

Digital marketing of food: Considerations for European policymakers

"There is unequivocal evidence that childhood obesity is influenced by marketing of foods and non-alcoholic beverages high in saturated fat, salt and/or free sugars" – WHO Euro, 2018¹

The present briefing has been written to support policymakers, civil society organisations (CSOs) and other stakeholders with the planning and implementation of regulations on the digital marketing of food. It supplements the evidence on food marketing provided by systematic reviews, cost studies, case studies and other resources and reports which have been compiled in the World Obesity Federation's policy dossier, available [here](#); a [webinar](#) hosted by World Obesity held in November 2018; and other reports that have been published on the topic. It presents a summary of the evidence highlighting the need to implement marketing restrictions, and specifically highlights the need to broaden efforts from TV towards a more comprehensive approach on the different forms of digital marketing. This briefing provides an overview of a number of considerations that will support the planning of digital marketing regulations, and showcases some stories from Europe in the form of case studies. More information can be found at <https://www.worldobesity.org/resources/policy-dossiers/pd-2>

INTRODUCTION

Marketing and advertising of high in fat, sugar and salt (HFSS) foods have been recognised as a risk for obesity,^{1,2} and thus restricting marketing of these foods has been identified as a policy priority.

In 2010, the World Health Organization (WHO) published a set of recommendations on the marketing of foods and non-alcoholic beverages to support governments in reducing the impact that marketing of unhealthy foods and drinks has on children.³ In addition, marketing regulations have also been recognised as a policy priority in several government Action Plans including the *EU Action Plan on Childhood Obesity 2014-2020*,⁴ the *European Food and Nutrition Action Plan 2015-2020*⁵ and the *Report of the Commission on Ending Childhood Obesity*.⁶

Definition: "Marketing can be described as any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product service."³

In 2009, food marketers spent an estimated \$633 million on youth-directed TV in the USA.⁷ In the UK, advertising spending by the top 18 national brands exceeded £143 million on advertising in 2016, corresponding to around 27.5 times more the annual government's spending budget on healthy eating campaigns.⁸

Marketing serves as an important tactic to engage customers, push them to develop brand preference and, consequently, boost their sales. Through marketing, companies are able to create a unique identity for their product and gain the trust of their customers towards a specific

product.⁹ The increased availability of processed foods and beverages has amplified manufacturers' marketing efforts to ensure brand and product differentiation from their competitors.

Marketing regulations have been identified as cost-effective policies. A study conducted by Cecchini et al. highlighted that both food advertising to children and mass media health promotion campaigns had positive cost-effectiveness ratios and predicted to be cost-saving in multiple countries.¹⁰ Additionally, Brown et al. conducted a study modelling the impact of the implementation of a 9:30pm watershed for the advertising of HFSS foods for children under 16 years old.¹¹ In addition to being cost-effective, health benefits appeared to be greater among children living in the most disadvantaged areas.¹¹ Marketing regulations therefore have the capacity to have a significant societal impact.

IMPACT OF MARKETING

Children are particularly vulnerable to marketing as they often lack understanding of persuasive intent. Marketers will consistently put forward the positive attributes of a product while withholding negative ones. They also often fail to recognise that marketing is an attempt to sell them something.¹² In addition, children often struggle to recognise advertising, a problem which is becoming particularly pertinent in the digital world where marketing is much more embedded into other content than is the case with TV.¹³

Children are preferentially targeted by companies as they are the future consumers and influence parents' purchase decision through 'pester power'.^{14,15,16} Previously, studies looking at the impact of marketing of HFSS foods often studied children aged 2-11, which supported regulations for children under the age of 12.¹⁷ However, teenagers are also susceptible to advertising and are more likely to take risks and to adopt media and brands as social identity. Furthermore, the United Nations Convention on the Rights of the Child identifies children as any individual below the age of 18 years, and WHO as any individual below the age of 19 years.^{18,19} Regulations on digital marketing should therefore be expanded to older children as well.

As shown in figure 1, marketing of unhealthy commodities has a range of impacts, including on awareness, attitudes, preferences, choice and consumption patterns.

DIGITAL MARKETING

The impact of food marketing on television (TV) has been studied extensively. TV has been identified as the most popular promotional channel and HFSS foods as the most common categories of food promoted to children.^{20,21} Most countries' existing regulations are limited to broadcast media and children-directed programmes only. While TV remains an important marketing medium, there has been a rise in digital marketing through increased usage of mobile phones and the Internet, especially among children between 12 and 15 years old.^{22,23}

Figure 1 – Impact of marketing



As highlighted through the evidence compiled in the [policy dossier](#) as well as in the [webinar](#), digital marketing is even more sophisticated and impactful than traditional forms of marketing.^{31,23} Both the content and the form of digital advertising have the ability to “seamlessly integrate advertising.”¹⁵ Online marketing and advertising can be tailored based on one of two criteria:

1. The content that a user sees on a website, known as “*contextual advertising*.”¹
2. Characteristics and preferences of individual users, known as “*online behavioural advertising*.”¹

General Data Protection Regulation (GDPR): “The aim of the GDPR is to protect all EU citizens from privacy and data breaches in today’s data-driven world. The GDPR not only applies to organisations located within the EU but also applies to organisations located outside of the EU if they offer goods or services to, or monitor the behaviour or, EU data subjects. It applies to all companies processing and holding the personal data of subjects residing in the European Union, regardless of the company’s location.”³²

Both contextual and online behavioural advertising are based on the collection of personal data from users, regardless of their age. Despite a recent update of the General Data Protection Regulation (GDPR), important loopholes remain. The GDPR states that “children’s personal data merits specific protection, which should in particular apply to the use of their data for marketing purposes or creating personality or user profiles.”³³ While it acknowledges children’s vulnerability, the GDPR does not prevent the collection and use of children’s personal data.

EXAMPLES OF DIGITAL MARKETING

In the past, parents were able to have some control over their children’s exposure to unhealthy products by restricting and controlling their TV viewing time. However, today a majority of young people use the Internet in some way, including social media platforms such as Instagram and Facebook, phone applications, and playing online games, and it is harder for parents to control and limit children’s exposure to marketing messages. While children should have the right to engage with digital media safely, studies have shown that parents may be unaware of the marketing of HFSS foods, and the broad array of online strategies used.^{1,34,35} Figure 2 highlights the impact of digital marketing exposure on the consumption of HFSS foods.

Given the ability for digital marketing to be so targeted to the user, parents are often unaware of the marketing their children are exposed to, and many fail to recognise more subtle advertising techniques.³⁶ These include the use of brand mascots and media characters, advergames, text messaging, social media, online advertising placement, mobile applications and food company websites, among others.

WORLD OBESITY

Figure 2 – Examples of digital marketing techniques

Image sources: <https://www.marcodegroen.com/how-social-media-works-for-restaurant-and-bars/>; <https://www.thedrum.com/news/2016/03/31/1982-reese-s-pieces-snags-product-placement-deal-et>; <http://www.happymeal.com/>



Food promotion through **social media** is now a popular marketing technique.³⁷ Social media marketing is particularly powerful as it uses users' data to showcase targeted ads. In addition to making use of demographic data, marketers also use viewers' preferences, which in turn increases consumers' vulnerability.³⁸

Product placement involves "incorporating brands in movies in return for money or promotional support."¹⁵ The image on the right portrays a scene of the famous movie *E.T: The Extra-Terrestrial*, during which Reese's Pieces is used as a pivotal accessory in the movie. This strategy is very powerful as it implicitly influences children's preferences, usually without them being explicitly aware of their exposure to the advertising.¹⁷



Advergaming is "the practice of using games, particularly Web-based games, to promote an organisation's brand or product."³⁹ A study conducted in Australia revealed that 28.6% of websites contained advergaming.⁴⁰ Most of these websites were for HFSS foods.⁴⁰

Figure 3 – Effects of digital marketing on consumption
Source: adapted from Kelly B et al.¹⁶



STATE OF PLAY IN EUROPE

Of the 53 countries in WHO European region, 28 have reported that they have taken steps to limit marketing of HFSS foods to children, according to WHO's report titled *Evaluating the Implementation of the WHO Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children*.⁴¹ Despite a number of countries having marketing regulations towards HFSS foods, only five specifically include digital marketing: the UK, Ireland, Norway, Denmark and Spain. In addition to government-initiated regulations, some countries additionally have voluntary pledges such as the EU Pledge, an industry-led voluntary commitment which was recently updated to include websites and advergames.⁴²

Types of marketing regulations⁴³

Government-initiated regulations

Statutory regulations: These are "texts enshrined in laws or statutes, or rules designed to fill in the details of the broad concepts mandated by legislation."⁴⁴ A study conducted by Kovic et al. found that this was the most effective form of regulation to reduce exposure to child-targeted HFSS food marketing.⁴⁵

Non-statutory government guidelines: Guidelines have the same purpose as statutory regulations, but are not enshrined in, or mandated by, law.

Self-regulations: These are "regulations put in place by a self-regulatory system whereby industry actively participates in, and is responsible for, its own regulation."⁴⁴

Industry-initiated regulations

Voluntary pledges: These are non-obligatory measures offered by individual companies.

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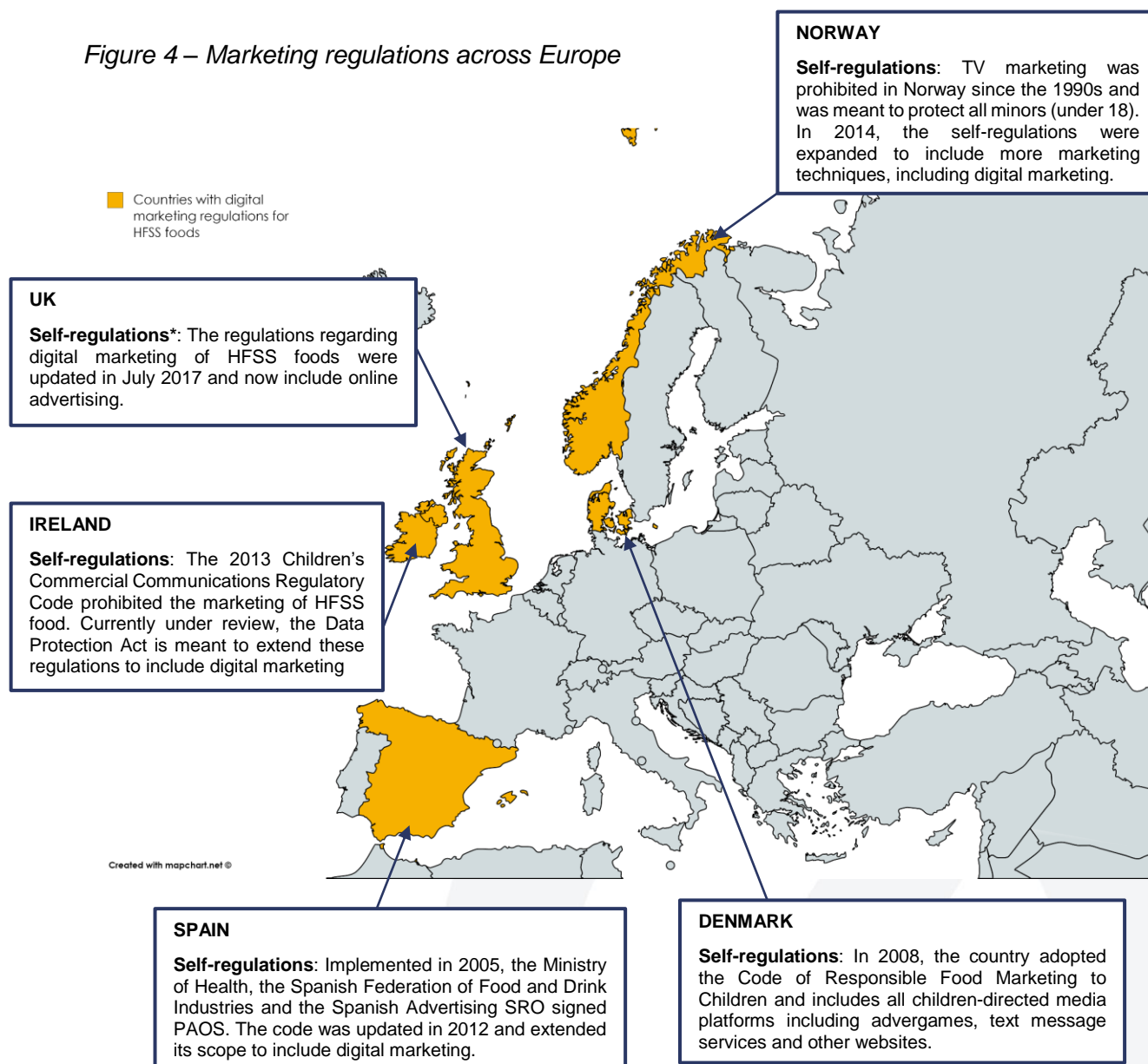
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Figure 4 – Marketing regulations across Europe



*In 2007, the country introduced legally binding statutory regulations for broadcast media.

KEY CONSIDERATIONS FOR DIGITAL MARKETING REGULATIONS

In this section, we highlight a series of considerations for policymakers, CSOs and other stakeholders when implementing digital marketing regulations.

1. **Designing digital marketing regulations:** Figure 5 shows some of the key questions to address when developing digital marketing regulations. It is based on the World Obesity's policy dossier and WHO's *Evaluating the Implementation of the WHO Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children*.⁴¹

2. **Consider the key drivers of digital marketing:** As identified by UNICEF, there are four primary interrelated drivers of digital marketing: a shift from increased usage of digital versus broadcast media, increased availability of connected devices (i.e. smartphones), compilation of data and development of complex and precise algorithms based on users' previous online preferences.⁴⁶
3. **Actors in the digital marketing sphere:** A number of platforms are used in digital marketing, implying the need to consult with a variety of stakeholders to ensure the efficient implementation of regulations. These include advertisers, advertising agencies, data companies, publishers, advertising networks, developers, as well as governments, CSOs and parents.⁴⁶
4. **Adapt to the changing landscape:** Despite existing regulations regarding marketing through TV, the emergence of new forms of marketing remains largely unaddressed.⁴⁶
5. **Adopt a child's rights approach:** Article 24 of the United Nations Convention on the Rights of Child mandates States Parties to respect, protect and fulfil the child's right to the highest attainable standard of health.¹⁸ Consequently, it is the duty of states to do more to protect children from unhealthy food marketing. Being mindful of the best interests of the child should be a primary consideration at all time during the elaboration of digital marketing policies. Ireland is one of the EU countries that recently adopted such an approach. The country uses the transposition of the GDPR directive into their own Data Protection Act published in February 2018 and used it as an opportunity to get in protection for children.
6. **Cross-border collaboration:** The evolution of the digital landscape is outpacing the one of the legal landscape.⁴⁶ Currently, European legal regulations do not go beyond the geographical barriers. Member States should cooperate to reduce the impact of cross-border marketing to secure the positive impact of national regulation policies.⁴⁷
7. **Multi-sectoral collaboration:** Digital marketing perfectly exemplifies the need to link different public health silos to ensure inter-sectoral cooperation and highlights the need to have a joint public health action to address the common challenges of digital marketing to children.
8. **Ensure alignment between GDPR and national regulations:** The GDPR contains requirements regarding children's data and states that parental consent is required for all youth under 16 years old. However, Member States have the possibility to lower this age threshold.⁴⁸ Additionally, careful attention should be brought to ensure the appropriate use of legal terms in the formulation of regulations. Ireland is a good example of a country that used the GDPR in order to develop the Data Protection Act, focused on protecting children from the effects of marketing and profiling.⁴⁹ Governments should ensure to comply with the general GDPR regulations and tighter regulations need to be defined surrounding the use of children's personal data.

Figure 5 – Designing digital marketing regulations



CASE STUDIES

Across Europe, regulations for food marketing on TV and the Internet are inconsistent, some countries having statutory regulations and others only being controlled through self-regulation or voluntary measures such as the EU Pledge.⁴² Below are some case studies illustrating different forms of regulations implemented and lessons that can be learned .

United Kingdom

Why are regulations needed?

About a third of children are obese or overweight by the time they finish primary school.⁵² Nationally, almost 30 times more is spent on brands advertising than on healthy eating campaigns.⁵³



Description of regulations

In 2007, Ofcom implemented a ban on the marketing of foods HFSS during children's viewing time.⁵⁴ The UK became the first country in the European region to implement legally binding marketing regulations targeting the marketing of foods HFSS to children.⁴¹ There are two main advertising codes: the CAP non-broadcast code and the CAP broadcast code.⁵⁵ The regulations saw a significant change in July 2017 when the Committee of Advertising Practice Code was extended to include online advertising. The new rules, applied to all non-broadcast marketing targeting children under the age of sixteen include:⁵⁶

- Ban advertising on HFSS food or drink products in **traditional and online children's media**, from magazines and cinema to social media and advergames.
- Ads that **directly or indirectly** (branding that is synonymous with an HFSS product) **promote an HFSS product** cannot appear in children's media.
- Ads for HFSS products cannot appear in other media where **children make up over 25% of the audience**.

Impact

According to the Ofcom report, children saw 37% less advertising for foods HFSS in 2009 following the TV advertising regulations, compared to 2005.⁵⁴ Furthermore, this had a substantial impact on younger children aged four to nine years old who viewed 52% less advertisements for foods HFSS.⁵⁴ However, a study conducted by Adams and al. on the impact of restrictions related to the advertising of HFSS foods emphasises the perverse tactics employed by marketers.⁵⁷ The results suggest that "rather than reducing HFSS advertising, advertisers may simply have responded to the schedule restriction [...] by moving when and on what channels HFSS advertisements were broadcasted."⁵⁷

What could be improved?

It seems that the decline in advertising of HFSS foods to children was mainly a consequence of the reduction during children's airtime.⁴¹ However, a majority of children's viewing is spent outside of children's airtime. This highlights the need to expand the scope of regulations to more accurately reflect children's viewing patterns, and ensure there is a greater reduction in children's exposure. In addition to restricting the marketing of HFSS products specifically during children-oriented timeslots, it is important for policymakers to acknowledge that they remain *exposed* to such advertising techniques. There is therefore an urgent need to expand and broaden the scope of the regulations to ensure children's protection towards unexpected exposure.

Ireland

Why are regulations needed?

One in four children in Ireland is affected by overweight or obesity.⁵⁸ One-third of children-directed food advertising is for energy-dense nutrient poor foods and beverages.¹⁷ Despite existing restrictions on broadcast marketing of HFSS foods, no regulations are in place to respond to digital marketing.



Description of regulations

Published in February 2018, the country uses the transposition of the GDPR directive into their own Data Protection Act. The Data Protection Act, published in February 2018, is based off on the GDPR directive and was developed as an opportunity to protect children from the direct effects of marketing and profiling. The aim of this bill was to increase the effect of the GDPR. The inclusion of section 30 was developed as an opportunity to protect children from the direct effects of marketing and profiling:

“It shall be an offence under this Act for any company or corporate body to process the personal data of a child as defined by section 29 for the purposes of direct marketing, profiling or micro-targeting. Such an offence shall be punishable by an administrative fine under section 141.”⁴⁹

Impact

Given the many platforms and techniques on which digital marketing operates, it is impossible to rely solely on parents to ensure the protection of their children in light of the aggressive marketing techniques employed. The inclusion of section 30 highlights that companies will now have an onus placed upon them to ensure that they are not profiling child for marketing purposes. The publication of the Data Protection Act intensifies the attention brought to the rights of children in the digital environment.

What could be improved?

Work is being done surrounding the wording of Section 30 of the Data Protection Act. From the perspective of the Department of Justice, the GDPR and Irish Constitution, issues remain around the use of the term “micro-targeting.” This term fails to be referred to in the Irish Domestic Law, and therefore it would be unconstitutional to create an offence towards something that has not been previously referred to.

The EU Pledge

Why are regulations needed?

The WHO European Region is the most affected by NCDs, which account for 77% of the burden of disease and approximately 86% of premature mortality.⁵ According to the WHO European Childhood Obesity Surveillance Initiative, around one in three children aged six to nine is overweight or obese.⁵ Furthermore, as highlighted through the compiled evidence, most of the food advertised is for non-core HFSS products.



Description of regulations

Launched in December 2007, the EU Pledge is “a voluntary initiative by leading food and beverage companies to change food and beverage advertising to children under the age of twelve in the European Union.”⁵⁹ Two key components make up the Pledge:

1. “No advertising for food and beverage products to children under the age of twelve on TV, print and internet, except for products which fulfil common nutritional criteria”⁵⁹
2. “No communication related to products in primary schools, except where specifically requested by, or agreed with, the school administration for educational purposes.”⁵⁹

The Pledge has since then been extended to include radio, cinema, DVD/CD-ROM, direct marketing, product placement, interactive games, outdoor marketing, mobile and SMS marketing.⁴² Additionally, since January 1, 2015, the Pledge adopted harmonised nutrition criteria.⁶⁰

Impact

According the 2017 Monitoring Report, there was:⁶⁰

- 97.4% compliance for TV
- 99% compliance for websites
- 98% compliance for social media profiles

However, it is important to note that the compliance evaluations are done by “independent evaluators **on the request of the EU Pledge secretariat**”.⁶¹ Studies conducted in Germany and Spain highlight a lack of effectiveness of the EU Pledge, stressing that children remain highly exposed to commercials for HFSS products, implying that the Pledge criteria do not adequately protect children.^{43,62}

What could be improved?

Despite seemingly positive results in the monitoring reports and some improvements since the reviewed commitments, the EU Pledge remains a voluntary initiative which not all companies have signed up to. This means companies who have not signed up are in an advantageous position compared to their competitors who have. Companies are free to join but also would not receive any sanction for leaving the scheme or not joining. In addition, while targeting a broad range of marketing techniques, the focus age group remains very limited given the increasing evidence regarding the impact of food marketing on teenagers.

CONCLUSION

The aim of this policy brief is to provide guidance to policymakers, CSOs and other key stakeholders to ensure the successful implementation of digital marketing regulations. It is complementary to the information available through the World Obesity's [policy dossier](#) and [webinar](#). The compiled evidence highlights the need to implement statutory marketing regulations and increases the scope of current regulations to include digital marketing techniques as well as broaden the target age group. Overall, the evidence provided through the systematic reviews, cost studies, case studies and reports on the effects of marketing of unhealthy commodities supports that we need greater action and states must do more to protect children's rights to achieve healthier food environments.

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ACKNOWLEDGMENTS

Written by Hannah Brinsden and Margot Neveux, with support from Emma Boyland, Kathryn Reilly, Malcolm Clark, Sandra Radö's Krnel and Tim Lobstein.

The production of this Briefing Paper has received support from an operating grant under the European Union's 3rd Health Programme. The European Commission is not responsible for any use that may be made of this document.

