray a preoccupation with problems in high-income countries which is consistent with the origin of experts acknowledged in [\*The Protecting Children From The Harmful Impact Of Food Marketing: Policy Brief\*](#). Diet-related disease is mainly caused by insufficient consumption of whole grains, fruits, vegetables, polyunsaturated fat, and plant-based proteins, and excess consumption of red and processed meat and refined grains (as well as sodium, saturated fat, and free sugars) through biological mechanisms that are unrelated or only partially related to body fatness.

While one of the risks of rises in *per capita* income could be increased rates of obesity, unconscionable manipulation of children by advertising is manifest everywhere now.

When a global public health authority beats the drum about obesity in low-income countries where most families cannot provide enough food to make their children fat, or their children get fat anyway because they are too reliant on predominantly grain- and tuber-based diets may appear insensitive the concerns of populations that are most in need of WHO normative guidance.

### **3. Excessive focus on obesity can contribute to fat-shaming among children.**

A hyper-focus on childhood obesity can amplify body-shaming and stigma of children in places where slimness is culturally valued aesthetically, and adiposity is ridiculed. It seems unconscionable for a high-profile public health authority to continue to stress obesity messages after some national governments and health NGOs have recognized the harm of such messaging. The most charitable account of this approach is that WHO appears unversed and insensitive to the cultural and psychological effect of this analytical approach to marketing to children. Why stress victim-blaming messages if the recommendations for reform emphasize the regulation of corporate practices?

### **4. Do not subtly undermine comprehensive laws in place in Quebec, Norway, Sweden, Brazil, etc.**

In previous years, the WHO recognized the value of many restrictions on marketing to children that are in place in member states that prohibit commercial manipulation of children generally (not just banning ads for certain foods). Highly detailed nutrition criteria can lead to restrictions that are hard to enforce, easy to manipulate, and are permeable to marketing of places (e.g., restaurants that primarily sell nutrient poor foods), brand advertising (e.g., Coca-Cola that primarily sells sugary soft drinks), and other products that are harmful to health or interfere with parental decisions (such as video games, television programs, other products that promote sedentary play, gambling/lottery games, etc.).

Indeed, 2012 WHO guidance noted on page 3 acknowledges the third and most comprehensive type of child-marketing restrictions (i.e., all forms of commercial advertising to children, not just ads for food or some nutritionally delimited foods), but the title of the guidance appears to exclude this approach: [\*Protecting Children from the Harmful Impact of Food Marketing: Policy Brief\*](#) [emphasis added]. Likewise bullet three of recommendation 2 (of 2)—at slide 40 of the launch consultation presentation reinforces this dismissal of the most comprehensive approach by recommending nutrient criteria as the basis for restricting advertisements.<sup>4</sup>

Nor does the title reflect any concern about the manipulative aspects of marketing to children (which is as the heart of the most comprehensive advertising bans globally), the pediatric cognitive development expertise of which seems to be with the medical-science mandate of the WHO.

The subtle distinction indicated on page 3 may not be evident to the reader, a conspicuous omission if the intention is to promote and defend regulatory bans like those in force in Quebec, Sweden,

Norway, Brazil and elsewhere. Some clearer language would help. The other two forms of advertising bans can be easily and foreseeably evaded by soft drink sellers and fast-food restaurants.

## **5. Do not overstate the limitations of national statute- or regulation-making.**

The March 2022 draft states: “Food marketing originating from sources outside a country’s jurisdiction may be beyond the scope of a current national policy.”

However, if products, services or companies/brands are advertised elsewhere and leak inside a country’s borders, and the sales of those items are amplified by such ads, legal action could be taken in many cases to disgorge the profits of the local sales. Likewise, if the ads are disseminated by the Internet, television, or magazine, for instance, in an African country from a country where a manufacturer is headquartered (e.g., in Europe), legal remedies may be available in the originating legal system.

Furthermore, the United Nations Human Rights Council’s Intergovernmental Working Group is presently negotiating a Legally Binding Instrument to ensure that remedies are available for human rights violations throughout global supply chains. The European Union itself is considering mandatory human rights due diligence. If WHO believes this concern is important, it could intervene to this effect in these negotiations or at least acknowledge the Human Rights Council negotiations in the proposed WHO guidance.

## **6. Do not inadvertently put a chill on comprehensive restrictions on marketing to children.**

The March 2022 draft states (at page 3):

*“To date, no country has implemented a comprehensive policy (28), despite evolving evidence on the harmful impact that food marketing can have on children of all ages, including those aged over 12 years (8, 9, 29), and despite the lack of evidence that stepwise approaches can reduce both exposure to and the power of food marketing, and have a positive impact on children’s health.”*

This seems like a good place to acknowledge that the UN *Convention on the Rights of the Child* indicates that the agreed upon definition of the end of childhood is age 18 and that national governments are free to extend protections to even older children.

Likewise, the draft appears to discourage comprehensive approaches for being untested and commends “baby step” incrementalism by stating at page 5 and 6:

*“To date, no country is implementing any of the three comprehensive policy approaches proposed in the framework for implementation. Therefore, there is no available evidence on the effectiveness of a comprehensive approach. Stepwise policy approaches are the most commonly implemented; they include both mandatory regulation and voluntary approaches, such as industry pledges...Challenges or barriers included complexity of the regulatory processes, conflicting interests, lack of financial and human resources, industry interference, a weak evidence base, and ambiguous categorization of, or lack of criteria for, foods to be restricted or banned (40-50)...Obtaining buy-in to implement a comprehensive policy that best protects children from the harmful impact of food marketing is likely to be challenging.”*

Please reconcile this incrementalistic approach with the wiser, comprehensive approach advocated on pages 3, 4, and 8, or at least be clear that WHO is not promoting both.

## 7. Ensure final guidance is fit-for-purpose to enact and defend legislation and regulations.

The value of WHO normative guidance is to help promote and defend national laws restricting manipulative and/or harmful advertising to children.

The purpose and intention of the “guidance” is needlessly obscured by characterizing the advice (at p. 9) as: “governments are called upon to implement comprehensive policy approaches.” This lacks precision about the main effective approach that governments can take: prohibiting advertising by law. Likewise, the role and capacity of legislatures is obscured by a statement on page 4 that:

*“Parliamentarians also play a unique role in advancing policies, including those to protect children from the harmful impact of food marketing through their mandates of representation, legislation, budget and oversight (30).”*

Guidance could be more direct by indicating that legislatures could ban advertising to children by enacting or amending legislation governing consumer protection, food, competition, and/or business practices. Government executive authorities could also promulgate ministerial or cabinet regulations or enforcement directives for existing laws (that generally prohibit misleading or deceptive advertising) to stipulate that all commercial advertising aimed at children are deemed to be misleading. Referring to “policies” instead of regulations and statutes seems needlessly imprecise.

None of the 60 sources cited were published in law-related journals or judgements of judicial or human rights adjudicators, experts, or special rapporteurs. Considering that the proposed guidance is about law-making, this seems to be an important omission. Referencing mainly medical and scientific experts seems more in keeping with therapeutic treatment guidelines. Although I am not able to conduct a globally relevant literature review of legal sources for the purposes of commenting on the draft WHO guideline, some have been written about national situations.<sup>5</sup> Also, the United Nations Human Rights Council’s Committee on the Rights of the Child has published at least three General Comments relevant to advertising to children: No. 4, No. 16, and No. 17. Comment Number 4 in 2003 states, in part:

*25. The Committee is concerned about the influence exerted on adolescent health behaviours by the marketing of unhealthy products and lifestyles. In line with article 17 of the Convention, States parties are urged to protect adolescents from information that is harmful to their health and development, while underscoring their right to information and material from diverse national and international sources. States parties are therefore urged to regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents.<sup>6</sup>*

In 2013 the Committee published [\*General Comment No. 16\*](#) on business and human rights which urged all governments, at paragraphs 57 and 59, that:

*“States are also required to implement and enforce internationally agreed standards concerning children’s rights, health and business, including the World Health Organization Framework Convention on Tobacco Control, and the International Code of Marketing of Breast-milk Substitutes and relevant subsequent World Health Assembly resolutions...Children may regard marketing and advertisements that are transmitted through the media as truthful and unbiased and consequently can consume and use products that are harmful. Advertising and*

*marketing can also have a powerful influence over children's self esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions."*<sup>7</sup>

In 2013, in General Comment No. 17, the Committee on the Rights of the Child called on States to review policies concerning the commercialization of toys and games to children, including through children's television programmes and directly related advertisements.

**47. Marketing and commercialization of play:** *The Committee is concerned that many children and their families are exposed to increasing levels of unregulated commercialization and marketing by toy and game manufacturers. Parents are pressured to purchase a growing number of products which may be harmful to their children's development or are antithetical to creative play, such as products that promote television programmes with established characters and storylines which impede imaginative exploration; toys with microchips which render the child as a passive observer; kits with a pre-determined pattern of activity; toys that promote traditional gender stereotypes or early sexualization of girls; toys containing dangerous parts or chemicals; realistic war toys and games. Global marketing can also serve to weaken children's participation in the traditional cultural and artistic life of their community.*<sup>8</sup>

## **8. Clarify the limits of restricting on the advertisement of foods high in sodium, saturated fat, and sugar.**

According to the [Institute for Health Metrics and Evaluation](#), [foods high in the aforementioned nutrients are responsible for approximately 30% of all diet-related disease:](#)

- the vast majority of which is associated with excess sodium;
- the saturated fat contribution assumes that it is replaced entirely with polyunsaturated fat (not monounsaturated fat or refined carbohydrates) so might be over-estimated in; and
- the impact of sugar may be underestimated in high-income countries by focusing mainly on liquid candy (not other sources of free sugars).

Just as for obesity, hyper-focusing on those three nutrients might give populations a distorted view of poor and ideal diets.

Importantly, the regional dietary guidance (e.g., for Africa) cited in the draft guidance<sup>9</sup> urge curbing consumption of saturated fat and sugar (same as Europe) in countries where the vast majority of people consume trivial amounts of both.<sup>10</sup>

Instead, consider focusing on prohibiting the manipulation of children rather than creating an edifice of European-styled restrictions on advertising that would mainly benefit affluent African children with disposable income. Getting the protection correct and comprehensive is most important in countries with young populations. For example, in some African countries, children comprise nearly half of the total population.

## 9. Be more specific about legal duties of governments.

At page 7 of the [Policy Brief](#), WHO asserts that:

*“Governments have a legal obligation to protect child rights, including those that are threatened by harmful marketing.”*

If this were unequivocally true, then there would be no need for Parliament or governments to take any further measures except enforcing such obligations and corresponding rights. Justiciable legal rights are not the same as whatever seems fair to the writer. Some national constitutions place obligations on governments to protect children, safeguard the right to nutrition, protect health, prevent economic exploitation, ensure rights to accuracy of information in the marketplace, etc. These rights might, in some circumstances, be deemed by a national court to include a right for children to be shielded from commercial advertising as a result of public interest test-case litigation. Or, they might provide a rationale and justification for the government promulgating regulations or the legislature enacting a ban on such ads. However, the WHO making bare assertions of they rights do not necessarily make them justiciable in domestic courts and writing as much in guidance might be perceived as misguided or confusing to the reader.

## 10. Do not imply that governments are impotent to regulate advertising (at page 7).

The *Policy Brief* states:

*“Whether or not the ministry of health has the legal authority to regulate food marketing varies between jurisdictions and is a matter for each government to determine based on its domestic legislation.”*

In the unlikely event that a national legislature has authorized one administrative unit of the executive branch to regulate advertising to adults, but not to children, it is almost certainly the case that another government department has this authority. In any case, I doubt there is any government on the planet with a constitution that prevents its legislature from regulating advertising to children directly or delegating this authority to the executive branch. Check the text on page 7 to ensure that an inference of powerlessness is not advanced. Also, as indicated above, Parliaments can expand or re-assign roles, ministers can cooperate, and heads of state can compel ministers to cooperate. The *Policy Brief* reflects the perspective of a health ministry bureaucrat bound by an immutable legislative mandate.

## 11. Correcting the record about Quebec’s enforcement system and informing the record about various efforts and opportunities to expand those protections (recently, as little as possible) though legislation, regulation, administrative action, and litigation.

The Quebec Consumer Protection Agency is notoriously underfunded and heavily dependent on consumer complaints to instigate prosecutions—notably by a CSO: Quebec Public Health Association project, Coalition Poids. Also, it seems that the WHO *Policy Brief*’s reported range of possible fines for breaching the Quebec advertising ban is misleading. The range is from \$1,000 to \$40,000 for companies. (The \$600 fine is for individuals, and the upper limit of \$100,000 is for obstruction of justice offenses.) See sections 277-279 of the Quebec [Consumer Protection Act](#).

As you know, the province of Quebec uses a comprehensive approach within the limits of its constitutional authority in the federated state of Canada, albeit only protecting children under age 13.<sup>11</sup> The Quebec *Act* prohibits commercial advertising of all products, services, and companies—not just certain foods—based on the premise that children are uniquely vulnerable to marketing and deserve protection from manipulation by commercial actors.<sup>12</sup> The Supreme Court of Canada rejected a constitutional challenge to the Quebec advertising ban in 1989 (brought by an aggrieved toy company) by concluding that all advertising to children is:

*“...per se manipulative. Such advertising aims to promote products by convincing those who will always believe.”<sup>13</sup>*

If there was any WHO guidance at the time, it was not cited by the Supreme Court.

Although Canada is home to the oldest and most comprehensive still-operating modern<sup>14</sup> ban on advertising to children in Quebec, proposals to extend this protection:

- to other provinces;
- to older children (to age 18 or older); and
- to product labelling such as breakfast cereal box and candy wrapper promotions (which are beyond the reach of provincial law in this federated state)

have been opposed by industry and abandoned by Parliaments, so far.

From 2016-2019, the federal Liberal government executive appeared to support a, since retired, Conservative Senator’s bill to restrict advertising of nutrient-poor foods<sup>15</sup> to children, but weakened the protections (from up to age 16 to only age 13) and was unable or unwilling to ensure the bill proceeded to a final vote before the summer recess preceding the 2019 election.<sup>16</sup> Also, Senator Greene Raine’s bill proposed restricting advertising of nutrient-poor foods to children. As such, it is uniquely permeable to many products (see below).<sup>17</sup>

Prime Minister Trudeau’s December 2021 [open-letter mandated the Minister of Health Dr. Yves Duclos to support “restrictions on the commercial marketing of food and beverages to children.”](#) Though Minister Duclos has not yet acted on that mandate, in February 2022, a Member of Parliament from the governing Liberal Party proposed [Bill C-252 An Act to amend the Food and Drugs Act \(prohibition of food and beverage marketing directed at children\)](#) which would:

- a) restrict only advertisements for foods high in sugar, saturated fat, and sodium even though the same source of data from which the bill-sponsor drew her assessments of the economic burden of poor diet (\$13 billion per year<sup>18</sup>) and the number of premature deaths attributable to poor diet (36,000 per year) indicate that excess intake of those nutrients is responsible for only approximately 20% of diet-related disease (approximately 7,000 deaths);<sup>19</sup>
- b) likely use the nutrient-limits applied to front-of-pack nutrition labelling last month that are lax enough to exempt nearly all sugary breakfast cereals and reward foods that fail to meet voluntary sodium-reduction targets,
- c) possibly allow extensive food category exemptions for red meat, coconut oil, butter, cheese, and high-fat milk that were applied to front-of-pack-nutrition labelling regulations promulgated last month;<sup>20</sup>
- d) permit all advertising to teenagers by defining “child” as a person aged 0-13 years of age, not 0-18 as recommended by the *Convention on the Rights of the Child* and not 0-18 or 0-19 as stipulated in the age-of-majority legislation in the provinces and territories;
- e) not prohibit artificially sweetened soft drinks, soft drinks (that are ambiguous about product nutrition), low-sugar energy drinks, refined grains, restaurants;
- f) not prohibit advertising brands, logos, and mascots (like Ronald McDonald); and
- g) permit exemptions for sponsorship advertising through children’s sports teams spearheaded by Canada’s two biggest fast food companies, Tim Hortons (coffee and donuts) and McDonalds (hamburgers and deep-fried potatoes).

These loopholes are big enough to render the measures almost completely ineffective and the before-after differences in the products advertised to children (mostly breakfast cereal, soft drinks, and fast food restaurants) to be barely noticeable to children and parents or detectable only by form not products.

In 2013, an Ontario provincial minister of health from the same political party promised plans to restrict marketing to children at a McDonald's restaurant, then did nothing further to deliver on that pledge in the ensuing decade.<sup>21</sup>

*Bill C-252, The Child Health Protection Act* will be considered in the Parliament of Canada in September 2022.<sup>22</sup> A weak national ban that any incrementalist civil society groups praise will likely drain political will for stronger provincial laws and might jeopardize the broader Quebec law. If manufacturers of sugary cereal companies are as successful in also winning exemptions from advertising limits as there were in recent exemptions from front-of-pack label warnings,<sup>23</sup> advertising to children could continue almost unabated.

And, section 9 of the federal *Competition Act* states that only persons 18 years or older may officially complain about prohibited “misleading” or “deceptive” ads, a mechanism that was used by public health advocates in Canada, Australia and elsewhere to disrupt tobacco companies’ use of the claims “light” and “mild” on cigarette packages.<sup>24</sup>

If a law enforcement agency that is already responsible for enforcing legislation that prohibits deceptive advertising (e.g., the Canadian Food Inspection Agency, the Commissioner of Competition, or the Director responsible for the Ontario *Consumer Protection Act*) decided to apply the Supreme-Court-endorsed principles underpinning the Quebec ban (i.e., children are vulnerable to manipulation) even to age 18 or 19, important progress could be achieved by public health advocates. WHO guidance could promote this approach and legal theory.

I understand that the consultation closed last week; while I was unable to submit in time due to other commitments, I hope that you will consider these perspectives. My impression is that WHO typically does not finalize consultation documents so quickly, including the consultation on a global food safety strategy which was held more than a year ago (c.f. my email of August 4, 2022 and [letter-submissions on WHO's Global Strategy for Food Safety of June 18 and November 23, 2021](#)). Also, I understand that many Europeans take holiday most of August.

I am happy to complete a WHO conflict-of-interest declaration statement, as I have before, and look forward to seeing the submissions and declarations made by other parties.\*

In sum, there are foreseeable scenarios where one might have to use evidence and arguments to distinguish the guidance provided by WHO—especially guidance that appears to endorse ineffective measures and fails to recognize their shortcomings—to best shield children from commercial marketing. This might be easier to do in a Parliament than a court, but both fora have impulses to follow the path of least resistance, not the path of most public health effectiveness.

Respectfully submitted,



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\* The acknowledgment on page 9 of the *Policy Brief* indicates that it is based on a soon-to-be published article entitled “Taking action to protect children from the harmful impact of food marketing: a child rights-based approach.” This leaves the reader with the impression that WHO is unconcerned with feedback from the consultation process because those institutional views are already fixed. If WHO guidance were modified on the basis of the feedback from CHSL and others, that article might seem internally inconsistent and dismissive of the perspectives of public interest stakeholders.

## Endnotes

<sup>1</sup> The Centre for Health Science and Law is a founding member of the Geneva Global Health Hub (G2H2) and a member of the International Association of Consumer Food Organizations. CHSL is one of the few health-focused Canadian NGOs accredited by the UN Economic and Social Council (ECOSOC). CHSL's executive director, Bill Jeffery, has been personally active in international standard-setting advocacy and expert deliberations at the Codex Alimentarius Commissions (since 1998), World Health Organization (since 2005), UN General Assembly (since 2011), several UN Human Rights Council committees (since 2018), and UNICEF regulatory reform in Sub-Saharan Africa (since 2018). He has advocated mandatory back-of-pack nutrition labelling at the Codex Committee on Food Labelling 1998-2012 and proposed front-of-pack nutrition labelling and advocated its adoptions 2016-2021 and participated in the WHO's first implementation consultation event on the Global Strategy on Diet Physical Activity and Health in 2005. In Canada, he has advocated nutrition labelling reforms, advertising restrictions, sodium reduction measures, a ban on trans fat, and a national, publicly funded school food program. CHSL, like UNICEF, is a member of the global School Meals Coalition and I, on behalf of CHSL, provided technical assistance to 10 national governments and intergovernmental organization in Africa to implement the WHO *International Code on the Marketing of Breast-milk Substitutes* and other nutrition-related regulations 2018-2022. These regulatory interventions are all cited at pp. 111-112, and 132-33, and 170-71 and elsewhere in the report. I currently serve as one of five voting members of the International Development Law Organization's "Healthy Diets and Human Rights Research Initiative Advisory Board" (focusing on Kenya, Tanzania, and Uganda) along with a former Special Rapporteur on the Right to Food, current Executive Secretary of the UN Nutrition Committee, and ex officio reps of UNICEF, WHO, and FAO.

<sup>2</sup> See the first seven items here: C-252 (44<sup>th</sup> Parliament, 1<sup>st</sup> session), S-228 (42<sup>nd</sup> Parliament, 1<sup>st</sup> session), C-430 (41<sup>st</sup> Parliament, 2<sup>nd</sup> session), C-324 (40<sup>th</sup> Parliament, 3<sup>rd</sup> session), C-414 (39<sup>th</sup> Parliament, 2<sup>nd</sup> session), C-414 (39<sup>th</sup> Parliament, 1<sup>st</sup> session), and a speech by Senator Spivak calling for action by the federal government in <https://www.parl.ca/LegisInfo/en/bills?keywords=advertising%20and%20%22food%20and%20drug%20act%22&parlsession=all&view=tile&sortby=latestactivity-desc> and Child-Directed Advertising at pages 1126-8 of Debates of the Senate 3rd Session. 37th Parliament Volume 141. Number 40 Official Report (Hansard) Tuesday, May 11, 2004. The Honourable Dan Hays Speaker. Available at: [https://sencanada.ca/content/sen/chamber/373/debates/pdf/040db\\_2004-05-11-e.pdf](https://sencanada.ca/content/sen/chamber/373/debates/pdf/040db_2004-05-11-e.pdf)

<sup>3</sup> Adrian Morrow, U.S. Correspondent. Ontario Liberals to propose law that chain restaurants must post calorie counts Globe and Mail. Toronto. October 9, 2013. Available at: <https://www.theglobeandmail.com/news/politics/liberals-promise-bill-to-require-some-restaurants-to-put-calories-on-menus/article14770225/>

<sup>4</sup> WHO. Launch event of the public consultation on the draft WHO guideline on policies to protect children from the harmful impact of food marketing 30 June 2022. Available at: [https://cdn.who.int/media/docs/default-source/nutritionlibrary/events/2022/launch-public-consultation-draft-guideline-food-marketing-presentation-jun2022.pdf?sfvrsn=16e8651d\\_3](https://cdn.who.int/media/docs/default-source/nutritionlibrary/events/2022/launch-public-consultation-draft-guideline-food-marketing-presentation-jun2022.pdf?sfvrsn=16e8651d_3)

<sup>5</sup> E.g., Jeffery B. Supreme Court of Canada's Appraisal of the 1980 Ban on Advertising to Children in Québec: Implications for Misleading Advertising Elsewhere, 2006. 39:237-276 *Loyola of Los Angeles Law Review*. Available at: <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2512&context=llr>

This article appears in a special issue dedicated to marketing to children with several article contributed by U.S. legal scholars and practitioners. See: <https://digitalcommons.lmu.edu/llr/vol39/iss1/>

<sup>6</sup> General Comment No.4 Adolescent Health and Development (CRC/GC/2003/4), paragraph 27 at page 27. Available at: <https://www.unicef-irc.org/publications/pdf/cregencommen.pdf>

<sup>7</sup> United Nations CRC/C/GC/16. Convention on the Rights of the Child. Distr.: General 17 April 2013. Committee on the Rights of the Child. General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights at paragraphs 57 and 59. Available at: [https://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-16\\_en.doc](https://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-16_en.doc)

<sup>8</sup> General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art.31) at Part VIII (8), at paragraph 47. Available at: [https://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-17\\_en.doc](https://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-17_en.doc)

<sup>9</sup> Nutrient profile model for the WHO African Region: a tool for implementing WHO recommendations on the marketing of foods and non-alcoholic beverages. Brazzaville: World Health Organization Regional Office for Africa; 2019 (<https://apps.who.int/iris/handle/10665/329956>).

<sup>10</sup> Food and Agriculture Organization. 2021. World Food and Agriculture - Statistical Yearbook 2021. Rome. <https://doi.org/10.4060/cb4477en> Table 42. Dietary Energy Supply By Commodity Group, 2018 at pages 273-277 Available at: <https://www.fao.org/3/cb4477en/cb4477en.pdf>

<sup>11</sup> Quebec Consumer Protection Act, c. P-40.1, sections 248-9. Available at: <https://www.legisquebec.gouv.qc.ca/en/document/cs/p-40.1>

<sup>12</sup> The Quebec legislation is not proactively enforced, but complaints from the Quebec-based NGO Coalition Poids have led to effective enforcement actions against McDonald's, Coca-Cola, Burger King, Saputo, and General Mills, etc. See: <https://www.cqpp.qc.ca/en/our-priorities/food-marketing/marketing-to-kids/complaints-lodged/>

<sup>13</sup> *Attorney General of Québec v. Irwin Toy, Ltd.*, [1989] 1 Supreme Court Reports 927 at 988-9.

<sup>14</sup> According to a speech by former Canadian Senator, the Honourable Mira Spivak, the United Kingdom Parliament outlawed advertising to children by tradesmen in 1874 in the Infant Relief Act. See: Child-Directed Advertising at pages 1126-8 of Debates of the Senate 3rd Session. 37th Parliament Volume 141 . Number 40 Official Report (Hansard) Tuesday, May 11, 2004. The Honourable Dan Hays Speaker. Available at: [https://sencanada.ca/content/sen/chamber/373/debates/pdf/040db\\_2004-05-11-e.pdf](https://sencanada.ca/content/sen/chamber/373/debates/pdf/040db_2004-05-11-e.pdf)

<sup>15</sup> *Bill S-228, Child Health Protection Act*, 1st Session, 42nd Parliament, 64-65 Elizabeth II, 2015-2016, Senate of Canada Available at: SENATE OF CANADA Available at: <https://www.parl.ca/DocumentViewer/en/42-1/bill/S-228/first-reading>

<sup>16</sup> Liberal political leadership of the current federal government supported an individual Conservative Senator's bill to restrict advising of some food to children, but was unable or unwilling to ensure that bill proceeded to a final vote legislative proposal for restrictions on the advertising and promotion of certain foods to children of yet-to-be defined nutrient-poor foods. *Bill S-228* was proposed by (now-retired) Senator Nancy Green Raine, an Olympic gold medalist skier who was voted Athlete of the 20<sup>th</sup> Century by *Maclean's Magazine* (a leading national news magazine). The federal government successfully urged the Senate to [expand protections in the bill to protect some teenagers, then narrowed it to cover only pre-teens](#) before possibly allowing it to [be defeated altogether for want of a single final vote in the Senate chamber before the October 2019 election](#). Reportedly, the bill was defeated by a procedural convention that allows a minority of unelected Senators to delay a vote indefinitely.

<sup>17</sup> Bill Jeffery. Testimony on Bill S-228 before the Standing Senate Committee on Social Affairs, Science and Technology Available at: [https://sencanada.ca/content/sen/committee/421/SOCI/Briefs/Bill\\_Jeffery\\_brief\\_e.pdf](https://sencanada.ca/content/sen/committee/421/SOCI/Briefs/Bill_Jeffery_brief_e.pdf) Bill Jeffery, Protecting Quebec Kids from Advertising: The Charter of Rights and the Supreme Court Make Canadian History, 2017:2, *Food for Life Report* at 22-23.

Even if the bill were still passed in its current form in a subsequent Parliament, its full implementation would be delayed several years, hampered by major loopholes, and vulnerable to legal challenge. A future Parliament would need to restart the legislative approval process. Then, a future cabinet would need to promulgate regulations to stipulate nutrition criteria for eligible advertisements, but an express exemption for sports team sponsorships and place/brand advertising (restaurants and mascots), and a foreseeably loophole for cross promotions (e.g., nutritionally vacuous diet drinks resembling sugary beverages) could greatly diminish the impact of the law in a marketing environment that is heavily dominated by soft drink and fast food restaurant ads on television. The law would likely be effective at preventing ads for candy and cheese, the nature of which products are less suited to the foreseeable loopholes. However, a proposed approach to front-of-pack nutrition labelling which would spare the vast majority of sugar cereals to carry a high-sugar warning, could become a lever for food companies to legal challenge in the courts stricter proposed nutrient limits for child-directed advertising.

<sup>18</sup> Lieffers JRL, Ekwaru JP, Ohinmaa A, Veugelers PJ. The economic burden of not meeting food recommendations in Canada: The cost of doing nothing. *PLoS One*. 2018 Apr 27;13(4):e0196333. doi: 10.1371/journal.pone.0196333. PMID: 29702680; PMCID: PMC5922758. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5922758/pdf/pone.0196333.pdf>

<sup>19</sup> Institute for Health Metrics and Evaluation. Global Burden of Disease database. 2019. See: <https://vizhub.healthdata.org/gbd-results?params=gbd-api-2019-permalink/eb9c83035a4ff09e41d73ace5551ce70>

<sup>20</sup> *Infra*, endnote 23.

<sup>21</sup> Adrian Morrow, U.S. Correspondent. Ontario Liberals to propose law that chain restaurants must post calorie counts Globe and Mail. Toronto. October 9, 2013. Available at: <https://www.theglobeandmail.com/news/politics/liberals-promise-bill-to-require-some-restaurants-to-put-calories-on-menus/article14770225/>

<sup>22</sup> See CHSL's Technical Brief of Bill Jeffery, LLB, Centre for Health Science and Law (CHSL) before the Senate Standing Senate Committee on Social Affairs, Science and Technology regarding Bill S-228, An Act to amend the Food and Drugs Act June 7, 2017 in Ottawa. Available at <http://healthscienceandlaw.ca/wp-content/uploads/2017/06/Centre-for-Health-Science-and-Law.Bills-228.Child-Protection-Act.pdf> and CHSL's submission to the House of Commons Standing Committee on Health study on child health, submitted May 20, 2022, page 3. Available at: <https://www.ourcommons.ca/Content/Committee/441/HESA/Brief/BR11805564/br-external/CentreForHealthScienceAndLaw-e.pdf>

<sup>23</sup> Through a combination of the compliance error tolerance of +/-20% and the high limits of 10 grams of free sugars per (usually) 30-gram serving of cereal, only four brands of breakfast cereal of approximately 150 available for sale in a large Ottawa grocery store would be required to carry a high-sugar warning by regulations promulgated in July 2020: Post Honey Shreddies, Post Oreo O's, Post Timbits Chocolate Glazed, Kellogg's Raisin Bran, Quaker Harvest Crunch Raisin Almond, all of which could escape the high-sugar warning requirement but reformulating to reduce the amount of sugar per serving by 0.5, 0.5, 1, 2, and 5 grams, respectively. The result could be collectively deceiving Canadians into believing that sugary cereals are very sugary after all. See: Registration SOR/2022-168 June 28, 2022 P.C. 2022-844 Her Excellency the Governor General in Council, on the recommendation of the Minister of Health, makes the annexed *Regulations Amending the Food and Drug Regulations (Nutrition Symbols, Other Labelling Provisions, Vitamin D and Hydrogenated Fats or Oils)* under subsection 30(1)1a of the *Food and Drugs Act*. 2022-07-20 *Canada Gazette Part II*, Vol. 156, No. 15 SOR/DORS/2022-168 pages 3457-3629. Available at <https://canadagazette.gc.ca/rp-pr/p2/2022/2022-07-20/pdf/g2-15615.pdf>

<sup>24</sup> *Ashley v. Canada (Commissioner of Competition)*, 2006 Federal Court 459. Available at: <https://canlii.ca/t/1n1vd>

**Submitted by:**

Marie-Jeanne Rossier-Bisaillon, Coalition québécoise sur la problématique du poids, Canada

Survey response	
Considerations and implications for adaptation and implementation of the guideline	<p>The definition of marketing that appears on page 20 is accurate but does not provide an understanding of the scope of food marketing to children. Early in the guideline, there should be examples of strategies to illustrate the power of strategies used (e.g., brand advertising, sports sponsorships, food packaging, marketing on social media, etc.) as well as how food marketing targets children (e.g., mascots, toys, cross-promotion, advertising in family venues or in schools, etc.). The recommendation to legislate all forms of marketing to which children are exposed is very relevant, considering the pervasiveness of these practices in our environments. However, when it comes to implementing public policies to restrict marketing to children, an important aspect is the identification of marketing that should be prohibited. To facilitate the implementation of this measure and make it feasible, this should be part of the guideline. For example, in box 1 (p.55), a tool describing examples of criteria could be proposed to guide the implementation of restriction on marketing to children. For example, in Quebec, a province of Canada, three criterias are used to define marketing to children: the nature of the product (does it interest children), the way that is promoted (does it talk to the children, color, music, animation, etc.) and the moment when it is promoted (does a lot of children are exposed?).</p>
General comments	<p>In the first paragraph of the Executive summary, the focus is on childhood obesity. However, food marketing to children influences greatly eating habits and preferences of children, as specified later in the guideline. Thus, the introduction should address the importance of promoting healthy eating among children, regardless of their weight, like it's the case in the Introduction. The over consumption of ultra processed foods and beverages is associated with type 2 diabetes, cardiovascular disease, some cancers, obesity, and other chronic diseases. Congratulations on this very complete and pertinent guideline. The recommendations are evidence-based, relevant and necessary in the face of this problem.</p>

**Submitted by:**

Julissa Chavira Garcia, Contrapeso, Mexico

## DRAFT WHO GUIDELINE FOR PUBLIC CONSULTATION ON POLICIES TO PROTECT CHILDREN FROM THE HARMFUL IMPACT OF FOOD MARKETING

**General comment of age:** At the beginning of the draft adolescents are mentioned but after the executive summary they are not mentioned again. Also the recommendation 2 suggest protecting children of all ages, including those older than 12 years, but the age range needs to be specified because “over 12” is not clearly understood.

**General comment of marketing definitions:** It is necessary to add in the introduction the different forms of marketing, such as physical, traditional media (Tv, radio, etc...), social media and online media. Not all the recommendations apply for all the types of marketing in the same way. The definition of marketing are needed that includes the full array of paid, owned, and earned content presently known and leaves room for the inclusion of new forms of marketing that will arise in the future:

- Expand marketing activity beyond “commercial.” This expansion would include earned content.
- Expand “communication or message” to include any form of direct and indirect marketing activity. This inclusion would encompass corporate social responsibility and cause-related marketing events and programs, sponsorships and partnerships, merchandising, brand ambassadors and social media influencer activity, and any promotional activity by celebrities, influencers, athletes, licensed characters, etc. This inclusion would also encompass marketing activity that might exist in any locale or time where/when children might be present, including but not limited to schools, play spaces, sports and entertainment venues, point of sale, digital and social media, and product and brand placements and tie-ins.
- Expand “particular products and services” to include brand marketing that has the effect of increasing recognition, appeal, or consumption of its products or services.
- Include digital data collection as a part of digital marketing (see our comments on children’s rights and specifically their right to privacy).

Also we believe it is necessary to highlight the actions for digital marketing as they are the ones that have increased their presence and intensity in recent years.

**General comment of equity:** As a transversal topic and based in research information, the equity topic must be integrated into the entire document. According to scientific research, children in public schools are more exposed to physical marketing than those in private schools. On this same topic, we also consider very important that this guideline contains information on the situation of children living in low- and middle- income countries.

In the page 46 of the draft it is mentioned that fifty-nine publications provided evidence related to human rights and equity, however human rights and equity are not a strong part of the recommendations. We suggest integrate modifications of a human rights external expert.

**General comment of recommendations and actors:** The draft is presented as a guideline on policies to protect children from the harmful impact of food marketing, however, there is an important lack of recommendations for policies and political action. We suggest that the topic of policy recommendations be broadened and deepened. We also suggest keeping the format of previous publications of WHO/PAHO on marketing aimed at children, such as ISBN 978-92-75-31638-2 or ISBN 978 92 4 350021, where the format of each recommendation contains a basis of recommendations and formulations. We consider that it would helpful if the recommendations are deepened, classified and presented by sector, e.g. recommendations and actions suggested for civil society, for government, for media sector, for industry, etc. Given that, for example, civil society often gets involved in more actions than dissemination of information, and has an active participation with decision makers in advocacy towards policies to protect children from food marketing.

**General comment of research gaps.** We appreciate the sample research questions offered in the Draft Guidelines. We would like to add to the need for research assessing differential effects of food marketing appeals based on the age of the child and based on the type of exposure channel. Currently, the sample questions focus on comparisons only against the absence of marketing. However, examining interactions between appeal, exposure type, and child age are important to identify the marketing strategies that are most powerful depending on age group.

We would also like to add the need for research comparing brand marketing versus product marketing, in addition to the proposed comparisons against the absence of marketing. This type of research is important to provide additional evidence for the discussion of brand marketing noted on p. 53 of the Draft Guidelines. As in, this research is important for understanding the nature of brand spillover effects, and this research might also provide insights into any intersection between brand spillover and health halo effects(Provencher & Jacob, 2016), wherein the marketing for a healthier version of a product within a brand family might create both a brand spillover and health halo effect for a less healthy product within the same family.

**Submitted by:**

Marisa Macari, El Poder del Consumidor, Mexico

Survey response	
Overall clarity of the guideline	<p>o Lack of specificity: The text of the recommendations should be further specified and provide further details to enable the guideline to be more useful at the national level. Decision-makers, especially those that are not technical experts in the topic will have difficulty interpreting many of the phrases in the recommendation section because they are vague and many of the important terms are left undefined.</p> <p>o Human rights: A central theme of the document should be the protection of children's rights and the right to health, food and water. The introduction, rationale, objectives and implementation considerations should explicitly state the protection of children's rights and interrelated rights such as the right to health, adequate food and water as a key justification for marketing regulation. We also note that the WHO Handbook for Guideline development indicates the importance of integrating human rights into WHO Guidelines.</p> <p>o Criteria guiding recommendations: The use of GRADE to make policy recommendations in the Guideline does not take into account the justification for marketing regulations to guarantee human rights.</p> <p>o Definitions: The definition of marketing should be more inclusive to include other types of marketing beyond advertising such as sponsorships, promotional activities, product placement and packaging.</p> <p>o Transparency: The Guideline should specify the names, affiliations and expertise of the authors as well as the NUGAG to support transparency of the process.</p>
Considerations and implications for adaptation and implementation of the guideline	<p>o Nutritional profile: A key component for successful implementation of marketing regulations is the nutrient profile that guides them, this should be specified in the guidelines, especially in the Recommendations Section, to ensure effective implementation at the local level. It should be very clearly specified that the nutrient profile undergirding marketing policies should be "aligned with WHO-region specific recommendations" or "WHO-regional profiles". These WHO regional profiles are more robust than industry developed profiles and were developed with independent experts. Indeed, the fact that WHO regional profiles are more effective than company developed profiles is mentioned in the systematic reviews on which the Guideline is developed. This phrase is key for proper implementation to ensure that the EU Pledge nutrient criteria, which research demonstrates is lax, and which does not include non-caloric sweeteners, is not chosen over more robust WHO nutrient criteria.</p> <p>o Power: To improve implementation of the 5th bullet under Recommendation 2, it will be important to specify the marketing</p>

	<p>strategies that impact the “power of marketing to persuade”. The intention of this recommendation only becomes clear after reading the “remarks” section below. For decision-makers and policy-makers, the specific strategies that make marketing “powerful” like tie-ins, celebrities, influencers, sponsorships, gifts or incentives must be specified.</p> <p>o Marketing channels: In the interest of successful implementation at the federal and local level the 4th bullet of the 2nd Recommendation should be specified more clearly, it unclear what “broad” policies should entail. It would be important to specify that “all marketing channels” should be regulated and key marketing channels should be mentioned by saying “including digital marketing, TV, print, packaging and marketing in schools, etc”. Marketing channels could also be defined and listed in the glossary. Otherwise, this key element of marketing policies is left unspecified and undefined, leaving policy-makers without useful Guidance.</p> <p>o Age: The age range included in the guideline should be more specific to include children from 0-19 explicitly. The current text is unclear as it just says “including those older than 12 years...”. Many marketing recommendations and HR guidance suggest protecting children through the age of 19, including children under the age of 2.</p> <p>o Conflict of Interest/Industry Interference: In the Recommendation section, an additional recommendation should be included to protect policy from industry interference, something like “Policy development should prioritize the public interest and the best interests of the child and safeguard against industry interference”. This is aligned with mentions of conflict of interest in the 2010 Set of Recommendations on Marketing as well as in the CFS Voluntary Guidelines on Food Systems and Nutrition in the section on marketing. Currently, the mention of industry opposition is very vague in the Guidelines and does not include regulatory approaches to CoI that could help to curb industry involvement in policy-making.</p>
Context and setting-specific issues that have not yet been captured	<p>o As the guidelines state, the literature included in the review is heavily biased towards HICs, it is important that this reality be taken into account more thoroughly in the Guideline. Examples of marketing regulations in lower-income countries, and potentially the global south, could enable the document to have greater relevance in these localities. Furthermore, the inclusion of additional recommendations based on the precautionary principle may be justified to ensure the protection of children’s rights in LMIC.</p>

# **EuroHealthNet Response to the WHO online public consultation on draft guideline on policies to protect children from the harmful impact of food marketing**

EuroHealthNet welcomes the opportunity to contribute to this online public consultation by the WHO on the “draft guideline on policies to protect children from the harmful impact of food marketing”. Our hope is that our health equity-focused input will strengthen the advocacy towards more mandatory regulation at EU and Member State level focused on protecting children from unhealthy food marketing. For what concerns the specific questions of the consultation, we believe that:

## **1.1 Overall clarity of the guideline**

We are satisfied with the overall clarity of the document. Research is well presented, gaps and areas for improvement are well specified, and language, while technical, not too complicated to be appropriately disseminated at policy level. However, we found the executive summary to be slightly too long (pages 7-17), considering that all concepts then get repeated over the next pages. Hence, we think the document would benefit from having a more concise executive summary.

Furthermore, in the current version of the document there seems to be only two recommendations, while the guidelines pose 4 main objectives. Matching the number of the recommendations with the guidelines would then improve the overall clarity. Here, we are yet not sure if recommendations indicated are just the updated ones compared to before, so it may be that you have already resolved this aspect.

## **1.2 Considerations and implications for adaptation and implementation of the guidelines**

We have a few considerations concerning the adaptation and implementation of the guidelines:

- I. **Add a definition of ‘Healthy diet’ in the glossary:** a big challenge, especially with policy regulation in mind, is to define clearly what we mean by *healthy diets*. In a certain way, we all know what is healthy, but those opposing regulation always find a way to slow down regulation by contextualizing the "unhealthiness" of a food. For example, it is not an infrequent tactic not to discard a sugary drink as ‘unhealthy’ if considered a part of an active lifestyle or ‘consumed in moderation’ or within recommended portion sizes. For this reason, we think that document would benefit from inserting a definition of ‘healthy diet’ in the glossary, so that in the following parts of the document it is more clearly defined what we refer to when using this term.
- II. **The importance of ‘sustainability’:** throughout the text, there are few references to *sustainability*, and its connection with healthy diets. We understand that this could be a deliberate choice to maintain the document specifically focused on the impact of food advertisement on children’s health, but it would be important to at least mention that restricting marketing of HFSS foods to children would not only lead to positive health outcomes, but it would also benefit the environment.
- III. **Lower socio-economic (SES) groups and backgrounds more affected:** EuroHealthNet is always working with the social gradient narrative, and we are thus pleased that throughout the text there are several references to the fact that children from lower SES are more affected. While making the point, we would suggest embedding the children more in their family and community environments, which may be also characterised by a significant level of deprivation. This is to say while targeting policies at the child-population, due attention to their closest living environments is given so as to support, not undermine any benefit of such policies by unfavourable socio-economic determinants at family and community level. At the same time, this point emerges more in the middle and final part of the text, so it would be important to reference right from the beginning of the document that this problem affects the whole society, but there is a clear social gradient to it, with children from lower SES that are most affected by the double burden of malnutrition and overweight.
- IV. **Mandatory/voluntary policies:** we are pleased that document mentions one fundamental problem in policy regulation, namely that (industry-led) voluntary regulation (guidelines, codes of conduct) are largely ineffective and at times detrimental. However, a conundrum here is that the definition of policies includes also voluntary measures. Hence, we think that throughout the text it should always be specified “mandatory” when the term policies is used. In this way, it would be more clear that policy regulation is not sufficient, since we need to implement *mandatory* legally-binding policy regulation.
- V. **Broadening the scope:** We appreciated the recommendation of broadening the scope of policies to protect all children exposed to unhealthy food marketing through different channels, potentially also the emerging ones as well. A significant challenge

at policy level is finding regulations that apply to different media, so it is necessary to stress that policies ought to target as wide a range of media as possible.

- VI. **We applaud the guidelines reference to long-term political commitment** needed for address of the issue, including through sustained resources allocation for enforcement, continued monitoring for compliance and achievement of objectives. It is important to strengthen these points across all relevant ministries at all relevant governance levels.

### 1.3 Context and setting-specific issues that have not yet been captured

- The reference to the children rights as **human rights approach** is excellent, but as it is presented it misses one very essential consequence of this point. That is, if we demonstrate – as done by several scholars such as Professor Amandine Garde – that food advertisement infringes children’s basic human rights, then we have space to claim that we **must** act to regulate advertisement, and not that we just **should** act. This is not only a semantic difference, since ‘must’ implies an obligation that we cannot delay or forget, while the ‘should’ implies suggestions and advices that the food industry can delay, manufacture doubt about the strength of the evidence or do business as usual without facing legal consequences. Hence, text should exploit more the regulatory opportunity offered by the human rights approach, and it should also replace the ‘should’ with ‘must’ throughout the text.
- It is welcome to specify that little is known about the impact of food marketing via marketing channels other than television, but the text still misses a bit of an analysis on the new channels by which children are consuming advertisement, such as **vlogs, influencer social media accounts, ad-games, etc.** Document mentions this, but it does not seem to give it the needed priority compared to traditional media. The European Commission - DG Connect in particular - has been putting more and more attention to this issue recently, so also this document could delve a bit more into the issues caused by vloggers, influencers and similar media as they emerge. In addition, the issue of exploitation of the Artificial Intelligence in collecting children’s dietary choices, personalised advertising based on children’s unique emotional experience- should be reflected in the guidelines. These new techniques have been increasingly entering the advertising and marketing food and drink industry practice.
- We are pleased that document references to the opposition from certain actors – such as food industries – that mandatory measures via regulations are likely to face. Regulations that are needed to protect the public health and the public good will be opposed by the industries who have been profiting from deregulated markets precisely. Policy-making environment must embrace a very likely opposition to mandatory measures. If we are to

implement more mandatory regulations, it is necessary to acknowledge that opposition will be an inevitable part of the process. Ultimately, it is a matter of a precautionary principle and the strength of evidence at hand to prove the value of legislation.

- In regards to research gaps identified, we would be interested to see the effect in children on mental health of exposure to food marketing, compared to no marketing; addition of reference to sustainable diets and transition to sustainable food systems; as well as insufficient data on the effects of food marketing in children younger than 5.

## 1.4 Errors of fact or missing data

We are concerned that recommendation 2 is framed as a “*Conditional recommendation, very low certainty evidence*”. As mentioned by the document itself in other parts, there is sufficient support demonstrating the positive results of mandatory regulation and of other forms of protection from marketing. It would thus be a shame if we framed all these excellent recommendations with “very low evidence support”, since opponents would easily find a way to discard changes by mentioning that document acknowledges that we do not have support to implement mandatory regulation over unhealthy food advertisement. We do not recommend playing it in hands of those who have specialised in manufacturing and nurturing doubt about lack of or weak evidence for the benefits of regulating food marketing to children.

## 1.5 General comments

As a European not-for-profit partnership that includes organisations, institutes, and authorities working on public health, disease prevention, promoting health and wellbeing, and reducing inequalities, EuroHealthNet welcomes these guidelines and the systemic approach to food marketing on which this document is framed. We are part of an [informal alliance](#) of EU organisations advocating for an EU directive on unhealthy food marketing to children, and we believe that this document well fits our advocacy work, since it considers all major points connected to advertisement of unhealthy foods. Moreover, guidelines are set at the right level of specificity, since they are sufficiently general that can apply to different contexts, but at the same time they are not too theoretical that policy makers do not see how they could use them. For this reason, we will include these guidelines in our advocacy work on bringing health and equity at the centre of EU food policies.



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**Submitted by:**

Manuel Moñino, European Federation of the Associations of Dietitians, The Netherlands

29, July 2022

**CALL FOR COMMENTS ON THE DRAFT WHO GUIDELINE: POLICIES TO PROTECT CHILDREN FROM THE HARMFUL IMPACT OF FOOD MARKETING**

**Response of European Specialist Dietetic Network (ESDN) for Public Health of the European Federation of the Associations of Dietitians (EFAD)<sup>1</sup>.**

We really welcomed the opportunity to participate in this consultation, and we hope our comments are helpful for the development of this guidelines:

**Considerations and implications for adaptation and implementation of the guidance**

- We welcome the suggestion of using nutrient profile models to identify foods whose marketing should be restricted. Nutrient profile models must be consistent for preventing obesity and other non-communicable diseases and should be based on national food-based dietary guidelines, which could be applied to all products and with a clearly defined cut-off. In addition, policies in place must ensure that nutrient profile models work for different purposes, such as nutrition and health claims, front of package nutrition labeling or food and drink taxes, to allow consistency with public health objectives (1). However, inconsistencies in classification of certain foods according to the nutrient profile model used, need to be considered. For example, the European nutrient profile model would permit marketing of some commonly consumed types of fast food, such as fried chicken, due to its high protein content. In contrast, the Eastern European nutrient profile model explicitly mentions the restriction of advertising of these products. Consistency among nutrient profile models should be considered to prevent cross-border marketing of certain products. This should be emphasized in recommendation 2 in

<sup>1</sup>Zoi Toumpakari (United Kingdom), Amanda Avery, (United Kingdom), Teresa Rodrigues (Portugal), Elena Carrillo (Spain), Zeynep Begüm Kalyoncu (Turkey) Bernadette Kiss-Toth (Hungary) and Manuel Moñino (Spain). <http://www.efad.org/en-us/specialists-networks/public-health/>

addition to minimising the risk of migration of marketing to other channels.

- More clear and specific guidance could be provided on how governments can deal with industry opposition, in order to implement restrictions in food marketing. Influencing the policymaking process, via practices, such as lobbying, has been previously documented as a common strategy used by the food industry to maintain a 'business-friendly regulatory environment' (2). Hence, a more nuanced description of how policymakers can deal with industry opposition is needed.
- We believe that a clear definition, as well as list of persuasive elements used in powerful food marketing should be identified. We additionally argue for monitoring the use of these techniques, to avoid the use of similar 'novel' techniques in the future.
- Brand marketing is a common technique used by the food industry to create brand loyalty (2). We therefore support proposed restrictions on brand marketing, although these are the ones most likely to face strong opposition (3). Clear definitions of which brands should be restricted are needed, which in addition to brands synonymous to 'unhealthy' foods (highlighted in the guideline), could be further informed by their likelihood to have power to attract children and have expected exposure of children to this brand (3).
- The guideline refers to food marketing restrictions in outdoor settings, but these settings could be made more specific to aid policymakers in the decision making stage. Recent evidence supports the implementation of food marketing restrictions in outdoor settings, such as the Transport for London Network (4), by suggesting a reduction in purchasing of high in fat, salt or sugar (HFSS) products, following the implementation of this policy. Advertising bans for outdoor settings, e.g., bus stops, have been introduced in more UK cities, e.g., Bristol. An evaluation of their impact on critical and important outcomes will shed additional light on the impact of these policies in outdoor settings.
- A challenge in implementing food marketing restrictions in outdoor advertising sites, e.g. bus stops, is that not all of these sites are owned by local councils and are rather privately owned. They may therefore fall outside the jurisdiction of

policies aiming to introduce restrictions in food marketing. The guideline should emphasise this challenge and explicitly recommend broad application of policies regardless of owning rights.

#### Context and setting-specific issues that have not yet been captured

- We argue for the importance of policy framing to increase public acceptability and minimise opposing views. We suggest that food marketing policies should be communicated alongside other dietary policies e.g., policies on the school food environment, nutritional labelling, taxes, etc, to increase public support. We also argue that food marketing policies should be framed alongside valued co-benefits that have been identified in the literature, e.g., a reduction in exposure to harmful commercial practices(3). Evidence suggests that framing policies alongside valued co-benefits or other policies that tackle similar aspects of the public health issue are likely to increase public support for these policies(5).

#### Errors of fact or missing data

- We believe that the guideline should emphasise the need for food marketing policies to target not only children from low socioeconomic backgrounds, but also from ethnic minorities, as evidence suggest higher exposure to food marketing for both these population sub-groups(6).

#### General comments

- The guideline talks about dealing with industry opposition by 'showing that well-designed policies do not pose substantive trade concerns'. It is not clear to the extent that this is well documented in the literature or if further studies are needed. Existing research argues for additional interdisciplinary studies to examine the intersection of food marketing policies and economic policies for successful implementation of the former and this should be made clear in the guideline(3).
- The report mentions that more high-quality studies are needed to measure the impact of restrictions in food marketing on dietary intake. We believe that it should be made clear that future studies should assess dietary intake throughout the day, rather than an acute measure of diet following exposure to food marketing. This will account for compensatory dietary intake

and provide a more accurate picture of the impact of restrictions in food marketing on dietary intake.

- We argue that future studies should not only assess objective exposure to food marketing, but also perceptions around what and how many adverts children are exposed to. Perceptions of the food environment have been found to better predict dietary intake compare to objective measures(7), hence, exploring perceptions of food marketing exposure, as well as 'true' exposure to food marketing is important.
- The guideline should acknowledge and encourage future studies to use a longitudinal study design to evaluate the effectiveness of food marketing policies and allow a better understanding of the impact of these policies on critical and important outcomes in the long-term.

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**Submitted by:**

Nikolai Pushkarev, European Public Health Alliance, Belgium

Survey response	
General comments	The European Public Health Alliance (EPHA) strongly agrees with Recommendation 2 (section 4.2). In our view, this should not be a conditional recommendation, but a full recommendation, considering that voluntary measures and approaches to marketing regulation of limited scope have not succeeded in protecting children (up to age 18) from unhealthy food marketing. In the attached we include a Call to Action, supported by 20 European leading health, consumer, child and family organisations, and Blueprint Directive to protect children from the marketing of nutritionally poor food*. The measures proposed align closely and give further shape to the Recommendation 2.

\* Attachments not included

**Submitted by:**

Maria Elisabet Pizarro, Fundación Interamericana del Corazón Argentina [Interamerican Heart Foundation- Argentina], Argentina

Survey response	
Overall clarity of the guideline	<p>1. Page 15: We suggest modifying the wording of the age range: “protect children of all ages, including those older than 12 years” and to say instead: “protect children of all ages, from 0 to 19 years”. It is not recommended to make a distinction between children under 12 and children older than that age. The Convention on the Rights of the Child specified that “a child means every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier.” 2. In general: We suggest being more stringent in recommending mandatory regulations and discouraging voluntary measures. It has been demonstrated that voluntary agreements are not efficient in preventing the consumption of unhealthy products. In terms of effective policies for the prevention of NCDs’ risk factors, States should regulate the activities of these industries, which are increasingly implicated in the global NCDs epidemic, in order to mitigate the detrimental impact their actions have on the enjoyment of the right to health and other rights. Evidence shows that industry approaches have had no effect on protecting public health. For example, companies in Mexico, which had signed the self-regulation, influenced children indirectly by targeting other audiences and by developing marketing actions during family television programs, which are also watched by children (Théodore and et; Pitfalls of the self-regulation of advertisements directed at children on Mexican television; 2016. Available at: <a href="https://onlinelibrary.wiley.com/doi/epdf/10.1111/ijpo.12144">https://onlinelibrary.wiley.com/doi/epdf/10.1111/ijpo.12144</a>) In this context, the data show that binding forms of government-led, independently adopted, and fully enforced regulation, with clear objectives, timelines, and sanctions, have the greatest impact and effect (Kelley Lee and Nicholas Freudenberg; Public Health Roles in Addressing Commercial Determinants of Health; Annual Review of Public Health 2022 43:1, 375-395. Available at: <a href="https://www.annualreviews.org/doi/full/10.1146/annurev-publhealth-052220-020447">https://www.annualreviews.org/doi/full/10.1146/annurev-publhealth-052220-020447</a>)</p>
Considerations and implications for adaptation and implementation of the guideline	
Context and setting-specific	<p>1. We suggest detailing communication channels and venues and their proximities: “including traditional and digital media, streets, schools, and</p>

<p>issues that have not yet been captured</p>	<p>school surroundings” every time they are mentioned (for example on page 15). 2. We suggest that the nutrient profile model used to classify foods to be restricted from marketing should be based on the best standards and available scientific evidence and should identify processed and ultra-processed products with excessive amounts of critical nutrients such as sodium, sugar, and fats that contain sweeteners. This should be mentioned every time nutrient profiles characteristics are mentioned (for example on page 15) . 3. Need to promote and guarantee transparency: There are guidelines that establish the need to promote and guarantee transparency in companies' relationships with governments, as there are clear conflicts of interest between unhealthy product companies and public health measures(see for example WHO Framework Convention on Tobacco Control, Art. 5.3; PAHO; Preventing and Managing Conflicts of Interest in Country-level Nutrition Programs: A Roadmap for Implementing the World Health Organization’s Draft Approach in the Americas). We suggest including a specific reference in the guidelines for governments in which the WHO recommends to States to ensure transparency in the promotion of marketing regulations. States have the duty to ensure that no undue influence, whether real or perceived, on interests other than the public good, is exerted on individuals or institutions responsible for public decision-making. All of this in order not to affect the integrity and confidence in the public policies implemented (PAHO; Preventing and Managing Conflicts of Interest in Country-level Nutrition Programs: A Roadmap for Implementing the World Health Organization’s Draft Approach in the Americas. Available at: <a href="https://www.paho.org/en/documents/preventing-and-managing-conflicts-interest-country-level-nutrition-programs-roadmap">https://www.paho.org/en/documents/preventing-and-managing-conflicts-interest-country-level-nutrition-programs-roadmap</a>). It has been internationally recommended to States, for example in the field of tobacco control, that they should not accept, support, or endorse the participation of tobacco companies in public education or youth initiatives or any tobacco control-related policy (Weishaar H, Collin J, Smith K, Grüning T, Mandal S, Gilmore A. 2012. Global health governance and the commercial sector: a documentary analysis of tobacco company strategies to influence the WHO Framework Convention on Tobacco Control. PLOS Med. 9(6):e1001249). In this sense, WHO has advised States, in order to avoid industry interference, to develop a legal framework with binding rules and impose sanctions for non-compliance. In addition, they should develop a written policy on conflicts of interest and codes of conduct (for experts, professionals, and the scientific community) that establish clear rules on what types of behavior are prohibited (Weishaar H, Collin J, Smith K, Grüning T, Mandal S, Gilmore A. 2012. Global health governance and the commercial sector: a documentary analysis of tobacco company strategies</p>
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	to influence the WHO Framework Convention on Tobacco Control. PLOS Med. 9(6):e1001249).
Errors of fact or missing data	Section “Research gaps” page 17: we suggest including as a research gap the lack of evidence about how to regulate and monitor digital media marketing. And to highlight the importance and urgency of developing this evidence as children are highly exposed to this type of marketing nowadays.
General comments	

**Submitted by:**

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**Recommendation to restrict unhealthy junk food advertisements aiming children**

There are many evidence-based research reports that childhood obesity directly related with irresponsible food marketing and consumption of junk foods and some non-alcoholic beverages. Children are more vulnerable to marketing especially kids younger than 6 years. The age group unable to distinguish between entertainment, reality or marketing. Children unable to understand the consequences of their eating behaviour, choice and preferences on long term health.

The junk food advertisements influencing children, excess or uncontrolled consumption of such junk food cause direct reason for obesity and other related health issues. There are several research shows that marketing influences the children's requests, preferences and choices of consuming food. Children are a lucrative market for food companies and the pester power of kids influence their parents to buy, thereby developing habit consuming junk foods when they were young. It is one of the key responsibility and Government and state health authority to implement mandatory restriction policy on children intended junk food advertisements especially rich in saturated fat, salt and/or free. Advertising undoubtedly plays a significant role in promoting and encouraging the consumption of less healthy foods. The restriction of junk food advertisements definitely helps to change the behaviour of children and reduce the cost of public health expense.

It is important to frame legal tools to restrict and monitor junk food advertisement to protect the health of our future working healthy productive citizens and significantly reduce the cost of public health expense, work load of overstretched health service and building a better healthy people and community.

What our recommendations to develop guidelines for implement restriction on junk food adverts that should adequately protect children from exposure to, and the power of, unhealthy food and beverage marketing

Govt shall frame a code that governs all food and beverage advertising intended at children and apply to all media across the country

1)Constitute a committee- (Healthy food for Public Board) for collecting applications for approving any food advertisements intended for children or a child/child in that food marketing advertisement The committee decide what is unhealthy food and how it affects children health and what kind of advertising should be allowed. This committee will be responsible for ensuring advertisers comply with code

The committee consists of one food industry/retail food industry representative, two health public health expert, One GP, two consumer representatives (who has children 3-7 yrs. old.), two clinical nutrition expert/dietician and one food safety expert

This committee can assess application after evaluating the quality, health and nutrition effect of food products they advertised and granting conditions for such advertisement (time restriction in media such as TV, online location restriction).

2) The committee can Impose restriction cartoon covered packaging for sugary cereals, any branded food products with collectable magnets or any other toys as gift offer to children, impose time restriction on media advertisements especially, TV, Radio, online about unhealthy food and beverage products at peak viewing times especially evening at 4 pm-9pm

3) Impose a guideline or regulation Food and drink brands, restaurants, takeaways and delivery services are only allowed to place adverts that promote healthier products rather than simply give publicity for their brands

4) Ban any type of Junk food adverts in public transport system (train, bus etc) similar to that implemented London city

5) The committee act as watch dog for monitoring food marketing advertisements in market and also collecting complaints from public and conduct hearing on any disputed advertisements and take a final decision about advice to amend/ withdraw complaints

6) This committee can also receive, assess, take action on public complaints about of any confusing, falsehood, misrepresenting, trickery health claiming advertisement.

7) The committee can decide to approve reject any food related advertisements place in public sites, railway station, airport, on long term basis (except for two- or three-day sponsorship for any events)

7) This committee give an opportunity for both retail food service/food chain/food company and consumers {complainant} can explain their views /issues in front of a committee and take a final decision on any unhealthy claimed advertisement, though it is intended for child or adult

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**Submitted by:**

Elizabeth Orlan, Global Health Advocacy Incubator, United States of America



***Global Health Advocacy Incubator's inputs on the World Health Organization's Online public consultation on draft guideline on policies to protect children from the harmful impact of food marketing  
July 2022***

***Overall clarity of the guideline***

- Please clarify Recommendation 2, point 4 (page 15). We recommend providing more specifics related to the channels of marketing. While more channels may be introduced in future years, it would be helpful to have an indicative list of examples of some current channels as a reference to states addressing these issues. This list does not need to be exhaustive and can build on the channels already regulated for tobacco control, alcohol and unhealthy food marketing. Partial marketing restrictions systematically are ineffective at reducing marketing Restrictions should use language that would encompass any future channels' inclusion (Boyland & Tatlow-Golden, 2017; Garton et al. 2021).
- Additionally, for Recommendation 2, point 4, please specify the type of channels and whether it includes television, the internet, or social media. There should be more specific guidelines regarding social media marketing. Social media has allowed the food industry to directly contact children and adolescents through media campaigns, celebrity/influencer endorsements and collaborations which are not always explicitly revealed as marketing strategies. Social media has allowed the food industry to use yet another medium that has the power to influence food preferences. Numerous articles highlight the frequency of exposure to marketing unhealthy foods and beverages and the impact of exposure on children and adolescents (Bend et al. 2022, Ares et al. 2022; Brooks et al 2022; McCarthy et al. 2022; Zambrano et al. 2021; Qutteina, 2019; Kucharczuk et al. 2022).
- For Recommendation 2, point 5 (page 15), it is unclear what is meant by "restrict the power of food marketing to persuade." Marketing is intended to persuade to increase purchases, therefore, the only way to lessen this is to eliminate this marketing.
- For Recommendation 2, remarks (page 15, last bullet), please clarify what age range should be protected by marketing policies. There seems to be a lack of clarity on this issue in this section and throughout the document, as some statements imply including adults/persons all ages and other statements do not. It is unclear whether there will be different guidelines that apply to media specifically targeted to children under 12 versus children and persons over 12.
  - This is repeated on page 16- "*These policy design elements involve using a*
  - *mandatory approach protecting children of all ages (including those older than 12 years),*" this statement or intention should be clarified to include what elements that also apply to adults or apply on media that may be viewed by children but is not directed to children.
  - The definitions and/or language for what is meant by "desirable effects" (page 15, last 2 bullets) should be clarified and explained
- The policy design elements in Recommendation 2, paragraph 3 on page 16 under "Implementation considerations" follow best practices and should be the main points under which the guidelines are based, these include: "using a mandatory approach protecting children of all ages (including those older than 12 years, defining the foods for which marketing is to be restricted using a nutrient profile model, and ensuring that policies are as broad as possible in their coverage of advertising, promotion and sponsorship strategies and channels." Those children under 18 years should be explicitly included in this regulation.

- For Remarks, page 16, please clarify/specify which nutrient profile model is being recommended. We would recommend using WHO's regional NPMs- SEARO, PAHO, AFRO, as the minimum standards.
- Please clarify and expand the definition of marketing as written on page 20: Marketing is defined as “any form of commercial communication or message that advertises or otherwise promotes a product, its related brand or a service. It is designed to, or has the effect of, increasing the recognition, appeal, use and/or consumption of particular products and services (1,2).” For example, the Framework Convention on Tobacco Control (page 4c) defines tobacco advertising and promotion as “any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.” This statement can be modified to relate to ultra-processed products and sweet drinks to be sure that any form of advertising, promotion and sponsorship is included in the definition and should be used as such throughout the document. It is very important to extend the definition of marketing from brands to manufacturers of ultra-processed products to fully include all marketing practices that exist for the parent company, particularly but not limited to sponsorship.
- While under recommendation 2 the guidelines suggest that mandatory marketing restrictions are necessary, the document is insufficient in providing the existing evidence that demonstrates how voluntary agreements are not effective in decreasing exposure to marketing. In addition, throughout the guidelines, the information in relation to mandatory versus voluntary regulations is presented in a way that creates confusion as voluntary agreements are positioned, defined, and treated as a way to regulate marketing, when instead voluntary restrictions are used as a way for companies to seem like they are abiding by a regulation when they are not, and there is little (if any) enforcement.
- Under the glossary section on page 6, the definition of policies seems to recognize voluntary agreements as a legitimate path to the formulation of public policies. This is particularly concerning as voluntary agreements leave the implementation to the private sector, instead of governments, who should be enforcing mandatory marketing restrictions to protect child wellbeing and uphold human rights.
- In this regard, effective regulations of practices that are impacting human rights of children is an obligation for Member States that ratified basic human rights treaties. Thus, we recommend using stronger language, in line with recommendations from human rights bodies, arguing that relying on industry self-regulation could violate countries' human rights obligations. This recommendation is consistent with the suggestion to add a stronger human rights perspective across the guideline. We also recommend unifying the language including a human rights approach throughout the document to be consistent.
- The document is unclear about the criteria under which the declaration of interest of members of the Nutrition Guidance Expert Advisory Group (NUGAG) was assessed to better manage conflict of interest. It was also unclear who wrote the document, and what, if any, their conflicts of interest are. We recommend providing more information about the criteria used for conflict-of-interest declaration, how conflicts were managed, as well as listing the guideline's participating authors, their institutions, and any relevant conflicts of interest before the document is finalized in Appendices 2-5.
- The first bullet point on page 16 is unclear in referring to NPMs. This seems to be an issue of mandatory versus voluntary policy instead of NPM versus no NPM.

### ***Considerations and implications for adaptation and implementation of the guideline***

- To “protect children from the harmful impact of food marketing, improve health and nutritional status of all people and ultimately reduce the burden of diet related NCDs to

accelerate the achievement the SDG goals” (page 9) we believe that stronger policy recommendations are needed

- The second point on page 16 shows the need for comprehensive marketing restrictions on all media to all populations (not only children). The guidelines should reflect this.
- Under recommendation 2, there is a suggestion to protect children of all ages, including those older than 12 years. We suggest connecting this recommendation to the definition of children under the Convention of the rights of the Child, which covers those under 18 years old. Marketing restrictions do not limit the autonomy of people, including children, to make decisions but instead protect them from exposure that has proven to be harmful.
- We recommend avoiding any language that could be interpreted to limit marketing restrictions only to “marketing directed to children.” Children are exposed and vulnerable to many marketing strategies that are not directed to them. We propose to use language that clearly establishes that the goal of the guideline and its implementation is to reduce child exposure to any form of unhealthy food marketing but not confined only to marketing strategies “directed to children”. (Carpentier et al. 2019; Correa et al. 2018; Dintrans et al. 2019)
- It is challenging to comment on how this guideline will complement the upcoming guidelines on school food and nutrition policies, labeling and fiscal policies at this time since those guidelines are not yet published. It would be best to have opportunities to view all guidelines and have a subsequent opportunity to comment on the package of policies together, and how the guidelines could complement each other.
- The statement that “*recommendations may require adaptation to the local context of WHO regions and Member States, including the country’s nutritional situation, cultural context, locally available foods, dietary customs, available resources and capacities, and existing policies and governance structures,*” while likely true, may be a barrier for those countries trying to implement these policies. This comment could also be interpreted to minimize the fact that the ultra-processed products, the companies that produce them, and the marketing practices are quite similar across all countries. The food industry has employed tactical marketing strategies to integrate their brand into the culture of their customers countries through various media platforms, school environments, sports teams, and more. (Du et al. 2021; Kelly et al. 2015; Demers-Potvin et al. 2022; Dam et al. 2021; Ireland et al. 2022; Wood et al. 2021;). Issuing this guideline could stress the global features of these challenges, particularly as multinational food corporations dominate the market, while also ensuring each country can adapt measures to their specific contexts.
- Most recommendations as stated are diminished by the fact that they are conditional (see page 15) and “very low certainty evidence” for nearly all recommendations.
  - If conditional recommendations “depend on policy design elements and contextual factors”- please provide information on what those elements and factors are. Providing example scenarios could be a useful tool for countries looking to implement these policies.
- Based on Recommendation 2, “remarks” point 4, all aspects of marketing should be covered and to all populations (page 16).
- Implementation considerations, Paragraph 2 (page 16): we recommend deferring to WHO regional Nutrient Profile Models instead of requiring countries to develop their own specific standards. We recommend the use of the corresponding WHO regional NPM as minimum standards for several reasons: -these NPMs are based on robust scientific evidence and consultation without conflicts of interest; considers existing WHO guidelines on sugar and other nutrients of concern; PAHO’s NPM is designed for use in multiple applications, not only including marketing but also front of package labeling and fiscal policies, while other regional NPMs specify thresholds that can also be used to govern these policies. Further, the use of a regional standard is an effective way to protect national policies from industry legal challenges and conserves the time and resources typically needed to develop new NPMs

versus adapting an existing NPM. In addition, utilizing WHO regional NPMs versus country specific NPMs removes a step in the process from which industry and other corporate actors can interfere to weaken the thresholds of marketing restrictions among other food policies at scale globally.

- The guidelines indicate that marketing regulations should be “broad enough to minimize the risk of migration of marketing to other channels”; however, it is unclear how the implementation and monitoring will address issues such as digital and new technologies marketing, cross-border marketing, influencers or other channels. The guidelines do not present specific solutions for these new channels, including potential policy designs, monitoring mechanisms, or tracking of online or offline content, that we recommend to address.
- Under its implementation considerations, the guidelines suggest that “marketing that originates from sources outside a national jurisdiction may not be covered by national policies”. This statement undermines the capacity of states to address different marketing practices. Marketing originating from outside a national jurisdiction will always have aspects that could be regulated by national jurisdictions. In any case, current practices of blocking certain ads based on IP addresses of users, considering arrangements between websites and TV companies shows that restrictions are implementable (Internet Society Perspectives on Internet Content Blocking: An Overview, 2017). WHO should not discourage countries from designing effective mechanisms for marketing restrictions both within and outside of the national jurisdiction. In fact, WHO could encourage collaboration among states to address any challenges that may arise related to these restrictions.
- With regards to the research gaps section (pages 17-18), the guideline’s conservative approach about the evidence on the effectiveness and limited evidence because of the lack of policies that exist will only be perpetuated by the “low confidence” in the evidence presented, wherein countries may be hesitant to implement policies if there is not strong backing from organizations like the WHO, even though the evidence that exists and is presented shows that marketing restrictions are active policy, and marketing restrictions have been recommended by WHO for other harmful products such as tobacco and alcohol. This is particularly important in the context where there is strong evidence that demonstrated that the partial restrictions of unhealthy food marketing systematically failed to reduce exposure to marketing (Lavriša et al. 2020; Mulligan et al. 2018; Barquera 2013), which also occurred with partial marketing restrictions for tobacco and alcohol (Zheng et al. 2022; Casswell et al. 2012). We urge the WHO to recommend comprehensive, mandatory, bans of advertising, promotion, and sponsorship (and other forms of marketing) of ultra-processed food and sugary drinks. The data in the background section on the current state of global diet-related disease (page 19-22) show the need for urgent action even when there are gaps in the specific data available. A situation with strong evidence for urgent action and less strong evidence for measures has happened before in many public health issues. For tobacco control, this situation has been addressed by an International Centre for Settlement of Investment Disputes (ICSID)
- In referencing the arbitration panel for the case Philip Morris v. Uruguay there are some lessons learned that apply to these guidelines. In the final award for that case, the tribunal highlighted the need for states to have flexibility to develop public measures to respond to urgent matters, even if the evidence for new measures is yet to be developed. Discussing a labeling and marketing restriction in Uruguay, the tribunal found that “The Tribunal observes that possible over- or under-inclusiveness of the SPR (single presentation requirement) was unsurprising given the relative novelty of this regulation” (ICSID arbitration panel award, p.406). According to the tribunal, new measures are expected to need adjustments and that does not stop governments from developing them. Also, with regards to the evidence needed to advance on a public health measure, the tribunal found that “it is sufficient in light of the applicable standard to hold that the SPR was an attempt to address a real public health concern, that the measure taken was not disproportionate to that concern and that it was

adopted in good faith” (ICSID arbitration panel award, p.409). If an investment tribunal, considering investment related obligation is making such a clear statement in favor of the ability of governments to act to respond to public health issues, the WHO should have stronger and more supportive approach of governments taking actions.

- The statement about the need for disaggregated data, while a correct assessment of a need from a research perspective, is not necessary for this intervention, especially when there is comparable evidence from low- and middle-income countries, by SES, gender and geographical location for tobacco and other health harming products.

### ***Context and setting-specific issues that have not yet been captured***

- The guidelines lack a clear definition of conflict of interest and the steps needed to protect the regulation decisions from vested interests coming from industries that sell/have an interest in food, alcohol, and tobacco.
- The guidelines do not contemplate actions to avoid and prevent corporate capture and interference in the policy-making process.
- There are no specific recommendations to help countries/governments prevent and mitigate undue influence in the policy-making process and/or policy development.
- We applaud the draft guideline’s reference to the human rights-based approach in terms of protecting children from the adverse consequences of deceptive marketing practices in the food and beverage industry, however, we recommend that this approach be strengthened throughout the guideline. Children are one of the most vulnerable groups of society, and governments must exercise their regulatory power and fulfill their international human rights obligations by the global human rights instruments that are dedicated to child protection, such as the Convention on the Rights of the Child (CRC), by taking immediate, comprehensive and mandatory policy and legislative actions that are coercive both in process and outcome. Almost every country worldwide has ratified the CRC and as such, governments have the obligation but also the discretion on how to effectively regulate harmful food and beverage marketing practices through binding regulations. This guideline must maximize the full potential of the rights-based approach in terms of comprehensively and compulsorily regulating all forms and modalities of marketing practices to which a broad range of children are exposed, including digital marketing and encourage that states set out meaningful monitoring, accountability, and enforcement frameworks are established with a potential for a drastic effect in reducing children’s exposure to harmful food and beverage marketing. CRC protects the children’s right to food in the context of the right to life, survival, development, health, nutrition, and to an adequate standard of living. For children to enjoy their right to food, an enabling environment should be created in which their access to adequate food can be secured. The CRC further states that children have a fundamental right to a healthy childhood that must be free from economic exploitation including marketing of ultra-processed products.
- In addition to using the WHO regional NPMs to guide which products would be restricted, we recommend including artificial sweeteners and caffeine as additional criteria to ban marketing strategies. Based on the emerging evidence about the health harms of these components, particularly in children, and lessons learned from policies implemented in Chile and Mexico, where sugar was replaced with sweeteners, the marketing of products with these components should be restricted, (Colchero et al. 2021; Patiño et al. 2016; Munguiá et al. 2020).
- Countries with context specific documents, such as National Nutrition Guidelines, created by experts without conflicts of interest and which are up to date, could be used as a supplementary tool to implement and enforce marketing restrictions. when they are evidence based and updated regularly, or the definition of threshold.

### *Errors of fact or missing data*

- The revised WHO guidelines need to strongly support mandatory and comprehensive regulations that restrict marketing (including advertising, promotion and sponsorship) given the current evidence base. There needs to be some acknowledgement that it will take several years to collect data from new policies (like Argentina's), and we cannot wait for further evidence to inform these guidelines. We know that marketing influences behavior from the broader literature and given the health impacts already pointed out within the guidelines (Cairns et al. 2012; Norman et al. 2018; Khan et al. 2022). WHO must urge governments to enact comprehensive regulations that limit exposure to any advertisement, promotion and sponsorship for food and beverages high in nutrients of concern.
  - A stated objective of the guideline is to “support evidence informed advocacy to advance policy action to restrict food marketing practices” to achieve this objective, the WHO should recommend specific, mandatory and strong policy actions that member states can apply in their contexts.
- In 2009, the WHO's review already established that food marketing had an impact on knowledge, food preferences, and consumption patterns, and those foods that were promoted had dietary profiles high in energy, fat, salt/sodium, and sugar.
- Given that this has been established with over 10 years of evidentiary support, and with few mandatory policies arising from the 2010 recommendations, there is a need for the WHO to support mandatory marketing comprehensive restrictions.
- It would be helpful to clarify what is considered a mandatory government policy to restrict marketing, as sources vary on the number of marketing policies enacted worldwide (as specified on page 8).
- From our analyses of the research that informed the systematic reviews, there are no research articles incorporated in the time after March of 2020. Between April 2020 and present (July 2022), there have been several publications evaluating the marketing policies in Chile, including (but not limited to) Jensen et al. (2021)., Taillie et al. (2021) and a U.S. based study, Carroll et al. (2021). The reviews and guidelines should be updated with the latest evidence available.
- Based on the systematic reviews on evidence thus far, having mandatory marketing restrictions makes a significant difference in purchasing behavior compared to having voluntary or no marketing restrictions. However, the Grading of Recommendations Assessment Development and Evaluation (GRADE) methodology does not seem to highlight these statistically significant findings, and instead makes conditional and weak recommendations which are unlikely to convince policymakers on the merits of mandatory marketing restrictions.
- The guidelines may be strengthened by using research from the fields of tobacco and alcohol marketing to support this document, particularly because research exists in a range of geographic settings and in countries of different income levels and has been used to create the WHO marketing guidelines for those products.
- Table 1 on page 29 in the row titled “important outcomes” includes for key question 1 and 2, longer term health outcomes such as overweight, obesity and BMI as well as diet related NCDs (or validated surrogate indicators). These outcomes have, thus far, not been able to be measured because marketing restrictions on food is a relatively new policy. However, the “critical outcomes” (including food preference, choice, purchasing and intake) are more readily measurable for newer policies and should be the focus for this guideline, even though the end goal is to reduce diet related non-communicable diseases and obesity.

### ***About Global Health Advocacy Incubator***

The Global Health Advocacy Incubator (GHAI) works with civil society organizations across public health issues and political systems to provide strategic support to advocates that are working to enact and implement laws that save lives.

Our history is rooted in one of the most successful public health campaigns — tobacco control. Building on the successes and lessons learned in the global fight against tobacco deaths, the Campaign for Tobacco-Free Kids launched the GHAI in 2014 to strengthen advocacy capacity to improve public health around the globe.

Our experience designing successful campaigns and passing policies to save lives gave us an innovative and proven model for advocacy – one that is locally led and adaptable to culture, political context and issue area. Our expert multidisciplinary team has a broad range of experience planning, executing and evaluating high-impact policy advocacy campaigns. We provide capacity building and technical assistance across all components of effective policy advocacy, including political mapping, legal analysis and strategic planning to media advocacy, coalition building and grassroots mobilization.

Our Food Policy Program supports advocacy campaigns calling for healthy food policies at the national level in Brazil, Barbados, Colombia, Jamaica and South Africa. Through our Advocacy Fund and Legal Defense Fund, we help organizations and governments promote and defend their healthy food policy initiatives in Argentina, Ghana, India, Indonesia, Kazakhstan, Nigeria, Pakistan, St. Kitts & Nevis, Uruguay and Vietnam.

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**Submitted by:**

Kathryn Reilly, Irish Heart Foundation, Ireland

Survey response	
Considerations and implications for adaptation and implementation of the guideline	<p>The recommendations that policies are mandatory will cause ripples in the policy landscape; the trend in countries has been for self or co regulation. This has been bolstered by legislation like the Audio Visual Media Services Directive in the EU, which specifically mentions co-regulation. Many countries work directly with industry (advertising, food etc), particularly at policy formation stage which inhibits progressive, effective policies. As countries move to develop policies and, as policy initiatives like Best ReMap Package 6 (<a href="https://bestremap.eu/marketing/">https://bestremap.eu/marketing/</a>) develop guides and codes, it is critical that there is unanimity that policies are mandatory. Moreover, the more mandatory policies developed, the better the evidence base will be in the future. Also, as marketing migrates to complicated and complex digital spaces, the need for the policies to be broad is critical; they cannot be short sighted so as to risk missing the evolving landscape. This is particularly true as legislation on AI, digital services etc are developed and transposed</p>
General comments	<p>The inclusion of "related brand or service" is welcome; many companies use existing codes or nutrient profiles to shirk their responsibilities (eg McDonalds advertising Happy Meal but not showing the HFSS products is acceptable because they aren't advertising a product). We know that brand loyalty and recognition are central to food marketing. However, as we shift to have more mandatory policies, this loophole will be exploited more. While a comment is made on page 54 relating to possible approaches that countries could use to restrict brand marketing, this needs to be developed further and made into a document (criteria need to be explicitly set out to make this as easy as possible for policy makers!) Finally, Annex 6 (Evidence to decision: summary of judgement) is a very useful reference guide for those engaged in advocacy and lobbying in terms of arguing for these policies, and also rebutting contra arguments. It would be welcome if this could be made into a type of summary document in itself/cheat sheet</p>



The George Institute  
for Global Health



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HEART  
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## Joint submission to the call for comments on the Draft WHO Guideline: Policies to protect children from the harmful impact of food marketing

July 2022

1. **NCD Alliance, NCD Child, The George Institute for Global Health, World Cancer Research Fund International, World Heart Federation and World Obesity Federation** welcome the recognition by the World Health Organization (WHO) that progress to restrict marketing of unhealthy food products has been slow, and that Member States may benefit from further guidance to assist with establishing or strengthening policies to protect children from the harmful impact of food marketing. We appreciate the consultation opportunity and wish to contribute with some comments for your consideration.

### Comments on overall clarity of the Guideline

2. **The document must be shorter and concise.** The length and repetition of content in the Guideline can lead to confusion and undermine the purpose of this document: to provide clear policy guidance to Member States. We urge WHO to have a shorter, concise and well-structured version of this Guideline, with its recommendations brought to the forefront; background information including on the development of the Guideline in Annexes or a complementary discussion paper; and an executive summary that is limited to a few pages. The intended audience (Member States) must easily find the recommendations to achieve the Guideline's purpose, and clarity will ensure that points made within the Guideline are not taken out of context in a way that undermines the overarching goal.
3. **The document must explain the added value and evidence of its recommendations.** The aim and added value that this document brings compared to previous WHO resources on restricting marketing of unhealthy food products to children is unclear. The current draft often appears unconvincing in its recommendations and argument for the need for action due to its length and tone. We therefore urge WHO to better articulate the need for this Guideline, including by drawing up examples of convincing evidence from outset.
4. **The document must be clearer regarding the fact that, despite the current state of the evidence, the judgment of benefit from the policy recommendations is favorable.** As it stands, the Guideline recommendations are caveated as being "conditional" to very low certainty evidence, which can be seen as contradictory, and risks diluting the importance of having marketing restrictions. To accurately strengthen the recommendations, we urge WHO to refer under the recommendations to the heterogeneity and limitations of current research, and to the level of judgment under specific areas: desirable effects of these policies (moderate), undesirable effects (trivial), cost-effectiveness (favors the intervention), human rights (increased), feasibility (yes). These conclusions are currently only accessible under Annex 6 (the very last section of the document), which risks diluting the perception of the beneficial impact that such restrictions can have.

5. **The document must have a stronger and clearer policy message by presenting one, comprehensive recommendation which addresses how the power of marketing can be restricted.** Currently, the Guideline presents two recommendations that are complementary and with similar “conditional” quality consideration by the Guideline development group. For a stronger and clearer policy message, we urge WHO to consider only one recommendation that would include all aspects Member States should consider for policy design, ensuring that the policy specifics required for efficacy are not lost in two recommendations. As is the case in relation to exposure to marketing, it is important that the recommendation explains how the power of marketing can be addressed through policy. For instance, the suggested single recommendation for this Guideline could read:

*“WHO recommends the implementation of mandatory policies restricting food marketing to which children (aged 0-18 years) are exposed to (1) by defining a nutrient profile model to classify foods to be restricted from marketing; (2) by defining a comprehensive policy approach to minimize the risk of migration of marketing to other channels, to other spaces within the same channel or to other age groups; and (3) by restricting a comprehensive range of marketing strategies aimed at persuading children directly or indirectly via caregivers and other responsible adults to consume certain products.”*

In addition, clarity on the full range of different marketing techniques to be covered would be helpful to aid effective implementation of the recommendation.

6. **The document must specify that its primary audience is Member States.** Considering that the recommendations are intended to strengthen marketing restrictions by Member States, rather than, for instance, self-regulated voluntary restrictions by food companies, we urge WHO to divide the target audience of this Guideline into two groups to make it clear what role different actors play. The primary target audience includes Member States actors (national and local policy-makers and food regulators, and implementers and managers of national and local health and nutrition programmes); and the secondary target audience includes other actors (NGOs, professional societies, health professionals, scientists and other academic actors, and representatives of the food industry, marketing/advertising agencies).
7. **The document must define children.** Although for the scope of the review, children were defined under footnote 4 (page 9), we urge WHO to include a definition of “children” in the glossary section as a core concept for the Guideline. As a UN body, we suggest that WHO uses the definition in Art. 1 of the Convention on the Rights of the Child: “[...] a child means every human being below the age of eighteen years [...]” (aged 0-18 years). This will help Member States, especially those who have ratified the Convention on the Rights to Child, to frame the recommendations within their legal frameworks. Otherwise, we urge WHO to clarify the rationale behind including as children the age group of 0-19 years. The definition of children should also be reflected in the Guideline recommendation as suggested above, and a footnote can be added specifying that a country may adapt the targeted age range to their own definition of children.

### **Comments on context and setting specific issues that have not yet been captured in the Guideline**

8. **The document must include the impacts of food marketing on caregivers and health professionals (including pediatricians) as part of the remit of policies to protect children from the harmful impact of food marketing.** The review and recommendations of the Guideline do not include the way marketing affects parents and/or caregivers' decisions on children's diets in many cases undermining their efforts to guarantee nutritious foods to their children. This must be acknowledged either as a research gap and/or a future research question if it is considered that such information is not currently available. To adequately protect children from unhealthy food marketing, parents and/or caregivers should also be protected against misleading information and marketing strategies, such as featuring unhealthy food products surrounded by healthy food options. Moreover, health professionals can also be targeted (e.g., including, through conference marketing) which may have an impact on the nutritional advice they might provide to families. The Guideline scope should be extended to include food marketing impact on caregivers and health professionals and its policy implications to fully protect children's right to health, adequate nutrition, and information.<sup>1</sup> As they are the first intermediaries between unhealthy food marketing and a young child's intake, the Guideline must acknowledge this or explain the rationale behind such an exclusion.
9. **The document must acknowledge the vulnerabilities of children in resource-poor settings to unhealthy food marketing.** We welcome the focus on equity, and reference to policies that protect children from the harmful impact of food marketing being expected to reduce health inequities. This is crucial for downstream public health policy development and improvements in health outcomes for communities experiencing inequity. However, the Guideline should include explicit reference to the vulnerabilities of children in resource-poor settings, and marketing being particularly exploitative in these settings.

### **Comments on considerations and implications for adaptation and implementation of the Guideline**

10. **The document must reflect the need to include monitoring and enforcement mechanisms in the Guideline recommendation(s).** Under implementation considerations, reference is made to the role that monitoring and enforcement mechanisms can have in increasing the effectiveness of policies, and that evidence on policy effectiveness is limited, due to some extent to the lack of standardized monitoring. We urge WHO to consider adding under the Guideline recommendation(s) the establishment of monitoring and enforcement mechanisms as another element that policies to restrict food marketing should have.
11. **The document must reinforce the need to address industry opposition as part of policy implementation.** Under implementation considerations, reference is made to the expected industry opposition to marketing restrictions (including by pushing for self-regulatory policies instead, which evidence shows are ineffective) and the need for Member States to learn from

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<sup>1</sup> Art. 24(e) of the Convention on the Rights to the Child: "To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;"

countries that have overcome such opposition. However, protection from industry interference is not part of the review process for the Guideline and considerations on undue influence from the food industry must be broadened out, given that one of the main barriers to policy implementation is industry lobbying and the wider commercial determinants of health. If this would be out of the Guideline scope, we ask WHO to reference existing documents and guidance on managing industry interference.

12. **The document must add further evidence on the ineffectiveness of self-regulation to restrict food marketing.** This will make the recommendation for mandatory marketing restrictions very clear, minimizing misinterpretation. Robust, clear and evidence-based mandatory restrictions are the most effective way to restrict marketing aimed at children and adequately protect them from exposure. Independent evaluations of policy effectiveness of both government-led voluntary regulation and industry-led self-regulation, as well as the extent of implementation of industry commitments, indicate that their impact on the food environment has been very limited (see bibliography). This message needs to come across more clearly and evidence needs to be provided to Member States, to build their case for policy implementation.
13. **The document must specify the challenges of cross-border marketing in managing children's exposure to marketing.** While the Guideline recommendations mention the need for policies to be broad enough to minimize the risk of migration of marketing to other channels, spaces or age groups, we urge WHO to specify under implementation considerations the challenges and legal capacity required to reduce exposure to unhealthy food marketing in the context of cross-border marketing, as this may fall under other jurisdictions.

### General comments

14. **The document raises important points that are unfortunately diluted within the current draft due to its length and repetition of content.** The Guideline has many strengths, such as recommending a mandatory approach to marketing restrictions based on evidence, the use of existing regional nutrition profile systems (page 56), and also by highlighting the need for further research and regulation of brand marketing (and not just product marketing). The current draft also calls on Member States to prepare to respond to industry opposition ahead of implementing these policies, and it makes the case for including provisions for industry to share data, which would help to further assess the impact of marketing restrictions. These are all important points in the Guideline that could be better highlighted by processing the above comments and making the document shorter and concise.
15. **The document needs to be clearer on the main policy recommendation and added value it brings to the current WHO knowledge base and the recommendations for countries.** Member States need practical, easy-to-read guidance, providing case studies of good practice and overcoming frequent obstacles to the successful implementation of marketing restrictions, such as the recent WHO-UNICEF-STOP Policy Brief on *Protecting children from the harmful impact of food marketing* (see bibliography). By clearly presenting the main policy recommendation and added value of this Guideline, this document will be strengthened and can become a good reference for the future development of the Guidelines on school food and nutrition policies, nutrition labeling policies, and fiscal policies.

## **Bibliography of other key resources on the harmful impact of food marketing and policy effectiveness**

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**Submitted by:**

Katarnya Hickey, Obesity Policy Coalition, Australia



**Obesity Policy Coalition – July 2022**

**Submission on the draft *WHO guideline on policies to protect children from the harmful impact of food marketing***

The Obesity Policy Coalition (OPC) is an Australian public health advocacy partnership between Cancer Council Victoria, VicHealth and the Global Obesity Centre at Deakin University; a World Health Organization (WHO) Collaborating Centre for Obesity Prevention. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia, particularly among children.

The OPC welcomes the development of the draft WHO guideline on policies to protect children from the harmful impact of food marketing (the Guideline) and acknowledges the important role of the WHO in supporting and guiding international action to protect children from unhealthy food marketing.

In particular, we strongly support the following elements of the Guideline:

- The focus on reducing children's exposure to unhealthy food marketing. This is of critical importance in protecting children from the impact of unhealthy food marketing, as policies or regulation that focus only on narrow definitions of marketing that is targeted to or directed at children are of limited effect. We also strongly support the simultaneous focus on reducing the power of unhealthy food marketing.
- The clarification that policies must be mandatory, which should be strengthened further to expressly refer to government led policies or regulation, as outlined below.
- The recommendation that policies should be broad and should apply to children of all ages, we recommend the inclusion of further detail on these issues.
- The inclusion of analysis and discussion on human rights and health equity, and in particular the recognition that policies that protect children from the harmful impact of food marketing are expected to reduce health inequities. We suggest the inclusion of further discussion around the Convention of the Rights of the Child, as outlined below.

We make the following suggestions to clarify and strengthen the impact of the Guideline:

- **Government led policies and regulation.** The Guideline be amended to clearly recommend that restrictions be government led, and to clarify that self-regulatory policies developed by the food or advertising industries are not recommended or supported by evidence. The current draft recommends mandatory policies but does not clearly state that these policies should be developed by government and implemented through mandatory, enforceable government policy or legislation.

- **Clarity around strength of recommendations.** Although we understand and acknowledge the reasons provided to explain why the recommendations are described as conditional, with very low certainty evidence, we remain concerned that presenting the recommendations in this way will affect the Guideline's impact. In our view, a stronger approach is needed to drive government action to reduce harm to children, even where evidence may not be as strong as possible, in line with the precautionary principle.

If this cannot be changed, we recommend a clear explanation be included in the text itself rather than in a footnote. We recommend that, if the evidence allows, the explanation be reframed to discuss the probable outcome if a best practice policy were implemented in line with the detail provided in recommendations 1 and 2. We understand that the effect of a policy will necessarily depend on policy design and implementation, however the likelihood of variation should not preclude an assessment of the impact of a policy with certain features in a particular context.

- **More detail on a comprehensive policy.** We recommend the Guideline include further detail on what forms of marketing and media a comprehensive policy should capture. Although recommendation 2 outlines that a policy should be sufficiently broad to avoid marketing migrating within and between channels and to other age groups, we consider it would benefit from outlining factors to consider when determining the scope and application of an effective, comprehensive policy.
- **Strengthened wording.** The current wording of recommendations 1 and 2 says that 'WHO suggests'. We recommend this be strengthened to instead say 'WHO recommends'. This is very important in communicating the nature of the WHO's guidance and the weight it should be given by policy makers and governments around the world.
- **Clarification on age of application.** We suggest that recommendation 2 should expressly advise that policies are recommended to apply to children up to 18 years of age. Although the current wording refers to policies applying to children of all ages, including those above 12 years old, in our view this could be amended to make the intended age expressly clear.
- **Exposure to be incorporated into recommendation 2.** We suggest that recommendation 2 be amended to expressly advise that a policy must be designed to reduce children's exposure to all unhealthy food marketing, and not only focused on such marketing that is directed or targeted to children specifically. We acknowledge that exposure is referenced in recommendation 1 and explained further in the remarks below the recommendations, however we consider recommendation 2 would be strengthened by also including this in the list of policy requirements for maximum efficacy.
- **More detail on digital marketing.** We consider the Guideline would be strengthened by a more detailed and distinct discussion on the impact of digital marketing and on considerations associated with the implementation of controls in this area, in particular any key differences in digital marketing in comparison to more traditional forms of marketing such as television, outdoor and print media. The discussion of the way digital marketing can facilitate engagement does not sufficiently address the

impact and challenges of digital marketing. The Guideline should provide clear guidance to policy makers on how to consider and address issues associated with digital marketing of unhealthy food.

- **Role of industry.** We commend the WHO for its strong requirements around declarations of conflict of interest as part of the consultation and expert advisory processes. We also note the Guideline's discussion on likely industry opposition to policies to protect children from unhealthy food marketing. In light of this, we recommend that, as well as expressly recommending that policies be government led, the Guideline recommend that governments apply strong conflict of interest policies during the development process, to ensure the resulting policy is evidence based and not inappropriately influenced by the food or advertising industries. We also suggest the Guideline include specific evidence around industry opposition to government-led restrictions and the tactic of developing voluntary self-regulatory policies to delay mandatory regulation.
- **Brand marketing.** We welcome the discussion on brand marketing in the Guideline, and its view that such marketing should be restricted. We recommend this be strengthened by expressly including this as part of recommendation 2. Brand marketing is a significant gap in an effective policy, allowing brands strongly associated with unhealthy food to build brand recognition and continue to market to even where other restrictions on unhealthy food marketing are in place.
- **Convention on the Rights of the Child.** We strongly support the Guideline's position that States that have ratified the Convention on the Rights of the Child have a legal requirement to realise a child's right to the highest attainable standard of health. We recommend the WHO consider whether this discussion should be expanded to address other rights conferred by the Convention on the Rights of the Child that may also be affected by unhealthy food marketing, including rights to privacy, protection from economic exploitation and to reliable information from the media.
- **Clarification of the Guideline's relationship with other WHO documentation on unhealthy food marketing.** We recommend the Guideline clarify the relationship and differences between this Guideline and the *Set of Recommendations on the marketing of foods and non-alcoholic beverages to children* (Set of Recommendations) and its Implementation Framework. Although the Guideline notes that the Implementation Framework should be used in conjunction with the recommendations in the Guideline and discusses areas of difference between the Guideline and the Set of Recommendations, we consider this could be further clarified and the differences clearly set out in one place. The Guideline could expressly advise that where there is inconsistency, or where the Guideline provides further detail, the Guideline represents current best practice and should take precedence.
- **Inclusion of cross-border marketing.** We suggest that recommendation 2 be amended to specifically refer to cross-border marketing. We acknowledge that this issue is discussed as part of implementation considerations in the Guideline, but in our view this should be expressly included within recommendation 2.

- **Distinction between food marketing and unhealthy food marketing.** We recommend the Guideline be reviewed to ensure a clear distinction between all food marketing and unhealthy food marketing, particularly in the Executive Summary. We acknowledge that marketing of healthy food products may be beneficial.

Thank for the opportunity to provide feedback on this important document.

**Submitted by:**

Yoanna Nedelcheva, The European Association for the Study of the Liver, Switzerland

Survey response	
General comments	Recommendation 2 To maximize the effectiveness of food marketing restrictions, WHO suggests that policies: • be mandatory; • protect children of all ages, including those older than 12 years; • use a nutrient profile model to classify foods to be restricted from marketing; • be broad enough to minimize the risk of migration of marketing to other channels, to other spaces within the same channel or to other age groups; and • restrict the power of food marketing to persuade. • language should be understandable for everyone ( using children's symbols)

**Submitted by:**

Rosanna Pike, The Heart Foundation of Jamaica, Jamaica

## General Comments on the WHO Consultation on Marketing Guidelines

**Organization:** Global Health Advocacy Project Food Policy Programme at the Heart Foundation of Jamaica

**Commendations:**

- We commend and support the inclusion of the Convention of the Rights of the Child as one of the rationales for updating the policy. We wish for it to be used as a driving force.
- Additionally, we laud the indication that marketing restrictions are best implemented as part of a comprehensive policy approach to create enabling and supportive food environments, inclusive of FOPL, fiscal policies and healthy school food environments.

General Comments	
Use of GRADE to make policy recommendations	The criteria for defining evidence levels of quality and certainty are not clear and might be biased in setting the scientific support for the marketing restrictions. The use of this methodology undermines the evidence that mandatory marketing policies are needed.
Definitions	<ul style="list-style-type: none"><li>- Need to improve and amplify the glossary section with additional concepts and better definitions that bind guidelines from conflict of interest.</li><li>- Guidelines should recognize marketing beyond advertising by including a more comprehensive definition that includes packaging, product placements, partnerships, and sponsorship of scientific articles, as well as specify what is being marketed, to whom (range should be extended to 0 to 19yo), where (which channels), when, how, and why.</li><li>- Include a broad definition of conflict of interest, industry influence/interference, in order to protect regulations from such practices.</li><li>- The definition of policies binds voluntary agreements as legal and legitimate avenues to the creation of marketing regulations, Despite the fact that the document recognizes voluntary measures as tactics to undermine marketing regulations.</li></ul>
Target population	<ul style="list-style-type: none"><li>- Explicitly include children under 2 years old and their caregivers (children 0 to 19, plus caregivers). This is alluded to in the document but is not explicitly stated.</li></ul>

	<ul style="list-style-type: none"> <li>- There is no indication of school administrators, teachers/educators listed as part of the end-users. These groups should be included and clearly distinct. This is especially as schools are key marketing areas through sponsorship for events and products, products sold and branding in and around the school environment.</li> <li>- Better define the industry's role as a target audience to avoid conflict of interest, self-regulation, and participation in policy formulation.</li> </ul>
Marketing standards	<ul style="list-style-type: none"> <li>- Content strategies of the marketing message targeted to different ages</li> <li>- Consistency across categories when using the Nutrient Profile Model (NPM) and adding non-nutritive, non-caloric, and artificial sweeteners.</li> <li>- Specify the NPM that is recommended to be used and explain the reasons why.</li> </ul>
Evidence gathered	<ul style="list-style-type: none"> <li>- The guideline was informed by evidence from high income countries with an exception of 1 article from Mexico;</li> <li>- Missing evidence after March 2020; add 2+ years of evidence</li> <li>- The evidence does show a clear significant effect that mandatory policies are more effective than voluntary policies; this should be highlighted more in the recommendations section</li> </ul>
Industry involvement	<ul style="list-style-type: none"> <li>- The guidelines are not clear on how the recommendations have considered preventing industry influence and the corporate capture of policy-making spaces.</li> <li>- The expression "restrict the power of food marketing to persuade children" is unspecific as the industry can easily argue that specific marketing strategies are not intended to convince children, while they heavily draw their attention.</li> <li>- Guidelines should include and ensure mechanisms that compel the industry to mandatory share information on the budget spent on advertising, declarations of advertising channels, as well as sanctions for violating policies. Industry must present this information accurately, timely, and in a transparent way.</li> <li>- Should include a more comprehensive analysis of why voluntary or self-regulation agreements coming from industry are NOT effective from a public health perspective.</li> <li>- There are NO specific recommendations on how to prevent, mitigate and manage the effects of corporate influence in the design or implementation of such guidelines, as well as conflict of interest.</li> </ul>
Recommendations section	<ul style="list-style-type: none"> <li>- The reviews showed statistically significant findings, however, the recommendations are all "very low certainty of evidence"; this is not helpful for countries wanting to implement policies with an evidence-informed approach, and undermines the stated goal of "supporting evidence informed advocacy to advance policy action"</li> <li>- <i>Recommendation 2 calls for an adjustment of the age limit for restrictions, stating that most marketing restrictions implemented in countries define the age limit for children as up to 12 years. We concur that the age restrictions should cover birth to 18 years. The supporting statement could also use evidence from the systematic reviews on brand recognition and</i></li> </ul>

	<p><i>recall for age groups over 12 years when their brains are constantly developing and approaching peak performance/capacity.</i></p> <ul style="list-style-type: none"> <li>- Encourage defining “conditional recommendations,” “policy design elements” and “contextual factors” that should be used with example scenarios.</li> <li>- Recommend revising the statement on “restricting marketing’s power to persuade”- the goal of marketing is to persuade, the only way to restrict is to restrict/ban marketing practices</li> <li>- The recommendation should specify, for transparency purposes, names and affiliations of the authors as well as the Nutrition Guidance Expert Advisory Group (NUGAG), including whether human rights experts were included.</li> </ul>
Additional considerations	<ul style="list-style-type: none"> <li>- To provide more detailed recommendations, encourage more research related to brand marketing (spillover effects and health halo effects from advertising different healthier versions of a similar- or same-branded product), and interactions (identify differential effects of exposure based on channel and power based on an appeal for different age groups).</li> <li>- The document doesn’t refer to (or appear to build on) previous WHO or UNICEF guidelines or include any references to other public health areas, e.g. Tobacco Control (FCTC, Article 13) or Alcohol.</li> <li>- It would be useful for the guideline to include a deeper analysis from a human rights-based approach, including why marketing restrictions represent a key barrier for children to achieve their full development</li> <li>- The guidelines lack a Human Rights approach and instruments to better explain how absence of compulsory marketing regulations violate a set of rights, for instance, right to health, right to adequate food, right to children, among others.</li> </ul>

**Submitted by**

Alexey Kotov, Vital Strategies, United States of America

Survey response	
Considerations and implications for adaptation and implementation of the guideline	Cross-governmental engagement is vital. Implementation of these policies often falls with advertising councils within ministries of information and broadcasting. Need robust multidepartment mechanisms for implementation. In this, continuous monitoring is vital and should be included into the Guide.
Context and setting-specific issues that have not yet been captured	<p>Marketing definition: The definition of marketing could be updated to ensure it encapsulates current practice, relates directly to food marketing, and specifies children. A definition should define what is being marketed, to whom, where, when, how, and why.</p> <p>Suggestions: • delete "commercial", • add "direct and indirect marketing." • add "product and brand placement, corporate social responsibility programs, brand promotions and tie-ins, merchandising and sponsorship." • add "the effect of increasing, the recognition, appeal and/or consumption of particular products and services, or industry/companies that produce it, or of the parent company of such products and services." • add "via any media or channel, including point of sale, social media, promotions, and endorsements (by celebrities, influencers, athletes, or licensed characters)." • add "includes all marketing directly or indirectly to children as well as marketing to which children are exposed." 3.</p> <p>Good practice statement and recommendations Rationale Dot point one- Should include children's exposure to marketing, e.g., in outdoor settings, in sporting contexts (at games or in broadcasts, product placement, etc.); Dot point two – should acknowledge that children become trapped by digital food marketing practices that engage them in two-way communication. Dot point three – marketing is mostly for foods inconsistent with healthy diets. Suggestion – marketing environment is dominated by unhealthy foods. Recommendation 1: Suggestion: add – a "comprehensive ban or restrictions" on all marketing of food children are exposed to or is directed for children's consumption, including breast milk substitutes and toddler milk. Recommendation 2: • Specify age 0 to 19 years (The age range should be extended and include a specific range that includes adolescents according to the WHO standard for age group classification for children and adolescents) • "use a nutrient profile model" – should recommend using a strong NPM, e.g., PAHO's. • "Minimize risk of migration to other channels." Suggest to specify and cover all channels: - all advertising and</p>

	<p>promotion strategies, as well as sponsorship, without exemption; direct and indirect advertising, promotion, sponsorship, and deals; acts that aim at promotion and acts that have or are likely to have a promotional effect, including the use of characters/ cartoons; gifts, toys, and prizes; commercial communications and commercial recommendations and actions; contribution of any kind to any event, activity, or individual; advertising and promotion of food companies' brand names and all corporate promotion; traditional media (print, television, and radio) and all media platforms, including the Internet, social media, mobile telephones, and other new technologies as well as films; communication and marketing strategies that indirectly target children, e.g., outdoor advertising, sporting broadcasts, programs or events for an adult auditorium that can be watched and attended by children. • "restrict the power of food marketing to persuade." Suggestion to reframe: restrict the claims made on products and in marketing, and ensure disclosure of HSS content.</p>
General comments	<p>The guidelines should recognize marketing as bigger than advertising. Marketing also includes packaging, product placements, partnerships, and sponsorship of scientific articles. Governments often promote the marketing of unhealthy products through tax breaks on their marketing. Solutions must also include labeling and bans on product placement, etc. We recognize marketing as a crucial channel of industry interference in good policy making (Kickbusch et al.). Hence, marketing regulations are not only important for protecting children from the purchase and consumption of unhealthy foods but also to protect the public policy process from industry interference – thereby also protecting children. While guidelines to protect children from unhealthy products like the one in the consultation are good, they do not go far enough. To protect children fully, food policies must be free from the industry interference that occurs through corporate marketing. The Guideline should include and refer to other relevant public health guides, e.g. UNICEF, Alcohol and the Framework Convention on Tobacco Control (FCTC). This would also make its recommendations more recognizable and understandable to policymakers and other end-users familiar with the obligations of the FCTC.</p>

**Submitted by:**

Tim Lobstein, World Obesity Federation, United Kingdom

Survey response	
Overall clarity of the guideline	<p>The evidence summaries are fine, but the document falls short when it comes to the language used in the Recommendations. The phrase 'WHO suggests' should not be part of a Recommendation. The repeated emphasis in italics of the lack of certainty of evidence undermines the Recommendations. This is not the approach used in other Guidelines, such as the one on fortification of flour (see below) with its stronger, better statement of what is recommended, and its handling of the lack of certainty, shown in the last sentence: "Based on available evidence the recommendations to fortify wheat flour are as follows. "• Fortification of wheat flour with highly bioavailable iron is recommended as a public health strategy to improve haemoglobin concentrations and iron status and to prevent anaemia and iron deficiency in populations, particularly in vulnerable groups such as children and women (strong recommendation, low certainty of evidence). "• Fortification of wheat flour with folic acid is recommended as a public health strategy to reduce the risk of occurrence of neural tube defects in pregnancies in women of reproductive age and to improve folate status in populations (strong recommendation, low and very low certainty of evidence). "• Fortification of wheat flour with zinc may be used as a public health strategy to improve serum/plasma zinc status of populations (conditional recommendation, low certainty of evidence). "The guideline development group considered wheat flour fortification with iron and folic acid as strong recommendations despite the low certainty of the evidence after discussing other considerations like the priority of the problem and the clear benefits of fortification. Other considerations included feasibility and acceptability of the intervention." (GUIDELINE: FORTIFICATION OF WHEAT FLOUR WITH VITAMINS AND MINERALS AS A PUBLIC HEALTH STRATEGY, p17) The Wheat fortification guidelines are a good model to follow, as they also emphasise the contextual factors more extensively and constructively, p 20-28.</p>
Considerations and implications for adaptation and implementation of the guideline	<p>Policy-drafting officials will find it hard to convince their political leaders that the measures for implementing marketing restrictions are proportionate and effective, especially if the Recommendations are expressed very cautiously, as they are at present. Alongside strengthening the Recommendations, the Guidelines should</p>

	repeatedly emphasise that marketing restrictions should be introduced as part of a systems approach, with multiple policies being implemented as part of a wider strategy to promote children's health, and introduced with additional measures designed to maximise public support.
Context and setting-specific issues that have not yet been captured	The evidence base is largely from high income countries. Marketing controls and the ability to implement them will likely be weaker in LMICs, yet this is where the vast majority of overweight children and the greatest burden of diet-related NCDs lie. The WHO Guidelines - like the Breastmilk Substitutes code - are an invaluable tool to public health policy makers in these lower-income countries, and clear assertions of the need to tackle the commercial determinants of health need to be made.
Errors of fact or missing data	Not checked.
General comments	This is an important attempt to tackle the commercial determinants of health. To maximise political support, the Recommendations need to be robustly stated. The emphasis on 'WHO suggests' and the 'lack of certainty' in the key parts of the document need to be reconsidered, with phrasing used in the Wheat Fortification guidelines taken as a model for the required language.

**Submitted by:**

Angela Carriedo, World Public Health Nutrition Association, United Kingdom



26 July 2022

**World Public Health Nutrition Association comments on "WHO guideline on policies to protect children from the harmful impact of food marketing."**

To whom it may concern,

We at World Public Health Nutrition Association (WPHNA) are pleased to read and review the draft *WHO guideline on policies to protect children from the harmful impact of food marketing*. This Guideline is a necessary and timely update after 10 years to the preceding documents: *Recommendations on marketing of foods and non-alcoholic beverages to children* (2010), and the *Framework for implementing the recommendations on marketing of foods and non-alcoholic beverages to children* (2012). We congratulate the WHO Department of Nutrition and Food Safety and the WHO Nutrition Guidance Expert Advisory Group (NUGAG) Subgroup on Policy Actions for their work.

We note that the effort in compiling and summarising the evidence is thoroughly done and explained in the document. In addition, existing efforts to implement policies in this area are acknowledged, particularly the reference to the WHO European Region's documents *Evaluating the implementation of the WHO set of recommendations on the marketing of foods and non-alcoholic beverages to children: progress, challenges, and guidance for the next steps in the WHO European Region* and the important similarities with the WHO guidelines here drafted.

We also note that several in-house references marked as "forthcoming" will greatly strengthen implementation of the current guidelines and would welcome the opportunity to review these at the appropriate time.

Please find a section with general comments followed by specific comments on the guidelines.

Many thanks for the opportunity to submit our comments.

Best Wishes,

Angela Carriedo RN, MSC, PhD

Policy Secretary, World Public Health Nutrition Association,

On behalf of the WPHNA Executive Committee

World Public Health Nutrition Association

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## GENERAL COMMENTS

- WPHNA strongly supports the protection of child's rights to health as the main argument around the implementation of "mandatory, legally enforceable measures. While the documents cite a forthcoming document, we suggest making stronger emphasis on this principle as an overarching rationale for the implementation of such policies.
- WPHNA believes recommendations and guidance on regulating the marketing of foods and beverages on the digital environment and its challenges, should be emphasized strongly, given the relevance this medium has rapidly acquired among young populations worldwide.
- WPHNA suggests that the document should highlight work done by WCRFI<sup>1</sup> including examples of challenges and successes, and limitations when implementing policy.
- WPHNA suggest that more details on the challenges faced when implementing these recommendations should be stressed, and counteractions by the Member States should also be outlined.
- WPHN suggests the recommendations be more directive on how to implement the policies, and despite describing the non-mandatory and voluntary alternatives, given evidence of more effectiveness, the mandatory forms of policy should come stronger in the language of the guidelines to avoid corporate actors pushing for the former.
- WPHNA suggest that the guideline stresses the role of different non-state actors in the role of designing robust policies to protect children and explicitly outline the challenges of having actors with competing interest involved.
- WPHNA suggest including more about recommendations on how countries aim to cover digital environments in the policies addressed to protect children from harmful marketing.

## SPECIFIC COMMENTS

### Page 9, footnote with additional outcomes

"The outcomes in note 3, with the addition to critical outcomes of exposure to marketing and power of marketing. Policies were defined as mandatory, legally enforceable measures (including statutory approaches, regulations, legislation or orders used by a jurisdiction's legal system) and voluntary measures (including self-regulatory measures, pledges or codes). They do not include action plans, strategies, programmes or initiatives. Policy implementation was compared with either not implementing a policy or implementing a "weaker" policy."

WPHNA believes it is not clear what a "weaker" policy means; we suggest clarifying to the reader.

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<sup>1</sup> International WCRF. Building Momentum: Lessons on Implementing Robust Restrictions of Food and Non-Alcoholic Beverage Marketing to Children. World Cancer Research Fund International London, UK; 2020.

#### **4.1 Good-practice statement and recommendations**

WPHNA considers the good practice statement should say "must" instead of "should" as a good practice. The rationale is well presented and referenced in the review commissioned by the WHO. We suggest that the overarching rationale of this recommendation relies on points 6, 7 and 8. The relevance of a) enabling children to achieve their full development as a human right, b) to follow the Convention on the rights of the child (CRC) and c) the legal obligations countries signing the Convention must protect children from harmful marketing are the primary and strong reasons for the practice to have the word "must".

#### **4.2, Recommendation 2**

We notice that the recommendation does not give a defined age range of children to be protected. While it says "older than 12y" it does not say "up to 19" as it says in other parts of the document. While it might be intended to broaden the range even beyond adulthood, the ambiguity might be open to interpretation and a loophole that can lead to implementing policies that cover only the minimum (1 or 2 y) above the WHO's recommended age range.

For the last point, we suggest keeping "persuasive power" as before, instead of "the power of food to persuade."

#### **Implementation considerations**

##### **Paragraph 3, page 16**

When referring to "ensure policy effectiveness," the relevance of providing mandatory approaches is outlined and provides a guide on the age that should be covered. We suggest adding some guidance on how to effectively implement and act upon when the Member States encounter cases of non-compliance by food marketers.

##### **Paragraph 2, page 17**

The last part of the sentence says, "policies may consider the inclusion of provisions to make industry data available for this purpose." WPHNA suggest that instead of "may", the word "should" be more appropriate.

##### **Paragraph 4 on page 17**

"Acceptability to the industry of government-led policies to protect children from the harmful impact of food marketing was found to be low and preparing for potential opposition to such policies may increase their strength and effectiveness (34). The experiences of countries that have successfully implemented policies can guide for overcoming such opposition (41)."

WPHNA believes the statement should be clear, and the evidence about previous experiences of opposition should be cited and discussed with clear guidelines on how to address such experiences

or refer to further guidelines drafted in the past<sup>2</sup>. The statement is weakened by prioritising a defending argument from opposers as the variable that will define the policy's "effectiveness". WPHNA considers that it should be the opposite: saying that by designing a robust policy (as recommended in point 2), would lessen opportunities for the opposers to influence it.

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<sup>2</sup> World Health Organization (2017) Safeguarding against possible conflicts of interest in nutrition programmes: Draft approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at the country level.  
<https://www.who.int/nutrition/consultationdoi/Discussion-paper-nutrition.pdf>. Accessed 19 Sep 2019

## Private sector (including industry organizations and associations)

- Andres Velez, Estudio Juridico Y De Educacion Sas, Colombia
- Calisa Lim, Food Industry Asia, Singapore
- Sibylle Stanciu, International Council for Advertising Self-Regulation, Belgium
- Katherine Loatman, International Council of Beverages Associations, United States of America
- Laurence Rycken, International Dairy Federation, Belgium
- Rocco Renaldi, International Food & Beverage Alliance, Switzerland
- Masaki Sawaoka, Japan Food Industry Association, Japan
- Nicholas Hodac, UNESDA Soft Drinks Europe, Belgium
- Fraser Bridges, World Federation of Advertisers, Belgium

**Submitted by :**

Andres Velez, Estudio Juridico Y De Educacion Sas, Colombia

Survey response	
Overall clarity of the guideline	The Guideline is clear, however there are certain points that demand further elaboration, such as: (i) Page 49 (Remarks 2) " The power of food marketing to persuade relates to techniques appealing to and resonating with children, including promotional characters and celebrity endorsements; these techniques impact dietary intake (31)."; (ii) This guideline therefore recommends that policies restrict "food marketing to which children are exposed".
Considerations and implications for adaptation and implementation of the guideline	Provide additional arguments in order for countries to urgently adopt mandatory restrictions on food marketing to which children are exposed, even when there is very low certainty evidence as indicated in the draft Guideline.
Context and setting-specific issues that have not yet been captured	The Guideline provides useful information on the effects of food marketing.
Errors of fact or missing data	None have been identified.
General comments	It is necessary to provide additional tools in order to regulate food marketing, specifically on how to address "food marketing to which children are exposed". Likewise, it is very important to provide additional arguments on why these recommendations should be urgently adopted by countries, even when the Guideline says that it is a conditional recommendation, to the extent that there is very low certainty evidence

## **FIA Response to WHO Consultation on Draft Guidelines on Policies to Protect Children from the Harmful Impact of Food Marketing**

### **Introduction**

Food Industry Asia (FIA) wishes to thank the World Health Organisation (WHO) for the opportunity to comment on the “Draft Guidelines on Policies to Protect Children from the Harmful Impact of Food Marketing” on behalf of the food industry in Asia, through the e-consultation process.

FIA is a trade association established in Asia to represent the view of the food industry as a trusted partner for multi-stakeholder dialogue. The goal of FIA is to harness the expertise of major food and beverage companies and respond to the region's complex challenges in food safety, regulatory harmonisation and health & nutrition.

Together, we work with a broad range of stakeholders in Asia to promote the role of multi-stakeholder collaboration as a cost-effective mechanism as part of delivering positive socio-economic outcomes.

To this end, FIA is committed to working collaboratively with governments, policy makers, civil societies and academia throughout Asia, either directly or through existing local industry groups.

### **General Feedback**

Obesity and its associated diseases are a complex, multi-dimensional problem. Aligned with the 2010 [“Set of recommendations on the marketing of foods and non-alcoholic beverages to children”](#), and the policy objective of reducing the negative impact on children from HFSS food marketing, FIA recognises the role of responsible marketing and we support the continued commitment to strengthen and adapt self-regulatory measures as part of a holistic approach to combat the growing rates of obesity, as well as nudge healthier dietary habits and lifestyles within the population.

Within Asia, across Singapore, Malaysia, Thailand, Philippines, and India, FIA members are already driving self-regulatory commitments<sup>1</sup> – these are designed within a framework in which the robust industry-led standards can be easily incorporated in regional and national regulatory policies to create a system responsive to the unique needs of different countries. These steps towards a co-regulatory approach, signifies industry’s willingness in tackling the multi-factorial challenges of obesity and to reformulate across its product portfolio to provide a wider range of healthier food choices for its consumers.

FIA firmly believes that policy interventions (regardless of statutory restrictions, co-regulation or voluntary industry initiatives) targeted at addressing health challenges should be grounded on sound science where all components of the policy support the clear objective(s), to influence positive health behaviours and habits within the population and to incentivise industry’s reformulation programmes, through the active participation of all stakeholders, including the industry, government bodies, academia and other relevant stakeholders to advance the public health agenda.

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<sup>1</sup> The [IFBA Global Responsible Marketing Policy](#), has inspired a [series of self-regulatory pledges](#) within the abovementioned Asia countries in Asia to prohibit the marketing of any products to children (generally under 12 years of age) that do not meet specific nutrition criteria.

There is also a need to support behaviours that improve health – by building an individual’s intellectual capability around nutrition, to change perceptions and behaviours towards diets. More focus should be placed on the promotion of robust nutrition education programmes, to effectively reach all social groups, to ensure that consumers make informed food choices, as part of a balanced diet<sup>2</sup>.

## Industry’s Concerns

### 1. Very Low Certainty Evidence on the Impact of Food Marketing

FIA understands that while advertising has some influence on consumer preferences and choices, evidence with regards to the scale of impact, on an individual’s overall diet and health outcomes remain limited and inconclusive. **This was acknowledged within the draft guidelines, that there is only very low certainty evidence highlighting that policies to restrict marketing to children have had a positive effect on children’s dietary intake (in terms of exposure and power of food marketing).**

**Evidence on the cost-effectiveness of far-reaching regulatory interventions in the area of food marketing remains to be seen.** In 2016, Chile adopted the strictest policy environments for high fat, sugar and salt (HFSS) product(s) advertising, to restrict the exposure and power of food marketing. HFSS products cannot be advertised from 6am to 10pm, all packs and visual ads for HFSS products must display warning labels, and the use of cartoons or characters of appeal to children are also prohibited. While a short-term impact on purchases was demonstrated<sup>3</sup>, longer term effects have not been proven – a recent study also showed that the change in consumption patterns of pre-schoolers were not significantly mediated by advertising exposure<sup>4</sup>.

According to a study by Chile’s Health Ministry, the figures of overweight or obese school children had increased from 51.2 per cent in 2016, to 54 per cent in 2020 in spite of its stringent advertising measures<sup>5</sup>.

Moreover, the impact these policies could have on children’s diets need to be thoroughly assessed – in terms of encouraging and/or limiting certain foods and its impact on nutrition adequacy. This is critical in the policy development and implementation process(es) among member states; considering the existing gaps in current literature on food marketing, and the low certainty evidence that these recommendations are being made on.

While food manufacturers in Asia are prepared to support balanced regulatory frameworks that effectively protect children, government and health authorities should prioritise the development of evidence-based policies for impactful health outcomes amidst limited resources and help to level the playing field.

<sup>2</sup> According to [FAO/WHO \(1992\)](#), nutrition education programs and approaches should help in providing consumers with correct information on the nutritional value of foods, food quality and safety methods of preservation, processing and handling, food preparation and eating to help them make the best choice of foods for an adequate diet.

<sup>3</sup> Bercholz M., Colchero M., Corvalán C., Popkin B., Reyes M. and Taillie L. (2021). Changes in food purchases after the Chilean policies on food labelling, marketing, and sales in schools: a before and after study. doi: [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(21\)00172-8/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(21)00172-8/fulltext)

<sup>4</sup> Adair L., Carpentier F., Corvalán C., Jensen M., Popkin B., and Taillie L. (2021). Examining Chile’s unique food marketing policy: TV advertising and dietary intake in preschool children, a pre- and post- policy study. *Pediatric Obesity*, 16(4). doi: [10.1111/ijpo.12735](https://doi.org/10.1111/ijpo.12735)

<sup>5</sup> BBC News. (2021). [The labels encouraging Chileans to buy healthier food.](#)

## 2. Self/Co-Regulatory Approaches Have Real Outcomes

Markets with strong traditions of advertising self-regulation and voluntary industry initiatives have demonstrated significant reduction in the exposure of HFSS advertisements to children. In 2021, a study conducted by Nielsen concluded that on average, **only 1.45% of online ads served to children (under 12) were on HFSS foods and beverages**<sup>6</sup>.

Some of the most effective options can be achieved when self-regulation complements existing statutory regulation<sup>7</sup>. As an example, the food and beverage industry in Singapore and Malaysia, through the self-regulatory approach, has demonstrated that the industry takes the matter of responsible advertising to children seriously, and has taken steps to ensure that it has adhered to the high standard of ethics in food advertising to children. The Singapore pledge is further enforced and monitored by the Advertising Standards Authority of Singapore (ASAS)<sup>8</sup>. This pledge was developed in collaboration with government agencies and industry associations to put in place a long-term framework for advertising of food and beverage products to children.

Additionally, voluntary, industry-led pledges serve as a gateway to encourage reformulation efforts, where realistic targets and timelines can be agreed upon, and definitions discussed extensively among all key players. This allows for greater, widespread participation among the small-medium enterprises (SMEs) to kickstart their reformulation journey, particularly with the sharing of best practices. With realistic targets, structured timelines, consumers can also adjust to the changes made to the taste and flavour profiles of the reformulated product. This will also guide consumers into maintaining the healthier food/beverage choices in the long term, rather than influence a negative substitution.

To this end, FIA believes that the emphasis of the draft guidelines should not be focused on statutory or self-regulatory approaches; rather, it is about **proper enforcement of well-designed policies with active involvement of all key players, that work across all forms of media and marketing techniques**.

## 3. Nutrition Criteria for Food Marketing

FIA is of the view that nutrient profiling (NP) models used to classify foods for which marketing should be restricted, are to be based on sound science and take into account core food groups and dietary recommendations. This ensures a more holistic approach in the classification of foods, where the whole food matrix and its benefits are considered. FIA encourages the **consideration of both nutrients to limit** (i.e., saturated fats, trans-fat, salt, added sugar and energy) and **nutrients to encourage** (e.g., protein, fibre, vitamins, and minerals) within a food product in the development of a NP model, alongside robust dietary guidelines, to support the overall diet quality.

A NP model with a focus on nutrients to limit can create a view that a specific nutrient is bad, regardless of the role it plays when consumed as part of a healthy, balanced diet. This defeats the objective of encouraging consumers to make informed food choices. Additionally, NP models used for

<sup>6</sup> The World Federation of Advertisers partnered with Nielsen to developed the [Digital Avatar Project](#), which used four avatars (simulated consumer profiles) to track advertising activity across 12 markets (Belgium, Brazil, Czechia, Denmark, Ireland, Japan, Mexico, Netherlands, Nigeria, Philippines, South Africa, and Spain). Through the findings, Nielsen estimated the general pervasiveness of HFSS advertising, as well as the probabilistic rate of a child's exposure to HFSS advertising.

<sup>7</sup> Many authors have concluded that formal legal systems work best when combined with self-regulation. See e.g., Doyle, C. (1997): Self-Regulation and Statutory Regulation. *Business Strategy Review*, 8 (3), pp. 35-42.

<sup>8</sup> FIA. (2012). [Leading Companies Announce Singapore's First Advertising Pledge](#).

the restriction of marketing to children should reflect the specific nutritional needs of children, and thus, should differ from the criteria set for the use in the general population.

Generally, the adoption of category-specific, threshold-based models are preferred over those that utilise an across-the-board scoring system. These thresholds are easier to adapt on a country level and factors in local consumption patterns as defined by national nutrition surveys and food composition databases<sup>9</sup>. Realistic nutrient thresholds can further act as a strong incentive for the industry to drive gradual reformulation processes as compared to a NP model with overly stringent nutrition criteria, which may lead to a negative substitution effect among consumers.

#### 4. Age Definition of a Child

The draft guidelines define children as those aged between 0-19 years<sup>10</sup>. However, according to the [International Chamber of Commerce \(ICC\)](#), children and teenagers are described as two distinct groups – children are defined to be 12 years and younger, while teens or young people are individuals aged 13 – 18 years old. ICC noted that the age at which most children have the ability to think critically about advertising is generally considered to be around age 12.

Such definitions reflect proven differences in the ability of teenagers to understand marketing communications and develop the cognitive and emotional (e.g., self-control) capacities that enable them to critically process advertising influences<sup>11</sup>. **As such, ICC highlighted that rules that attempt to treat teenagers 13 – 18 like children are unworkable.**

Regardless, many voluntary pledges, including the [IFBA Global Responsible Marketing Policy](#) have tightened their food marketing criteria by raising the age threshold of a child from 12 years old to 13 years old. **This signifies a stronger industry commitment to reduce the influence of marketing of foods high in fat, sugar or salt on children.**

### Conclusion

FIA firmly believes that the food and beverage industry has a key role to play in the implementation of policy interventions (regardless of statutory restrictions, co-regulation or voluntary industry initiatives) to meet the WHO policy objectives of addressing the impact of HFSS food and beverage marketing on children – both in terms of exposure and power.

We would caution against the guidelines on food marketing that discredit advertising self-regulation; self-regulatory systems need to deliver more, not less, within the right regulatory frameworks and with proper government recognition.

A collaborative approach involving the commitment of the government(s), industry and other stakeholders (i.e., public health bodies, research institutions, the advertising sector, etc.) is required throughout any policy development process, to support policy interventions that are science-based and grounded on solid evidence.

<sup>9</sup> World Health Organisation. (2016). [The WHO Regional Office for South-East Asia \(SEARO\) Nutrient Profile Model](#).

<sup>10</sup> See [WHO draft guideline](#): “Children were defined as people aged 0–19 years.”, page 9 footnote. As argued above, children should be defined as 12 and under, with a separate age bracket for young persons. To date, 42 countries have or are developing national codes based on the [ICC Marketing Code](#).

<sup>11</sup> Nairn A. (2014). Advertising and child well-being. In Handbook of child well-being, 2031–55. Netherlands: Springer

We respectfully invite the WHO to continue counting on the tremendous potential, both in terms of resources and expertise, that the food industry can provide, to deliver healthier outcomes for society, while creating demand for healthy foods and diets through thriving markets, trade, competition, and innovation.



**Request to offer Member States a wider range of policy options including collaboration with effective, voluntary self-regulatory initiatives**
**ICAS submission to the WHO online public consultation on the draft guideline on policies to protect children from the harmful impact of food marketing**

This submission is provided by the International Council for Advertising Self-Regulation ([ICAS](https://icas.global)). ICAS is a global platform which promotes responsible advertising through effective advertising self-regulation. It brings together a network of Advertising Standards Bodies, or so-called Self-Regulatory Organizations (SROs) from Africa, Asia-Pacific, Europe, and North & South America, regional associations such as the European Advertising Standards Alliance<sup>1</sup>, as well as global associations representing the advertising industry (The World Federation of Advertisers (WFA), the International Advertising Association (IAA), the European Publishers Council (EPC), and WOO, the World Out of Home Organization) as well as experts on global advertising and marketing laws, the Global Advertising Lawyers Alliance (GALA).<sup>2</sup>

*Countries with a Self-Regulatory Organization in ICAS and EASA membership*



The Advertising Standards Bodies / SROs in our membership **are independent bodies<sup>3</sup>** and play a key role in ensuring **that advertising on all media is legal, decent, honest, and truthful**. They do **proactive work to avoid irresponsible advertising**, and **act on complaints to tackle harmful, misleading, or offensive ads**. Their **systems involve a wide range of stakeholders**, not only the advertisers, but also advertising agencies and the media making this self-regulatory system **an effective and ‘collective’ regulatory system for advertising, which is unparalleled when compared to other forms of industry self-regulation**. There are **multiple checks and balances** in place to ensure **the system is transparent and accountable**, which is why the benefits of the self-regulatory system for advertising **have been recognized by public authorities, international organizations, as well as in legislative texts**.

<sup>1</sup> The [European Advertising Standards Alliance \(EASA\)](https://easa.europa.eu/) is the European counterpart of ICAS and brings together 28 independent advertising self-regulatory organizations (SROs), which enforce advertising self-regulatory codes of conduct at national level, and 14 stakeholders representing the advertising ecosystem (advertisers, agencies, media and digital platforms) which are all committed to ensuring responsible advertising.

<sup>2</sup> List of ICAS members: <https://icas.global/about/members/>. An interactive map of ICAS members can be found [here](#).

<sup>3</sup> SROs operate independently. They administer and enforce the codes and standards independently from the government, specific interest groups, and the advertising industry.

## General Comments/Summary

ICAS is grateful for the opportunity to contribute to the online public consultation on the WHO [draft guideline on policies to protect children from the harmful impact of food marketing](#) and would like to highlight that **ICAS and its members fully support the WHO's good-practice statement that "Children should be protected from the harmful impact of food marketing."** We also applaud the effort undertaken by the WHO to formulate evidence-informed recommendations. This is fully in line with efforts made by Self-Regulatory Organizations to review and assess new evidence regularly to ensure the rules and their application remain fit-for-purpose. However, we note that the recommendation 2 of the draft guidelines is supported only by "very low certainty evidence".

Given the weakness of the evidence supporting mandatory policies, **ICAS recommends that the WHO guidelines offer Member States the consideration of a broader range of policy options that would best fit their national legal, economic and cultural context. This would make it more likely that the interventions are fit for purpose and achieve a positive effect on children's health. Such an approach would also take advantage of the oversight and enforcement mechanisms provided by local Self-Regulatory Organizations.**

## Considerations and implications for adaptation and implementation of the guideline

In our submission we would like to highlight the following:

- While efforts were undertaken by WHO's Nutrition Guidance Expert Advisory Group (NUGAG) Subgroup on Policy Actions to evaluate available evidence through systematic study reviews and based on this, to develop evidence-informed guidelines, the recommendations made in the guidance are in fact based on "very low certainty evidence" making the recommendations conditional only as "the guideline development group was less certain about the desirable effects of implementing the intervention, as these depend on policy design elements and contextual factors.";
- The WHO draft guidance itself recognizes that "a weak evidence base" can form barriers to development and implementation;
- The recommendations also make a difference between "mandatory" and "voluntary" restrictions stating in the document that voluntary self-regulatory policies are offered by the industry as an "alternative"<sup>4</sup>. We would like to clarify that regulation through mandatory rules and voluntary/self-regulatory rules are not mutually exclusive. In fact, there is a much richer range of policy options, the most effective often being where self-regulation is a complement to statutory regulation and is embedded in a supportive legal framework.<sup>5</sup> SROs and governments can collaborate through the sharing of information and regulators can assist SROs, where necessary, to bring non-compliant companies into line<sup>6</sup>;
- A collaboration between governments and self-regulatory organizations much better reflects the contemporary need for an inclusive and multi-level regulatory approach. This is

<sup>4</sup> See WHO [draft guideline](#): "Industry generally opposed government-led restrictions, but offered voluntary self-regulatory policies as an alternative. When initiated by industry, such policies can be considered a strategy to prevent the introduction of strong, legally enforceable government regulations.", page 46. As argued above, government-led restrictions and self-regulation are most effective when working together, i.e. joined-up enforcement action and referral processes can help assist SROs, where necessary, to bring non-compliant advertisers into line.

<sup>5</sup> see UNCTAD. Manual on Consumer Protection. 2018, pp. 45: "(...) In final analysis, self-regulation does not prevent a statute from being put into place; the two routes are not incompatible but mutually reinforcing":

[https://unctad.org/system/files/official-document/ditccplp2017d1\\_en.pdf](https://unctad.org/system/files/official-document/ditccplp2017d1_en.pdf), Many authors have concluded that self-regulation and formal legal systems work best when they are combined. See e.g. Doyle, C. (1997): Self Regulation and Statutory Regulation. Business Strategy Review, 8 (3), pp. 35-42.

<sup>6</sup> Successful co-regulatory models, particularly in the field of food advertising aimed at children already exist.

also recognized in the WHO's Global NCD Action Plan, that states that there is a vital need for multisectoral collaboration and cooperation to achieve the objectives of the action plan;

- **Further to that, we would like to point out that there are different forms of industry self-regulation.** The self-regulatory approach promoted by ICAS and its members is a **comprehensive and collective regulatory system** that makes sure that the **enforcement of the advertising standards is done independently**, and this includes independence from the industry<sup>7</sup>;
- The draft recommendations also state that policies should be “broad enough to minimize the risk of migration of marketing to other channels, to other spaces within the same channel or to other age groups”. The advantage of advertising self-regulation as promoted by ICAS is that it is media neutral, i.e. the standards and rules are applicable to all types of media, including online media which are used by children and young people. Enforcement measures are also increasingly focused on digital marketing, especially advertising on social media platforms, such as influencer marketing<sup>8</sup>;
- **Self-Regulatory Organizations are currently also developing sophisticated technological tools using avatars or AI to monitor the compliance of online advertisements<sup>9</sup>. This shows the speed and efficiency with which self-regulation can adapt to changes in digital advertising and which makes it all the more valuable for governments to collaborate with Self-Regulatory Organizations.**

Based on the points made above we would like to argue that **it would be essential for public authorities, civil society, and the industry to work together**. When it comes to marketing and the protection of children from harm, these collaborations can build on the already existing and effective self-regulatory systems for advertising in many countries.

In this context, it is crucial to note that recent and relevant texts by authorities on advertising and children point out that the protection of children today requires a broad and collective commitment, by all actors, including businesses and recommend a balanced and inclusive regulation, with the common scope of promoting respect for children's fundamental rights and connectivity opportunities, protecting them from evidence-based potential risks of harm and optimizing the benefits.<sup>10</sup>

**We thus encourage the WHO to recommend to Member States a wider range of policy options including consideration of effective advertising self-regulation (or co-regulation<sup>11</sup> where locally applicable) when examining and implementing policy options and to build and/or strengthen a dialogue with Self-Regulatory Organizations in their country.**

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<sup>7</sup> The SRO members of ICAS are committed to the principles of integrity and transparency as laid down in the ICAS Charter <https://icas.global/about/the-icas-charter/>. These principles correspond to the requirements pointed out by supranational authorities; see more details on page 5 of this document and in footnote 18.

<sup>8</sup> See a list of all ICAS members that have developed influencer marketing guidelines to ensure transparent disclosure of ads by social media influencers: <https://icas.global/advertising-self-regulation/influencer-guidelines/>

<sup>9</sup> See for example the work the Advertising Standards Authority in the UK is doing to measure children's exposure to age restricted ads: <https://www.asa.org.uk/news/measuring-exposure-a-research-perspective.html>

<sup>10</sup> See:

- UNICEF Report - “Children in a Digital World”. 2017 pp. 5 and 33. « *The State of the World's Children 2017 concludes with six priority actions : (...) ; « 5. Leverage the power of the private sector to advance ethical standards and practices that protect and benefit children online.* » <https://www.unicef.org/media/48601/file> United Nations

- Convention on the Rights of the Child General comment No. 25 (2021) on children's rights in relation to the digital environment. Item H.1 «Children's rights and the business sector » and 2.

- OECD Recommendation of the Council on Children in the Digital Environment. OECD / LEGAL / 0389. First Version : 2012. Updated : 2021, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0389>

<sup>11</sup> Co-regulation is a system of regulation combining statutory and self-regulatory elements.

## Context and setting-specific issues that have not yet been captured

Under this heading, we would like to highlight the value of effective advertising self-regulation and clarify why it helps protect people in general, and children in particular, from harmful advertising.

The self-regulatory approach developed by the advertising industry is unparalleled when compared to most other forms of “industry self-regulation”. The advertising self-regulatory approach is a **comprehensive system** that is **well-balanced and extensive**, featuring **high advertising standards**<sup>12</sup>, a **system for adoption, review and application of these standards and independent bodies that enforce the standards**. The systems are designed to ensure that standards are collectively agreed upon, known, understood, and applied by all the operators in the ecosystem and that those that breach the standards can face sanctions, including referral to appropriate government authorities.

The self-regulatory systems also feature iterative improvements processes with feedback loops through which standards are regularly updated to quickly respond to societal and technological transformations. **Thanks to the broad participation of all members of the industry and the collaboration with other stakeholders, such as civil society, and informed by the learnings from monitoring exercises and the analysis of complaints, these systems allow the capture of and the ability to act upon identified issues.**

Among many distinctive features, the comprehensive advertising self-regulatory system of the advertising industry is unique in that it includes self-regulatory organizations (SROs) which provide for the following:

**Independence:** SROs operate independently from the industry. They administer and enforce the codes and standards independently from the government, specific interest groups, and the advertising industry.<sup>13</sup>

**Universality and comprehensive coverage:** SROs cover all forms of commercial communications and bring together a wide range of actors of the advertising industry, including advertisers, agencies, media/publishers and increasingly digital platforms. This means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set which creates a level-playing field amongst them.

**Advice and training:** SROs are the focal point between the design of the standards and their enforcement; therefore, SROs have a unique expertise regarding the proper implementation of these self-regulatory standards. They provide third-party training and advice to all members of the industry who seek to ensure the compliance of their ads, not only to advertisers, but also to the agencies, the

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<sup>12</sup> In most countries, advertising standards are based on the [Advertising and Marketing Communications Code](#) of the International Chamber of Commerce (the ‘ICC Marketing Code’). National adjustments are however often made to take into account legal, social, cultural and economic features of the country. Where the codes contain specific provisions, those provisions are typically agreed upon by an independent standards-making body within the SRO, and subsequently updated on a regular basis. The main standards are also often accompanied by sectoral guidelines addressing the marketing of specific products or services (e.g., alcohol, cosmetics...) or by issue-specific guidelines (e.g., on interest-based advertising, on advertising to children, on influencer marketing, etc.), or by detailed case-specific guidance on the applicable self-regulatory standards.

<sup>13</sup> Although Self-Regulatory Organizations (SROs) are primarily funded by the advertising industry, they operate independently. There are several safeguards in place to ensure that complaints on individual ads are dealt with independently and impartially, and decisions are usually made publicly available to ensure maximum transparency. To find more about how SROs are financed, please read our publication: [https://icas.global/wp-content/uploads/2018\\_10\\_01\\_SRO\\_Funding\\_Overview.pdf](https://icas.global/wp-content/uploads/2018_10_01_SRO_Funding_Overview.pdf)

media or influencers. Advice services include e.g. copy advice services or pre-clearance of advertisements before they are published. The services are quick<sup>14</sup> and are a key preventive feature ensuring ads are legal, decent, honest and truthful.

In many countries, SROs also provide advice on compliance with the legislative rules.

**Effective, independent, and impartial dispute resolution at local level:** SROs provide efficient and quick complaint handling at no cost to the consumers, consumer associations and public administrations. Being locally based, these consumer-facing entities handle complaints and queries in (the) local language(s) and are mindful of local cultural sensitivities.<sup>15</sup>

**Effective sanctions and enforcement:** Non-compliance of industry actors are subject to a staggered scale of sanctions<sup>16</sup>. Ultimately, self-regulatory bodies may refer a situation where an advertiser refuses to comply with a decision or to participate in the self-regulatory process to the appropriate statutory authorities.<sup>17</sup>

**Accountability and transparency:** To ensure accountability and transparency, SROs also generally publish their decisions, or detailed summaries, online. The list of decisions (sometimes called ‘rulings’) or summaries is typically available on the SRO’s website.

**Technological innovation:** To keep pace with changes in the media and the corresponding advertising landscapes and to effectively regulate advertising, including online advertising, an increasing number of SROs across the globe are investing in technology including automation and artificial intelligence.

**Inclusivity and openness:** SROs regularly communicate and often involve other interested parties such as civil society and public authorities.

**The core principles for an effective advertising self-regulatory system detailed above are enshrined in [the ICAS Charter](#) which was adopted on 7 May 2021 by all ICAS members. The principles in the ICAS Charter correspond to the requirements of integrity pointed out by researchers and authorities.**<sup>18</sup>

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<sup>14</sup> In Europe, almost all requests for copy-advice are handled in 48h.

<sup>15</sup> In Spain for example the SRO’s jury has obtained public recognition as an Alternative Dispute Resolution (ADR) body under European law. Spanish legislation is also requiring companies to go through the SRO’s ADR system before going to court.

<sup>16</sup> Most advertisers voluntarily comply with SRO decisions by changing or withdrawing an ad or claim which has been determined as in breach of the standards. Should they refuse to do so, in some regions, SROs ask the media to refuse to publish/run or air the campaign. Ultimately, self-regulatory bodies may refer a situation where an advertiser refuses to comply with a decision or to participate in the self-regulatory process to the appropriate statutory authorities. Options available to the self-regulatory body will depend on the procedures of the Self-Regulatory Organizations, its remit and the existing legal framework. All have proven to be effective in promoting high levels of compliance with self-regulatory decisions.

<sup>17</sup> SROs are entitled to act against their own members in case of non-compliance. In general, advertisers that are not in SRO membership, who refuse to accept the self-regulatory procedure and the adjudication of the jury, can also be sanctioned or the SRO can refer the case to the relevant authorities.

<sup>18</sup> The principles enshrined in the ICAS Charter correspond to the requirements of integrity pointed out by researchers and authorities. See the following documents for reference:

- “UNCTAD. Manual on consumer protection, 2018”. “Box. 5. Checklist for Self-regulation and corporate social responsibility”, Page 44. Available at: [https://unctad.org/en/PublicationsLibrary/ditccplp2017d1\\_en.pdf](https://unctad.org/en/PublicationsLibrary/ditccplp2017d1_en.pdf).

- “OECD Report – alternatives to traditional regulation”. 2002. Pages 59 – 60 Available at: <https://www.oecd.org/gov/regulatory-policy/42245468.pdf>

**Self-Regulatory Organizations take the protection of children, minors and vulnerable groups extremely seriously.** Applicable advertising codes concerning the marketing communications for HFSS foods and the **rigorous enforcement of these codes or standards can provide strong protections tailored to work with the individual nations' economic and legal systems.**

Children deserve especially careful treatment by marketers in any marketing communications directed to them which is why specific provisions on marketing communications to children are included in national self-regulation codes, including the ICC code. Many SROs implement the principles of the [Marketing and Advertising Code of the International Chamber of Commerce](#) and the updated [Framework for Responsible Food and Beverage Marketing Communications](#). Bringing together relevant articles from its International Codes of Advertising Practice and of Sales Promotion, the Framework provides a clear interpretation of existing rules for advertising food and beverages.

Additionally, there are further industry-led initiatives related to food and beverage marketing, such as [the EU Pledge](#) and the US [Children's Food and Beverage Advertising Initiative](#).

The [EU Pledge](#) is a voluntary initiative by leading food and beverage companies to change the way they advertise to children. Launched in 2007 as a World Federation of Advertisers (WFA) commitment to the [EU Platform for Action on Diet, Physical Activity and Health](#), the EU Pledge commits member companies either to only advertise better-for-you products to children under 13, subject to common nutrition criteria; or not to advertise any products to children under this age at all. The EU Pledge is a framework commitment; individual [companies' commitments](#) can and often do go beyond.<sup>19</sup> Based on extensive annual third-party audits, the EU Pledge has been able to report [high levels of compliance](#) and a [significant impact on children's exposure](#) to audiovisual communications for these foods and beverages, notably **an 83% reduction in children's exposure in and around children's programs, and a 48% reduction in children's exposure overall**, across all programs. The program also includes an [accountability mechanism](#), which allows citizens and interested parties across the EU to make complaints. These are channeled to an **independent panel of experts** administered by the [European Advertising Standards Alliance](#) (EASA), which delivers rulings. These are [published](#) on the EU Pledge website. Member companies that are found in breach must take corrective measures as directed by the panel's ruling.

In the US, the [Children's Food and Beverage Advertising Initiative \(CFBAI\)](#) and the [Children's Confection Advertising Initiative](#) were created to improve the landscape of food advertising to children under age 13. They are administered by BBB National Programs, which also oversees other advertising self-regulation programs including the Children's Advertising Review Unit.<sup>20</sup> Under CFBAI, participants voluntarily commit that, in advertising primarily directed to children, they will either not

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- OECD. Industry self-regulation – role and use in support consumer interests. 2015, pp. 8, «Features or provisions of the Self-Regulation ». <https://www.oecd-ilibrary.org/docserver/5js4k1fjqkwh-en.pdf?expires=1658438454&id=id&accname=guest&checksum=29D99884BF769D9826B1B7724EBE71D0>

<sup>19</sup> Additionally to the EU Pledge, there are also national pledges e.g. in Belgium, Portugal, and Switzerland. In June 2022, the local food companies in Greece have signed the Greek Pledge committing to adhere to the EU Pledge commitments. This initiative is carried out by the Hellenic Food Industry Association (SEVT) in collaboration with the Hellenic Advertisers' Association (SDE) and the monitoring will be conducted by the independent, national self-regulatory body, SEE.

<sup>20</sup> CARU's Children's Advertising Guidelines, which apply to all food advertisers, prohibit: depicting excessive food consumption; discouraging or disparaging foods provided by parents or schools or recommended by the U.S. Dietary Guidelines; and depicting snack foods as substitutes for meals.

advertise foods or beverages to children at all or advertise only products that meet CFBAI's strict Uniform Nutrition Criteria. All CCAI participants pledge to not advertise to children at all. Participants in both programs also do not advertise in elementary schools and do not engage in advertising primarily directed to children under age 6. Since CFBAI began in 2007, participants have reduced nutrients to limit, like added sugars or sodium, and added more food groups or important nutrients like calcium and Vitamin D in foods advertised to children. Some participants do not advertise to children at all. The CFBAI participants account for 70% of advertising on children's television<sup>21</sup>.

CFBAI monitors and evaluates the participants' compliance with their pledge commitments and publishes an [annual report](#) on compliance and progress. These annual reports have noted instances of non-compliance but generally found excellent compliance over the years.

In the UK, the Advertising Standards Authority (ASA) has addressed potential harms relating to a large number of issues, especially when it comes to the protection of children. The ASA conducts own research with consumers to understand what concerns them most. As such, the rules in place to protect children are deliberately strict. Ads must not contain anything that is likely to result in the mental, physical or moral harm of a child.

Furthermore, ads for food and drink products that are classed as being high in fat, salt or sugar aren't allowed to appear in or on any dedicated children's media. In fact, the ASA goes much further by allowing them only to be shown exclusively or predominantly to adult audiences, in which adults comprise at least three quarters of the audience.

The ASA also continues to use technology to proactively monitor the media landscape for any breaches of the rules, taking compliance action as necessary. The ASA's [CCTV-style Monitoring Reports](#) and [Avatar Monitoring Reports](#) bring transparency and assign accountability to this important area of their work, and their findings have triggered a significant strengthening of the [ASA system's online targeting guidance](#).

In Ireland, the [Advertising Standards Authority for Ireland \(ASAI\)](#), has [updated](#) the rules relating to the advertising of High Fat, Salt and Sugar (HFSS) products in 2021. The rules are restricting marketing communications for HFSS foods and beverages from being directed or targeted at children under the age of 15 through the selection of media or the context in which they appear. The rules are in response to changing media habits among young people, as well as wider concerns in society about public health challenges for this age group. Thresholds for non-broadcast media will reduce the overall exposure to HFSS product marketing communications.<sup>22</sup>

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<sup>21</sup> A 2017 report from the University of Connecticut's Rudd Center for Food Policy & Health found a 50% decline in food ads viewed by children on children's TV programming in the ten years since CFBAI's launch. (Report available at <https://uconnruddcenter.org/research/food-marketing/facts/>.) A 2018 Rudd report noted an 18% decline in children's exposure to food advertising overall since the start of CFBAI. See [Trends in TV advertising: 2017 update reports food-related TV advertising viewed by children and teens from 2002 to 2017.pdf](#). Brief Report. May 2018. A 2018 U.S. study regarding advertising on apps intended for children under age five found virtually no foods ads, although almost all apps contained at least one type of ad. Meyer, M. et al, Advertising in Young Children's Apps, A Content Analysis, Journal of Developmental & Behavioral Pediatrics (Oct. 29, 2018), available at [https://journals.lww.com/jrnldb/Abstract/publishahead/Advertising\\_in\\_Young\\_Childrens\\_Apps\\_A\\_Content.99257.aspx](https://journals.lww.com/jrnldb/Abstract/publishahead/Advertising_in_Young_Childrens_Apps_A_Content.99257.aspx).

<sup>22</sup> See rule 8.21 of the ASAI Code: "Where a marketing communication for HFSS is permissible, it shall be subject to media specific placement rules, including maximum thresholds for each medium."

## The Benefits of Advertising Self-Regulation and its International Recognition

The core principles of advertising self-regulation as detailed above and the work done specifically around food and alcohol advertising and the protection of minors, show that the self-regulatory system has numerous benefits for policy makers, consumers, marketers, and society as a whole.

**For policy makers:** Self-regulatory ad standards provide an additional layer of consumer protection that complements the legal framework. National advertising self-regulatory bodies help educate and thus avoid problems before they happen by providing training and copy advice. They keep track of key concerns about advertising and take steps to address them when needed. Self-regulation is also more efficient and faster than the legal process to adapt to technological and societal changes.

**For marketers:** It is often estimated that one-third to one-half of a company's market capitalization is represented by its brand reputation<sup>23</sup>, which is why consumer trust in the brand is crucial to corporate success. Advertising self-regulation, through the promotion of responsible advertising, helps build consumer trust in brands. Maximized returns on long term investments on advertising benefit not only advertisers but also agencies and media, who will see a higher demand for creative yet responsible advertising. Advertising self-regulation also ensures an impartial and level-playing field for brands.

**For consumers:** Self-regulation provides an effective, inexpensive (typically cost-free), fast and efficient solution to handle consumer complaints. An efficient and meaningful self-regulatory system helps make sure that advertising remains responsible and thus ensures a high level of consumer protection.

**The benefits of advertising self-regulation are recognized by international governmental organizations such as the Asia-Pacific Economic Cooperation (APEC), the European Union (EU), the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD).**

- The **Asia-Pacific Economic Cooperation (APEC)**<sup>24</sup> and the **Organisation for Economic Cooperation and Development (OECD)**<sup>25</sup> have both recognized advertising self-regulation's important role and called for greater capacity building of such systems.
- The **United Nations Conference on Trade and Development (UNCTAD)** states in the 'Guidelines for consumer protection'<sup>26</sup> that Member States should encourage the formulation and implementation of codes of marketing and other business practices to ensure adequate consumer protection.
- In **Europe**, effective advertising self-regulation is promoted as a complementary policy tool to general legislation within several policy and regulatory initiatives, such as the Audiovisual

<sup>23</sup> [World Intellectual Property \(WIPO\) Report Brands – Reputation and Image in the Global Marketplace](#), WIPO, 2013  
In Canada, 96% of consumers believe that it is 'somewhat' to 'very' important for advertisements to have a set of rules and regulations that advertisers must follow. [Ad Standards Canada Consumer Research](#), Ad Standards, Canada, 2019

<sup>24</sup> [Asia Pacific Economic Cooperation \(APEC\) Joint Ministerial Statement](#), APEC, 2017

<sup>25</sup> Industry Self-Regulation: ROLE AND USE IN SUPPORTING CONSUMER INTERESTS, OECD (2015-03-01), OECD Digital Economy Papers, No. 247, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5js4k1fiqkwh-en>. "Toolkit for protecting digital consumers". (OECD) 2018. The Report recognizes the benefits of effective Self-Regulation, "particularly relevant to the characteristics of the digital economy". Pages 59 and 60 <https://www.oecd.org/going-digital/topics/digital-consumers/toolkit-for-protecting-digital-consumers.pdf>

<sup>26</sup> UNCTAD Guidelines for Consumer Protection, 2015. [https://unctad.org/system/files/official-document/ditccplpmisc2016d1\\_en.pdf](https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf), item 31; UNCTAD Manual on Consumer Protection, 2018. Page 45 [https://unctad.org/system/files/official-document/ditccplp2017d1\\_en.pdf](https://unctad.org/system/files/official-document/ditccplp2017d1_en.pdf)

Media Services Directive (AVMSD). The revised AVMSD expressly encourages self-regulation and the use of codes of conduct in relation to HFSS foods and beverages marketing.<sup>27</sup>

- The **European Union's Better Regulation package**<sup>28</sup> commends principles for effective self-regulation and its inclusion in the policy toolkit and regulatory impact assessment.
- In the US, the regulatory authority primarily responsible for oversight of advertising and marketing practice, the **Federal Trade Commission (FTC)**, recognizes the role and efficacy of advertising self-regulation, and actively promotes participation by members of the advertising ecosystem. FTC guidance has spurred evolution of self-regulatory requirements, such as the Children's Food and Beverage Advertising Initiative, FTC-approved industry safe harbor programs pursuant to the Children's Online Privacy Protection Act, the Digital Advertising Accountability Program, regarding interest-based advertising,<sup>29</sup> and the Direct Selling Self-Regulatory Council, offering a first line of compliance enforcement, reducing the burden on regulators. In addition, the FTC has issued several reports on self-regulation in the alcohol industry.<sup>30</sup> The FTC has specifically noted that self-regulation is an appropriate response to concerns about the impact of alcohol advertising on youth, given the substantial protections the First Amendment to the U.S. Constitution affords to advertising.

## Conclusion

In conclusion, **we strongly recommend offering Member States a wider range of policy options including consideration of effective advertising self-regulation when examining and implementing policy options.** We also believe that **Member States should be encouraged to build and/or strengthen a dialogue with Self-Regulatory Organizations in their country.**

Resolving the big societal and health issues at global level will require strong local, regional and global partnerships and co-operations between public authorities, civil society and the industry. When it comes to advertising these partnerships can build on the strong self-regulatory systems that already exist in most developed and bigger economies across the globe.

ICAS and our members stand ready to discuss the best way we could work together to help ensure that marketing of HFSS foods is appropriate, and that children and minors are protected from harmful advertising and marketing practices.

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<sup>27</sup> Article 4a of the Directive (EU) 2018/1808 concerning the provision of audiovisual media services (Audiovisual Media Services Directive) establishes that "Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems". In addition, Recital 29 of the Directive states. In addition, recital 28 of the [Directive \(EU\) 2018/1808 concerning the provision of audiovisual media services \(Audiovisual Media Services Directive\)](#) states: 'Certain widely recognised nutritional guidelines exist at national and international level, such as the World Health Organisation Regional Office for Europe's nutrient profile model, in order to differentiate foods on the basis of their nutritional composition in the context of television advertising of foods to children. Member States should be encouraged to ensure that self- and co-regulation, including through codes of conduct, is used to effectively reduce the exposure of children to audiovisual commercial communications regarding foods and beverages that are high in salt, sugars, fat, saturated fats or trans-fatty acids or that otherwise do not fit those national or international nutritional guidelines.'

<sup>28</sup> [European Union's Better Regulation Package](#), European Commission, 2015

<sup>29</sup> See Federal Trade Commission Staff Report: Self-Regulatory Principles For Online Behavioral Advertising: Tracking, Targeting, and Technology, <https://www.ftc.gov/reports/federal-trade-commission-staff-report-self-regulatory-principles-online-behavioral>

<sup>30</sup> See [Self-Regulation in the Alcohol Industry: Report of the Federal Trade Commission \(March 2014\) \(ftc.gov\)](#).

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**Submitted by:**

Katherine Loatman, International Council of Beverages Associations, United States of America



July 28, 2022

**VIA Email (NFS@who.int)**

**Re: DRAFT WHO Guideline: Policies to Protect Children from the Harmful Impact of Food Marketing**

Dear Sir or Madam:

The International Council of Beverages Associations (“ICBA”) is pleased to submit these comments on WHO’s Draft Guideline on Policies to Protect Children from the Harmful Impact of Food Marketing (the “Draft Guideline”).<sup>1</sup> We appreciate and support the position that WHO recognizes the adoption of this Draft Guideline may require adaptation according to national and local context<sup>2</sup>. As discussed below in these comments, although ICBA supports WHO’s efforts to promote good marketing practices, ICBA respectfully requests that WHO reconsider overall priorities and return to science-based policymaking when providing guidance to Member States, and also recognize the value of self-regulatory initiatives.

At the outset, we note with concern that the two recommendations contained in this Draft Guideline are “Conditional Recommendations,” which means they are based on very low-certainty evidence. WHO’s Nutrition Guideline Expert Advisory Group (NUGAG) has now issued two consecutive Draft Guidelines that are based on very low-levels of evidence. Both these Marketing Draft Guidelines and the Draft Guidelines on the Use of Non-Sugar Sweeteners issued on 15 July, 2022 contain only “Conditional Recommendations,” showing guidelines with a tenuous evidentiary basis.

**Member States should expect WHO recommendations to be grounded in strong science, not science of “low-certainty.”** Countries around the world rely on WHO to offer gold-standard

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<sup>1</sup> ICBA is an international non-governmental organization established in 1995 that is the voice of the global non-alcoholic beverage industry. The members of ICBA include national and regional beverage associations as well as international beverage companies that operate in more than 200 countries and territories and produce, distribute, and sell a variety of non-alcoholic sparkling and still beverages, including soft drinks, sports drinks, energy drinks, bottled waters, flavored and/or enhanced waters, ready-to-drink teas and coffees, 100 percent fruit or vegetable juices, nectars and juice drinks, and dairy-based beverages.<sup>1</sup> ICBA holds special consultative status with the UN Economic and Social Council and has been a recognized observer and well-respected stakeholder at the Codex Alimentarius (“Codex”) Commission for over twenty years.

<sup>2</sup> See Chapter 5, page 51 of Draft Guideline.

scientific advice. However, if a policy position lacks a sound scientific basis, then we would respectfully suggest that WHO should not adopt that policy position. Member States face budgetary realities and are better served pursuing sound science-based solutions that have a better chance of yielding positive health results and are cost-effective.

**I. The Global Beverage Industry Has Long Been Committed to Taking Appropriate Actions on Marketing to Children: Self-Regulation Should Continue to Be An Option.**

Our industry appreciates WHO's overall efforts to promote more responsible marketing practices and we recognize that as technologies advance, the conversation will need to continue and policies will further evolve. We have long made robust commitments regarding advertising and marketing to children, and we have always been willing to lean in and adjust. In 2008, our industry first established Guidelines on Marketing to Children, committing not to place any marketing communications for specified covered beverages in any paid, third-party media where the audience consists of 50% or more of children under the age of 12 years. Over the years we have continued to enhance these Guidelines, including expanding the definition of programming and media (as technology advances). Most recently, the Guidelines extended to children under the age of 13 rather than 12 years and tightened the definition of children's media by defining the audience as 30% under 13 rather than 35% under 12.<sup>3</sup>

We note in 2021 the World Federation of Advertisers partnered with Nielsen to gain an estimation of the extent to which children are exposed to 'high in fat, salt and sugar' food and beverage ads online. Nielsen looked at online environments in 12 markets around the world and concluded that on average only 1.45% of online ads served to children are for 'HFSS' foods and beverages.<sup>4</sup> While industry will remain committed to further improving on its voluntary commitments in order to capture the remaining 1.45% of the market, one does wonder if, perhaps WHO's limited resources should be devoted to efforts to develop and promote policies in an area where much has already been accomplished through self-regulation.

It is important that WHO see industry as a part of the conversation and solution, as do most Member States. Rather than excluding the private sector from the dialogue and the opportunity, WHO should recognize that self-regulation has historically been part of the solution and that the private sector is, in fact, committed to doing more – these actions can be innovative, fast and often more effective than a regulatory-only approach.

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<sup>3</sup> <https://icba-bigtree.s3.amazonaws.com/files/resources/icba-marketing-to-children-guidelines-final-2022.pdf>

<sup>4</sup> The *Digital Avatar Project* used four avatars (simulated consumer profiles) to track advertising activity across 12 markets (Belgium, Brazil, Czechia, Denmark, Ireland, Japan, Mexico, Netherlands, Nigeria, Philippines, South Africa, and Spain). Through the findings, Nielsen estimated the general pervasiveness of 'HFSS' advertising, as well as the probabilistic rate of a child's exposure to 'HFSS' advertising. Available: <https://wfanet.org/knowledge/item/2022/03/29/Only-145-of-online-ads-served-to-children-are-for-'HFSS'-foods>

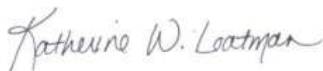
## II. We Recommend Marketing Policies that Define Child at A Reasonable Age.

We believe that the age 13 provides a coherent and well-recognized cut-off between “children” and “teens.” This distinction is an age at which teens begin to make decisions on their own and are exposed to the broader world. We find the references to age 19 in WHO’s Draft Guidelines rather unusual – would these teenagers be completely shielded from advertisements in a world in which legally they can drive vehicles, marry, become parents, serve in the military and national service programs, attend university, and work full-time jobs? This age of 13 is also reflected in regulations related to digital marketing, such as United States’ Children’s Online Privacy Protection Rule (“COPPA”) and European Union’s General Data Protection Regulation (“GDPR”). Furthermore, key government-led reviews of the existing academic research conducted in the context of the debate on food marketing communications have identified an age cut-off at 13 years.<sup>5</sup>

## III. Conclusion

In conclusion, we appreciate WHO’s effort to provide guidance to policymakers on marketing to children. However, we believe that any guidance must be grounded in principles of science-based policy to achieve meaningful, measurable results, and recognize the value of self-regulatory approaches. We are concerned that the decision to base guidelines on low-quality evidence may ultimately lead Member States to enact legislation that is equally low-quality and yields little improvements at higher costs to the broader economy. We thank you for the opportunity to submit these comments. Please let us know if you have any questions or require additional information.

Respectfully submitted,



Katherine W. Loatman  
Executive Director

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<sup>5</sup> John DR. Consumer socialization of children: a retrospective look at twenty five years of research. J Consum Res. 1999;26(3):183–213 Livingstone and Helsper, Advertising Foods to Children: Understanding promotion in the context of children's daily lives, 2006; Ofcom, Childhood Obesity - Food Advertising in Context (review of academic research conducted by Prof. Sonia Livingstone, LSE, London, UK), 22 July 2004 The Development of a Child into a Consumer, Vlakenburg and Cantor, University of Amsterdam, University of WisconsinMadison, NL and US, 2001



## IDF position to the draft WHO guideline on policies to protect children from the harmful impact of food marketing

26 July 2022

The International Dairy Federation (IDF) appreciates the opportunity to provide a response to the draft WHO guideline for public consultation on policies to protect children from the harmful impact of food marketing. It is critically important that any policy measures advanced under this guideline should align with country or region-specific dietary guidelines and/or science-based nutrition recommendations. Therefore, as detailed below,

- IDF disagrees with the misleading classification of dairy products, with connotation as unhealthy foods, as stated on page 35. Hence, we recommend the removal of “dairy products” on page 35.
- IDF disagrees with the use of solely nutrient profiling to set this policy measure. Classifying foods used across multiple food categories through only nutrient profiling systems will misrepresent nutritious dairy products.

**Dairy products in general should not be related to foods that contribute to unhealthy diets.** The draft WHO guideline on page 35 mentioned dairy products in the following context, “The proportion of food marketing that was identified as being for foods that contribute to unhealthy diets generally ranged from 31.0% to 93.0%. The most frequently marketed foods included fast food, sugar-sweetened beverages, chocolate and confectionery, salty/savoury snacks, sweet bakery items and snacks, breakfast cereals, dairy products, and desserts.” While this statement does not make a direct link between dairy products and unhealthy diets, it will likely give a false impression to readers. To avoid any misrepresentation of nutritious dairy products, and to avoid any unintended consequences of reduced consumption leading to a worsening of nutrient inadequacy, **IDF recommends removing “dairy products” from that part of the draft WHO guideline.** This is justified by the vast scientific evidence supporting dairy products such as milk, yoghurt and cheese, in the context of a healthy and balanced diet, which is adopted by dietary guidelines around the world. To provide a global picture across different parts of the world, milk and dairy products are part of the dietary guidelines in, for example, Austria [1], China [2], Colombia [3], Iran [4], South Africa [5] and the United States of America [6].

IDF understands that the source of the statement is the WHO report *Food marketing exposure and power and their associations with food-related attitudes, beliefs, and behaviours: a narrative review* [7]. In the latter, dairy products are listed as one of the most advertised products and are unjustifiably generalised as being products linked to unhealthy diets. There is no description of what specific type of dairy product is intended and some of the studies potentially referring to the category “dairy products” included high-added sugar products such as ice-creams. It is important to highlight the reference 23 of the WHO narrative review [7], which highlights the crucial role of milk, yoghurt and cheese in nutrition. The authors considered the classification of “core dairy” and “non-core dairy”, and they recommend “non-core dairy

advertisement should be prevented”, referring to “custards and dairy desserts”<sup>1</sup>. The latter negative outcome reflected in the overall WHO narrative review [7] as the influence of the generalised “dairy products” category and then translated into the present draft WHO guideline. **Not identifying the type of dairy products then highlighting only the implications of the high-added sugar products is misleading.**

The removal of “dairy products” would also bring it to line with the other references to frequently marketed foods on pages 14 and 48, stating “Food marketing is mostly for foods that are inconsistent with healthy diets. Across studies, the most frequently marketed food categories were fast food, sugar-sweetened beverages, chocolate and confectionery, salty/savoury snacks, sweet bakery items and snacks, breakfast cereals and desserts”. Therefore, reformulating the sentence on pages 34-35 would read: *The proportion of food marketing that was identified as being for foods that contribute to unhealthy diets generally ranged from 31.0% to 93.0%. The most frequently marketed foods included fast food, sugar-sweetened beverages, chocolate and confectionery, salty/savoury snacks, sweet bakery items and snacks, breakfast cereals and desserts.*

**Dairy products, in particular milk, help children meet their daily nutrient requirements since they are nutrient-dense, affordable, and versatile.** There is overwhelming scientific evidence that dairy is a key component of a healthy dietary pattern and is associated with positive nutrition and health outcomes. The evidence supporting the positive role of the consumption of milk and milk products like cheese and yoghurt in childhood nutrition is well established. This includes optimal growth and development in children and a reduced risk of developing chronic diseases such as type 2 diabetes and heart disease [9, 10]. Systematic reviews and meta-analyses have shown that increased dairy consumption may protect against weight gain and obesity [11, 12, 13, 14, 15, 16, 17, 18, 19, 20]. Indeed, there is good evidence that school milk programmes have a positive impact on children’s health and nutrition, in particular, calcium and vitamin D intake or status, and anthropometric measures. In addition, a quality education, combined with a guaranteed package of health and nutrition interventions at school, can contribute to child and adolescent development [21].

**Nutrient profile models are not appropriate to classify foods across various categories.** The overarching objective of any nutrient profiling model should be to support an accurate, evidence-based model that improves diet quality, delivers meaningful public health outcomes and enables consumers to choose nutrient-dense foods rather than energy-dense, nutrient-poor foods as outlined in dietary guidelines worldwide. IDF disagrees with the WHO’s proposal to use solely nutrient profiling models to classify foods as one of the policies to maximize the effectiveness of food marketing restrictions (i.e., recommendation 2, point 3). This is because it misrepresents nutritious foods such as milk, cheese and yoghurt due to the focus on nutrients such as saturated fat in isolation and the lack of evaluation of the benefits of the whole food matrix.

Food-based dietary guidelines recognized the role of dairy products. A review of countries reporting in the FAO dietary guidelines database shows that countries advise and recommend the consumption of

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<sup>1</sup> Mehta et al. 2012 [8] “Dairy: all milk, yoghurt and cheese products were classified as core foods, in line with the National Schools Canteen Project, classification system (22). Other dairy products such as custards and dairy desserts were classified as core foods only if they met the criteria of <20g fat/100g and <15g sugar/100g (23). Custards and dairy desserts that contained >20g fat/100g and >15g sugar/100g were designated ‘dairy non-core.’ The dairy category was given special attention by the National Schools Canteen Project because of the beneficial effects of calcium and protein, that were considered to compensate for detrimental effects of sugar and fat (22).”

milk and/or dairy foods as part of a healthy diet [22]. This is reflective of the vast scientific evidence that **dairy is a key component of a healthy dietary pattern and associated with positive health outcomes**. Dairy products have a unique and essential package of nutrients, which provides multiple health benefits [23]. In fact, in the present draft WHO guideline, it is recognized that diets that are low in calcium or milk are considered a dietary risks cluster, contributing to nearly 8 million deaths from non-communicable diseases per year.

Foods and food groups constitute dietary patterns and are more than just a collection of nutrients, therefore policies and guidelines should consider the food matrix. Our diets are not composed of single nutrients but varied and complex whole foods. Hence, **dietary guidance should be based on an evaluation of the health effects of whole foods, not a nutrient-focused approach**. The 2010 WHO report on Nutrient Profiling states that as nutrient profile models classify foods based on their nutrient composition, these nutrient profile models need to complement and support food-based dietary guidelines [24]. These dietary guidelines provide context-specific advice and principles on healthy diets and lifestyles, which are rooted in sound evidence, and respond to a country's public health and nutrition priorities, food production and consumption patterns, sociocultural influences, food composition data, and accessibility, among other factors [25]. **Nutrient profile models that focus solely on the presence or absence of particular nutrients and ignore the food matrix can misrepresent the association between some foods and health outcomes**, and are not consistent with broader health strategies designed to reduce the risk of diet-related non-communicable disease.

Moreover, it is important to highlight the remarkably low evidence for recommendation 2 in the draft WHO guideline. As Boyland, et al. [26] stated “for policies using a nutrient profile model to classify restricted foods, two studies (of three) potentially favored the intervention (no studies clearly favored)”. The present draft WHO guideline did not identify any undesirable effects of restricting food marketing. However, this is based on the systematic review by Boyland, et al. that looked at three studies and the unintended consequences evaluated in these three studies were on the reduction of advertising expenditures and loss of food and drink advertising revenues [26]. Based on that, **IDF considers that the WHO did not properly assess the potential unintended consequences on nutrient adequacy**. Therefore, making recommendations on such low certainty evidence without a proper impact assessment of what these policies could have on the nutrient adequacy of children's diets appears disconcerting. In this context, we suggest that recommendations would be considered voluntary, not mandatory.

**Dairy products are a requisite and vital component of healthy dietary patterns for children, which should not be ignored but promoted**. In many cases, children's health is improved with increased intake of milk and other high-quality dairy foods. This is especially true for low-income households. The possible policies based on this draft WHO guideline may have unintended consequences including discouraging dairy intake, which is already lower than recommended. This would have detrimental consequences on children's health, increasing the risk of impaired nutritional status in children, particularly in low-income households. As described in the draft WHO guideline, there are data that indicate some populations do consume excess calories. However, there is also evidence that for other populations, in particular infants and children in low-income households, there is underconsumption of nutrients that are well packaged in dairy products. Children who do not meet the daily recommended servings of milk, yoghurt and cheese may have inadequate intakes of important nutrients such as calcium, which are necessary for optimal growth and development [27].

## **Concluding remarks**

IDF does not support the following recommendations made in the proposed guideline.

- The misleading classification of dairy products in general, with connotation as unhealthy foods.
- The use of nutrient profile models as a solely way to classify foods, without the context of dietary guidelines.

Nutrition research has evolved and shifted focus to examine the relationship between whole foods and health. This is based on the premise that we do not eat nutrients in isolation but foods and meals that form parts of an overall dietary pattern. From this research, a different, more comprehensive picture has emerged than the one predicted through the application of a nutrient profiling model to individual foods evaluated.

Using nutrient profiling systems, especially those focusing solely on the presence or absence of particular nutrients without consideration of the role of the whole food and food matrix in the diet, will misrepresent the association between some foods, for example, milk, cheese and yoghurt, and health outcomes. Discouraging dairy consumption or restricting access to information about dairy products within these age groups has the potential to impact their future development and growth.

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## Online public consultation on the “Draft WHO guideline on policies to protect children from the harmful impact of food marketing”

### *IFBA comments*

#### **Introduction**

The International Food and Beverage Alliance (IFBA) welcomes the opportunity to provide comments on the “Draft WHO guideline on policies to protect children from the harmful impact of food marketing”.

IFBA is a group of eleven international food and non-alcoholic beverage companies – The Coca-Cola Company, Danone, Ferrero, General Mills, Grupo Bimbo, Kellogg’s, Mars, Mondelēz International, Nestlé, PepsiCo and Unilever – who share a common goal of helping people around the world achieve balanced diets and healthy, active lifestyles. IFBA is a non-commercial, non-profit making organization, in special consultative status with ECOSOC.

Since its establishment in 2008, IFBA has been championing voluntary food industry action to improve nutrition and health outcomes. IFBA recognises the need for responsible marketing practices. Among its global commitments, IFBA abides by a [Global Responsible Marketing Policy](#), which sets a common global standard for all member companies (many individual companies go beyond), and is aligned with WHO’s Set of recommendations on the marketing of foods and non-alcoholic beverages to children.

The IFBA policy – last updated and strengthened in 2021 - applies in every country where IFBA members market their products and prohibits the marketing of any products to children under 13 years of age that do not meet specific nutrition criteria, based on accepted science-based dietary guidance. Some member companies have decided not to market their products to children under age 13 at all.

This policy has led to positive changes in that the foods that continue to be marketed to children are, overall, now lower in sugar, salt and saturated fat and provide more whole grains, non-fat dairy, fruits and vegetables, while many other foods are no longer marketed to children at all. The IFBA Global Responsible Marketing Policy is further implemented through voluntary initiatives at regional and national level in [over 50 countries](#). Countries with strong traditions of advertising self-regulation and voluntary industry initiatives have demonstrated substantial reductions in children’s ‘HFSS’ ad exposure. In 2021, the World Federation of Advertisers partnered with Nielsen to gain an estimation of the extent to which children are exposed to ‘HFSS’ food and beverage ads online. Nielsen looked at online environments in 12 countries around the world and concluded that on average only 1.45% of online ads served to children are for ‘HFSS’ foods and beverages.<sup>1</sup>

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<sup>1</sup> The *Digital Avatar Project* used four avatars (simulated consumer profiles) to track advertising activity across 12 markets (Belgium, Brazil, Czechia, Denmark, Ireland, Japan, Mexico, Netherlands, Nigeria, Philippines, South Africa, and Spain). Through the findings, Nielsen estimated the general pervasiveness of ‘HFSS’ advertising, as well as the probabilistic rate of a child’s exposure to ‘HFSS’ advertising. Available: <https://wfanet.org/knowledge/item/2022/03/29/Only-145-of-online-ads-served-to-children-are-for-‘HFSS’-foods>

These figures have been corroborated by a study recently commissioned by the European Commission<sup>2</sup>, which showed that just 1.7% of ads that children see online are for food products, in the EU. The study also found that YouTube accounted for over 80% of children’s online ‘HFSS’ advertising exposure. Another 2019 analysis commissioned by the UK government concluded that children under 16 were exposed to just 13.2 seconds (0.22 minutes) of HFSS advertising per day online.<sup>3</sup>

This does not mean that no additional action is required to further ensure that food and beverage marketing is responsible and that comprehensive policy responses are put in place to address the major global challenge of NCDs, including childhood obesity. On the contrary, IFBA appreciates the WHO’s leadership in driving Member States to implement appropriate policies and to encourage non-State actors, including the private sector, to take action against NCDs too.

### Comments on the draft WHO guideline

As reflected by the long-standing investment in self-regulation describe above, IFBA fully recognises the need for responsible food and beverage marketing practices, in particular as regards children. IFBA also believes, however, that policy recommendations need to be based on robust evidence of likely effectiveness. The “conditional” recommendations included in the draft guideline admit to being based on “very low certainty evidence”. Indeed, the research underpinning the guideline found:

- Very low certainty evidence on the effect of policies on children’s exposure to food marketing and the power of food marketing, as well as on children’s dietary intake and product change.
- Very low certainty evidence on the impact of exposure to food marketing on children’s food preferences, beyond evidence from randomised control trials on evidence of the impact of exposure on short term intended food choices and requests.
- Low certainty evidence on the effect of policies to restrict food marketing to children on children’s food purchasing.
- No relevant studies on the impact of exposure to food marketing on diet-related NCDs (or validated surrogate indicators) or on the effect of policies to restrict food marketing to children on food preferences, food choice, product requests, dental caries/erosion, body weight/BMI/obesity and diet-related NCDs (or validated surrogate indicators).

Publishing WHO guidance that recommends a much more rigid and restrictive approach than the existing 2010 WHO recommendations, on the basis of this very limited evidence, risks promoting regulation that is both disproportionate and ineffective.

### Conclusion

We do not believe that guidance that is “conditional” and based on “very low certainty of evidence” is going to be effective. All stakeholders need guidance that is strongly grounded in evidence. Revising existing and widely recognised guidance with new guidance that is not underpinned by such evidence is of questionable value. Instead, we would encourage WHO to support further research to

<sup>2</sup> [Study on the exposure of children to linear, non-linear and online marketing of foods high in fat, salt or sugar](#), ECORYS, 2021

<sup>3</sup> <https://www.gov.uk/government/consultations/total-restriction-of-online-advertising-for-products-high-in-fat-sugar-and-salt-hfss/evidence-note#child-exposure>

better understand the relationship between marketing and health-related outcomes in children, including how marketing can be leveraged for health promotion, as well as empirical research to better understand the impact of different policies to restrict food marketing to children.

This does not mean that meanwhile nothing should be done on a policy level. As stated above, IFBA believes in the need for responsible marketing practices; all IFBA companies apply a global standard; and all have individual global policies for responsible marketing, many of which go beyond. Often the IFBA policy is the *only* collective standard applied in the marketplace: as the draft WHO guideline points out, many countries are not equipped with policies in this area. We would therefore encourage WHO to focus on how public and private sector actors can collaborate to identify what approaches work locally and broaden standards so that they apply beyond leading international companies, to others, levelling the playing field and ensuring universal enforcement at national level, rather than dismissing these approaches based on weak evidence. Self- and co-regulatory systems need to be incentivised to deliver more, not less, and not in substitution to, but within the right regulatory frameworks, and with proper government recognition.

A collaborative multi-stakeholder, whole-of-society approach is required throughout any policy development process, to support policy interventions that are science-based and grounded on solid evidence.

The sweeping approach proposed in the draft WHO guideline would not just restrict marketing to children, but marketing in general. A recommendation that promotes such an approach based on weak evidence and in a “conditional” manner seems questionable. Marketing is among other things an enabler of innovation, including for better nutrition and health outcomes. A targeted policy approach would therefore be advisable.

IFBA and its member companies remain at the disposal of the WHO and its Member States to provide evidence, insights and perspectives on this and related issues as deemed appropriate.

**Contact:** Rocco Renaldi, Secretary General, IFBA ([rrenaldi@ifballiance.org](mailto:rrenaldi@ifballiance.org))

**Submitted by:**

Masaki Sawaoka, Japan Food Industry Association, Japan

Survey response	
Considerations and implications for adaptation and implementation of the guideline	The degree of obesity among minors varies greatly depending on the diet and customs of each country and ethnic group. We believe that this guideline should not be applied uniformly, and that national and regional governments should take the most suitable measures according to the nutritional status of the country and the health status of children. Therefore, We think that the P51 draft "The recommendations in this guideline may require adaptation to the local context of WHO regions and Member States, including the country's nutritional situation, cultural context, locally available foods, dietary customs, available resources and capacities, and existing policies and governance structures" should be maintained.

29 July 2022

**BY EMAIL TO [NFS@who.int](mailto:NFS@who.int)**

## **Draft WHO guideline on policies to protect children from the harmful impact of food marketing:**

### ***UNESDA submission to endorse and complement the submission from the International Council of Beverages Associations***

UNESDA Soft Drinks Europe, the association representing the European soft drinks industry, fully endorses the submission to this present consultation from our international association, the International Council of Beverages Associations ("ICBA").

We echo the ICBA's concerns, especially in relation to the fact that the two recommendations contained in this draft WHO guideline are "Conditional Recommendations," meaning they are based on very low-certainty evidence.

As UNESDA, we considered it may be helpful to the WHO for us to supplement the ICBA submission with the following concrete examples and results of the European soft drink sector's long-standing voluntary commitments – both not to market to children and to act responsibly in European schools.

#### **1. UNESDA commitment not to market or advertise to children**

The European soft drinks industry, under the umbrella of UNESDA, supports healthier dietary habits. Its actions include a wide range of far-reaching self-regulatory commitments to act responsibly – especially with regard to children. Since 2006, UNESDA has committed not to advertise ANY of its soft drinks to children under 12 years of age, neither on TV, radio, in print media, online, nor in cinemas.

In June 2021, UNESDA has taken this a step further by committing not to advertise and market its beverages to children under 13 across all media, and to lower the audience threshold to 30%, thereby reducing the number of children who will be directly exposed to advertising for any soft drinks.

The media covered by our enhanced commitment includes not only TV, radio, print, in cinemas and online but has been extended to include social media and other online platforms and sites (such as company-owned websites and video-sharing platforms). This also includes direct

marketing, product placement, interactive games, outdoor marketing, mobile marketing, and contracted influencers.

This pledge was submitted as part of the UNESDA commitments (available [here](#)) to the EU Code of Conduct on Responsible Food Business and Marketing Practices. This Code was launched by the European Commission in July 2021 as one of the first deliverables of the EU Farm to Fork Strategy to help accelerate the transition to a more sustainable food system in Europe. The European soft drinks industry is strongly supportive of the Code and its potential to mobilise the necessary critical mass to substantially enhance the food and drink environment of European consumers.

According to the latest results from the [EU Pledge 2021 monitoring report](#), the members of the EU Pledge, including several UNESDA corporate members, achieved high compliance rates in 2021 regarding not advertising or marketing to children: 98.84% on TV, 96.49% on company-owned websites, 96.53% on company-owned social media profiles, and 100% on influencer profiles. The EU Pledge is a flagship voluntary commitment on responsible food and beverage marketing to children by leading food and beverage companies.

## 2. UNESDA commitment to act responsibly in schools

The European soft drink sector has a long-standing commitment to act responsibly in EU schools: since 2006, UNESDA member companies have not sold nor advertised ANY soft drinks in EU primary schools and, when it comes to secondary schools, they only offer for sale no- and low-calorie soft drinks (since 2017), and only in unbranded vending machines (through direct distribution).

Independent research carried out in 2020 by the third-party auditors BVA-BDRC found that UNESDA member companies delivered high levels of compliance with the school commitments made in 2006 that were subsequently reinforced over the past 15 years: between 97%-100% compliance in EU primary schools and between 72%-99% compliance in EU secondary schools. UNESDA will intensify its efforts, working with other third-party distributors, to ensure that its commitments continue to be implemented across Europe.

### **Conclusion: Data demonstrating that UNESDA responsible marketing practices towards children promote healthier drink habits**

UNESDA responsible marketing practices and school policies have been key in promoting healthier drink habits. [This is demonstrated by data](#) from the WHO's own studies, such as the WHO Health Behaviour in School-aged Children studies and the WHO European Childhood Obesity Surveillance Initiative ('COSI') reports. These show that soft drink intake and frequency by European children have fallen consistently, whilst rates of overweight and obesity continue to increase.

**WHO COSI data show that between 2001 and 2018, the proportion of EU children aged 11, 12 and 13 who drank soft drinks daily decreased by more than 40% - 11-year-olds: 46% decrease; 12-year-olds: 43% decrease; 13-year-olds: 43% decrease.**

**Despite this marked decline in the frequency of consumption of soft drinks, WHO COSI data show that rates of overweight and obesity continue to increase.**

As an example, WHO COSI recent data (2015-2022) show that 48% of Spanish 6–9-year-olds were reported to be overweight/obese, whereas only 3.7% of Spanish 6–9-year-olds consumed soft drinks frequently. For examples of case studies from other European countries, please see [here](#).

This points to the complex issue of overweight and obesity and the need to properly consider the multiple factors behind it.

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For more information, please contact Nicholas Hodac, Director General, UNESDA - [nhodac@unesda.eu](mailto:nhodac@unesda.eu)



# Online public consultation on the “Draft guidelines on policies to protect children from the harmful impact of food marketing”

## *WFA comments*

The World Federation of Advertisers (WFA) welcomes the opportunity to provide comments on the “Draft guidelines on policies to protect children from the harmful impact of food marketing”.

WFA is the voice of marketers worldwide, representing 90% of global marketing communications spend, over €800 billion per year. We represent over 130 brand owners and 60 national advertiser associations worldwide. 44 of our corporate member companies are manufacturers, retailers or service providers in the food and beverage sector.

For the past 15 years, WFA has been championing voluntary initiatives in the area of food marketing, including through partnership with the International Food and Beverage Alliance (IFBA)<sup>1</sup> and through coordination of action at [regional](#) and [national level](#), involving a much broader range of companies and industry players.

### **1. Food advertising restrictions must be evidence-based and proportionate**

The media and marketing landscape has evolved significantly since 2010, and so have food marketing policies. It is therefore absolutely timely to revisit these guidelines to take new evidence into consideration. **As the draft guidelines acknowledge, there is only very low certainty evidence that policies to restrict marketing to children have had a positive effect on children’s dietary intake.** To make policy recommendations on the basis of this limited evidence, therefore, runs the risk of promoting regulation that is both disproportionate and ineffective. We instead encourage WHO to support further study to close evidence gaps and to understand the extent of any relationship between marketing restrictions and obesity and other health-related outcomes. Importantly, such research will need to consider the challenges of disentangling advertising exposure from the many factors that contribute to poor health outcomes. Industry, academia, and regulators alike tend to agree that action is needed in many areas of society to start to tackle what is perceived as “obesogenic environments”<sup>2</sup>.

**WFA recognises that advertising has an influence on consumers’ preferences and choices — for both children and adults.** However, the size and relative importance of this impact, and any demonstrable impact on health outcomes, are important research questions that are far from settled. It therefore must be acknowledged that some major data gaps continue to exist. The UK

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<sup>1</sup> The [International Food and Beverage Alliance](#) (IFBA) is an alliance of eleven multinational food and non-alcoholic beverage companies – The Coca-Cola Company, Danone, Ferrero, General Mills, Grupo Bimbo, Kellogg’s, Mars, Mondelēz International, Nestlé, PepsiCo and Unilever – who share a common goal of helping people around the world achieve balanced diets and healthy lifestyles. Developed through partnership with WFA, the [IFBA Global Responsible Marketing Policy](#) applies in every country where IFBA members market their products and prohibits the marketing of any products to children under 13 years of age that do not meet specific nutrition criteria. This global policy has inspired action at [regional](#) and [national](#) level, involving a much broader range of companies and industry players.

<sup>2</sup> [Report of the Commission on Ending Childhood Obesity](#), (2016): “Many children today are growing up in an obesogenic environment that encourages weight gain and obesity. Energy imbalance has resulted from the changes in food type, availability, affordability and marketing, as well as a decline in physical activity, with more time being spent on screenbased and sedentary leisure activities.”

government-funded 2007 work to map the different factors that influence levels of obesity<sup>3</sup> was an early start to this, followed by McKinsey's 2014 discussion paper on overcoming obesity to compare different measures and their outcomes<sup>4</sup>. More work should be done.

Food advertisers stand ready to play their part to help close the evidence gap and support policy frameworks that effectively promote children's well-being. Any policies, including regulatory and self- and co-regulatory measures, which should not be seen as mutually exclusive but complementary, must always be proportionate, evidence based, and appropriate for country-specific situations.

## 2. Focus should be on policy outcomes — not 'regulation versus self-regulation'

WFA fully subscribes to the 2010 "[Set of recommendations on the marketing of foods and non-alcoholic beverages to children](#)" and the policy objective of reducing any impact on children of 'HFSS' food marketing. The 2010 recommendations put emphasis on the policy *outcomes* and acknowledged that the policy objective can be achieved through a variety of approaches, ranging from statutory legislation to self- and co-regulatory<sup>5</sup> initiatives. There is no one size fits all; what works in one market, may not work in another. The draft guidelines rightly state "*policy measures to promote healthy diets, including policies to protect children from the harmful impact of food marketing, are implemented within complex systems (including the food system) that are country-specific, and influenced by political, legal, economic, cultural and ethical contexts.*"

WFA believes self-regulation works best when it is well-designed to work across all forms of media and is supported with proper enforcement mechanisms, such as enforcement by an independent self-regulatory organisation (SRO). Self-regulation has evolved and strengthened over time and can continue to do so, ideally with all key players at the table, including regulators, public health bodies, research institutions, the advertising sector, and the food industry. We therefore encourage WHO to focus on how policy can help to expand self-regulatory systems to include all of industry and to strengthen their enforcement mechanisms, rather than dismissing these programs as ineffective.

In 2021, WFA partnered with Nielsen to gain an estimation of the extent to which children are exposed to 'HFSS' food and beverage ads online. Nielsen looked at online environments in 12 markets around the world and concluded that on average **only 1.45% of online ads served to children are for 'HFSS' foods and beverages.**<sup>6</sup>

These figures have been corroborated by the study commissioned by the European Commission<sup>7</sup>, which showed that **just 1.7% of ads that children see online are for food products**, in the EU. The study also found that YouTube accounted for over 80% of children's online 'HFSS' advertising exposure. This was monitored before YouTube introduced an outright prohibition on 'HFSS' advertising to users under 18 years in the EU and the UK, effective as of October 2020<sup>8</sup>. The UK

<sup>3</sup> [Reducing obesity: obesity systems map](#), UK Government Office for Science, 2007.

<sup>4</sup> [Overcoming obesity: An initial economic analysis](#), McKinsey & Company, 2014.

<sup>5</sup> Paragraph 22, [Set of recommendations on the marketing of foods and non-alcoholic beverages to children](#), World Health Organization, 2010.

<sup>6</sup> The *Digital Avatar Project* used four avatars (simulated consumer profiles) to track advertising activity across 12 markets (Belgium, Brazil, Czechia, Denmark, Ireland, Japan, Mexico, Netherlands, Nigeria, Philippines, South Africa, and Spain). Through the findings, Nielsen estimated the general pervasiveness of 'HFSS' advertising, as well as the probabilistic rate of a child's exposure to 'HFSS' advertising. Available: <https://wfanet.org/knowledge/item/2022/03/29/Only-145-of-online-ads-served-to-children-are-for-'HFSS'-foods>

<sup>7</sup> [Study on the exposure of children to linear, non-linear and online marketing of foods high in fat, salt or sugar](#), ECORYS, 2021

<sup>8</sup> [Google support page](#), update October 2020.

Advertising Standards Authority also contracted Nielsen back in 2021 and found that 98.4% of ‘HFSS’ ad impressions appeared in media where adults represented at least 75% of the audience.<sup>9</sup>

In the USA, an analysis of food ads in 2021 by the BBB National Programs’ Children’s Food and Beverage Advertising Initiative found that the majority of advertising on television featured nutrient-dense foods that positively contribute to children’s diets.<sup>10</sup> The [EU Pledge](#), a voluntary initiative taken by more than 20 food companies representing approximately 85% of European food marketing, has achieved an 83% reduction in ‘HFSS’ food ads around children’s TV programs.<sup>11</sup>

These studies, contracted by industry and regulators alike, demonstrate that co- and self-regulatory approaches have produced real outputs, such as significant decreases in children’s exposure to ‘HFSS’ advertising. We would recommend that the WHO maintain a strong focus on policy outcomes and proper enforcement, as opposed to prescribing whether Member States should go for statutory restrictions versus industry-driven self-regulation.

## Contacts:

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## WFA’s corporate members



<sup>9</sup> [ASA report on age-restricted ads appearing in online mixed-age media](#), 2021.

<sup>10</sup> 2020 CFBAI and CCAI Compliance Report. December 2021. Available: <https://bbbprograms.org/programs/all-programs/cfbai>

<sup>11</sup> Accenture data for TV shows that between 2009 and 2014, compared to a 2005 baseline, children were exposed to 83% less ‘HFSS’ ads around children’s programs, or 48% across all programs. See [2016 annual report](#).

## WFA's national advertiser association members



## Academic

- Swati Jain, Department of Food and Nutrition, Lady Irwin College, University of Delhi, India
- Valentina Castagnari, Global Center for Legal Innovation on Food Environments at the O'Neill Institute for National and Global Health Law at Georgetown University, United States of America
- Claudia Nieto, Instituto Nacional de Salud Pública, Mexico
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- Bridget Kelly, University of Wollongong, Australia
- Vivica Kraak, Virginia Polytechnic Institute and State University, United States of America

**Submitted by:**

Swati Jain, Department of Food and Nutrition, Lady Irwin College, University of Delhi, India

**Comments**

The willingness to open the draft version of these guidelines to public consultation is appreciated.

Unregulated food marketing to children has been regarded as a hazard to public health since earlier times. However, considerable work needs to be done to combat these international food corporations. It is necessary to enforce regulations and policies at the national and institutional levels. The evidence base that WHO has referred for these guidelines is robust indicating incorporation of active action through accelerators and mechanism providing a link between global and national level discourse. The document should highlight the active involvement of parents, schools and social organizations in addressing this issue.

Companies from all over the world have used children as a naive audience to boost sales. Recommendations and regulatory strategies from the past, to some of which India has also been a signatory have been into existence but with a not so active enforcement. The document states that many countries do not have mandatory polices on food marketing and use of nutrient profile models. This as a key consideration for any upcoming guidelines as it is critical for achieving effective and coherent global action on the challenges of food marketing.

Most policies on food marketing in the past were based on children aged up to 12yrs. The inclusion up to the age of 19 yrs. in the present guideline is a profound step towards impacting purchasing outcomes. We understand and endorse this view that age is a compelling factor for influencing and thereby determining the food choices, preferences and consumption patterns.

It might be worth emphasizing that these guidelines should be led by countries based on the national priorities and assessments of their own needs and gaps. The document cites most research evidence on food marketing from High Income Countries. It is suggested that more references should be added from Lower middle-income countries as well to make guidelines more inclusive and applicable.

Nevertheless, with a boom in digitalization the new challenge is enforcement of regulations in marketing and advertising to curb the global epidemic of non-communicable diseases. It is suggested to add details on how to tackle digital marketing.

**Submitted by:**

Valentina Castagnari, Global Center for Legal Innovation on Food Environments at the O'Neill Institute for National and Global Health Law at Georgetown University, United States of America



To whom it may concern at the World Health Organization,

Following the public consultation on the draft “WHO Guideline on policies to protect children from the harmful impact of food marketing” (the Draft Guideline), the Global Center for Legal Innovation on Food Environments at the O'Neill Institute for National and Global Health Law at Georgetown University celebrates the initiative for its potential to strengthen legal and advocacy efforts to protect and promote the realization of the right to health and other interrelated human rights at the domestic and international levels. In this context, it would like to offer the following comments and suggestions to help enhance the Draft Guideline's power to contribute to these aims, by being more robustly grounded on human rights and bolstering its recommendations.

**Recommendations:**

1. Frame the Draft Guideline as a materialization of States' obligations to tackle NCDs under international human rights law, stressing that marketing regulations are a suitable and rights-compliant measure to fulfil such duties.
2. Explicitly recommend that marketing regulations prioritize public health and human rights over commercial interests and properly acknowledge the need to tackle undue influence of corporate actors in policymaking.
3. Stress the need for policy to be informed by the best available evidence free from conflicts of interest, while leaving space for policy experimentation and progress.
4. Ensure that the Draft Guideline builds upon existing recommendations, to contribute to the progressive realization of human rights.

**Rationale for recommendations:**

1. **Frame the Draft Guideline as a materialization of States' obligations to tackle NCDs under international human rights law, stressing that marketing regulations are a suitable and rights-compliant measure to fulfil such duties.**

There are well-established links between non-communicable diseases (NCDs) and human rights, as recognized extensively by experts, authoritative human rights interpreters and scholars alike. Particularly, the need to address behavioral risk factors, including unhealthy diets, by creating environments that not only enable, but also foster, healthy food choices has long been acknowledged as fundamental to address the NCD epidemic, where marketing restrictions constitute a key policy priority.

The right to health has been at the forefront of the rights-based discussions, with authoritative interpretation by human rights bodies and experts developing standards on States' obligations to address the NCD epidemic. While the Draft Guideline reasonably focuses on work by the Committee on the Rights of the Child (CRC)- in light of its child's-rights approach- these references omit relevant rights and associated obligations developed by other human rights bodies, that are applicable to everyone, regardless of age. Moreover, the core part of the Draft Guideline includes only very limited references to equity and human rights, which could be enhanced to support its grounding and strengthen its recommendations.

Starting more than 20 years back, the Committee of Economic, Social and Cultural Rights (CESCR) has repeatedly stressed that the content of the right to health extends to its determinants, including food,

nutrition, potable water and a healthy environment.<sup>1</sup> Moreover, recognizing the interconnected, indivisible and interdependent nature of human rights, the CESCR has acknowledged not only that health is indispensable for the exercise of other human rights,<sup>2</sup> but also that it is dependent upon their realization; including the rights to food, education, dignity, life, non-discrimination, equality, privacy and access to information, amongst others.<sup>3</sup> In the context of women's rights, the Committee on the Elimination of Discrimination against Women (CEDAW) has equally stressed that the right to health requires promoting "women's fundamental human right to nutritional well-being throughout their lifespan by means of a food supply that is safe, *nutritious* and adapted to local conditions"<sup>4</sup> (emphasis added)

Under international human rights law, States have three levels of obligations: to respect, protect and fulfill human rights. The obligation to *respect* requires States to refrain from interfering either directly or indirectly with the enjoyment of human rights. Therefore, in the context of the right to health, States cannot engage in behaviours that may contribute to preventable morbidity and mortality.<sup>5</sup> Second, under the obligation to *protect*, States must take legislative and other measures to prevent non-State actors, including corporations, from interfering with the enjoyment of human rights.<sup>6</sup> Lastly, States must, under the obligation to *fulfil*, adopt legislation and national health policies to advance the full realisation of human rights. In the context of the right to health, this includes, but is not limited to, the need to provide information that supports healthy decisions.<sup>7</sup>

Acknowledging resource limitations, some of these obligations are of *progressive* nature, where realisation of human rights is to be incrementally achieved in accordance with State's available resources. Nonetheless, international human rights law also imposes obligations of *immediate* realization, which include the duty to take "deliberate, concrete and targeted" <sup>8</sup> measures towards human rights realisation without discrimination. Consequently, "States parties have a specific and continuing obligation to move as *expeditiously* and *effectively* as possible" towards human rights realisation.<sup>9</sup> (emphasis added) This has been recognized by the CESCR not only in the context of general State obligations under the

<sup>1</sup> Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, E/C.12/2000/4, 4, 11 (2000).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 3; Committee on Economic, Social and Cultural Rights, *General Comment 12: The right to adequate food*, E/C.12/1999/5, 4 (1999).

<sup>4</sup> Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, 4 (1999).

<sup>5</sup> Committee on Economic, Social and Cultural Rights, *supra* note 1 at 34; Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Unhealthy foods, non-communicable diseases and the right to health*, 14 (2014); Danius Puras, *Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs*, (2020).

<sup>6</sup> Committee on Economic, Social and Cultural Rights, *supra* note 1 at 35; Grover, *supra* note 5 at 15; Danius Puras, *supra* note 5.

<sup>7</sup> Committee on Economic, Social and Cultural Rights, *supra* note 1 at 36.

<sup>8</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, E/1991/23, 2 (1990).

<sup>9</sup> Committee on Economic, Social and Cultural Rights, *supra* note 1 at 31.

International Covenant on Economic, Social and Cultural Rights,<sup>10</sup> but also in the context of the right to health<sup>11</sup> and education,<sup>12</sup> amongst others.<sup>13</sup>

In this context, while much of the legal debate around measures to regulate products or corporate behavior to tackle NCDs tends to focus around whether States *are allowed to* intervene (which is reflected in the Draft Guideline's language that marketing restriction are "in accordance with" human rights),<sup>14</sup> human rights law in the context of social, economic and cultural rights actually impose an *obligation* to take action. Hence, State inaction is not an option, particularly where human rights risks are tangible, as with NCDs, and rights-promoting measures are not substantially dependent on resources, as is the case with marketing regulations. In fact, the evidence referenced in the supporting documents of the Draft Guideline indicates that marketing regulations are not only not resource-dependent but can actually be a source of long-term health and economic benefits.<sup>15</sup> Thus, it could be argued that marketing regulation is an immediate State obligation not subject to progressive realization, where inaction constitutes a State violation of its human rights duties.

The CESCR addressed the need for States to regulate private actors in the context of the right to health early in its General Comment 14.<sup>16</sup> However, it has more recently specifically addressed State obligations regarding business activities, by recognizing that "the obligation to protect means that States parties *must* prevent *effectively* infringements of economic, social and cultural rights in the context of business activities"<sup>17</sup> (emphasis added). Acknowledging that such actions are not mere "good practice," but a direct reflection of States' human rights obligations, the CESCR has stressed that compliance with such duties requires State parties to adopt legislative, administrative, educational or other appropriate measures, to "ensure *effective* protection against Covenant rights violations linked to business activities".<sup>18</sup> This reiterates that State duties are not fulfilled by the adoption of *any* measures aimed at preventing human rights violations. On the contrary, measures must be "deliberate, concrete and targeted,"<sup>19</sup> as referenced earlier, and also "*effective*" in achieving that aim.

In the context of business activities affecting public health, the CESCR has stressed that "the obligation to protect sometimes necessitates direct regulation and intervention," where "States parties should consider measures such as restricting marketing and advertising of certain goods and services in order to protect public health."<sup>20</sup> This echoes the CRC's call for States to "ensure that marketing and advertising

<sup>10</sup> Committee on Economic, Social and Cultural Rights, *supra* note 8 at 2.

<sup>11</sup> Committee on Economic, Social and Cultural Rights, *supra* note 1 at 30–1.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Art. 13)*, 43 (1999).

<sup>13</sup> For example, the right to science. See: Committee on Economic, Social and Cultural Rights, *General comment 25 on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)*. E/C.12/GC/25, (2020).

<sup>14</sup> WORLD HEALTH ORGANIZATION, *Draft guideline on policies to protect children from the harmful impact of food marketing*, 15 and 45 (2022).

<sup>15</sup> WORLD HEALTH ORGANIZATION, *Implementing policies to restrict food marketing: a review of contextual factors*, 12–5 (2021), <https://www.who.int/publications/i/item/9789240035041>.

<sup>16</sup> Committee on Economic, Social and Cultural Rights, *supra* note 1 at 55–6.

<sup>17</sup> Committee on Economic, Social and Cultural Rights, *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, 14 (2017).

<sup>18</sup> *Id.*

<sup>19</sup> Committee on Economic, Social and Cultural Rights, *supra* note 8 at 2.

<sup>20</sup> Committee on Economic, Social and Cultural Rights, *supra* note 22 at 14, 19.

do not have adverse impacts on children's rights by adopting appropriate regulation,"<sup>21</sup> as acknowledged in the Draft Guideline<sup>22</sup>.

The CESCR has also addressed the need to take effective measures to tackle NCDs in the context of its Concluding Observations to specific countries. In its conclusions on the fourth periodic report of Argentina, the Committee expressed concern for the country's increasing overweight and obesity rates and the absence of State measures to address the issue, calling for "effective measures to discourage the consumption of unhealthy foods and beverages, including (...) restrictions on the advertising of unhealthy foods and beverages, especially those directed towards children."<sup>23</sup> Likewise, in Mauritius, it extended its worry about the high incidence of non-communicable diseases and related deaths, demanding the country "take effective measures to reduce the risk factors of non-communicable diseases."<sup>24</sup>

The work by the CESCR has been complemented by different UN Special Rapporteurs on the right to health and food, who have linked human rights directly with NCDs and have called for State action, specifically referencing the need to regulate unhealthy food marketing to children (some of this work was acknowledged in the Draft Guideline's supporting documents, although not in its core recommendations).<sup>25</sup>

Remarkably, the former Special Rapporteur on the right to health, Anand Grover, issued a report focusing specifically on *Unhealthy foods, non-communicable diseases and the right to health*, where he recalled that States have an obligation to protect people from violations of their right to health from activities of non-State actors, including private food corporations.<sup>26</sup> Thus, he stressed that "States have a positive duty to regulate unhealthy food advertising and the promotion strategies of food companies,"<sup>27</sup> in order to prevent harm to people's health and fulfil State obligations under the right to health.<sup>28</sup> His successor, Danius Puras, also highlighted the human-rights implications of the growing NCD epidemic, this time specifically addressing the need for a different regulatory measure, front-of-package warning labels, as an effective means to protect and promote human rights.<sup>29</sup>

The issue was also discussed by the former Special Rapporteur on the right to food, Hilal Elver, who published a report discussing the underlying factors affecting nutrition, including industrial food systems, unhealthy eating environments and the growing threat of non-communicable diseases. On that occasion, she highlighted the impact of food corporations in the growing NCD epidemic and called for State action, including marketing restrictions.<sup>30</sup>

Moreover, the need to restrict unhealthy food marketing to children was also acknowledged by experts in areas unrelated to health and food. The Special Rapporteur in the field of cultural rights, Farida Shaheed, also expressed concern about the negative effect of commercial advertising to people's health,

<sup>21</sup> Committee on The Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*. CRC/C/GC/16, 59 (2013).

<sup>22</sup> WORLD HEALTH ORGANIZATION, *supra* note 14 at 15 and 49.

<sup>23</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations of the fourth periodic report of Argentina*. E/C.12/ARG/CO/4, 46.f (2018).

<sup>24</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Mauritius*. E/C.12/MUS/CO/5, 52.a (2019).

<sup>25</sup> WORLD HEALTH ORGANIZATION, *supra* note 15 at 16–21.

<sup>26</sup> Grover, *supra* note 5 at 15.

<sup>27</sup> *Id.* at 25.

<sup>28</sup> *Id.* at 22.

<sup>29</sup> Danius Puras, *supra* note 5 Significantly, this statement was also endorsed by the Special Rapporteur on the right to food and the Working Group on Business and Human Rights.

<sup>30</sup> Hilal Elver, *Interim report of the Special Rapporteur on the right to food*. A/71/282, (2016).

social relationships and the environment, stressing that, in the context of food, “by promoting mainly manufactured products with a high content of fat, sugar or salt, food and beverage companies contribute to altering previous eating and cooking practices that often were healthier and more ecologically sound” and “have contributed to shifting dietary patterns towards those closely linked with non-communicable diseases.”<sup>31</sup> As a result, concerned for the effect of advertising on cultural rights, including education and leisure, she recommended strong marketing regulations, including a “ban [on] all commercial advertising and marketing in public and private schools”<sup>32</sup> (emphasis added). Moreover, she emphasized the shortcomings of self-regulation, stressing that it is “unsatisfactory, leading to poor overall implementation, gaps, inconsistencies and legal uncertainty for both the industry and the public”<sup>33</sup> and called for government regulation instead.

The developments described in the universal system have also been echoed in the InterAmerican Human Rights system, where the jurisprudence of the InterAmerican Court of Human Rights (IACtHR) has established that failure to prevent human rights violations can make States directly responsible, even when carried out by non-State actors. The Court has been developing these standards progressively through its jurisprudence both in relation with the right to health<sup>34</sup> and in the context of risky activities threatening other human rights.<sup>35</sup> Thus, the Court has established that, where States’ failure to adequately regulate or supervise private parties result in human rights violations, the fact that actions were perpetuated by non-State actors still constitutes lack of State due diligence to prevent harm.<sup>36</sup> For example, in a recent case against Honduras, where private companies were exploiting vulnerable populations through risky fishing practices, the IACtHR defined that the obligation to guarantee human rights was not fulfilled by the mere existence of a legal system designed for that effect, but “requires the government to conduct itself so as to *effectively ensure* the free and full exercise of human rights”<sup>37</sup> (emphasis added). Hence, this obligation “extends beyond the relations between State agents and the persons subject to their jurisdiction, and encompasses the duty to prevent third parties, in the private sphere, from violating the protected rights.”<sup>38</sup>

The above is directly applicable to the topic discussed in the present document, as, in line with the standards described by the CESCR, the IACtHR directly acknowledges States’ obligation to take positive steps towards *effective* human rights realization. Echoing these issues, the Inter-American Commission on Human Rights (IACHR) has emphasized that increased consumption of unhealthy products, including unhealthy foods, reflects a lack of State compliance with its human rights obligations to prevent and address the negative effects of business practices, which require decisive State measures, including appropriate marketing regulations.<sup>39</sup>

<sup>31</sup> Farida Shaheed, *Report of the Special Rapporteur in the field of cultural rights*, 48, 50 (2014).

<sup>32</sup> *Id.* at 101.

<sup>33</sup> *Id.*

<sup>34</sup> See, eg. *Caso Poblete Vilches y otros vs. Chile* (2018) and *Caso Vera Rojas y otras vs. Chile* (2011).

<sup>35</sup> See, e.g., *Caso empleados de la Fábrica de fuegos en Santo Antonio de Jesus y sus familiares vs. Brasil* (2020) and *Caso de los Buzos Miskitos (Lemoth Morris y otros) Vs. Honduras*, 43 (2021).

<sup>36</sup> For a comprehensive account of InterAmerican human rights standards in relation to healthy diets, see: Belén Ríos, Isabel Barbosa & Ariadna Tovar Ramírez, *State Obligations in the Context of Unhealthy Diets: Paving the Way Within the Inter-American Human Rights System*, 11 REVISTA INTERNACIONAL DE DERECHOS HUMANOS 43–72 (2021).

<sup>37</sup> *CASO DE LOS BUZOS MISKITOS (LEMOTH MORRIS Y OTROS) VS. HONDURAS*, *supra* note 49 at 43.

<sup>38</sup> *Id.* at 44.

<sup>39</sup> RELATORÍA ESPECIAL SOBRE DERECHOS ECONÓMICOS SOCIALES CULTURALES Y AMBIENTALES & MUÑOZ, *Informe Empresas y Derechos Humanos: Estándares Interamericanos*, 211 360–1 (2019), <https://www.oas.org/es/cidh/informes/pdfs/EmpresasDDHH.pdf>.

As the above shows, prevention of human rights violations is a core State obligation, specifically where business practices can cause such a harm, as in the context of unhealthy food marketing. Significantly, though, State duties are not exhausted by harm prevention, but rather entail a concomitant duty to positively promote human rights realization, to the maximum of their available resources, as an expression of their duty to fulfill human rights.<sup>40</sup>

In this context, marketing restrictions are necessary and human-rights compliant measures to address the growing burden of NCDs. This neither ignores nor undermines the fact that marketing restrictions can represent limitations of some commercial freedoms, but rather highlights that such limitations are lawful and legitimate from the perspective of international human rights law and domestic constitutional standards. In fact, given its inherently economic underpinning, even commercial freedom of expression, where protected, has been considered a form of expression with a lesser degree of protection both by international human rights scholars and experts<sup>41</sup> and in domestic Courts.<sup>42</sup> By stating that “no undesirable effects of restricting food marketing were identified,”<sup>43</sup> the Draft Guideline falls short of acknowledging such relevant discussions, which it would do well in recognizing in anticipation of stakeholder complaints.

The above leads to an important conclusion: State action to address NCDs risk factors, including unhealthy diets and unhealthy food marketing, as its driver, is mandated under international and regional human rights law, where State’s omission to take effective measures would constitute a violation thereof. This is not only on account of violations to the right to health, but also of other interrelated human rights, including food, education, non-discrimination, and culture, amongst others. In this context, unhealthy food marketing restrictions appear as an appropriate measure to prevent human rights violations and promote their realization, as has been repeatedly acknowledged by authorities in the matter.

Therefore, the Draft Guideline’s “good practice statement” that “children *should* be protected from the harmful impact of food marketing”<sup>44</sup> (emphasis added) fails to properly reflect States’ obligations to protect and promote human rights. This is true regardless of age, but includes additional and reinforced duties when the rights of children and other vulnerable populations are at stake. Similarly, the claim that “policies to protect children from the harmful impact of food marketing *appear to be in accordance with* human rights standards”<sup>45</sup> (emphasis added) is inaccurate and potentially misleading. Far from a discussion on semantics, the framing of the issue as a hortatory matter, subject to States’ good will, wrongfully and unnecessarily waters down the Draft Guideline’s grounding on human rights and represents a missed opportunity to remind States that their binding obligations call for decisive and urgent action.

Instead, we suggest using stronger language in the text of the recommendations, to **explicitly acknowledge that effective actions to address NCDs are necessary to comply with international**

<sup>40</sup> Committee on Economic, Social and Cultural Rights, *supra* note 22 at 23.

<sup>41</sup> See e.g., Shaheed, *supra* note 45 at 99; Commercial Speech and Commercial Determinants of Health: special issue, 50 JOURNAL OF LAW, MEDICINE & ETHICS (2022).

<sup>42</sup> Supreme Court cases in Argentina and Colombia have recognized the lesser protection of commercial expression in the context of tobacco marketing restrictions. See e.g., *Nobleza Piccardo S.A.I.C. y F. c/ Santa Fe, Provincia de s/ acción declarativa de inconstitucionalidad*, 2006 for Argentina and Sentencia C-830/10 for Colombia.

<sup>43</sup> WORLD HEALTH ORGANIZATION, *supra* note 14 at 15.

<sup>44</sup> WORLD HEALTH ORGANIZATION, *supra* note 14 at 14 and 48.

<sup>45</sup> *Id.* at 13 and 45.

**and regional human rights obligations and that marketing restrictions are a suitable means to achieve that end according to well-established human rights standards.**

Finally, the evidence analyzed under the equity part of the Draft Guideline's supporting documents<sup>46</sup> shows that children of lower socioeconomic status are more exposed to food marketing than children of higher socioeconomic status. However, this consideration was given little weight in the core recommendations because the same review determined that there was no evidence that implementing food marketing restrictions had a positive impact on equity. In this respect, under the human rights framework, it should first be noted that the disproportionate impact of food marketing on children of lower socioeconomic status requires States to take specific measures to correct this situation of *de facto* discrimination.<sup>47</sup> Second, these measures can then be assessed and adjusted as needed to increase their effectiveness in light of the goal of addressing disparities.<sup>48</sup>

**2. Explicitly recommend that marketing regulations prioritize public health and human rights over commercial interests and properly acknowledge the need to tackle undue influence of corporate actors in policymaking.**

The food and beverage industry has consistently and persistently thwarted rights-compliant regulations that threaten to harm their economic interests, employing a broad array of tactics to deny the existence of a problem (or the industry's role in it), deflect attention, divide advocates, or delay the sanction or implementation of norms, both at the political levels or resorting to Courts to challenge them.<sup>49</sup> These tactics have been systematically deployed and well-documented in multiple countries in Latin America and other regions of the world.<sup>50</sup>

The undue influence of corporations in policymaking has also been addressed by international and regional human rights bodies and experts.<sup>51</sup> Discussing front-of-package labelling regulations, the

<sup>46</sup> WORLD HEALTH ORGANIZATION, *supra* note 15.

<sup>47</sup> UN Human Rights Committee, *General Comment 18: Non-discrimination*. CCPR/C/21/Rev.1/Add.1, (1989).

<sup>48</sup> Grover, *supra* note 5.

<sup>49</sup> WORLD CANCER RESEARCH FUND, *Building momentum: lessons on implementing a robust front-of-pack food label*, 48 (2019).

<sup>50</sup> Méliisa Mialon et al., *Food industry political practices in Chile: "the economy has always been the main concern,"* 16 GLOBALIZATION AND HEALTH 107 (2020); COLECTIVO DE ABOGADOS, *La interferencia de la industria es nociva Para la salud, Estrategias corporativas contra el etiquetado frontal de advertencia: un estudio comparado de Chile, Perú, México y Uruguay*, (2020); Gastón Ares et al., *Argumentos de la industria alimentaria en contra del etiquetado frontal de advertencias nutricionales en Uruguay*, 44 REVISTA PANAMERICANA DE SALUD PÚBLICA e20 (2020); Méliisa Mialon & Fabio da Silva Gomes, *Public health and the ultra-processed food and drink products industry: corporate political activity of major transnationals in Latin America and the Caribbean*, 22 PUBLIC HEALTH NUTR 1898–1908 (2019); Arsenios Tselengidis & Per-Olof Östergren, *Lobbying against sugar taxation in the European Union: Analysing the lobbying arguments and tactics of stakeholders in the food and drink industries*, 47 SCAND J PUBLIC HEALTH 565–575 (2019); PopLab, *Las fichas de Coca Cola*, LAS FICHAS DE COCA COLA.; Andrea Pedroza-Tobias et al., *Food and beverage industry interference in science and policy: efforts to block soda tax implementation in Mexico and prevent international diffusion*, 6 BMJ GLOB HEALTH e005662 (2021); Chantal Julia & Serge Hercberg, *Big Food's Opposition to the French Nutri-Score Front-of-Pack Labeling Warrants a Global Reaction*, 108 AM J PUBLIC HEALTH 318–320 (2018); Méliisa Mialon et al., *Beyond nutrition and physical activity: food industry shaping of the very principles of scientific integrity*, 17 GLOBALIZATION AND HEALTH 37 (2021); Melissa Mialon et al., *"A consistent stakeholder management process can guarantee the 'social license to operate': mapping the political strategies of the food industry in Brazil*, 37 CADERNOS DE SAÚDE PÚBLICA e00085220 (2022).

<sup>51</sup> The UN Working Group on Business and Human Rights has also acknowledged how undue influence by businesses, sometimes termed "corporate capture," threatens human rights. Thus, it has opened a public consultation

former UN Special Rapporteur on the right to health, Danius Puras, described the efforts by the food and beverage industry to “strongly and extensively” undermine government public health efforts; through misinformation, pressure on policymakers, and other attempts to interfere or directly influence government decision-making processes. Moreover, as the Rapporteur highlighted, industry actors also draw on campaigns and tactics to delay and/or block implementation of these regulatory measures, to overturn them or diminish their effect, which “constitutes an undue influence of corporations on government decision-making that should be addressed by States to ensure that regulations to prevent harm to people’s health, derived from the consumption of unhealthy foods and beverages, are driven by human rights and scientific evidence free from conflicts of interest.”<sup>52</sup>

Similarly, the Special Rapporteur Hilal Elver has expressed concern on how food corporations “vehemently opposed calls to regulate marketing” and, instead, promote voluntary commitments on labelling and advertising or sponsor nutrition and health education programmes as part of their “corporate social responsibility”. She has also highlighted that such practices are “concerning” as they are “blurring the lines between education and marketing, and potentially allowing companies to disseminate misleading information.”<sup>53</sup>

In the context of the InterAmerican Human Rights System, the IACHR issued a report where it used the food and beverage industry as an example of corporate capture in policymaking, citing the case of lobby against regulation of the marketing of unhealthy food to children and other regulatory measures.<sup>54</sup> In addition, in another thematic report on corruption and human rights, the IACHR also discussed the practice of corporate capture using a human rights lens. In that report, the IACHR underlined how decision-making that serves private interests rather than the common good undermines policymaking oriented towards the realization of human rights and can constitute corruption.<sup>55</sup>

The known impact of corporations on public health has even led to the crafting of the term “commercial determinants of health,” which refers to “strategies and approaches used by the private sector to promote products... that are detrimental to health.”<sup>56</sup> Such a framework has been recently adopted by WHO itself.<sup>57</sup>

In this context, it is imperative that the Draft Guideline appropriately acknowledges the evidence on how corporate capture of governments impairs and obstructs unhealthy food regulations, particularly evidence coming from Latin America, which is not comprehensively reflected in the Draft Guideline or in its supporting documents.<sup>58</sup> **Building on this evidence, the Draft Guideline should make it an explicit requirement that marketing regulations are informed by evidence that is free from conflicts of**

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for inputs to draft an information note on the matter. See: <https://www.ohchr.org/sites/default/files/2021-12/call-for-Inputs-responsible-corporate-political-engagement.pdf>

<sup>52</sup> Danius Puras, *supra* note 5.

<sup>53</sup> Elver, *supra* note 44 at 72.

<sup>54</sup> RELATORÍA ESPECIAL SOBRE DERECHOS ECONÓMICOS SOCIALES CULTURALES Y AMBIENTALES AND MUÑOZ, *supra* note 53 at 265–6.

<sup>55</sup> COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, *Corrupción y Derechos Humanos: estándares interamericanos*, (2019).

<sup>56</sup> Ilona Kickbusch, Luke Allen & Christian Franz, *The commercial determinants of health*, 4 LANCET GLOB HEALTH e895–e896 (2016).

<sup>57</sup> WORLD HEALTH ORGANIZATION, *Commercial determinants of health: Key facts*, (2021), <https://www.who.int/news-room/fact-sheets/detail/commercial-determinants-of-health> (last visited May 30, 2022).

<sup>58</sup> Except for a brief reference in WORLD HEALTH ORGANIZATION, *supra* note 15 at 27 and in the Draft Guidelines, where industry opposition is addressed simply as an “implementation consideration” that fails to address the complexity and pervasive nature of the issue.

**interest and prioritize public health and human rights over commercial interests.** While this does not necessarily imply that industry actors cannot participate in policymaking processes (an option that may still be legitimate at the domestic level at the light of industry interference in policymaking), it does provide a framework of engagement where human rights are the primary consideration. This is not only in accordance with the aforementioned human rights standards, but also builds upon previous WHO recommendations which have called for government to be the key stakeholders in marketing policy development and prioritize public interest while also avoiding conflict of interest.<sup>59</sup>

**3. Stress the need for policy to be informed by the best available evidence free from conflicts of interest, while leaving space for policy experimentation and progress.**

Marketing restrictions should be informed by the best available scientific evidence and be designed to suit public health and human rights goals. This not only constitutes “good practice” in policymaking but is a materialization of the right to access scientific benefits and its applications, as the use of scientific knowledge in public decision-making constitutes a “clear benefit of scientific progress” and, consequently, States should “endeavor to align their policies with the best scientific evidence available”<sup>60</sup> that is free from conflicts of interest.<sup>61</sup>

In the context of policymaking, while producing evidence to inform decision-making may be costly (and, as such, subject to progressive realization), both the right to health and other interrelated rights (like the right to scientific progress) mandates that, where evidence is readily available, States rely on it to inform decision-making, prioritizing evidence-based policies over those which are not. Hence, the Draft Guideline’s evidence-informed approach is welcome and compliant with a rights-based approach.

Nonetheless, the requirement for evidence-informed policies should not be read in isolation, but rather in conjunction with the urgency to act at the face of other human rights violations, in order to avoid transforming evidence-related requirements into standards that are too difficult (or impossible) for States to meet and, thus, become an excuse for inaction. In the context of NCDs and its risk factors, evidence on both food marketing’s effect on children’s behavior and the effectiveness of policy solutions, although arguably incomplete, is relevant and consistently signals towards the need to restrict children’s exposure to marketing to prevent human rights violations.

Hence, the Draft Guideline should frame the discussion on the available evidence constructively, to acknowledge its limitations while also fostering policy implementation and the construction of better evidence as a result of policy experimentation and evaluation. By enabling knowledge development and progress, this too is a manifestation of the right to scientific progress, abiding by the mandate to regularly review the adequacy of laws relating to the regulation of business practices to identify and address compliance and information gaps, as well as emerging problems.<sup>62</sup>

In this light, the fact that the Draft Guideline highlights the “low certainty” of evidence in its recommendations can be misleading and be illegitimately used to hamper policy action, particularly by powerful industry actors who repeatedly signal the lack of evidence as an excuse to obstruct policy

<sup>59</sup> Recommendation number 6: “Governments should be the key stakeholders in the development of policy and provide leadership, through a multistakeholder platform, for implementation, monitoring and evaluation. In setting the national policy framework, governments may choose to allocate defined roles to other stakeholders, while protecting the public interest and avoiding conflict of interest.” WORLD HEALTH ORGANIZATION, *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*, (2010), <https://www.who.int/dietphysicalactivity/publications/recsmarketing/en/> (last visited Oct 19, 2020).

<sup>60</sup> Committee on Economic, Social and Cultural Rights, *supra* note 13 at 54.

<sup>61</sup> Danus Puras, *supra* note 5.

<sup>62</sup> Committee on Economic, Social and Cultural Rights, *supra* note 22 at 15.

progress. In fact, the Draft Guideline's focus on the evidence's limitations, rather than its progress in over a decade since the last WHO marketing recommendations, could be read to imply that the evidence base has moved backwards, rather than forward. This is not only factually wrong but could also feed into the food industry's narrative to thwart any attempts at human-rights promoting regulation. Additionally, evaluating evidence with standards that are too strict to meet, while scientifically desirable, may further skew evidence towards high-income-countries, who are the only ones with the resources to produce it. Thus, **we suggest reframing the language of the recommendations, eliminating the reference to the "low certainty" of evidence to acknowledge the level of progress achieved**, as well as the above considerations.

#### 4. Ensure that the Draft Guideline builds upon existing recommendations to contribute to the progressive realization of human rights.

The Draft Guideline is a welcome and necessary update of existing WHO recommendations<sup>63</sup> and should therefore consider such recommendations as a floor upon which to build the path towards more effective regulations for the realization of human rights. In this quest, besides considering WHO guidance, it should also integrate the rich developments in the human rights arena that were outlined in the previous subheadings, taking into consideration that there is a strong presumption that retrogressive measures taken in relation to human rights are not permissible.<sup>64</sup>

The Draft Guideline is remarkable in some of its advances. Particularly, its focus on reducing the *exposure* of children to marketing (rather than advertising that is *directed to* or *targeted at* them), acknowledges the reality that children are impacted by marketing regardless of it being subjectively directed at them, which is especially relevant in the digital arena. Moreover, the emphasis on *mandatory* regulations is also in accordance with evidence on the ineffectiveness of self-regulation, amongst other progresses.

Nonetheless, the Draft Guideline fails to acknowledge previous WHO recommendations in other respects, outlined below. While it is true that some of these issues are acknowledged in the Draft Guideline as "Implementation considerations," they should be incorporated more straight-forwardly as part of the core recommendations.

- a. *Corporate capture*: as outlined in subsection 2, the Draft Guidelines should include a specific recommendation that marketing policies prioritize public health and human rights over commercial interests and properly acknowledge undue influence of corporate actors in policymaking, building on and expanding existing WHO recommendations.<sup>65</sup>
- b. *Extraterritorial obligations*: the Draft Guideline should acknowledge the increasing impact of cross-border marketing, particularly in the digital realm, and recommend State action towards reducing its impact, enhancing existing recommendations.<sup>66</sup>
- c. *Schools and places where children gather should be free from all forms of marketing*. This has been directly required by recommendations of the CRC, UN Special rapporteurs and

<sup>63</sup> Most notably, but not only the following: WORLD HEALTH ORGANIZATION, *supra* note 77; WORLD HEALTH ORGANIZATION, *A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children*, (2012), [https://apps.who.int/iris/bitstream/handle/10665/80148/9789241503242\\_eng.pdf;jsessionid=89899A92BBF01A4637C4CE020A7B55A6?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/80148/9789241503242_eng.pdf;jsessionid=89899A92BBF01A4637C4CE020A7B55A6?sequence=1) (last visited Oct 14, 2020).

<sup>64</sup> Committee on Economic, Social and Cultural Rights, *supra* note 1 at 32.

<sup>65</sup> Recommendation 6. WORLD HEALTH ORGANIZATION, *supra* note 77.

<sup>66</sup> Recommendation 8. *Id.*



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WHO itself.<sup>67</sup> Hence, the Draft Guideline should include a specific mandate in that direction.

- d. *Monitoring, enforcement and evaluation mechanisms* should be specifically included as part of the Draft Guideline recommendations, following previous WHO guidance.<sup>68</sup> This is an essential component of rights-compliant regulations that adequately integrate scientific evidence into policymaking and evolve according to its progress.

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<sup>67</sup> Recommendation 5. *Id.*

<sup>68</sup> Recommendations 9, 10 and 11. *Id.*

**Submitted by:**

Claudia Nieto, Instituto Nacional de Salud Pública, Mexico

Survey response	
Overall clarity of the guideline	The length and repetition of content in the document can lead to confusion and undermine the purpose of this document. It would be ideal to reconsider when the document mentions no effect of the food marketing interventions, since there is a lot of evidence that indicates the contrary. In some countries, the detractors might use that two lines to undermine state efforts to implement an evidence-based policy. We suggest the WHO to have a shorter, more concise version of this Guideline.
Considerations and implications for adaptation and implementation of the guideline	Thinking about human rights children should be protected from harmful marketing; therefore, public health decisions should be taken based on the best available evidence. We believe that the guideline's recommendations to consider the safety and integrity of the child, the precautionary principle requires assessing the possibility of future risk and harm and other consequences of the decision for the child's health. Since several randomized trials have proven that the exposure to marketing increases the calorie consumption, preference and food intake, we raise our concern about disclaiming low certainty evidence. It seems appropriate to take decisions based on the evidence available and thinking about the precautionary principle from the Convention of the Rights of the Child.
Context and setting-specific issues that have not yet been captured	We reckon that the power definition should be expanded, not only to strategies directed to children but also to content or strategies likely to be appealing or relevant to young audiences. Marketing is not only directed to children; we have evidence to believe that marketing to general audiences might have an impact on children. In addition, adult's exposure to marketing permeates into children food intake. Suggested revision: "Power: The power of marketing is influenced by the content and performance of the marketing action, including the creative and placement strategies used. These strategies encompass content and placement in settings and contexts likely to be relevant or appealing to young audiences. Examples include but are not limited to: graphics and visual design, such as cartoons and brand equity characters; appeals attractive to both child and general audiences such as health, humour, fun, social success, and fantasy; use of childhood or school contexts; celebrity and influencer promotions; competitions, entertainment

	<p>events, and other mediated and non-mediated events and venues where children are in the audience; and any form of digital interaction or targeting from digital data collection.” It would be also relevant to consider recommending for children aged 0-3 years a restriction in all marketing channels and persuasive strategies (power), since younger children are growing and developing, and habits during that window have the potential to mark the path of their life and subsequent food decisions.</p>
Errors of fact or missing data	<p>The implications of food marketing in caregivers as part of policies’ remit to protect children from the harmful impact of food marketing are missing. The review and recommendations of the Guideline do not include the way marketing affects parents and/or caregivers’ decisions on children’s diets in many cases undermining their efforts to guarantee nutritious foods to their children. This must be acknowledged either as a research gap and/or a future research question. In order to adequately protect children from unhealthy food marketing, parents and/or caregivers should also be protected against misleading information and marketing strategies, such as featuring unhealthy food products surrounded by healthy food options. The Guideline scope should be extended to include food marketing impact on caregivers and policy implications to fully protect children’s right to health and adequate nutrition. As they are the first intermediaries between unhealthy food marketing and a young child intake , , the Guideline must acknowledge this or explain the rationale behind such exclusion. Two new publications by (Taillie et al.) provide important evidence of the effectiveness of Chile’s food labeling and advertising law in reducing unhealthy food purchases. Taillie et al. (2020)’s publication in PLoS Medicine compares beverage purchases before and after the first implementation of Chile’s regulation and found a significant reduction in purchases of sugar-sweetened beverages with sugar content above the regulated thresholds in sugars per 100ml. Taillie et al.’s (2021) more comprehensive study published in The Lancet Planetary Health shows reductions in purchases of multiple food categories above thresholds in regulated nutrients from before the first implementation to after this implementation. This compelling evidence of food purchase changes suggests a multi-pronged approach that includes a strong marketing regulation component is effective in reducing the presence of sugars, sodium, and fats in household diets. We did not find these citations in the reviews listed in the Draft Guidelines. We urge you to add these two studies to the review, given their focus on purchase behaviors.</p>

**Submitted by:** Mary L'Abbe, Department of Nutritional Sciences, WHO Collaborating Centre on Nutrition Policy for Chronic Disease Prevention, Temerty Faculty of Medicine, University of Toronto, Canada



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July 30, 2022

**Re: *Call for comments on the draft WHO Guideline: Policies to protect children from the harmful impact of food marketing***

Comments on the draft guideline  
by

**Mary R. L'Abbé, C.M, PhD & Christine Mulligan**  
Department of Nutritional Sciences, University of Toronto

**General comments:**

Overall, we support the WHO's draft guideline and recommendations on policies to protect children from the harmful impact of food marketing. In particular, we highly agree with the highlighted importance of mandatory policies protecting children older than 12 years old, using broad-sweeping restrictions to cover the full breadth of media to which children are exposed. Further, we agree that the use of a government-developed nutrient profile model is an important strength of any policy.

**Specific comments:**

- We appreciate the effort that has gone into updating the systematic review and meta-analyses on this topic, including the systematic review on the impact of marketing on children, the effectiveness of marketing policies, and the contextual factors surrounding marketing. These were well summarized in this guideline.

- Page 14, bullet 1 - We appreciate the emphasis on product packaging. We feel that packaging has often been neglected by marketing regulation and are pleased to see this included so explicitly.
- Top of page 17- We agree that brand marketing should be restricted. There is growing evidence that brand marketing is forming a large portion of children and teen's exposure to marketing, and this is important to capture within regulation. We can provide evidence that brand marketing is very prevalent in Canada (you may want to consult studies conducted by Dr Monique Potvin Kent, University of Ottawa, Canada)
- Page 18 - We agree that studies to monitor the potential migration of food marketing to other marketing channels is needed. Broad marketing pre-implementation can support this goal and facilitate the detection of shifts in marketing practices after the implementation of marketing restrictions in different countries. Comparisons can also be made through additional natural experiments comparing countries in similar markets where restrictions are implemented vs neighbouring countries without such restrictions.
- Page 18 - We strongly agree that further studies into the equity/inequities of food marketing are critical. There has been some evidence of food marketing disproportionately impacting children of lower SES or of racialized backgrounds and further research into this area is imperative. It will also be equally important to examine how other factors associated with food marketing (e.g., price) impact equity. Ensuring that marketing policies do not perpetuate existing health inequities is imperative.
- Page 49 - we agree with these recommendations, especially that
  - Policies should be mandatory
  - Restrictions should protect children older than 12, given that teens are still vulnerable to marketing and that manufacturers are likely heavily targeting this demographic. Teens also have increased financial independence and most of their documented purchases are for less healthy foods.
  - Policies should be as broad as possible- the migration of marketing practices to unrestricted platforms is a likely unintended consequence and this should be mitigated by implementing broad-sweeping restrictions from the offset.
  - Nutrient profiling models are important to provide objective definitions of healthfulness.
- Page 50 - we agree that policies should address children's exposure to food marketing irrespective of the timing, venue or intended audience and should therefore go beyond children's media.

- Page 52: “Policies that restrict only marketing “targeted at” or “directed at” children fail to adequately limit children’s exposure to food marketing, as children are exposed to considerable marketing that falls outside this scope, such as marketing during mixed-audience television programs (e.g. sporting events, music/talent-show competitions) and on general-use apps (e.g. YouTube, Instagram, Snapchat, Facebook) (86). This guideline therefore recommends that policies restrict **“food marketing to which children are exposed”.**”
  - We agree that this is a very important and nuanced improvement in the recommendations.
  - We also agree that looking to restrict marketing for which children are exposed to, in terms of absolute numbers (rather than a % of audience) is critical. Both metrics are equally important and capture the different nature of different media or programs etc.
- We appreciate the explanation of the current research gaps that exist but agree that these gaps are not sufficient to delay the implementation of robust policy in this area.

Thank you for giving these comments your consideration and we would like to thank and acknowledge WHO for their leadership in this important policy area.

Sincerely,



Mary R. L'Abbé, C.M., Ph.D.  
 Professor, Department of Nutritional Sciences, and  
 Director, World Health Organization Collaborating Centre on  
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**Submitted by:**

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## **SUBMISSION TO THE CONSULTATION ON WORLD HEALTH ORGANIZATION DRAFT GUIDELINE ON POLICIES TO PROTECT CHILDREN FROM THE HARMFUL IMPACT OF FOOD MARKETING JULY 2022**

### **About this submission**

The George Institute for Global Health is pleased to contribute to the public consultation on the World Health Organization (WHO) draft guideline on policies to protect children from the harmful impact of food marketing.

Research produced by The George Institute for Global Health and other world-leading health and medical research institutes across the world indicates that the marketing of unhealthy products to children is a powerful tool used by food manufacturers to increase unhealthy food consumption, alter preferences, stimulate purchase requests, and ultimately adversely impact human health. Marketing limits the uptake of healthy and sustainable diets and is associated with increased rates of diet-related non-communicable diseases (NCDs), including overweight and obesity, dental caries, diabetes, and some cancers. Based on this work and the broader evidence base, we strongly recommend that the marketing of unhealthy products to children is restricted to ensure the healthiest start in life, particularly among communities experiencing greatest vulnerability.

We congratulate the WHO on the development of the Guideline and stand ready to collaborate to address research gaps and considerations identified through the systematic reviews, the narrative review, and the review of contextual factors conducted by the WHO. We welcome the opportunity to further engage on this important issue.

The George Institute has supported a complementary, joint submission developed with the NCD Alliance, NCD Child, World Cancer Research Fund International and the World Obesity Federation.

### **About The George Institute for Global Health**

The George Institute is a leading independent global medical research institute established in Sydney, with additional major centres in China, India, and the UK, and an international network of experts and collaborators. Our mission is to improve the health of millions of people worldwide by using innovative approaches to prevent and treat the world's biggest killers: non-communicable diseases (NCDs) and injury.

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Our work aims to generate effective, evidence-based, and affordable solutions to the world's biggest health challenges. We research the chronic and critical conditions that cause the greatest loss of life and quality of life and the most substantial economic burden, particularly in resource-poor settings.

Our food policy team works to reduce death and disease caused by diets high in salt, harmful fats, added sugars, and excess energy. The team conducts multi-disciplinary research with a focus on generating outputs that will help governments and industry deliver a healthier food environment for all.

The George Institute also owns and manages FoodSwitch, a mobile app that empowers consumers to make better food choices by providing simple nutrition information on a scanned product and suggesting healthier alternatives to 'switch' to. FoodSwitch collects nutrition information from annual in-store supermarket visits and crowd-sourcing images of new products through consumers who use the app. The data collected informs our research and advocacy work to improve food environments.

### **Acknowledgement of Country**

The George Institute acknowledges the Gadigal People of the Eora Nation as the Traditional Custodians of the land on which our Australia office is built, and this submission was written.

We pay our respect to Elders past, present and emerging.

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## Overall clarity of the Guideline

The structure and overall clarity of the Guideline could be much improved as follows:

- **Overall:** The Guideline should be set out more clearly for ease of readability and navigation. Overall, it is long, and the Member States would benefit from a shorter, more concise document. For example, it would be helpful if the document could more clearly delineate the degree to which the Member States should consider elements and/or act on them (see also the recommendation below on presenting the previous set of recommendations with these guidelines to serve as a point of comparison (ToR 2, page 51)).
- **Page 14 (and subsequent references):** The Best Practice Statement should be able to be read without reference to various definitions within the document; for example, by explicitly referring to all forms of marketing and the relevant category of food (i.e., unhealthy food). We propose the following adjusted wording: “Children should be protected from the harmful impact of all forms of marketing of unhealthy foods and beverages”.
- **Page 15 (and subsequent references):** The language in recommendations 1 and 2 should be stronger. “WHO suggests” is very weak as a recommendation, even though we appreciate the modest strength of the evidence outlined. We suggest replacing “suggests” with “recommends” in both cases.
- **Page 48:** The definition of children should be clearer in the good practice statement and recommendations beyond. References simply “to children” and “including those older than 12 years” should refer to, and be defined by, Article 1 of the United Nations Convention on the Rights of the Child (UNCRC) - “a child means every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier.”

## Adaptation and implementation of the Guideline

The implementation considerations of the Guideline could be further strengthened as follows:

- **Page 51:** The Guideline should more clearly outline how it updates the previous WHO set of recommendations on the marketing of foods and non-alcoholic beverages to children, and what the implications are for Member States seeking to act on WHO guidance in this area. Some of the recommendations that supersede and/or depart from the original set are well highlighted in the ‘Implementation Considerations’ section, but it is unclear whether this is a comprehensive list or only a subset. Generally, this could be much more clearly explained.
- **Page 54:** The Guideline should highlight evidence related to industry opposition to government-led restrictions, and the tactic of offering voluntary self-regulatory policies as an alternative to mandatory regulation or as a delaying tactic. Currently, self-regulation is the most common form of marketing restriction, usually supported by stakeholders with a profit motive. The evidence shows that regulations such as voluntary pledges and other non-obligatory measures are ineffective.<sup>i</sup> The Guideline

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must add further evidence on the ineffectiveness of self-regulation to make the recommendation for mandatory marketing restrictions very clear, minimising misinterpretation. Robust, clear, and evidence-based mandatory restrictions are the most effective way to restrict marketing aimed at children and adequately protect them from exposure<sup>ii</sup>.

- Additional suggested resources for inclusion:
  - Implementing policies to restrict food marketing: a review of contextual factors. Geneva: World Health Organization; 2021. Licence: CC BY-NC-SA 3.0 IGO
  - Pettigrew, S., Coyle, D., McKenzie, B., Vu, D., Lim, S., Berasi, K., Poowanastien, A., Suya, I. and Kowal, P., 2022. A review of front-of-pack nutrition labelling in Southeast Asia: Industry interference, lessons learned, and future directions. *The Lancet Regional Health - Southeast Asia*, p.100017.
  - World Health Organization. 2022. Protecting children from the harmful impact of food marketing: policy brief. [online] Available at: <<https://www.who.int/publications-detail-redirect/9789240051348>> [Accessed 19 July 2022].
  - Fisher, L., Dahal, M., Hawkes, S., Puri, M., & Buse, K. (2021). Barriers and opportunities to restricting marketing of unhealthy foods and beverages to children in Nepal: a policy analysis. *BMC Public Health*, 21(1). doi:10.1186/s12889-021-11257-y

### Context and setting-specific issues that have not yet been captured

The George Institute has identified several gaps concerning context-specific issues and makes the following recommendations to strengthen the Guideline.

- **Overall:** The Guideline should explicitly highlight the vulnerabilities of children in resource-poor settings, as marketing is particularly exploitative in these contexts.
- **Overall:** The Guideline should explicitly include the recognition of a systems approach to reducing diet-related diseases in children as a facilitator to improved health outcomes throughout the life course. Restricting all marketing to which children are exposed will also reduce the unhealthy marketing to which parents and guardians of children are exposed.<sup>iii</sup>
- **Page 6:** The term “Nutrient Profile Model” should be added to the glossary and clearly defined, in order to distinguish between nutrient profile models and food category-based classifications. The Guideline should also advise Member States to define a nutrient profile model to classify foods to be restricted from marketing. This should be aligned with national dietary guidelines and expectations of the nutritional quality of foods. Testing and monitoring of the criteria are required to avoid anomalies in classifications.
- **Page 7:** The Executive Summary should be amended to differentiate “marketing” more clearly from “marketing of unhealthy products”. Marketing healthy products can be educational for consumers and increase the consumption of such products. This

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distinction should be consistent throughout the Guideline, but particularly in the Executive Summary where the industry may criticise WHO's critique of all marketing.

- **Page 8:** The Objectives, Rationale and Purpose section should make stronger reference to the application of the UNCRC, stressing that the Guideline's recommendations support State Parties' obligations to protect children's rights under the convention (such as children's right to health, food, information, and privacy)<sup>iv</sup>. (Most Member States are a party to the Convention<sup>v</sup>, but many have not met their legal obligation to protect children's rights.)
- **Page 8:** In addition, reference should be made to all elements of the UNCRC that are relevant to marketing foods to children. Beyond the right to health (Article 24), a range of other rights are relevant, including privacy rights (Article 16), protection from economic exploitation (Article 32), and rights to reliable information and the media (Article 17)<sup>vi</sup>. Highlighting the relevance of the UNCRC here provides further impetus for countries that have ratified the Convention to implement marketing restrictions.
- **Page 8:** The Guideline's recommendations should explicitly call for mandatory policy action. With the current wording, 'policies' might be considered to include voluntary policies, which evidence has shown to be ineffective.
- **Page 16:** Recommendation 2 should be revised to specify that policies must consider cross-border marketing. In some countries and regions, cross-border marketing constitutes a large part of the marketing to which children are exposed (e.g., via radio, TV, online) and therefore could be a substantial gap in any regulatory scheme. While the document acknowledges cross-border marketing as an area in which action is necessary as part of the Implementation Considerations, the potential reach of borderless digital media is such that more guidance within the Guideline itself or the supporting text is needed. Member States should also be made aware of Resolution 63.14 from the World Health Assembly, which stresses the need "to take active steps to establish intergovernmental collaboration to reduce the impact of cross-border marketing"<sup>vii</sup>.

<b>Any errors of fact or missing data</b>
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The George Institute believes the WHO has thoroughly analysed the data to develop an evidence-based Guideline document. However, we believe the document could be further strengthened as follows:

- **Page 25:** The Guideline should clearly define what is meant by 'policy implementers'. "Target Audience" at 1.4 is defined as "representatives of the food industry, marketing/advertising agencies and related associations involved in *implementing* marketing policies". If, as the Guideline suggests, countries implement mandatory restrictions on food marketing, it will be governments who are responsible for designing and implementing restrictions on food marketing. In these cases, the industry is not the implementer, but rather they are complying with the policy set by the government. This distinction is crucial, as entities with a conflict of interest could use this justification to be involved in policy development, potentially resulting in a

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regulatory environment that runs contrary to the needs of public health priorities. The definition of ‘target audience’ should be changed to “*representatives of the food industry, marketing/advertising agencies and related associations involved in complying with (in the case of mandatory restrictions as recommended) marketing policies*”.

- **Page 48:** More detail should be provided on the increasing prevalence of digital food marketing as one of the “rationale” points for the good-practice statement. This should go beyond simply noting that it “facilitates engagement, which can amplify the marketing message and the overall impact of marketing”.
- **Page 55:** A number of other useful publications that provide global guidance and tools should be included in Box 1. For example:
  - Provide more detail on factors that support or hinder implementing restrictions on food marketing - [Implementing policies to restrict food marketing: a review of contextual factors](#). Geneva: World Health Organization; 2021. Licence: CC BY-NC-SA 3.0 IGO.
  - Provide detail on policy elements to consider when implementing a comprehensive policy and examples of common arguments from opponents and counterarguments: [Protecting children from the harmful impact of food marketing: policy brief](#). World Health Organization, 2022.
  - Offer a legal analysis that links the WHO Recommendations with the UNCRC and states’ obligations under the convention: [A Child Rights-Based Approach To Food Marketing: A Guide For Policy Makers](#). UNICEF, 2018.

#### Other comments

The George Institute for Global Health is pleased to contribute to the public consultation on the draft guideline on policies to protect children from the harmful impact of food marketing. We congratulate the WHO on its commitment to regularly updating the Guideline based on new data and information.

Beyond the comments made above, we would like to reiterate our support for the following elements in particular:

- We welcome the processes established within the development of the Guideline to manage conflict of interest in external peer reviews and this public consultation process. This is crucial to the integrity of such guidelines and the optimisation of their downstream impacts on public health.
- We welcome reference to the need for policies to “be broad enough to minimise the risk of migration of marketing to other channels, to other spaces within the same channel or other age groups” in Recommendation 2.
- We recognise inequity as a significant contributor to ill health for specific populations. We welcome the focus on equity and statements regarding policies that protect children from the harmful impact of unhealthy food marketing and its potential to reduce health inequities. This is crucial for downstream public health policy development and improvements in health outcomes for communities experiencing inequity.

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- We support the Guideline protecting children of all ages.
- We endorse the specific reference to digital marketing and its implications for the well-being of children. Given the lack of feasible methods of limiting and monitoring such marketing, consideration should be given to providing firmer recommendations about appropriate restrictions.
- We welcome the inclusion of brand marketing in the definition of marketing.

## Contact

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## References

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<sup>ii</sup> [Two references] Romero-Fernández MM, Royo-Bordonada MÁ, RodríguezArtalejo F. Compliance with self-regulation of television food and beverage advertising aimed at children in Spain. *Public Health Nutr.* 2010;13(07):1013-1021. doi:10.1017/S1368980009991984  
Kraak VI, Story M. An accountability evaluation for the industry's responsible use of brand mascots and licensed media characters to market a healthy diet to American children. *Obes Rev.* 2015;16(6):433-453. doi:10.1111/obr.12279

<sup>iii</sup> UNICEF East Asia & Pacific, UNICEF Thailand, Deakin University, Auckland University. Controls on the marketing of food and non-alcoholic beverages to children in Thailand: legislative options and regulatory design. Nov 2021. Available at: <https://www.unicef.org/eap/reports/controls-marketing-food-and-non-alcoholic-beverages-children-thailand>

<sup>iv</sup> Garde A, Byrne S, Gokani N, Murphy B. (2018). A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers. Available at: [https://sites.unicef.org/csr/files/A\\_Child\\_Rights-Based\\_Approach\\_to\\_Food\\_Marketing\\_Report.pdf](https://sites.unicef.org/csr/files/A_Child_Rights-Based_Approach_to_Food_Marketing_Report.pdf)

<sup>v</sup> United Nations Human Rights Office of the High Commissioner. Status of Ratification Interactive Dashboard. [Internet] 2014 [Accessed 7 July 2022]; Available at: <https://indicators.ohchr.org/>.

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<sup>vi</sup> World Cancer Research Fund International (2020). Building Momentum: lessons on implementing robust restrictions of food and non-alcoholic beverage marketing to children. Available at: [wcrf.org/buildingmomentum](http://wcrf.org/buildingmomentum).

<sup>vii</sup> World Health Assembly, 63. (2010). Marketing of food and non-alcoholic beverages to children. World Health Organization. <https://apps.who.int/iris/handle/10665/3088>.

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**Submitted by:**

Francesca Dillman Carpentier, University of North Carolina at Chapel Hill, United States of America



**GILLINGS SCHOOL OF  
GLOBAL PUBLIC HEALTH**

July 31, 2022

Re: Online public consultation on draft guidelines  
on policies to protect children from the  
harmful impact of food marketing

To the Esteemed Committee:

Thank you for the opportunity to comment on the Draft Guidelines via this online public consultation.

In the pages that follow, we explain how new research from Chile shows that careful all-inclusive marketing controls can reduce children's and adolescents' exposure to marketing of foods and beverages that qualify for warning labels indicating excess sugars, sodium, saturated fats, and energy per 100g or 100ml. This new research, which is not included in the reviews guiding the draft, also shows that the food industry shifted marketing of foods with warning labels to other TV programming outside of children's programs and that the daytime 6am-10pm ban on advertising of these foods was important to significantly reduce children's exposure to this marketing. Further, this new research highlights the importance of schools as a critical environment for eliminating the marketing and sale of foods with warnings and for encouraging healthy diets among children.

Proposing complete bans on all marketing as Chile has done with its 6 am to 10pm ban and as the UK is doing with its 6am to 11pm regulation would be effective in reducing children's exposure to unhealthy food marketing and in line with protecting children's rights to information and education and their right to be protected from harmful information.

As you will see in the following pages, we provide comments on the importance of children's rights as the key rationale for all recommendations, critique the application of GRADE and suggest a qualification of this approach in all recommendations, describe the new research from Chile, propose clarifications to the marketing definitions and recommendations offered in the Draft Guidelines, and offer thoughts on additional research gaps. References are listed at the end.

Thank you again for the opportunity to provide comments on this draft.

# 1 General Comments and Recommendations

## 1.1 *Elevate Human Rights and Equity in Draft Guidelines*

### A. Lead with Children's Rights in recommendations

The Convention on the Rights of the Child lists a number of rights applicable to marketing regulation, including the right to privacy (Article 7), the right to information and protection from harmful information disseminated through media (Article 17), and the right to education (Articles 28 and 29). Relevant to children's right to privacy, the United Nations (United Nations General Assembly Human Rights Council's 46th Session, 2021) has explained in detail children's online privacy rights and protections from online targeting, tracking and saving of their digital information and global regulations protecting these rights.

We advocate for a stronger inclusion of human rights and equity, in particular children's rights, in the recommendations of the Draft Guidelines. Specifically, **the primary rationale for all recommendations should be children's rights**. In addition, recommendations should include protection from unhealthy marketing in school environments and mandated protection from the targeting and tracking of children in online environments. Both school environments and online environments need to be explicitly included in recommendations to ensure children's rights to privacy and education are not violated.

### B. Address lack of Human Rights experts in Draft Guideline Development

The WHO Nutrition Guidance Expert Advisory Group Subgroup on Policy Actions (NUGAG Subgroup) was established in 2018 following an open call and a goal of supporting the development of a series of WHO guidelines on policy actions affecting food environments. The WHO's stated intention for selecting NUGAG Subgroup members included "the need for expertise from multiple disciplinary areas" (World Health Organization, 2022a, p. 26, Acknowledgements). The 23 current members of the NUGAG Subgroup listed on the WHO's website (World Health Organization, 2022c), do not appear to include human rights experts. This omission contradicts the WHO Handbook for Guideline Development, which states that the guideline development group is "multidisciplinary" and recognizes the importance of having a human rights expert in the group (World Health Organization, 2014, pp. 25,28).

The list of NUGAG and external members directly involved in the Draft Guideline development have not yet been published (World Health Organization, 2022a, Annex 3,4), which limits the transparency of the guideline development process and the public's ability for comment. The Guideline document does indicate that the NUGAG Subgroup acted as the "guideline development group" (World Health Organization, 2014, pp. 25,28; 2022a, p. 26).

"Equity and Human Rights" are among the five factors to be covered in the Draft Guideline's Review of Contextual Factors (World Health Organization, 2021). Children's rights are foundational to the rationale for protecting children from unhealthy food marketing and are additionally critical considerations in protections from online tracking

and marketing, which is noted among contextual issues on p. 46 of the Draft Guidelines but is not a key component of the recommendations (World Health Organization, 2022a). Based on the available information, it seems that only one WHO staff member with human rights expertise was asked to comment on the human rights section, and no external experts were invited to contribute or comment on this section (World Health Organization, 2021, Acknowledgements). The apparent lack of human rights expertise in the NUGAG Subgroup and external consultants therefore calls into question the development of the Draft Guideline, in addition to other guidelines under development (i.e., nutrition labeling policies, fiscal policies to promote healthy diets, school food and nutrition policies).

## **1.2 Address Bias in GRADE method**

The GRADE Public Health Group (Hilton Boon et al., 2021) and others have noted the need to adapt the GRADE method for public health, as the current method has been critiqued for its bias toward RCTs, treatment/exclusion of observational and qualitative research and challenges with non-health outcomes (Rehfuess & Akl, 2013), such that research assessing real-world national level policies via natural or quasi-experiments, surveys, and focus groups will naturally result in low certainty scores (Norris & Bero, 2016).

Further, the GRADE handbook indicates: “A number of criteria should be used when moving from evidence to recommendations... During that process, separate judgments are required for each of these criteria. In particular, separating judgments about the confidence in estimates or quality of evidence from judgments about the strength of recommendations is important as high confidence in effect estimates does not necessarily imply strong recommendations, and strong recommendations can result from low or even very low confidence in effect estimates...” (Schünemann, 2013) The WHO Guidelines for Physical Activity successfully demonstrate this separation of criterion judgments and recommendation strength: “Children and adolescents should limit the amount of time spent being sedentary, particularly the amount of recreational screen time” with the statement “Strong recommendation, low certainty evidence.” (World Health Organization, 2020)

Thirdly, the evidence reviewed notes the distinction between mandatory policies and industry self-regulation (Taillie, Busey, Mediano Stoltze, & Dillman Carpentier, 2019), in that industry self-regulation has been largely found to be ineffective and mandatory policies more effective in reducing children’s exposure to unhealthy food marketing, as noted on p. 43 of the Draft Guidelines in the review of policy effectiveness (World Health Organization, 2022a). Unlike mandatory governmental policy, industry pledges and self-regulatory measures constitute a qualitatively different intervention marked by variations in defining what products, marketing content, and marketing placement are restricted and what oversight there is for compliance (Hawkes & Harris, 2011). According to the GRADE handbook’s recommendations on defining the population and intervention, “a single estimate across the range of patients and interventions will not well serve the decision-making needs of patients and clinicians. These subpopulations should, therefore, be defined separately” (Schünemann, 2013).

It is unclear how certain conditional recommendations were made in the draft, such as: “The recommendation is conditional because the guideline development group was less certain about the desirable effects of implementing the intervention, as these depend on policy design elements and contextual factors. However, no undesirable effects of restricting food marketing were identified.” It is also unclear why the resulting judgment of the certainty of evidence on policy effectiveness, such as those presented on p. 43 and p. 54, combines mandatory policy and industry self-regulation rather than separating these bodies of evidence. We therefore ask for clarification about the inclusion criteria for studies and application of the GRADE method, which we believe has led to bias toward low and very low certainty and artificially weakened recommendations.

### ***1.3 Include Missing Evidence to strengthen recommendations***

We wish to call your attention to new research focused on Chile, which has a comprehensive multi-pronged legislation involving taxation, food warning labels, and marketing restrictions for foods high in sugars, saturated fats, sodium, and energy. As already referenced in Annex 7 of the Draft Guidelines, Chile’s legislation was implemented in three phases, each phase with increasingly stringent nutrient thresholds and a graduation from restricting marketing based on child-directed content (e.g., use of cartoon characters in the marketing message on food packages and in an array of mediated and non-mediated channels) and content placement (e.g., ads in children’s television programming) to adding a restriction on the advertising of any high-in product on television during times when children might be exposed to this content (i.e., from 6am-10pm)(Corvalán, Reyes, Garmendia, & Uauy, 2019).

Two new publications by (Taillie et al., 2021; Taillie, Reyes, Colchero, Popkin, & Corvalán, 2020) provide important evidence of the effectiveness of Chile’s food labeling and advertising law in reducing unhealthy food purchases. Taillie et al. (2020)’s publication in PLoS Medicine compares beverage purchases before and after the first implementation of Chile’s regulation and found a significant reduction in purchases of sugar-sweetened beverages with sugar content above the regulated thresholds in sugars per 100ml. Taillie et al.’s (2021) more comprehensive study published in The Lancet Planetary Health shows reductions in purchases of multiple food categories above thresholds in regulated nutrients from before the first implementation to after this implementation. This compelling evidence of food purchase changes suggests a multi-pronged approach that includes a strong marketing regulation component is effective in reducing the presence of sugars, sodium, and fats in household diets. We did not find these citations in the reviews listed in the Draft Guidelines. We urge you to add these two studies to the review, given their focus on purchase behaviors.

Two publications by (Jensen et al., 2021a; Jensen et al., 2021b) support a broad recommendation for reducing the prevalence of unhealthy food marketing across time periods and locations relevant to children across multiple age ranges. Jensen et al. (2021a) publication in Pediatric Obesity notes dual drops in both television advertising exposure and consumption of foods above regulated thresholds in sugars, sodium, saturated fats, and/or energy (hereafter “high-in foods”) among preschool children from before to after the first implementation of the Chilean law. Recall that Chile’s regulation

included a restriction on child-directed marketing content on food packages in addition to warning labels as part of the first implementation. Jensen et al. (2021b) notes a drop in adolescents' high-in ad exposure and a drop in high-in food consumption for adolescents with lower high-in ad exposure at baseline, highlighting the importance of long-term reductions in unhealthy food marketing for older children and teens who have spent their lifetimes inundated with high levels of unhealthy food marketing and who are increasingly exposed to food promotions online, as noted in the Draft Guidelines.

Evidence from the evaluation of Chile's multi-phased law is still incoming, with evidence that adds strength to the recommendation for comprehensive marketing restrictions. For example, new research presented at the November 2021 annual meeting of the Latin American Society of Nutrition (SLAN) (Dillman Carpentier, 2021) shows additional significant drops in both high-in advertising prevalence on television and children's exposure to high-in advertising based on television audience ratings data from the initial implementation of content-based restrictions to the implementation of the daytime ban of high-in advertising. This research highlights the exposure children continue to have when a restriction is limited to children's programming and notes the strengths of a regulation that dually contains measures designed to eliminate the possibility of children's exposure in a widespread manner and measures to reduce the marketing power of messages (restricting child appeals in the ad content) that a smaller proportion of children continue to see (e.g., at night).

In sum, we believe the growing body of evidence from the Chilean evaluation warrants a strengthening of the recommendations presented in the Draft Guidelines.

## **1.4 Provide more Comprehensive Definitions of Marketing**

### **A. Improve the Definition of Marketing**

**Proposed definition:** *"Marketing: Any form of commercial communication or message that acts to advertise or otherwise promote a product, its related brand or service, and is designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of particular products and services."* (p. 6 of Draft Guidelines)

**Suggested revision:** *"any form of **direct and indirect marketing activity** that is designed to, or has the effect of, increasing the recognition, appeal and/ or consumption of particular products, services, **and brands**. It comprises anything that acts to advertise or otherwise promote a product, service **or brand, including paid, owned, and earned content, as well as, digital data collection to inform marketing practices.**"*

The WHO(2012, p. 9) had previously defined marketing as *"any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/ or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service."* This definition encompasses a wide range of content, channels and locales and includes advertising, packaging, product placements, sponsorships, and partnerships promoting foods or beverages inside and outside of analog or digital

media. However, this definition could be further specified to acknowledge new and different forms of marketing as follows.

First, brand marketing increases *recognition, appeal and/ or consumption of particular products and services*. “*Branding involves the process of endowing products and services with the advantages that accrue to building a strong brand (e.g., enhanced loyalty, price premiums, etc.)*.”(Keller, 2003) Marketing that promotes a brand name, brand logo, or brand family therefore indirectly promotes products and services via the common name or logo, even if there is no explicit reference to a particular product or service. Brand-promoting strategies are at the center of marketing practices and impact food preferences and eating behaviors (E. J. Boyland & Halford, 2013). Additionally, evidence shows that food marketing has spillover effects, in that exposure to an advertisement for one branded product within a brand family can increase the preference for and consumption of other products within the brand family(Pina, Riley, & Lomax, 2013). For instance, advertising sugar-sweetened soda has been shown to increase consumers' demand for sugar-free sodas from the same brand and vice versa(Lopez, Liu, & Zhu, 2015). Therefore, in order to reduce the recognition, appeal and/ or consumption of particular products considered unhealthy, brand marketing should also be included in the marketing definition.

More generally, marketing can be discussed in terms of paid, owned, and earned content (Katz, 2016). Briefly, paid content consists of messages, like advertising, sponsorships, or product placement, for which a company pays for exposure. Owned content consists of content a company directly owns and controls, for example its packaging or website. Earned content refers to messages others create and disseminate about the company or its product, as in word-of-mouth user-generated content on social media or unpaid promotions by social media influencers (Brooks et al., 2022). The WHO (2012)definition does not reflect the rise in earned content in digital media and blur between paid, owned and earned content online.

Specific to digital marketing strategies, we would also refer to our comments regarding children’s rights to privacy and indicate that any marketing definition should include protections from tools and techniques used to engage in targeted marketing.

In sum, we believe revisions to the definition of marketing are needed that includes the full array of paid, owned, and earned content presently known and leaves room for the inclusion of new forms of marketing that will arise in the future:

- Expand marketing activity beyond “commercial.” This expansion would include earned content.
- Expand “communication or message” to include any form of direct and indirect marketing activity. This inclusion would encompass corporate social responsibility and cause-related marketing events and programs, sponsorships and partnerships, merchandising, brand ambassadors and social media influencer activity, and any promotional activity by celebrities, influencers, athletes, licensed characters, etc. This inclusion would also encompass marketing activity that might exist in any locale or time where/when children might be present, including but not limited to schools, play spaces, sports and

entertainment venues, point of sale, digital and social media, and product and brand placements and tie-ins.

- Expand “particular products and services” to include brand marketing that has the effect of increasing recognition, appeal, or consumption of its products or services.
- Include digital data collection as a part of digital marketing (see our comments on children’s rights and specifically their right to privacy).

## **B. Improve the Definition of Marketing Power**

**Proposed definition:** *“Power: The power of marketing is influenced by the content of the message, especially the creative strategies used. These strategies include graphics and visual design, such as cartoons and brand equity characters; humour, fun and fantasy; movie and sports celebrities; and competitions and entertainment events.”* (p. 6 of Draft Guidelines)

**Suggested revision:** *“Power: The power of marketing is influenced by the content **and performance** of the **marketing action, including** the creative **and placement** strategies used. These strategies **encompass content and placement in settings and contexts likely to be relevant or appealing to young audiences. Examples include but are not limited to:** graphics and visual design, such as cartoons and brand equity characters; **appeals attractive to both child and general audiences such as health, humour, fun, social success, and fantasy; use of childhood or school contexts; celebrity and influencer promotions; competitions, entertainment events, and other mediated and non-mediated events and venues where children are in the audience; and any form of digital interaction or targeting from digital data collection.**”*

With regard to marketing content, the WHO Narrative Review on food marketing research indicates the power of food marketing encompasses the use of “a wide range of creative strategies likely to appeal to, and resonate with, young audiences. These included the use of celebrity/sports endorsements; promotional characters; promotions, gifts/incentives and tie-ins; competitions; games; colour, visual imagery and novel designs; animation, dynamic elements and special effects; branding; persuasive appeals; health/nutrition claims and disclaimers; and various other engagement techniques” (World Health Organization, 2022b).

Research supports the wide array of creative strategies that attract and appeal to children. For example, although generally considered non-child-directed, health claims used in food advertising have been shown to generate children’s positive responses toward the advertised products (Arrua et al., 2017). Health claims are among the most prevalent creative content techniques used in food marketing directed to children, and emotional appeals are perhaps an even more prevalent content technique used in child- and adolescent targeted marketing (Elliott & Truman, 2019).

Recent data presented at the International Society of Behavioral Nutrition and Physical Activity (ISBNPA) and International Communication Association annual conferences in 2022 show that Chilean children 11-12 yo feel similarly attracted to child- and non-child-directed advertising based on the definition of child-directed content in the

Chilean regulation(F. Mediano-Stoltze, Dillman Carpentier, F., Harris, J., Comello, M.L., Lazard, A., Reyes, M., & Taillie, L. S 2022; F. Mediano-Stoltze, Dillman Carpentier, F., Harris, J., Lazard, A., Comello, M.L., Taillie, L. S. & Reyes, M, 2022). The research presented at ISBNPA, in particular, shows that emotional persuasive strategies that are universally appealing, such as friendship and fun, were the main drivers of soda advertising impacts on children's attitudes and beverage choices, regardless of the presence of other child cues (use of child actors and cartoon imagery) in the ad content. The universal appeal of friendship seen in this recently presented research noted above aligns with appeals of popularity and seen in other research on marketing appeals aimed at adolescents and teens(Buijzen & Valkenburg, 2002; Potvin Kent, Martin, & Kent, 2014). We consider friendship and popularity to be examples of social success.

Despite the evidence for the wide range of creative strategies appealing to children, restrictions to power of marketing in the current food marketing regulations are mostly focused on what has been considered “child-directed creative content,” banning only the most obvious child-appealing techniques most relevant to younger children(Mulligan, Kent, Christoforou, & L’Abbé, 2020) and excluding persuasive strategies that might capture children’s attention and be liked by children despite the message being more directed toward a general audience(Elliott & Truman, 2019; Mulligan, Potvin Kent, Vergeer, Christoforou, & L’Abbé, 2021). Therefore, we suggest the recommendation incorporate a wider array of examples of content “**likely to be relevant or appealing to young audiences**” including “**appeals attractive to both child and general audiences**” that specifically mention **health** and **social success** among the examples of power. We further suggest using the phrase “**Examples include but are not limited to**” to emphasize the wide range of strategies that can appeal to children of different ages.

Marketing policies have also focused on the placement of marketing content, focusing on channels attracting a particular threshold (e.g., a 20% audience share) of children(Taillie et al., 2019). Recent qualitative research from Chile not included in the Draft Guideline review(Correa et al., 2022) indicates the importance of schools as an important venue to consider in any intervention. This research describes findings from focus groups with mothers of children 2-14yo, which highlights the importance of a comprehensive legislation that includes multiple measures, including food labeling, in addition to the critical role of schools in reinforcing the legislation. To further emphasize the broader definition of marketing and marketing exposure, and to specifically note the role of schools as a relevant cue for children, we suggest additionally including “**performance of the marketing action**” in addition to the focus on content, “**placement in settings and contexts likely to be relevant or appealing to young audiences**” to further emphasize the diversity of marketing activities and exposure potential, “**other mediated and non-mediated events and venues where children are in the audience**” to again emphasize marketing activity beyond content strategies, and “**use of childhood or school contexts**” to specifically call attention to marketing in areas where children gather, such as schools, and marketing content strategies using references to these areas as cues for relevance or appeal.

Finally, given the increasing prevalence of food marketing in digital and social media(World Health Organization, 2022b) and the high use of these media by children

and adolescents (Tatlow-Golden & Garde, 2020), it is pertinent to include digital marketing strategies in any policy aimed at reducing children's exposure to unhealthy food marketing. Digital marketing encompasses engagement techniques that provide opportunities to interact with companies or brand messages and can also provide an immersive media experience to attract and persuade consumers (Brooks et al., 2022; Montgomery, Grier, Chester, & Dorfman, 2011). Additionally, digital marketing strategies are developed based on users' digital behavior collected through digital technology. Users' behavioral and demographic information is used to identify social and psychographic profiles and test, refine, and tailor digital strategies to reach maximum effects (Montgomery et al., 2011). Altogether, the digital marketing landscape amplifies the impact of marketing beyond that of just passive exposure (Leslie, Levine, Loughlin, & Pechmann, 2009; Montgomery et al., 2011; Pechmann, Levine, Loughlin, & Leslie, 2005; Tatlow-Golden & Garde, 2020; World Health Organization, 2022b). We have already commented on children's rights to privacy with respect to being tracked and targeted by marketers. Therefore we encourage including "**any form of digital interaction or targeting from digital data collection**" as a form of power. We have also commented elsewhere on the power of social media influencers to impact young audiences' purchase decisions and further suggest the addition of "**influencer promotions**" as an example of power.

### C. Improve the Definition of Marketing Exposure

**Proposed marketing exposure definition:** *"Exposure to marketing is influenced by the communication channels, times and settings in which children see marketing. Exposure includes the reach and frequency of a particular message. Reach is the percentage of people in a target market who are exposed to the campaign over a specified period. Frequency is a measure of how many times the average person is exposed to a message (1)."*

**Suggested revision:** *"Exposure to marketing is influenced by the communication channels, **venues, tools**, times and settings in which children see **or experience** marketing. Exposure includes the reach and frequency of a particular message **or marketing action**. Reach is the percentage of people in a target market who are exposed to the campaign over a specified period. Frequency is a measure of how many times the average person is exposed to a message."*

If policies are to effectively reduce children's and adolescents' total exposure to all forms of food marketing (World-Health-Organization, 2012), we suggest expanding the "exposure" definition to account for the complexities of the food marketing landscape which as noted above, includes a wide variety of marketing messages and activities from content on packages to social media posts (Hallez, Qutteina, Raedschelders, Boen, & Smits, 2020; Tatlow-Golden & Garde, 2020). This complexity is reflected in the Implementation Considerations Section of the Draft Guidelines (p. 53), which states: *"Policies should also be as broad as possible in terms of the marketing channels covered (e.g. television, digital, packaging, outdoors, sponsorship) – including taking into account the evolving marketing landscape (e.g. increasing digital marketing) – to protect children from exposure and prevent the migration of food marketing to other marketing channels to which children are exposed"* (World Health Organization, 2022a). Therefore we suggest the definition to incorporate the word "**venues**" to clearly cover

marketing actions in physical locations where children might gather (Signal et al., 2017), inclusive of outdoor advertising and promotion in schools and public places. We also suggest adding the word “**tools**” to account for marketing on packages (Hallez et al., 2020) or any other kind of merchandising. The inclusion of “**tools**” would also include marketing activities that exist in digital spaces, for example digital tracking and the use of algorithms to target individual users.

Also in consideration of digital marketing, given the interactive nature of current marketing practices online (Tatlow-Golden & Garde, 2020; World Health Organization, 2016), we suggest adding the words “**experience**” and “**marketing action**” to describe marketing exposure to the tools and strategies around content and placement of paid, owned, and earned promotions. For instance, digital marketing allows consumers to interact and co-create marketing actions through liking, commenting, sharing, and creating posts. We believe the proposed additions to the definition will ensure any interaction is also considered within the concept of exposure.

## 2 Recommendations

### 2.1 Recommendation 1

**Proposed recommendation:** “WHO suggests implementation of policies to restrict food marketing to which children are exposed. Conditional recommendation, very low certainty evidence” (p. 49 of Draft Guidelines)

**Suggested revision:** “WHO suggests implementation of **mandatory** policies to **comprehensively** restrict food marketing to which children **and adolescents (0-19 yo)** are exposed, **irrespective of creative content, timing, venue, or intended audience**. **Strong** recommendation aligning with the UN Convention on the Rights of the Child (UNCRC), very low certainty evidence **based on GRADE (not adapted for public health)**”

We suggest “**mandatory policies**” instead of “**policies**” aligning with Recommendation 2’s first suggestion that the policies “*be mandatory*” (p. 49) and the evidence provided in Remark 1: “*Regarding policy design elements, evidence indicates that voluntary measures are more likely to show undesirable effects than desirable effects for exposure to, and power of, marketing.*” Compared to no food marketing policies or measures, mandatory policies are associated with a greater proportion of desirable than undesirable effects on reducing child food marketing exposure (Carpentier, Correa, Reyes, & Taillie, 2020; Ofcom, 2008, 2010) and power (Mediano Stoltze et al., 2019; Ofcom, 2008), whereas voluntary measures are associated with a greater proportion of undesirable than desirable effects (E. Boyland, McGale, Maden, Hounsome, Boland, & Jones, 2022). Moreover, when comparing mandatory policies versus voluntary measures directly, mandatory policies are more likely than voluntary measures to generate desirable effects (E. Boyland, McGale, Maden, Hounsome, Boland, & Jones, 2022). Evidence further suggests that non-mandatory food marketing restrictions, which are generally industry led, may generate clear or potential public

health harm (E. Boyland, McGale, Maden, Hounsome, Boland, & Jones, 2022). Therefore, it is important to ensure this recommendation does not invite stakeholders to implement measures that might have undesirable effects, such as increasing marketing of unhealthy food products targeting children (Effertz & Wilcke, 2012; Kent & Pauzé, 2018; Potvin Kent, Dubois, & Wanless, 2011; Warren, Wicks, Wicks, Fosu, & Chung, 2008). We therefore strongly suggest avoiding such a risk based on the concepts of precaution and prevention of potential health harm to children and adolescents (Martuzzi, Tickner, & Organization, 2004).

We suggest the addition of the word “**comprehensively**” to “**restrict food marketing**” and adding the phrase “irrespective of creative content, setting or context, or intended audience” to realize the suggestion in Recommendation 2 that the policy “be broad enough to minimize the risk of migration of marketing to other channels, to other spaces within the same channel or to other age groups; and restrict the power of food marketing to persuade.” These additions would also serve Remark 4: “*Given that the impact of marketing is a function of both exposure to marketing and power of marketing, policies should address children’s exposure to food marketing, irrespective of timing, venue or intended audience, and should therefore go beyond children’s media.*”

We suggest using “**children and adolescents (0 to 19)**” instead of “**children**” when referring to the regulation target population. This age range is coherent with WHO definition of children and adolescents (Requejo et al., 2022) and UNICEF definition of children (UN General Assembly, 1989). This suggestion is also in line with Recommendation 2: “*protect children of all ages, including those older than 12 years*” and the evidence provided in Remark 2: “*Most policies currently restrict marketing to young children and define a child as less than 12 years of age. However, evidence indicated that policies designed to restrict food marketing to children that included children older than 12 years were more likely to report desirable effects.*” Separating the recommendation weakens the message and might give room for misunderstandings given information is not provided all at once. Further, the evidence available shows food marketing is associated with increased intake, choice, preference, and purchase requests in both children and adolescents (E. Boyland, McGale, Maden, Hounsome, Boland, Angus, et al., 2022). Additionally, both children and adolescents are vulnerable populations and should be protected from food marketing as their cognitive, emotional, and neurobiological immaturity (Harris, Yokum, & Fleming-Milici, 2020; Leslie et al., 2009; Pechmann et al., 2005; Potvin Kent, Pauzé, Roy, de Billy, & Czoli, 2019; Tatlow-Golden & Garde, 2020) and age-related behavioral factors such as high media use contribute to high marketing exposure (Potvin Kent et al., 2019; Tatlow-Golden & Garde, 2020) and overall increased vulnerability to this marketing. Given the evidence of the effectiveness of food marketing policies with populations older than age 12 (E. Boyland, McGale, Maden, Hounsome, Boland, & Jones, 2022), we suggest clearly stating in Recommendation 1 that the target population of food marketing mandatory policies is children and adolescents from 0 to 19 years old.

Noted in a previous comment, the conditional recommendation and very low certainty designation is derived from an application of the GRADE method that is known to be biased toward lower certainty if not adapted for public health and policy evaluation research. Even considering the low levels of certainty derived from this application of

GRADE, we suggest that stronger recommendations be proposed based on the **‘precautionary principle’** promoted by WHO. Namely, “The precautionary principle: protecting public health, the environment and the future of our children” (Martuzzi et al., 2004) notes that the lack of full scientific certainty should not be a reason to postpone required preventive interventions. Rather, available evidence should be used for preventing potential health harm and encouraging further research instead of postponing interventions and reacting when the population has been harmed already (Martuzzi et al., 2004). We therefore suggest **“Strong recommendation”** rather than “Conditional recommendation” in addition to noting children’s right, namely that this recommendation aligns **“with the UN Convention on the Rights of the Child (UNCRC).”** Further, it is important to qualify the certainty of evidence with **“based on GRADE (not adapted for public health)”** to acknowledge an application of GRADE that has not been adapted to better treat observational and other research used to evaluate policy interventions. This is if a certainty assessment is necessary to include. We would actually suggest excluding the GRADE assessments from all recommendations due to its biases.

## 2.2 Recommendation 2

**Proposed recommendation:** *“To maximize effectiveness of food marketing restrictions, WHO suggests that policies:*

- *be mandatory;*
- *protect children of all ages, including those older than 12 years;*
- *use a nutrient profile model to classify foods to be restricted from marketing;*
- *be broad enough to minimize the risk of migration of marketing to other channels, to other spaces within the same channel or to other age groups; and*
- *restrict the power of food marketing to persuade.*
- *Conditional recommendation, very low certainty evidence”*

**Suggested revisions:** *“To maximize effectiveness of food marketing restrictions, WHO suggests that policies:*

- *be mandatory;*
- *protect children of all ages, **from age 0 to 19;***
- *use a **government-mandated** nutrient profile model to classify foods to be restricted from marketing;*
- *be broad enough to minimize the risk of migration of marketing to other channels, to other spaces within the same channel or to other age groups **to ensure children and adolescents are not exposed to any direct or indirect form of paid, owned, or earned marketing of products, services, or brands under the regulation;** and*
- *restrict the power of food marketing to persuade, **ensuring strategies relevant or appealing to children and adolescents, including strategies with universal appeal, such as emotional and health-related appeals, are not used.***
- *have measures in place to ensure compliance, including a robust monitoring mechanism, for example a combined institutionalized and civil monitoring system, and meaningful penalties for non-compliance.*

**Strong** recommendation aligning with the UN Convention on the Rights of the Child (UNCRC), very low certainty evidence **based on GRADE (not adapted for public health)**

Regarding the child age range, we suggest using “**from (0 to 19)**” instead of “**including those older than 12 years.**” We have suggested this change as a revision to Recommendation 1 and have explained our rationale in our comments for Recommendation 1. In addition to that rationale, the phrase “*including those older than 12 years*” is ambiguous, as it does not clearly state that children and adolescents should be the target of the regulation.

Another comment on the application of GRADE notes issues with the inclusion of both studies of mandatory policy and industry self-regulation in the same pool, given what appears to be a clear contextual difference in that mandatory policy is both more effective and more clearly and consistently defined and applied than are industry-led measures. In line with these observations, which are noted on p. 43 of the Draft Guidelines, we recommend adding “**government-mandated**” to the point about the nutrient profile model to clarify that any profile should be a part of the mandatory policy.

We suggest emphasizing the target population and comprehensive marketing definition by adding “**to ensure children and adolescents are not exposed to any direct or indirect form of paid, owned, or earned marketing of products, services, or brands under the regulation**” to the following point: “*be broad enough to minimize the risk of migration of marketing to other channels, to other spaces within the same channel or to other age groups.*” We have offered and explained a suggested broadening of the marketing definition in another comment.

We suggest emphasizing the comprehensive definition of marketing power by adding “**ensuring strategies relevant or appealing to children and adolescents, including strategies with universal appeal, such as emotional and health-related appeals, are not used**” to the following point: “*restrict the power of food marketing to persuade.*” We have offered and explained a suggested broadening of the marketing power definition in another comment.

Although the monitoring and policy enforcement are discussed in Section 5 (Implementation Considerations) of the Draft Guidelines, we strongly encourage adding a recommendation on the critical role of monitoring and enforcement in maximizing the effectiveness of food marketing restrictions. As research on food marketing policies shows, the lack of robust monitoring and evaluation systems can limit the impact of regulations (King et al., 2011; Reeve et al., 2018), whereas communication of monetary penalties and continuous monitoring can strengthen regulation enforcement (World Health Organization, 2016).. The further indicates monitoring, evaluation, enforcement and meaningful penalties are central contextual factors for food marketing policy feasibility (World Health Organization, 2021). The relevance of these policy factors is reflected in the WHO Framework Convention on Tobacco Control: Guidelines for Implementation, which indicates: “Recommendation: Parties should introduce and apply effective, proportionate and dissuasive penalties. Parties should designate a competent, independent authority to monitor and enforce the law and entrust it with the necessary

powers and resources. Civil society should be involved in the monitoring and enforcement of the law and have access to justice,” (Organization, 2013, p. 111). Following this example, we suggest adding the recommendation “***have measures in place to ensure compliance, including a robust monitoring mechanism, for example a combined institutionalized and civil monitoring system, and meaningful penalties for non-compliance***” to emphasize these key factors impacting policy effectiveness.

Using the same rationale as we have offered for Recommendation 1, we likewise suggest the conditional recommendation be changed to **Strong** recommendation noting that this recommendation aligns “**with the UN Convention on the Rights of the Child (UNCRC).**” Further, we recommend qualifying the certainty of evidence with “**based on GRADE (not adapted for public health)**” if a certainty assessment is necessary. Again, we would actually suggest excluding the GRADE assessments from all recommendations due to its biases.

### 3 Research gaps

We appreciate the sample research questions offered in the Draft Guidelines. We would like to add to **the need for research assessing differential effects of food marketing appeals based on the age of the child and based on the type of exposure channel**. Currently, the sample questions focus on comparisons only against the absence of marketing. However, examining interactions between appeal, exposure type, and child age are important to identify the marketing strategies that are most powerful depending on age group.

We would also like to add **the need for research comparing brand marketing versus product marketing**, in addition to the proposed comparisons against the absence of marketing. This type of research is important to provide additional evidence for the discussion of brand marketing noted on p. 53 of the Draft Guidelines. As in, this research is important for understanding the nature of brand spillover effects, and this research might also provide insights into any intersection between brand spillover and health halo effects (Provencher & Jacob, 2016), wherein the marketing for a healthier version of a product within a brand family might create both a brand spillover and health halo effect for a less healthy product within the same family.

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WHO DRAFT GUIDELINES ON FOOD MARKETING: COMMENTS FROM UWC, SOUTH AFRICA

Comments on the WHO draft guidelines to protect children from the harmful  
impact of food marketing from the University of the Western Cape, South Africa

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July 2022

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We wish to thank the WHO team for compiling these useful draft regulations and specifically for highlighting and including the following key issues into the policy guideline:

- Urging for mandatory policy.
- Protecting all children including those above 12 years of age.
- Considering the power of marketing to persuade children.
- Using a nutrient profiling model to classify foods to be restricted from marketing.
- Considering the potential for migration of marketing to other channels not currently used.

The intention of the comments below is to assist in strengthening the policy guidelines to ensure children are adequately protected through the implementation of strict food marketing policies.

## 1. Overall clarity

- ❖ An expansion of a few *definitions* would lend better clarity on the proposed policy guidelines:
  - a. **Child:** It is preferable not to limit the guidelines to children under 12 years of age but to include all children 0 to 18 years of age. Explicitly include children under two years of age. This age range is coherent with WHO definition of children and adolescents (Requejo et al., 2022) and is the definition of a child according to the South African constitution (Comparative Constitutions Project, 2021).
  - b. **Marketing:** Consider rephrasing to, “any form of direct and indirect marketing activity that is designed to, or has the effect of, increasing the recognition, appeal and/ or consumption of particular products, services, and brands. It comprises anything that acts

to advertise or otherwise promote a product, service or brand, including paid, owned, and earned content, as well as digital data collection to inform marketing practices.”

- c. **Power of marketing:** The power of marketing is influenced by the content and performance of the marketing action, including the creative and placement strategies used. These strategies encompass content and placement in settings and contexts likely to be relevant or appealing to young audiences. Examples include but are not limited to: graphics and visual design, such as cartoons and brand equity characters; appeals attractive to both child and general audiences such as health, humour, fun, social success, and fantasy; use of childhood or school contexts; celebrity and influencer promotions; competitions, entertainment events, and other mediated and non-mediated events and venues where children are in the audience; and any form of digital interaction or targeting from digital data collection.
- d. **Marketing exposure:** Consider rephrasing to, “Exposure to marketing is influenced by the communication channels, venues, tools, times, and settings in which children see or experience marketing. Exposure includes the reach and frequency of a particular message or marketing action. Reach is the percentage of people in a target market who are exposed to the campaign over a specified period. Frequency is a measure of how many times the average person is exposed to a message.”
- ❖ ***Children’s rights*** are the basis to the rationale for protecting children from unhealthy food marketing and are essential considerations in protecting them from online tracking and marketing. Consider including the protection of children from unhealthy marketing in school environments and mandated protection from the targeting and tracking of children in online environments. Specific to digital marketing strategies, consider children’s rights

to privacy and indicate that any marketing definition should include protections from tools and techniques used to engage in targeted marketing.

## **2. Context and setting specific issues**

- a. Both school environments and online environments (including social media and influencers) need to be explicitly included in recommendations to ensure children's rights to privacy and education are not violated.
- b. Expand on direct and indirect marketing and include both in the guidelines. Research supports the wide array of creative strategies that attract and appeal to children. Although generally considered non-child-directed, health claims used in food advertising have been shown to generate children's positive responses toward the advertised products (Arrúa et al., 2017). Health claims are among the most prevalent creative content techniques used in food marketing directed to children, and emotional appeals are perhaps an even more prevalent content technique used in child- and adolescent targeted marketing (Elliott & Truman, 2020).
- c. Include brand marketing (with or without a food product) in the policy guidelines. Marketing that promotes a brand name, brand logo, or brand family therefore indirectly promotes products and services via the common name or logo, even if there is no explicit reference to a particular product or service. Brand-promoting strategies are at the center of marketing practices and impact food preferences and eating behaviors (Boyland & Halford, 2013).
- d. Include corporate social responsibility and cause-related marketing events and programs, sponsorships and partnerships, merchandising, brand ambassadors and social media influencer activity, and any promotional activity by celebrities, influencers, athletes,

licensed characters, etc. This inclusion would also encompass marketing activity that might exist in any locale or time where/when children might be present, including but not limited to schools, play spaces, sports and entertainment venues, point of sale, digital and social media, and product and brand placements and tie-ins.

### **3. Consideration for mandatory policy**

Mandatory policies are associated with a greater proportion of desirable than undesirable effects on reducing child food marketing exposure (Dillman Carpentier et al., 2019) and power (Stoltze et al., 2019), whereas voluntary measures are associated with a greater proportion of undesirable than desirable effects (Boyland et al., 2022). Evidence further suggests that non-mandatory food marketing restrictions, which are generally industry led, may generate clear or potential public health harm (Boyland et al., 2022). There is South African evidence to indicate that self-regulation is ineffective as is seen in the pledge by Coco-Cola Beverages South Africa (CCBSA) not to advertise or sell sugar sweetened beverages (SSBs) near or in schools and two years post the pledge they have been found to violate it (Erzse et al., 2021). We call for an emphasis on comprehensive and strict mandatory policies.

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**WHO consultation on marketing guidelines**

The draft guideline on policies to protect children from the harmful impact of food marketing provides clear guidance that strengthens the previous WHO recommendations on food marketing, particularly by specifying the preference for mandatory policies. This preference for mandatory rather than voluntary approaches is very clearly shown in the extant evidence and was, indeed, highlighted almost a decade ago in the review by Galbraith and Lobstein, which showed that industry policies simply do not work to reduce children's exposure to unhealthful food marketing (<https://pubmed.ncbi.nlm.nih.gov/23845093/>).

The recommendations are mostly clear and refer to the main issues to be considered in policy frameworks seeking to protect children from the harmful impacts of unhealthful food marketing. That is, the policy arrangement (mandatory), the media and settings included (comprehensive), the age of children (>12 years), limiting both exposure and power, and defining foods as not recommended to be marketed using a nutrient profiling model.

There are three main issues with the draft guidelines that I wish to raise.

1. The guideline makes a conditional recommendation using the term “suggests”, due to the very low certainty of evidence on the effect of policies on the outcomes of interest. The related GRADE evidence profile on the effects of any policy vs. no policy combines studies on mandatory and voluntary (industry) policies. In the supplementary material for this review, Comparison 2 clearly shows that most of the evaluations of mandatory policies have found an effect favouring the intervention, while voluntary policies mostly favour the control. The GRADE rating of the certainty of evidence was downgraded almost entirely due to inconsistency. This inconsistency derives from combining the effects of mandatory and voluntary policy evaluations. As such, the evidence for the effect of mandatory policies is not as low certainty (based on less inconsistency) as for the overall evidence. Focusing on Comparison 2 and the improved certainty of evidence on the effect of mandatory policies on the outcomes of interest would allow WHO to strengthen its recommendation. This is warranted given the evidence from the review on the effects of marketing indicate moderate certainty of evidence from RCTs on the negative impact of marketing on children's diets and food choice.
2. The age of children recommended to be covered by the policy could be explicitly extended to 18 years, rather than older than 12. The review of contextual factors that informed the guideline development cited the Convention on the Rights of the Child, which defines children as under 18 years.
3. The recommendation for the use of a nutrient profile model to classify foods to be restricted from marketing requires further clarification. This should specify that the model to classify foods should be aligned with national dietary guidelines and expectations of the nutritional quality of foods. Further, testing and monitoring of the criteria is required to avoid anomalies in classifications.

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3 July 2022

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**RE: WHO Online public consultation on draft guideline on policies to protect children from the harmful impact of food marketing:** <https://extranet.who.int/dataformv3/index.php/859562?lang=en>

Dear WHO NUGAG Subgroup:

Thank you for the opportunity to submit comments on the NUGAG Subgroup's Report on Policy Actions to Protect Children from the Harmful Impact of Food Marketing. I attended the Zoom launch event for the public consultation on 30 June 2022 that was very informative to understand the breadth of evidence and technical expertise invested in writing the draft policy recommendations. The WHO should be commended for the agency's extensive leadership to provide technical support to Member States (national governments) to comprehensively address this important issue. There are, however, additional steps that the WHO NUGAG Subgroup members could take to strengthen the guidelines to enable state actors (governments) and other relevant non-state food system governance actors (i.e., businesses, civil society, the media and the public) to collectively support and protect children's diet, health and well-being in countries worldwide.

I offer several comments to be considered by the WHO NUGAG Subgroup members to improve the clarity, specificity and breadth of the best practice statement. I also offer suggestions to substantially strengthen the draft policy guidelines for this complex challenge for which there has been limited progress to date. My comments address the policy implications for adaptation and implementing the guidelines, and setting-specific issues that have not been adequately described in the current draft report. Thank you for considering these comments to inform the revised recommendations in the finalized NUGAG Subgroup's Report later in 2022.

Sincerely,



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## 1. Comments on the Good or Best Practice Statement

*Current statement:* Children should be protected from the impact of harmful food marketing.

*Proposed revision:* Children and adolescents (birth to age 18 years) should be protected by government and other relevant food system actors from the influence and impact of collective marketing practices that promote unhealthy food and beverage products that undermine and harm their diet quality, health and well-being.

*Recommendation 1:* WHO suggests implementation of policies to restrict food marketing to which children are exposed.

*Proposed revision:* The WHO suggests that state actors (government) and non-state actors (businesses and civil society organizations) develop, implement and evaluate policies (i.e., guidelines, legislation and laws) to restrict the marketing of unhealthy food and beverage products in settings and environments where children and adolescents (birth to age 18 years) are exposed.

*Recommendation 2:* To maximize effectiveness of food marketing restrictions, WHO suggests that policies: be mandatory; protect children of all ages, including those older than 12 years; use a nutrient profile model to classify foods to be restricted from marketing; be broad enough to minimize the risk of migration of marketing to other channels, to other spaces within the same channel or to other age groups; and restrict the power of food marketing to persuade.

*Proposed revision:* To maximize the effectiveness of food and beverage marketing restrictions, WHO suggests that state and non-state actors' policies: be mandatory; protect children and adolescents of all ages (birth up to 18 years); use a evidence-informed, nutrient profile model developed by the WHO Regional Offices or national governments to classify foods and beverages to be restricted from marketing and also to be encouraged as healthy choices; to be broad enough to minimize the risk of migration of marketing practices across other media platforms and channels, to other spaces within the same channel or to other age groups; and to restrict the persuasive power of all food and beverage marketing practices that promote products that are not aligned with national food-based dietary guidelines in countries and regions.

*Justification:* As noted by Dr. Barbara Schneeman who presented the NUGAG Subgroup's draft policy actions on the Zoom launch, all Member States, with the exception of the United States government, have signed and ratified the 1989 United Nations Convention on the Rights of the Child (UNCRC) (UNOHCHR, 1989). The UNCRC is an international human rights treaty that outlines 54 articles that recognize international standards for State Parties to protect, promote, and fulfill the economic, social, cultural, civil and political rights of children worldwide. Ratification of this international treaty is an important mechanism for interested publics to hold governments in countries and other jurisdictions legally accountable for developing, implementation and evaluating effective policies and voluntary actions to protect, promote and fulfill children's rights. The 30<sup>th</sup> anniversary of the UNCRC treaty was recognized on 20 November 2019. Over three decades, the UNCRC has served as a powerful international legal instrument and inspired national and regional governments to enact laws to protect children's rights, physical and emotional well-being worldwide (Goldhagen et al., 2020; UNOHCHR, 2019).

Of specific relevance to the marketing of food and beverage products to children are the UNCRC Article 3 (action for the best interests of the child); Article 12 (right to give opinions on issues that affect children); Article 24 (right to health, nutritious food and clean water); Article 26 (governments should provide support to help children from poor families); Article 27 (children's right to food, clothing, and a safe and clean environment); and UNICEF's updated justification in 2019 to protect children's right to healthy food environments (UNOHCHR, 1989; UNICEF, 2019).

- **Since the UNCRC defines a “child” as between birth up to age 18 years, the WHO NUGAG good or best practice statement should *explicitly* include language directed at state and non-state actors to protect children from birth up to 18 years that aligns with the UNCRC.**

Most statutory national government guidelines, legislation or laws in Member States apply to children under 12 or 13 years (Tallie et al., 2019). Only a few countries or jurisdictions (i.e., Spain and the United Kingdom) have developed legislation to protect adolescents up to age 16 years, from the collective marketing practices of branded food and beverage products (Gómez and Rajmil, 2022).

Most voluntary industry and business self-regulatory programs define a child as under the age of 12 to 14 years. Numerous industry self-regulatory programs at national, regional and global levels, including the 12 members of the International Food & Beverage Alliance (IFBA) that developed a Global Policy on the Marketing Communications to Children in 2008 that was updated in 2021 (IFBA, 2021), pledged to market responsibly to children only under 12 years without any commitments to protect adolescents aged 12 up to 18 years. In August 2021, IFBA updated its Global Responsible Marketing Policy to advertise only products to children under 13 years that met IFBA’s common nutrition criteria based on science-based dietary guidelines (IFBA, 2021). IFBA’s updated nutrient profiling criteria effective January 2022 currently do not all align with the six WHO regional office nutrient profiling guidelines released 2015 through 2019 (Kraak and Boyland, 2022). The IFBA commitments are insufficient because they do not apply to the UN and WHO definition for a child, aged 13 up to 18 years; and do not comprehensively cover all integrated marketing communications, especially applied to digital and social media marketing targeted to children and adolescents worldwide (Cassidy et al., 2021; Kraak et al., 2019; 2020; WHO Europe, 2022).

Evaluation of the 12 IFBA firms have shown poor corporate performance, corresponding to D and F grades, based on the Access to Nutrition Initiative (ATNI) global 2013, 2016, 2018 and 2021 reports (Kraak et al., 2019; Access to Nutrition Foundation [ATNF] 2013, 2016, 2018, 2021). **The ATNI 2021 global report assessed 25 of the largest transnational food and beverage manufacturers and found only 9 percent of 38,8523 products qualified as “healthy” and could be marketed to children using the health-star rating nutrient profiling system (ATNF, 2021).**

- **The WHO NUGAG good or best practice statement should include language to address the commercial marketing that collectively promote unhealthy food and BEVERAGE products to children and adolescents (birth up to age 18 years).**

Evidence based on the most current review of national consumption of sugary beverage products among children and adolescents (2010-2019) across 51 countries showed that while there is considerable variability between countries, **sugary beverages are a substantial source of energy (calories or kilojoules) and excessive added or free sugars that require comprehensive policies and actions to restrict the marketing of sugary beverage availability, affordability, access, marketing, purchasing and consumption.** The consumption of branded sugary beverages negatively impacts young people’s diet quality and health by increasing the risk for obesity and other non-communicable diseases during adulthood (Malik and Hu, 2022; Ooi et al., 2022). Myriad sugary beverage brands are marketed by transnational beverage firms, including: The Coca-Cola Company and PepsiCo (that operate businesses in over 200 countries worldwide); Nestle S.A. and Red Bull (energy drinks) (Kraak and Consavage Stanley, 2021; Kraak et al., 2022). Therefore, **beverage marketing must be explicitly mentioned and included in the good or best practice statement to address the marketing practices of global beverage firms linked to many adverse diet and health outcomes for children and adolescents.**

## 2. Comments on policy recommendations for state and non-state policy actors

- **The WHO NUGAG Subgroup should develop an explicit recommendation for government and civil society to hold commercial and private-sector non-state actors accountable for marketing practices that harm children’s diet, health and well-being. Governments must prioritize and demonstrate leadership and establish independent and trusted accountability mechanisms for all food systems governance actors to protect, promote and fulfill children’s right to healthy food environments.**

Policy actors assert different forms of authority to influence food marketing policy. Business actors representing the advertising, food and beverage and media industries use various forms of authority more extensively and effectively compared to government bodies, technical experts and civil society actors (Ngqangashe et al., 2022). Food system governance actors experience power inequities in decision-making. These realities lead to “policy inertia” that prevents food policy actions due to strong opposition from commercial and private-sector non-state actors, the reluctance of governments to regulate and tax businesses, and a lack of demand for comprehensive policy action from civil society the reluctance of governments to regulate and tax, and the lack of demand for policy action from civil society (Swinburn et al., 2020). Examples of “policy inertia” to protect children and adolescents from the predatory marketing of unhealthy food and beverage products in Malaysia include: the lack of political will, industry resistance, complexity of legislation, technical challenges, and lack of resources, particularly professional skills, preferential adoption of industry self-regulatory programs, industry indifference, inadequate monitoring, poor actor interactions and relations, a lack of sustained public health advocacy (Ng et al., 2021).

An assessment of the capacity-building needs of 35 Member State countries in the WHO region of the Americas to restrict unhealthy food and beverage marketing to children found that there was strong infrastructure and information systems in place to monitor the marketing practices targeted to children. However, policy improvements would support a comprehensive national response, and include: enforcement of the constitutional health and human rights of children integrated into policies, policies that document conflict of interest from non-state actors, and strengthening regulatory oversight for digital marketing and digital media platforms (Rincón-Gallardo Patiño et al., 2022). National governments have state authority to establish corporate-performance threshold scores to justify engaging with individual firms or global alliances (Kraak, 2022). Accountability frameworks should be recommended by the WHO NUGAG Subgroup as available tools to enable state and non-state food system governance actors to monitor and evaluate comprehensive efforts to use marketing to promote healthy food and beverage products that support healthy diets consistent with national food-based dietary guidelines (Kraak et al., 2019);

Many existing global, regional and national alliances, networks, partnerships, coalitions and multi-stakeholder platforms have developed policies or voluntary guidelines to address certain aspects of responsible marketing of food and beverage brands and products to children and adolescents from birth up to age 18 years (Kraak, 2022). These bodies present different levels of risk and trust for government agencies engaging with various private-sector actors (Kraak, 2022). State and non-state actors must harmonize different guidelines and recommendations for responsible marketing to children and adolescents (birth up to 18 years) across various public- and private-sector entities operating in different settings where young people learn, play and work. These food system governance actors include: food and beverage manufacturers, restaurants, retailers, entertainment and digital technology firms, business-interest non-governmental organizations called industry trade associations or peak bodies, and public-interest non-governmental organizations, and private and corporate foundations. Published evaluations provide specific recommendations for various actors to reduce the harmful influence of print, broadcast and digital marketing of food and beverage products to young people that should be reviewed by the NUGAG Subgroup (Kraak, 2022; Kraak et al., 2019, 2021, 2022; Kraak and Boyland, 2022; Rincón-Gallardo Patiño et al., 2020, 2021; Zhou et al., 2020).

- **The WHO NUGAG Subgroup should develop stronger recommendations in the final policy guidelines not only directed to Member States, but also for other relevant food system governance**

**actors who develop, implement, support and disseminate the array of advertising and marketing practices for energy-dense and nutrient-poor food and beverage products high in fat, sugar and sodium that directly or indirectly influence the diets and health of young people worldwide**

This recommendation is essential due to the growing trend of global food systems and global health governance that is rapidly shifting from the traditional *multi-lateral governance model* (i.e., where national governments within states are held accountable for its actions and communicate directly with intergovernmental bodies such as the WHO) to *multi-stakeholder governance model* where food system actors and global bodies are treated equally without clear accountability mechanisms in place for consequences (Canfield et al., 2021). Without clear performance expectations and time-bound accountability mechanisms, the marketing of unhealthy food and beverage brands and products will continue to adversely influence the diet, health and well-being of children and adolescents (Garton et al., 2022).

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