

# **THE WHO RECOMMENDATIONS ON THE MARKETING OF FOOD AND NON-ALCOHOLIC BEVERAGES TO CHILDREN**

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## **INTRODUCTION**

Over the last twenty years, unequivocal evidence has accumulated that the marketing of unhealthy food influences children's preferences, purchase requests and consumption patterns. This is particularly problematic in a world where the number of overweight or obese infants and young children (aged 0 to 5 years) in the world increased from 32 million in 1990 to 42 million in 2013.<sup>1</sup> As part of the strategy to reverse global childhood obesity trends, the then 193 States of the World Health Assembly (WHA) unanimously endorsed a set of WHO recommendations on food marketing to children through Resolution WHA 63.14 in May 2010. The Recommendations, which are evidence-based, clearly acknowledge the relationship between food marketing and childhood obesity and urge Member States to restrict the marketing to children of unhealthy food. However, seven years after the adoption of the Recommendations and despite repeated calls from the international community, Member States have been relatively slow in implementing them.

This contribution sets the scene for this edited collection and provides the background for the papers which follow. After briefly presenting the genesis of the Recommendations (I), it highlights some key considerations that Member States are urged to bear in mind when regulating unhealthy food marketing to children (II). It concludes with their limited implementation by Member States, despite the growing consensus at global level that the Recommendations should be implemented as part of effective childhood obesity prevention strategies (III).

### **I. GENESIS OF THE RECOMMENDATIONS**

In May 2007, the WHA endorsed Resolution WHA 60.23 on the Prevention and Control of Noncommunicable Diseases: Implementation of the Global Strategy. This resolution requested the Director-General 'to promote initiatives aimed at implementing the global strategy for prevention and control of noncommunicable diseases with the purpose of increasing availability of healthy food and promoting healthy diets and healthy eating habits, and to promote responsible marketing, including the development of a set of recommendations on marketing of foods and non-alcoholic beverages to children, in order to reduce the impact of foods high in saturated fats, trans fatty acids, free sugars, or salt, in dialogue with all relevant stakeholders, including private-sector parties, while ensuring avoidance of potential conflict of interest'. Considering the request in resolution WHA 60.23, the WHO worked towards the development of such a set of recommendations that provided advice, guidance and technical support to Member States on how they could achieve the aim of reducing the impact of the marketing of non-alcoholic beverages and foods high in saturated fats, trans-fatty acids, free sugars, or salt (unhealthy food) on children's food consumption.

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<sup>1</sup> <http://www.who.int/end-childhood-obesity/facts/en/>.

In order to support the Secretariat in drafting the Recommendations, an Ad-Hoc Expert Group on Marketing of Foods and Non-alcoholic Beverages to Children was appointed by the Director-General.<sup>2</sup> The first meeting of the Group was held in December 2008. The Group was requested to provide technical advice to the WHO in the following three core areas:

- Policy Objectives: What should be the objectives of Member States policies on marketing of food and non-alcoholic beverages to children?
- Policy Options: What are the evidence-based or currently applied policy options available on marketing of foods and non-alcoholic beverages to children?
- Monitoring and Evaluation: What are the feasibility and mechanisms required to monitor and evaluate recommended policy options?

Before convening the Ad-Hoc Expert Group, the WHO held two dialogues with both representatives of the international non-governmental organizations, and with representatives of the food and advertising industries, in response to Resolution WHA60.23(6), which required that the Recommendations on Marketing Foods and Non-alcoholic Beverages to Children should be developed ‘in dialogue with all relevant stakeholders, including private-sector parties’.<sup>3</sup> These two dialogues enabled participants to inform the Secretariat of relevant work being undertaken by their organizations in the area of marketing of foods and non-alcoholic beverages to children. Reports of the dialogues were presented by the Secretariat to the Ad-Hoc Expert Group Meeting.<sup>4</sup> The Group also reviewed the results of an update (2006-2008) of the systematic review of the literature commissioned by WHO in 2006 (Hastings et al.) as well as other background documents that were provided by the Secretariat. The group submitted their report and evidence-based recommendations to the WHO in February 2009.

Regional consultations with Member States on the Draft Set of Recommendations on the Marketing of Food and Non-alcoholic Beverages to Children were held during the second half of 2009. A ‘Working paper’, developed by the Secretariat provided a framework for Member States consultations on the development of the Recommendations. Sixty six Member States submitted a response to the consultations which served as an important platform for refining and agreeing on the full text of the recommendations. Additional inputs were sought by the Secretariat through two dialogue meetings, one with the global food and non-alcoholic beverage industry and the global advertising industry in August 2009, and the other with international non-governmental organizations in September 2009. A public electronic web-based consultation followed to allow groups that had not been reached via the other mechanisms to provide their comments to the Recommendations.

It was clear from the consultations that Member States viewed marketing of foods and non-alcoholic beverages to children as an international issue and that the private sector needed to market its products responsibly. The consultations also showed that policies then in place in Member States varied in their objectives and content, approach, monitoring and evaluation

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<sup>2</sup>[http://www.who.int/dietphysicalactivity/process\\_who\\_development\\_recommendations\\_food\\_marketing\\_childr\\_en.pdf?ua=1](http://www.who.int/dietphysicalactivity/process_who_development_recommendations_food_marketing_childr_en.pdf?ua=1).

<sup>3</sup> Similarly, Resolution WHA57.17 requested the Director-General ‘to cooperate with civil society and with public and private stakeholders committed to reducing the risks of non-communicable diseases in implementing the Strategy and promoting healthy diet and physical activity, while ensuring avoidance of potential conflicts of interest’.

<sup>4</sup> The NGO report is available at:

[http://www.who.int/dietphysicalactivity/dialogue\\_non\\_governmental\\_organizations\\_20nov2008.pdf?ua=1](http://www.who.int/dietphysicalactivity/dialogue_non_governmental_organizations_20nov2008.pdf?ua=1); and for the private sector report, see:

[http://www.who.int/dietphysicalactivity/dialogue\\_private\\_sector\\_24nov2008.pdf?ua=1](http://www.who.int/dietphysicalactivity/dialogue_private_sector_24nov2008.pdf?ua=1).

practices, and the ways in which stakeholders were involved. Approaches ranged from statutory prohibitions on television advertising for children of predefined foods to voluntary codes by certain sections of the food and advertising industry. Several Member States indicated that they would need further support from the Secretariat in the areas of policy development, monitoring and evaluation, mainly due to the limited national evidence available and the lack of specialist resources in this field.

As a result of all these consultations, the Secretariat finalized the Recommendations, which were subsequently submitted to the WHO Executive Board in January 2010. The Board discussed the Recommendations and agreed to submit them for the approval of the 63<sup>rd</sup> WHA. The Recommendations provide guidance on three main areas: 1) policy development; 2) policy implementation; and 3) policy monitoring and evaluation, and research. In May 2010, WHO Member States unanimously endorsed the Recommendations through Resolution WHA63.14. The Recommendations call for national and international action to reduce the exposure of children to marketing messages that promote unhealthy food, and to reduce the use of powerful techniques to market such food to children.

### ***The WHO Recommendations***

- 1.** The policy aim should be to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.
- 2.** Given that the effectiveness of marketing is a function of exposure and power, the overall policy objective should be to reduce both the exposure of children to, and power of, marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.
- 3.** To achieve the policy aim and objective, Member States should consider different approaches, i.e. stepwise or comprehensive, to reduce marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt, to children.
- 4.** Governments should set clear definitions for the key components of the policy, thereby allowing for a standard implementation process. The setting of clear definitions would facilitate uniform implementation, irrespective of the implementing body. When setting the key definitions Member States need to identify and address any specific national challenges so as to derive the maximal impact of the policy.
- 5.** Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Such settings include, but are not limited to, nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services and during any sporting and cultural activities that are held on these premises.
- 6.** Governments should be the key stakeholders in the development of policy and provide leadership, through a multistakeholder platform, for implementation, monitoring and evaluation. In setting the national policy framework, governments may choose to allocate defined roles to other stakeholders, while protecting the public interest and avoiding conflict of interest.
- 7.** Considering resources, benefits and burdens of all stakeholders involved, Member

States should consider the most effective approach to reduce marketing to children of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Any approach selected should be set within a framework developed to achieve the policy objective.

**8.** Member States should cooperate to put in place the means necessary to reduce the impact of cross-border marketing (in-flowing and out-flowing) of foods high in saturated fats, trans-fatty acids, free sugars, or salt to children in order to achieve the highest possible impact of any national policy.

**9.** The policy framework should specify enforcement mechanisms and establish systems for their implementation. In this respect, the framework should include clear definitions of sanctions and could include a system for reporting complaints.

**10.** All policy frameworks should include a monitoring system to ensure compliance with the objectives set out in the national policy, using clearly defined indicators.

**11.** The policy frameworks should also include a system to evaluate the impact and effectiveness of the policy on the overall aim, using clearly defined indicators.

**12.** Member States are encouraged to identify existing information on the extent, nature and effects of food marketing to children in their country. They are also encouraged to support further research in this area, especially research focused on implementation and evaluation of policies to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.

## II. THE CONTENT OF THE RECOMMENDATIONS

The Recommendations clearly acknowledge the relationship between food marketing and children's food preferences, purchase requests and consumption patterns, and call on Member States to restrict the marketing to children of unhealthy food. In May 2012, the WHO published a framework implementation report in order to provide technical support to Member States in implementing the Recommendations and in monitoring and evaluating their implementation. In particular, the framework implementation report is designed to draw their attention to key issues arising at the different stages of the policy cycle, from policy development to policy implementation, policy monitoring and policy evaluation.<sup>5</sup>

Four key points are highlighted in this section.

**Firstly**, the Recommendations are evidence-based. The WHO commissioned an independent systematic literature review in order to establish whether, and if so the extent to which, restrictions on unhealthy food marketing to children were warranted.<sup>6</sup> The review first noted

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<sup>5</sup> Both the Recommendations and the Framework Implementation Report are available at: <http://www.who.int/dietphysicalactivity/marketing-food-to-children/en/index.html>.

<sup>6</sup> The Recommendations specifically refer to the following studies: Hastings G et al. *Review of the research on the effects of food promotion to children* (Glasgow, University of Strathclyde, Centre for Social Marketing; 2003); Hastings G et al. *The extent, nature and effects of food promotion to children: a review of the evidence* (Geneva, World Health organization, 2006); McGinnis JM, Gootman JA, Kraak VI (eds), *Food marketing to children and youth: threat or opportunity?* (Washington DC, Institute of Medicine, National Academies Press,

that food marketing to children was primarily for unhealthy food, in sharp contrast to dietary recommendations. It then highlighted that food marketing had become a global phenomenon and tended to be pluralistic and integrated, using multiple messages in multiple channels. The review then focused on the impact of unhealthy food marketing on children and concluded that it had the following effects:

- it undermines food knowledge and confuses children as to what is healthy and unhealthy food;
- it stimulates a preference for unhealthy food;
- it encourages the purchase of, and pestering for, unhealthy food; and
- it makes children more likely to consume unhealthy food. This unhealthy eating is directly linked to the recent increases in childhood obesity and weight gain, and related health-harms.

Importantly, it found that food marketing led to an increase in consumption not only of the product of a given brand, but also of all the products of the category in question. In other words, not only will children prefer one brand of fizzy sugary drink to another if they are exposed to marketing for the former, but they will also increase their consumption of fizzy sugary drinks to the detriment of other categories of healthier drinks, such as water and milk.

Several studies have since confirmed that food marketing contributes to childhood obesity. The research underpinning the Recommendations and some of their policy implications are discussed more fully in the next contribution.

**Secondly**, the Recommendations call on Member States to restrict unhealthy food marketing to children as comprehensively as possible, tackling both the exposure to and the power of marketing as the two components of its effectiveness. To ensure the broadest possible coverage and therefore a high level of public health protection, they adopt a particularly extensive definition of the notion of ‘marketing’. Indeed, ‘marketing’ means ‘any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service’.<sup>7</sup> This definition includes advertising as well as other forms of promotion. This should be welcome, as the definitions of ‘advertising’ have varied significantly: when used in a broad sense as a persuasive technique, the notion of advertising largely overlaps with the notion of marketing;<sup>8</sup> however, when defined more narrowly, ‘advertising’ amounts to one form only of marketing.<sup>9</sup> The key is that marketing is intended to promote the consumption of particular products and services: it is provided on a voluntary basis by business actors to highlight the positive attributes of their products, services and brands. As such, it is not unbiased and

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2006); and Cairns G, Angus K, Hastings G. *The extent, nature and effects of food promotion to children: a review of the evidence to December 2008* (Geneva, World Health Organization, 2009).

<sup>7</sup> Note 2, at page 7.

<sup>8</sup> The etymological origin of ‘advertising’ derives from the Latin *ad-vertere* and means ‘to turn towards’. Even though a marketing campaign may not achieve its objectives, it will have attempted to do so and will therefore fall within the scope of the WHO Recommendations: emphasis is placed not only on the effect but also on the intention of the business actor in question: see Framework Implementation Report (WHO, 2012).

<sup>9</sup> For example, EU Directive 2010/13 on audiovisual media services (AVMS) explicitly distinguishes television advertising from other forms of commercial communications, such as sponsorship and product placement. This is discussed further below in the contribution on the AVMS Directive.

should be distinguished from the information which business actors are required to disclose by States to inform consumers.<sup>10</sup>

The Recommendations call on Governments to set clear definitions so as to eliminate the loopholes which have been identified in existing regulatory frameworks. The definitions should include: the age group for which restrictions shall apply; the communication channels, settings and marketing techniques to be covered; what constitutes marketing to children according to factors such as product, timing, viewing audience, placement and content of the marketing message; and what foods fall within the scope of marketing restrictions (i.e. what constitute unhealthy food). In particular, Member States are specifically requested to define settings where children gather and ensure that they are free from all forms of unhealthy food marketing.<sup>11</sup> As Recommendation 5 states, these settings include, but are not limited to, nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services (including immunization programmes), and during any sporting and cultural activities that are held on these premises. However, there are many additional settings – which may vary significantly from one State to another – where children commonly gather, such as public playgrounds, swimming pools, summer schools and programmes, afterschool programmes, and sporting events. They also include temporary displays or gathering points for children, such as activity areas created for children in airports, community centres, places of worship and shopping malls... Finally, and as the Framework Implementation Report points out, the areas surrounding ‘settings where children gather’ are worth considering, for example where food business actors use highly prominent billboards to promote their goods and services very near schools.<sup>12</sup>

Furthermore, the Recommendations recognize that a comprehensive approach is more effective to a stepwise approach, which is by definition more selective in nature in that it prioritizes some categories unhealthy food marketing to children leaving others unregulated by targeting certain media or certain marketing techniques which are particularly popular with children. A stepwise approach leaves some gaps in the regulatory framework in place. As the specific country case studies discussed below vividly show, such gaps allow food business actors to shift their investment away from regulated programmes, media and marketing techniques to unregulated programmes, media and techniques. Such a piecemeal approach necessarily reduces the effectiveness of the restrictions in place. Hence the explicit (and logical) preference expressed in the Recommendations for a comprehensive approach restricting all unhealthy food marketing to children as a more effective form of regulatory intervention.

This is not to say, however, that a comprehensive approach mandates the imposition of a complete ban on all forms of all food marketing or on all forms of marketing to children. On the contrary: a comprehensive approach must also be proportionate. The principle of proportionality is a general principle of law which requires that the means used to achieve a specific objective, such as public health, must be tailored to the objective in question. This implies, firstly, that the measures adopted must be suitable to achieve the objective they pursue and, secondly, that they must be necessary to that end, i.e. they should not exceed what is required to achieve the objectives in question. Rules do not exist in a vacuum; they

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<sup>10</sup> States may require a nutrition declaration on pre-packaged food.

<sup>11</sup> This issue had been raised by many Member States during the consultation that led to the Recommendations. The special situation of schools as a setting where children are a captive audience and the health-promoting role that schools should have were identified as requiring specific attention in the Recommendations.

<sup>12</sup> At page 22.

must take account of a range of competing concerns and strike an appropriate balance between them. Thus, rules on unhealthy food marketing must not only take into account the need to ensure a high level of public health protection, but they must also consider the impact that these rules will have on different actors of society – including food and advertising business actors – and restrict negative impacts wherever possible. This is why impact assessments have an important role to play: they allow for the consideration of different options and will help determine which option of the ones proposed is the most proportionate. When considering costs and benefits, a broad view should be taken to include economic but also social and environmental costs and benefits. These issues are discussed more fully in the contribution on the regulation of cross-border advertising and the contribution arguing for a children’s rights approach to the prevention of childhood obesity prevention.

**Thirdly**, the Recommendations emphasize that Governments have a duty to protect public health and avoid conflicts of interests.<sup>13</sup> The question of conflicts of interests and the role of the private sector in the prevention of childhood obesity (and NCDs more generally) is highly charged politically and continues to give rise to controversial debates. The question is discussed more fully below in a specific contribution.

**Fourthly**, in light of the concerns that several Member States had expressed at the consultation stage, the Recommendations recognize the importance of tackling cross-border marketing to ensure that the effectiveness of national policies is not reduced.<sup>14</sup> Many countries, including those with restrictions in place, are exposed to food marketing in their country from beyond their borders. This is particularly the case when countries have close cultural ties and share a common language, as would be the case for Ireland and the UK; for Austria and Germany; for France, Belgium and Luxembourg... This issue is all the more salient in the European Union (EU), as EU membership requires that its Member States comply with EU law and the Treaty provisions on the establishment and functioning of the internal market.<sup>15</sup> In particular, EU Member States are bound by Article 9(2) of Directive 2010/13 which deals specifically with food marketing to children in audiovisual media services, including television, the internet and video-on-demand services. The regulation of cross-border marketing at EU level is dealt with more fully below.

The Recommendations emphasize the importance of distinguishing the three main stages of the policy cycle as they relate to their implementation: 1) policy development, but also 2) policy implementation and 3) policy monitoring, evaluation and research.<sup>16</sup> This Special Issue focuses above all on policy development, not least because rather little progress has been made towards the adoption of sufficiently comprehensive national (let alone regional) measures on unhealthy food marketing to children. However, some contributions also focus to some degree on the other stages of the policy cycle.

### **III. THE IMPLEMENTATION OF THE RECOMMENDATIONS**

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<sup>13</sup> Recommendation 6.

<sup>14</sup> Recommendation 8. 15 Member States raised cross-border marketing as an issue of particular concern.

<sup>15</sup> Article 26 of the Treaty of the Functioning of the European Union (TFEU) defines the internal market as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties’.

<sup>16</sup> For more information on the various stages of the policy process, see the Framework Implementation Report accompanying the Recommendations which the WHO published in 2012.

There is a broad consensus that the data on the prevalence of childhood overweight and obesity requires immediate and effective action from Member States if they are to reverse current trends. However, a review of actions taken to date in Europe and beyond to restrict the impact of unhealthy food marketing on children shows that no country has yet implemented the comprehensive approach the WHO Recommendations call for to protect children from the detrimental effects of unhealthy food marketing on their health.

### *A growing momentum at international level*

In September 2011, all Member States adopted the Political Declaration which concluded the UN High level meeting on NCDs and calls on Member States to promote the implementation of the Recommendations and discourage the marketing of foods that contribute to unhealthy diets.<sup>17</sup> As part of the preparation for this meeting, the WHO engaged in a lot of research and established that the implementation of population-wide interventions could have a high return on investment, in light of the enormous social and economic costs of NCDs on the economies (among others) of low-and-middle income countries (LMICs).<sup>18</sup>

Subsequently, in May 2013, the 66<sup>th</sup> WHA unanimously adopted a global action plan for the prevention and control of NCDs for 2013-2020. This plan includes a Global Monitoring Framework with specific global targets. In particular, by 2025, one should observe (among others) a global 25% reduction in the overall mortality from cardiovascular diseases, cancer, diabetes, or chronic respiratory diseases and a halt in the rise of diabetes and obesity.<sup>19</sup> These objectives are ambitious and require the development of effective multisectoral interventions and their coordination at global, regional and national levels. In particular, Member States and the international community need to work towards the implementation of the Recommendations as a major component of effective childhood obesity prevention strategies.<sup>20</sup>

To facilitate the implementation of the WHO NCD Global Action Plan, several mechanisms and working groups have been set up. Firstly, then Secretary-General Ban Ki-moon established the UN Interagency Task Force on NCDs (UNIATF), with the WHO in the lead, to assist the implementation at country-level of the WHO Global NCD Action Plan. Improved global monitoring and improved coordination is intended to provide the foundation for advocacy, policy development and global action, and this high-level meeting can help frame the concrete actions that countries should take between now and the third high-level meeting on non-communicable diseases in 2018.<sup>21</sup> The UNIATF has met on eight occasions to date. In October 2016, it agreed that a thematic group on nutrition should be established, that the UN Standing Committee on Nutrition (SCN) would be its convener and that nutrition

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<sup>17</sup> At paragraph 43.

<sup>18</sup> The economic consequences of NCDs are staggering. If intervention efforts remain static and rates of NCDs continue to increase as populations grow and age, cumulative economic losses to LMICs from the four diseases are estimated to surpass USD 7 trillion over the period 2011-2025 (an average of nearly USD 500 billion per year). This yearly loss is equivalent to approximately 4% of these countries' current annual output: see WHO, *From Burden to 'Best Buys': Reducing the Economic Impact of Non-communicable Diseases in Low- and Middle-income Countries, The Global Economic Burden of NCDs and Scaling up action against noncommunicable diseases: How much will it cost?* (Geneva, 2011).

<sup>19</sup> Resolution WHA 66.10.

<sup>20</sup> At paragraphs 4, 37, 38, 39 and 45, as well as in the Annex.

<sup>21</sup> <http://www.who.int/nmh/ncd-task-force/en/>.



would become a standing agenda item at IATF meetings.<sup>22</sup>

Secondly, after noting that progress in tackling childhood obesity had been ‘slow and inconsistent’, WHO Director-General Margaret Chan established a Commission on Ending Childhood Obesity (ECHO Commission) in June 2014. The Commission, made up of 15 commissioners, was entrusted with producing a report specifying which approaches and combinations of interventions were likely to be most effective in tackling childhood and adolescent obesity in different contexts around the world. Two Ad hoc working groups were convened to provide the Director-General with guidance, firstly, on the science and evidence for ending childhood obesity and, secondly, on implementation, monitoring and accountability frameworks. One of the tasks of the working group on science and evidence was to provide expert advice to the Commission on the role of the marketing of unhealthy food to children in growing rates of overweight and obesity – highlighting the strength of evidence on the role of unhealthy food marketing in childhood obesity.<sup>23</sup> The ECHO Commission submitted its final report to the WHO Director-General on 25 January 2016.<sup>24</sup> In relation to food marketing, it highlighted:

There is unequivocal evidence that the marketing of unhealthy foods and sugar-sweetened beverages is related to childhood obesity (30, 31). Despite the increasing number of voluntary efforts by industry, exposure to the marketing of unhealthy foods remains a major issue demanding change that will protect all children equally. Any attempt to tackle childhood obesity should, therefore, include a reduction in exposure of children to, and the power of, marketing.

Settings where children and adolescents gather (such as schools and sports facilities or events) and the screen-based offerings they watch or participate in, should be free of marketing of unhealthy foods and sugar-sweetened beverages. The Commission notes with concern the failure of Member States to give significant attention to Resolution WHA 63.14 endorsed by the World Health Assembly in 2010<sup>3</sup> and requests that they address this issue. [...]<sup>25</sup>

On this basis, it called on Member States to implement the Recommendations (Recommendation 1.3), and in particular to develop a nutrient profiling model (Recommendation 1.4) and address the issue of cross-border marketing (Recommendation 1.5).

Other recent developments on the global stage reflect the increased attention given to nutrition and obesity prevention, and the importance for States to implement the Recommendations. In particular, at the Second International Conference on Nutrition (ICN2) jointly organized by the FAO and the WHO in November 2014, Member States undertook to eliminate malnutrition in all its forms, including diet-related NCDs.<sup>26</sup> In April 2016, the UN General Assembly endorsed the ICN2 outcomes and proclaimed 2016 to 2025 ‘UN Decade

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<sup>22</sup> <http://www.who.int/ncds/un-task-force/events/report-7th-uniatf-meeting-oct2016.pdf>, at page 3.

<sup>23</sup> *Consideration of the evidence on childhood obesity for the Commission on Ending Childhood Obesity: Report of the Ad hoc Working Group on Science and Evidence for Ending Childhood Obesity* (WHO, 2016), at pages 69 to 79 in particular: [http://apps.who.int/iris/bitstream/10665/206549/1/9789241565332\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/206549/1/9789241565332_eng.pdf?ua=1).

<sup>24</sup> [http://apps.who.int/iris/bitstream/10665/204176/1/9789241510066\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/204176/1/9789241510066_eng.pdf?ua=1).

<sup>25</sup> Report of the ECHO Commission, at page 18.

<sup>26</sup> <http://www.fao.org/about/meetings/icn2/en/>.

of Action on Nutrition’.<sup>27</sup> At the same time, the adoption of the 2030 Agenda for Sustainable Development Goals (SDGs) in September 2015 has highlighted the urgent need to ‘end hunger, achieve food security and improved nutrition and promote sustainable agriculture’ (SDG 2), whilst ‘ensur[ing] healthy lives and promot[ing] the well-being for all at all ages’ (SDG 3).<sup>28</sup> It is therefore welcome that the UN General Assembly endorsed the ICN2 outcomes and proclaimed 2016 to 2025 ‘UN Decade of Action on Nutrition’.<sup>29</sup>

At Regional level, Member States have also been explicitly called upon to implement the Recommendations and reduce the commercial pressure on children. In particular, the WHO Regional Office for Europe has put the issue of food marketing to children very visibly on its agenda. In particular, the Action Plan for the implementation of the European Strategy on the prevention and control of NCDs for 2012-2016 adopted in 2011 by the States of the European Region identify the promotion of healthy consumption via fiscal and marketing policies as an area of strategic intervention, referring specifically to the imposition of ‘marketing controls’.<sup>30</sup> Subsequently, the Vienna Declaration on Nutrition and NCDs in the context of Health 2020, which was adopted on 4-5 July 2013,<sup>31</sup> and the European Food and Nutrition Action Plan for 2015-2020<sup>32</sup> both reiterated the importance for Member States of imposing ‘controls’ on the marketing of unhealthy food as part of effective nutrition strategies. More recently, the Regional Committee adopted an Action plan for the prevention and control of non-communicable diseases in the WHO European Region for 2016-2025 (corresponding to the UN Decade of Action on Nutrition), which identified the implementation of the WHO Recommendations as a priority area and urged Member States to adopt strong measures that reduce the overall impact on children and adults of all forms of marketing (including online) of unhealthy food.<sup>33</sup>

To provide assistance to Member States, the WHO Regional Office for Europe has developed some tools. In particular, in December 2015, it published a nutrient profiling model to assist Member States in the implementation of the Recommendations.<sup>34</sup> Furthermore, WHO EURO

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<sup>27</sup> UN General Assembly, Resolution 70.259, United Nations Decade of Action on Nutrition (2016– 2025), A/RES/70/259 (15 April 2016).

<sup>28</sup> UN General Assembly, Resolution 70/1, ‘Transforming our World: The 2030 Agenda for Sustainable Development’, A/RES/70/1 (25 September 2015). See <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

<sup>29</sup> UN General Assembly, Resolution 70.259, United Nations Decade of Action on Nutrition (2016– 2025), A/RES/70/259 (15 April 2016).

<sup>30</sup> [http://www.euro.who.int/\\_data/assets/pdf\\_file/0003/147729/wd12E\\_NCDs\\_111360\\_revision.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0003/147729/wd12E_NCDs_111360_revision.pdf?ua=1). The Action Plan was adopted in Baku in September 2011 by Resolution EUR/RC61/R3.

<sup>31</sup> [http://www.euro.who.int/\\_data/assets/pdf\\_file/0003/234381/Vienna-Declaration-on-Nutrition-and-Noncommunicable-Diseases-in-the-Context-of-Health-2020-Eng.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0003/234381/Vienna-Declaration-on-Nutrition-and-Noncommunicable-Diseases-in-the-Context-of-Health-2020-Eng.pdf?ua=1). See in particular paragraph 12, where Member States have committed to the creation of healthy food and drink environments “by taking decisive action to reduce food marketing pressure to children with regard to foods high in energy, saturated fats, *trans* fatty acids, free sugars or salt” (among other measures).

<sup>32</sup> European Food and Nutrition Action Plan for 2015-2020 (WHO EURO, 2014): [http://www.euro.who.int/\\_data/assets/pdf\\_file/0008/253727/64wd14e\\_FoodNutAP\\_140426.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0008/253727/64wd14e_FoodNutAP_140426.pdf?ua=1). See in particular paragraphs 29-30 and 46-50.

<sup>33</sup> EUR/RC66/11.

<sup>34</sup> This model divides food into distinct categories and identifies those which cannot be marketed to children <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/publications/2015/who-regional-office-for-europe-nutrient-profile-model>. Nutrient profiling is the science of classifying or ranking food according to its nutritional composition for reasons related to preventing disease and promoting health. Nutrient profiling can be used for various applications, including marketing of foods to children and implementing the WHO Recommendations (<http://www.who.int/nutrition/topics/profiling/en/>). The Framework Implementation Report accompanying the WHO Recommendations lists a range of models at pages 26 to 28.

has developed training courses for Member States to help them build their capacity with a view to developing effective regulatory and advocacy strategies as part of their childhood obesity prevention agenda. It first contributed to the organization of meeting on food and alcohol marketing, intended to support the adoption or strengthening of laws by eleven Member States in these fields (Porto, Portugal, October 2014).<sup>35</sup> In 2015, it jointly organized with WHO Headquarters and the WHO Regional Office for the Eastern Mediterranean, in collaboration with the University of Liverpool, a workshop intended to build the legal capacity required to help Member States implement the WHO Recommendations (Amman, Jordan, June 10-13 June 2015).<sup>36</sup> More recently, it arranged an intensive legal training and capacity-building workshop on law and non-communicable diseases with the McCabe Centre for Law and Cancer, the I.M. Sechenov First Moscow State Medical University and the Law & NCD Unit at the University of Liverpool, designed for public health policy-makers, government lawyers and representatives of trade and/or the economy (Moscow from 30 May–3 June 2016).<sup>37</sup> These initiatives have followed the mapping exercise which the Regional Office carried out on the state of implementation of the Recommendations in the Region.<sup>38</sup> The most recent initiative led to the publication of a report calling for calls for urgent action to protect children from digital marketing of food.<sup>39</sup>

### ***A rather poor implementation record to date***

Nevertheless, despite these unequivocal calls on Member States, the extent to which the Recommendations have been used as a tool for the development of policies at national and regional level in the EU has varied from one country to the other. Nearly seven years after their adoption, several States still have to implement the Recommendations. Among the countries that have adopted legally binding measures (as opposed to relying on self-regulatory commitments by food and media industry operators), we can distinguish two main approaches. On the one hand, a growing number of States have specifically limited the marketing of unhealthy food to children in order to promote a media environment which is more conducive to healthier diets. On the other hand, a few States have prohibited all forms of advertising to children in order to protect them – in light of their particular credulity and vulnerability – to its negative effects. Such an approach, which was pioneered by the Canadian province of Quebec as early as 1979, has had for indirect effect to limit the

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<sup>35</sup> <http://www.euro.who.int/en/health-topics/noncommunicable-diseases/pages/resolutions-and-meeting-reports/seminar-on-working-across-sectors-for-noncommunicable-diseases-ncd-policy-responses-to-marketing-of-alcohol-and-food-marketing-to-children>.

<sup>36</sup> <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/news/news/2015/06/bi-regional-workshop-to-build-legal-capacity-and-advance-action-on-who-recommendations-on-the-marketing-of-food-and-non-alcoholic-beverages-to-children>.

<sup>37</sup> The training report was published in March 2017 and is available at: <http://www.euro.who.int/en/health-topics/disease-prevention/tobacco/publications/2017/key-considerations-for-the-use-of-law-to-prevent-noncommunicable-diseases-in-the-who-european-region-2017>.

<sup>38</sup> WHO Europe, *Marketing of foods high in fat, salt and sugar to children: Update 2012-2013*, Copenhagen, 2013, which also provides an updated review of existing literature on the relationship between food marketing and food preferences which IASO (now World Obesity Federation) compiled as part of the Stanmark Project ([http://www.worldobesity.org/site\\_media/uploads/Marketing\\_children\\_literature\\_Jul13.pdf](http://www.worldobesity.org/site_media/uploads/Marketing_children_literature_Jul13.pdf), September 2012). Further references can also be found in M. Friant-Perrot and A. Garde, *L'impact du marketing sur les préférences alimentaires des enfants* (Institut national de prévention et d'éducation pour la santé, 2015).

<sup>39</sup> *Tackling food marketing to children in a digital world: trans-disciplinary perspectives. Children's rights, evidence of impact, methodological challenges, regulatory options and policy implications for the WHO European Region* (WHO Regional Office for Europe, 2016).

exposure of children to unhealthy food marketing, thus contributing to public health objectives.

To date, apart from Norway no State has considered adopting a comprehensive approach to unhealthy food marketing to children (though one should emphasize that the scope of the Norwegian ban has been significantly reduced as the legislative debates unfolded, as discussed in a specific contribution below). The current picture of the state of implementation of the WHO Recommendations in Europe is one of diversity. This Special Issue will focus on a few selected case studies: the UK, Norway, Denmark, Sweden and France. This is by no means intended to be exhaustive of the rules in place across the European Region to regulate unhealthy food marketing to children. However, it should give a sense of the regulatory diversity existing in the Region and the limits that characterize the various regulatory frameworks these countries have adopted.

## **CONCLUSION**

Political sensitivities are arguably compounded by the difficult legal issues which the regulation of food marketing raises and which food industry operators have been very quick to rely upon to serve their financial interests. The public health community is not well-equipped, at present, to deal with costly litigation. As part of the technical support it offers to Member States, WHO should continue to invest in the legal training of public health officials, as well as public health and consumer organizations, to increase their capacity to develop more effective obesity prevention strategies and contribute more specifically to the global target of halting the rise of obesity and diabetes by 2025.

Nothing will replace political will. However, what this Special Issue hopes to show is that the development of the legal capacity required to ensure that the Recommendations are effectively implemented can help minimize the risk of successful challenges from business actors and therefore support evidence-based policies intended to prevent childhood obesity and related NCDs.