



Best-ReMaP

Healthy Food for a Healthy Future

D6.2

Technical Guidance for Codes of Practice to reduce unhealthy food marketing to children in EU Member States

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Abbreviations

ASAI	Advertising Standards Authority for Ireland
AVMSD	Audio-Visual Media Services Directive
BAI	Broadcasting Authority of Ireland
CCCC	Children's Commercial Communications Code
CRBA	Child Rights-Based Approach
CSR	Corporate Social Responsibility
EU	European Union
F2F	Farm to Fork
HFSS	High in Fat, Sugar and/or Salt
JA	Joint Action
JRC	Joint Research Centre (European Commission)
MS	Member States
NPM	Nutrient Profile Model
SGPP	Steering Group on health Promotion, disease Prevention and Management of Non-Communicable Diseases
SMART	Specific, Measurable, Achievable, Relevant and Time-bounded
SOK	Slovenian Advertising Code
UNCRC	United Nation's Convention on the Rights of the Child
UNICEF	United Nations Children's Fund
WHO	World Health Organization

Glossary

Term	Definition
Advertising	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. Advertising is only one form of marketing (Grammatikaki et al, 2019).
Best practice	A relevant policy or intervention implemented in a real life setting and which has been favourable assessed in terms of adequacy (ethics and evidence) and equity as well as effectiveness and efficiency related to process and outcomes. Other criteria are important for a successful transferability of the practice such as a clear definition of the context, sustainability, intersectorality and participation of stakeholders (EC SGPP).
Child	Every human being below the age of eighteen years old unless, under the law applicable to the child, majority is attained earlier (Garde et al, 2018).
Food environment	The interface that mediates people's food acquisition and consumption within the wider food system. It encompasses external dimensions such as the availability, prices, vendor and product properties, and promotional information; and personal dimensions such as the accessibility, affordability, convenience and desirability of food sources and products (Turner et al, 2018).
Marketing	Any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of products and services. It comprises anything that acts to advertise or otherwise promote a product or service (WHO, 2010).
Marketing code	Any set of comprehensive actions addressing marketing techniques, from national governments or industry associations, be it statutory legislation, voluntary self-regulation, or co-regulation (Grammatikaki et al, 2019).
Unhealthy food	Any food and beverage with excessive amounts of total fat, saturated fat, trans-fatty acids, free sugar and/or non-sugar sweeteners, and/or salt, that should not be permitted to be marketed to children as designated by the Nutrient Profile Model (Best-ReMaP, 2021)

1 Introduction

The European Commission (EC) has classified obesity as a chronic relapsing disease, which acts as a gateway to other non-communicable diseases (Burki, 2021). Globally, it poses a major public health challenge, one which has been exacerbated by the COVID-19 pandemic. In many European countries, 1 in 4 children is currently living with severe obesity (Spinelli et al, 2019). Childhood obesity cannot only result in physical discomfort, low self-esteem and discrimination, but in the long-term, in reduced average life span and earlier onset of chronic diseases. Food environments, which in turn influence dietary behaviours, are one of the key determinants of increased risk of obesity (Swinburn et al, 2019). In the first years of life, when constant learning is taking place, food preferences are also forming. Children are however exposed to unhealthy food marketing, the easy availability of processed and ultra-processed foods high in fat, sugar and/or salt (HFSS) either at home or at public institutions, where they spend a considerable amount of time.

1.1 The Joint Action Best-ReMaP

The Best-ReMaP Joint Action (JA) project is a three-year initiative (2020-2023) funded by the EC and by participating organisations. Across seven Work Packages (WP), 35 beneficiaries representing 24 European countries are collaborating on implementing pilot projects and generating practical lessons in the field of nutrition with special focus on children and adolescents to realise the project goals (<https://bestremap.eu/>).

The Best-ReMaP JA seeks to contribute to an improved quality of food supplied to citizens of Europe by adapting, replicating, and implementing effective health interventions, based on practices that have proven to work in the areas of:

- food reformulation (WP5),
- restrictions on food marketing (WP6), and
- public procurement of healthy food in public settings (WP7).

To achieve these goals, during its lifetime the Best-ReMaP project will contribute to European initiatives that seek to change the current food environment available for Europeans by:

- providing assistance to European Union (EU) Member States (MS) to produce a snapshot of food currently offered to consumers in European markets and, with this food snapshot methodology, offer an opportunity to monitor the impact of national regulations aimed at decreasing the salt, sugar and fat contents of processed food;
- creating the Food Information Database to ensure the sustainability of data collection on food reformulation at the EU and national levels and of monitoring trends in food reformulation;

- developing technical guidance for Codes of Practice on the marketing of unhealthy food to children, and a governance and monitoring framework;
- delivering a coordinated EU approach to reducing unhealthy food marketing to children and adolescents and to develop tools for coordinated monitoring of marketing, with a focus on digital marketing; and
- improving the quality of menus in the kitchens of public institutions by testing a prototype catalogue of food in the public procurement procedure, assuring transparent quality of the procured foods, and ensuring a more professional and principled procurement procedure.

Building on this work, the JA will support implementation, transfer and integration of the results, outcomes and recommendations of the Best-ReMaP WPs into national and EU level policies. Throughout the JA processes, the participatory engagement of EU and national stakeholders in the field will be prioritised.

1.2 Work Package 6: Reducing the Marketing of Unhealthy Foods to Children

Best-ReMaP Work Package 6 (WP6) is focused on reducing the marketing of unhealthy foods to children. The Technical Guidance for Codes of Practice is a WP6 midterm deliverable of the JA Best-ReMaP, developed to support EU MS to implement or update marketing codes on unhealthy foods and beverages to children. It constitutes a simple tool that builds upon key background work, including the World Health Organization's (WHO) Set of Recommendations (2010), the Joint Research Centre's (JRC) Marketing Toolkit (2019), the UNICEF's report on a Child Rights-based Approach linked to Food Marketing (Garde et al, 2018) and the WHO's evaluation of the implementation of the WHO set of recommendations in the European Region (WHO Europe, 2018).

The overall goal of WP6 is to share and test best practices of implemented actions to reduce unhealthy food marketing to children at the EU level and to develop an implementation and monitoring framework. The general information of each of the Tasks of WP6 is appended in the Annex 1. The goal of this document is to engage MS in discussion around the requirements for technical guidance on marketing Codes of Practice for food and beverages and then implementing the technical guidance. The activities related to Task 6.5 commenced in October 2021 (Month 13) and will continue until March 2023 (Month 30).



Figure 1. Timeline for Task 6.5.

This guidance document was accompanied by a workshop led by Ireland organised virtually on 16 March 2022 (Milestone 6.4, Month 18). The purpose of the workshop was to assist EU MS to integrate into their national policies an evidence-informed Code of Practice to reduce the exposure and power of the marketing of foods that contribute to unhealthy diets in children up to 18 years of age, in line with the definition of children established in the United Nations Convention on the Rights of the Child (UNCRC).

The UNCRC identifies children as rights holders and governments as the corresponding duty bearers (Garde et al, 2018). Governments should be held accountable as duty bearers by “committing to, and enforcing, standards that impose constraints on the advertising of food and beverages to children” and “embodying principles of good governance, such as proportionality, due process, transparency and equity” (Reeve and Magnusson, 2018). The implementation of EU legislation, particularly, the revised Audio-Visual Media Services Directive (AVMSD) (EU 2018/1808), is an initial step to ensure respect for the child as a consumer and to effectively reduce the exposure of children to the harmful marketing of foods, non-alcoholic, and alcoholic beverages.

Further, to integrate a Child Rights-Based Approach (CRBA) into a food marketing Code of Practice there is a need to identify the rights that are negatively impacted by the exposure to harmful food marketing in the draft of the Code (Garde et al, 2018). Each of these rights are defined in the UNICEF guide for policy makers linking the WHO Set of Recommendations on HFSS food marketing and the UNCRC:

- Right to health
- Right to food
- Right to life, survival, and development
- Right to education
- Right to information
- Right to rest, leisure, recreation, and cultural activities
- Right to privacy (digital media)
- Right to non-discrimination

Altogether, thirteen countries are participating in the activities for Task 6.5 (Austria, Belgium, Bosnia and Herzegovina, Republic of Srpska, Cyprus, Estonia, Finland, France, Greece, Ireland, Lithuania, Portugal, and Serbia). In these countries, seventeen marketing codes on foods and/or non-alcoholic beverages have been established since 1978 —the Finnish Consumer Protection Act was the first law aimed at regulating food marketing to children. Of these, seven codes are statutory regulations, and ten codes correspond to voluntary industry self-regulations. It is important to mention that the scope between codes differ. Some of these apply to all foods and beverages while others are more specific (for example, Lithuania regulates the sale and marketing of energy drinks to children through its Law on Advertising).

For Task 6.5, a *marketing code* refers to “any set of comprehensive actions addressing marketing techniques, from national governments or industry associations, be it statutory legislation, voluntary self-regulation, or co-regulation (Grammatikaki et al, 2019)”.

- A statutory regulation, according to the WHO Set of Recommendations (pp 32-33), refers to an implementation approach through which implementation and compliance are a legal requirement (i.e., legally binding norms).
- A voluntary industry self-regulation refers to industry-led implementation of restrictions on marketing of foods and/or drinks to children. Members of an industry adopt within themselves and for themselves common guidelines (Grammatikaki et al, 2019). In a self-regulatory approach, the cost of policy development and compliance monitoring can be lower for governments.
- Co-regulatory implementation mechanisms may comprise of statutory, self-regulatory and/or voluntary industry initiatives.

In agreement with the WP6 Deliverable 6.1 regarding the EU coordinated approach using the criteria of the WHO Europe Nutrient Profile Model (NPM) for the identification of foods not permitted to children, the term 'unhealthy food' refers to "any food and beverage with excessive amounts of total fat, saturated fat, trans-fatty acids, free sugar and/or non-sugar sweeteners, and/or salt, that should not be permitted to be marketed to children" (Best-ReMaP, 2021).

1.3 Background

Implementing codes on unhealthy food and beverages that are marketed and advertised to children and young people is a priority public health strategy at the European level. The EU Action Plan on Childhood Obesity 2014-2020 addressed the issue of marketing to children, among eight other actions that can contribute to healthier food environments and childhood obesity prevention efforts. In response to the Midterm evaluation of the Action Plan, the EC asked JRC to produce a mapping of initiatives in food marketing and the Directorate-General for Health and Food Safety (DG-SANTE) called for the development of an EU-wide study on the exposure of children to marketing of HFSS foods, published in 2021. Furthermore, food consumption patterns that are sustainable in terms of health and the environment are the central focus of the EU Green Deal and the Farm to Fork (F2F) Strategy.

From the F2F Strategy, three main action themes are closely in line with the objectives of the JA Best-ReMaP: ensuring food security; stimulating responsible food processing, wholesale, retail, hospitality, and food service practices; and promoting sustainable food consumption and facilitating the shift to healthy sustainable diets. By supporting EU MS in the implementation of best practices on food marketing codes, the exposure of children to unhealthy food marketing can be reduced, driving a shift towards healthy commercial food environments, and improving children and young people's food choices and the nutritional quality of their diets (FAO, 2016). "Increasing the offer of healthier options of processed food and/or reducing salt, sugar and saturated fat from the processed food available in EU markets" is an objective established in the Third EU Health Programme 2014-2020, funding source of the JA Best-ReMaP, showing the alignment between current, regional health strategies and programmes.

1.4 Problem statement

The marketing of unhealthy foods to children and adolescents is prevalent across all settings, and pervasive, despite the introduction of regulations in most European countries (WHO, 2022). The HFSS foods that are predominantly marketed to children across all commercial communication channels include fast food products or take-away meals, sugar-sweetened beverages, chocolate, confectionary, salty and savoury snacks, sweet bakery items, breakfast cereals, dairy products, and desserts (WHO, 2022; DG SANTE, 2021). On television channels, children aged 4-7 years are exposed in average to 4.7 spots/day for HFSS foods, drinks or quick service restaurants and children aged 13-17 years are exposed to 2.95 HFSS spots per hour. On digital media, children are exposed to HFSS marketing in social media, news media websites, and music and video streaming platforms, particularly the young people aged between 13 and 17 years (DG-SANTE, 2021). In adolescents, exposure to HFSS marketing is associated with a positive perception and norms regarding the consumption of such foods (WHO, 2022).

It is widely documented that unhealthy food marketing negatively affects taste preferences, food requests, food purchases, food consumption, and the nutritional quality of children's diets. The increased obesogenicity of these food environments has a consequently negative impact on health outcomes, including the risk of childhood obesity (WHO, 2021).

2 Methodology

The development of a technical guidance for implementing best practices in Codes of Conduct to protect children from harmful food advertising is based on a review of statutory and voluntary codes on broadcast and non-broadcast media from Ireland, Portugal and Slovenia. These codes were compared against the JRC Toolkit (Grammatikaki et al, 2019). The JRC Toolkit provides:

- (1) a schematic overview of the three sections that should be considered when drafting a code of conduct;
- (2) a checklist describing each of the main aspects that should be considered by EU MS when adopting a national food marketing policy action or updating existing codes; and
- (3) an inventory of actions for each aspect of the code with examples of good practices identified by Grammatikaki, Sarasa-Renedo, Maragkoudakis, Wollgast, and Caldeira in JRC.

Initially, existing statutory regulations and voluntary self-regulatory codes were identified as part of a preliminary mapping exercise. The JRC Dataset (2019), the World Cancer Research Fund (WCRF) NOURISHING database, and the Food-EPI report for Ireland (Harrington et al, 2020), were consulted, respectively, on 06 September 2021, 08 July 2021 and 04 February 2022, to identify food marketing actions at the country-level and the relevant evidence of implementation. The JRC Dataset is a comprehensive key data source. From this dataset, 85 food marketing actions were found to be implemented between 1937 and 2019, the first being the Advertising and Marketing Communication Practice Code, established by the International Chamber of Commerce.

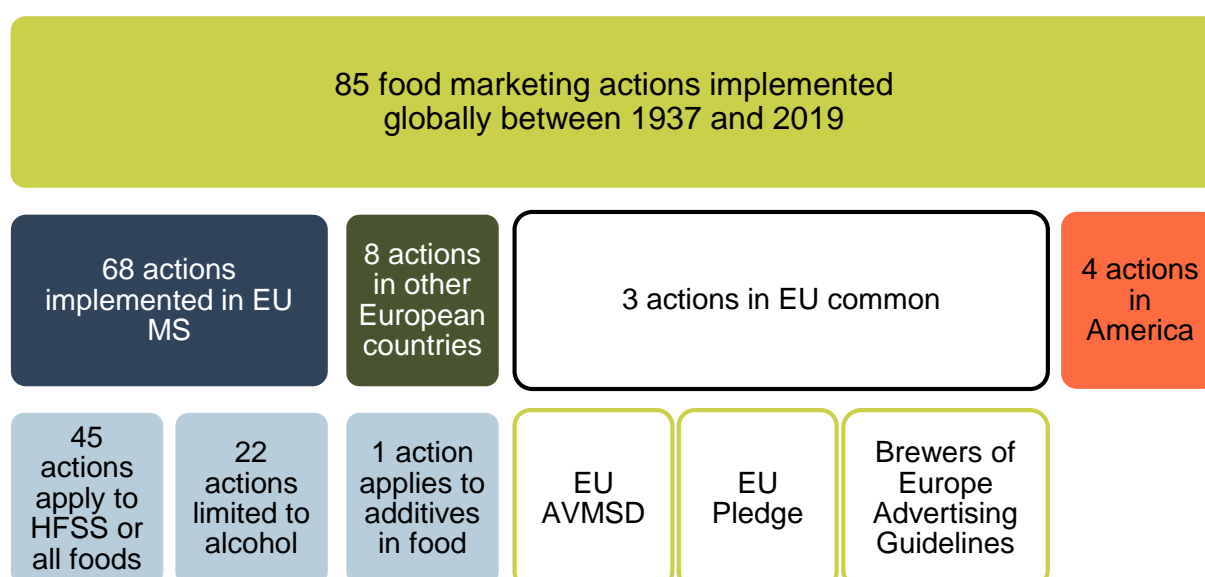


Figure 2. Results of marketing codes mapping from JRC Dataset.

From the 85 food marketing actions identified in the preliminary mapping exercise for the development of this report, 2 actions apply at the international level (Consolidated ICC Code, International Council of Beverage Associations, ICBA, Guidelines on Marketing to Children), 3 actions are common to EU MS (AVMSD, Brewers of Europe Advertising Standards and the EU Pledge), 4 actions are implemented in America (Brazil, Chile, Canada, United States), 68 actions are implemented in EU MS and 8 actions are implemented in other European countries (Iceland, Norway, Switzerland, United Kingdom). From the existing codes in EU MS, 22 actions are limited to the marketing of alcoholic beverages and 45 actions apply to all foods or exclusively to HFSS foods and/or beverages or food products that do not meet the national nutritional guideline. One action in Slovenia applies to substances in contact with foodstuffs. The previous WP6 Regulation and Legislation Mapping Report (Milestone 6.3) delivered in September 2021 (Best-ReMaP, 2021), provides further details of these codes.

The preparation of both the present technical guidance document and workshop is informed by:

- two 1-hour consultations with JRC held on 30 November 2021 and 24 February 2022;
- a workshop on how to implement Codes of Practice to reduce unhealthy food marketing to children (Milestone 6.4) organised on 16 March 2022;
- a separate, ongoing systematic review conducted by WP6; and
- the results of the WP6 Questionnaire (Regulations and Legislation Mapping Report, Milestone 6.3).

For the identification of best practices, the quality criteria adopted by the EC Steering Group on Health Promotion, Disease Prevention and Management of Non-Communicable Diseases (SGPP) was consulted. For the SGPP, a best practice is defined as “a relevant policy or intervention implemented in a real life setting and which has been favourably assessed in terms of adequacy (ethics and evidence) and equity as well as effectiveness and efficiency related to process and outcomes.” The criteria to select best practices is divided in three main categories: exclusion criteria, core criteria, and qualifier criteria (Table 1).

Although an assessment of a policy to identify best practices in health promotion should ideally comply with the criteria selected by the SGPP, the published literature provides limited data on the implementation and evaluation of marketing codes. Further, the scientific and grey literature available is limited, fragmented and heterogenous.

The analysis of the food marketing Codes of Practice from Ireland, Slovenia, and Portugal was informed by a non-exhaustive review of the literature published by international and European health organisations. The comparative analysis is presented in a narrative synthesis form. A detailed description of each of the aspects assessed are shown in Annex 4. Annex 4 includes a Code of Practice developed by a multi-sectoral group established by the Irish Minister of Health and published by the government-led initiative *Healthy Ireland* (HI). The Healthy Ireland Voluntary Code for Non-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including sponsorship and product placement is not shown in Table 2.

Table 1. Set of criteria to select best practices, according to the EC SGPP.

Exclusion criteria	Description
Relevance	The political/strategic context of the practice needs to be clearly explained. For example, the description of the practice should include whether it is a priority public health area or put in place to support the implementation of legislation.
Intervention characteristics	Assesses the existence of a situation analysis before the practice has been started of the target population and provides a thorough description of the practice (scope, methodology, SMART objectives, evaluation process, indicators to measure progress, and stakeholders involved).
Evidence and theory based	Check if intervention is built on a well-founded theory, is well documented and is evidence-based. In addition, the elements (techniques or principles) that lead to the effectiveness of the approach are stated.
Ethical aspects	A practice should accomplish all the following: <ul style="list-style-type: none"> • The expected benefits are superseding potential harms. • The intervention was implemented proportionally to target group needs. • Individual rights have been protected according to national and European legislation. • Conflicts of interests are clearly stated, including measures taken. • The practice is respectful with the basic bioethical issues of Autonomy, Nonmaleficence/Beneficence and Justice.
Core criteria	
Effectiveness and efficiency of the intervention	Degree to which the intervention was successful in producing a desired result in an optimal way. It measures the extent to which the objectives of quantity, quality and time have been met under real conditions at the lowest possible cost.
Equity	Considers that the practice should consider the needs of the population when allocating the resources and identify and reduce health inequalities.
Qualifier criteria	
Transferability	Measures to which extent the implementation results are systematized and documented, making it possible to transfer it to other context, settings and/or countries or to scale it up to a broader target population and/or geographic context.
Sustainability	Assesses the practice's ability to be maintained in the long-term with the available resources, adapting to social, economic and environmental requirements of the context in which it is developed.
Intersectoral collaboration	Assesses the ability of the practice to foster collaboration among the different sectors involved in the domain of interest.
Participation	Assesses the inclusion of stakeholders throughout the life cycle of process.

3 Results

Sharing best practices in the implementation of codes of conduct restricting the marketing of unhealthy food to children and young people is an important part of the current food security and health promotion agenda. In the latest State of Food Security and Nutrition in the World (SOFI), a flagship annual publication by the Food and Agriculture Organization of the United Nations (FAO), a set of four best practices in legislation from several countries are highlighted to protect children from all forms of malnutrition (Figure 3). The 2021 SOFI report mentioned that “the promotion and increased availability of highly processed foods has led to increased consumption of unhealthy diets affecting all ages” and “large food companies target much of their marketing to youth”. However, barriers in implementation of statutory regulations are, too, well recognised. These include powerful opposition and vested interests; addressing cross-border marketing; and monitoring digital marketing.

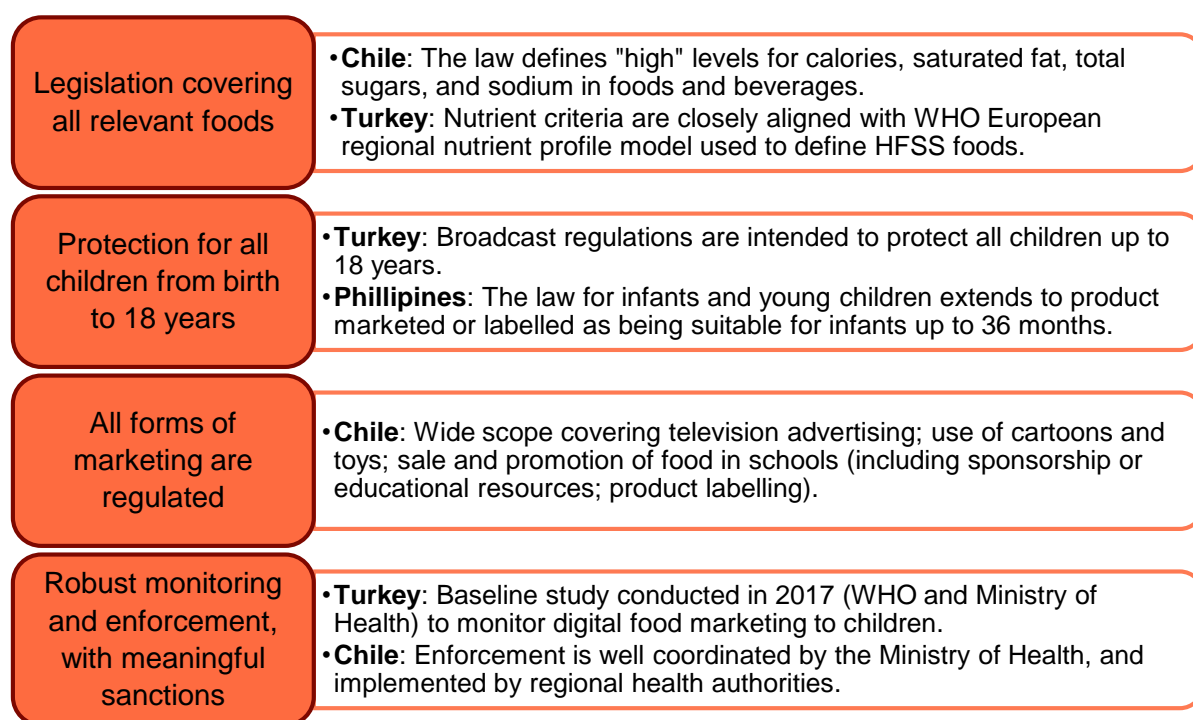


Figure 3. Best practices to protect children from unhealthy food marketing in FAO SOFI 2021

Table 2 shows the marketing codes from Ireland, Portugal and Slovenia, assessed against the JRC Toolkit:

- **Ireland:** Children’s Commercial Communications Code (CCCC) and the Code of Standards for Advertising and Marketing Communications (ASAI Code)
- **Portugal:** Law No 30/2019, of 23 Abril
- **Slovenia:** Slovenian Advertising Code (SOK)

Table 2. Assessment of Codes from Ireland, Portugal and Slovenia, against the JRC Toolkit.

Code structure	Aspects considered when drafting the code	Ireland		Portugal	Slovenia
		CCCC	ASAI Code	Law 30/2019	SOK
A. General information	A.1. Type of code	Yes	Yes	Yes	Yes
	A.2. Designer/owner of the code	Yes	Yes	Yes	Yes
	A.3. Goals and objectives of the code	Yes	Yes	Yes	Yes
	A.4. Scope of the code	Yes	Yes	Yes	Yes
	A.5. Products exempted	Yes	Yes	Yes	Yes
	A.6.1 Target population groups	Yes	Yes	Yes	Yes
	A.6.2 Define child marketing	Yes	Yes	Yes	No
	A.7. Geographical coverage	Yes	Yes	Yes	Yes
B. Marketing restrictions	B.1. Marketing techniques	Yes	Yes	Yes	Yes
	B.2. Audience	Yes	Yes	Yes	Yes
	B.3. Settings	Yes	Yes	Yes	Yes
	B.4. Time	Yes	No	Yes	No
	B.5.1 Content restrictions	Yes	Yes	Yes	Yes
	B.5.2 Include warning content	Yes	Yes	No	No
	B.6. Nutritional or compositional criteria	Yes	Yes	Yes	No
	B.7. Brand marketing	Yes	Yes	No	No
	B.8. Corporate Social Responsibility	No	No	No	No

Table 2 continued.

Code structure	Aspects considered when drafting the code	Ireland		Portugal	Slovenia
		CCCC	ASAI Code	Law 30/2019	SOK
C. Monitoring and evaluation	C.1.1 Define an implementation strategy including relevant indicators	No	No	No	No
	C.1.2 Define an evaluation strategy, include funding sources and reporting	Yes	No	Yes	No
	C.2.1 Define a strategy for enforcement	Yes	Yes	Yes	No
	C.2.2 Develop mechanisms to detect potential infringements	Yes	Yes	Yes	Yes
	C.2.3 Develop mechanisms to discourage new or further infringements	Yes	Yes	Yes	No

Ireland

On 1st January 2005, a statutory but independent organisation, the Broadcasting Commission of Ireland (BCI), implemented the first legally binding rules focused on responsible advertising, titled Children's Advertising Code. This Code adopted standard principles and provided six specifications for food and drinks advertising in Article 7, "Diet and Nutrition", one of which prohibited celebrities or sports stars in food or drinks advertisements:

- 7.1.** Children's advertising shall be responsible in the way food and drink are portrayed. It should not encourage an unhealthy lifestyle or unhealthy eating or drinking habits such as immoderate consumption, excessive or compulsive eating.
- 7.2.** Children's advertising representing mealtime should clearly and adequately depict the role of the product within the framework of a balanced diet.
- 7.3.** Children's advertising must not contain any misleading or incorrect information about the nutritional value of the product.
- 7.4.** All children's advertising for fast food products, outlets and/or brands must display an acoustic or visual message stating, 'should be eaten in moderation and as part of a balanced diet'.
- 7.5.** Children's advertising shall not portray or refer to celebrities or sports stars to promote food.
- 7.6.** Children's advertising for confectionary products must display an acoustic or visual message stating 'snacking on sugary foods and drinks can damage teeth'.

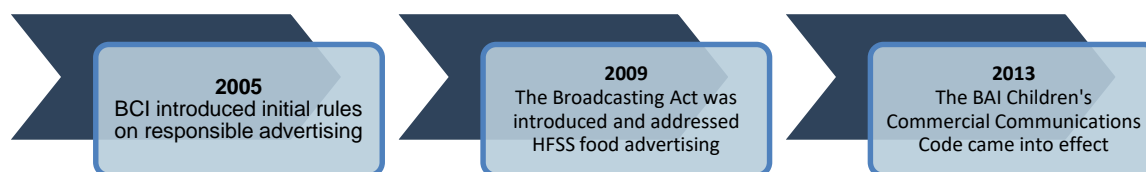


Figure 4. Timeline showing the history of the development of a statutory Code regulating the marketing of HFSS food to children in Ireland.

One year after the implementation of the Children's Advertising Code, BCI released a review assessing the amount of food and drink advertising to children in 270 hours of programming monitored, the level of compliance by broadcasters, the number of public complaints from the public and a description of queries received from broadcasters (Hawkes, 2007). The review of BCI was not available online at the time of writing this report.

In 2009, the Minister of Health introduced the Broadcasting Act. The Act placed the health interests of children to the forefront and directly addressed HFSS food advertising. It dissolved the BCI and its responsibilities were transferred to the newly minted Broadcasting Authority of Ireland (BAI). Over a 2-year period, the BAI engaged with a group of public health bodies for in-depth consultation to develop the first set of rules specific to HFSS products (BAI, 2011). A key element of this approach, according to Declan McLoughlin (Senior Manager, BAI), was the adoption of the NPM developed by the UK Food Standards Agency.

Among the Code development challenges, the adoption of a NPM was faced by strong opposition among stakeholders. The BAI convened an expert group with relevant health and food authorities (the Department of Health (DoH), the Health Services Executive, the Food Standards Authority of Ireland (FSAI), and safe food) to assess the suitability of the NPM. The group considered appropriate to adopt the UK NPM. In 2013, BAI introduced the CCCC with rules on HFSS foods that apply to all foods and beverages, except for cheese. The production and consumption of cheese has economic and cultural value. Instead, commercials for cheese products that appear in children's programmes, or which are directed at children are required to carry an on-screen message indicating the recommended maximum daily consumption limit for cheese. This exemption applies to cheese products only and not to products where cheese is an ingredient e.g., pizza (JRC Dataset, 2019).

The CCCC has four objectives: (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; (4) to provide unambiguous guidelines to broadcasters, advertisers, parents, guardians, and children, on the standards they can expect from commercial communications.

In 2014, BAI published a Compliance and Enforcement Policy describing methods developed to detect potential infringements to the CCCC, including the imposition of financial sanctions on broadcasters and contractors, following a thorough case-by-case investigation. The policy is “alive” in the sense that the BAI is expected to review and update its content every four years (BAI 2014).

The BAI is required by law to submit an evaluation of the CCCC to the Minister for Tourism, Culture, Arts, Gaeltacht, Sports and Media. In 2020, BAI published the “Statutory Report of the Effect of the BAI CCCC”, 292 pages long. This evaluation observed a decline, from 2011 to 2019, in exposure to HFSS food advertisements for children aged 4-17 years in national television channels (28% of the target audience viewing the advertisements for Virgin Media Ireland, 75% for RTE, 72% for TG4 and 100% for Eir). To evaluate the Children’s Code, multiple stakeholders were convened to meetings for consultation, including representatives of the civil society and public health bodies, many of which favoured a 21:00 watershed for HFSS food products. Importantly, the statutory report showed evidence of a shift in children’s television viewing patterns (BAI, 2020).

On 12 January 2022, the Minister for Tourism, Arts, Culture, Gaeltacht, Sports and Media published the Online Safety and Media Regulation Bill. This provides for the replacement of the BAI by a new Media Commission. The new legislation (expected in the second half of 2022) empowers the Media Commission to update the marketing rules. The Bill will continue to transpose the revised AVMSD into Irish legislation, a process that began in the 2010 decade, and will place regulations on video on-demand services and on harmful online content. In addition, the Media Commission will hold power to require provision of information from regulated services; appoint authorised officers to investigate suspect non-compliance; impose financial sanctions of up to €20 million or 10% of turnover in respect of non-compliance; and issue notices to end non-compliance.

Two independent research studies published in 2010 showed that measures were necessary to protect Irish children from unhealthy food marketing. Of all marketing transmitted through child-specific television channels, 31% were for food advertisements. Of these, a great majority (66.3%) were for HFSS food products (fast food, sweets/candy, and dairy) and the adverts were dominantly broadcasted after 14:00 (Scully et al, 2015). In post-primary schools, a study of commercial activity and sponsorship found that 81.4% of the 331 surveyed schools operated shops or canteens that sold snacks, 44.7% had vending machines for drinks and 28% had vending machines for snacks. In addition, due to inadequate funding for equipment, 38% of schools accepted for-profit sponsorship (Kelly et al, 2010). More studies are needed to analyse the current situation regarding the exposure and the power of harmful food marketing aimed at children and adolescents in different media settings.

Elements of best practice in the Children’s Commercial Communications Code. The CCCC states rules for commercial communications of HFSS foods that shall not be permitted in children’s programmes. Following best practice, **the CCCC provides a definition of children’s commercial communications**. In the code structure provided by the JRC Toolkit, the general information of the code should define *child-directed marketing* (A6.2).

"Children's Commercial Communications are commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes" (BAI, 2013).

The CCCC uses an adapted version of the UK NPM to identify HFSS food products.

"For the purpose of this Code, the NPM developed by the UK Food Standards Agency should be used to assess whether commercial communications is for a product or service that is high in fat, salt or sugar and therefore subject to restrictions and regulation". The Code provides instructions to score each food or drink.

The marketing restrictions of the code extend to food advertisements targeted to children in general audience broadcast channels. The marketing techniques to which the rules apply include teleshopping, product placement, use of celebrities, licensed or programme characters, and promotional offers. This is important as research on the impact of marketing codes on foods aimed at children has revealed a *squeezed balloon effect*, where HFSS food advertisements are moved from children's media channels to general audience channels (WHO Europe, 2018).

Moreover, as in Chile—considered a country with elements of best practice in SOFI report—, in Ireland there was **an initial law implemented (The Broadcasting Act of 2009), separated from the design of the regulatory code and the implementation process**. A law is more difficult to change than a code of conduct; this provided flexibility for amendments introduced in 2011 and 2013 (Villalobos Dintrans et al., 2020).

In addition, between 2019 and 2020, the BAI conducted a comprehensive review on the effect of implementation of the CCCC. The statutory report includes qualitative findings (eg, from group discussions with young people, aged 14-17, and parents of children up to 13 years), as well as quantitative findings (e.g., survey data via Omnipoll and viewing trends provided by TAM Ireland/ Nielsen) (BAI, 2020).

How can the Children's Commercial Communications Code be improved? The JRC and the EC SGPP criteria for best practices refer to the establishment of SMART general goals: **Specific, Measurable, Achievable, Relevant, and Time-Bound**. The translation of current code objectives into SMART goals can allow periodic monitoring and evaluation of the code and establish baselines and benchmarks that can be used in the future to assess progress and effectiveness of implementing the code.

Example of SMART objectives (from the JRC Toolkit):

- **Reduce by {year} the exposure of children and young people {ages} to television broadcast marketing of HFSS foods and beverages, defined using the {WHO Regional Office for Europe NPM} from current baseline {% of viewing rates and/or impacts, etc} by {points}, measured using {audience share data or other relevant measures}.**

It is important to note that for the design of SMART goals, a situation analysis (e.g., a needs assessment of the target population) must be available.

To support Irish legislation, two distinct voluntary industry self-regulatory codes are available.

The ASAI Code was developed by the Advertising Standards Authority for Ireland (ASAI)—an independent organisation, financed by the advertising industry. The ASAI Code aims “to regulate commercial marketing communications in the interest of consumers, by ensuring so far as possible that all communications are prepared with a sense of responsibility both to the consumer and to society”. The ASAI Code came into effect on 1st March 2016.

In the summer of 2021, ASAI released an updated version of Section 8, regarding Food and Non-Alcoholic Beverages, among other sections, which adopted the UK NPM to harmonise the Codes’ nutrient compositional criteria with the BAI’s CCCC. One of the challenges related to the use of a NPM is the need to provide technical assistance to small-sized food producers. These challenges have been addressed by the ASAI by including a dietitian in their working group (Michael Lee, Deputy Chief Executive, ASAI).

The ASAI Code restricts marketing in printed media, advertisements in public spaces, email and text SMS transmissions, broadcast television, radio, cinema, DVD, online video, websites, sales promotions, advertorials, non-paid-for space online.

The strategy for enforcement of the ASAI Code (7th Edition), consists of a complaint’s procedure, submitted through the postal service or an online form. Each suspected breach to the code is reviewed by ASAI and published on the ASAI website for public examination. This system of enforcement is based on asking the advertiser/promoter to make amendments and in “naming and shaming” through the online publication of decisions.

Further, the ASAI has worked together with industry stakeholders to integrate HFSS marketing communications and sponsorship provisions of the Irish DoH Voluntary Codes of Practice for non-broadcast media, product placement and sponsorship. This brings several the DoH Code rules within the complaint’s regime of the ASAI Code. The 2021 revisions to the ASAI Code bring a number of additional areas within this regime also. The rules apply specifically to advertisements of HFSS food products and became effective on 01 December 2021, except for rules on Sponsorship which will come into effect on 01 December 2022.

Elements of best practice in the Advertising Standards Authority for Ireland Code. The **ASAI Code refers to EU regulation on nutrition and health claims for a list of claims that may be included in marketing communications of food and drinks.** It also specifies what type of claims are not acceptable for food products.

“Only nutrition claims listed in the updated Annex of the EU Regulation (as reproduced in the EU Register) may be used in marketing communications. Only health claims listed as authorised in the EU Register or claims that would have the same meaning to the consumer, may be used in marketing communications”.

How can the Advertising Standards Authority for Ireland Code be improved? Additional health claims in HFSS food products could be included in the code, as is the case for France. The French Public Health Act of 2007 requires that commercial communications on

the Internet, television or radio, for drinks with added sugars, salt or sweeteners, or processed food, contain one of the following health messages:

- “For your health, eat at least five portions of fruit and vegetables a day”;
- “For your health, engage in regular physical activity”;
- “For your health, avoid eating too much added fat, sugar or salt”;
- “For your health, avoid snacking between meals” (Grammatikaki et al, 2019).

An additional voluntary industry self-regulation in Ireland specific to HFSS foods is the Healthy Ireland Voluntary Code for “Non-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including sponsorship and product placement”. The Healthy Ireland Voluntary Code, launched in 2018, was proposed within the Healthy Ireland campaign and its accompanying Obesity Policy and Action Plan, 2016-2025. For its development, the Minister of Health established a multi-sectoral group consisting of government departments, health agencies, advertising bodies, retailers and representatives of the food and drink sector. The aim of the voluntary rules is “to reduce exposure of the Irish population to marketing initiatives relating to HFSS foods and drinks. This is consistent with the Obesity Policy and the “whole of school approach” to food and healthy eating in the education sector.”

In terms of the design of the code, when compared to the JRC Toolkit, it complies with almost all the items included in the checklist, except for the definition of time and warning contents. The Healthy Ireland Voluntary Code is broad in terms of the marketing restrictions it covers, as it provides rules for:

1. HFSS food on non-broadcast media, out of home media, print media and cinemas;
2. Sponsorship linked to HFSS food; and
3. Retail product placement of HFSS food.

Additionally, some guidance on monitoring and evaluation is provided in the “Governance” section. However, to our knowledge, the annual reports for the Minister covering complaints and the effectiveness of the code are not available.

Elements of best practice in the Healthy Ireland Voluntary Code. The “Non-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including sponsorship and product placement: Voluntary Codes” are a result of multi-sector collaboration and consensus. ***The code restricts marketing in physical places of the food environment, such as public spaces and retail stores, covering those settings that are excluded from the statutory regulation*** (CCCC).

How can Healthy Ireland Voluntary Codes be improved? Although the monitoring and evaluation design is defined, details on process indicators are not mentioned, therefore, the degree to which the intervention has been implemented or has been successful cannot be determined for the time being.

A best practice is to establish the actors in charge of implementing and evaluating the code in writing to “foresee where (human and financial) resources will need to be allocated and by whom” (Grammatikaki et al, 2019).

A good example of best practice can be found in the Portuguese Law No 30/2019:

Article 40.º (revision of the Advertising Code) The Directorate-General for Consumer Affairs is responsible for monitoring the compliance with Article 20.º -A, as well as the investigation of the respective proceedings and the application of the respective fines and accessory sanctions.

Article 4.ª (Impact Assessment) This law shall be subject to periodic impact assessment, every five years, in particular with regard to: Compilation of the relevant indicators regarding the food consumption patterns of children under 16 years, the food communication aimed at them and their general health, through the action of the Government members responsible for Health, Education, Consumer Protection and Food, in collaboration with representatives of the relevant economic sectors, namely the agriculture and food sector and communication and marketing.

Portugal

In Portugal, since 2005, a self-regulatory voluntary code was released by the Portuguese Advertisers Association (Code of Good Practice in Commercial Communication to Minors) with 40 initial Signatories. However, a government communication released in October 2005 stated that “self-regulation is not accomplishing its’ tasks” (Hawkes, 2007). In 2019, a statutory regulation, Law No 30/2019, became effective “to protect the health of the population under 16 years of age, by regulating and limiting the advertising of some types of foods and beverages”.

The proposal for a Law enforcing restrictions on food and drinks advertising to children was initiated in 2016, as part of a set of policy actions in an Integrated Strategy for the Promotion of Healthy Eating to improve the quality of, and the consumer accessibility to, healthier food choices (Graça et al, 2018). The initial proposal, not approved in Parliament, defined children as any person below 18 years of age and prohibited entire food categories from advertising to children.

The scope and the settings regarding marketing restrictions defined in the regulation are broad and exemplary. Law No 30/2019 uses a Portuguese NPM to identify the foods and beverages that should not be marketed to children given the high content of energy, saturated fat, trans-fatty acids, sugar, and salt. The NPM, developed by the Directorate-General of Health (DGS), is based on the WHO Regional Office for Europe NPM to align the cut-off points of key nutrients to the values defined in EU legislation (Graça et al, 2020). Within its scope, the law restricts the marketing of HFSS food products in schools, public playgrounds and a 100-meter radius around these settings where children gather; during children’s programmes, in the 30 minutes before and after children’s programmes and in programmes that have at least 25% of a viewing audience younger than 16 years of age in television, on-demand media services and radio; in cinemas, films for children and young people aged under 16 years; print media targeting children aged under 16 years; and websites, digital social networks and mobile applications where contents are intended for under 16 years of age.

The restrictions to unhealthy food promotions to children and young people in Portugal are part of a country-wide intersectoral nutrition programme with defined process indicators, including: control the prevalence of pre-obesity and obesity in children and school-age population to a null increase by 2020; increase the number of people who consume fruit and vegetables daily by 5% until 2020; and increase the number of people who know the principles of the Mediterranean diet by 20% until 2020. The baseline values of the indicators were sourced from the Children Obesity Surveillance Initiative study of 2013 and National health survey data (Graça et al, 2020).

To prevent violations to the marketing law, administrative financial sanctions may be imposed: “From € 1750 to € 3750 or from € 3500 to € 45000, depending on whether the offender is single or legal person”.

Elements of good practice in the Law No 30/2019. Implementing a statutory regulation as part of a national 10-year nutrition programme allowed for a horizontal transfer of technical knowledge between policy actions and sectors in Portugal (Graça et al, 2018). ***A good practice example from the Portuguese law is the periodic assessment of the law, involving the compilation of relevant indicators from government responsible for health, education, consumer protection and food, in collaboration with agriculture, food, and communication and marketing sectors.*** The national programme involved several health promotion policy actions, including providing the informational/educational tools to improve the food choices and nutritional quality of the Portuguese diet (Graça et al, 2018). In this way, ***the implementation of an integrated Law 30/2019 into the national strategy fosters the participation of the target population, as well as intersectoral collaboration.*** In addition, to evaluate the effectiveness and impact of the Law, two monitoring bodies have been assigned.

“The Directorate-General for Consumer is responsible for the supervision of compliance, investigation processes and application of fines and sanctions, while the DGS is responsible for setting the values that define foods to which marketing restrictions apply” (JRC Dataset, 2019).

The definition of 'child marketing' refers to the proportion of children in the viewing audience (25% or more of viewing audience younger than 16 years of age). This definition is stricter, compared to the regulation currently in place for Ireland (50% of audience under 18 years old) or the EU Pledge which defines child-marketing as 30% of the viewing audience under 12 years old (WHO Europe, 2018; BEUC, 2021).

How can the Law No 30/2019 be improved? Although there is a reference to indicators compiled from different relevant sectors for the impact assessment, the Law does not specify the indicators that will be used for assessing effective implementation of the marketing restrictions. For the National Programme for the Promotion of Healthy Eating, the process indicators were defined in advance. Also, it is important to describe clearly how the Directorate-General for Consumer will monitor compliance and detect potential violations. The absence of written monitoring protocols was previously observed in the Best-ReMaP WP6 Regulation and Legislation Mapping Report (Milestone 6.3, Best-ReMaP, 2021).

The Law No 30/2019 could be further improved by integrating the UN Children’s Rights-Based Approach, in which a child is defined as any person under 18 years of age. This approach considers the impact of marketing on young people’s attitudes and preferences towards HFSS food products (WHO, 2022).

In Portugal, the voluntary EU-level industry initiative “EU Pledge” was implemented in October 2009 and updated on 19th February 2016. The companies that dominate the food and beverage advertising market in the EU region (Burger King, Coca-Cola, Danone, Ferrero, General Mills, Kellogg, Mars, McDonald’s, Mondelez, Nestle, PepsiCo and Unilever) lead the commitments of the EU Pledge, along with the European Snacks Association. This self-regulation provides rules for communications in primary schools and a wide range of channels: television, radio, print, cinema, online (company-owned websites and social media profiles), DVD/CD-ROM, direct-marketing, product placement, interactive games, outdoor marketing, mobile and SMS marketing. The signatories use the EU Pledge Nutritional Criteria first published in 2012, and updated in July 2015, October 2018, and July 2021. The last update to the Nutrient Criteria will apply from June 2022. In addition, the EU Pledge bans all marketing of specific food categories to children under 13 years old (ice cream and potato-based products).

A recent report prepared by Emma Calvert on behalf of the European Consumer Organisation (BEUC, 2021), provides an independent evaluation of the (ineffective) implementation of the EU Pledge. During the spring 2021, BEUC, co-jointly with ten organisations from across Europe, collected ~90 examples of commercial communications from signatory companies breaching the rules of the Pledge. Of the cases of potential infringements, 81 were submitted to the Pledge’s Accountability Mechanism, to understand the monitoring strategy. The BEUC reports that the nutritional criteria are lax, allowing signatories to continue to advertise HFSS food and beverages to children. The BEUC report identified additional loopholes specific to marketing techniques used by companies to attract the attention of children (advergaming) and to the complaints monitoring strategy of the Pledge, concluding that it is not fit for purpose. The processing of complaints is slow, taking over three months to reach a final decision in one of the cases. By then, the commercial communication had ended, and no further action was taken by the breaching company.

Slovenia

Slovenia has proved that collective efforts can generate national guidelines aligned to the recommendations set by competent global authorities. As a founding member of the European Network on Reducing Marketing Pressure on Children, Slovenia effectively used the knowledge and experience facilitated by the network to develop nutrition guidelines for the implementation of the AVMSD Codes of Conduct.

For the transposition of EU legislation, on 19 October 2011, the Slovenian government adopted the Act on Audio Visual Media Services (Zakon o avdiovizualnih medijskih storitvah - ZAVMS), which entered into force in November 2011. The Act provides rules for audio-visual commercial communications of food containing nutrients or substances with a physiological effect (fat,

trans fatty acids, salt or sodium and sugars) and that should not be consumed in excess in the overall diet. The law covers communications in, or adjacent to, children's programmes, together with sponsorship, product placement and teleshopping (EPHORT Consortium, 2018). All media service providers in Slovenia are required by law to develop and publish Codes of Conduct. Additionally, the Media Act establishes that the commercial communications for food and non-alcoholic beverages must promote healthy eating habits in accordance with dietary guidelines issued by the Minister responsible for health (EC JRC, 2019).

The Slovenian Minister responsible for health is an early adopter of the WHO Regional Office for Europe NPM (WHO Europe, 2018). The development of a national nutritional guideline for audio-visual media service operators, based on WHO nutritional criteria, initiated in 2011 and received full support from WHO, amongst other countries who were pilot testing the WHO NPM at the time (including Canada, South Africa, Emirates, Philippines, and Norway). Sharing experiences with other countries who participated in the WHO NPM testing process leveraged the development of these guidelines, as countries were able to learn from the progress observed in other countries, especially with respect to industry resistance (Gabrijelčič, 2017). The Slovenian NPM had only minor adaptation to the WHO nutrient criteria, e.g., it added the "nutrition supplements" category for which intake shall not be encouraged and it placed no limitation for 100% fruit and vegetables juice. The NPM, as a national nutritional guideline for audio-visual media service operators, was launched in July 2016 embracing the self-regulatory spirit of the AVMSD.

Elements of best practice in the Slovenian Act on Audio-visual Media Services. In Slovenia, a voluntary NPM is in place to identify HFSS that should not be marketed to children, promoting the use of international reference guidelines and European models.

How can the Slovenian Act on Audio-visual Media Services be improved? The Act does not apply to digital media marketing (search engines, online games, electronic versions of newspapers and magazines, web pages with animated elements). Companies now employ several marketing techniques (advergames, applications, gaming, and influencers) to attract the attention of children and young people navigating the digital landscape (BEUC, 2021). A complete ban on HFSS on all digital media has been recommended by BEUC.

Besides the Media Act, the Slovenian Advertising Chamber developed a voluntary industry self-regulation Slovenian Advertising Code (SOK), effective from 1 October 2009. The scope of the code is defined in Article 22, covering alcoholic beverages, non-alcoholic beverages, and food products. For food and "soft drinks":

- Advertising may not understate the importance of a healthy and active lifestyle.
- If the advertising of food and soft drinks contains claims regarding nutritional and possible health benefits, those claims shall be scientifically justified, credible, provable, and formulated in a way that the consumer is able to understand.
- The advertising of food and soft drinks may not encourage the excessive consumption of the advertised product.
- The advertising of food and soft drinks may not contain claims or themes that could mislead consumers as to the date of manufacture of the product, its calorific value, its

method of use or its quantity. The material properties of food and drink shall be precisely stated and may not be misleading.

- Advertising may not misuse the results of research or statements made in scientific and professional publications. Advertising may not make use of consumer preferences (e.g., regarding taste) in a way that falsely suggests that the results have statistical validity.

Elements of best practice in SOK. *Statutory legislation is supported by an industry voluntary code of practice, launched, and maintained by the national Chamber of Commerce.*

How can SOK be improved? Published research in the context of Slovenia reported that advertisements for chocolate and confectionary represented 77% of all television food advertisements in children's (4-9 years) viewing time (Korosec & Pravst, 2016) and the most advertised food category in children and young people's magazines (Lavrisa et al, 2018), even after the implementation of codes restricting the marketing of food and soft drinks.

In terms of broadcast media, recent research (Lavrisa et al, 2020) recommended extending the marketing restrictions to programmes with a high proportion of children composing the total viewing audience (Portugal has established 25% or more of people aged younger than 16 years old, as the definition of children's commercial communications). Furthermore, Lavrisa et al, observed that carefully monitoring food marketing policies is key to develop and improve best practices in unhealthy food marketing legislation.

Other voluntary codes specific to drinks and dairy products, the *Commitments of responsibility-soft drinks sector* and the *Commitments of responsibility-dairy sector*, were implemented in 2016 and 2017, respectively. As an example of the implications from these industry voluntary commitments, 16 signatories in the soft drink sector, are committed to:

- ensuring that children under 12 years old are not targeted to commercial activity,
- behaving responsibly in schools by working with the competent ministry, and
- including the energy value in the front of package label of at least 20% of the products, by 2020.

A recent independent, scientific evaluation observed that many of the beverage products in Slovenian markets were reformulated between 2017 and 2019. In particular, the percentage of energy drinks with low and no-calorie sweeteners increased from 16.9% to 41.8% (Hafner et al, 2021), showing an unintended effect of the food policy actions on HFSS foods.

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5 ANNEXES

5.1 Annex 1 - General information of WP6 Tasks

Task	Partners	Task Leader
Task 6.1 Establishment of the EU Expert Group and national intersectoral working groups.	<u>Participating partners:</u> ICH, SCIENSANO, BMASGK, CDPC, MCA, PHI-FBH, PHI-RS, NIPH, NIJZ, CHDR, MoH CY, CIPH, MoSA, NIHD, THL, LR SAM <u>Collaborating partners:</u> WHO, OECD, JRC	Portugal and Ireland team Maria João Gregório Ursula O'Dwyer Margarida Bica
Task 6.2 Mapping of existing regulations and legislation in EU MS	<u>Participating partners:</u> ICH, BMASGK, ANSES, SPF, MOH-FR, IPHS, NIPH, CHDR, MoH CY, CIPH, THL, LR SAM <u>Collaborating partners:</u> JRC, WHO (WHO European Marketing Network on reducing marketing pressure to children)	Portugal team Maria João Gregório Margarida Bica
Task 6.3 Implementation of the transposition of the new Audio-visual Media Services Directive (AVMSD)	<u>Participating partners:</u> ICH, CDPC, ANSES, SPF, MOH-FR, NIPH, NIJZ, CHDR, MoH CY, CIPH, MoSA, NIHD, THL, LR SAM <u>Collaborating partner:</u> WHO	Portugal team Maria João Gregório Margarida Bica
Task 6.4 Development of an EU-wide harmonised and comprehensive monitoring protocol for reducing unhealthy food marketing to children	<u>Participating partners:</u> ICH, SCIENSANO, BMASGK, ANSES, SPF, IPHS, CDPC, MCA, PHI-FBH, PHI-RS, MOH-FR, NIPH, NIJZ, CHDR, MoH CY, NCPHA, CIPH, THL, DGS <u>Collaborating partners:</u> WHO, OECD	Ireland team Ursula O'Dwyer Mimi Tatlow-Golden
Task 6.5 Guidance for regulatory and voluntary codes of practice.	<u>Participating partners:</u> ICH, SCIENSANO, BMASGK, SPF, IPHS, MCA, PHI-FBH, PHI-RS, MOH-FR, CHDR, FCNAUP, MoH CY, MoSA, NIHD, THL, LR SAM <u>Collaborating partner:</u> JRC	Ireland team Ursula O'Dwyer Ivan Perry
Task 6.6 Adaptation of the monitoring tools to address health inequalities	<u>Participating partners:</u> ICH, SCIENSANO, IPHS, NIPH, FCNAUP, NIJZ, MoH CY, CIPH, THL <u>Collaborating partner:</u> WHO	Portugal team Maria João Gregório Margarida Bica
Task 6.7 EU harmonised Framework for Action on reducing unhealthy food marketing to children		Portugal and Ireland team Maria João Gregório Ursula O'Dwyer Margarida Bica

5.2 Annex 2 - Topics for discussion on Best-ReMaP Workshop on Codes of Practice to reduce unhealthy food marketing to children– Process and Challenges

On 16th March 2022, WP6 organised a workshop with Task 6.5 partners, collaborators, and invitees (Milestone 6.4). The workshop was treated as an expert consultation to input feedback into the development of this report from participating countries regarding the implementation of food marketing codes, best practices, and challenges.

Topics discussed in the workshop with Task 6.5 partners:

1. Introduction from each country partner and overview of what is currently happening regarding food marketing codes.
2. Discussion on the draft Technical Guidance for Codes of Practice document.
3. Perspectives on Statutory and Voluntary Codes.
4. Legislation covers all relevant foods (WHO Europe NPM).
5. Next steps to take to update or develop a food marketing Code of Practice.

The current situation of Task 6.5 country partners who participated in the workshop, regarding the implementation of food marketing codes to protect children, is included in Milestone 6.4 “Workshop on how to implement Codes of Practice to reduce unhealthy food marketing to children”, Best-ReMaP report.

5.3 Annex 3 - Checklist of the elements of best practices a marketing code must include to strengthen the protection of children from unhealthy food marketing

Aspect of code	Element of best practice	
Goals and objectives of the code	The marketing code has clear, measurable objectives (SMART objectives) against which the effectiveness and efficiency of the regulation can be assessed in the future.	<input type="checkbox"/>
Target population groups	The marketing code provides protection for all children from birth to 18 years.	<input type="checkbox"/>
	The marketing code specifies the meaning of child marketing (or child-directed marketing), including the criteria used to identify marketing to children.	<input type="checkbox"/>
Geographical coverage	The marketing code applies to all HFSS food marketing irrespective of whether the target audience of the marketing message is in the same country as the source of the marketing message, addressing cross-border advertising, sponsorship and promotions.	<input type="checkbox"/>
Marketing restrictions	The marketing code specifies the commercial communication channels that it addresses, including online marketing of unhealthy food products.	<input type="checkbox"/>
	The marketing code lists and defines all of the marketing techniques and practices covered by the code, including techniques appealing to children on food packaging (e.g., cartoon characters and brand mascots)	<input type="checkbox"/>
Nutritional or compositional criteria	The marketing code covers all relevant foods by using nutrient criteria that is closely aligned with the WHO Regional Office for Europe Nutrient Profile Model, to define HFSS foods.	<input type="checkbox"/>
Implementation and evaluation of the code	<p>The marketing code:</p> <ul style="list-style-type: none"> • Incorporates accountability mechanisms by defining an administrative body and a monitoring body; • Defines an implementation and evaluation strategy, including process, outcome and output indicators; • Defines a structured, periodic review of its content and its operation to ensure that the regulation is up to date, in terms of technologies and exposure to relevant commercial communication channels. 	<input type="checkbox"/>
Enforcement of the code	The marketing code defines a strategy for enforcement, including mechanisms to monitor compliance to the rules and to discourage new or further infringements.	<input type="checkbox"/>

Sources: Grammatikaki et al, 2019; FAO, IFAD, UNICED, WFP and WHO, 2021; Reeve and Magnusson, 2018; WHO, 2018; and Calvert (BEUC), 2021.

5.4 Annex 4 - Detailed description of statutory and voluntary Food Marketing Codes of Practice for broadcast and/or non-broadcast media advertising in Ireland, Portugal and Slovenia

The assessment of each of the aspects included in the Food Marketing Codes of Ireland, Portugal and Slovenia, was based on the [JRC Toolkit to support the development or update of codes of conduct](#), and is part of the “Technical Guidance for Codes of Practice” developed by [WP6 of the JA Best-ReMaP](#).

A. General information of the Code					
Aspects considered	When drafting the code...	Irish Children's Commercial Communications Code	Healthy Ireland Voluntary Codes	Portuguese Law 30/2019	Slovenian Advertising Code
A.1. Type of code	Clearly defines if the code is a voluntary regulation, co-regulation, or statutory regulation.	Statutory regulation. In p.3: "The Code has been developed by the Broadcasting Authority of Ireland in accordance with its statutory obligations."	In the title page it reads: "Voluntary codes of practice". In p.4: "The nature of voluntary codes of practice is such that they have no statutory basis and are therefore developed and implemented by mutual agreement between stakeholders."	Statutory regulation	Self-regulation. In p.6: "It is binding in its entirety, with advertisers obliged to comply with all of its provisions."
A.2. Designer/owner of the code	States clearly: who develops and updates the code; who implements and evaluates the code; who enforces the code.	Broadcasting Authority of Ireland	Multi-sectoral group established by the Minister of Health (Healthy Ireland)	Government	Slovenian Advertising Chamber

A.3. Goals and objectives of the code	States a clear goal and set specific objectives to achieve this goal.	<ul style="list-style-type: none"> • To offer protection for children from inappropriate and/or harmful commercial communications. • To acknowledge the special susceptibilities of children and ensure that commercial communications do not exploit these susceptibilities. • 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. • To provide unambiguous guidelines to broadcasters, advertisers, parents, guardians and children on the standards they can expect from commercial 	“The overall objective of this code is to reduce exposure of the Irish population to marketing initiatives relating to foods that are high in fat, sugar and/or salt (HFSS foods). This is consistent with the Obesity Policy and the “whole of school approach” to food and healthy eating in the education sector.”	“This law establishes restrictions on the marketing and advertising of products containing high energy value, salt content, sugar, saturated fatty acids and trans fatty acids.”	<p>To ensure that advertising:</p> <ul style="list-style-type: none"> • remains unfettered in its constructive creative freedom while at the same time observing all the protected rights of other persons; • operates in accordance with good morals, and is produced with conscientiousness and fairness in mind; is responsible to the individual, groups and society as a whole, with special attention paid to the specific features of particularly vulnerable groups, such as children and adolescents; • conforms to the basic principles of competitiveness; • takes an aesthetic form that conforms with the requirements of its cultural environment; • is subject to minimal additional regulation by statutory regulations adopted by state authorities;

		communications on Irish broadcasting services.			<ul style="list-style-type: none"> is respectful towards the Slovenian language as set out in Article 7.6.
A.4. Scope of the code	Clearly states the scope, regarding product categories and communication channels that the code addresses.	<ul style="list-style-type: none"> Food Non-alcoholic beverages Service sector 	HFSS food products	<ul style="list-style-type: none"> HFSS food HFSS beverages 	<ul style="list-style-type: none"> Food Non-alcoholic beverages Alcoholic beverages

A.5. Products exempted	Should these exist, lists the exempted products. Includes a justification for making these exemptions.	“Cheese products e.g. block of cheddar, brie etc, are exempted and do not have to be scored using the model. Commercial communications for cheese products must comply with the Diet and Nutrition rules set out in section 11 (other than those applying to HFSS food) and with the general rules of this Code. This exemption does not apply to products where cheese is an ingredient e.g., pizza, sandwich.”	Non-HFSS food products	Non-HFSS food and beverages	Not mentioned
A.6.1. Target population groups	Specifies the population group it intends to protect, including a justification if certain age groups are excluded.	Child refers to any person under 18 years of age.	Children are those under the age of 18 years. Adults are therefore defined as those 18 years and over.	Children under the age of 16 years.	Children and adolescents defined as persons under the age of 16 years.
A.6.2. Define child marketing	Defines child-directed marketing.	"Children's Commercial Communications are commercial communications that promote products, services, or activities that are deemed to be of particular interest to children and/or broadcast during and between children's programmes."	"Children's Media are, for the purpose of this Code of Practice, non-broadcast media created specifically to be used and enjoyed by those under the age of 15 and/or those whose audience or user profile consists of 50% or more of this age group. This applies to all forms of digital media, out of home media, print media and cinema."	Not in the translated version.	Not mentioned

A.7. Geographical coverage	Specifies the geographical coverage of the code, addressing cross-border marketing.	“Broadcasters within the jurisdiction of the Republic of Ireland must comply with the provisions of the Code. It shall not apply to other services commonly received in this State but licensed in the United Kingdom or in other jurisdictions.” Does not mention any operational procedures for cross-border marketing communications.	“These Codes of Practice apply to non-broadcast media (digital, out of home, print, cinema), commercial sponsorship and retail product placement in the Republic of Ireland.”	As a law it is applicable to national commercial communications. Does not mention cross-border marketing.	“The Advertising Tribunal has sole jurisdiction to assess the compliance of advertising with the Slovenian Advertising Code. Under the Code, it may assess any advertising in the territory of Slovenia, except when that advertising is explicitly exempt under the Code.”
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B. Marketing restrictions					
Aspects considered	When drafting the code...	Irish Children's Commercial Communications Code	Healthy Ireland Voluntary Codes	Portuguese Law 30/2019	Slovenian Advertising Code
B.1. Marketing techniques	Lists and defines all the marketing techniques and practices that are covered by the code. Defines exceptions (if any) and when/where such exceptions apply.	<ul style="list-style-type: none"> • Advertising • Sponsorship • Misleading, comparative, surreptitious and subliminal commercial communications • Teleshopping • Television product placement • Virtual, interactive and split-screen advertising. 	<ul style="list-style-type: none"> • Non-broadcast media (digital, out of home, print, cinema) • Sponsorship • Retail product placement 	<ul style="list-style-type: none"> • Broadcast • On-demand services • Printed media • Online • Mobile apps 	<ul style="list-style-type: none"> • Print media • Billboards and advertising spaces in public places and in areas visible from public places, including moving images • Advertising via email, mobile telephones, etc. • Television, radio, and cinema advertising • Advertising in other electronic media, including internet • Advertising on electronic and video media • Advertorials • Sales promotion • Direct marketing

B.2. Audience	Specifies age groups for which the measures apply.	<p>Different levels of protection for different age groups:</p> <ul style="list-style-type: none"> • Under 6 years: state orally on-screen messages or small print. • Under 13 years: marketing of HFSS food products and/or services shall not include health and nutrition claims and promotional offers. • Under 15 years: Avoid the use of language, special effects or imaginative scenes which could confuse the child or make them believe the product or service has capabilities that it does not have in reality. • Under 18 years: Marketing for HFSS food products and/or services shall not be permitted in children's programmes. 	There are specific requirements that apply to children under 16 (e.g., marketing communications should not encourage children to eat more than they otherwise would) and to children under 15 (e.g., marketing communications for HFSS food by means of e-mail and SMS shall not target children under the age of 15).	Intended for persons under 16 years of age.	Children under the age of 16; alcohol should not be marketed to persons under 25.
B.3. Settings	Specifies settings at which the measures apply.	Broadcast advertising	<ul style="list-style-type: none"> • Locations primarily used by children • Websites of food businesses • Billboards, public transport stops, buses, trains and building banners • In store/point of sale materials, checkout bays 	<ul style="list-style-type: none"> • Schools • Playgrounds • Sports, cultural and recreational activities organised by schools • Television programmes with a minimum audience of less than 25% audience aged under 16 years • 30-minute period before and after children's programmes 	Same as in B.1.

B.4. Time	Specifies timeframe when the measures apply.	Applies to commercial communications broadcast during and between children's programmes where over 50% of the audience are of these age groups. In the 2020 BAI statutory report, the implementation of a 9pm watershed was included as a discussion point to be considered in next update of the Code.	Time of broadcast is one of the contextual factors used to consider whether a children's commercial communication is appropriate.	30-minute period before and after children's programmes	Not mentioned
B.5.1. Content	Defines restrictions on the content of marketing communications. OR Lists what is authorised/permitted (versus what is banned).	In factual presentation, p.8: Avoid the use of language, special effects or imaginative scenes which could confuse the child or have them believe that the product or service has capabilities or characteristics that it does not have in reality. U/15 (under the age of 15). Another example: Children's commercial communications should not imply that possession or use of a product or service will make the child or his/her family superior, either physically, socially or psychologically.	No	Eight specific restrictions in Article 20.A: It is forbidden to communicate characteristics of HFSS food products as beneficial to health. Advertisements should not encourage excessive consumption, create a sense of urgency or necessity in the consumption of the advertised product, transmit the idea of facilitation in its acquisition minimising its costs, associate consumption to status, success, skills, popularity or intelligence.	Food and drink advertising aimed at children: <ul style="list-style-type: none"> • may not justify or encourage poor dietary habits or unhealthy lifestyles; • may not encourage children to eat or drink before bedtime or to eat sweets and snacks on a regular basis throughout the day; • may not encourage children to eat more than they normally do; • may not mislead children regarding the possible physical, social or psychological benefits that the consumption of a product is said to have.

B.5.2 Include warning content	Includes warning messages (either positive/encouraging messages, e.g. eat fruits and vegetables, or negative/discouraging ones, e.g. don't drink and drive).	"Further to rule 6, where a product/service is assessed as an HFSS food and where it is a children's commercial communication of particular interest to primary and pre-school children, it may not include a health or nutrition claims."	No	No	No
B.6. Nutritional or compositional criteria	Defines the nutritional or compositional criteria used to (dis)qualify foods or beverages for marketing purposes, for example nutrient profile models or alcohol by volume in alcoholic beverages.	HFSS foods are those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the BAI.	HFSS Food is a sub-category of food that is deemed high in fat, sugar and/or salt by the application of the Nutrient Profile model used by the Broadcasting Authority of Ireland	The Directorate-General for Health shall, considering the recommendations of the World Health Organization and of the European Union, determine the values that must be taken into account in the identification of high energy, salt, sugar, saturated fatty acids and trans fatty acids foods and beverages."	Not mentioned
B.7. Brand marketing	Clearly states if, further to specific products, brand/company marketing is covered.	"The Code restricts the use of celebrities, licensed or programme characters in such commercial communications. (...) The rules apply to food products and services. This includes commercial communications promoting brands."	"The restrictions will not extend to corporate identities, trading names, or master brands."	Not mentioned	Not mentioned

B.8. Corporate Social Responsibility (CSR)	Clearly states if CSR initiatives are considered as any other form of marketing. Otherwise, ensure that products, brands or integrated marketing campaigns covered by the code are not promoted in association with CSR initiatives.	Not mentioned	"These Codes of Practice do not apply to corporate social responsibility initiatives, donations or patronage."	Not mentioned	Not mentioned
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C. Monitoring and evaluation

Aspects considered	When drafting the code...	Irish Children's Commercial Communications Code	Healthy Ireland Voluntary Codes	Portuguese Law 30/2019, of 23 april	Slovenian Advertising Code
C.1.1. Implementation and evaluation of the code	Defines an implementation strategy to ensure the uptake of the code, including relevant indicators.	Code effective on 2 September 2013	Codes launched in February 2018. Missing details on process indicators, and a clear definition of the actor in charge of evaluating the code. The code mentions a "monitoring body designated by the Minister for health" in Principles of Governance, p.14.	Law entered into force 60 days after its publication.	Code entered into force from 1 October 2009
C.1.2. Implementation and evaluation of the code	Defines an evaluation strategy for the code. Include details on type of evaluation, funding sources and reporting.	BAI regulates and monitors broadcast content for compliance with codes and rules. In 2020, BAI published a comprehensive statutory evaluation involving participation from societal groups.	"The Codes will be monitored for compliance and effectiveness by a monitoring body designated by the Minister for Health. The monitoring body will be free to decide on its operational methods. However, the body will have access to and review relevant data from all companies and partner organisations."	Foresees a periodic impact assessment every 5 years involving areas of the government responsible for health, education, consumer protection and food, in collaboration with other stakeholders (agri-food sector, communication and marketing). Requires compilation of relevant indicators regarding the food consumption patterns of children under 16 years,	Not mentioned

				the food communication aimed at them and their general health.	
C.2.1. Enforcement of the code	Defines a strategy for the enforcement of the code. Discloses funding and potential sources of conflict of interest in the monitoring process.	BAI launched a Compliance and Enforcement Policy in 2014. The enforcement methods are described and include monitoring of broadcast, on-site inspections and contractual approvals.	Not mentioned	The Directorate-General for the Consumer is responsible for monitoring compliance, as well as the investigation of the respective proceedings and the application of the respective fines and accessory sanctions.	Not mentioned
C.2.2. Enforcement of the code	Develops mechanism(s) to detect potential infringements to the rules.	Any viewer or listener may make a complaint if they are dissatisfied with the way a broadcaster is complying with code.	The Code includes a monitoring and complaints section, to detect potential infringements to the rules.	Not mentioned	Not mentioned
C.2.3. Enforcement of the code	Develops mechanism(s) to discourage new or further infringements.	<ul style="list-style-type: none"> • Legal measures • Financial sanctions up to €250,000. 	Not mentioned	Financial sanction, e.g., fines from €1750 to €3750 or from €3500 to €45000, depending on whether the offender is single or legal person..."	Not mentioned