



## Meeting Minutes

### Meeting Details

**Meeting name:** Workshop on Food Marketing Codes of Practices—Process and Challenges

**Organizer:** WP6 Best-ReMaP (DoH, Ireland)

**Date and time:** March 16<sup>th</sup>, 2022 from 10:30 to 14:00 hours (CET)

**Meeting location:** Zoom

### List of attendees

Aida Filipović Hadžiomerađić	Haidi Kanamäe	Margarida Bica	Sara Castelo
Aida Vilic	Hanna Alajõe	Marta Gaspar	Sayena Asadi
Amandine Garde	Heli Kuusipalo	Meropi Kontogianni	Sille Pihlak
Ana Conterras Navarro	Ieva Gudavičienė	Michael Lee	Stefanie Vandevijvere
Ana Sarasa-Renedo	Ingrid Sotlar	Milena Vasic	Stela Stojisavljević
Anne-Juliette Serry	Ivan Perry	Mimi Tatlow-Golden	Tiina Sirkjärvi
Bruno Vicente	Janas Harrington	Mojca Gabrijelčič	Tom James
Clarissa Leydon	Jelena Gudelj Rakic	Morgan Obura	Ursula O'Dwyer
Dijana Manigoda	Jelena Niškanović	Orestis Varkarolis	Venetia Vraila
Declan McLoughlin	Karin Schindler	Päivi Mäki	Wayne Anderson
Dragana Stojisavljevic	Lauren O'Mahony	Petra Večko	
Eleftheria Papachristou	Leonor Pinto	Pinja Seppänen	
Elisa Salas	Magdalena Muc da Encarnação	Roxane Berjaoui	
Eva Grammatikaki	Manon Egnell	Sally Griffin	



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## Notes

Topic of discussion	Action item
<p><b>Introduction to workshop and Welcome from Healthy Ireland and University College Cork</b></p> <p><b>Ursula O'Dwyer</b> (DoH, Ireland) welcomed the attendees of the workshop.</p> <p><b>Tom James</b> (Healthy Ireland) described the main aspects of Healthy Ireland, a government-led initiative that seeks to address the wider social, commercial, and environmental factors that impact on health and wellbeing. In addition, the objective of the workshop was mentioned: to support in the development of (food marketing) Codes of Practice and provide a platform for discussion on the draft Technical Guidance for Codes of Practice circulated (to Task 5 partners) last week.</p> <p><b>Ivan Perry</b> (UCC, Ireland) contextualised the organisation of the workshop as part of Task 6.5 of the Joint Action Best-ReMaP WP6 and expressed solidarity for the people affected by the Ukraine invasion.</p>	<p>N/A</p>
<p><b>Regulatory Codes &amp; Voluntary Codes in Ireland</b></p> <p><b>Declan McLoughlin</b> (BAI) presented a brief history of the development of statutory Codes on HFSS food advertising in Ireland. Over a 3-year period of in-depth consultation (2009-2012), the regulator (BAI) engaged with public health bodies. The initial set of rules on HFSS food advertising adopted the UK NPM, with strong opposition amongst stakeholders. In response, BAI convened an expert group of relevant health and food authorities (DoH, HSE, FSAI, safefood) to assess the suitability of the UK NPM. In addition, food scientists and advertising experts reviewed the draft rules before these came into force in 2013. Since its implementation, there has been one evaluation, published in 2020. The evaluation showed evidence of a shift in children's television viewing patterns. Following the passing of new legislation (expected in the second half of 2022), the marketing rules will be updated by the new Media Commission (which will replace the BAI). The rules will affect wider regulatory issues around social media, including video-sharing</p>	<p>N/A</p>





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platforms, as well as traditional linear and non linear media services.

**Wayne Anderson** (FSAI) mentioned points to consider when developing a Marketing Code. Start by establishing a working group led by a well-connected Chair and that is constituted by government officials, food experts, regulators of the advertising industry, and the food industry itself. Given the different backgrounds and different opinions, it is critical to level the knowledge-base by circulating background documents. For example, for the development of a [voluntary Code on non-broadcast media advertising and marketing of food and non-alcoholic beverages, including sponsorship and retail product placement](#), representatives from the Irish Department of Health, the Department of Agriculture, the Department of Youth Affairs, safefood, the Food Safety Authority of Ireland, the Broadcasting Authority of Ireland, the Advertising Standards Authority for Ireland, Retail Ireland, Food Drink Ireland, and the Irish Beverage Council, met 18 times between September 2015 and April 2017. The documents shared amongst the expert group included the WHO Set of Recommendations, the EU Pledge and the Healthy Weight for Ireland Action Plan 2016-2025.

**Michael Lee** (ASAI) highlighted the contribution of the Advertising Standards Authority for Ireland to the expert group mentioned by Wayne Anderson. ASAI had worked with the DoH in relation to an alcohol marketing communications monitoring body which placed thresholds and rules on alcohol advertising, looking at the protection of children. More recently, in 2021, as regulator of the advertising industry, the ASAI introduced rules on HFSS food marketing, adopting the UK NPM, in agreement with the nutrient criteria used by the BAI. One of the challenges related to the use of a NPM is the need to provide technical guidance to small-sized producers in particular. This challenge has been addressed by including a dietitian in the working group. Other challenges mentioned: programmatic advertising (where management of digital advertising is automated) and (online) compliance monitoring. ASAI, together with partners in Europe, is developing AI technologies to conduct a wide-scale online monitoring.

Discussion points from the Q&A session. **Karin Schindler** (MoH, Austria) asked if the online monitoring results are going to be shared to the public and relevant stakeholders. **Michael Lee** (ASAI) mentioned its in early stages, but it is certainly an area in which ASAI will invest heavily in the future. **Karin Schindler** highlighted transparency as the first



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<p>step to building trust. <b>Ursula O’Dwyer</b> (DoH, Ireland) shared that as part of the Task 4 of WP6, a monitoring framework with a focus on online and digital marketing is under development, with a workshop on the 9th of May.</p> <p><b>Mimi Tatlow-Golden</b> (Open University, UK) asked in the chat if the approach followed by ASAI to monitor online marketing is similar to the UK’s avatar-based approach? <b>Michael Lee</b> (ASAI) mentioned that the avatar has been designed in a way as to replicate the profile of a certain age category and that there are complexities in terms of managing these things appropriately.</p>	
<p><b>A toolkit to support the development and update of Codes of Conduct</b></p> <p><b>Eva Grammatikaki</b> (JRC) outlined the context for developing marketing restrictions to children, including global calls for action from the WHO, UNICEF and the Lancet Commission’s “A future for the worlds children”. In 2021, the EC published two calls for action to restrict marketing to children were Best-ReMaP is mentioned, emphasizing the importance of WP6 in the European context. <b>Ana Sarasa-Renedo</b> (JRC) explained the background work that led to the development of the JRC toolkit (based on the identification of all marketing codes on food, alcoholic beverages and non-alcoholic beverages) and provided an overview of the aspects that a code should consider. The assessment of the codes by JRC noted that 34.4% of all codes included nutrient compositional criteria and 39.3% of all codes had a system to address complaints. There are many grey areas in evaluation and monitoring. Best-ReMAP could address gaps or divergences by: strengthening codes in the EU context; protecting all children; definining nutritional criteria; developing monitoring toolds; building capacity at the national level; and coordinating action.</p>	N/A
<p><b>For a children’s rights-based approach to the regulation of food marketing in the EU</b></p> <p><b>Amandine Garde</b> (University of Liverpool, UK) reflected on the added value of a children’s rights-based approach (CRBA) to the regulation of food marketing by the EU through the AVMSD and by its Member States through its implementation. The three core elements of a human rights-based approach were defined: 1) grounded on international law and global or regional treaties and conventions; 2) recognition of rights to all people as right-holders, and</p>	To review the UN’s GPs and see how best to integrate into the draft Technical Guidance for Codes of Practice, considering the timeline— <a href="#">WP6 Irish Team</a>



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placement of the corresponding obligations on States as duty-bearers; 3) establishment of mechanisms to ensure that the rights of right-holders are realised and that duty-bearers are held accountable.

To integrate a CRBA into the development of food marketing Codes, the relevant rights that are implicated should be identified and it is also necessary to reflect on the obligation of States. Under international human rights treaties and conventions, States should adopt a preventive approach to health and regulate the commercial determinants of health, not least the marketing of unhealthy food. In addition, interpretation should be guided by the best available evidence. The UN Guiding Principles (GPs) on Business and Human Rights can contribute to the discussion on developing Codes of Conduct for food marketing to children. A CRBA to regulating unhealthy food marketing requires a broad definition of children (up to 18 years of age) and a comprehensive approach to media marketing restrictions: watershed from 6am to 11pm; ban of marketing of HFSS in digital media; ban in schools and other settings where children gather; end sponsorship by food brands of sports and cultural events, unless brands can prove that such sponsorship is not associated with unhealthy food; end use of marketing techniques appealing to children for the promotion of unhealthy food.

**Ivan Perry** (UCC, Ireland) shared that in 2012, Ireland enacted a significant children rights approach in the constitution following a national referendum which places an explicit responsibility on the State to protect and promote the rights to children. **Amandine Garde** further explained that, when children rights are explicitly mentioned in the constitution, the rights become more easily operationalised in jurisdictions.

### **Best practices in the implementation of marketing codes on unhealthy food to children**

**Ana Contreras Navarro** (UCC, Ireland) shared best practices identified in a review of food marketing Codes from Slovenia, Portugal and Ireland. The marketing Codes were compared to aspects described in the JRC toolkit. The term *elements of best practices* was chosen in place of *best practices* (BP), given that the EC SGPP criteria to identify BP is rigorous. The elements of BP in the marketing codes included: 1) protecting all children from birth to 18 years; 2) regulating all forms of marketing; 3) covering all relevant foods by using nutrient compositional criteria (the WHO Europe NPM); 4) fostering intersectoral collaboration; and 5) defining a robust monitoring and enforcement strategy

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with meaningful sanctions. Member States were invited to share reflections on the requirements for technical guidance to develop/update Codes, during the closed consultation or after the workshop.

### Structured workshop & Closed consultation

*Breakout Room 1, facilitated by Mimi Tatlow-Golden*

**Stefanie Vandevijvere** (Sciensano, Belgium) explained that, in Belgium, there are a number of Codes but they are very ineffective. In 2021, a working group was convened at the Superior Health Council and this group is preparing a detailed report on the evidence and putting forward recommendations on how to deal with restricting unhealthy food marketing to children. In September this year the working group will launch the report and engage with stakeholders around the implementation of the recommendations. Belgium has complexities due to the numerous media settings and nine health ministries, which leads to fragmentation. There is difficulty trying to determine where the jurisdiction sits—regional, federal, etc. This technical guidance document is timely and could help fine tune the recommendations that are included in the report.

**Haidi Kanamäe** (NIHD, Estonia) shared the current situation in Estonia regarding marketing codes to children. The Minister of Social Affairs and the National Institute for Health Development have prepared a guidance document with recommendations or aspects for the media sector to consider. At the moment this process has stopped due to the ongoing nutrient profiling process (with WP6), therefore the previous version needs to be revised. Key challenges are how to define different media, definitional challenges with regards to how to distinguish the advertising to children from adults, and also monitoring - how to protect the consumer (consumer rights). There are no resources for monitoring.

**Manon Egnell** (MoH FR, France) reflected that in France there are two different measures, one developed in 2018 to regulate marketing in public channels. However, it has been demonstrated in some reports from the Public Health agency, that restricting the advertising to children was not high on the agenda for public channels at the date of regulation. Therefore the measures have been shown to be ineffective. There are voluntary codes for private channels which focus on the promotion of healthier behaviours in children. A Charter was established last year and an evaluation

To follow up with each of the participating countries to support the development/update of food marketing Codes—[WP6 Irish Team](#).



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of the Charter's progress was made recently available to the MoH FR. For the time being, France is in the process of determining if the voluntary commitments are sufficient to protect children from the marketing of unhealthy foods.

**Leva Gudanavičienė** (LR SAM, Lithuania) contributed by sharing the experience of Lithuania. There is a law on public information which defines unhealthy foods, but the definition remains unclear. Guidance was provided for broadcasters to assist them in identifying which foods should not be advertised to children. The guidance focused on sugar, salt and saturated fat content. Trans fat is not so actionable as it is already under EU directive. The permissible amount for these nutrients of concern aligned with the guidance for the provision of foodstuff to children in educational institutions. This was decided to avoid confusion, but there are certain foods, such as cheese, that fall in between. This guidance has been available since January. There are a lot of Ministries involved, in addition to Health, such as Culture and a Commission which oversees all advertising. The Commission is currently monitoring progress on restricting unhealthy food advertising. The results are expected to be available in May and thereafter the next steps will be determined. This technical guidance document being developed will help with this.

**Ivan Perry** (UCC, Ireland) asked how to define children's advertising? There seems to be some confusion as to how to distinguish advertising to children separate to adults.

**Mimi Tatlow-Golden** (Open University, UK) referred to the EU Pledge which applies to advertising to children under 12 years of age. In advertisements that contain cartoons characters, the industry and the monitoring bodies may claim that the advertisement is targeted at parents, therefore the rules do not apply. Codes need to set out very clearly what has the power to influence children's attitudes, habits, and behaviours, rather than is it solely directed at children to the exclusion of adults.

**Ursula O'Dwyer** (DoH, Ireland) reflected on the debate around cheese (exempt from Irish Codes). A lesson learn from that experience is to be selective in the issues to champion. At the time, a focus on a watershed ban, instead of cheese, could have been considered. Cheese is of economic and cultural value, therefore it was exempt, except for a tagline at the bottom of the advertisement stating the appropriate daily serving size. The interpretation is important, with



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cheese there was only 1% of advertising and that was for cheese straws, which is not real cheese. But this focus on cheese took up so much time and resources.

*Breakout Room 2, facilitated by Ana Contreras Navarro*

**Sayena Asadi** (BMSGK, Austria) mentioned that, for Austria, a NPM was decided in May 2021 by the MoH National Nutrition Commission. It is voluntary to use. In regards to marketing regulation, there is a voluntary co-regulation in place owned by the Austrian Advertising Agency, which mentions HFSS products. The voluntary Code is not within their range of influence. With reference to the NPM developed by the MoH, its evaluation, established in the law, is in an early stage. In September this year, the first report will become available and the results will determine if the evaluation and reporting needs to be adapted. The MoH can only make recommendations for advertisers. There is a division of responsibility in Austria. The decisions around the audio-visual sector are placed in the Chancellery. There it is defined how exactly the evaluation and reporting should look like.

**Elisa Salas** (BMEL, Germany) represented the Federal Ministry of Food and Agriculture and joined the workshop as an observer. In Germany, there is a system of co-regulation, with the main focus being on self-regulation. Last year, the self-regulatory rules were updated, however, the advertisement of HFSS food is still an issue in Germany when directed to children. There is a coalition agreement where the government parties stated that this kind of advertising must end, but the wording of the coalition agreement is very open. This affects the scope, the scale, and the legal instrument. There are technical and legal questions to be answered in Germany right now.

**Aida Filipović Hadžiomerađić** (PHI-FBH, Bosnia and Herzegovina) shared the situation in Bosnia. The public health sector needs to get together to decide rules. The AVMSD has not been transposed as Bosnia is not an EU country. Some problems regarding to the monitoring of marketing to children have been identified.



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**Jelena Niškanović** (PHI-RS, Republic of Srpska) highlighted the opportunity to get some knowledge in the area of marketing of unhealthy food among children. This is a first orientational phase, need to do a lot of steps and a situation analysis to get some orientation about developing these Codes of Practice.

**Sille Pihlak** (MoSA, Estonia) is working in the public health department and shared the current situation in Estonia. The Media Services Act which transposes the AVMSD into national legislation was passed by parliament in February 2022. The Media Services Act says that broadcasters must develop self-regulation by the 1st of October, 2022. There is an agreement that the self-regulatory Code for broadcasters should follow national guidelines. The guidelines include a NPM. The guidelines have not been provided to broadcasters yet, because a harmonisation of the NPM is expected. At the same time, the Estonian Institute for Health Development is testing the NPM. Unfortunately, the time is getting really critical. There needs to be discussion to move forward in Estonia.

**Tiina Sirkjärvi** (THL, Finland) mentioned there is a recent study from Finland conducted by the research team at the National Institute of Health and Welfare with recommendations to restrict the marketing of unhealthy food to children.

**Venetia Vraila** (ICH, Greece) explained that there is a new law in Greece translocating the AVMSD into national legislation. However, Greece has not adopted a NPM. The law defined restrictions on what can be advertised and what cannot be advertised, considering the nutrient contents, and also places ban on marketing to children at certain times. The law became effective in June 2021. In an informal discussion with the national intersectoral working group, some of the participants were willing to adapt or promote the new guidelines, but it seems that the industry is reluctant to that because they believe that a NPM has many restrictions, so they did not show a big intention to comply with such a model.

**Amandine Garde** (University of Liverpool) participated in the chat: The AVMSD allows MS to adopt stricter measures than the very limited ones the directive imposes on MS and some MS have already done so as we have heard today. If States do place the best interest of the child as a primary consideration in policy making, this is precisely what they should be doing bearing in mind the lack of alignment of the AVMSD with the best available evidence. This is



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particularly so as the scope of the AVMSD is not comprehensive, only some media are covered, we know that children can only be protected from unhealthy food marketing if a comprehensive approach is adopted.

**Margarida Bica** (DGS-Portugal) mentioned this is a good opportunity to hear challenges and what countries can implement. Sharing experiences from Portugal, there was a lot of industry pressure when developing the law and when developing the NPM. It was a process that took a long time but the NPM took two months to develop. "The recommendations we already know but we are really looking forward to hearing more from your side". A Joint Action only survives if there is a collaborative space. In Portugal, the NPM could not include non-sugar sweeteners because the model said that the definition was HFSS, referring only to fat, sugars, and salt. Called to being extra careful in the way that we define things.

**Eva Grammatikaki** (JRC) added that there was a meeting with ERGA a few years back in November 2018, where participants were not fully aware before that meeting of why addressing food marketing was so important. There was not an understanding of why food marketing is important and so how complicated it is. A first step and maybe some support that the countries might need from those that have more experience would be (to identify) who they have to involve or who they have to reach, the ones that are dealing with public health, how can they find the people that they should try to convince about the importance of addressing food marketing. Try to find the key people to help in building this, because maybe it is overlooked, maybe is not something that someone is aware of.

### *Plenary session*

**Mimi Tatlow-Golden** (Open University, UK) thanked to colleagues across the countries for reflections on implementation on existing codes in Belgium, Estonia, France and Lithuania. The key issue is that some codes are available, and some are in development, so the WP is well timed. There's monitoring going on that will start to indicate whether these codes are having an impact and to what degree. Looking across the descriptions of the codes that exist it is fair to say that these are somewhat limited in their impact and potential for impact. So strong guidance on what codes need to cover for states will still be really valuable. This is not just a health issue. Belgium said there are 9 health ministers, and in general the challenges were around issues on how are we defining media, how to distinguish what is



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an add for a child from adult, how we define rules in relation to media or nutrients, above all how is the monitoring going to take place. Lots of encouragement.

**Ana Contreras Navarro** (UCC, Ireland) summarised challenges from country partners in the development and implementation of Codes, regarding who to talk to and who to persuade to adopt stricter rules on unhealthy food marketing to children. There are countries currently working on developing codes and this is a good moment to initiate this technical guidance process. Challenges related to finding the correct NPM and how to foster the coordination between different ministries were mentioned.

**Margarida** (DGS-Portugal) highlighted the importance of countries sharing experiences in terms of challenges and needs. Regarding the gaps, it is important to understand where are the gaps and to plan in advance. Marketing is progressing and evolving at a constant rhythm.

**Ana Contreras Navarro** (UCC, Ireland) welcomed comments on specific topics that participating countries would like to see addressed on the draft technical guidance document and encouraged submitting comments in writing.

### Closing remarks

**Ursula O'Dwyer** (DoH, Ireland) provided an overview of the next steps related to Task 6.5 and thanked everyone engaged in the workshop.

N/A



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