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WHO European Action Network on Reducing Marketing Pressure on Children

**Report of 11th meeting in Lisbon, Portugal,
21-22 April 2016**

ABSTRACT

The 11th meeting of the WHO European Action Network on Reducing Marketing Pressure on Children took place in Lisbon, 21-22 April 2016. The Network facilitates cooperation and knowledge sharing between European states on reducing marketing of foods high in fat, sugar or salt to children. Meeting participants – including 14 Network member countries – exchanged information on recent experiences with regulatory or voluntary approaches to reducing marketing pressure on children. The meeting also addressed the particularly challenging area of digital marketing and explored new topics, such as the inappropriate promotion of foods for infants and young children and the role of human rights in protecting children.

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Background

Increasing levels of childhood obesity and high burden of non-communicable diseases (NCDs) urge the need for broad-based prevention efforts. One important measure is to reduce marketing pressure on children – especially the marketing of energy-dense, micronutrient-poor, foods and beverages. Such marketing influences children’s knowledge, preferences, attitudes, food choices and dietary behaviours.

Over the last 10 years, the issue of reducing marketing of foods high in fat or salt or sugar (HFSS) to children has become increasingly prominent on the international agenda. International action is essential to ensure that efforts to reduce marketing pressure on children are effective.

The establishment of a European WHO Action Network on Reducing Marketing Pressure on Children (hereafter referred to as ‘the Network’) in 2008 reflected the joint interest of several countries in the WHO European Region to take action on this issue. The Network was established in close cooperation with the WHO Regional Office for Europe. Norway took on the responsibility of leading and facilitating the network.

There are currently 28 countries in the WHO European Region participating in the Network.¹ In addition, several organizations and institutions take part in the Network as observers.² Network meetings have been held in Serbia, Slovenia, the United Kingdom, Portugal, Belgium, Denmark, Turkey, Switzerland and Greece.

In April 2016, the 11th Network meeting took place in Lisbon, with Portugal now responsible for leadership of the Network. In total, around 40 participants attended the meeting representing 14 Network countries and including two WHO Collaborating Centres, observers, temporary advisers, invited speakers and WHO representatives.

Introductory session

On behalf of WHO Regional Office for Europe, João Breda welcomed participants and pointed to the high level of participation—with 14 countries participating—as a mark of success for the Network. With the participation of key academics and representatives of NGOs, the discussion promised to be extremely interesting, highly relevant and useful. He expressed gratitude to the hosts, and new Network chair, Portugal.

Francisco George, Director General of the Directorate General of Health in Portugal, welcomed all participants to Lisbon and to Portugal. At a recent meeting with the Regional Director at the WHO Regional Office, Dr George reaffirmed Portugal’s commitment to supporting the marketing Network. The Network discussions will provide important support and impetus for Portugal’s own efforts to tackle this issue. He conveyed thanks to colleagues from the previous Network chair, Norway, for excellent stewardship of the Network and a smooth handover. He also thanked Portuguese colleagues for organising the meeting and WHO for its support.

¹ Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Greece, Latvia, Ireland, Israel, Macedonia, Montenegro, the Netherlands, Norway, Poland, Portugal, Serbia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

² WHO, European Commission, FAO, UN Standing Committee on Nutrition, Consumers International, World Obesity, UNICEF, European Heart Network, World Cancer Research Fund.

Fernando Almeida, National Institute for Health, Portugal, added his words of welcome. The National Institute of Health has participated in the Network since the outset and this has contributed to some of achievements that Portugal has been able to realise, such as production of recommendations on marketing of foods to children and participation in the Childhood Obesity Surveillance Initiative (COSI). It is heartening, therefore, to see the Directorate-General of Health now take on the leadership of the Network on behalf of Portugal. The Institute is committed to collaborating fully and providing support where needed.

As former chair of the Network, Knut-Inge Klepp, Norwegian Institute of Public Health, thanked the hosts and conveyed thanks to Portuguese colleagues for taking on the task of leading the Network. There remains much work to be done in reducing marketing pressure on children across Europe and the exchanges facilitated through this forum can make an important contribution.

Restrictions on food marketing to children in Portugal

Updates on process and status of proposed regulatory measures

Pedro Graça, Directorate-General of Health (DGS), Portugal, added his words of welcome to Lisbon and added that DGS is delighted to host the Network. He went on to give an update on developments on food marketing to children in Portugal.

A new law was introduced in 2016 bringing in restrictions on advertising towards children in relation to food and drink. This complements existing legislation on marketing practices (not directly related to nutrition). To date, the law has had general approval by the three parties in the government. The second round of discussion, and detailed approval process, was underway at the time of the meeting.

In its current form, the new law forbids advertising of food and beverages high in sugar, fat or salt (HFSS) in schools and a surrounding radius of 500 meters, as well as in publications, programmes or activities aimed at minors. It also forbids the advertising of HFSS food and drinks in:

- the previous and subsequent 30 minutes of television and radio programmes aimed at children;
- children's programmes and TV programmes whose audiences have a minimum of 20% audience lower than 12 years;
- all the advertising during respective breaks;
- on the internet or web pages with content intended for children and a young audience.

The DGS recognises that this last item will be one of the most difficult measures to implement in practice.

The regulation provides for the DGS to identify and set the values for HFSS food and drinks according to the recommendations of WHO and the European Union. This reference to WHO recommendations will be helpful when it comes to defining HFSS foods.

The government is keen to take further action in this area—other areas being explored are a new law on traffic light labelling and a measure on introduction of organic food into school meals.

Discussion

Portugal was congratulated on these exciting developments. There was discussion of some of the challenges envisaged in enforcing the law, particularly because in Portugal cable TV channels now have larger audiences than terrestrial channels. An earlier version of the law had been rejected four years ago because critics said it would be too difficult to implement.

The law has had reasonable political support (including from some opposition members of parliament). Vested interests have tried to argue that the legislation will damage traditional print and broadcast media while it will be unable to control the web.

There was some discussion of whether there would be opposition from the European Commission and whether there is a requirement to notify the Commission. DGS had similar concerns about another proposed measure—namely, to reduce the portion size in individual packs of sugar for coffee. In fact, two countries – Ireland and the UK – have implemented statutory restrictions to those proposed by Portugal, and there has not been any legal challenge. There was clarification that Article 36 allows Member States to invoke an exception on public health grounds, but there is a burden of proof to show a convincing rationale, to show that considerations of impact on competitiveness have been taken into account and that the measure is proportionate. If the case seems reasonable, the Court tends to allow authorities some margin of manoeuvre. For this reason, it is very important to work with legal advisers from the very outset, to be able to frame the arguments appropriately.

In relation to age, the first clause refers to children under the age of 12. Elsewhere the legislation refers to minors, which applies to anyone under 18. The legislation does not specifically address the issue of sponsorship, which is a considerable problem in Portugal. There is, however, already legislation on gifts.

The penalties and sanctions have not yet been discussed. The second discussions on the legislation are ongoing, and although changes at this stage *should* only be minor, changes are still possible. It is not inconceivable that some of the provisions would be removed.

Monitoring of the implementation will, in the first instance, focus on changes in advertising. Monitoring of other outcomes may also be developed through work with research institutes, etc. A word of caution was issued, however, against trying to monitor the impact on direct health outcomes—there are so many, many factors involved.

The audience threshold of 20%—stricter by 15 percentage points than the EU Pledge (35% of an audience is children)—was particularly welcome. The process for defining foods that are covered has not yet been defined—it may be that DGS will be calling for expert support in this area, using WHO nutrition criteria (nutrient profile model) as one of the inspirations.

Exposure and power of marketing of HFSS foods—Portuguese evaluation project

Dr Emma Boyland, University of Liverpool, UK, and Dr Ana Rito, National Institute of Health, Portugal, presented a proposal for a new European comparative study of the content and marketing techniques of food brand websites, and to examine whether the EU Pledge is fit for purpose.

The study—planned in countries participating in the European Childhood Obesity Surveillance Initiative (COSI)—aims to evaluate compliance with the EU Pledge and to evaluate the extent to which this self-regulatory approach meets the requirements of the WHO Set of

Recommendations on The Marketing of Foods and Non-Alcoholic Beverages to Children. The study will only look at Pledge signatory companies.

Specifically, the objectives are:

- i. quantify the extent and nature of online food marketing on the relevant websites;
- ii. determine compliance with the commitments made by signatory companies;
- iii. evaluate the level of concordance between the pledge commitments and the WHO recommendations.

This study is needed because internet food marketing is relatively understudied and most data that do exist come from high-income English-speaking countries such as Australia, New Zealand and the US. The study will provide an EU perspective on the extent of the problem and an opportunity to assess the effectiveness of the EU Pledge and judge it against the WHO recommendations.

The proposal will be presented to the COSI meeting in June and all EU COSI countries will be invited to participate. The protocol combines the best attributes of the WHO Framework for Implementing the Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children and other monitoring manuals. Participating researchers will receive a detailed protocol (step-by-step guide) and training will be provided via Skype. Data will be captured by download (using specific software), coding while viewing or use of screenshot images. The sampling framework will enable identification of all websites featuring brands and/or products of *appeal to children* owned or sponsored by Pledge signatory companies. Content will be coded to take into account exposure, power (marketing techniques) and the nutrient profile of the products concerned. The WHO Regional Office for Europe nutrient profile model will be applied and compared with the standardised 2014 EU Pledge.

The estimated costs for participant countries will be relatively low. The purchase of web capture software is optional and the main costs will be researcher time (graduate level). Data will first be analysed for inter-coder reliability within countries, inter-coder correlation between countries. The analyses will examine the extent and nature of internet food marketing, compliance with the EU Pledge criteria and benchmarking against WHO recommendations, including the WHO EURO nutrient profile criteria. The results will be widely disseminated, including through publication of a final report of findings, submission of papers to peer-reviewed journals and media communication.

Discussion

There was discussion about whether any countries that do not participate in COSI would be able to participate. While the project will first be proposed to COSI principal investigators, then it may be possible for others to join. It should also be possible for countries to use the protocol in the national context, even if not as part of the wider project, and to build in national variables if necessary.

The EU Pledge rules have been in place for company and third party websites since 2013, but the rules on apps and mobile advertising come into force at the end of 2016. It is important to stress that the study will not be doing a pre- and post- evaluation of the EU Pledge rules, nor will it involve a comparison of Pledge signatories with companies that have not signed the Pledge. Rather, it will compare findings against the WHO Recommendations and consider how well the

Pledge meets these requirements. The intention is also to compare some companies across countries to identify whether they are employing different tactics in different countries.

Investigators will be provided with training on how to judge what content is '*of appeal to children*' and there will be some double-checking by the lead investigators.

Evaluation and monitoring of food marketing to children

Update on Joint Nordic Monitoring Protocol

Knut-Inge Klepp, Norwegian Institute of Public Health, presented an update on the joint Nordic monitoring protocol.

As background, the food and drink industry's self-regulation scheme (MFU) was in place in Norway and there were plans to conduct an evaluation. It was therefore judged to be a good opportunity to try and do something applicable across Nordic countries.

The objectives of the work are:

- To write a joint Nordic monitoring protocol for marketing of unhealthy foods and beverages towards children.
- To arrange a workshop with representatives from Nordic countries, researchers (Nordic and international) and WHO with the purpose of establishing the ground for joint and comparable Nordic monitoring practices.
- Long-term objective: use of the protocol will strengthen the evidence on marketing of unhealthy foods towards children in the different Nordic countries.

A workshop was held in Oslo in 21-22 September 2015 with the following aims:

- Exchange and update on the current marketing policies and monitoring in the Nordic countries;
- Development of and writing a joint Nordic monitoring protocol;
- Explore the potential and interest for possible joint project collaboration on monitoring of marketing of unhealthy food and beverages to children in the Nordic countries.

The resulting protocol can be used in whole or in part and can enable comparisons between and within the Nordic countries. It aims to describe how to collect data that will answer the following research questions:

- To what degree are HFSS foods and beverages marketed as a proportion of marketing overall?
- To what degree are HFSS foods and beverages marketed as a proportion of overall food and beverage marketing?
- What proportion of HFSS food and beverage marketing is directed at children and young people?
- What proportion of HFSS food and beverage marketing are children and young people exposed to?
- What type of HFSS foods and beverages are marketed to children and young people?
- What marketing techniques are used to market HFSS foods and beverages to children and young people?

An expert group, involving people from health authorities or appointed by health authorities, has taken the project forward. Two draft versions have been circulated and the final version was nearing completion and is due for publication before the summer.

The protocol has encountered some industry resistance – the Danish industry in particular is lobbying the Nordic Council of Ministers to reject the protocol. Various arguments have been put forward, including ‘the protocol does not meet appropriate scientific principles and standards’, ‘the protocol suggests a complete ban of marketing of legal products to adults’ and ‘the protocol cannot be used for comparison purposes’. In addition, the self-regulatory body in Norway has questioned the level of resources required.

The main controversial issues are (a) marketing specifically *directed* at children versus marketing that children are *actually/potentially exposed* to, and (b) should it only apply to children younger than 13 or to both children under 13 and young people aged 13-17 years.

The Nordic Council of Ministers has now requested additional information from the project on how each of the approximately 80 concrete comments and inputs have been addressed by the project. This extra workload has delayed the completion of the protocol.

The intended future steps are to complete the protocol, to use it for the 2016 evaluation of self-regulation in Norway, to integrate the protocol into governmental structures and policies in all Nordic countries, and to secure funding for future national and international collaborative monitoring efforts.

Evaluation of the Norwegian self-regulation scheme

Following lobbying the Norwegian government abandoned plans to legislate on food advertising to children, but a two-year trial of a strengthened self-regulatory scheme was introduced backed by the threat of legislation if this proved ineffective. On this basis it was agreed that the scheme, which came into force in January 2014, would be evaluated in 2016. There has since been a change of government and the current government has declared that it would never regulate (thereby removing the regulatory ‘threat’).

The MFU will be evaluated in 2016 as planned, and the evaluation will have three components:

- A systematic mapping of food advertising of HFSS food and beverages towards children and young people on TV, social media, web pages and blogs. The National Institute for Consumer Research (SIFO) and the Norwegian Centre for Child Research (NOSEB) have been charged with this work. The Joint Nordic Monitoring Protocol will be used as much as possible.
- MFU self-evaluation – using a questionnaire developed by the Norwegian Directorate of Health.
- Norwegian Directorate of Health’s overall evaluation based on 1 and 2 (above) and including NGOs and government agencies’ assessment of MFU, based on a questionnaire developed by the Norwegian Directorate of Health.

The results from a study investigating marketing to children in local grocery stores will be included. The Ministry of Health is scheduled to receive the final report from the Norwegian Directorate of Health in October 2016.

Discussion

It was suggested that it would be helpful to share lessons from the MFU evaluation, which may serve as a pilot for the joint monitoring protocol pilot. The idea behind the joint monitoring

protocol has always been that it should be a robust framework that should be adaptable more widely – it should prove very valuable for other Member States. The decision to limit the initial development to Nordic countries, as a first step, also reflects the source of funding.

For future monitoring in other Nordic countries, the plan is to wait for the Nordic Council to approve the protocol, now that the questions raised have been answered. In terms of rebutting the two main areas of controversy (age groups, and ‘aimed at’ versus ‘exposed to’) the response to the Council has been robust, emphasising that it is very important to have all this information so that the data can be analysed in different ways.

Progress in developing global nutrient profile models for marketing of food and non-alcoholic beverages to children and other applications

Chizuru Nishida, WHO headquarters, gave an update on WHO’s work on nutrient profiling.

The impetus for initiating WHO’s work on nutrient profiling came from the *ad hoc* development of models that was taking place, and the inconsistencies and confusion that this created. The need for a systematic evaluation and comparison of different models was recognized. There was a role for WHO to formulate a coordinated approach for developing and/or adapting nutrient profile models which could be used for different applications. This is important in order to facilitate the implementation of a coherent public health strategy.

Using a similar approach to that used to develop Food-Based Dietary Guidelines, WHO developed guiding principles and a framework manual on nutrient profiling.³ Between 2011 and 2013 the manual was field tested in six countries (South Africa, Canada, United Arab Emirates, Norway, Slovenia and Thailand).

The key lesson learnt from country field-testing of the WHO Nutrient Profiling Manual was that it is easier to adapt an existing model than to develop a new model from scratch. WHO compiled a catalogue of nutrient profile models. Of the 119 models identified, 54 met the inclusion criteria and, of these, only 19 had been validated in any way.

The lessons learnt from the Manual field testing have been taken forward in a number of new developments within the last two or three years:

- A regional model developed by the WHO European Region, through adaptation of existing models that had been developed by Norway and Denmark was launched in early 2015.
- A regional model developed for the WHO Eastern Mediterranean Region, through adapting the model developed by WHO EURO, is currently being finalized.
- In early 2016, a regional model for the WHO American Region based on Brazil’s concept and method of classifying foods according to the level of processing was launched.
- Official country consultation is currently underway to finalize a regional model for the WHO Western Pacific Region through adapting the model developed by WHO EURO.

³ World Health Organization. Nutrient Profiling—Guiding principles and Framework manual for the development or adaptation of nutrient profile models. Geneva: WHO;

- Country testing is underway to assess the feasibility of adapting the regional model developed for WPRO in WHO South East Asian Region and a workshop is planned in July 2016 to review and evaluate the outcomes.

So, by the end of 2016 there will be five regional models for regulating the marketing of foods and non-alcoholic beverages.

For WHO the next step will be to develop a unified nutrient profile model for regulating the marketing of foods and non-alcoholic beverages to children. This will be important for the WHO African Region, for example, which has not developed a regional model. The global model will take the strictest threshold from each region and then countries can, of course, adapt. The WHO Guiding Principle and Framework Manual will be revised and updated to include this model, and the Catalogue will be updated.

Further steps will be to test to assess if the marketing nutrient profile model could be adapted for other purposes. These include regulating school food procurement, for implementing fiscal policies (e.g., taxes/removal of subsidies on unhealthy food items, subsidizing food items, etc.) and for implementing nutrition labelling (e.g., front-of-pack labelling). WHO's further role will include providing support to countries to help with adaptation of nutrient profile models and to train and build capacities in the use and application of nutrient profile models.

Discussion

The extent of progress in the last couple of years was warmly welcomed, and the leading role of the European Region and the Network is clear. The flexibility of the nutrient profile models that have been developed is a really positive element—in this way countries can adapt the models to their own context without having to reject the entire model. There was a particular call for development of a nutrient profile model to help formulate fiscal policies (taxes and subsidies), since this is a very complex area of policy. WHO is currently working on identifying cost-effective interventions on taxation and this will feed into the development of a nutrient profile model.

Progress in implementing the WHO Set of Recommendations on the marketing of foods and non-alcoholic beverages to children

Leo Nederveen, WHO headquarters, gave an update on the implementation of WHO's Set of Recommendations on the marketing of foods and non-alcoholic beverages to children, which was endorsed by the 63rd World Health Assembly in May 2010.

There are 12 recommendations—covering rationale, policy development, policy implementation, monitoring and evaluation, and research—with the aim of guiding Member States in designing new and/or strengthening existing policies on food marketing communications to children in order to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.

The WHO NCD Progress Monitor in 2015 reported that 42 of 194 countries say they have implemented restrictions on marketing to children. Closer examination of policies to reduce the impact on children of marketing of foods and non-alcoholic beverages in 51 countries found that 23 involved voluntary or self-regulation and 27 were based on government legislation. In relation to enforcement, 29 were enforced by government, 7 by the food industry itself and 8 by independent bodies. Only 13 of the policies included cross-border marketing.

The reality of the situation is that implementation has been poor and there are bottlenecks at all stages of the policy cycle. In the latest data just over a third (37%) of countries reported having policies for reducing the impact of marketing of HFSS foods and drinks on children and no country had comprehensive implementation. Implementation was highest in high-income countries and was lowest in low-income countries, with the lowest implementation in the African Region.

A second reality of the situation is that governments favour voluntary codes and self-regulation, but self-regulation does not work. Self-regulation is often a tactic to avoid statutory regulation and the rules of self-regulatory codes are set and interpreted by the advertising and food industries to suit their own interests. There is also a lack of independent review, public awareness of standards, penalties and enforcement.

The industry continues to undermine and oppose efforts to reduce the impact of marketing on children and young people. Marketing practice overall has altered little other than being more cost-efficient and innovative. Adolescents in particular remain highly exposed to pervasive marketing of foods and non-alcoholic beverages. The net result of this continuous undermining of Member States' efforts is a tired, weary and overwhelmed workforce.

There is a very clear need to engage with the legal sector. Vested interests and legislative hurdles create bottlenecks in the development and implementation of policy. In reality, nutrition and public health personnel are trying to implement legislative interventions against a backdrop of specialized lawyers engaged by industry. Policymakers should work with lawyers from the outset to guard against these issues. Another issue is the general lack of media regulation or an appropriate legislative framework in some countries.

Problems are compounded by a lack of awareness about the Recommendations and knowledge of how to implement them. There is also a lack of recognition that there is a problem with marketing to children and that there is a need to restrict marketing. This is a particular problem in the African and South East Asian Regions, but also in the Western Pacific. There is, therefore, a huge need for greater advocacy from civil society and professional organizations, especially in low- and middle-income countries. Enforcement and monitoring capacity is also sorely lacking—a weakness which is often exploited by those pushing self-regulatory approaches with little independent monitoring.

All of these harsh realities about the progress with implementation of the Recommendations point to the need for better policy tools. Member States have expressed needs for tools to help with nutrient profiling, model laws or a legislation checklist and monitoring tools. There is also a need to build capacity in Member States. Creating stronger links with economics and trade may help to push marketing restrictions up the agenda. Increasingly, trade measures (such as international investment treaties) are becoming a barrier to policies for NCD prevention, including marketing. Increasingly, marketing restrictions and fiscal policies on foods are seen as riding on the same wave and are promoted together as a package.

Despite all the challenges, regulation on marketing is cost-effective and should be pursued as part of a rights-based approach to regulation. It is essential to mobilise a wide range of collaborators and partners from civil society, public health and the legal sector. WHO will continue the development and application of a range of tools and further capacity building work will be pursued, with a particular focus on the law and NCDs through provision of short courses and bi-regional workshops.

Discussion

Participants were informed that the WHO Regional Office for Europe and headquarters would be working together to update information on recent developments on nutrition in the Region. A questionnaire will be sent out to Member States but, in order to minimise the work involved for countries, WHO will try to pre-fill as much of the questionnaire as possible with information that is already available.

Portuguese research on food marketing and consumption

Sandra Gomes, IPAM Porto, Portugal, reported on some studies on food marketing and consumption in children.

In 2015 a focus group study was conducted with children aged 5-6 years and those aged 8-9 years to explore the influence of packaging in children's food choice. The study found, among other things, that children usually go with their parents to the supermarket and enjoy the visit *if it implies a reward*. Children are highly aware about the design, visual elements of packaging and of licensed characters. Promotional gifts are more important for young children than for older children, who say that they do not buy a product they do not like just because of a promotional gift. The word 'healthy' on packaging provokes a more negative attitude than 'sweet' in experiments.

The study explored what advertising is from the children's point of view and found that the younger children already knew about YouTube advertising and that the older children sometimes realise that product placement in television programmes (prevalent in Portugal) is promotion.

Another study in 2015 explored the attractive elements of TV commercials for food products towards children. A qualitative study involved observation of commercials during children's programmes over a two-week period. A quantitative survey was then conducted among children aged between 8 and 13 years. According to children, the attractive elements of advertising are animals, celebrities, humour, a family/parent figure and dance. Among the least attractive elements were promotional gifts, coupons or prizes. Surprisingly, however, some of the other least attractive elements were also among those most valued—namely, celebrities, animals and dance.

Finally, an ongoing 2015-16 study on Portuguese consumer attitudes towards food labelling will comprise qualitative research with focus groups and a national survey.

A number of recommendations for the marketing of healthy food brands or social marketing campaigns regarding healthy eating can be derived from these studies:

- Use celebrities
- Use animals
- Use humour, music or slogans
- Use famous licensed characters
- Do not only target children's programmes, also consider television series, soap operas and entertainment shows
- Use digital marketing
- Define sub-segments: ages, gender, social class, etc.
- Healthy product communication is important at the point of sale.

In this way it is possible to use marketing to create the tools to craft the right message towards the promotion of healthy food.

Discussion

The different perspective offered by these studies was welcomed. There was some discussion of the broader issue of commercialisation of childhood, and whether it is ethical to target children with marketing irrespective of whether the foods involved are healthy or unhealthy. IPAM does also have a stream of research examining this issue and, from IPAM's perspective, the message is that marketers and health professionals should definitely work together towards health goals.

Addressing the challenge of digital marketing to children

Is digital marketing of HFSS foods to children a problem?

Dr Emma Boyland, University of Liverpool, UK, addressed the question of whether digital marketing of HFSS foods to children is a problem.

There are no well-established definitions of digital marketing. Montgomery and Chester, in 2011, identified five techniques used in digital marketing⁴:

- Promotion using augmented reality, online gaming, virtual environments and other immersive techniques
- Use of data collection and behavioural profiling
- Promotion using social media
- Location targeting and mobile marketing
- Neuromarketing.

A working definition of digital marketing would, therefore, be to say marketing involving 'the presence of one or more of these techniques'.

It is clear that children are enthusiastic consumers of digital media. UK data, for example, show that 91% of children aged 8-11 years and 96% of children aged 12-15 years had internet access at home in 2015. In the same year, 24% of 8-11 year olds and 69% of 12-15 year olds owned a smartphone.⁵ The same dataset shows that the estimated weekly hours of internet consumption is increasing.

In line with the WHO framework for implementing the Set of Recommendations, the important elements to examine are 'exposure' (which relates to the frequency and reach of media) and 'power' (which relates to the creativity and persuasiveness of marketing).

Numerous studies show that these marketing techniques are commonplace and that they are often promoting less healthy foods.

Food brand websites sometimes incorporate adver gaming, which involves brand immersion throughout the game. A Canadian study of 24 purposively sampled websites sponsored by 10 companies that promoted products to children found that the majority (83%) targeted children under the age of 12. The marketing techniques included free website membership (63%), leader

⁴ Montgomery and Chester, 2011.

⁵ Ofcom. Children and Parents: media use and attitudes report. 2014. <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/october-2013/research07Oct2013.pdf>.

boards (50%), advergaming (79%) and branded downloadable content (76%).⁶ The study points to marketers using online techniques that, even if they don't break the rules do break the spirit of their commitments.

Another study, by Culp and colleagues, analysed content of web sites advertised on Cartoon Network and Nickelodeon.⁷ Of the total of 290 web pages and 247 unique games on 19 internet sites were examined. Games, found on 81% of web sites, were the most predominant prominent strategy used. One third of the adverts were for food, most commonly for fast food (42%), ready to eat (32%) and sweetened cereals (13%). The strategies used on include online-games (84%), sweepstake contests (47%) and free downloads (36%). Ninety-one per cent of games offered opportunities to play again (in order to increase visit length), 52% of games offered a chance to get to a higher level, 32% allowed high scores to be posted publically and 17% of games allowed opportunity to win free prizes. Logos appeared in 70% of games, product images in 43%, and product packages in 24%. A further study of the nutrition content of food and beverage products on 28 non-food web sites popular with children found 77 advertised products, of which 64% met Institute of Medicine criteria for 'foods to avoid' and only 6% met criteria for 'foods to encourage'.⁸ Social media are a major food marketing platform—Coca Cola, for example, has 62 million Facebook followers, Ben and Jerry's Twitter account is one of the fastest growing, gaining more than 750 new followers daily. It is important to remember that the reach of social media extends beyond the followers themselves, their friends are also exposed.

Studies on children's perception of advertising have examined whether children know when they are being promoted to. A study on absolute and relative exposure to online advertising by Sandberg and colleagues, found that teenagers were aware of the purpose of advertising but mainly unaware of advert exposure.⁹ Work by Ali and colleagues found that six-year-olds recognized a quarter of advertisements, eight-year-olds recognized half the advertisements and even 10-12 year-olds only recognized about three-quarters of websites (even with static websites). On television, children can identify adverts before they fully understand their purpose, while on the web this is reversed. Children do not have to comprehend the message as an advert to be influenced by it and might even be more vulnerable to persuasion.

In relation to the impact of advergaming on children, studies show that unhealthy advergaming exposure increases overall intake of unhealthy food,¹⁰ that playing an advergaming containing food cues increases energy intake^{11,12} (particularly through snack foods) irrespective of product type,¹³ that rewarding children to refrain from eating did not mitigate against the effects of playing a game in impulsive children,¹¹ and that children with higher gaze duration and latency of intake fixation to the food cues ate more of the advertised snack.¹² Studies on the effects of

⁶ Brady J, Mendelson R, Farrell A, Wong S. Online marketing of food and beverages to children: A content analysis. *Can J Diet Prac Res.* 2010;71:166-171.

⁷ Culp J, Bell RA, Cassady D. Characteristics of food industry web sites and advergaming targeting children. *J Nutr Educ Behav.* 2010;42:197-201.

⁸ Lingas EO, Dorfman L, Bukofzer E. Nutrient content of food and beverage products on web sites popular with children. *Am J Public Health. Supplement 3.* 2009. Vol. 99. No 53.

⁹ Sandberg H, Gidlof K, Holmberg N. Children's exposure to and perceptions of online advertising. *International Journal of Communication* 5 (2011), 21-50.

¹⁰ Harris JL, Speers SE, Schwartz MB, Brownell KD. *Journal of Children and Media*, Vol 6. No 1, 2012.

¹¹ Folkvord F, Anschutz DJ, Nederkoom C, Westerik H, Buijzen M. *Pediatrics* 2014; 133(6):1007-12.

¹² Folkvord F, Anschutz DJ, Wiers RW, Buijzen M. 2015; *Appetite* 84: 251-8.

¹³ Folkvord F, Anschutz DJ, Buijzen M, Valkenburg PM. 2013 ; *Am J Clin Nutr* 97(2) :239-45.

exposure to television advertisements show increasing preference for high fat and sugar foods,¹⁴ greater preference for the brand or product advertised,¹⁵ more product requests,¹⁶ increased snack food consumption,¹⁷ increased overall calorie intake,¹⁸ higher rates of obesity¹⁹ and reduced intake of fruit and vegetables.²⁰ A meta-analysis (in press) of 13 studies in children demonstrates that food advertising exposure does promote intake in children.²¹

Research by Nielsen Media concluded that exposure to ‘homepage ads’ on social media increase ad recall, brand awareness and purchase intent. Adding social context—such as when the page has been ‘liked’ by a friend—dramatically enhanced all three metrics. An explorative study of adolescents’ presentation of food in social media found that 85% of adolescent users shared images containing food items, that over two-thirds (67.7%) depicted high calorie foods and that around half had brand exposure with many images clearly influenced by food marketing campaigns.²²

In conclusion, it is clear that digital food marketing to children is a problem and there is a clear need to tackle this situation. After all, governments, advocates and the food industry—as evidenced by the self-regulation introduced – recognise that HFSS food marketing to children is a problem and the WHO Set of Recommendations calls for a *comprehensive* policy approach that incorporates all media.

The digital food marketing landscape

Dr Mimi Tatlow-Golden, University College Dublin, presented an overview of current knowledge (and corresponding gaps in knowledge) about the digital food marketing landscape.

Children have clearly gone digital—in the UK 7-16 year olds spend on average 3 hours online per day in 2016, which is more than the 2.1 hours they spend watching TV. It is not clear whether this represents a shift to digital or just a greater amount of screen time. In a study by Ofcom in the UK, consumption of both TV and internet increased between 2005 and 2015 in 8-11 year olds and 12-15 year olds. It remains important, therefore, to continue to work on marketing through broadcast media as well as digital media.

It is extremely difficult to monitor where children go when they go online. The EU Kids Online and Net Children Go Mobile projects found that children are most likely to engage with social network sites, instant messaging, YouTube and gaming. There are some national surveys and

¹⁴ Boyland EJ, Harrold JA, Kirkham TC, Halford JCG. The extent of food advertising to children on UK television in 2008. *Int J Pediatr Obesity* 2011;6:455–61.

¹⁵ Borzekowski DL, Robinson TN. The 30-second effect: an experiment revealing the impact of television commercials on food preferences of pre-schoolers. [J Am Diet Assoc](#). 2001 Jan;101(1):42-6.

¹⁶ Buijzen M, Valkenburg PM. The effects of television advertising on materialism, parent–child conflict, and unhappiness: A review of research. *J Appl Dev Psychol*. 2003;24(4):437-456. doi:10.1016/S0193-3973(03)00072-8

¹⁷ Halford JCG, Gillespie J, Brown V, Pontin EE, Dovey TM. Effect of television advertisements for foods on food consumption in children. *Appetite*. 2004;42(2):221-225. doi:10.1016/j.appet.2003.11.006.

¹⁸ Epstein LH, Roemmich JN, Robinson JL, et al. A randomized trial of the effects of reducing television viewing and computer use on body mass index in young children. [Arch Pediatr Adolesc Med](#). 2008;162:239-45

¹⁹ Shin-Yi Chou, Inas Rashad, and Michael Grossman, "Fast-Food Restaurant Advertising on Television and Its Influence on Childhood Obesity," *The Journal of Law and Economics* 51, no. 4 (November 2008): 599-618

²⁰ Barr-Anderson DJ, Larson NI, Nelson MC, Neumark-Sztainer D, Story M. Does television viewing predict dietary intake five years later in high school students and young adults. *International Journal of Behavioural Nutrition and Physical Activity* 2009 6:7.

²¹ Boyland et al, *AJCN*, in press.

²² Holmberg C, Chaplin JE, Hillman T, Berg C. Adolescents’ presentation of food in social media: an explorative study. *Appetite* 99 (2016) 121-129.

SuperAwesome publishes a quarterly update based on data from a network of 25,000 children who report their online activities. The data is, however, very limited—while YouTube is reported as a favourite, there are more than 800,000 ad-supported channels on YouTube. Thus, it remains very difficult for governments or researchers to get any information on where exactly children are online, now. However, the industries involved (brands, advertisers, social network sites) *do* have access to such information.

In this new digital landscape, advertising is being driven by data-driven platforms and ad exchanges. There is extensive information exchange of information generated by users and those delivering content, through a network of third parties including web analytics providers, ad networks, secondary ad networks, merchants, profiling services or other websites. Profiles are built using techniques such as device fingerprinting, browser sniffing, zombie cookies, geo-location, social graphs, key-stroke analysis and many others. All of this information is compiled to generate a very clear picture of who the person is and what advertising they may be interested in.

Under US law, children are protected to a degree by the Children’s Online Privacy Protection Rule (COPPA), which requires verifiable parental consent for collecting information from under-13 year olds and discourages behavioural targeting. In Europe, most sites claim to be COPPA compliant. A 2015 sweep by the Global Privacy Enforcement Network (GPEN) across 29 data protection agencies internationally found that two-thirds of sites and apps aimed at, or of interest to, children collect personally identifiable information from under-12s. Four out of 10 were flagged as a concern. There is no bar at all on collecting information on children aged 13 or over.

HFSS digital marketing employs numerous ‘stealth’ tactics. Recommendations by video bloggers on YouTube is known to be a particularly powerful technique. One video of two children eating sweets (Kid Candy Review) has been viewed 94 million times. More teens said they were ‘happy to try a brand’ suggested by a YouTuber/blogger (63%) than a movie star (46%).²³ The techniques employed work on emotions and emotion analytics that use emotion-sensing programmes are becoming widespread so that advertisers can tweak campaigns mid flow.

There is increasing use of ad blockers to block digital marketing, but it remains unclear whether these represent part of the solution or they will simply pave the way for more stealth advertising.

In conclusion, there are a number of gaps in current knowledge:

1. Where *exactly* children are online... *now*
2. Extent of HFSS advertising *delivered to*, and *seen by*, children and teens online
 - a. Contextual
 - b. Personalised (under-13s with parent consent and teens)
3. ‘Stealth’ marketing, new developments: Extent, nature, impact
4. ... AND wider public attitudes to these issues.

We do, however, know that:

²³ US teens, Defy Media Acumen Report: Constant Content, March 3, 2015. Emarketer.com

- Children are online more than ever
- Teens are being extensively targeted
- Collection of personal information is taking place at all ages
- ‘Stealth’ marketing and other new developments are in use
- There is potential for parental awareness to influence policy action.

It is essential, therefore, for public health to take a proactive stance, to tackle the knowledge gaps and to challenge the language of ‘choice’ and the devolution of responsibility to parents.

How to ensure digital content does not promote HFSS foods: opportunities and challenges

Jo Jewell, WHO Regional Office for Europe, gave an overview of some of the opportunities and challenges associated with ensuring that digital content does not promote HFSS foods.

While children today are native to the digital environment, they should nonetheless have the same rights in all settings, irrespective of whether they use mobile apps and internet services, communicate with friends via social media or watch TV. In this context, existing policy and regulatory responses in many countries have proven inadequate and have failed to keep up with the pace and scope of change in the media and marketing environment. It is clear that governments are grappling with many complex issues, but the current ‘wait-and-see’ stance leaves children to deal alone with the digital environment and be treated as any other customers online.

There is a balance to be found between participation and protection of children. Clearly, children and young people should be supported and empowered to engage in society including the digital world, but should also be protected from harms as we have sought to do elsewhere. This should not entail ‘devolving’ responsibility to parents, this is akin to asking parents to completely prohibit children from watching television, rather than implementing broadcast regulations.

Children use platforms to communicate and typically think of it as temporary with no further application, like a call or a text. Nevertheless, platforms such as Instagram and Facebook, in contrast, seek to analyse, aggregate and use photos, videos, personal information and metadata commercially, including focusing targeted advertising. Such advertising content often promotes HFSS foods, is behaviourally targeted and involves processing of personal data. Thus a two-pronged focus is needed—one that addresses the content of digital marketing to children and also addresses behavioural analytics, tracking and privacy. Current advertising practice is such that targeting of advertising at children (for HFSS foods as for other products) takes place along with the collection and exchange of data on children’s online behaviour.

Some early thinking by the WHO Regional Office, along with experts in this field, has set out to identify what can be done to tackle these issues. A number of elements are proposed:

1. Establish the principle of children’s rights.
2. Refer to the WHO Set of Recommendations regarding protecting children from HFSS marketing.

3. Refer to Opinions of high-level European bodies regarding personalised marketing and digital privacy issues.
4. Recognise limitations or shortcomings in existing frameworks, policy and regulatory instruments and their implementation.
5. Identify examples of consumer or marketing legislation from other areas that could establish precedent.
6. Identify the entry point for rules/restrictions explicitly relating to HFSS foods and children.

It is interesting to consider existing examples—from outside public health—on children’s data and access to content, that we could be able to learn from.

A key issue to consider is the question of where any such regulations should sit. Currently, media law and regulation is often divided across different media platforms with separate systems of regulation for broadcasting, films and games, print media, etc. Many of these instruments provide only patchy or partial protection and contradict NET/tech neutrality principle. On the other hand, primary legislation that covers marketing practices can contain explicit provision on marketing activities targeted to children and can require businesses to take special care not to exploit the natural credulity of children and young people, and their lack of experience and critical sense which makes them very susceptible to influence. New provisions or rules could be included that would clearly also apply to digital marketing.

There are a number of activities that could be regulated:

- **Creation of digital marketing content** by advertisers: those particular aspects relating to content could be covered under ‘consumer protection’ and/or ‘marketing’ regulations, laws and agencies.
- **Dissemination of digital marketing content:** might be covered by the very same legislation, but also, for example, ‘spam acts’, and ‘privacy and data protection acts’.
- **Tracking and profiling:** this typically falls under data protection and privacy realm, and the laws and agencies under that umbrella.

In relation to who would implement such legislation, it clearly depends on the context in the Member State or particular jurisdiction. Examples of possible regulatory agencies that could oversee and enforce compliance include national media and communications agencies, national competition and consumer protection agencies, data protection authorities or privacy commissioners.

There is a particular challenge in defining what is “aimed at children”. This is already a challenge in relation to television advertising, but is even more difficult in relation to digital platforms. The online threshold age is often fixed at 13, aligned with US practice. Empirical evidence suggests, however, that relying on age-based models is producing unintended consequences whereby young “authorised users” are treated as adults and presented the same information and privacy settings, without any consideration of their particular needs, online behaviour and risks of the online environment. It could, however, be argued that with personalised marketing, advertisers know exactly when they are ‘aiming at’ children.

This is an ongoing area of work for the WHO Regional Office for Europe, which is producing a report on the situation in Europe on food marketing to children in a digital world. This report

will describe what is known of the current situation and scale of the problem and, among other issues, will explore how digital technology could potentially be leveraged, for example, to measure children's actual exposure to particular types of content.

Discussion

There was discussion of the particular challenges facing single Member States wanting to take action concerning international platforms such as YouTube or Facebook. These international companies do, however, have access to such detailed data analytics that, in reality, they could easily switch off all advertising to adolescents. There is potential for countries to be able to take meaningful action, but the real challenge is that the political will is often lacking. This is why it is so important to raise awareness of the dangers and harms of digital marketing and to build capacity. The interaction with other areas of concern, and the pooling of resources that this could lead to, was particularly welcomed.

There are possible lessons or pointers from other sectors that may be valuable. Online child protection to prevent stranger danger and to block access to pornography is more robust. In another useful example, there is sometimes a copy clearance process for alcoholic drink marketing that prevents depiction of anyone that could be considered a 'hero of the young'.

Engagement with bodies working on children's rights was also encouraged. The UN Committee on the Rights of the Child, for example, discussed digital media and children's rights in 2014. It would be useful to engage with such this and other UN bodies to explore synergies and to raise awareness of the issues around digital marketing of HFSS foods to children.

Group discussions on the challenges in designing, implementing and enforcing restrictions on digital marketing

Three working groups discussed three questions about digital marketing to children in their specific countries:

- Has your country introduced measures that address digital marketing to children for HFSS foods?
- Has your country conducted any monitoring or studies looking at children's exposure to digital marketing for HFSS foods?
- What do you think could be the next steps for your country and the network?

The groups identified that this is a difficult and complex issues and, despite some Member State attempts, national efforts have not really scratched the surface. The cross-border nature of much digital marketing makes it more challenging. A lack of solid political will, because of lobbying and some of the challenges associated with the EU Pledge, is clearly part of the problem.

A need for much more cross-sectoral engagement was identified and there was recognition of the lessons to be learnt from other sectors. Evidence-based arguments and a well-argued rationale for action are needed, and the case needs to be built on the basis of other concerns beyond public health. There is a need to move towards a situation where commercial marketing to children is not acceptable.

EU Member States could also demand more action from the European Commission.

Updates from Network members

Bulgaria

Vesselka Duleva, National Center of Public Health and Analyses, Bulgaria, presented a brief update on Bulgaria.

Bulgaria started to work on pressure on marketing of food and non-alcohol beverages to children with the Food and Nutrition Action Plan, 2005-2010, which included a special focus on this issue.

There have been a range of actions to improve pre-school and school nutrition, including a set of national regulations for foods and meals for children (banning of sugary products and soft drinks, energy drinks, snacks and foods with high fat and salt content). Results from the Childhood Obesity Surveillance Initiative (COSI) report an increase in the percentage of schools free from advertising and marketing from 50% to close to 80% between 2008 and 2013.

Research done with the support of Unicef found that 50-75% of children want to have foods that are advertised. The proportion of respondents that always or often buy foods advertised in the media is much higher in the 10-13, 14-18 and 19-29 age groups than in older age groups.

The commercial communication of food to children in Bulgaria is regulated through a co-regulation system where:

1. The Radio and TV Act provides the general framework:
 - a. no content or commercial communication should allow for harmful for children content (incl. physical, mental, moral and / or social development of children);
 - b. specific criteria for harmful for children content is applied. The criteria include specific requirements related to food advertising and are updated annually by the Council for Electronic Media and the State Agency for Child Protection.
2. The law defines a role for self-regulation. It requires:
 - o providers of audiovisual media services to apply the Ethical Rules for Advertising and Commercial Communication (Ethical Code), adopted by the National Council for Self Regulation. The Code contains specific rules for food advertising with special attention on marketing to children;
 - o the National Council for Self Regulation to apply the criteria for harmful content for children adopted by the regulators.
3. The regulator retains the final word – it has the right to impose sanctions on providers of audiovisual materials in case the recommendations of the Ethical Committee of National Council for Self Regulation are not implemented.

A Memorandum for Co-operation has been signed between the Council for Electronic Media and the National Council for Self Regulation. There is good collaboration between the Ministry of Health, the National Centre of Public Health and the National Council for Self Regulation.

Since 2009 more than 400 complaints in total have been received and one third of these were found to concern unsuitable advertising. Bulgaria participated in the process of validation of the

WHO nutrient profile model and cross-checked the nutritional content of 200 food products against the thresholds.

The Bulgarian Soft Drinks Association has been very active and developed a number of codes (responsible marketing, labelling and marketing of energy drinks and energy shots).

Currently, a Bulgarian version of the EU Pledge is in preparation, with the aim of getting local players to sign up to the commitments that the multinationals have made. In the future, the intention is to use the WHO nutrient profile model at some point.

Switzerland

Liliane Bruggman, Federal Food Safety and Veterinary Office (FSVO), Switzerland gave an update on efforts in Switzerland.

Through the Swiss Nutrition Strategy, the FSVO advocates voluntary action by the food industry with the goal to reduce advertising aimed at children. The *actionsanté* initiative, similar to the EU Platform, is one of the main tools of the FSVO to implement the national nutrition policy. As part of this initiative, between 2011 and the end of 2014 food and beverage producers and retailers voluntarily committed to restrict food advertising to children younger than 12 years of age on the basis of defined criteria (Swiss Pledge).

At that time, the criteria for the Swiss Pledge were as follows:

- No advertising of products to children under 12 years (i.e., advertising to media audiences with a minimum of 35% of children under 12 years).
- No communication related to products in primary schools, except where specifically requested by, or agreed with, the school administration for educational purposes.
- Covers commercial communications on TV, print and company-owned websites.

After this Pledge commitment ended at the end of 2014, it was concluded that there had been some success with the Swiss Pledge, but it was criticized by NGOs as not being strict enough and not sufficiently effective. In addition, it was lacking a nutrient profile model supported by the governments—studies have shown that nutrition criteria supported by governments are much more restrictive than those defined by industry. A further criticism is that monitoring was not carried out by a neutral agency or government.

The University of Life Sciences and Facility Management in Zurich compared the WHO Nutrient Profile model with the Swiss Pledge nutrition criteria. The study found that the WHO nutrient profile model criteria were stricter. During the study period, between June and August 2015, marketing of 220 products aimed at children were recorded through internet, TV, print media and point of sale. Of these, 70% were HFSS products for which marketing would not be permitted according to the WHO nutrient profile model, but which were allowed under the Swiss Pledge. More than half of these products were produced by companies that are Swiss Pledge partners. Furthermore, even the softer Pledge rules were not strictly adhered to on the companies' own websites.

As a result, it was decided to adopt the WHO nutrient profile model, with some small adaptations to the Swiss context. This was proposed as a long-term, step-by-step approach. The question was raised as to what extent the Swiss Pledge should be extended to cover social media, children's websites, packages, marketing communication using licensed characters, etc. The challenges involved, because of cross-border communication, were recognised. It was proposed that monitoring be conducted by government or a neutral agency.

Discussions with the Swiss Pledge partners started in the autumn of 2015 but in February 2016 Swiss Pledge members stopped the discussions. They want to revert to the original Swiss Pledge criteria. At the time of the meeting, the discussions remained stalled and the way forward was unclear.

Discussion

There was clarification that a self-regulatory/voluntary approach is really the only option in the current Swiss political context – any request to parliament to legislate is likely to fail.

FSVO's commitment to independent and transparent monitoring was lauded. The lack of such independent monitoring is recognised to have been a problem with the EU Pledge.

There was some discussion of whether the EU Pledge criteria are likely to change or whether Pledge companies are likely to adopt the WHO EURO nutrient profile model. While, officially there has been resistance to the WHO EURO model from some industry parties – who argue that the model provides no incentive for reformulation – informal discussions suggest that *some* companies might consider adopting the WHO model.

Ireland

Ursula O'Dwyer, Department of Health, Ireland gave an update on the situation in Ireland.

Existing Irish legislation on advertising to children, regulated by the Ministry of Communication, defines a child as being up to the age of 18. Ireland was one of the first countries to ban free toy gifts with fast food meals and to ban celebrity endorsement of products.

In 2010, a review of the Code on restricting marketing to children was started. A small technical working group was charged with examining nutrient criteria – exploring whether to adapt or use the Ofcom model or to develop an Irish model. In the end, the Ofcom model was selected with a single modification – to make cheese an exception for economic and cultural reasons. This Code is due to be finalised soon.

A Code on marketing to adults was brought out in September 2015. A new Code of Marketing group has been established to look at issues around advertising, sponsorship and product placement in all media. It has now been agreed that the same nutrient profile model will be used for the adult code. It is hoped that the Code will be ready for adoption by the end of the year. It is likely to be a voluntary code to begin with, but the Minister of Health – whose engagement has been key on this issue – has said that the government will legislate if the voluntary code is ineffective.

Netherlands

Jasper Lok, Ministry of Health, Welfare and Sports, gave an update on the situation in the Netherlands.

The approach in the Netherlands is mainly self-regulatory, with monitoring on linear and non-linear media. The Ministry of Health monitors sporadically.

This self-regulatory approach includes online marketing. A short research study²⁴ was conducted on places/settings where children are active online to see whether industry is compliant. Eight

²⁴<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2016/03/31/voedingsreclame-gericht-op-kinderen/voedingsreclame-gericht-op-kinderen.pdf>

cases of possible non-compliance were identified and seven of these were on YouTube. Online video bloggers are extremely popular – with hundreds of thousands of followers – and sometimes these involve young people eating HFSS foods.

In response to the study findings, there were discussions with industry parties and the industry pledged to ‘do better’. There are, however, challenges around the age limit – if a vlogger is aged 13 or over then the video seems Code-compliant, even though many of her/his followers are likely to be younger. Data is not available on the audience age.

The findings of this study confirm how difficult it is going to be to effectively control digital marketing. The Netherlands is very interested to collaborate with other countries, and to explore the possibility of developing common definitions (e.g., marketing, child) and criteria. This will be addressed in the High Level Group on Nutrition and Physical Activity.

Update from Slovenia on the process of adapting the WHO Europe nutrient profile model

Mojca Gabrijelcic, National Institute of Public Health, Slovenia gave an update on the process of adapting the WHO Europe nutrient profile model.

In 2011 the Ministry of Health prepared a working document with a proposal for a co-regulatory approach to reduce marketing pressure to children. The guidelines developed by the Ministry of Health were successfully incorporated into media law. In order to define what is healthy, it as decided to wait for publication of the WHO nutrient profile model and to adapt it to the Slovene context. The new Nutrition and physical activity action plan 2015-25 has been adopted by the Slovene parliament and provides a strong baseline for further action.

Since May 2015, when the WHO model was published, there have been a number of developments. There have been a number of additions to the media law, notably that “codes of conduct have to be developed/formulated in a way which enables the development of healthy nutrition habits in children and adolescents, in accordance with the nutrition guidelines of the Ministry of Health.” A number of different scenarios for implementing the nutrition guidelines were discussed. If possible, the Ministry of Health would work together with the Agency for communication networks and services of the Republic of Slovenia, when operators or advertisers would propose codes of conduct. A proposal to revise the Media law was revised so that media service providers would have to implement and announce publicly available codes of conduct, rather than simply develop codes, was rejected. Penalties of 6,000 to 60,000 euros are foreseen only for providers/advertisers who do not develop codes of conduct. This is relatively limited, due to the limited scope of the EU AVM Directive 2010. Links have been established with the Ministry of Culture, in relation to discussions on the AVM Directive.

Agencies from nine countries in Central Europe have organised a Central European Regulatory Form (CERF) in order to collaborate and handle issues of cross-border marketing.

Dialogue with the private sector has been useful, and the national food producing industry has been quite proactive in discussions on the nutrient profile model. Presently, the food producing activities are linked to the new Food and Nutrition Action Plan, but different commitments are foreseen for the future and the industry is in active discussions with the Ministry of Health. Experts in food processing technology have been involved in the whole process of the preparation of the nutrient profile model. This has helped develop trust and enabled a content-driven approach, as a baseline for cooperation with the food processing industry. A key lesson

from this dialogue with the private sector is that there is often a lack of communication between food technologists and marketing teams in the same companies. After the discussions a national pledge was signed on 16 September 2015.

The various elements of the Communication Strategy have been drafted. For the definition of a child, the public health working group (in agreement with the communication agency) proposed an age limit of 14-15 years, consistent with the end of primary school. The food industry and the chamber of commerce proposed a threshold of 12 years. For the definition of channels covered, the law covers children television programmes, but the proposed voluntary pledge also includes internet and social media. The primary target audiences for the strategy are the AVM service providers, advertising agencies, advertisers and the Chamber of Commerce.

A number of adaptations to the WHO European nutrient profile model have been proposed for the specific context in Slovenia. These have been the subject of discussion with the Chamber of Commerce. Comments were issued to allay fears of ‘mission creep’ expressed by the Chamber of Commerce, reiterating that the categories and thresholds were specifically designed in relation to restricting marketing to children. The 15-year age limit has now been accepted, and included in the present legislation. A number of specific changes were proposed and accepted:

- To clarify which categories apply for some products (e.g., paté);
- To clarify the definition of salt and to raise the limits of salt in some categories;
- To add a new sub-category for vegetable drinks (almond, soya, rice, oat milks);
- To include milk spreads in the same group as yoghurts;
- Creating a new sub-group for butter and cream;
- Raising the fat limits for the sub-category for yoghurt and sour milk, but adding a limit on total sugars and specifying that non-sugar sweeteners are not permitted;
- Advertising of 100% fruit and vegetable juices is permitted;
- A new category—dietary supplements—was added, and is not permitted to be marketed to children.

Some of the proposals on salt were not accepted because Slovene analytical data prove that versions with lower salt contents are already available on the market.

There is evidence that Slovenia is beginning to reverse the trend on obesity among 7-14 year olds.

In conclusion, the way forward for Slovenia is the development of a co-regulated approach to reducing marketing pressure to children. This is being achieved by adapting the WHO nutrient profile to the national needs, coupled with productive engagement with industry stakeholders. It is envisaged that the Ministry of Health will sign the guidelines, including the nutrient profile model, by June 2016. An internationally harmonised public health approach, and cooperation through this Network and other fora, has been very supportive for this work.

Discussion

It is very encouraging to see the nutrient profile model being used and, as envisaged, adapted to the national context. Slovenia is to be congratulated on these achievements.

There was clarification that the level of added sugars in vegetable milks is the same as for other milk drinks, of 10 g per 100 g. This level was arrived at on the basis of the 6 g lactose already present and the fact that very few drinks have levels before 10 g. This means, in practice, that

only a few products can be marketed. Because of the increased fat content only a few products meet the criteria. This also creates incentives to reformulate products.

Update from Malta on proposed legislation

Charmaine Gauci, Ministry for Health, Malta gave an update, via Skype, on new proposed legislation in Malta.

Prevalence of obesity and overweight in Malta is high and television viewing is an important part of the island's contemporary culture.

In order to assess the existing situation – with the EU Pledge in place – a cross-sectional study of television advertising was conducted over a seven-day period. All television advertising during that period was recorded and coded. Of these, 27% of the adverts related to food and drinks and 95% were for HFSS foods. Advertising for HFSS foods increased after 3 pm, the time when children come home from school, and were most advertised at times of family viewing (soap operas, etc.).

To tackle this situation, and based on a clear decision to go for a regulatory approach, the Ministry introduced a Healthy Lifestyle Bill in January 2016. Regulation of advertising is only one aspect of the Bill, which covers a range of issues relating to NCD prevention, including establishment of a high-level healthy living council whose Chair is to be appointed by the Prime Minister. The Bill is an enabling act and will be followed by various sets of regulations, including, among others, regulations on food consumed in and around schools, food in public institutions and regulation of marketing. Malta's EU Presidency will focus on procurement guidelines for schools, based on the WHO EURO nutrient profile model, for Member States.

The legislation is, therefore, a work in progress, but it is hoped that this combination of targeted legislative measures will be effective in tackling obesity.

Discussion

Malta was congratulated on its approach—having taken stock of the current situation, acknowledging that more needs to be done and then taking action. It is also interesting to see use of the WHO nutrient profile model extending beyond the regulation of marketing to improve school food provision.

Marketing and children's rights

Amandine Garde, Law & Non-Communicable Diseases Unit, University of Liverpool, UK, outlined the basis for a rights-based approach to dealing with food marketing to children.

There has been growing momentum to use human rights to help combat NCDs. This can be seen by the inclusion of a human rights approach as an overarching principle in the WHO NCD global action plan and by the reference to the UN Convention on the Rights of the Child in the final report of the Commission on Ending Childhood Obesity.

Human rights can be a particularly powerful tool for addressing NCDs in a number of ways, by, for example, strengthening a political position, helping to forge alliances, balancing arguments where vested interests argue their rights are being violated, and – very importantly – by reminding States of their legal obligations (in addition to their ethical responsibilities).

Human rights are inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. They are universal and apply to everyone, i.e., without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The fundamental nature of human rights gives them a particularly high status in the hierarchy of norms.

The Convention on the Rights of the Child (CRC) was adopted on 20 November 1989 (UN resolution 44/25) and entered into force on 2 September 1990 with almost universal ratification (all States are parties to the CRC except the USA). It recognizes children as rights-holders and States as duty-bearers, and sets out a broad array of civil, political, economic, social and cultural rights for the optimum development of the child.

The CRC also makes it clear that States should intervene – childhood obesity is not exclusively a question of personal or parental responsibility. Article 18 sets out that parents have primary responsibility for the upbringing of the child, but that States ‘shall render appropriate assistance to parents and legal guardians’.

UNICEF has commissioned the University of Liverpool to examine what role the CRC could play in ensuring that food advertising does not violate children’s rights. The project seeks to understand how the CRC can be relied on to promote healthier environment and support the adoption of food marketing restrictions, taking into account other human rights instruments, interpretative guidance from UN committees and special rapporteurs, court decisions and, of course, the WHO Recommendations. The report is due to be published in March 2017.

It is important to really flesh out the rights relied upon in sufficient detail to ensure that advocates do not risk damaging their arguments by making generalised, vague statements about human rights without further engagement with the text of the CRC itself and how it has been interpreted. Even though the CRC does not refer explicitly to obesity, it contains several provisions which can be invoked to argue that States have a duty to restrict the marketing of unhealthy food to children to promote healthier food environments. A more systematic collaboration between human rights and public health experts could promote a better use of the CRC in discussions surrounding childhood obesity prevention, and the regulation of food marketing more specifically.

Article 24 of the CRC sets out the Right to Health (‘the right of the child to the enjoyment of the highest attainable standard of health’), lists areas where States need to take appropriate measures (including to combat disease and malnutrition, ensuring that parents and children are informed and supported in the use of basic knowledge of child health and nutrition) and sets out the obligation to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right.

- There is clearly interaction with other provisions of international human rights law– such from the International Covenant on Economic Social and Cultural Rights (ICESCR) which focuses on the right to the highest standard of attainable health in Article 12. This is not the right of an individual to be healthy; rather it reflects obligations on States to ‘adopt the necessary measures to protect the public’s health’. Guidance on implementation of the ICESCR sets out in General Comment 14 that States have the duty to ‘respect, protect and fulfil the right to health’; Respect means that States must refrain from interfering with the enjoyment of human rights. In relation to food marketing, this could mean that States should not promote unhealthy food.

- Protect: States must protect individuals and groups against human rights abuses, including from non-state actors/third parties. This can reflect States' duty to regulate and thus prevent human rights abuses by non-state actors, including the food, beverage and advertising industries.
- Fulfill: States must take positive/active measures to establish the necessary infrastructure to facilitate the enjoyment of human rights, including setting up institutions and procedures to ensure that standards are met.

In June 2014 Anand Grover, then UN Special Rapporteur on the Right to Health, called on states in unequivocal terms to 'regulate unhealthy food advertising and the promotion strategies of food companies'. Similarly, Olivier De Schutter, then former Special Rapporteur on the Right to Food, called for strict regulation of food advertising because of its 'strong impact on children'.

There is evidence of growing momentum behind a rights-based approach to tackling marketing of HFSS foods to children, but statements are rarely sufficiently detailed and sometimes not sufficiently evidence-based. This further underlines the urgent need for human rights and public health professionals to work together.

Industry operators have sometimes invoked the freedom of (commercial) expression to oppose marketing restrictions, along with the freedom to trade and the right to (intellectual) property. Case law in the US, which has been referred to by the European Court of Human Rights in its interpretation of the European Convention on Human Rights, has found that advertising is a form of expression and should therefore benefit from the protection granted by Article 10 of the European Convention. These rights are protected by several legal instruments worldwide. However, they are not absolute and can be restricted on grounds of public interests, including public health, provided that the restrictions imposed are proportionate. A balancing exercise, therefore, is required between competing rights. The burden of proof is on Member States to establish that they have considered these other rights or interests and that the measures they have adopted are proportionate. A broader margin of discretion, however, is granted to regulatory authorities in the EU and European Economic Area than in the USA.

Proportionality is a key legal principle and requires that a measure must be necessary and it must not exceed what is necessary to achieve a given objective – that policymakers need to understand and apply when drafting measures. To ensure that the measures they have in mind comply with the proportionality principle, policymakers are advised to undertake an impact assessment of these measures to determine whether they are evidence-based and do not restrict more than is required the competing rights commercial operators will invoke when challenging them. This will allow them to be in a much stronger position to defend their measures in the face of any legal challenge. If not, a court of law may have to annul the measures in question, which would result in a waste of time and resources, and could possibly create a regulatory 'chill effect' that discourages governments from legislating.

Under Article 3 of the CRC, the best interest of the child shall be a primary consideration, and there is increasing guidance on how this principle should be applied. Legislation which is framed as being 'in the best interest of the child' from the outset will have a better chance of surviving any legal challenge. Another key CRC principle is child participation, so it is important to promote children's involvement as far as possible.

It is necessary for States to demonstrate that their policies are in line with existing evidence and adopted to promote children's rights, bearing in mind the complexity and multifactorial nature of

interventions intended to promote healthier diets. The earlier that impact assessments, consultations are carried out in the process, the better.

Regulatory tools to address childhood obesity can (and should) lawfully be adopted, but evidence will never replace political will. This is yet another reason why it is important to use human rights: to build consensus both within and beyond governments. It is time to shift the paradigm – not only using fundamental rights as a ‘shield’ to oppose industry challenges, but also as a ‘sword’ to regulate food industry operators.²⁵

Discussion

This different perspective was welcomed as being very helpful for those trying to develop policy or regulation. There was a comment that ethics committees are always very anxious to protect children from the effects of research but less aware of protecting them from foods they eat or marketing.

Ending inappropriate promotion of foods for infants and young children

Laurence Grummer-Strawn, WHO headquarters, gave an overview of guidance on ending the inappropriate promotion of foods for infants and young children.

In 2010, the World Health Assembly called on Member States to ‘end inappropriate promotion of food for infants and young children’ and then, in 2012, WHA requested clarification and guidance on what constitutes inappropriate promotion and how to end it. As a result, WHO provided clarification in 2014 and WHA requested development of guidance. A Scientific and Technical Advisory Group (STAG), convened in 2013 and 2015 to develop recommendations.

A number of key concerns were identified by the STAG, which can be summarised as follows:

- Interference with breastfeeding
 - Promotion of follow-on formula, growing up milk, toddler milk is common and this market is growing rapidly. Consumption of such milks is inversely associated with breastfeeding intensity. There has been a lot of confusion about whether such products are covered by the International Code of Marketing of Breast-milk Substitutes, despite a clarifying statement by WHO.
 - Cross promotion of breastmilk substitutes through complementary food products. Milk products are often marketed as ‘stages’ and some products are marketed with colour schemes, designs, slogans, mascots or symbols similar to infant formula.
- Obesity and NCDs
 - Consumption of commercial baby foods is highly variable in Europe and Latin America (ranging from over \$500 per child in Norway, Sweden and Italy to less than \$40 in Mexico, Argentina and Peru).

²⁵ On these questions, see Amandine Garde, ‘Advertising Regulation and the Protection of Children-Consumers in the European Union: In the Best Interest of... Commercial Operators?’, in Helen Stalford et al (eds), *Children’s Rights in Europe*, a Special Issue of the *International Journal of Children’s Rights* 19, and Alberto Alemanno and Amandine Garde, ‘Regulating Lifestyles in Europe: How to Prevent and Control Non-Communicable Diseases Associated with Tobacco, Alcohol and Unhealthy Diets?’, Report for the Swedish Institute for European Policy Studies, December 2013: <http://www.sieps.se/en/publications/reports/regulating-lifestyles-in-europe-how-to-prevent-and-control-non-communicable>.

- There are concerns about complementary foods high in sugars, trans fats, saturated fat and salt.
- There are also concerns that foods marketed for older children or adults are also being fed to younger children. Consumption of unhealthy snack foods is common (a majority had consumed them in the last 24 hours in studies in Nepal, Senegal and Cambodia) among young children and promotion of unhealthy snack foods is very common (over 80% of mothers in Nepal, Senegal and Cambodia reported exposure to promotions).
- Conflicts of interest
 - Health care settings and professionals are being used to market products.
 - Public-private partnerships.
 - Special concerns with the infant formula industry.
 - Responsibility lies on both sides – industry has to take care not to create conflicts of interest, while health professionals also need to avoid them.

Commercial complementary foods may, in some situations, provide nutrients that are not easily accessible in children's diets and can be an inexpensive alternative to improve nutritional status, as well as being convenient and time saving for families. For these reasons the guidance was designed in such a way that in some cases it could be appropriate to promote foods for infants and young children.

The recommendations developed by the STAG were simplified by WHO and released for consultation in July 2015. Following different stages of consultation and revision, a final version of the recommendations was disseminated on 22 April 2016.

Recommendations to end inappropriate promotion of foods for infants and young children

The purpose of the recommendations is to protect breastfeeding, prevent obesity and NCDs, promote a health diet and ensure clear and accurate information on feeding. They cover products targeted at children aged between 6 and 36 months. Supplements and home fortificants are excluded, but the guidance does extend to government and non-profit programmes.

1. Promotion should be based on the Guiding Principles with emphasis on “suitable, nutrient-rich, home-prepared, and locally available foods”.
2. Products that function as breast-milk substitutes (including follow-up formula and growing-up milks) should not be promoted.
3. Only promote foods meeting all the relevant national, regional and global standards for composition, safety, quality and nutrient levels and are in line with national dietary guidelines. Strengthen Codex standards.
4. Messages should:

Include statement on need for breastfeeding through 2 years and no complementary foods before 6 months

State recommended age of introduction

Be easily understood.

Messages should not:

- Suggest use before 6 months
- Discourage breastfeeding or imply equivalence to breastmilk

- Promote bottle feeding
 - Convey endorsements.
5. No cross promotion of breastmilk substitutes using other products
Differentiate designs, labels, slogans, logos
No direct contact for breastmilk substitute marketers.
6. Avoid conflicts of interest (health care vs. industry)
No free, reduced-price products
No donations of equipment, supplies or services
No gifts or incentives to health care staff
No gifts or coupons to parents, caregivers and families
No education to parents in health facilities
No sponsorship of meetings of health professionals and scientific meetings.
7. Apply WHO set of recommendations on the marketing of foods and non-alcoholic beverages to children. A range of strategies should be implemented to limit the consumption of unhealthy foods.

The recommendations and a proposed Resolution – which also reiterates support for the Code, calls for the recommendations to be implemented by Member States, manufacturers, health professionals, the media and creative industries, and calls for support from civil society and WHO – will be discussed at the World Health Assembly in May 2016.²⁶

Discussion

The importance of this guidance for Europe was recognised, given that the European Region has the lowest rates of exclusive breastfeeding globally. The evidence for the benefits of exclusive breastfeeding is getting stronger all the time. The issue of baby food composition, with, for example, high levels of sugars and salt, is important for the evolution of tastes and eating patterns as well as for future development of NCDs.

The WHO Regional Office for Europe is conducting a study on baby foods marketed in the region, with some worrying preliminary results. The European Parliament issued a strong message on this issue when it rejected the European Commission's proposal to allow high levels of sugars in baby foods. It is really very important, therefore, to take coordinated, concerted action on this issue.

²⁶ A resolution welcoming with appreciation the recommendations was adopted at the 69th WHA in May 2016. The final Resolution is available at http://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_ACONF7Rev1-en.pdf and the final version of the guidance is available here: http://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_7Add1-en.pdf.

Update from network observers

World Cancer Research Fund International

Louise Codling gave an update on activities at WCRF. She reminded participants about WCRF's NOURISHING framework for policy action and the online database of implemented policy actions from around the world.

In relation to food marketing to children there are a number of new policies to note:

- Chile has introduced new mandatory regulation of broadcast and non-broadcast advertising to children and regulated food marketing to children. In the legislation, which comes into effect in July 2016, a child is defined as being under 14 years and restrictions apply to TV programmes or websites targeted at children or where more than 20% of the audience is made up of children.
- Taiwan is introducing mandatory regulation of broadcast marketing to children (under 12 years old) during the 5-9 pm period. It is also prohibiting toy promotions and free gifts.
- Poland brought in a new School Food Law in September 2015, including mandatory regulation of food standards in schools.

At the 69th World Health Assembly WCRF will be launching a new document with some proposals for SMART commitments for the UN Decade of Action on Nutrition.

Consumers International

Sue Davies gave an update on behalf of Consumers International (CI). Recent CI efforts on food have focused on the campaign for a global convention to protect healthy diets. The Jamie Oliver Food Foundation is now behind this campaign and he will be hosting a side-event at the WHA, which will hopefully feed into the Rio nutrition summit in August 2016.

At the annual CI summit the campaign for a global convention and food marketing were both important topics. Food marketing is still a very important issue for many CI members. In the UK, Which? has been active on this issue and is waiting for the forthcoming UK childhood obesity strategy. For the EU, BEUC is gathering examples of marketing practices across Europe to feed into the Commission's review of the Audiovisual Media Services Directive. It will be important to flag up issues such as vlogging for that review.

Next steps for the Network

On behalf of WHO, João Breda introduced the discussion on the next steps for the Network.

The Network is now maturing nicely and the leadership has smoothly transitioned from Norway to Portugal.

In recognition of the challenges that food marketing poses from infancy to adulthood, the meeting has extended the scope by covering promotion of foods for infants and marketing to adults. The principal focus on marketing to children has not, however, been lost.

The presentations and discussions at the meeting provide clear evidence that Network members remain determined to tackle the issue of food marketing to children. Some very valuable progress has been made and efforts are ongoing throughout the Region.

Issues that have come through very strongly in the discussion are: the importance of monitoring and how to develop solutions for tackling digital marketing. WHO is ready to continue to provide Member States with technical assistance in this area. In the near future WHO will be sending Member States a questionnaire requesting information on recent developments in this and other areas of nutrition.

The current context presents various challenges and opportunities. The UN Decade of Action on Nutrition and the inclusion of nutrition-related targets in the Sustainable Development Goals are examples of the important opportunities ahead. The work achieved by this Network will continue to be instrumental in informing practice and in raising the profile of this issue.

Pedro Graça summarised three interesting themes to be included in the future work of the Network:

- Digital marketing – this remains a very important issue to explore;
- The WHO nutrient profile model – it will be interesting to hear of new experiences using this tool;
- Human rights – how the human rights approach can be used effectively to protect children.

He thanked all participants for their input and thanked the WHO team for its enormous support with the meeting organisation.

The next meeting is planned for spring 2017 and may take place in Ireland (to be confirmed).

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