



World  
Cancer  
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Fund International

A person with long dark hair, wearing a white lab coat, is seen from the side, holding a black remote control. They are sitting in front of a television screen that displays a colorful, abstract image. The background is blurred, showing a red cup and a yellow bowl. The overall scene suggests a laboratory or a research setting.

## **Building momentum:** lessons on implementing robust restrictions of food and non-alcoholic beverage marketing to children

### **About World Cancer Research Fund International**

**World Cancer Research Fund International** leads and unifies a network of cancer prevention charities with a global reach in Europe, the Americas and Asia. We are a leading authority on the links between diet, nutrition, physical activity and cancer. We work collaboratively with organisations around the world to encourage governments to implement policies to prevent cancer and other non-communicable diseases.

### **Acknowledgements**

This report was written by Fiona Sing and Angela Carriedo (WCRF International) with input from Kate Oldridge-Turner (WCRF International) and members and observers of WCRF International's Policy Advisory Group: Anita George (McCabe Centre for Law and Cancer, Australia); Prof Sir Trevor Hassell (Healthy Caribbean Coalition, Barbados); Dr Hasan Hutchinson (Health Canada, Canada); Prof Shiriki Kumanyika (University of Pennsylvania, US); Dr Feisul Idzwan Mustapha (Ministry of Health, Malaysia); Dr Anna Peeters (Deakin University, Australia); and WCRF International colleagues Dr Kate Allen, Dr Giota Mitrou, Dr Martin Wiseman, and Geoff Simmons and Davina Serle from the WCRF Design team.

Special acknowledgement goes to Prof Amandine Garde (University of Liverpool, UK); Jo Jewell (UNICEF, New York, US); Dr Mimi Tatlow-Golden (The Open University, London, UK); Assoc Prof Bridget Kelly (University of Wollongong, Australia); Bernadette Gutman (UNICEF, Geneva, Switzerland); Dan Parker (Living Loud, UK); Dr Lorena Rodríguez Osiac (University of Chile, Chile); Dr Camila Corvalan (Institute of Nutrition and Food Technology (INTA); University of Chile) and Kaja Lund-Iversen (Norwegian Consumer Council, Norway) for their expertise and assistance in drafting the report, and to Katy Cooper and Melanie Purnode (WCRF International) for editing the report.

We would like to gratefully acknowledge those who were interviewed during our research: Prof Amandine Garde (University of Liverpool, UK); Ana Larrañaga (ContraPeso, Mexico); Assoc Prof Bridget Kelly (University of Wollongong, Australia); Camila Maranhã P. Carvalho (ACT Health Promotion and Fluminense Federal University, Brazil); Senator Guido Girardi (Congressman, Chile); Dr Jaime Delgado Zegarra (Consumers Defence Commission; Peru); Kaja Lund-Iversen (Norwegian Consumer Council, Norway); Kathryn Reilly (Irish Heart Foundation, Ireland); Prof Knut-Inge Klepp (Norwegian Institute of Public Health, Norway); Laís Amaral Mais (Instituto Brasileiro de Defesa do Consumidor (IDEC), Brazil); Dr Lorena Rodríguez Osiac (University of Chile, Chile); Dr Maria João Gregório (National Programme for the Promotion of Healthy Eating, Portugal); Dr Mimi Tatlow-Golden (The Open University, UK); Susana Guilles (Fundacion Educación Popular en Salud, Chile); Caroline Cerny (Obesity Health Alliance, UK) and those who wished to remain anonymous. The views and opinions expressed in this report are those of the authors and do not necessarily reflect the views of those interviewed.

### **How to cite the report**

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](https://wcrf.org/buildingmomentum)

# Table of contents

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<b>Key Messages</b>	2
<b>Glossary and abbreviations</b>	4
<b>Introduction</b>	7
<b>Methods</b>	8
<b>PART ONE</b>	9
<b>1. Background</b>	
1.1 Obesity and growth in sales of HFSS products	9
1.2 Regulating food marketing to children	10
1.3 The international legal and policy framework	11
1.4 International guiding documents	12
1.5 Current forms of regulation	15
1.6 Limitations of current practice	16
1.7 Cross-border issues	17
<b>PART TWO</b>	18
<b>2. Robust Design</b>	
2.1 Context-specific approach	18
2.2 Pathways of effect	18
2.3 Policy objectives	20
2.4 Evidence countries should consider to support policy	21
2.5 Key decisions when designing a marketing restriction	23
2.5.1 What legal measures should be used?	23
2.5.2 Who should be protected?	24
2.5.3 Which forms of marketing should be restricted?	25
2.5.4 What level of marketing should be restricted?	28
2.5.5 Which foods and beverages should be restricted?	29
2.6 Stakeholder engagement	30
2.7 Monitoring and evaluation	33
<b>PART THREE</b>	34
<b>3. Defending marketing restrictions</b>	
3.1 Common industry tactics used to challenge marketing restrictions	34
3.2 Legal considerations	36
3.3 Mitigating risk of legal challenge: key learnings	37
<b>4. Lessons learned</b>	
Be prepared with evidence	39
Carefully consider local context	39
Be strategic	39
Develop a broad base of support	40
Scrutinise the policy design	41
Be prepared for push back	41
<b>5. Case studies</b>	42
<b>6. Conclusions</b>	45
<b>References</b>	46

## Key Messages

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- There is a **wealth of evidence** on the extent, nature and effects of the marketing to children of products high in fat, sugar and salt (HFSS), which shows that advertising affects children's eating and drinking behaviour, preferences, requests,(1, 2) nutrition knowledge(3) and food intake.(4, 5) Cognitive defences continue to develop through the teenage years, meaning that children require protection from broadcast and non-broadcast media (such as internet gaming and advertising, text advertising, social media and sports sponsorship).(6, 7)
- The main aim of regulating the marketing of HFSS products is to **limit its impact on children's food/drink preferences, their eating behaviour, food intake and carers' food selection.** This can be achieved by reducing the power of and exposure to current marketing practices by implementing and improving restrictions.(7, 8)
- Protecting children from harmful marketing practices is a **human rights issue:** governments that are a party to the UN Convention on the Rights of the Child have a duty to protect, respect and fulfil children's right to health,(8) and HFSS marketing can be framed as a child rights matter, encompassing rights such as the right to health, privacy, and information. Successfully establishing this framing requires the involvement of many different stakeholders (from health and beyond, for example other government agencies and children's rights organisations). (15, 16) This child rights-based approach can be used to strengthen calls for new marketing restrictions.
- There is overwhelming **international consensus** calling for marketing restrictions to be implemented, including the WHO Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children.(5, 9–11)
- Experts agree that **stricter regulatory measures are urgently required** to combat the increasingly sophisticated marketing practices which children are exposed to increase their preference and consumption of HFSS products.(9, 12)
- **Robust policy design** is a crucial element to ensure the development and implementation of marketing restrictions can withstand opposition. Designing marketing restrictions based on **lessons learned from other countries and international expertise** can increase the chance of successful implementation, if appropriately adapted for the relevant context. These include:
  - What legal measure should be used?
    - **Implement government-led mandatory restrictions.**
  - Who should be protected?
    - **Children up to 18 years of age.**
  - Which forms of marketing should be restricted?
    - **All forms of marketing should be included in restrictions to ensure that children's exposure is limited across all media and settings.**
  - What level of marketing should be restricted?
    - **Define marketing as 'marketing to which children are exposed'.**
  - Which foods and beverages should be restricted?
    - **Use a nutrient profile model to decide which products are in scope of the restriction.**

- An **international or regional approach** to regulation is also needed to combat challenges caused by cross-border marketing and the lack of regulation of the digital space.(7, 9, 13, 14)
- There are **common elements** that are important in developing and implementing comprehensive marketing restrictions that can withstand opposition, such as challenges related to domestic, international trade and investment law. Consider the following:
  - Be prepared with evidence.
  - Carefully consider the local context.
  - Be strategic.
  - Develop a broad base of support.
  - Scrutinise the policy design.
  - Be prepared for push back.
- It is important to include mechanisms to **shield the policy development process from commercial interests** that conflict with the purpose of the policy. Such conflicts of interest when engaging with stakeholders may cause delay or undermine the impact of the policy, especially its scope and potential effectiveness. Governments can be challenged by third parties, most frequently industry, on the introduction of marketing restrictions. Common tactics used to challenge marketing restrictions can be categorised into **delay, divide, deflect and deny**.
- Commercial rights such as the right to free trade or intellectual property or the right to freedom of expression are not absolute; they can be restricted on grounds of public interest, **including public health**.
- The **experiences of countries** that defended HFSS marketing restrictions against challenges can help prepare others currently considering such restrictions.





## Glossary and abbreviations

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**Advertising** Advertising is one form of marketing: the paid public presentation and promotion of ideas, goods, or services by a sponsor that is intended to bring a product to the attention of consumers through a variety of media channels such as broadcast and cable television, radio, print, billboards, the internet or personal contact.(18)

Examples include:

- Broadcast including television and radio.
- Print media including newspaper, magazines and comic books.
- Online including on-search engines, social networking sites, news sites and blogs, as well as television programmes, films and media clips watched online.
- Outdoors including billboards, posters, moving vehicles.(18, 19)

**Branding** A marketing feature that provides a name or symbol that legally identifies a company, a single product, or a product line to differentiate it from other companies and products in the marketplace.(18)

**Children** For the purposes of this report, we are using the definition of people under 18 years of age in line with the UN Convention on the Rights of the Child (40) and the WHO Commission on Ending Childhood Obesity.(10)

**Note:** In this report, ‘children’ refers to both children and adolescents.

**NB:** WHO defines adolescents as those between 10 and 19 years of age. Most adolescents are, therefore, included in the age-based definition of “child”, adopted by the CRC, as a person under the age of 18 years.

**CRC** UN Convention on the Rights of the Child

**Digital marketing** Promotional activity, delivered through a digital medium, that seeks to maximise impact through creative and/or analytical methods, including:

- Creative methods to activate implicit emotional persuasion, such as building engagement in social networks (e-word-of-mouth).
- Immersive narratives or social-, entertainment- and humour-based approaches.
- ‘Influencers’ popular with children, such as YouTube ‘vloggers’ (video bloggers).
- Augmented reality, online games and virtual environments.
- Analysis of emotions, responses, preferences, behaviour and location to target specific groups, individuals and particular moments of vulnerability or to maximise the impact of creative methods.(10)

**Direct marketing** A form of advertising that involves sending a promotional message directly to consumers through direct mail or telemarketing rather than through a mass medium such as television or the internet. Direct marketing is also called direct advertising.(18)

Examples include promotional emails, promotional sales by telephone, text messaging to mobile phones, home catalogues, leafleting and canvassing, contests or sweepstakes, ‘money-off’ vouchers, promotion and sampling schemes in schools.(18)

**FAO** UN Food and Agriculture Organization

**HFSS products** Food and non-alcoholic beverages high in fat, sugar and/or salt.

**Marketing** ‘Marketing’ refers to any form of commercial communication or message that is designed to or has the effect of increasing the recognition, appeal or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service.(17, 18)

**Marketing exposure** This refers to the reach and frequency of the marketing message. Reach is the percentage of people in a target market who are exposed to the campaign over a specific period, and frequency is a measure of how many times the average person is exposed to a message.(20)

**Marketing power** The extent to which the message achieves its communication objectives, through its content and the strategies used.(21)

**NCD** Non-communicable disease

**Nutrient profile model** The evidence-based classification or ranking of foods according to their nutritional composition for reasons related to preventing disease and promoting health.

**PAHO** Pan American Health Organization

**Point-of-sale techniques** This involves marketing activities that stimulate consumer purchases at the point-of-sale (excluding advertising, personal selling, and publicity). Examples include: on-shelf displays, displays at check-outs, pay-points and end-of-aisles in supermarkets, special offers and pricing incentives, vending machines in schools and youth clubs; loyalty schemes, and free samples and tastings.(18)

**Product design and packaging** A marketing technique that uses:

- Product design such as colours or shapes, for example dinosaur-shaped products.
- Packaging design for example imagery, colours or play shapes.
- Product portions for example king size, duo packs.
- In-pack and on-pack promotions for example gifts, puzzles and vouchers.(18)

**Product placement** A marketing technique that uses a message, brand logo or product in a visual or graphic medium in a variety of forms of media entertainment, including television programmes, films, music, videos/DVDs, video games and advergames.(18, 19)

**SDGs** Sustainable Development Goals

**Sponsorship** Any form of monetary or in-kind contribution to any event, activity or individual with the aim, effect or likely effect of directly or indirectly promoting a product. Can include sponsorship of television and radio programmes, events, educational materials and equipment; programmes, including public-health campaigns and school breakfast or lunch programmes, venues; or sports teams.(18)

**TBT agreement** WTO Technical Barriers to Trade Agreement

**TRIPS agreement** WTO Trade Related Aspects of Intellectual Property Rights Agreement

**UN** United Nations

**WCRF International** World Cancer Research Fund International

**WHO** World Health Organization

**WHO Recommendations** WHO Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children

**WTO** World Trade Organization





# Introduction

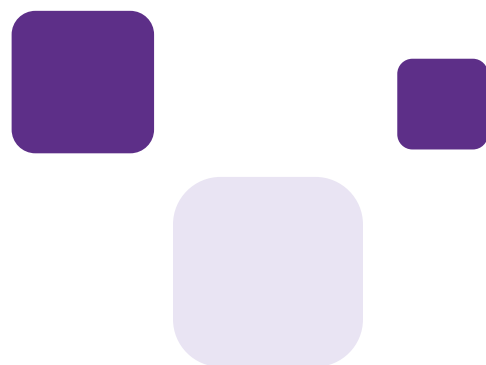
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This is the third report in the WCRF International Building Momentum series, providing advice primarily to policymakers on designing and implementing nutrition policies in the face of various challenges including lack of political will and food and beverage industry interference. The focus of this report is on protecting children and adolescents (for conciseness, referred to throughout this report as children) from the impact of marketing through limiting the exposure to and power of marketing of HFSS food and non-alcoholic beverages through national-level marketing restrictions.

Every child has the right to enjoy the highest attainable standard of health. As a result, governments have a legal obligation to address the underlying determinants of health and take all measures that are necessary to prevent child obesity and other diet-related non-communicable diseases (NCDs).<sup>(5, 8)</sup>

The marketing of HFSS products is a matter of public-health concern, affecting how a person perceives, desires, selects and purchases products. Establishing regulatory mechanisms to restrict marketing is a challenging matter for policymakers, as marketing is a very broad concept. It includes, but is not limited to, broadcast and non-broadcast advertising, advertising in schools, retail stores, billboards, sport centres, sponsorships in sports and children's events, use of celebrities to nudge audiences, and food-labelling claims and promotions.<sup>(17, 18)</sup> Additionally, the digital environment is a rapidly evolving and changing area, providing new opportunities for advertisers to reach key audiences including children and their carers, as well as new challenges for policymakers.<sup>(5, 22)</sup>

This report provides guidance on how to design a robust, comprehensive and effective regulatory framework intended to restrict the marketing of HFSS products to children, including core elements to consider in its development and implementation, and advice on how to defend it from opposition. This report draws on the existing literature that guides policymakers on implementing the World Health Organization (WHO) *Set of Recommendations on the Marketing of Foods and Non-alcoholic beverages to Children (WHO Recommendations)* (17) (listed in **International reports and guidelines addressing HFSS marketing restrictions** on p.13) and adds further context about lessons learned from countries that have introduced different types of marketing restrictions.





## Methods

A literature review and a set of interviews were undertaken for this report. The literature review included international reports, recently published research papers and policies from around the world related to food and beverage marketing to children. The literature review focused on papers published between January 2010 and July 2019 that address the main regulatory mechanisms, scope of regulatory measures and voluntary initiatives; and that provide evidence of the current marketing trends, ecosystems and impact on food selection, health status and behaviour of children. Key search terms were used on Web of Science and Academic Complete and in a Google search. Several reports and documents were provided or highlighted by interviewees.

In total 17 interviews were conducted with experts in the field who were selected due to their knowledge and experience of the topic either internationally or locally. The interviews explored the policy process undertaken in several countries that have implemented marketing restrictions, to better understand the main enablers and constraints.

# Part 1. Background

## 1.1 Obesity and growth in sales of HFSS products

Rates of overweight, obesity and diet-related non-communicable diseases (NCDs), including cancer, are increasing globally.(23) In 2016, 40.5 million (71 percent) of global deaths were due to NCDs; over three-quarters of these deaths occurred in low- and middle-income countries.(24)

In 2016, an estimated 1.97 billion adults and over 338 million children around the world were categorised as overweight or obese with numbers projected to rise.(25) The NCD Risk Factor Collaboration estimated that if current trends continue, by 2025 global obesity prevalence will reach 18% in men and surpass 21% in women, and severe obesity (have BMI  $\geq 35$  kg/m<sup>2</sup>) will surpass 6% in men and 9% in women.(25) Although the rate of increase has begun to slow in some high-income countries, the prevalence of obesity has tended to accelerate in low- and middle-income countries.(23) These accelerations have occurred in tandem with considerable changes in food systems and dietary patterns, commonly termed the 'nutrition transition'.(26)

Overweight and obesity is occurring at an even earlier age as 38.3 million children under five are overweight, increasing lifetime exposure to the associated risks of obesity, including many cancers, cardiovascular disease, insulin resistance, musculoskeletal disorders and disability.(27) Children with obesity are more likely to remain obese as adults and are at risk of developing serious NCDs.(24)

Marketing of HFSS products of low nutritional value continue to be a salient feature of the physical and sociocultural food environment in which purchase and consumption decisions are made.(28) The high availability and affordability of, and exposure awareness to, these foods (28) (following the 4 Ps marketing mix of price, product, place, promotion)(29) are reflected in current sales and consumption trends in both high-income and lower-income countries. Recent reports show the sale and consumption of HFSS products are increasing globally.(21, 30) Sales of these products remain high in high-income countries, and the rate of growth has been higher in lower-income countries in recent decades, leading to an abrupt increase in the prevalence of food-related NCDs and obesity.(31, 32)



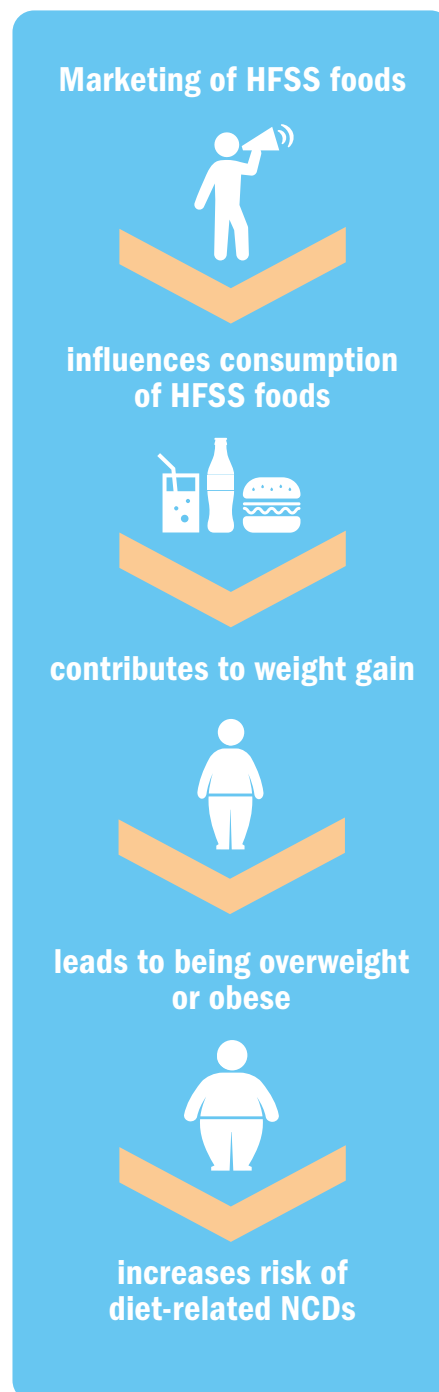
## 1.2 Regulating food marketing to children

Research has documented how transnational corporations producing HFSS products engage in influential marketing techniques and how this affects children's diets.(33) Additionally, evidence from systematic reviews on the extent, nature and effects of HFSS marketing to children shows that advertising affects children's eating behaviour, preferences, requests,(1, 2) nutrition knowledge(3) and food intake,(4) leading them to prefer to consume HFSS products. Marketing of foods affects subconscious cognitive processes and caloric intake,(34) and multiple studies show that most of food and non-alcoholic beverage marketing is for HFSS products.(35) Unequivocal evidence has also shown how marketing of these foods is linked to weight outcomes.(36)

***“We must not ignore the amount of work that has gone into developing a robust evidence base. Review after review consistently shows that marketing has a harmful impact on children. We must not let governments or industry tell us that there is not enough strong evidence.”***

Nutrition expert in UN system.

Children are particularly vulnerable to marketing and promotional techniques designed to influence their preference for HFSS products or to increase peer power and changes in household purchasing.(36) Children under eight are particularly vulnerable as they are unable to distinguish between programme content and the persuasive intent of advertising.(36) A multi-country survey revealed that the intent of advertising (namely, to sell a product for profit) is not understood until early adolescence.(37) Cognitive defences continue to develop through the teenage years, so adolescents also require protection from broadcast and non-broadcast media (such as internet gaming and advertising, text advertising, social media and sports sponsorships) as evidence shows children over 12 continue to be negatively influenced by HFSS marketing.(14, 22, 38)



Recently, the increase in marketing exposure in the often-unregulated digital sphere has become an area of concern, as the digital environment has changed significantly. Children's screen time has shifted from mainly broadcast media to phones, computers and tablets, where the main social media platforms are flooding cyberspace with advertising.(22) Additionally, overt marketing intent may be less clear in these media, and exposure may be prolonged; for example, games sponsored by HFSS food or beverage companies may draw children to websites for extended periods.(2, 22, 39)

### 1.3 The international legal and policy framework

A number of international legal and policy frameworks, reports and guidelines require governments to take action to protect the health of children and prevent NCDs (see diagrams p.13 and p.14).

#### 1.3.1 Child rights-based approach

The rights within the United Nations Convention on the Rights of the Child provide a platform for the regulation of the marketing of HFSS products. (9, 40) States that have ratified the CRC, which is the most ratified human rights treaty in the world (by all but two UN Member States), have the legal obligation to fulfil the right of the child to enjoy the highest attainable standard of health.(16, 40, 41)

Article 24 of the CRC states that all children have the right to enjoy the highest attainable standard of health. States should combat disease and malnutrition and provide access to adequate and nutritious foods and clean drinking water. It also requires that all parents and children ‘have access to education and are supported in the use of basic knowledge of child health and nutrition...’ (paragraph e), and that ‘state parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.’ (40)

In addition to the right to health, the CRC also articulates children’s rights to privacy (Article 16) and protection from economic exploitation (Article 32), as well as participation rights such as the right of freedom of expression (Article 13), freedom of association (Article 14), and access to information and the mass media with the protection of information and material that would impact a child’s wellbeing (Article 17).(40) All are relevant to the marketing of HFSS products.

**Applying rights-based approach to digital media:**

***“Taken as a whole, this rights-based framework suggests that children have a right to participate in digital media; that when they are participating, they also have the right to have their health and privacy protected and not to be economically exploited. The current challenge of restricting digital marketing of HFSS foods to children should be addressed through these lenses: reducing children’s risk for health problems both now and in the future and securing children’s right to be protected from undue harm, while at the same time facilitating their right to participate in public life, including on the Internet.” (14)***

In 2013, the UN Committee on the Rights of the Child published General Comment 15, confirming the need to regulate the marketing of HFSS products. (42) It stated that:

‘States should also address obesity in children, as it is associated with hypertension, early markers of cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death. Children’s exposure to “fast foods” that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances, should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled.’ (42)



In its final report (2016), the WHO Commission on Ending Childhood Obesity stated: ‘Tackling childhood obesity resonates with the universal acceptance of the rights of the child to a healthy life as well as the obligations assumed by State Parties to the Convention on the Rights of the Child.’(43)

Other UN agency reports have highlighted the complementarity of the rights-based approach when adopting the *WHO Recommendations*. (7, 8, 15, 18, 44)

The UN Committee on the Rights of the Child has cited the need for food marketing restrictions in a number of country reports, including Canada, South Africa, Switzerland, Brazil, Chile, Poland and the United Arab Emirates.(42)

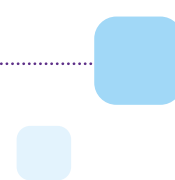
The child rights-based approach has been one of the main arguments advocates for marketing restrictions have used to encourage legally binding HFSS marketing restrictions.(41) Over time the child rights-based approach has been used with varying degrees of success, with some governments opting to frame the need for regulation within public-health discourse, where it may be easier to generate traction and political will. However, a child rights-based approach has the potential to generate more political will, as it is a common priority area for governments; having an understanding of how to use this approach could significantly increase political will for the introduction of marketing restrictions. A 2018 UNICEF report provides guidance on how to embed a child rights-based approach.(8)

Our interviews with policymakers confirmed the viewpoint of international experts: that to successfully use a child rights-based framing during the policy process, a multisectoral approach across sectors including health, privacy and children’s rights/protection is necessary.(15, 16) Working with stakeholders beyond health, and designing and advocating for the policy collaboratively, will help to increase the chance of a child rights-based approach being successfully delivered.



**“By framing a specific problem as a child rights or human rights problem more generally, you’re making it more imperative for states to adopt an effective regulatory framework and be accountable for their failure to do so.”**

Prof Amandine Garde, Professor of Law, Director of Law & NCD Unit, University of Liverpool, UK.



### 1.3.2 The Sustainable Development Goals

The Sustainable Development Goals (SDGs) are another important tool to drive government action. The goals include targets on ending malnutrition in all its forms (which includes obesity as well as undernutrition) in SDG 2.2 and reducing premature death from diet-related NCDs in SDG 3.4.(47) Heads of State and governments have committed to developing national responses to the overall implementation of the SDGs, and restricting the marketing of foods is an important policy option to meet the SDGs.(47)

### 1.4 International guiding documents

Since 2003, the WHO and various non-governmental organisations have published increasingly strong statements about the need to control marketing to children, as part of guiding and developing policy action at a national and global level.(48) The leading WHO document is the *Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children* (2010).(17) The WHO is currently in the process of developing guidelines on policies to restrict marketing food and non-alcoholic beverages to children based on new and updated systematic evidence reviews. These guidelines will focus on school-age children and adolescents up to the age of 19 in line with the WHO definition of children.





**WHO Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children (2010)** calls for global action to reduce the harmful impact of marketing of HFSS products to children.

## International reports and guidelines addressing HFSS marketing restrictions

- **2010** – Pan-American Health Organization, *Recommendations from a PAHO Expert Consultation on Marketing of Foods and Non-alcoholic Beverages to Children in the Americas*.(49)
- **2011** – Consumers International, *Manual for Monitoring Food Marketing to Children*, to guide international researchers with the tools necessary to gather evidence on the marketing to children of HFSS products.(50)
- **2012** – WHO, *A Framework for Implementing the Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children*, aiming at supporting policy development and implementation.(18)
- **2014** – World Obesity Federation and Consumers International, *Recommendations Towards a Global Convention to Protect and Promote Healthy Diets*, including recommendations to ensure responsible food and beverage advertising, promotion and sponsorship.(51)
- **2016** – WHO Europe Regional Office, *Tackling Food Marketing to Children in a Digital World: Trans-disciplinary Perspectives*, a guiding document to support governments.(22)
- **2016** – WHO Europe Regional Office, *Monitoring Food and Beverage Marketing to Children via Television and the Internet: a Proposed Tool for the WHO European Region*.(52)
- **2018** – UNICEF, *A Child Rights-based Approach to Food Marketing: A Guide for Policy Makers*.(8)
- **2018** – WHO Europe Regional Office, *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 Next Steps in the WHO European Region*, highlighting research supporting the restrictions, setting recommendations and updating on the progress in the region, the main challenges and the consideration of the CRC to enforce these regulations.(7)
- **2018** – WHO Eastern Mediterranean Regional Office, *Implementing the WHO Recommendations on the Marketing of Food and Non-alcoholic Beverages to Children in the Eastern Mediterranean Region*.(53)
- **2019** – WHO European Regional Office, *Monitoring and Restricting Digital Marketing of Unhealthy Products to Children and Adolescents (the CLICK report)*, a tool on monitoring and restricting digital marketing.(54)
- **2019** – WHO Western Pacific Regional Office, *Draft Regional Action Framework on Protecting Children from the Harmful Impact of Food Marketing in the Western Pacific*, endorsed by WHO Regional Committee for the Western Pacific Resolution WPR/RC70.R1.(109, 110)

## UN documents calling on Member States to implement marketing restrictions

- **2004** – WHO, *Global Strategy on Diet, Physical Activity and Health*, recommended multi-sectoral approaches to the marketing of food and non-alcoholic beverages to children, including sponsorship, promotion and advertising.(55)
- **2008** – WHO, *2008–2013 Action Plan for the Global Strategy for the Prevention and Control of Non-communicable Diseases*, to translate the Global Strategy into concrete actions.(56)
- **2011** – UN General Assembly, *Political Declaration of the UN High-Level Meeting on the Prevention and Control of NCDs*, highlighting recommendations on actions and policies to restrict marketing and advertising to children.(57)
- **2013** – WHO, *Global Action Plan for the Prevention and Control of NCDs 2013–2020*, Appendix 3 of which provides a list of policy options including implementing the WHO Recommendations.(58)
- **2014** – FAO, *Rome Declaration on Nutrition*, states ‘governments should protect consumers, especially children, from inappropriate marketing and publicity of food’. (59)
- **2014** – UN General Assembly, *Outcome Document on the High-level Meeting of the General Assembly on the Comprehensive Review and Assessment achieved in the Prevention and Control of NCDs*, reiterating recommendations on actions and policies to restrict marketing and advertising to children, including a call to mobilise political will and financial resources.(60)
- **2016** – WHO, *Report of the Commission on Ending Childhood Obesity* (the ECHO Commission), adopted by the World Health Assembly, which included a call for improving actions to restrict marketing to children.(10)
- **2017** – WHO, *Tackling NCDs: ‘Best Buys’ and other Recommended Interventions for the Prevention and Control of Non-communicable Diseases*, listed implementing the WHO recommendations as an overarching/enabling action.(61)
- **2018** – UN, *Political Declaration of the Third UN High-Level Meeting on the Prevention and Control of NCDs* highlighted recommendations on actions and policies to restrict marketing and advertising to children.(62)



The table on page 13-14 shows the growing momentum and scope of international organisations' calls for marketing restrictions to be implemented, and advice and tools to guide implementation. However, the tables do not illustrate the extensive research and published literature produced by academics in this field. The academic literature has built a robust evidence base, substantiating the claims that policy action is needed and setting out what that policy action should look like (such as policy design). This evidence base, developed by academics, combined with the work done by civil society groups and international organisations, such as WHO and UNICEF, illustrates that the call for marketing restrictions are grounded in robust, independent research.



See the **Table of Evidence** for evaluations of implemented marketing restrictions from around the world.

## 1.5 Current type and forms of regulation

Globally, several types of national-level measures have been implemented to protect children from HFSS food and beverage marketing (63–65, 66). Most of these measures have addressed exposure and power of marketing to some extent, and have taken either a mandatory approach (UK, Chile) or a government-approved voluntary approach or a mix of both approaches for different marketing techniques (Ireland). Some industry stakeholders have additionally adopted a self-regulatory approach independent of the government (for example, the Children's Food and Beverage Advertising Initiative in the US or the EU Pledge in Europe). (67, 68, 108) The measures also differ in the range of media and types of marketing covered.

### Different types of approach to restricting marketing practices of HFSS products

#### Self-regulatory approach

A consortium of food and beverage companies commit themselves to restrict marketing of HFSS products to children by setting their own guidelines or targets, independent of government.

#### Government-approved voluntary approach

Government provides guidelines on how companies can restrict their marketing practices and those companies decide whether or not to comply with the guidelines.

#### Mandatory approach: legislation and regulation

Legislation is passed by government to establish the general legal framework of principles to which the relevant stakeholders are required to adhere to including regulations. A robust legal framework would also include enforcement mechanisms to ensure compliance.

Government-approved voluntary approaches have been the dominant approach undertaken globally. (66, 69) Nevertheless, independent evaluations of policy effectiveness of both government-led voluntary regulation and industry-led self-regulation indicate that their impact on the food environment has been very limited. (12, 69, 71, 72, 81, 82) See **What legal measure should be used?** (p.23) and the **Table of Evidence** for more discussion on the challenges of voluntary or self-regulatory approaches.

In **Chile**, marketing regulations define limits for calories, saturated fat, sugar and sodium content considered “high” in food and beverages. Advertising directed to children under the age of 14 of food in the “high in” category is restricted. The regulatory norms define advertising targeted to children as television programmes or websites directed to children or with an audience of greater than 20% children, or in commercial breaks before, during or after these shows, and according to the design of the advertisement. Promotional strategies and incentives, such as cartoons, animations and toys that could attract the attention of children are included in the ban, as is advertising of food in schools.

In Quebec, **Canada**, there is a long-standing ban on any commercial advertising directed at children under the age of 13 on television, radio, print, internet, mobile phones and signage as well as through the use of promotional items.

In the **UK**, a more incremental approach to restricting HFSS marketing has taken place. First broadcast advertising was restricted, followed by the introduction of (non-binding) restrictions for online advertising. The government is now consulting on broader broadcast and online marketing restrictions, as well as on product placement and promotions.

## 1.6 Limitations of current practice

A growing body of independent monitoring and research indicates that existing policies and regulations are insufficient to address the continuing challenges of HFSS marketing (5) (see **Table of Evidence**). Policies and regulations tend to use narrow definitions and criteria, as they frequently only apply to pre-digital media, to younger children and not to adolescents, and to ‘children-directed’ media, rather than those with the greatest child audiences; and they almost never address the complex challenges of cross-border marketing. (7) Experts agree that stricter regulatory measures are required urgently to combat the increasingly sophisticated marketing techniques targeted at children to increase their preference for and consumption of harmful products. (5, 7, 9, 12, 14) Therefore, even in countries where policies are already in place, governments still need to take further action and strengthen protection mechanisms for children, and in particular adolescents, who are currently not as well protected by existing restrictions. (5, 7, 9, 22)



**“Given what we know about the impact of marketing on children, given that we’re talking about a vulnerable age group, and given that we’re talking about this in a context where obesity levels are extremely high and we’re supposed to do everything we can to prevent it, I think it’s shocking that we still allow something which is not right. It’s a privilege that companies have to market to children; a privilege that can and should be taken away when companies market HFSS foods. I think it’s shocking that countries haven’t done more.”**

Nutrition expert in UN system.



## 1.7 Cross-border issues

Some governments have introduced national policies, but an international or regional approach to regulating marketing practices is also needed to combat challenges caused by cross-border marketing and the current difficulties in regulating the digital space.(9, 7, 13, 54) Governments face challenges restricting marketing content that originates from another country, for example a neighbouring country with the same language or culture.(9, 7, 13, 54)

**Norway** prohibits marketing directed at children under 18 and advertising in connection with children’s programmes on television, radio and teletext. The ban includes any product, including food and beverages, but one of the main limitations of the policy is that it only applies to broadcast media *originating* in Norway. This is because, under current EU law, national marketing restrictions can only apply to broadcasts emanating from within the country of origin.(72, 73) See the case study on page 43 for a discussion on the interaction of the marketing restrictions with the additional government-approved voluntary approach (The Code of Marketing of Foods and Drinks) in Norway.

This report focuses on national-level action, but the lessons learned for designing a robust marketing restriction could be useful when different levels of governance systems are considering regulating the marketing of HFSS products either regionally or globally. The WHO Recommendations also call for cross-border marketing restrictions to ensure national-level restrictions are not undermined. The increase in digital-marketing techniques and the ability for those techniques to cross borders makes state cooperation even more pressing and important. (5, 74)

**“We need to devise mechanisms of international cooperation to ensure that the cross-border marketing of unhealthy food is effectively regulated. This is particularly important in light of the advent of digital marketing, international sports sponsorship and other forms of marketing that know no frontiers. International cooperation should support rather than stifle the efforts deployed by states at a national level to protect children from harmful marketing. The WHO Recommendations provide the yardstick.”**

Prof Amandine Garde, Professor of Law, Director of Law & NCD Unit, University of Liverpool, UK.



## Part 2. Robust design

### 2.1 Context specific approach

Economic, political, social and cultural factors all shape the process of developing and implementing marketing restrictions of HFSS products, and there are large variations between countries and the stakeholders interested and involved in policy design. It is, therefore, important for approaches to be context-specific to increase the likelihood of successful and sustained implementation. The scope of the restriction, the time allocated to design it and the stakeholders involved in its design will depend upon different factors.

However, common elements exist for developing and implementing marketing restrictions across countries and regions. The lessons learned from different countries show that marketing restrictions are often, but not always, met with significant opposition and interference from stakeholders whose interests conflict with the introduction of marketing restrictions. Therefore, robust policy design is a crucial element, ensuring the development and implementation of marketing restrictions that can withstand strong opposition.

Designing marketing restrictions based on lessons learned from other countries can increase the chance of successful implementation, if appropriately adapted for the relevant context.

### 2.2 Pathways of effect

The main aim of regulating the marketing of HFSS products is to limit its impact on children's food and drink preferences, their eating behaviour, food intake and carers' food selection.(17, 18) This can be achieved by reducing the **power** of and **exposure** to current marketing practices by improving and implementing restrictions.(17, 18)

**Exposure** refers to the reach and frequency of promotional messages across media and channels and **power** refers to the creative content, design and execution of the advertising.(18)

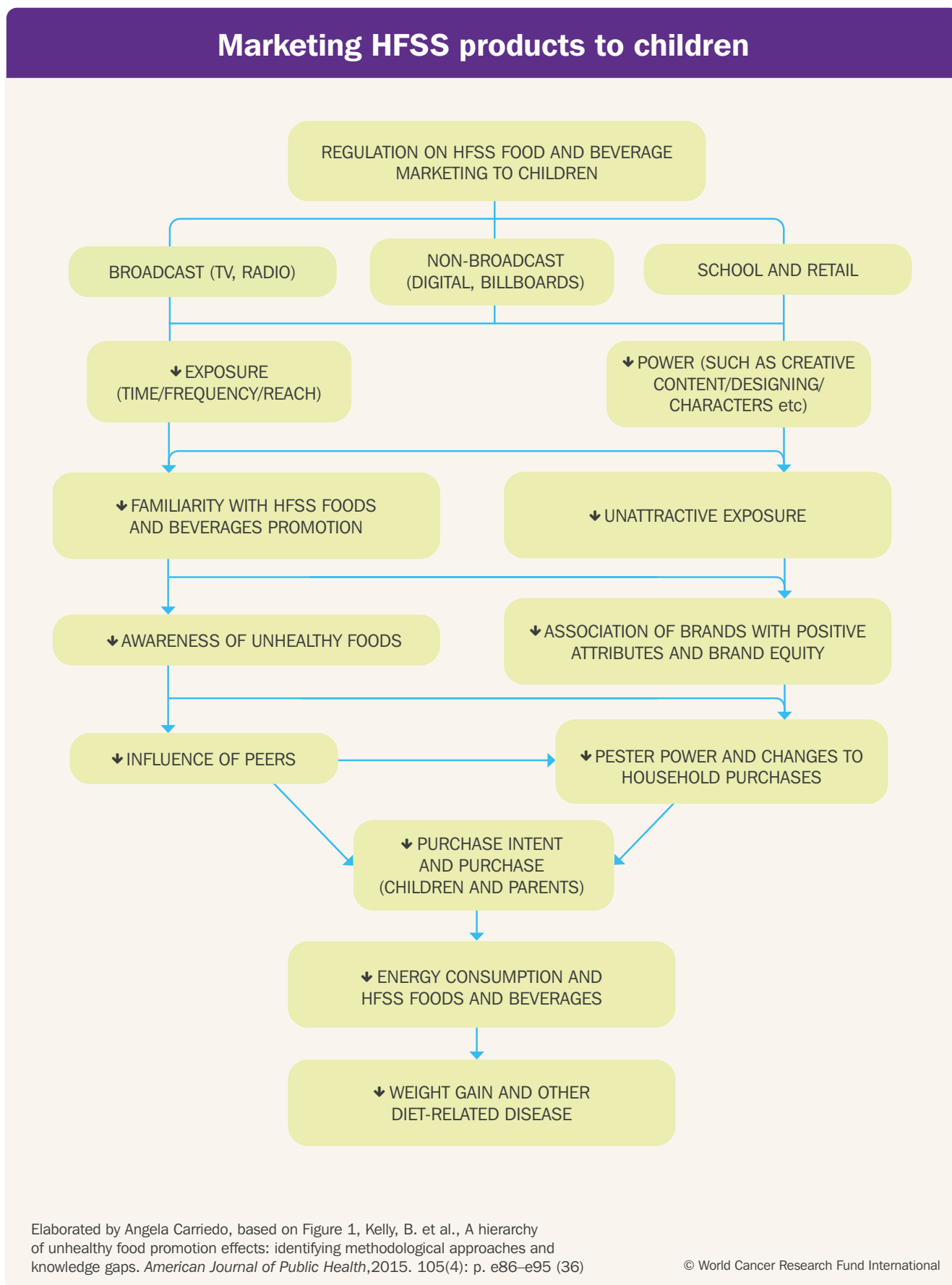
Understanding the pathways of effect through which marketing restrictions would protect children is critical in developing objectives and aims of regulation and strategies to monitor and evaluate it (see **Monitoring and evaluation** p.33).

**Figure 1** illustrates the overarching pathways of effect of marketing restrictions, including short-, medium- and long-term outcomes.





**Figure 1: Pathways of effect of regulation of marketing HFSS products to children**



## 2.3 Policy objectives

The evidence suggests that effective policy implementation starts with setting clear policy objectives about what marketing restrictions will achieve and how the restriction will operate.(41)

The types of policy objectives of marketing restrictions used to date include:

- limiting the impact of marketing of HFSS products to children through reducing the exposure to, and the power of, marketing in order to reduce the negative effects it has on their eating/drinking behaviour, food preferences, nutrition knowledge and consumption; and
- stimulating product reformulation towards healthier recipes.



It is important to set clear and specific objectives to identify how the marketing restriction will help address a particular problem (such as childhood obesity). The ultimate goal of the marketing restriction should consider short-term and intermediate outcomes in the pathways of effect (see **Pathways of effect** p.19), which will help to make explicit how the marketing restriction will meet its goal throughout its implementation and how to direct the evaluation and monitoring of the policy. If the objective focuses only on long-term objectives (for example, 'to prevent NCDs'), it can be harder to show how the policy will meet that objective without addressing the short and intermediate effects the policy will have. Once the objectives are defined, the reach, goal and scope of the policy can be drawn up based on existing recommendations and evidence.

### Case study examples of policy objectives

#### Chile

1. Child protection.
2. Promoting informed selection of food.
3. Decreasing food consumption with excessive amounts of critical nutrients(105).

#### UK (proposed)

1. Reducing children's exposure to HFSS advertising, to reduce children's overconsumption of these products.
2. Drive reformulation of products by brands.
3. Restrictions would be proportionate and targeted to the products of most concern to childhood obesity, and limit the advertising children see.
4. Easily understood by parents, so that they can be supported in making healthy choices for their families(45).

#### Ireland

1. To offer protection for children from inappropriate and/or harmful commercial communications.
2. To acknowledge the special susceptibilities of children and ensure that commercial communications do not exploit these susceptibilities.
3. To ensure that commercial communications are fair and present the product or service promoted in a way that is easily interpreted by children and does not raise unrealistic expectations of the capabilities or characteristics of the product or service being promoted.
4. To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians and children on the standards they can expect from commercial communications on Irish broadcasting services(106, 107).

## 2.4 Evidence that countries should consider in adopting a policy on HFSS marketing

As with any other public-health policy measure, independent evidence must be at the heart of policy design and brought to bear on every stage of the policy process. It is important that evidence used is from sources that are reliable, independent and free from conflicts of interest.

### Examples of evidence to consider when designing the policy include:

#### Burden of NCDs

- Prevalence of overweight, obesity and diet-related NCDs (including obesity and type 2 diabetes) in the country, particularly among children.
- The direct and indirect costs of these diseases on the healthcare system and society.

#### Diet and health behaviour

- The links between poor diet and health, including evidence of the link between high consumption of processed foods containing nutrients of concern (sugars, saturated fat, salt) and diet-related NCDs in children.
- Evidence on the current rate of children's consumption of HFSS food and beverages.
- Evidence on children's physical (in)activity and time spent in front of screens through which marketing is channelled.

***“I think the data (on obesity) that we have now for the Portuguese population was important to create this awareness in the political domain. I think that, nowadays, our Ministry of Health is becoming more committed to the need to have a strong policy to promote a healthy diet in the Portuguese population.”***

Maria João Gregório, Director-General of Health, National Programme for the Promotion of Healthy Eating, Portugal.

### Existing guidelines or nutrient intake recommendations

- Guidelines on specific nutrients:
  - WHO, *Guideline: Sugars intake for adults and children* (2015).(101)
  - WHO, *Guideline: Sodium intake for adults and children* (2012).(102)
  - FAO, *Fats and fatty acids in human nutrition: Report of an expert consultation* (2010).(103)
  - Global, regional and national recommendations for dietary fibre intake.
- National and regional dietary guidelines.

### Marketing exposure and power

Evidence on:

- The devices used by children to reach the channels of advertising on which HFSS marketing appears.
- Current marketing practices in schools, cinemas and public sport spaces (including sponsorships, product packaging, in-store promotions, street billboards, and prizes or multi-buy promotions).
- Current trends in social media channels used by children, such as Snapchat, YouTube, Facebook and Instagram as well as vloggers.
- New and emerging media, of which marketers are making increasing use (for example advergames, mobile messaging, viral marketing and outdoor advertising).
- The effect of HFSS marketing as it related to the causal pathway – for example evidence from systematic reviews on the extent, nature and effects of HFSS marketing to children show that advertising affects children's eating/drinking behaviour, preferences, requests,(1, 2) nutrition knowledge,(3) food intake(4) and their subconscious cognitive processes and caloric intake(34) leading them to preferentially consume HFSS food.
- Evidence that shows how a logical sequence of effect has linked marketing of these foods to weight outcomes.(36)

## Tools to help governments monitor marketing exposure and power

**WHO Regional Office of Europe CLICK tool:** developed to help governments monitor and evaluate digital marketing practices.(54)

**INFORMAS - (International Network for Food and Obesity/non-communicable diseases, Research, Monitoring and Action Support):** protocols to help countries monitor their marketing environment.(33, 75)

**WHO Regional Office of Europe:** *Monitoring food and beverage marketing to children via television and the internet: A proposed tool for the WHO European Region.*(52)

### Regulatory space

- Current general marketing and advertising regulations in the country and the level of impact they are having (including voluntary commitments by the food and advertising industry).
- Current regulations that take a child rights-based approach, and how the current government has implemented the CRC.
- The most recent policies and international rules on data protection and social media guidelines pertaining to children (platforms such as Snapchat, YouTube, Facebook and Instagram, and vloggers).

### Implementing and monitoring

- Estimated costs and benefits of implementing marketing restrictions.
- Consider the tools available to define and monitor audience data: how current media forms are age-categorised and whether this is compatible with the audience exposed.

***“At the beginning, we didn’t have information, but we found information in international documents such as the WHO and other groups that are working with food environments and social determinants and factors that induce consumption. And we worked with Chilean experts about consumption, about marketing, about the factors that affect consumption. And we developed a document about the arguments for regulating marketing.”***

Dr Lorena Rodriguez Osiac, Assistant Professor, Public Health Institute of the University of Chile.

***“The advice to countries without a strong evidence base is that that global evidence cannot be ignored and is likely to be applicable in that context as well.”***

Dr Bridget Kelly, Associate Professor, University of Wollongong, Australia.

The **UK** government commissioned research to inform the design of the most recent marketing restriction proposal, to adapt it to the reality of the UK marketing environment. Under the current advertising regulations, an analysis of television advertising in May 2018 found that 49% of the food adverts between 6pm and 9 pm were directly advertising HFSS foods and almost half of the adverts were for fast-food or delivery brands.(77)

## Challenges with data collection

The ubiquity of marketing practices and the emergence of new media are a challenge in developing legislative standards that adequately cover current and future, as yet unanticipated, marketing strategies. It can be hard to collect evidence and data about current marketing practices and their target audiences in countries that lack access to data or where data is owned by private companies or available only at very high cost from private providers. In some instances, it is not possible to capture accurate data of the age of the user, making it inherently difficult to enforce age limits online in the current digital regulatory space (for example, social media users misreport their age to access social media platforms). (5, 74)

A vital step is therefore to map the potential involvement of the stakeholders interested in the policy to ascertain what data is needed and how best to collect it (77) (see **Stakeholder engagement**) (p.30). Simple desk-based frameworks or protocols have also been developed to help countries collect a certain amount of the data needed. (For more information see **Tools to help governments monitor marketing exposure and power** p.22).



There is a strong body of evidence to support the implementation of government-led mandatory regulation, as self-regulation has been shown to be ineffective (see **Table of evidence**).

## 2.5 Key decisions when designing a marketing restriction

Based on the qualitative research for this report, there are five main considerations when developing a marketing restriction, which need to be addressed when designing the policy:

1. What legal measure should be used?
2. Who should be protected?
3. Which forms of marketing should be restricted?
4. What level of marketing should be restricted?
5. Which foods and beverages should be restricted?

### 2.5.1 What legal measures should be used?

Governments have used a range of measures to restrict marketing of HFSS products to children including using mandatory approaches through legislation and regulations or government-approved voluntary approaches.

Robust, clear and evidence-based mandatory restrictions are the most effective way to restrict marketing aimed at children and adequately protect them from exposure.(5, 9, 12, 13, 33, 64, 69, 71, 72, 81, 82) It is relevant to assess any current or pre-existing voluntary initiative in the country and whether this has decreased exposure and/or power of HFSS marketing to children. The starting point can then be either a modification or adaptation of current practices or a completely new approach.



***“Before the law we had a self-regulatory code, especially to protect children, but it really didn't work. Some industries did it, other industries didn't do it.”***

Dr Lorena Rodriguez Osiac, Assistant Professor, Public Health Institute of the University of Chile.



### The benefits of mandatory approaches compared to voluntary or self-regulatory approaches:

- From a legal perspective, governments are accountable for upholding international and human rights law (such as the CRC) and are required to implement national laws to uphold these international legal obligations. Therefore, it is governments, not the private sector, that must design and implement marketing restrictions, as industry stakeholders are not accountable under international and human rights law. Businesses have a responsibility to respect human rights under the UN Guiding Principles on Business and Human Rights, but not a legal obligation.(80)
- Mandatory marketing restrictions can be accompanied with enforcement provisions such as fines. Voluntary regulation or self-regulation do not have the same level of enforcement and are therefore much less of a deterrent. Where there is little or no risk of (financial) sanction, a business could decide it is more in its interests not to follow the self-regulation.(78)
- Mandatory regulation creates a level playing field for businesses, where compliance is not left to the voluntary commitment of industry. This removes any possibility of a company attempting to gain market advantage through non-compliance (an option that is still open to them under voluntary or self-regulation).(7, 78)
- Existing self-regulatory measures and industry pledges are often not aligned with the *WHO Recommendations*(54, 81, 82) (for example, they do not cover the breadth of marketing practices, or do not adequately limit the exposure and power of HFSS advertising); therefore, government-led mandatory mechanisms are more likely, if designed comprehensively, to ensure the *WHO Recommendations* are implemented.

**“The voluntary code in Ireland is more flexible, as it has no sanctions, there’s not really monitoring of it, so they (the food industry) are using voluntary codes as a way of avoiding regulation.”**

Kathryn Reilly, Policy Manager,  
Irish Heart Foundation

Governments could introduce legislation and regulations under a variety of legislative mechanisms including, but not limited to, broadcasting legislation, marketing or advertising legislation, consumer protection legislation, food legislation or child protection legislation.

#### **Summary: Implement government-led mandatory restrictions**

### 2.5.2 Who should be protected?

Governments have implemented policies that restrict marketing of HFSS products up to different ages. International consensus and academic research supports governments implementing marketing restrictions that protect *all* children, including adolescents.(7, 8, 33, 51, 54) International best practice require governments to protect children up to the age of 18.

The CRC defines a child as every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.(40)

Adolescents are sometimes not within the scope of the marketing restrictions because they are considered to have more advanced cognitive ability than younger children. However, evidence shows that adolescents’ neurological, hormonal and social developmental factors make them particularly susceptible to HFSS advertising; they also have more purchasing power than younger children as they often have money with which to purchase food items.(14)



### Age limits countries currently used:

- Chile 14
- UK <16
- Slovenia <16
- Turkey <18
- South Korea 18
- Ireland <18



It is important to carefully consider the age to be covered because it impacts on the following elements of the design of the marketing restriction:

- a) Categorisation of marketing techniques and the content to which the restriction applies.
- b) Appropriate monitoring of the behaviour of children of relevant ages, to ensure that all broadcast programmes, digital media and places where children are more exposed are covered by the restriction, regardless of the theoretical categorisation of particular media such as television programmes.

### Digital marketing and age restrictions

Programmatic digital advertising is fast-growing and targets products and services to users based on the profile and preferences of each individual user, rather than on the content and audience of the website being visited (83). Increasingly, this is delivered through opaque, algorithmic systems inaccessible to outside observers, which makes applying age categories even more challenging (5, 14, 54). When campaigns are described in industry materials, they are often vague in their representation of the specific ages they are targeting. Moreover, social media and video platforms whose terms of service officially exclude children under 13 can attract large numbers of underage users.(5)

Any marketing restriction designed to regulate the content or audience profile of a website will not effectively protect children(83) (see **What level of marketing should be restricted** p.28).

**Summary: protect children up to the age of 18**

### 2.5.3 Which forms of marketing should be restricted?

Children are exposed to a vast array of marketing techniques beyond traditional broadcasting.(84) Many countries focus on broadcast restrictions because they are easier to enforce, but there needs to be a level playing field between the various media to which children are exposed so that each child receives the same level of protection regardless of how media content is accessed.(85)

To ensure the policy is robust and reduces children's exposure to HFSS products it is more effective to restrict all forms of marketing of these products(7–9, 54) (see **Figure 2: How HFSS products are marketed** p.26). This includes advertising (broadcast/print/radio and digital), direct marketing, product placement and branding, sponsorship, product design and packaging, and point-of-sale tactics.



'Marketing' refers to any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service.(17, 18)

**Figure 2: How HFSS products are marketed**



By including all forms of marketing, governments can better limit the risk of industry shifting its investment in marketing from regulated to unregulated programmes, media, marketing techniques or settings where children gather.(9)

Adopting a broad definition of marketing as advocated in the *WHO Recommendations* can allow flexibility in policy design to incorporate new and evolving marketing techniques.

**“Marketing producers are very intelligent and creative and they create many things that are attractive to children. So we designed the regulations to say ‘such as’ or ‘etc’ to allow us to add new marketing techniques directed to children when they are changed.”**

Dr Lorena Rodriguez Osiac, Assistant Professor, Public Health Institute of the University of Chile.

Important forms of marketing that are often excluded from policies but are increasingly relevant include brand marketing, outdoor media, sponsorship, in-store promotion and food packaging.(7) These are loopholes that need to be closed if policies are to be effective.

**Chile** - Tony the Tiger, a significant Kellogg’s brand identity, was removed by Chilean marketing restrictions that ban techniques and incentives that could attract the attention of children, such as cartoons, animations and toys.

**Ireland** - The 2009 Children’s Commercial Communications Code (as amended 2013) prohibits both the featuring of celebrities in food advertising to under-18s and the use of characters and personalities from children’s programming in food advertising to under-15s.

**Peru** - The law includes restrictions for advertising aimed at under-16s through any medium, including not using gifts, prizes or any other benefit to encourage purchase or consumption of food or drinks, and not using real or fictional characters known to children.

**Summary: all forms of marketing should be included in restrictions to ensure children’s full exposure is limited**

## PRODUCT IN CHILE

Use of cartoon characters is prohibited



## PRODUCT IN MEXICO

Use of cartoon characters

Sponsorship by sports leagues



Source: Centro de Investigación en Nutrición y Salud, Instituto Nacional de Salud Pública, Mexico

## 2.5.4 What level of marketing should be restricted?

Existing regulations are usually designed to limit HFSS marketing that are:

- ‘targeted at’ children
- ‘directed at’ children
- ‘appealing to’ children
- ‘child-directed’
- specific to ‘children’s programming’ or
- specific to ‘children’s media’.

This type of definition does not accurately capture the full scope of marketing to which children are exposed because this age group is exposed to a wide range of media sources that are not necessarily specifically ‘targeted at’ them, such as family shows. (7, 54) Therefore, the restrictions may not limit children’s actual exposure to HFSS marketing, leaving many children unprotected who watch mixed-audience programming.(7, 54) The same logic can be applied to other media forms, such as digital marketing, brand marketing, sponsorship, in-store promotion and food packaging.(7, 54)

**“Some of the ways that countries have tried to define advertising to children or marketing to children have really resulted in the ineffectiveness of the policy – specifically focusing on television programmes, for example, that have a higher proportion of child viewers in the audience. I think we’ve seen consistently that that kind of approach opens up all sorts of loopholes because children’s programmes and programmes that have more children in the audience are not the times or the programmes when the greatest number of children are watching.”**

Dr Bridget Kelly, Associate Professor, University of Wollongong, Australia.

Focusing the policy on marketing or media forms that are viewed or engaged with by children would ensure that the policy measure is more effective at reducing exposure of the target audience to HFSS marketing, allowing the policy objectives set by a government to be met.(7, 54)

The WHO Regional Office for Europe states “current definitions include the proportion of children watching, the proportion relative to the adult audience, the total number of children watching, and the television rating of the programme or channel. Such approaches are workable but would be improved by applying them to programming that is viewed by large numbers of children, rather than to programming targeted at children, even if that means applying restrictions to programming for mixed audiences”.(52)

### Country examples of current definitions

In March 2018, the **Turkish** government started to restrict advertising of food and beverages that are not recommended for ‘excessive consumption’ in general diets before, during or after children’s television programmes. The regulations protect children aged up to 18. Television advertisements that are played during programmes not targeted at children that advertise these food and beverage products must display health-promotion messages encouraging physical activity and consumption of a healthy diet.

In the **UK**, HFSS advertising is banned not only on dedicated children’s channels but also in and around broadcast programmes ‘of particular appeal’ to children under 16 years of age (as determined by the proportion of children in the viewing audience).(7)



**“Our intention is to restrict all the food marketing that children might be exposed to. We know that, in some family programmes, we have a lot of children seeing these types of programmes. We know that it’s not only enough if we restrict the food marketing only for the programmes that will be directed to children.”**

Maria João Gregório, Director-General of Health, National Programme for the Promotion of Healthy Eating, Portugal.

**“The legislator’s job should be to define what standards we as a society demand of the digital advertising industry, not the ‘how’. Once that regulatory mandate is set, it should be up to the digital advertising industry to comply with that standard using their almost unlimited technical resources.”**

Dan Parker, Chief Executive, Living Loud, UK.

### **Regulating the digital ecosystem - from the Insider’s Guide – Regulating junk food marketing online, Living Loud**

The online advertising ecosystem can appear complex but simply put– there are media owners/content providers and there are advertisers. Between them is an interlinked host who provide data, technology or trading capability to make the system more effective.

The burden of responsibility to implement a government’s marketing restrictions needs to sit with the advertisers, as it does with traditional media. The advertisers have greater leverage with the global digital media corporations. Furthermore, most of the HFSS advertisers have some form of legal entity within national jurisdictions, so government regulators will be better able to hold them to account as opposed to an interlinked host (for example Snapchat, Facebook, YouTube) who may not have a legal entity at national level.

Governments can stipulate the requirements of the advertising industry in relation to HFSS marketing (such as restrict all HFSS marketing to which children under 18 are exposed) and industry can be accountable for implementing the required mechanisms that will achieve the government’s requirements.(83)

### **Summary – define marketing as ‘marketing to which children are exposed’**



### **2.5.5 Which foods and beverages should be restricted?**

Governments also need to determine which HFSS products are subject to the restrictions. They can choose to distinguish food and beverage types in several ways, such as by using national dietary guidelines or international/regional/national nutrient profiling systems. A nutrient profile model classifies or ranks foods according to nutritional composition, and this could be used or adapted when deciding on the particular aspects of a marketing restriction.(86–89)

Where countries are developing a new nutrient profile model, it may be beneficial to draw on an existing and appropriate nutrient profile model from a neighbouring country or region in order to avoid duplication of effort, especially where resource and capacity is limited.

The WHO has developed regional nutrient profile models for different regions, which can be used as a starting point.(87–88) However, the specific context of the implementing country must be given appropriate consideration; for example, governments may choose to include even stricter criteria for certain foods than the WHO regional nutrient profile model, because of a specific factor such as prevalence of a certain non-communicable disease. Any nutrient profile model should be adapted to the food composition and dietary patterns of the country.

**“We called for a group of experts, nutrition experts, from different places of our country, from different academic groups, that are working in food and nutrition, and with them we defined a model, to have cut-off points, to define which foods will be healthier than others, and to define the restrictions of marketing and restrictions of sales at schools.”**

Dr Lorena Rodriguez Osiac, Assistant Professor, Public Health Institute of the University of Chile.

To reduce the risk of industry challenges to the nutrient profile model or the marketing restriction, any exemptions of particular food or beverage groups from the nutrient profile model must be for legitimate reasons and not discriminate unfairly (9, 41, 91) (see **Legal considerations** p.36).

**Summary: use a nutrient profile model to decide which products are in scope of the restriction.**



The stringency of nutrient profile models varies significantly; they may have been designed for different policy objectives such as reformulation instead of marketing restrictions. (90) These discrepancies highlight the importance of policymakers carefully evaluating the characteristics underlying such models when identifying a suitable model to underpin regulations to restrict the marketing of HFSS products to children.(90) Governments could consider the basis of the nutrient profile model, the alignment with other nutrient criteria used in other regulations in the country or in the region and the objectives the policy is trying to meet. (86-90)

## 2.6 Stakeholder engagement

It is the government’s duty to set direction and overall strategy to achieve public-health goals, and it is important for governments to lead the policy development, implementation, and monitoring and evaluation processes. However, in the course of the policy development process, governments may choose to engage with a wide range of other stakeholders, such as civil society groups, other government agencies, academics and the private sector. Protecting the public interest and avoiding conflicts of interest are at the core of designing a regulatory measure, and should be considered at all times.(2, 17, 78, 92) It is particularly important to protect the policy design from any commercially driven interest that might conflict with the overall goal of the policy/marketing restriction.(95) This section summarises how interaction with external stakeholders could be managed.



WCRF International’s research for this report suggests that there are six main recommendations to manage stakeholder engagement:

1. Perform a stakeholder mapping exercise.
2. Search for allies.
3. Develop a communication strategy.
4. Establish transparency processes and accountability mechanisms.
5. Establish an information system to communicate the progress of the policy.
6. Consider conflicts of interest.

**Recommendation 1:** Consider carrying out a stakeholder mapping exercise to identify key stakeholders’ position on restricting HFSS marketing, to understand their influence and interest, and to identify who should be engaged with and at what stage, who needs to be informed and to whom the policy needs to be delivered.

Stakeholder mapping includes a list of all the organisations and people (such as academics, civil society groups, politicians, civil servants, community leaders, children, local authority representatives, food and beverage industry bodies or/and consortiums, food producers, broadcast and digital media industry representatives) that are interested in or have potential influence over the policy agenda and implementation.

In **Chile** two groups were identified to work on the regulation: a technical group and a political group. These two working groups identified influential and interested stakeholders in the government (in different ministries) and outside government, such as marketing groups and civil society groups. Each group of stakeholders were approached separately to explain the regulation and seek support for it.

**Engaging with children themselves** is a critical pillar of stakeholder engagement when developing child-related policies. Understanding how to meaningfully engage children in the design of the policy will ensure it is a more robust and effective marketing restriction.

**Recommendation 2:** Search for allies before designing the restriction.

*“A really key part of successfully getting a policy progressed is the public support. In the UK, we have been making the case for comprehensive marketing restrictions for several years. Very high-profile people like Jamie Oliver and Hugh Fearnley-Whittingstall, who are big celebrities in the UK, have come on board and have thrown their weight behind it, which has really built up a big amount of public support for the policy.”*

Caroline Cerny, Alliance Lead, Obesity Health Alliance, UK.

**Recommendation 3:** Develop communication channels and avenues with other interested stakeholders, in order to get support.

In **Canada**, the Government was supported by the Stop Marketing to Kids Coalition, a group of civil society advocates, who helped communicate the issue and keep it on the agenda, which was critical for the policy development.

**Recommendation 4:** Establish clear mechanisms of transparency and accountability throughout the policy design process.

A consultation with clear up-front rules and restrictions might open clear mechanisms of engagement in a constructive way. Final decisions are taken by a government, and will be most effective if communicated with transparency.



**Canada** adopted an openness and transparency policy, which means that a copy of all communications received or meeting minutes held with external parties about the policy must be published online.

**Recommendation 5:** Keep an information flow with your key allies and potential opposition, to encourage transparency throughout the design process.

Regardless of the policy framework chosen, there should be widespread communication of the policy to all stakeholder groups, including the private sector, civil society, non-governmental organisations, the media, academic researchers, children, parents, carers and the wider community.

**“The evidence collation and review, design of the nutrient profile model and the development of the policy need to be protected. Consultations with industry are a requirement when the process reaches the appropriate stage but, prior to that, protecting the integrity of the policy design is critical.”**

Canadian policymaker.

**Recommendation 6:** Consider the possible impacts of conflicts of interest and commercial interference.

When designing a policy, the government needs to consider the principles of inclusiveness and participation (two core principles of good governance). It is also important to include mechanisms to shield the process from commercial interests that conflict with the purpose of the policy. Such conflicts of interest may cause delay or undermine the policy’s impact, especially its scope and potential effectiveness.(2, 17, 78, 92)

Some mechanisms to manage conflicts of interest include, but are not limited to:

- Setting a defined time period for the consultation process.
- Making the consultation process fully transparent and able to be scrutinised by any member of the public.
- Requiring a declaration of conflict of interest by all individuals participating in the policy design or development process (any meeting, hearing, open consultation or debate).
- Performing a risk assessment of organisations or individual participants who might have a conflict of interest during the policy design phase and exclude those stakeholders with a conflict of interest from the policy design process.

Existing tools to help protect policymaking from commercial interference or conflicts of interest are available from WHO(94), Health Canada (95) and VicHealth(96).

## 2.7 Monitoring and evaluation

Designing a monitoring and evaluation framework requires dedicated resources, technical capacity, capturing of baseline data and the means to collect follow-up data. Developing the framework during the policy design phase (for example before implementing a marketing restriction) will identify how best to measure the effects of the restriction and monitor compliance, including identifying baseline data requirements, and indicators to be considered for short-term and intermediate outcomes and policy impact. Evaluations should be of high quality, independent and free from conflicts of interest.

Establishing clear pathways of effect is important for policy evaluation to ensure the appropriate outcomes are being assessed (see **Pathways of effect** p.18). Policies can have unintended positive, negative or neutral impacts when implemented in the real world. Therefore, it is crucial to monitor and evaluate marketing restrictions to understand if they are having the anticipated effect and adjust the policy if not.

Governments are required to report to the relevant UN bodies regarding their compliance with the CRC and progress in implementing the SDGs, and a monitoring and evaluation framework can facilitate this reporting.

***“We have, in our proposed law, that we need to evaluate the impact of the law every five years. The Consumer Directorate-General (Ministry for the Economy) is responsible to monitor and enforce the law.”***

Maria João Gregório, Director-General of Health, National Programme for the Promotion of Healthy Eating, Portugal.

***“First, we monitored implementation. In the first month, we worked very closely with regional groups in Chile to be sure that the industry was applying the law. This is the first step. Then, we commissioned academic groups to evaluate the impact and effectiveness of the policy. First, we looked at the perception and what people think about this, and if people understand what happened with labelling, school food sales and marketing on TV or in any mass media. Then each year we look at the impact on children’s nutritional status to measure the effect.”***

Dr Lorena Rodriguez Osiac, Assistant Professor, Public Health Institute of the University of Chile.

At a global level, WCRF International’s NOURISHING policy database can be used to track current marketing restrictions in effect around the world, with links to published evaluations. Evaluating implemented marketing restrictions is important to continue to build an evidence base to support action nationally, regionally and globally.

**[www.wcrf.org/NOURISHING](http://www.wcrf.org/NOURISHING)**

## Part 3. Defending marketing restrictions

# The 4D'S INDUSTRY TACTICS

> DELAY

> DIVIDE

> DEFLECT

> DENY

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Government proposals for marketing restrictions can encounter two main forms of opposition: **political challenges** and **legal challenges** related to the design of the restriction.

### 3.1 Common industry tactics used to challenge marketing restrictions

Common tactics used by industry to challenge marketing restrictions can be categorised into four main types: delay, divide, deflect and deny. Common political challenges that governments experience throughout the design, development and implementation of a policy are outlined overleaf.

*“During the policy process, civil society involved said that the marketing restriction was something that deals with important and powerful interests who will stop this law from being approved or passed. And, even if the law was passed, there was the threat that industry would use legal measures, so the law would not work as intended, as had happened in other instances.”*

Camila Maranhã P. Carvalho, ACT Health Promotion and Fluminense Federal University, Brazil.



## > DELAY

Opponents will:

- Push for longer consultation periods
- Push for more research and evidence to be collated
- Threaten litigation and/or trade action through domestic, international trade and investment law (for more information see **Legal considerations** p.36)
- Argue that implementation is too difficult



## > DEFLECT

Opponents will:

- Claim any of the following:
  - The nutrient profile model is too strict
  - The regulation would restrict trade
  - The regulation would impact intellectual property rights
  - The current voluntary actions are working
- Reframe the issues
  - State that personal responsibility is a central issue
  - Cite physical inactivity rather than overnutrition as the cause
  - Use the “nanny state” argument and that consumers have the right to choose what to eat and what to watch
  - State that the cost of food might increase
  - Highlight the potential impact on the economy (such as job losses)

## > DIVIDE

Opponents will:

- Propose their own self-regulatory scheme
- Attack every element of the regulation (for example age of children, form of regulation, nutrition profiling used)
- Lobby politicians behind closed doors to stop, delay or vote against the regulation
- Launch personal attacks in the media of supporters of the measure or academics behind the research
- Fund research that opposes the evidence of the effect of marketing restrictions
- Donate to organisations (including civil society organisations) to encourage advocating against the marketing restriction
- Use think-tanks to provide an opposing view

## > DENY

Opponents will:

- Claim there is not enough evidence to make decisions
- Cast doubt on existing evidence relating to any aspect of the pathways of effect
- Argue that there is no global agreement on how to define unhealthy foods
- Fund research and reports that showcase other solutions
- Argue there is no causal relationship between marketing and consumption
- Claim the research is inconsistent

Policymakers, advocates and academics from different countries were interviewed to provide lessons learned from their experiences of implementing marketing restrictions (see **Lessons Learned** (p.39) for an overview of how countries dealt with the challenges to marketing restrictions).



## 3.2 Legal considerations

As outlined in the **4Ds**, governments can be challenged by the threat of legal action under international investment law, international trade law or domestic law. This section outlines the main areas of law that impact on a government's ability to restrict marketing and how governments can protect themselves against the threat of legal action.



### International investment law

International investment law could affect a government's ability to introduce marketing restrictions by giving investors the right to challenge the restrictions under:

- International investment agreements, comprising a variety of agreements including bilateral investment treaties.
- Investment chapters in free trade agreements.
- Investment contracts between the state and investors that aim to promote and protect foreign investment in order to stimulate economic growth and development in a country.

International investment law generally provides protection to investors against expropriation of private property (including intellectual property) without due process and compensation and against unfair and inequitable treatment. Regulatory space generally exists within international investment law for governments to enact legitimate, evidence-based public-health measures.

### International trade law

#### The World Trade Organization (WTO) under the Technical Barriers to Trade (TBT) Agreement

WTO Member States may raise 'Specific Trade Concerns' or bring a formal dispute against marketing restrictions before the WTO under the TBT Agreement. The TBT Agreement aims to prevent unnecessary technical barriers to international trade, while enabling WTO Member States to maintain their right to adopt regulations to pursue legitimate objectives such as public health.

The TBT Agreement states that technical regulations (such as marketing restrictions) must not be more trade restrictive than necessary to fulfil a legitimate objective, such as public health. The TBT Agreement also contains provisions prohibiting discrimination against imported products unless there is a legitimate regulatory basis for the focus on imported products. WTO Member States need to ensure that their marketing restrictions do not constitute unnecessary 'technical barriers' to free movement of food products across borders.

### International Intellectual Property law

#### The WTO under the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement

WTO Member States might bring a dispute under Article 20 of the TRIPS Agreement if they consider that marketing restrictions implemented by another Member State impacts on their national's right to use a trademark (for example, a brand icon such as Kellogg's Tony the Tiger in Chile)(97). It has been argued, and it is still debated, that the TRIPS Agreement does not provide the food and beverage industry with a claim they are entitled to use their trademark when a regulation bans it.(98) However, intellectual property rights might be protected by domestic law.(98)

### Regional trade agreements

Many governments have regional, multilateral or bilateral trade agreements with which to comply, for example the United States-Mexico-Canada Agreement (formerly the North American Free Trade Agreement), the Trans-Pacific Partnership Agreement and the European Union's trade regulations. A government can be challenged if its marketing restriction is deemed incompatible with regional trade agreements.

### Domestic law

Third parties in domestic courts can legally challenge marketing restrictions for the following reasons:

- Discriminatory: marketing restrictions only apply to certain products and not others (for example based on country of origin or product type).
- Jurisdictional issues: government has no mandate or jurisdiction to introduce marketing restrictions.
- Unconstitutional: marketing restrictions restrict or impinge on rights to trade or freedom of expression or intellectual property (use of brand icons and trademarks).

### 3.3 Mitigating risk of legal challenge: key learnings

If a marketing restriction is challenged under any area of international or domestic law, there are legal responses available to governments to defend themselves.(41) This section outlines defending a challenge to a marketing restriction, and also serves as a guide to avoid legal challenge in the first instance by anticipating and mitigating the risk of legal threat.

Researchers have summarised learnings related to domestic, international trade and investment law to assist governments in mitigating the risk of legal challenges to marketing restrictions. The key learnings are as follows:(16, 41, 91, 99–100)

- Governments should implement marketing restrictions to uphold the CRC and protect the rights of children. Commercial rights such as the right to free trade or intellectual property or the right to freedom of expression are not absolute; they can be restricted on grounds of public interest, **including public health**.



***“The right to free trade has never been unlimited. What is not allowed is unnecessary barriers to trade.”***

Prof Amandine Garde, Professor of Law, Director of Law & NCD Unit, University of Liverpool, UK.

- Governments can defend their decision to implement a marketing restriction in their capacity as protector of children's rights and the health of their populations.
- Ensure that there is a strong, legitimate public-health objective for the measure. This should be based directly on evidence of pathways of effect; for example, a link between increased childhood obesity and exposure of children to HFSS marketing is a rationale for governments to introduce marketing restrictions, as it fulfils a legitimate policy objective (in this case, to reduce childhood obesity through evidence-based interventions).
- Ensure that the evidence base is strong and understand how the chosen marketing restriction will achieve the policy objectives identified.
- Ideally, marketing restrictions should form part of a comprehensive package of policies aimed at achieving a clear public-health objective.
- Do not discriminate against products of different origins and do not discriminate between foreign investors or investments in 'like' circumstances. Using a nutrient profile model to scientifically categorise which foods will be the subject of the marketing restriction will ensure that the evidence base for the foods chosen is robust, and not discriminatory against certain food groups or products.



- As much as possible, ensure the selected measure is based on international consensus. Governments have a wealth of international support from which to draw in choosing, designing and implementing the marketing restrictions (see **International guiding documents** section p.12).
- Engage legal, trade, human rights, marketing and investment government officials early on in the development of marketing restrictions, to understand the broader legal implications and ensure that due process is followed.
- Undertake multisectoral collaboration between the health and investment sectors to ensure that public-health measures are developed with an understanding of obligations under international investment law, and that investment and trade agreements with investment chapters are negotiated and drafted to ensure regulatory space for public health.
- Ensure that due process is observed in any interaction between government and foreign investors in the policy development process (in accordance with national law) and establish a clear expectation that marketing practices will be subject to ongoing regulation. Avoid specific commitments, undertakings or representations to industry that such regulation will remain unchanged.

***“Governments who implement marketing restrictions are not banning any food from the market; they are simply restricting the food and advertising industries from marketing unhealthy food to children who are vulnerable to its negative impact.”***

Prof Amandine Garde, Professor of Law,  
Director of Law & NCD Unit, University of  
Liverpool, UK.

## 4. Lessons learned

Governments, civil society organisations and researchers all play important roles in the development, defence and implementation of marketing restrictions. Lessons can be learned from the experiences of countries that attempted to implement, are in the process of implementing, or have successfully implemented marketing restrictions.

### Be prepared with evidence

- Collate robust evidence from the outset of the policy process.
- Establish consensus on national and international evidence from academia before beginning the policy process, to demonstrate a united front against possible industry challenge.
- Highlight messages about the risks of exposure and power of marketing on children, based on the most recent evidence.
- Highlight the prevalence of obesity and other diet-related diseases in the country, especially among vulnerable and low-income groups.
- Consider international nutrition guidelines to support the measure. (101-103)

***“The Norwegian government used evidence on dietary habits, on prevalence of obesity and overweight, surveys on media use and media habits among youth, as well as the WHO Recommendations in the process of developing their proposed legislation. The legislation was very well argued for, which also justified why it was needed to implement stronger regulation of marketing of unhealthy foods to all children under the age of 18.”***

Kaja Lund-Iversen, Senior Food and Nutrition Policy Adviser, Norwegian Consumer Council.

### Carefully consider local context

- Understand the country’s regulatory process and current marketing environment, including the digital ecosystem.
- Have a thorough understanding of the country’s domestic, regional and international obligations both in relation to child rights but also trade and investment requirements.

### Be strategic

- Governments must lead the policy process in order to counter industry influence. It is a government’s responsibility to protect and promote the health of its citizens, including safeguarding against conflicts of interest in the public-health policy process.
- Governments must have their own established agenda before involving external stakeholders, so that the principles of the marketing restrictions that they want to develop are in place prior to opening dialogue with industry and other stakeholders about specific format and technical details of the system.
- Engage not just with the government department responsible for the regulatory process but also with other departments that can support these efforts.

In the **UK**, the Department of Health and Social Care and the Department of Digital, Media, Culture and Sport jointly lead the policy development process relating to new food marketing restrictions.(45, 46)



- Adopt a transparent approach to stakeholder engagement to reduce any pressure or lobbying. Publish online any correspondence received on the matter from external parties and any meeting notes to allow the public to see the full political process.
- Press releases and media messages should be consistent, brief and outline the main tenets of the marketing restrictions.



***“It’s important to have civil society involved. In Portugal, for example, the Portuguese National Association for Consumer Protection are very active. They made a lot of pressure on the government; it is important.” (sic)***

Maria João Gregório, Director-General of Health, National Programme for the Promotion of Healthy Eating, Portugal.



***“It’s important to have this topic alive in the media. The media have a lot of power to influence politicians. In Portugal, it is very clear. Sometimes it influences, a lot, the political decisions.” (sic)***

Maria João Gregório, Director-General of Health, National Programme for the Promotion of Healthy Eating, Portugal.



***“In Chile, we invited international and national members of the scientific community to a big event, for them to validate our proposal.”***

Senator Guido Girardi, Congressman, Chile.



## Develop a broad base of support

- Map key actors from the beginning and decide how and when best to engage them.
- Engage the research community to help obtain robust evidence.
- Engage technical teams of relevant groups beyond the health sector (for example digital, child rights, privacy).
- Where appropriate, engage the media to ensure the marketing restrictions stay on the public agenda.



***“Senator Guido Girardi and leading academic Ricardo Uauy championed the policy. Both of them talked with many people, to garner support for the policy. Also, in the Ministry of Health, the authorities were very important and also the technical team that worked on the arguments for implementing the law and worked on the details of the law, and the regulation to implement the law. I think that these groups, the political group and the technical team to talk with stakeholders, were crucial.”***

Dr Lorena Rodriguez Osiac, Assistant Professor, Public Health Institute of the University of Chile.



## Scrutinise the policy design

- Ensure that the policy design meets the overall objectives and that these are feasible.
- Scrutinise the policy design from industry's perspective and from the viewpoint of those responsible for implementing the policy. Locate any loopholes, correct them, and make the policy clear and enforceable.
- Be consistent with the definitions of the foods to be included in the regulation, using a nutrient profile model.
- Consider whether the policy meets the country's international obligations to protect the rights of the child.



***“You need to be prepared to counter industry arguments and to face this political and economic power from the industries that profit from marketing activities. You need to have important actors that know how the industries involved in the process act. You need to be aware that you’re going to interfere in different industries, not only the food and beverage industry, for example the advertising industry.”***

Camila Maranhã P. Carvalho, ACT Health Promotion and Fluminense Federal University, Brazil.

## Be prepared for push back

- Stick with three or four key messages (on the aim of and means to implement the policy), using a simple and consistent format throughout all communications.
- It is a government's role to protect the population's health and the rights of the child, and this framing can be used to rebut the arguments that obesity and food consumption are a matter of personal responsibility and not a place for governments to intervene.
- Engage people with soft skills who have the capacity to negotiate and to convince others who have the ability to protect children from the exposure and power of HFSS marketing.
- Use the overwhelming evidence and WHO guidance, the CRC and international calls for marketing restrictions to galvanise efforts.



## 5. Case studies

The implementation of health policies to prevent and control NCDs is a political process. The circumstances and series of events that lead to the successful implementation of a marketing restriction are context specific and involve many different factors.

There are many theories of the policy process that help explain how certain policies make it onto the political agenda and are implemented. Marketing restrictions to date have weaknesses, but an exploration of two different case studies, Chile and Norway, can help governments understand the motivation, enablers, challenges and weaknesses of different political processes. These examples include both mandatory and voluntary regulations.



### Chile

#### Law of Nutritional Composition of Food and Advertising

##### Motivations

- Increased supply, demand and consumption of processed and ultra-processed foods.
- High prevalence of overweight and obesity in the population, especially childhood obesity.
- High prevalence of diet-related NCDs (such as type 2 diabetes, cancer and cardiovascular diseases) and associated healthcare costs and indirect costs.

##### Enablers

- Active support from Parliament, the Ministry of Health, academic groups and the President to urgently address increases in diet-related NCD prevalence.
- Ministry of Health and academic groups' commitment to advocate for and compile evidence supporting regulatory measures on marketing foods to children, new front-of-pack labelling, and for school sales restrictions simultaneously.
- Influential policy leadership (Senator Guido Girard) and academic support (Prof Ricardo Uauy).
- A group of scientific and media experts to support the design of the regulation (such as to define age, nutrient profile and marketing techniques to be covered.)
- Policy synergies between front-of-pack labelling and marketing restriction: foods carrying warning signs are the same products that cannot be publicised and promoted to children under 14 and that cannot be sold at day care and in schools.

- Gradual implementation process, which gave time to food producers either to adapt their food and beverage content (to avoid the regulation) or their marketing strategies (if regulated).
- Involvement of the Ministries of Health, Education, Economy, Treasury, Social Development, Agriculture and Foreign Affairs throughout the process.
- Involvement of other governmental offices was also critical in defining indicators of compliance (such as The National Institute of Industrial Property, The National Council of Television and the National Consumers Service).

### Challenges

- Industry opposition to the nutrient profile (units (per 100g or 100ml), limits by food categories, etc) used in the regulation.
- Operationalisation of marketing definitions, particularly ‘child-directed advertising’. The regulation included a comprehensive list of examples of what was considered a child-directed strategy; however, the dynamic nature of marketing is a challenge for assessing compliance.
- Industry lobbying to stop the law and its implementation.

### Weaknesses

- The regulation does not cover marketing directed to children older than 13 or higher-education settings such as universities.
- Internet, mobile apps, and social media food marketing is difficult to monitor and enforce.

## Norway

### Code of Marketing of Food and Drink Aimed at Children.

#### Motivations

- Several factors influenced the Norwegian government’s decision to investigate updating the existing marketing legislation with regard to marketing of foods and non-alcoholic beverages to children:
  - Between 2006 and 2012, Norway led the advocacy for marketing restrictions at the UN level. After convening a meeting for the WHO in 2006, Norway’s delegation tabled the need for countries to implement marketing restrictions at the 2007 World Health Assembly.
  - Norway was the Chair and Secretariat for the WHO European Network on Marketing to Children from 2008 to 2016.
  - Commitments made by the Norwegian government and other Member States at the 2010 and 2012 World Health Assemblies were a key motivation to move the issue forward in the domestic policy agenda and improve national marketing legislation (encompassed by the Broadcasting Act, the Marketing Act, the Food Law and the Education Acts).
  - Strong evidence on dietary habits, on prevalence of nutrition challenges and overweight, and surveys on media use and media habits among adolescents.



## Enablers

- Marketing to children in broadcast media has been regulated in the Broadcasting Act since 1992. The Marketing Act 2009 has a designated chapter on the protection of children. ('Children' is defined as minors under the age of 18.)
- Marketing restrictions were on the political agenda since 2007, opening up opportunities to discuss the improvement of marketing restrictions.
- After the 2010 World Health Assembly, a National Committee representing the Ministry of Health and Care Services and the Ministry of Children and Family Affairs, as well as three public bodies, was established to consider the imposition of additional restrictions on the marketing of food and beverages aimed at children and young people in Norway.
- Norway developed its own nutrition profile model that also served as a model for the WHO/Europe nutrient profile model.

## Challenges

- The introduction of strengthened marketing legislation, with a proposed new regulation under the Food Law, met strong resistance from the food industry.
- After two public hearings in 2012 and 2013, with responses from both national and international organisations, the government agreed on an industry-led self-regulation initiative in 2013 due to industry pressure.
- The age-limit of the industry-led code of marketing was reduced to 13, down from 18 and 15 in the proposed legislative regulations.
- The enforcement and complaint mechanism is not well known to the public and is difficult for children to access.

## Weaknesses

- The protection of teenagers is especially weak, as the industry-led code protects children only up to 13 years old.
- Digital marketing of HFSS products aimed at youth is widespread, and robust monitoring systems need to be developed.
- Marketing techniques such as packaging, shelf location and sponsorships have been excluded from the code.
- The code only covers marketing 'directed to children' and does not cover marketing to which children are exposed.



## 6. Conclusions

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There is overwhelming international consensus calling for marketing restrictions to be implemented. Protecting children from harmful marketing practices is a human rights issue: governments that are a party to the CRC have a legal obligation to protect, respect and fulfil children's right to health. Experts agree that stricter regulatory measures are required urgently to combat the increasingly sophisticated marketing techniques that are targeted at children to increase their preference and consumption of harmful products, including HFSS food and beverages.

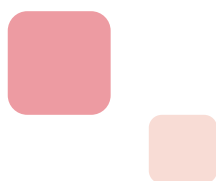
Robust policy design is crucial to ensure marketing restrictions can withstand strong opposition. Designing marketing restrictions based on lessons learned from other countries and international consensus, using the best available evidence and carefully adapted to the context, can increase the chance of successful implementation.

Governments seeking to implement marketing restrictions should:

- **Consider the national context.**
- **Build a strong evidence base.**
- **Set clear and specific policy objectives.**
- **Consider their international, regional, and domestic legal obligations, including commitments under trade and investment law.**
- **Carefully consider the design of the policy.**
- **Implement robust and transparent governance mechanisms to manage stakeholder engagement and potential conflicts of interest.**
- **Integrate monitoring and evaluation early on in the policy development process.**
- **Be prepared at every step along the way to defend the marketing restriction from opposition.**

Common barriers and challenges exist to the development and implementation of marketing restrictions that are experienced by countries around the world. These are often the result of opposition from industry, including the use of common tactics used to challenge marketing restrictions, that can be categorised into four main types: delay, divide, deflect and deny. Sharing lessons learned from these experiences is extremely useful to other countries seeking to implement marketing restrictions, as well as other public health nutrition policies.

Evidence on effectiveness of policies from other jurisdictions shows that a government-led mandatory marketing restriction that protects children up to age 18 years, includes all forms of marketing to which they are exposed, and that uses a nutrient profile model to define which products are in scope, is the most effective way to achieve a robustly designed marketing restriction, in line with the *WHO Recommendations*.





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# BUILDING MOMENTUM: LESSONS ON IMPLEMENTING ROBUST RESTRICTIONS OF FOOD & NON-ALCOHOLIC BEVERAGE MARKETING TO CHILDREN



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