

A young girl with dark, curly hair and black-rimmed glasses is holding a white tablet. The tablet displays text in white on a dark grey background. She is wearing a white shirt with a pink strap over her shoulder.

**Taking action to protect
children from the
harmful impact
of food marketing**
A child rights-based approach

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Taking action to protect children from the harmful impact of food marketing: a child rights-based approach

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Foreword

Food marketing is pervasive and persuasive. It reaches children through print advertisements, television and online spaces. And it is ubiquitous in their daily lives – in their homes, schools, communities and gathering places.

Food and beverage companies play a significant role in shaping children’s food environments, but their objectives are profit driven rather than child centred. They have a vested commercial interest in increasing sales of their unhealthy products and use highly immersive, engaging – and often unethical – marketing techniques to target children and their caregivers.

We know that food marketing harms children. It negatively affects children’s food preferences, purchase decisions and consumption behaviours, ultimately contributing to childhood obesity and diet-related disease. Food marketing also affects household purchasing decisions and the types of foods that are eaten in the home.

Numerous global and regional calls to action to end the harmful impact of food marketing have been made by governments and international agencies alike, including the United Nations Children’s Fund (UNICEF) and the World Health Organization (WHO). In 2010, the World Health Assembly endorsed the *WHO Set of recommendations on the marketing of foods and non-alcoholic beverages to children*, which called for States to develop policies to protect children from the marketing of unhealthy foods. The Special Rapporteur on the Right to Food has urged governments to “impose strong regulatory systems to ensure that the food industry does not violate citizens’ human rights to adequate food and nutrition”. And UNICEF has emphasized the importance of applying a child rights-based approach to tackling food marketing.

Despite political commitments, policies and the recognition of food marketing as a violation of children’s rights, evidence continues to show that children of all ages are insufficiently protected from food marketing and remain exposed to the aggressive marketing of foods and beverages high in fats, sugars and/or salt. The emergence of personalized and targeted marketing of unhealthy products through digital technologies is magnifying the reach and impact of traditional marketing.

The evidence is clear that mandatory regulations can protect children from the harmful impact of food marketing – and countries have shown that it is feasible to develop and implement them. Evidence also shows that piecemeal or voluntary actions by the food and beverage industry do not work. We must advocate for and support government-led comprehensive regulations that capture all forms of marketing and protect all children.

This UNICEF–WHO toolkit aims to guide governments and partners through the steps to introduce legal regulations and restrictions on food marketing that are fit for purpose. It supports governments to take action using a child rights perspective and complements the recent WHO guideline on *Policies to protect children from the harmful impact of food marketing* and UNICEF’s *A child rights-based approach to food marketing: a guide for policy makers*.

As food marketing proliferates globally, and childhood overweight and obesity continue to rise, the time for action is now. WHO and UNICEF stand ready to support governments in protecting children from the negative commercial influences that undermine their right to good nutrition. With bold government commitment to adopt mandatory food marketing restrictions, we have the power to transform food environments and build a brighter, healthier future for all children.



Francesco Branca



Victor Aguayo

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Abbreviations

CRIA	child rights impact assessment
CRC	Convention on the Rights of the Child
CSO	civil society organization
EU	European Union
NCD	noncommunicable disease
NGO	nongovernmental organization
UNICEF	United Nations Children’s Fund
WHO	World Health Organization



Introduction

Millions of children worldwide are consuming too many highly processed foods and non-alcoholic beverages that are high in saturated fats, *trans*-fatty acids, free sugars or salt (1), with devastating consequences for their health and development. Today, unhealthy diets are a leading cause of death and disability globally, and overweight and obesity are on the rise. While these problems were once limited to high-income countries, middle-income countries now account for more than three quarters of all children under the age of 5 affected by overweight (2). Globally, overweight affects 1 in 5 children 5–19 years of age, and the issue is impacting a broad cross-section of the population, including urban, rural and poor communities (3).

The food environment, including how foods are marketed, plays a critical role in influencing children’s diets. Evidence shows that food marketing impacts children’s food preferences and dietary intake; it is also linked to childhood overweight and obesity. Food marketing is a profit-driven activity that represents “one of the most underappreciated risks to [children’s] health and well-being”, as highlighted by the recent World Health Organization (WHO)—United Nations Children’s Fund (UNICEF)—Lancet Commission on the future for the world’s children (4).

Food marketing is pervasive globally. It typically uses persuasive and entertaining messages and experiences to engage children, exploiting their vulnerability, impulsiveness and ability to be easily influenced. More than ever, children are exposed to marketing across multiple channels, including online (via digital marketing), where they are frequently encouraged to share positive experiences with their friends, amplifying the effects of food marketing through peer influence. The collection of personal data from children online is increasingly used to inform behavioural advertising, specifying audiences with precision and targeting the most vulnerable.

In 2010, the Sixty-third World Health Assembly unanimously endorsed the WHO *Set of recommendations on the marketing of foods and non-alcoholic beverages to children* (5), a document calling for concerted action to reduce the impact on children of the marketing of foods high in saturated fats, *trans*-fatty acids, free sugars or salt, which leads to excess intake of these nutrients of public health concern. These recommendations were followed, in 2012, by a framework for implementing the set of recommendations (6).

In addition to being a public health concern, there is also growing consensus that food marketing threatens children’s rights, impacting both their physical health and their emotional, mental and spiritual well-being (1, 4, 7–11).

The Convention on the Rights of the Child (CRC), an international human rights treaty ratified by all but one country in the world, obliges State Parties¹ to ensure that children’s rights are respected, protected and fulfilled. This requires restricting commercial activities that infringe on children’s rights, including food marketing.

The Committee on the Rights of the Child, the independent body of experts tasked with monitoring compliance with the CRC, has noted that the food industry spends billions of dollars on persistent and pervasive marketing strategies to promote food to children, and that such marketing, particularly when focused on children, should be regulated (12). The Committee on the Rights of the Child General Comment 25 (2021) on child rights in relation to the digital environment states that “States Parties should . . . regulate targeted or age-inappropriate advertising, marketing and other relevant digital services to prevent children’s exposure to the promotion of unhealthy products, including certain food and beverages” (12). This call is echoed by the United Nations Special Rapporteurs on the Right to Health (13, 14) and on the Right to Food (15, 16).

Despite the recommendations of the World Health Assembly, human rights bodies and experts, children’s exposure to harmful food marketing remains a persistent problem globally. Few countries have adopted and implemented the comprehensive regulations needed to protect children from these practices. A decade after the adoption of the WHO set of recommendations, children around the world remain exposed to high levels of food marketing, and the few existing policies have many loopholes (1, 2, 5, 7).

Recognizing the lack of progress on this issue, the purpose of this practical implementation guidance is to strengthen action globally to protect children from the harmful impact of food marketing through a child rights perspective. The guidance complements the WHO guideline on *Policies to protect children from the harmful impact of food marketing* (17) and outlines how restricting food marketing can contribute to the achievement of two goals: promoting children’s nutrition and health; and supporting governments to fulfil their legal obligations to respect, protect and fulfil the rights of all children under the age of 18 years. It also makes the case for why marketing restrictions are necessary and provides step-by-step guidance on how countries can develop, implement and monitor these restrictions.

1 State Parties are governments that have ratified the treaty, and are therefore party to and legally bound by it.

BOX 1.**Definition of foods and food marketing to be restricted in the context of this guidance**

In this guidance, foods for which marketing is to be restricted are defined in line with the nutrient profile models developed by WHO regional offices (18–23) and include non-alcoholic beverages.

Nutrient profile models provide a practical approach to classifying specific foods according to their nutritional composition for reasons related to preventing disease and promoting health. For the purposes of implementing food marketing restrictions, the WHO nutrient profile models set thresholds – for example, for total fats, saturated fats, sugars and salt. A food or non-alcoholic beverage is to be restricted from marketing if it falls above the thresholds established in the region-specific models or if it belongs to a category for which all marketing is prohibited (and thus no thresholds are established). Such foods are typically high in fats, sugars and/or salt, and usually highly processed.

To ensure the broadest possible coverage and a high level of protection from the harmful impacts of marketing, the WHO set of recommendations adopts an extensive definition of marketing, further expanded by the WHO guideline on *Policies to protect children from the harmful impact of food marketing* as “Any form of commercial communication, message or action that acts to advertise or otherwise promote a product or service, or its related brand, and is designed to increase, or has the effect of increasing, the recognition, appeal and/or consumption of particular products or services” (17). If such marketing is for foods and/or non-alcoholic beverages or their related brands, this is referred to as food marketing. As such, this guidance document also covers the marketing of food brands, which is used to promote foods and/or non-alcoholic beverages and create brand loyalty.

In line with the WHO *Set of recommendations on the marketing of foods and non-alcoholic beverages to children* and the WHO guideline on *Policies to protect children from the harmful impact of food marketing*, this guidance focuses on the marketing of foods and non-alcoholic beverages that are high in saturated fats, *trans*-fatty acids, free sugars or salt (“foods”). This document defines a child as any human being under the age of 18 years (24, 25), in accordance with Article 1 of the CRC, and with evidence that all children are vulnerable to the persuasive effects of food marketing.

The practical guidance is structured as follows: Part I describes the impact of food marketing on children, and identifies main developments and challenges in the marketing landscape observed in the past decade. Part II outlines why a child rights-based approach can and should be used by governments to restrict food marketing. Part III identifies how governments can take action to restrict food marketing, building on the WHO set of recommendations and the WHO guideline on *Policies to protect children from the harmful impact of food marketing*, and supported by country experience and lessons learned.

This document is intended to be read alongside guidance that WHO and UNICEF have produced to support the development, implementation, monitoring and evaluation of national and regional policies intended to protect children from the harmful impact of food marketing (10, 17, 26–29).

BOX 2.**Defining food marketing restrictions in the context of this guidance**

For the purposes of this document, food marketing restrictions encompass all forms of government-led mandatory measures, which have the greatest potential to effectively protect children from the harmful impact of food marketing. In general, compliance with food marketing restrictions is made mandatory through legal instruments, including legislation/statutes/laws passed by the legislative branch of government (e.g. a parliament or assembly as prescribed in the constitution) and subsidiary legislative instruments, such as regulations or administrative orders issued by the executive branch of government (e.g. ministers or administrative or regulatory agencies) using powers and functions generally provided by the relevant enabling legislation.

Voluntary actions, such as industry-led pledges and other self-regulatory measures, have not been demonstrated to work effectively to protect children from the impact of food marketing (see Part I), and are therefore not included as part of the restrictions recommended in this implementation guidance.



Part 1

**An update on the evidence
and new challenges**



Key messages

- The evidence is clear that food marketing harms children – especially the poorest and most vulnerable.
- Food marketing is becoming increasingly influential via new strategies and digital channels, particularly those that foster direct engagement.
- Tackling food marketing is challenging: past experience shows that food companies use loopholes and develop new strategies to bypass restrictions.
- Voluntary schemes are ineffective in reducing children’s exposure to food marketing.
- Mandatory regulation has the potential to be the most effective path to protecting children from the harmful impact of food marketing.



Since the WHO set of recommendations was endorsed in 2010, further research has reinforced the call for effective restrictions on food marketing and informed the recent *Policies to protect children from the harmful impact of food marketing*. The imperative for action is compelling; however, progress has been insufficient. This section highlights major developments and challenges related to tackling the problem of food marketing over the past decades. It explores the latest evidence on the extent and nature of food marketing, and its harmful impact on behaviour, health and equity. It also examines innovations and developments in marketing strategies, the shortcomings of current actions, and why governments are best placed to protect children from the harmful impact of food marketing.

1.1 Food marketing negatively impacts children: the evidence

A large body of evidence has determined the extent, nature and impact of food marketing targeting children (30). This global evidence has continued to grow in depth and breadth since 2010. Fig. 1 illustrates the cascade of effects by which exposure to food marketing is likely to ultimately influence children's weight status and likelihood of developing diet-related NCDs (31), and highlights the commercial drivers of food marketing. There is unequivocal evidence that food marketing influences food preferences, and purchase and consumption behaviours, including excess energy intake.

In 2016, the WHO Commission on Ending Childhood Obesity restated the importance of the WHO set of recommendations and the impact that food marketing can have on childhood obesity (31).

BOX 3

Explaining the impact of marketing

The impact of marketing is a function of exposure and power. As such, the overall aim of food marketing restrictions should be to reduce both the exposure of children to, and the power of, food marketing.

Exposure to marketing is influenced by the communication channels, times and settings in which children see marketing. Exposure includes the reach and frequency of a particular message. Reach is the percentage of people in a target market who are exposed to the campaign over a specified period, and frequency is a measure of how many times the average person is exposed to a message (6).

The power of marketing is influenced by the content of the message, especially the creative strategies used. These strategies include graphics and visual design, such as cartoons and brand equity characters; humour, fun and fantasy; movie and sports celebrities; and competitions and entertainment events (6).

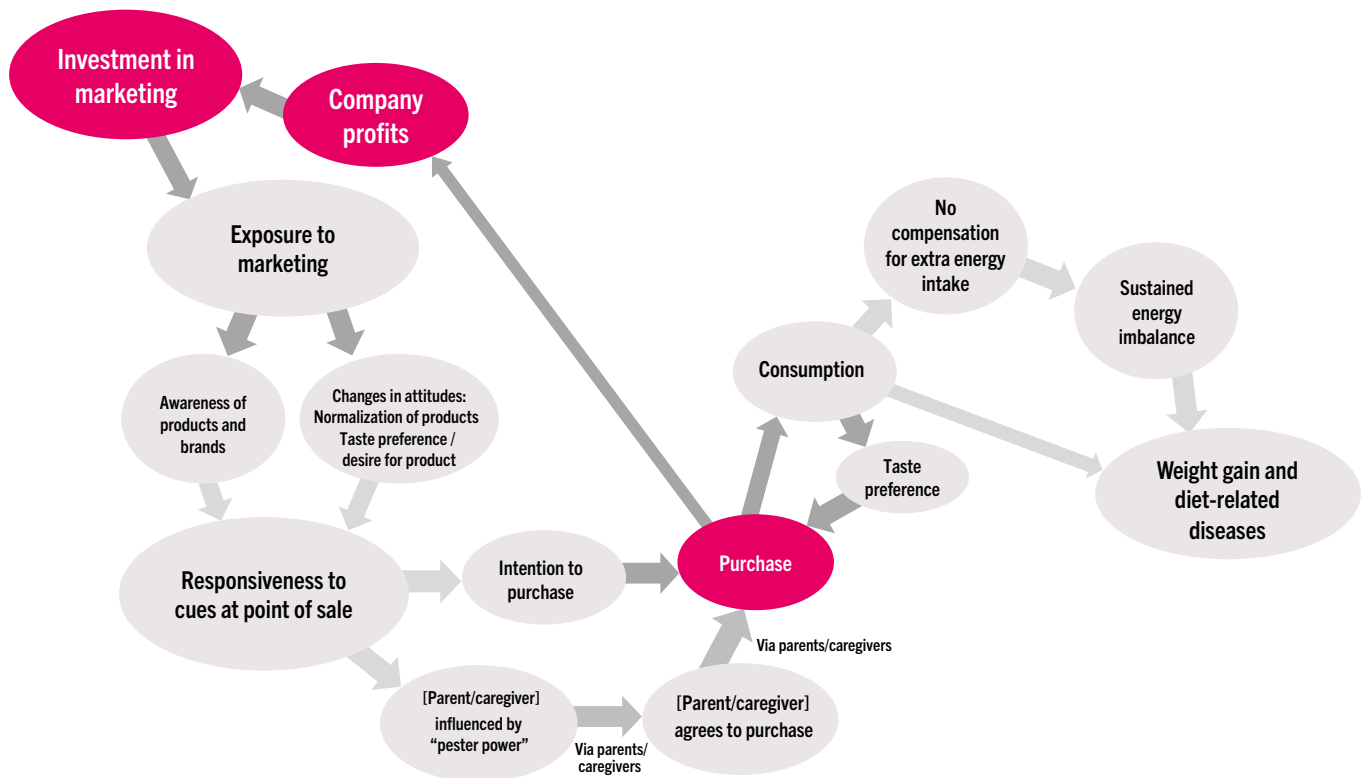
The evidence gathered over the past decade reinforces that:

- the marketing of foods is globally pervasive (32);
- food marketing is taking place via a growing number of communication channels, of which digital media platforms are a particular concern (see Box 4) (33);
- food marketing is widespread in settings where children gather, such as schools, sports and leisure centres, and retail environments (34–37);
- food marketing is increasingly diverse in form (38–42) and uses an increasingly wide range of persuasive techniques that appeal to children;
- digital technology is enabling behavioural tracking that allows companies to target individuals with food marketing using greater precision (42–46);
- children’s exposure to food marketing outside of children’s programming continues to grow, as children see and engage with marketing that is not exclusively targeted to them but appeals to their interests (24, 25, 47–51);
- all children are vulnerable to the persuasive effects of food marketing, but older children are routinely left unprotected by existing restrictions (47–51); and
- children from lower socioeconomic groups and minority ethnic groups are exposed to a greater degree of marketing

than children from higher socioeconomic groups (52–54) and are more susceptible to these messages (55, 56). Food marketing is associated with direct and indirect impacts, including (26):

- more positive attitudes to marketed foods; increased taste preferences for marketed products; and increased preference for foods high in saturated fats, *trans*-fatty acids, free sugars or salt overall (57, 58);
- increased consumption of the marketed product of a given brand and of all products in a given food category (59);
- greater pestering of parents to purchase foods (60), and purchase requests (61);
- increased intake of food that is not compensated for during later eating occasions, leading to increased caloric intake over the course of a day (62–64);
- greater consumption of foods high in saturated fats, *trans*-fatty acids, free sugars or salt, and lower consumption of nutritious foods overall in the diet (65);
- greater body weight (66); and
- shifts in norms, values and socially accepted practices around food (67).

Fig. 1. Effect of food marketing on health outcomes



Sources: WHO (17), adapted from Kelly et al. (31).

1.2 Food marketing appeals to children in new and diverse ways

Children continue to be exposed to food marketing through traditional channels, such as advertising on television, in print media and through sports sponsorship. However, new, powerful and constantly evolving marketing strategies and communication channels have emerged, spurred largely by technological developments but also by incentives to exploit loopholes in current restrictions. Such developments amplify the reach, frequency and persuasive power of food marketing.

Companies purposefully employ marketing strategies that appeal directly to children. They may use striking graphics; employ humour and fun in their messaging; and link their product promotions to gifts, competitions and entertainment events. Many companies feature movie and sports celebrities, as well as cartoon and brand equity characters (i.e. those developed to represent a particular brand or product), which are popular with children (7–9, 36, 38).

These strategies can also be employed to increase the recognition and appeal of a food brand, without referring directly to a specific food. For example, a beverage company might develop a brand advertisement, featuring the company name, logo and core visuals, without mentioning its top-selling sugar-sweetened beverage. Food companies use brand advertising to pursue two objectives: to promote purchase of their products, many of which are inextricably linked to the brand name and logo; and to achieve lifelong brand loyalty among children, thereby capturing future consumption (4). Brand preference and brand loyalty – developed through fostering associations between the brand and the consumer – are believed to precede and contribute to purchase behaviour, which then facilitates and promotes consumption (68, 69). Despite this, brand marketing is often permitted under the current marketing restrictions or voluntary actions of many countries because it does not promote a specific food product. This is a concern because exposure to brand advertising by companies typically associated with foods can influence children's preference for these foods; this is true even when the advertising features healthier food choices (70).

The strategy of cross-promotion can have the same effect, where companies use common taglines, design elements or themes to enable indirect promotion of top-selling, but typically unhealthier, food products. The food industry may also scale up brand marketing through sponsorship or via game and activity apps aimed at young children (see Box 4), which allow it to circumvent existing marketing restrictions (71). Sponsorship of large sports events, in particular, is a triple win for many companies: it allows them to promote their brands to large, diverse audiences globally, including children, and increases brand awareness and preference for sponsor products (72); it improves the industry's image and allows it to claim a contribution to the promotion of physical activity (73); and it makes children more likely to consider the company's products healthy by association. These strategies take advantage of the

shortcomings in narrowly defined food marketing restrictions.

Marketing communication techniques have also moved away from one-size-fits-all spot advertisements towards strategies for fostering engagement (74). Engagement encourages children to interact with the brand, befriend the product, share it with peers, and integrate it into their personal and social relationships more broadly (75). Digital technologies, in particular, make it possible for marketers to enlist youth in creating and distributing brand-related content. In this way, children are not passive viewers of commercial messages, but rather active practitioners in the marketing enterprise (Box 4).

1.3 Existing actions are failing to protect children from the harmful impact of food marketing

The 2010 WHO set of recommendations recognized that a comprehensive approach (i.e. restricting all forms of food marketing to eliminate children's exposure) "has the highest potential to achieve the desired impact" (5). Although some countries have made progress, clear gaps and limitations remain (30). Most notably, in taking a "stepwise" or partial restrictions approach, countries have not adopted policies that are broad enough to effectively reduce the total volume and power of food marketing to which children are exposed.

Existing measures are generally too narrow in scope, limiting their effectiveness and thereby the evidence in support of effective policy measures (30). Importantly, most existing measures:

- fail to acknowledge that adolescents, and not only younger children, are influenced by, and should therefore be protected from, food marketing;
- neglect to include important media, settings and/or techniques (e.g. digital marketing);
- rely on nutrient profiling schemes that are insufficiently strict;
- focus on marketing that targets children, rather than marketing that children are exposed to; and
- fail to include cross-border marketing (described below) within their scope.

Experience shows that, although these partial restrictions may be perceived as representing small and cumulative gains over time, they leave many children inadequately protected and may actually have counterproductive effects. For example, in some instances, partial restrictions have been shown to lead to an increase rather than a decrease in children's exposure to food marketing (26, 89). Narrow policy criteria allow gaps that encourage companies to shift their marketing investment to those areas that are not covered (97–100). This may occur in the following ways.

- Partially limiting marketing on one medium or channel alone, leaving children exposed via other channels. For example, most countries prohibit advertising during children's

BOX 4.**Digital food marketing: a pressing concern**

The explosion of digital media, including social media, as a new communication channel and the increasing amount of time that children are spending online are possibly the biggest developments in the marketing landscape since 2010 (76, 77). By 2025, 60% of total global advertising spend will be on digital ads (78). Digital marketing amplifies (rather than replaces) existing marketing strategies; increases opportunities for children to be exposed to marketing; and enables far more engaging, immersive, integrated and personalized marketing techniques (7–9, 29, 36, 79–82).

Widespread use of entertaining, immersive and highly engaging marketing techniques

Digital media platforms allow marketers to engage directly with children and encourage peer sharing of marketing content, which amplifies its impact (7, 9, 29, 46, 80, 83, 84). The rapid spread of marketing through peer networks is facilitated by the use of hashtags and prompts to “like”, “share” and “tag” others in advertising posts or create user-generated promotional content (29, 85). Receiving marketing on a mobile device – the “brand in the hand” – helps companies establish intimate relationships with customers (86, 87). Digital marketing also relies on video bloggers who are popular with children to promote products and brands in personal ways (9, 29, 46, 88, 89).

These influencers are paid or receive in-kind contributions to integrate advertising into their online content and present it as their genuine opinion, experience or preference. Influencers often have huge fan bases, and children report finding them more trustworthy than traditional celebrities (90). Experimental studies have demonstrated the effectiveness of these covert marketing techniques (91): children eat more snacks after viewing this form of food marketing compared with children who watched videos of the same influencer promoting non-food items (92).

Many food companies also have websites and/or apps offering a range of games promoting their goods, services and brands (“advergames”). These games, which are often intended for children without always referring explicitly to the food marketed, are highly immersive. They are designed to be entertaining and rely on children playing for long periods of time, often to earn rewards, sometimes leading to repeat visits.

Furthermore, it has been reported that 97% of all food and beverage advergames contained at least one food cue that could be considered a brand identifier, such as an image, a brand character or a company logo (93). Advergames have been shown to influence the dietary choices of both younger and older children, irrespective of their cognitive abilities (94–96), relying on their impulsivity (39) and their attentional bias (93).

Extraction of personal data to market food

The effects of the creative marketing techniques described above are amplified by the ability to hone content for specific audiences within digital environments, drawing on the data of users, including their age, demographics, location, interests, moods and other personal characteristics. This allows the direct, personalized micro-targeting of marketing messages to specific audiences, including children, who are most vulnerable to their effects. Furthermore, data extraction allows marketers to draw inferences, experiment constantly, and analyse responses instantaneously to craft their methods more precisely. This, in turn, magnifies the persuasive power of marketing and increases the likelihood that the very children who are most vulnerable to food marketing are targeted using techniques to which they are most likely to respond (8, 28, 82).





television programming but fail to consider marketing via digital platforms (e.g. social media) or newer broadcast services (e.g. video on demand, internet television).

- Focusing on food marketing “directed at” or “targeted at” children, often using narrow definitions, which fails to effectively protect children from exposure to food marketing. Examples of times and places where children may continue to be exposed include marketing during television programming or events that are popular with children but not made especially for them (e.g. sporting events, music/talent show competitions) or digital marketing (e.g. on popular internet locations frequently visited by children, but not exclusively or overtly directed at them, such as Facebook, Instagram and YouTube).
- Failing to prohibit specific techniques that have a marked appeal to children. This may include the use of music, vivid colours or amusing voices that are likely to be popular with children. Further, the use of brand equity characters is often excluded from marketing restrictions. With the advent of digital media, influencer marketing and user-generated content are often left unrestricted by existing policies.
- Focusing on young children, while leaving older children unprotected. Many existing policies only protect children under 12 years of age – a choice that reflects dated

cognitive models of marketing persuasion, which suppose that advertising literacy is achieved in early adolescence. This leads to an (unfounded) assumption that older children can activate cognitive defences against marketing, and fails to account for the emotional, implicit (unconscious) and social effects of advertising, which are magnified in the era of digital marketing. The evidence is also consistent that adolescents engage with food marketing longer on social media, and like, share, recall and recognize it more than advertisements for healthier food options or non-food items (24, 48, 101–103). Adolescents are strongly influenced by peers; and, despite having more developed cognitive abilities than younger children, they have neurological, hormonal and social developmental factors that can make them particularly susceptible to food marketing.

Another shortcoming of existing measures is that they do not protect against cross-border marketing. Many media cross national borders (e.g. broadcast media, films, websites, advergames and social networking sites, commercial communications in print media, sponsorship of international sports and cultural events). These cross-border media can be vehicles for food marketing to children, where material produced in one country can be sold, shared, downloaded or consumed in another. There is thus a strong rationale for

international cooperation, including common food marketing restrictions developed by regional trade forums or other appropriate forums that have the requisite powers.

With common rules, countries may find it easier to effectively enforce domestic food marketing restrictions on commercial communications originating from other countries. Data collected by the WHO Regional Office for the Eastern Mediterranean show that advertising expenditure on pan-Arabic television channels has increased far more rapidly over the past 5 years than advertising on national channels. However, these changes have not been accompanied by improvements in the regulatory environment for cross-border media services and cross-border marketing (9).

1.4 Governments are best placed to effectively implement policies to protect all children from the harmful impact of food marketing

Governments should lead in developing policy and providing leadership, as proposed in the WHO set of recommendations (Recommendation 6) (5), and the recommendation of mandatory policies in the recent *Policies to protect children from the harmful impact of food marketing: WHO guideline* (17). Governments are best placed to implement marketing restrictions. They also have legal obligations to implement measures at the domestic level to respect, protect and fulfil relevant human rights, including the right to health, the right to food and the rights of children under international human rights treaties to which they are State Parties.

These include the CRC; the International Covenant on Economic, Social and Cultural Rights; and relevant regional treaties. In contrast, non-state actors, such as industry stakeholders, are not parties to international treaties and not generally accountable under international human rights law. Although businesses have a responsibility to respect human rights under the United Nations Guiding Principles on Business and Human Rights, this is not a legal obligation.

Governments are best placed for the following reasons.

- Mandatory food marketing restrictions can be accompanied by enforcement provisions such as sanctions impacting business operations and meaningful fines, whereas voluntary actions and industry self-regulation are generally not enforceable and do not have the same business impact, meaning they are less of a deterrent. When there is little or no risk of (financial) sanction, businesses can and do decide not to self-regulate.
- Mandatory food marketing restrictions create a level playing field for businesses, because compliance is not left to the voluntary commitment of industry. This is important in a business context, where companies compete for market share. Mandatory restrictions reduce opportunities for companies to gain market advantage through non-compliance (an option that is still open to them under voluntary actions, such as self-regulation).

- The primary interest of government in this policy space is to improve public health by decreasing the consumption of foods high in saturated fats, *trans*-fatty acids, free sugars or salt. In contrast, food and beverage industry actors are involved in the manufacture, supply and sale of food; as such, they have a vested commercial interest in increasing sales of their products. When in a position to influence the design or implementation of measures to restrict marketing to children, industry actors have an incentive to delay, weaken or prevent the implementation of measures that could reduce the consumption of their products.
- Governments have jurisdiction to regulate marketing, including cross-border marketing, and to collaborate with other governments, particularly those of neighbouring countries, to agree on harmonized regulations or minimum standards applicable to marketing (discussed further in Part III).

To date, it is indeed governments (not food companies or food industry associations) that have come closest to the comprehensive approach put forward in the WHO set of recommendations and in the WHO guideline on *Policies to protect children from the harmful impact of food marketing* (Table 1).

Comprehensive approaches are more likely to ensure that food marketing does not shift from regulated to unregulated. This shift can occur in terms of programmes (e.g. from children's programmes to programmes of general appeal that have a high children's audience in absolute numbers), media (e.g. from broadcast media to digital media, or from food packaging to in-store marketing on shelves), marketing techniques (e.g. from licensed characters to brand equity characters) and settings (e.g. from schools to other settings where children gather).

Governments are also best placed to tackle cross-border marketing comprehensively, including by working with neighbouring countries (that may share the same language and media) to agree on minimum rules that can be effectively enforced. The WHO set of recommendations acknowledges that food marketing has become a global phenomenon and explicitly calls on Member States to cooperate to put in place mechanisms for reducing the impact of both inflowing and outflowing cross-border marketing (Recommendation 8) (5). This imperative is compounded by the rapid development of digital marketing, and a globalized food system dominated by large and powerful multinational food companies using aggressive and wide-reaching multinational advertising and/or technology companies to promote their products, services and brands.

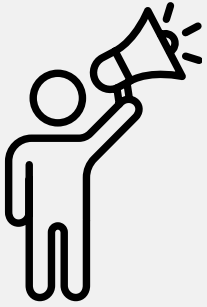
Table 1. Examples of effective policy measures in selected countries

Policy element	Country examples
Protecting all children	Broadcast regulations restricting food marketing in Ireland (104), the Republic of Korea (105) and Türkiye (106), apply to children up to the age of 18 years. In Ireland, for example, commercial communications for food products defined as high in saturated fats, <i>trans</i> -fatty acids, free sugars or salt according to a nutrient profile model are not permitted in children's programmes and shall not include licensed characters. Children's programmes are defined as those where more than 50% of the audience is under 18 years old.
Adopting a broad definition of marketing to children	Chile's Food Labelling and Advertising Law (107) includes a ban on advertising for foods high in saturated fats, <i>trans</i> -fatty acids, free sugars or salt that are considered to be child targeted; where >20% of the audience comprises children aged <14 years; and where advertising appeals to children by including characters, toys or other strategies considered to be directed to children. The legislation was updated in June 2018 to include a time-based restriction, where all advertising of foods high in fat, salt and sugar is banned on television programmes between the hours of 06:00 hours and 22:00 hours.
Including a broad set of marketing communication channels	In Quebec, Canada, section 248 of the Quebec Consumer Protection Act (108) bans any commercial advertising directed at children under 13 years of age on television, radio, print, internet, mobile phones and signage, as well as the use of promotional items. The ban covers all forms of marketing, including the marketing of foods and beverages.
Covering a broad set of persuasive techniques that appeal to children	In Peru, the Law Promoting Healthy Eating for Children and Adolescents (Law No. 30021) (109) includes restrictions on advertising aimed at children and adolescents under 16 years of age through any medium. This means that companies cannot advertise age-inappropriate portion sizes, or use real or fictional characters, gifts, prizes or any other benefit to encourage purchase or consumption of food or drinks.
Applying a strict nutrient profile model	The Turkish Broadcast Regulation (106) applies restrictions on the marketing of foods to children based on the WHO Europe nutrient profile model. Specific food categories, including chocolate and candies, energy bars, sweet biscuits and waffles, potato chips and sugar-sweetened beverages, are prohibited from being advertised during children's programming.
Adopting an effective enforcement mechanism	In Quebec, Canada, the Office for Consumer Protection (108) can enforce the Consumer Protection Act in three principal ways: notifying the actors concerned about the rules that apply to their activities; negotiating with the actors to voluntarily change their practices; or filing criminal proceedings against the actors for violating the Act. Fines can be levied on any actor in the advertising process (from the conception phase to its distribution), ranging from 600 to 100 000 Canadian dollars.



Part 2

**Food marketing is a child
rights concern**



Key messages

- Governments have an imperative to adopt a child rights-based approach to protect children from the harmful impact of food marketing.
- Food marketing is a major threat to the fulfilment of human rights, including the right to health, the right to adequate and nutritious food, the right to privacy and the right to be free from economic exploitation.
- Children are rights holders; these entitlements give rise to legal obligations on the part of governments – as duty bearers – to respect, protect and fulfil children’s rights.
- Governments have a duty to protect children from the harmful impact of food marketing to fulfil their human rights obligations to children.
- The CRC requires that the best interests of the child shall be a primary consideration in all decisions concerning children, including decisions about how food marketing is regulated. Competing rights and interests invoked by business actors must be assessed in light of this principle.
- A child rights-based approach promotes good governance, clear roles and responsibilities, and accountability, while empowering children as individuals, and their parents and caregivers.
- A child rights-based approach can galvanize broader societal support for food marketing restrictions, and mobilize support from other child rights advocates and civil society organizations (CSOs) operating beyond the food and health sectors.



There is a growing consensus that food marketing is not only a public health concern but also a major children’s rights concern (110–115). This evolution has important implications for protecting children from the harmful impact of food marketing and for implementing effective policies to protect all children.

More specifically, as the WHO Commission on Ending Childhood Obesity underlined in its final report:

Government and society have a moral responsibility to act on behalf of the child to reduce the risk of obesity. Tackling childhood obesity resonates with the universal acceptance of the rights of the child to a healthy life as well as the obligations assumed by State Parties to the Convention of the Rights of the Child. This new perspective offers some potential to increase the pressure on States to effectively address the various harms associated with the marketing of unhealthy, ultra-processed food to children (79).

Subsequently, international agencies have produced guidance documents highlighting why food marketing should be understood as a child rights issue and what a child rights-based approach entails for policy-makers (7). A child rights-based approach emphasizes the need for governments, as duty bearers, to meet their legal obligations under the CRC and other legally binding international human rights instruments. The CRC is particularly important as it recognizes that children have the same human rights as every person in the world, in addition to specific rights that recognize their special needs.

State Parties to the CRC are legally bound by its provisions and Optional Protocols² (where ratified by the State Party), and they have a legal obligation to respect, protect and fulfil the rights recognized therein. In practice, this means that State Parties must adopt the necessary national legislation and other policies to ensure that their obligations under the CRC are met, and submit regular progress reports on implementation of those rights to the Committee on the Rights of the Child, the independent body of experts that monitors and reviews compliance with the treaty.

2.1 Child rights affected by food marketing

Food marketing negatively affects many of the rights enshrined in the CRC and other legally binding human rights instruments. Table 2 highlights four human rights that are most negatively affected by food marketing: the right to health, the right to adequate and nutritious food, the right to privacy and the right to be free from exploitation. Other rights may also be impacted, including the right to education; the right to freedom of opinion; the right to access appropriate information; the right to leisure and play; the right to participate in cultural life; the right to non-discrimination; and the right to survival, life and development (7). All rights enshrined in the CRC are interrelated, interdependent and indivisible: they all have equal status, and the protection of each right should not be to the detriment of the protection of other rights. Governments need to balance children’s important participatory rights, including in a digital environment, with the need to protect children from harm and actions that may be injurious to their well-being.

² Optional Protocols are treaties in their own right, and are open to signature and/or ratification by States that are party to the main treaty. Signature and ratification of the Optional Protocols is a separate process, so State Parties to the CRC are not bound by an Optional Protocol unless they have also ratified that Optional Protocol.

Table 2. Selected children’s rights negatively impacted by food marketing

<p>The right to health</p>	<p>Every child has the right to enjoy the highest attainable standard of health (CRC Article 24). Although Article 24 does not explicitly mention childhood obesity or food marketing regulation, it refers to the imperative for State Parties “to combat disease and malnutrition”, of which child obesity prevention has become a major component (1, 116). Subsequently, the Committee on the Rights of the Child has noted that States should address obesity in children; that foods “high in fat, sugar or salt, energy-dense and micronutrient-poor foods, and drinks containing high levels of caffeine or other potentially harmful substances” should be limited; and that marketing, particularly when focused on children, should be regulated (General Comment 15) (117). This has since been echoed by several other United Nations organizations and the Special Rapporteurs on the Right to Health (13, 118) and the Right to Food (15, 16, 116), including in a joint statement by the Special Rapporteurs on the Right to Food and the Right to Health, the Working Group on Discrimination against Women in the Law and in Practice, and the Committee on the Rights of the Child (118).</p>
<p>The right to adequate and nutritious food</p>	<p>Apart from the right to be free from hunger, the right to food (CRC Article 24) recognizes the need for food to be adequate and nutritious. By marketing food high in saturated fats, <i>trans</i>-fatty acids, free sugars or salt, both media and food business actors undermine children’s access to adequate food and healthy diets (7). The CRC makes clear that the right to health and to adequate nutritious food is a fundamental human right, and that special protections must be extended to children to ensure their right to enjoy the highest attainable standard of health. The Committee on the Rights of the Child has issued several general comments to support governments in combating malnutrition and safeguarding every child’s right to a healthy food environment. Everyone, including children, has the right to physical and economic access, at all times, to adequate food or means for its procurement (General Comment 12) (117).</p>
<p>The right to privacy</p>	<p>Every child has the right to the protection of the law against arbitrary or unlawful interference with their privacy (CRC Article 16). The digital age has expanded the understanding of privacy to include a right to the protection of children’s personal data (119). Many everyday actions generate data, and the relationship between privacy and data online is becoming highly complex (120). Marketing in the digital era relies on the collection of personal data that allow the identification of individual preferences, choices and behaviours used to target and tailor food advertising, posing a major threat to children’s right to privacy (7). Despite the existence of so-called privacy policies, children of all ages and their parents are rarely able to make free and informed decisions about online participation, and to protect themselves from the extensive extraction and sale of their personal data (39).</p>
<p>The right to be free from exploitation</p>	<p>Every child has the right to be free from economic exploitation and all other forms of exploitation (CRC Articles 32 and 36) (39). Exploitation refers to people or entities taking unfair advantage of a child by encouraging or coercing the child, by whatever means, to undertake an activity that provides that person or entity with a benefit (121). Manipulative marketing practices promote economic gain by taking advantage of children’s vulnerabilities, including their emotions, and their limited ability to process and evaluate information (122, 123). The use of personal data and the techniques that digital media deploy to capture children’s attention, target them and engage with them directly in the transmission of marketing (e.g. peer-to-peer techniques) allow brands to influence children, while increasing profits at low costs. These practices therefore constitute a form of economic exploitation (39, 122, 124).</p>

Source: adapted from UNICEF (7).

2.2 The imperative for governments to adopt a child rights-based approach to restrict food marketing

Children are rights holders, and governments are the corresponding duty bearers

Children have needs; more importantly, they also have rights. These entitlements give rise to legal obligations on the part of governments, the corresponding duty bearers, to ensure that these rights are effectively upheld where governments are party to international treaties under which these rights arise. Introducing the concept of rights to policy-making can strengthen the imperative for restrictions on marketing to children. General Comment 16, paragraph 59, of the Committee on the Rights of the Child highlights that “States should ensure that marketing and advertising do not have adverse impacts on children’s rights by adopting appropriate regulation”, while General Comment 15, paragraph 47, states that “the marketing of [foods that are high in fat, sugar or salt, energy-dense and micronutrient-poor] – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled”. Because food marketing infringes several child rights (Table 2), State Parties must restrict such marketing effectively if they are to meet their obligations under the CRC and protect children from its harmful impact. The implementation of effective policies to protect children from the harmful impact of food marketing should be envisaged as essential in the promotion of healthy diets, and the prevention of obesity and diet-related noncommunicable diseases (NCDs), as well as in the implementation of the CRC.

Putting children first: the best interests of the child as a primary consideration

The principle of the best interests of the child, enshrined in Article 3, is a cornerstone of the CRC and provides a crucial benchmark when implementing policies intended to reduce the impact of marketing practices that are harmful to children. It requires that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. This provision is an obligation of particularly broad scope, and State Parties must ensure that the best interests of the child are upheld as a primary consideration in all their actions (or lack of actions) that have an effect on an individual child, a group of children or all children (123). As such, policy-making processes must ensure that commercial and other interests are not given priority over the best interests of the child (116).

The principle of the best interests of the child (Box 5) establishes a high threshold that should be applied to “influence the development of policies to regulate actions that impede the physical and social environments in which children

live, grow and develop” (115). The child’s right to health and consideration of their health conditions, including nutrition, are central in assessing their best interests (123). No policy is child-neutral, meaning that due consideration must be given to the impact of any policy decision on children, placing children and their best interests at the centre of the policy process. A child rights-based approach gives more legitimacy to efforts to restrict food marketing because competing policies lose legitimacy when they are incompatible with children’s rights. When business actors make competing claims – for example, to the right to freedom of expression (including commercial expression where that right exists under national laws) or property (which may include intellectual property under national laws) – these claims should be assessed in light of the child’s right to the enjoyment of the highest attainable standard of health, to adequate food, to privacy, and to all related rights that are negatively affected by food marketing (7).

BOX 5.

The three dimensions of the best interests of the child principle

The Committee on the Rights of the Child has outlined three complementary dimensions of this principle (125, 126).

- **A substantive right:** A child has an individual personal right to have their best interests taken as a primary consideration. Consequently, a child rights-based approach must be incorporated into all actions that have a potential impact on children.
- **A fundamental, interpretative legal principle:** When a provision is open to more than one meaning, it must be interpreted in a way that serves the child’s best interests.
- **A rule of procedure:** Any decision that is likely to have an impact on the best interests of the child must include an evaluation of the potential impacts. This includes being able to explain how children’s best interests have been respected in decision-making and how their interests have been weighed against other considerations.

State Parties to the CRC must ensure that the best interests of the child are central to the development of legislation and policies that shape business activities and operations. Viewing the best interests of the child as primary requires an awareness about the place that children’s interests must occupy in all actions and a willingness to give priority to those interests (127).

2.3 Allocating clear roles and responsibilities (including involving children)

A child rights-based approach ensures that stakeholders comply with their obligations and responsibilities to respect, protect and fulfil children’s rights (Box 6). Governments have a duty to protect and realize children’s rights; lead government departments should therefore allocate clear roles and responsibilities, and state what is expected of each stakeholder throughout the policy-making process to restrict food marketing. This includes ensuring that children and young people are aware of their right to be heard and are able to participate in, and influence, the processes that affect them. At the same time, governments should take action to ensure that commercial interests that threaten children’s rights do not delay, weaken or undermine comprehensive policies to protect public health. This includes strengthening all procedures to prevent and manage conflicts of interest in policy-making (see Part III, Step 5), and holding private entities accountable for complying with applicable laws and respecting children’s rights (128).

BOX 6.

The responsibility of business actors to protect children’s rights

Business actors have a responsibility under the United Nations Guiding Principles on Business and Human Rights to ensure that they respect children’s human rights, as interpreted by the Committee on the Rights of the Child in its General Comment 16 on the impact of the business sector on children’s rights (122). Therefore, in addition to complying with national policies and regulations, as applicable, business actors in the food, media, advertising and technology industries should also ensure that their global marketing practices respect the rights enshrined in the CRC, and specifically protect children from exposure to, and the power of, food marketing (128). However, as established in Part I, voluntary actions and self-regulation by businesses have major limitations, and do not substitute for the role of government in protecting children from harmful marketing practices. As such, government responsibility for policy-making in this area should not be delegated to stakeholders with vested interests, such as food companies or the advertising industry.

2.4 Using a rights-based approach to galvanize broader societal support for food marketing restrictions and promote greater government accountability

A child rights-based approach provides an opportunity to build strategic alliances, coalitions and networks with other actors – in particular, CSOs and grassroots movements – that share a similar vision and pursue common objectives. In relation to food marketing regulation, a child rights-based approach is likely to foster the involvement of a broader range of actors than was the case before the issue was framed as a child rights concern. This may include human rights organizations; child rights advocates and activists; child protection and support agencies; children themselves and their representatives; and teachers, parents and family associations. In turn, this is likely to galvanize political will and foster country compliance with human rights obligations under the CRC and other international human rights instruments (7).

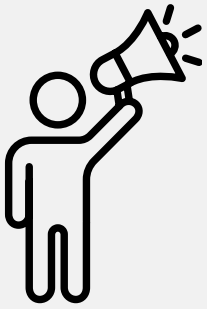
A child rights-based approach should also guarantee a degree of government accountability, making effective remedies³ more likely where rights enshrined in law are infringed, subject to the national legal context. In Norway, for example, the Ombudsperson for Children is a dedicated advocate for children’s rights that works to ensure that the opinions of children and young people are heard, and that their rights are upheld. One of the Ombudsperson’s most important duties is to ensure that the authorities in Norway comply with the CRC, which is enshrined in Norwegian law. This, in turn, helps translate the commitments and obligations established in the CRC into actionable, realizable and sustainable entitlements, guaranteed by independent monitoring bodies, including courts and national human rights institutions.

³ Human rights law imposes an obligation on countries to provide remedies and reparation for the victims of human rights violations. This means that appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law are established and available.

A young child with short, dark hair is looking directly at the camera. They are holding a white tablet in front of their chest with both hands. The tablet displays the text 'Part 3' in a large, bold, blue font, and below it, 'Restricting food marketing using a child rights-based approach' in a smaller, bold, black font. The background is a plain, light color.

Part 3

**Restricting food marketing
using a child rights-based
approach**



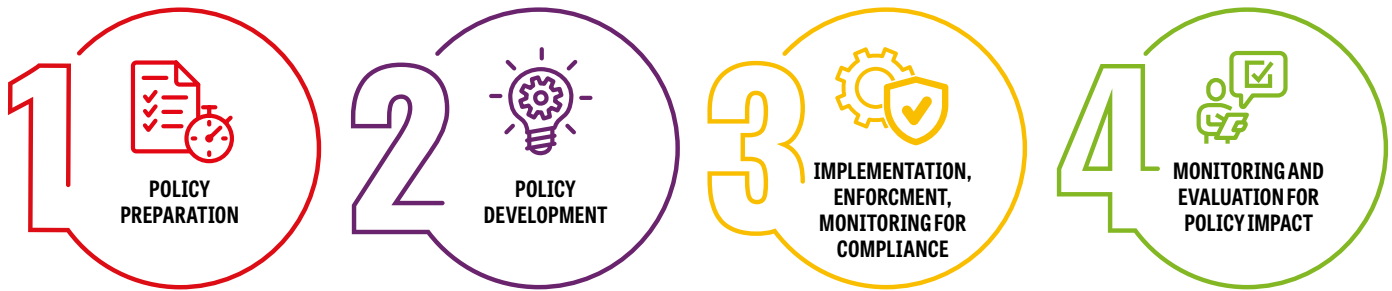
Key messages

- Governments have a responsibility to consider how to protect children's rights from the harmful impact of food marketing, at every stage of the policy cycle.
- At the policy preparation stage – governments understand the food marketing landscape, identify legal entry points for enacting restrictions, achieve consensus for action, identify a lead agency, form a steering committee, establish rules for stakeholder engagement, and engage with CSOs.
- At the policy development stage – governments draft the proposed restrictions, set clear objectives, align policies to promote healthy diets, ensure that the process respects children's rights, anticipate legal challenges, consult with the public, and allocate resources for action.
- At the implementation stage – governments establish timelines and targets; build capacity to implement, monitor and enforce restrictions; communicate with the public; establish a complaints mechanism; and enforce restrictions.
- At the monitoring and evaluation stage – governments monitor progress and evaluate impact, and identify entry points in the human rights reporting cycle to strengthen enforcement.

Part III of this guidance is organized by the main stages in a policy cycle: policy preparation, policy development, implementation (including enforcement and monitoring for compliance), and monitoring and evaluation for policy impact (see Fig. 2). Stage 1 covers policy preparation, including context analysis, identifying the relevant legal entry points, and determining the lead agency and rules of engagement. Stage 2 looks at policy development, including defining the

goals, objectives, scope and definition of the food marketing restrictions; preparing for legal challenges; and conducting public consultations. Stage 3 concerns the process of implementation, checking compliance and enforcement. Finally, Stage 4 addresses the need to monitor and evaluate the impact of the food marketing restrictions, understand any gaps or loopholes, and identify any child rights deprivations that remain and need to be addressed.

Fig. 2. Principal stages in the policy cycle

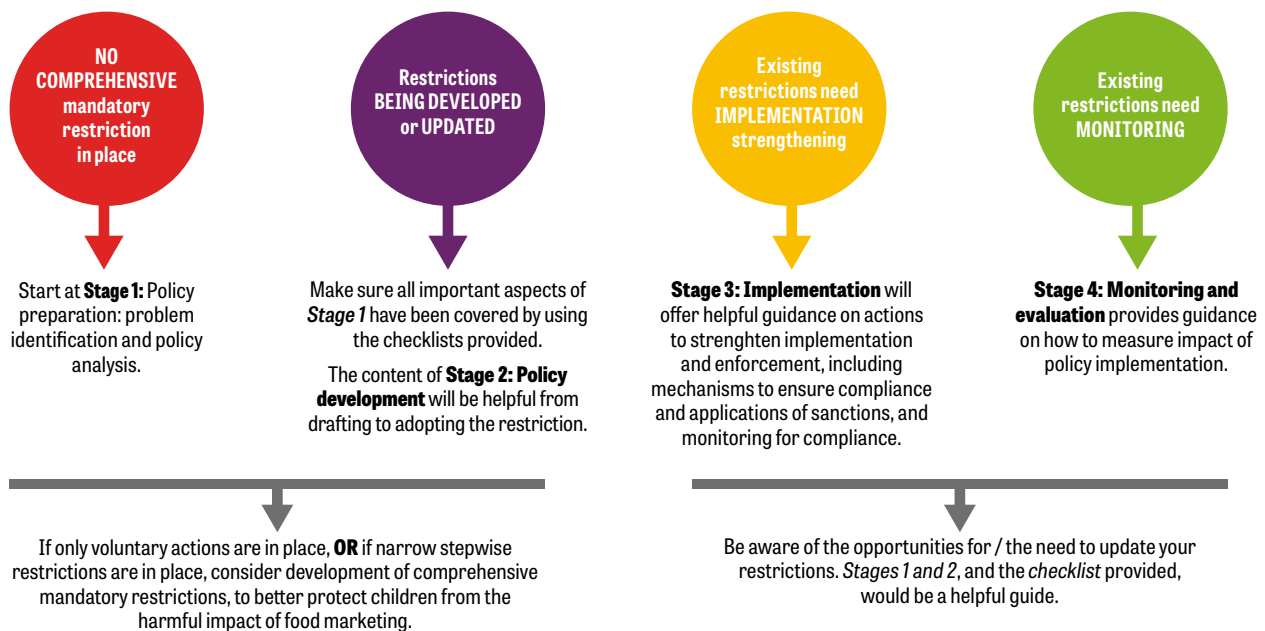


Policy-making is unique to a given country context: the proposed steps vary in each country and may happen concurrently rather than in a linear pattern. Rather than being prescriptive, the sections that follow are intended to provide guidance to policy-makers and those supporting them that can be adapted to the local context. Visualizing the policy-making cycle simplifies the complex process of developing comprehensive food marketing restrictions at a subnational,

national or regional level by using steps that are common and familiar to most governments and policy-makers.

Countries are likely to be at different stages of the policy process (129). To identify the content that is most useful to each country, it may be helpful to start by reflecting on the status of implementation of marketing restrictions in that jurisdiction (see Fig. 3).

Fig. 3. Identifying country progress in implementing food marketing restrictions



At every stage of the policy cycle, the steps taken to restrict food marketing must integrate both a public health lens and a child rights lens, while considering the key legal principles set out in the CRC described in Part II. As previously emphasized, policy-makers should continually recall that:

- children are rights holders, and governments are duty bearers;
- the best interests of the child shall be a primary consideration in all actions concerning children; and
- a child is any human being under the age of 18 years.

Governments generally have powers to regulate to protect public health; they also have existing obligations to respect, protect and

fulfil children's rights, and are therefore best placed to lead the policy process. Government action should consider – at every stage of the policy cycle – that the best way to respect, protect and fulfil children's rights when it comes to protecting them from harmful marketing practices is to adopt a mandatory, comprehensive approach.

Implementing a child rights-based approach means applying, in practice, the human rights principles of universality and inalienability, indivisibility, interdependence and interrelatedness, equality and non-discrimination, participation and inclusion, and accountability and rule of law (Annex 1).



STAGE 1 POLICY PREPARATION



By the end of Stage 1, a government has:

- ✓ formed a better understanding of the current situation regarding food marketing, including discrepancies between national and global recommendations, and measures in place in its jurisdiction;
- ✓ identified potential legal entry points to restrict food marketing;
- ✓ arrived at a consensus on the need to act and clearly communicated a plan of action;
- ✓ identified a lead agency, supporting stakeholders and potential opposition;
- ✓ formed a steering committee or working group;
- ✓ established clear rules for stakeholder engagement; and
- ✓ engaged with CSOs.

This stage addresses how governments can take a child rights-based approach while gathering critical information and evidence, as well as how to manage the early policy analysis process. Stage 1 is divided into six steps (Fig. 4), which may occur sequentially or in parallel. Elements of existing tools, such as the UNICEF/WHO childhood overweight and obesity landscape analysis tool, may be helpful to guide many of the steps.

Fig. 4. Steps in the policy preparation stage



Step 1. Gather information on the health and nutrition situation in the country

Information on the health and nutrition situation in the country provides one of the most important rationales for taking action on food marketing and makes the case more compelling for policy leaders. For example, if data show that overweight and obesity, including childhood obesity, are increasing, or if children consume foods high in saturated fats, *trans*-fatty acids, free sugars and/or salt beyond recommended levels, the urgency for government action is greater. The information gathered is also used to shape policy objectives. Some key data to collect are described in Table 3.

Data collected on nutrition and health status should be disaggregated as much as possible to show potential inequalities based on sex, disability, income, geographical location, ethnicity and other indicators of inequality used in the country. A key principle of human rights is equality and non-discrimination, meaning that each person is entitled to the same rights regardless of their race, sex, ethnicity, age, language, religion, disability, gender identity, sexual orientation, socioeconomic status or other characteristics.

Consideration should be given to how to best synthesize and communicate the evidence internally for advocacy and build political buy-in for change. Consider what messages – supported by data – will resonate most powerfully with politicians and decision-makers.

Table 3. Data on health and nutrition status to support action on food marketing

Levels of child and adolescent overweight and obesity	This could include data from national Demographic and Health Surveys or Multiple Indicator Cluster Surveys. Country-specific data may be available via the UNICEF/WHO/World Bank joint malnutrition estimates, the Global School-Based Student Health Surveys, the WHO European Childhood Obesity Surveillance Initiative and/or the World Obesity Federation.
Diets of children and adolescents	The focus is on unhealthy dietary behaviours. For example, many countries will have some data on consumption of sugar-sweetened beverages, fast food and sweets; and inadequate consumption of fruits and vegetables. Global School-Based Student Health Surveys or national nutrition surveys could be used. Market research data on sales of sugar-sweetened beverages and other product categories may also be used.
Levels of adult overweight and obesity; prevalence of diet-related NCDs, including diabetes, hypertension, cancer and cardiovascular disease	This could include data from national health surveys or the STEPS survey. If data are available for premature mortality and total mortality from diet-related diseases, these can also be useful. Finally, the economic costs and productivity losses associated with NCDs can be powerful, but not all countries have these data.
Diets in the adult population	Countries should look to complement information on overweight and obesity with data on dietary intake, such as consumption of sugar-sweetened beverages, consumption of fruits and vegetables, and sodium intake (often collected in STEPS). As above, some countries will have more complete information on overall dietary intake than others.



Step 2. Collect information on exposure to, and power of, marketing

In addition to gathering information about the health and nutrition situation, it is important to look at what data are available or needed to describe the nature and extent of food marketing in a country. This will help frame the policy and highlight the rationale for actions that focus on marketing.

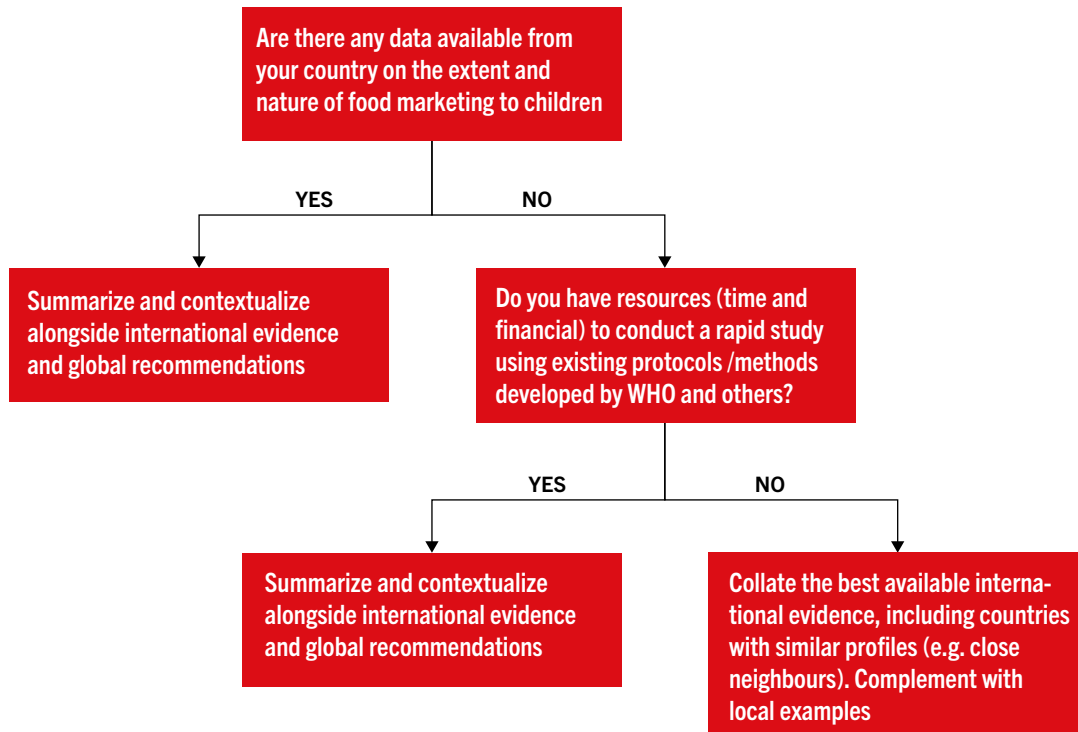
For some countries, information on the extent and power of food marketing may already be available from country studies, and the exercise will be a simple desk review to extract key findings. If studies are not available, standardized protocols are available to support relatively straightforward and quick local assessments of evidence on the extent and nature of marketing. These can be done in conjunction with academia or CSOs (e.g. see protocols developed by the WHO Regional Office for Europe, the WHO Regional Office for the Western Pacific, governments, civil society and academia).

Where time and resources are limited, countries can also collate and summarize data from existing international

studies, systematic reviews and grey literature. For example, a country could use a study from a neighbouring country with a similar profile to illustrate the problem. Governments (or partner organizations working with governments) may prepare an evidence summary for policy-makers describing the existing national and/or international evidence and trends in the exposure and power of marketing, and the relationship between marketing and behavioural and health outcomes. Examples of evidence summaries and policy briefs are available (130–133). Fig. 5 summarizes the options available to countries.

The aim of this exercise is to demonstrate objectively and concisely that there is scientific consensus on the nature, extent and harmful impact of food marketing – and on the need to act. A child rights-based approach should be integral to preparing the evidence summary. It should highlight that food marketing threatens children’s rights and that States have a duty under the CRC to protect children from harmful marketing practices. Disaggregated data should be used whenever possible to highlight inequalities, and data gaps should be noted.

Fig. 5. Decision tree to guide decisions on country-level data collection



Step 3. Review existing laws and policies, and identify potential legal entry points

The purpose of this step is to identify what, if anything, has previously been done in the country to restrict food marketing, and what legal and policy frameworks are currently in place that are relevant to this issue. This exercise will help with understanding:

- what commitments the government has made to reduce the impact of marketing on children;
- how these commitments relate to the government’s child rights obligations and how they align with existing child rights frameworks at the global level;
- what laws, regulations or policies relevant to food marketing are in place, including their legal basis, and the mechanisms used to administer, enforce and monitor them;
- how effectively laws, regulations or policies are implemented, enforced, and systematically monitored and evaluated;
- the scope of these laws, regulations or policies with regard to the marketing techniques, audiences, foods and age of children that are covered;
- what approach is being used (comprehensive or stepwise) and if there is room for updating the content or moving from voluntary to mandatory measures;

- what potential gaps need to be addressed by implementing or amending laws, regulations or policies to ensure better protections for children against food marketing;
- which government agencies have a legislative mandate, powers or functions that could be relevant to restricting marketing to children;
- how the different actors engage, with an identification of the roles and responsibilities of each;
- what the planning cycle of health-related policies entails; and
- what reporting cycle is used for human rights reports.

Box 7 provides an example from Thailand.

Based on this exercise, it should be possible to identify the relevant legal and policy frameworks, demonstrate the gaps and point to the need for policy action. This will help in preparing for the policy process, and getting to a point where a decision can be made to act that can be successfully defended if challenged in domestic or international forums.

Table 4 shows examples of legal and policy frameworks and governance structures that may be relevant to include in the review.

Table 4. Example of legal and policy frameworks and governance structures

Existing legal and policy frameworks	Governance structures
<ul style="list-style-type: none"> • Consumer protection laws • Public health laws • Media and communication laws • Advertising and marketing laws • Broadcasting laws, including laws governing broadcasting over the internet • Children’s laws • Food labelling laws • Competition laws • Intellectual property laws • Data protection laws • Privacy laws • Laws and policies governing the composition, sale and promotion of food • Laws and policies governing the sale, service or marketing of food in settings where children gather, such as schools, day-care and leisure centres • Voluntary schemes and self-regulation of marketing • Overarching legislation where fundamental human rights (including children’s rights) and government duties are recognized (e.g. national constitutions) • Sector-specific laws and policies where specific children’s rights are recognized (e.g. food security laws and policies that recognize the right to food) • Trade laws and policies (i.e. international commitments or obligations reflected in, or impacting, domestic law) 	<ul style="list-style-type: none"> • Implementing ministries or regulating authorities (e.g. food and drug administration, communications authority) • Organizations and agencies mandated to implement, enforce and monitor each policy or law • Coordination mechanisms (e.g. national nutrition council) • Focal points, committees or commissions responsible for human rights (including children’s rights), including reporting (e.g. reporting to the Committee on the Rights of the Child) • Government institutions in charge of providing remedies (e.g. courts, administrative tribunals, regulators such as consumer protection authorities) • Standard-setting authorities or bodies • Corporate governance and market regulators • Customs authority • Multilateral and regional trade or customs bodies and forums

BOX 7.**Stronger legislation to reduce children's exposure to inappropriate food marketing in Thailand**

The introduction of legislation to control the inappropriate marketing of food and non-alcoholic beverages in Thailand stands against a background of rising rates of NCDs and overweight. NCDs account for 74% of all deaths in Thailand (134), while overweight, a key risk factor driving the country's rapidly rising burden of NCDs, is increasing sharply in children and adults (135). Strong evidence in Thailand indicates a positive relationship between the consumption of foods high in fat, sugar and salt and children's body weight (136). Moreover, among 54 low- and middle-income countries, Thailand is ranked highest for adolescent fast food intake (137).

The Government of Thailand has introduced a range of marketing legislation, including the Tobacco Products Control Act (2017), which bans the advertising and marketing of tobacco products; the Control of Marketing of Infant and Young Child Food Act (2017), which prohibits the advertising of breast-milk substitutes for infants up to 12 months of age; and the Ministerial Notification (2007) on the Labelling of Certain Pre-cooked Ready-to-eat Food, which states that ready-to-eat food and snack advertisements must display nutrition and health-related text or voice messages, such as "consume in small quantities" and "exercise for good health".

Building on these initiatives and in response to the increasing levels of NCDs in the country, the Government of Thailand committed to banning the "inappropriate marketing of unhealthy food and beverages to children" in August 2018. This was one of 17 recommendations established as part of a framework for cooperation between the government and a United Nations Interagency Task Force on the Prevention and Control of Non-Communicable Diseases, which visited Thailand in 2018 (138).

Progress has been made to restrict food marketing in schools through the Notification of the Ministry of Education on Measures and Approaches to Enhance Knowledge and Skills Related to Oral

Health Care and Selection of Dental Services (announced on 11 June 2020), which banned marketing and promotion activities for all types of foods and beverages in educational institutions. However, a policy was still needed to ban the inappropriate marketing of foods and drinks to all children to adequately protect them within and beyond educational establishments, and to uphold national commitments to the United Nations Interagency Taskforce in Thailand.

The Ministry of Public Health was assigned responsibility to establish this policy, with technical support from UNICEF and WHO. A subcommittee on restricting marketing of foods and non-alcoholic beverages to which children are exposed was set up to explore policy options for strengthening legislation, under the leadership of the Bureau of Nutrition. The subcommittee evolved from a small working group to include a broader range of key stakeholders from across government ministries, civil society, academia, United Nations agencies and public health advocates.

A first step was to develop the technical and legislative framework for how food marketing should be regulated to best protect children in Thailand. An evidence report exploring this topic was jointly produced by the Bureau of Nutrition, the Ministry of Public Health, the Department of Health, the International Health Policy Program Thailand, UNICEF and WHO (139). The report set out the rationale for legislation in Thailand, and presented the principles required for effective legislation based on global guidance and national experience. Eleven recommendations were proposed. The report was translated into Thai, and the findings and recommendations have been presented to the subcommittee as well as during the third meeting of the United Nations Interagency Taskforce on the Prevention and Control of Non-Communicable Diseases, which met in Bangkok in late 2020.

Key recommendations from the report are as follows.

1. Adopt mandatory government legislation.
2. Assign the Ministry of Public Health as the lead government agency.
3. Set an overarching objective to reduce children's exposure to marketing of foods high in fat, sugar and salt.
4. Protect all children up to 18 years of age.
5. Include all marketing of all foods high in fat, sugar and salt, regardless of target audience.
6. Implement comprehensive legislation covering all settings, times and media channels.
7. Restrict marketing in all settings where children are present (child-centred settings, public spaces and retail environments).
8. Restrict the marketing of foods high in fat, sugar and salt across all broadcast media between the hours of 06:00 and midnight.
9. Ban marketing of foods high in fat, sugar and salt across non-digital and digital platforms.
10. Categorize food and drink as permitted or not permitted for marketing based on a robust classification system.
11. Monitor and evaluate the legislation using an independent government agency and robust enforcement mechanisms.

To take forward the recommendations of the evidence report, the Bureau of Nutrition has set up two working groups with key stakeholders from the subcommittee. Working group 1 focuses on the drafting of the legislation to control the marketing of food and non-alcoholic beverages to children. Government lawyers are included in this working group to provide guidance on specific legal wording. Working group 2 focuses on advocacy to implement the legislation once the draft is complete.

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The review can also support the identification of potential legal entry points for food marketing restrictions and windows of opportunity to align different policy processes. Box 8 shows examples of entry points that have been used in various countries, which can take different forms. In most countries, the first and main entry point considered is the national level. However, subnational restrictions can be considered in some countries, including at the state, territory, provincial and city levels.

In addition, it is also increasingly important that countries consider legal entry points for regulating cross-border marketing. As a general rule, countries have jurisdiction to regulate cross-border marketing:

- carried out by their nationals, including corporations (wherever located);
- entering their territory (inflowing); and
- produced in or leaving their territory (outflowing).

As a first step, policy-makers would need to collaborate with government lawyers to explore:

- the extent of the State's capacity to regulate (incoming) cross-border food marketing in the same way as domestic-source marketing;
- the extent to which such regulation can be effectively enforced throughout the supply chain, including against multinational companies or foreign commercial actors (both those distributing marketing and the food and beverage companies commissioning it); and
- whether potential penalties are sufficiently meaningful to deter non-compliance.

There are, however, limits on the ability of national governments to restrict media content – including food marketing – originating from another country or jurisdiction. These limits and challenges can include international legal commitments relating to media or broadcasting that limit the government's power to restrict incoming media, the political economy associated with limiting popular but non-compliant content (e.g. the extent to which a government is willing to ban transmission of international sporting events that are sponsored by companies producing certain foods or other unhealthy commodities) and enforcement challenges where relevant companies are not physically present in a jurisdiction.

Recognizing these issues, governments, particularly of neighbouring countries or those sharing the same language and media, may benefit from agreeing on a common approach that can be effectively enforced for regulating the marketing to which children are exposed. One example is the European Union (EU) Tobacco Products Directive, where Member States agreed on a common approach to restricting tobacco marketing that mediates other commitments on broadcasting. Any such standards must be sufficiently high to ensure

that they contribute to reducing the harmful impact of food marketing on children, and therefore support rather than hinder governments in their efforts to implement effective policies to protect children from the harmful impact of food marketing. Minimum standards must be sufficiently robust to promote the realization of children's rights and must be based on the best available evidence. In addition, they must allow governments to adopt more ambitious domestic requirements that exceed the minimum standards.

Step 4. Identify a lead government authority or agency, advocate for political buy-in, form a steering committee and anticipate opponents

Once the government decides to embark on policy development, successful outcomes depend on effective preparation. This includes outlining the responsibilities of decision-making bodies, generating support and buy-in, establishing the rules of engagement, building capacity to manage the process, and engaging stakeholder groups in a meaningful way.

A stakeholder analysis is a useful tool for identifying all relevant actors (e.g. potential allies, likely opponents), including policy and community leaders who will steer the process, advocate for change and help secure political buy-in. In-depth descriptions of how to conduct a stakeholder analysis are available elsewhere (e.g. a tool developed by the United Nations Network for Scaling Up Nutrition); thus, this practical guidance focuses on providing examples of stakeholders to consider when embarking on policy action to protect children from the harmful impact of food marketing.

The main stakeholders responsible for implementing effective policies to protect children from the harmful impact of food marketing should be trusted public authorities, as the bearers of a duty to protect children's rights and public health. Delegation of responsibility to other stakeholders (e.g. sector associations representing the advertising industry or broadcasters) is not recommended as it has been shown to create conflicts of interest at the heart of policy discussions in many countries, which may in part explain the failure to fully implement the 2010 WHO set of recommendations (8, 9, 143, 144) over the past decade.

The implementation of policies to protect children from the harmful impact of food marketing is of primary concern to the ministry of health; in most countries, the impetus for adopting regulations has typically come from this sector of government. Although the ministry of health would be an ideal lead authority, this may not always be possible, but it should always play an active role. Beyond the ministry of health, the issue is also relevant to a broad range of non-health government sectors such as the ministries, departments, authorities and agencies that have responsibility or regulatory authority for communications, media and advertising.

BOX 8.**Examples of possible legal entry points for marketing restrictions**

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Chile

In 2012, the Government of Chile approved a Law of Nutritional Composition of Food and Advertising (Law 20.606). In June 2015, a regulation was made under that law requiring its implementation (Official Journal No. 41.193). Both the law and regulation came into effect on 27 June 2016. The Ministry of Health is the lead government agency responsible for their administration and implementation. The law mandates front-of-pack warning labels, restricts the marketing of foods to children under the age of 14 years, and bans the promotion and sale of foods and beverages containing added sugars, sodium or saturated fats that exceed set nutrient or calorie thresholds in schools. Chile's food marketing restrictions under this law also include various restrictions on advertising (described further in Part I, Table 1).

Ireland

In Ireland, Section 42 of the Broadcasting Act, 2009, provides that the Broadcasting Authority of Ireland shall prepare and revise codes governing standards and practice to be observed by broadcasters. The Children's Commercial Communications Code (2013 revision) was developed by the Broadcasting Authority of Ireland, in line with its statutory authority, to address advertising, sponsorship, product placement and other forms of commercial promotion

aimed at children, or broadcast in or around children's programming. Broadcasters within the jurisdiction of the Republic of Ireland must comply with the provisions of the code. It specifically prohibits advertising, sponsorship, teleshopping and product placement of foods high in fats, sugars and salt (as defined by a nutrient profile model) during children's television and radio programmes, and any other programming where more than 50% of the audience is under 18 years of age. The lead government agencies are the Broadcasting Authority of Ireland and the Department of Health.

Norway

Based on the Broadcasting Act No. 127 of 1992 (Chapter 3.1), Norway prohibits marketing directed at children under 18 years of age, and advertising in connection with children's programmes on television and radio. The ban includes all products, including foods and beverages. The Act also states that advertising for products or services of special interest to children and young people is prohibited if it uses personalities who have featured regularly in the preceding 12 months, or over a long period of time, as important elements in programmes for children in Norway; if children feature in the commercial; or if it uses characters or content that particularly appeal to children.

Canada

Since 1978, Section 248 of the Province of Quebec's Consumer Protection Act bans any commercial advertising directed at children under 13 years of age on television, radio, print, internet, mobile phones, signage and promotional items. The ban is applicable to food and beverage marketing, among other products.

United Kingdom

The United Kingdom Code of Broadcast Advertising Practice bans the scheduling of advertisements for foods high in saturated fats, *trans*-fatty acids, free sugars or salt next to television programmes commissioned for, or that appeal particularly to, children. If the proportion of children in the audience is greater than the proportion of children in the population, the programme is said to have particular appeal to children. In 2019, the government announced its intention to introduce a watershed policy that would ban advertisements for foods high in saturated fats, *trans*-fatty acids, free sugars or salt on television and online between 5:30 and 21:00. Subsequently, in November 2020, it consulted on plans to ban all online advertising for these foods (140). It also announced plans to prohibit promotional deals for the same food products (e.g. "buy one, get one free"). The lead government authorities for the proposed legislation are the Department of Health and Social Care, and the Department for Digital, Culture, Media and Sports (141, 142).

United States

In 2011, the city of San Francisco implemented the Healthy Food Incentives Ordinance under Article 8, Section 471, of the San Francisco Health Code. The ordinance bans restaurants, including takeaway restaurants, from giving away toys and other free incentive items with children's meals unless the meals meet the nutritional standards set out in the ordinance. The lead government agency is the San Francisco Department of Public Health, which has responsibility over food and food products.

STAGE 1

Indeed, if the issue of food marketing is understood as a child rights issue, other ministries are also likely to be interested. It is critical at this early stage to identify who has the power to adopt the regulation, and which authority, department or agency has the power to monitor and enforce it. These entities may be the same in some countries, but not in all cases. It is important to define roles and responsibilities from the outset.

Not all government sectors are guaranteed to be supportive, due to perceived competing interests, such as those related to trade, business development, and even food and agriculture. Ministries of health are encouraged to proactively reach out to other ministries to secure their support and ensure that their objectives appeal to other government stakeholders (145).

Advocating to obtain political buy-in and establish consensus on the need for action across government agencies, sectors or partners is paramount to policy success.

Parliamentarians play a unique role in advancing policies – including those that create healthy food environments to enable healthy diets – through their mandates of representation, legislation, budget and oversight (Box 9).

There may also be specialized government agencies or ombudspersons that could provide valuable information and skills throughout the policy cycle, particularly at the policy development stage of the process.

BOX 9.

Actions for parliamentarians to support restricting food marketing¹

Representation

- Solicit disaggregated evidence, data and analysis from researcher networks and other relevant stakeholders to assess the current situation of childhood overweight and obesity.
- Raise the awareness of government agencies, media and the public of the issue of childhood overweight and obesity, and the need for actions to restrict food marketing.
- Advocate for prioritizing the childhood overweight and obesity agenda by influencing senior leadership in the legislature.
- Build alliances with civil society, academic institutions and other relevant actors to further advance advocacy, while being vigilant about conflicts of interest.

Legislation

- Take stock of existing bills related to consumer protection, children's rights, the media, public health and restrictions on food marketing.
- Consult with relevant parliamentary bodies, the executive branch and constituents, to identify legislative gaps and prioritize legislative needs.
- Develop proposals to regulate the inappropriate promotion of foods where right-of-initiative powers exist.

- Debate, develop or revise and amend proposed legislation or regulations to strengthen the protections they offer to children.
- Collaborate within and across regions, and attend international events to share lessons learned and experiences in legislating for restricting food marketing, including sharing evidence to prevent and manage conflicts of interest, and counter vested interests opposed to such legislation.

Budget

- Track and analyse budgets to ascertain the amount of money allocated or needed to restrict food marketing across government ministries – not only health, but also relevant sectors such as education, women's affairs, urban/rural development and social protection.
- Negotiate and approve budgets for policies and programmes aiming to regulate food marketing to children.
- Review spending information from government sectors and other groups of stakeholders.

Oversight

- Establish clear processes and mechanisms in legislation to monitor and enforce the implementation of regulations.
- Monitor and evaluate the short- and long-term effects of regulations, in collaboration with independent research institutes.
- Use relevant parliamentary standing committees (e.g. health, food security and nutrition, education, children, women's affairs, governance, human rights, budget) to organize transparent hearings with relevant ministries on progress in implementation and the limitations of regulations pertinent to restricting food marketing.
- Enshrine a nutrition agenda, including the tackling of childhood overweight and obesity, in the manifestos of political parties.
- Hold decision-makers accountable and develop scorecard systems to ensure that political commitments to healthy diets are realized.
- Establish mechanisms to coordinate engagement with relevant stakeholders, including rules of engagement to avoid and manage conflicts of interest and vested interests.

1 Adapted from Inter-Parliamentary Union *Nutrition and food systems: handbook for parliamentarians*

The structure of government varies from one country to another; however, some suggestions for potential stakeholders in food marketing restrictions are presented in Table 5. It is worth recalling that regional bodies may be relevant to the process – either as relevant policy-making authorities in their own right or as convenors that can be leveraged to drive a regional advocacy agenda on this issue.

Once the main stakeholders have been identified, a core group of policy leads can form a steering committee to negotiate the content needed to develop a draft of the food marketing restrictions. Before any engagement, due diligence of possible

partners must be conducted to avoid conflicts of interest in policy-making (146). Managing conflict of interest is discussed in further detail in Step 5.

Implementation of effective policies to protect children from the harmful impact of food marketing may be strongly opposed by groups that view restrictions as a threat to their business models and profits, or by those who are ideologically or politically opposed to government regulation or interference in the market economy. Examples of potential opponents are also listed in Table 5.

Table 5. Potential stakeholders in food marketing restrictions

Governmental ministries and policy-makers	Specialized agencies	Supporting organizations	Stakeholders impacted and potentially opposed
<ul style="list-style-type: none"> • Health • Legal affairs, justice, Attorney General's office • Consumer affairs • Social development • Food and agriculture • Media, communications • Culture and sport • Family affairs and child protection • Trade, commerce, industry • Education • Urban planning • Finance, revenue • Regional trade commissioner or focal point • Local government • Competition authority, market regulator • Foreign affairs, investment, development • Regional bodies, such as intergovernmental organizations or economic communities • Parliamentarians 	<ul style="list-style-type: none"> • Public health and health promotion agencies • School health and nutrition agencies • Food regulatory authorities • Agricultural agencies • Customs and border control agencies • Consumer and fair trade agencies or ombudspersons • Broadcasting, digital and communication agencies • Child protection and education agencies or ombudspersons • National human rights institutions 	<ul style="list-style-type: none"> • Consumer organizations • Child rights groups • Youth groups • Parent/caregiver organizations • Privacy advocates • Teacher organizations • Organizations representing specific vulnerable groups (this will depend on the country context and goes beyond national human rights institutions): migrants, low-income families, rural and indigenous communities • Community or cultural (e.g. religious) leaders and groups • CSOs and NGOs focused on public health, NCDs, nutrition issues or law reform • Professional societies (e.g. in medicine, public health or law) • Academia and research institutes 	<ul style="list-style-type: none"> • Business actors (e.g. members of the food and beverage industry) that promote foods, such as some manufacturers, retailers, fast food chains, some restaurant and café chains, and food delivery businesses • Business interest NGOs and chambers of commerce • Food and beverage industry associations and front groups • Broadcasters and digital platforms that may perceive a risk in losing advertising revenue • Advertising and technology industry • Entertainment venues, including cinemas and festival organizers • Sports organizations (if sports sponsorship is affected) • Opposition political parties • Policy-makers with competing interests • Academics with competing interests

STAGE 1

Oppositional tactics are likely to vary significantly. They can involve ridicule, personal attacks, minimizing the problem and the existing evidence, production of industry-driven research, use of think tanks, and lobbying of politicians and the media in an effort to shift the narrative to individual responsibility. Tactics also include pre-emptively announcing and implementing industry-designed codes that still allow most forms of food marketing to children. This gives the appearance of problem solving but has the aim of stopping or delaying more comprehensive regulation. It is necessary to understand who these opponents and their allies are, and to anticipate the arguments they are likely to use to oppose the implementation of effective policies to protect children from the harmful

impact of food marketing. The relative balance of allies and opponents is not always constant, and the cyclical ebb and flow will include cycles when support from allies is greater. During these windows of opportunity, governments should be equipped with a clear plan for messaging and countering industry lobbying from the outset, and a public communication strategy to promote the benefits of the proposed legislation. Table 6 identifies some common arguments, and proposes counterarguments based on a child rights-based approach and the available scientific evidence to date.

Table 6. Common arguments against food marketing regulation and counterarguments

Common arguments from opponents	Counterargument
<p>Parents and caregivers are responsible for what their children eat. This should not be decided by the State or by businesses.</p>	<p>Under the CRC, all children have the right to grow up in an environment that promotes their health and well-being; the actions of the private sector in promoting food to children should not infringe on this right. The public expects the government to act in the best interests of children and seek to protect their health and well-being, including by restricting harmful marketing practices. States also have an obligation to ensure that parents and other caregivers are adequately supported in meeting their responsibilities. The predominance of marketing of foods high in saturated fats, <i>trans</i>-fatty acids, free sugars or salt contrasts directly with the recommended diet for children and conveys a profoundly distorted picture of what foods should appeal to, and be consumed by, children (147). Marketing acts to influence children’s preferences and food choices – including by creating good feelings about foods and encouraging children to demand these foods (“pester power”), which directly undermines the efforts of parents and other caregivers to encourage healthy eating. The overabundance of marketing for foods high in saturated fats, <i>trans</i>-fatty acids, free sugars or salt distorts the information landscape, impacting children directly and making it more difficult for parents to navigate.</p> <p>The adoption of a comprehensive, child rights-based approach to the regulation of food marketing is an important step for governments to take to meet their human rights obligations to uphold children’s rights and protect them from commercial exploitation. It is also an important measure to empower parents and caregivers by modifying food environments surrounding them, and supporting them in making healthier decisions easier, thus providing better care for their children (7, 114).</p>
<p>There is no proof that the marketing of foods and beverages is linked to children’s health outcomes, such as overweight and obesity.</p>	<p>This argument is no longer sustainable. A large body of consistent and independent evidence has determined that marketing influences children’s food preferences, purchase requests and consumption patterns, independently of other factors such as snacking and physical inactivity (see Part I). The evidence is unequivocal that food marketing is associated with unhealthy diets, and growing rates of child overweight and obesity (79). Moreover, evaluation of existing food marketing restrictions suggests that countries with mandatory food marketing regulations have seen a significant decrease in sales per capita of foods restricted from marketing, which has not been seen in countries with no policies or only self-regulatory policies (148). Food marketing restrictions are thus an important component of the response to promote healthy diets and prevent obesity.</p>

Common arguments from opponents	Counterargument
<p>The contribution that food marketing restrictions can make to health outcomes is minimal, while the contribution of food marketing to the economy is significant. In particular, advertising and sponsorship allow the financing of good-quality (children’s) programmes, schools, sports and events.</p>	<p>Any costs associated with food marketing restrictions are small compared with the costs to citizens and governments of unhealthy diets and diet-related diseases, including direct costs of health care and indirect costs such as lost productivity (149). Advertising revenue from non-food products and services can still make a contribution to programme financing. With regard to the sponsorship of schools, sports and events, the United Nations Special Rapporteur on Cultural Rights has underlined that this should not result in advertising and marketing materials or activities entering school premises or being targeted to children.</p> <p>Any cost–benefit analysis must consider the health and wider societal impacts. Marketing restrictions are cost-effective; indeed they may be cost saving, and are likely to have greatest benefit for disadvantaged socioeconomic groups (149). Therefore, the introduction of legally binding rules intended to restrict food marketing is a proportionate response to the health challenges posed by diet-related diseases, and child overweight and obesity.</p>
<p>The ministry of health is not the appropriate actor to determine how food marketing to children should be regulated.</p>	<p>Governments have a legal obligation to protect children’s rights, including those that are threatened by harmful marketing. This may also include ensuring that all relevant governmental sectors are involved in drafting, adopting and enforcing regulations on food marketing.</p> <p>Whether or not the ministry of health has the legal authority to regulate food marketing varies between jurisdictions and is a matter for each government to determine based on its domestic legislation. However, the ministry of health will typically take a lead in the process, given the health objective of food marketing restrictions. It will need to be supported by the appropriate bodies and agencies to ensure that legislation or regulations are issued by the appropriate government body, following required procedures.</p>
<p>The food industry is better placed than the government to self-regulate food marketing: the adoption of industry-led, self-regulatory pledges is more efficient and less costly than the imposition of government-led restrictions on business practices.</p>	<p>Research has established that voluntary actions by industry, such as pledges to promote food “responsibly” to children, contain significant gaps that prevent industry from reducing the exposure of children to harmful food marketing. These gaps relate to limitations in the age ranges of children protected; exemptions in the marketing techniques, media and programmes used; and weaknesses in the categorization of foods. Industry-led initiatives are also not effectively enforced, monitored and evaluated; as such, they cannot be a substitute for a government-led, child rights-compliant implementation of effective policies to protect children from the harmful impact of food marketing.</p>
<p>Sweeping restrictions are excessive: they limit business activity too much and infringe on the ability to market food to adults. A stepwise approach, starting with more narrowly defined approaches, would be better.</p>	<p>The WHO set of recommendations recognizes that a comprehensive approach is most effective in ensuring the broadest possible coverage and a high level of public health protection against food marketing (5). Partial restrictions may be perceived as representing small and cumulative gains over time, but research has shown that they can have counterproductive effects: they can lead to an increase (rather than a decrease) in children’s exposure to such marketing. As recent evidence has shown, gaps in restrictions encourage companies to shift their marketing investment to unregulated programmes, media, marketing techniques and settings (99, 100). As a result, a stepwise approach does not sufficiently protect children from exposure to commercial practices that negatively impact their rights, as enshrined in the CRC.</p>
<p>Marketing restrictions are unlawful.</p>	<p>Business actors have invoked different legal arguments challenging the validity of food marketing restrictions. These arguments can be rebutted, particularly where a government has considered the likelihood of legal challenges in the development of the legislation or regulations (see Stage 2, Step 4). Governments that have ratified the CRC have an obligation to ensure the enjoyment of the highest attainable standard of health for all children in their jurisdictions. In upholding this right, they have a broad margin of discretion in determining how to do so most effectively, including through the use of legislation and regulations.</p>

Step 5. Manage conflicts of interest

As noted in the Lancet Commission report in 2019 (143):

A principal source of policy inertia related to addressing obesity ... is the power of vested interests by commercial actors whose engagement in policy often constitutes a conflict of interest that is at odds with the public good and planetary health. Countering this power to assure unbiased decision-making requires strong processes to manage conflicts of interest.

This is particularly true in relation to food marketing restrictions.

A conflict of interest arises where there is potential for a secondary interest in the outcome of the government's work to unduly influence, or be reasonably perceived to unduly influence, the independence or objectivity of government decisions or actions in relation to a primary interest of the government's work. For example, a food manufacturer could attempt to interfere with a government policy to restrict food marketing as part of its national strategy to promote healthy diets and prevent obesity. In this case, the primary interest of the government – to improve public health by decreasing consumption of foods high in saturated fats, *trans*-fatty acids, free sugars or salt – conflicts with the vested commercial interests of the food manufacturer to prevent measures that may affect sales of its products. If the manufacturer is able to engage in or influence the policy process, it may interfere by lobbying government to delay, weaken or prevent implementation of the policy, representing a conflict of interest.

The management of real, perceived or potential conflicts of interest is part of the overarching principles of global and regional WHO action plans and strategies endorsed by Member States (10, 150), and is reflected in the UNICEF programming guidance *Prevention of overweight and obesity in children and adolescents* (151). Recommendation 6 of the WHO set of recommendations (5) recognizes the existence of, or potential for, conflicts of interests in relation to food marketing restrictions and emphasizes that, although governments should be the key stakeholders, they may choose to allocate defined roles to other stakeholders, while protecting the public interest and avoiding conflict of interest.

To avoid, or effectively manage, potential conflicts of interest, governments should adopt clear, transparent, robust guidelines and mechanisms that cover all stages of the policy process.

How the lead government department engages, with whom, and at which stage of the policy cycle requires establishment of processes or rules of engagement and good governance practices at the outset, before any policy process begins. This helps guard against conflicts of interest.

Engagement with other stakeholders includes any formalized interaction, including:

- collaboration through a working group;
- meetings with other government sectors (e.g. to secure buy-in and commitment);
- invitations to comment during public hearings and receive written comments;
- hearings with the food industry to hear and respond to food industry concerns and questions around implementation;
- collaboration with academia to monitor and evaluate a policy or to provide technical support; and
- partnership with civil society to support advocacy.

Box 10 provides an example from Canada.

Examples of rules of stakeholder engagement include the following (144).

- Build transparency into all engagement, including by:
 - documenting and making public all meetings, workshops and consultations undertaken by and between government agencies and stakeholders with vested interests in a policy; and
 - setting up platforms for publication of comments and submissions made in any public comments process, and including any government responses.
- State clearly at the start of the process that government is proposing mandatory restrictions on food marketing, rather than voluntary pledges or other forms of self-regulation.
- Ensure compliance with any formal requirements or established processes for policy development, implementation, enforcement, monitoring and evaluation.
- Ensure compliance with, and strengthen as required, legislation, regulations, processes and policies governing conflicts of interest for public officials, members of parliament and policy-makers.
- Request and review declarations of interest, including funding, for stakeholders before their engagement in the policy process, including:
 - public officials, members of parliament and policy-makers;
 - CSOs;
 - academic institutions and individual experts;
 - other NGOs; and
 - industry entities.
- Conduct due diligence on stakeholders before their engagement in the policy process, as discussed above.

BOX 10.**Safeguarding against conflicts of interest in nutrition policies and programmes: Canada's approach**

Canada's federal department of health, Health Canada, recognizes that safeguarding against possible conflicts of interest in nutrition policies and programmes is key to maintaining public trust in healthy eating initiatives. Several recent advances have been made to support efforts in this area.

- In October 2016, Canada's Minister of Health announced a new approach to transparency of stakeholder communications for healthy eating initiatives. Under this approach, all meetings and correspondence with stakeholders (in which views, opinions, information and requests for information are relayed with the intent to inform policy development) are published in a searchable table on the government website, including the name of the organization, and the topics and purpose of discussion. The intent of this approach is to

improve public trust, openness and transparency around stakeholder engagement activities related to healthy eating initiatives (152, 153).

- During policy development for the new food guide, officials from Health Canada's Office of Nutrition Policy and Promotion did not meet with food and beverage industry representatives. This was important to ensure that the development of dietary guidance was free from conflict of interest. Additionally, in reviewing the evidence on food, nutrients and health, industry-commissioned reports were excluded to reduce the potential for, or the perception of, conflict of interest. Industry stakeholders did have the opportunity to participate in online public consultations, along with all interested stakeholders.
- In July 2019, Health Canada announced its intention to establish a new external Nutrition Science Advisory Committee (NSAC) to strengthen its scientific oversight, and provide timely and independent scientific and technical advice related to nutrition. This includes dietary guidance. In an effort to mitigate conflict of interest in the establishment of the NSAC, an external expert on conflict of interest advised the selection committee (154). All NSAC nominees were required to complete an affiliations and interests declaration form at the time of nomination, and were screened for potential conflicts of interest during the selection process.



STAGE 1

- Put in place a clear policy (if one does not exist in law) setting out:
 - the mandate, authority and role of the government in the policy process;
 - how transparency will be assured (as above);
 - how potential conflicts of interest will be assessed (including by due diligence and conflict-of-interest declaration processes, as above);
 - the procedure to be followed to ensure that people and entities with a potential conflict of interest are excluded from those parts of the policy process, or from decision-making, where a conflict of interest may apply; and
 - identification of the parts of the policy process where different stakeholders may, or may not, be engaged.

Step 6. Engage with children, CSOs and academia throughout the process

Participation and inclusion are key human rights principles. This means that people who are negatively affected by harmful food marketing, including children, should have the opportunity to meaningfully participate in policy processes that affect them.

A child rights-based approach can be galvanized to support strengthened advocacy efforts and foster wide public support for implementing food marketing restrictions. This can be done by actively involving children and supporting organizations, such as groups that represent the interests of children, youth groups and parent/caregiver organizations, in

addition to academia and CSOs working on food marketing or issues related to NCDs, nutrition, public health or law reform. Promoting the participation of these organizations helps increase widespread support for food marketing restrictions, while allowing rights holders to have a say in the policy process. Examples of public mobilization and civil society support include the Parents' Voice in Australia, the Alliance for Adequate and Healthy Food in Brazil, the Children's Food Campaign parents surveys, and some of the campaigns for front-of-pack labelling and sugary drinks taxes in Mexico (Box 11), led by the consumer organization El Poder del Consumidor. A notable example of youth-led engagement on the topic is Bite Back 2030.

Such organizations can also support implementation of the government's public education and social marketing programmes, and contribute to monitoring compliance with the newly adopted or revised food marketing restrictions by filing complaints to the relevant monitoring bodies. Before engagement with CSOs and academics, due diligence should be undertaken to ensure that the CSO or academic in question does not have a conflict of interest. Examples of conflict of interest include CSOs that are sponsored, supported or established by the same industry that is to be regulated by the policy measure; or academics who receive research grants from industry. In recent years, special interest groups have been establishing false grassroots CSOs to support corporate agendas, such as the establishment of a CSO that challenged the implementation of a sugar-sweetened beverage tax (155).

BOX 11.


Successful civil society engagement in Mexico

A successful example of engagement with civil society and public communication around the benefits of proposed legislation comes from Mexico. In 2014, the Alliance for Healthy Food, a coalition of civil and social organizations and concerned professionals, including El Poder del Consumidor, were able to help mobilize public support and government commitment for the implementation of a soda tax. Through

communications campaigns to raise public awareness of the health risks of sugar-sweetened beverages and direct engagement with members of Congress, the alliance secured the support of the President and the legislature to adopt the soda tax (156).

STAGE 1: CHECKLIST

Use this checklist to check whether all points from Stage 1 (Policy preparation) that are relevant for the country context have been considered.

Description	Status 
Information on health and nutrition has been gathered and provides an overview of the situation in the country.	
Information on health and nutrition is disaggregated to identify inequalities based on sex, income, geographical location, ethnicity and other relevant indicators, allowing identification of the most vulnerable groups.	
A decision has been taken about whether to conduct a rapid assessment of food marketing in the country.	
An evidence summary for policy-makers has been prepared, collating national and global evidence on the relationship between marketing and behavioural and health outcomes, and trends in exposure to, and power of, marketing.	
A child rights-based approach has been used in preparing the evidence summary, framing the communication and advocacy messages, and developing other briefs for policy-makers. This includes using the rationale that food marketing threatens several children's rights, and that addressing this issue is part of existing government obligations to uphold children's rights.	
A landscape analysis to review existing policies and laws has enabled the country to identify gaps and the need for policy action.	
Existing legal and policy frameworks that are relevant to food marketing restrictions, including human rights and children's rights law, have been mapped.	
Governance structures that are relevant for food marketing restrictions have been mapped.	
Legal entry points for food marketing restrictions and windows of opportunity to align different policy processes have been identified.	
A government authority or agency has been identified to lead the process of establishing food marketing restrictions.	
A steering committee has been established to negotiate content and guide the process of developing policy or legislation.	
Organizations and stakeholders that are likely to support food marketing restrictions, such as consumer organizations, child rights groups, parent/caregiver organizations and academia, have been identified.	
Likely opponents to food marketing restrictions have been identified.	
A government communication strategy around the proposed policy has been developed.	
Advocacy efforts to promote wide public support for implementing food marketing restrictions adopt a child rights-based approach to galvanize support.	
Common arguments against food marketing regulation have been identified, as well as child rights-based counterarguments that can be used.	
Clear rules of engagement among stakeholders have been established to avoid conflicts of interest.	
CSOs and academia are engaged in the process to ensure participation of rights holders.	



STAGE 2 POLICY DEVELOPMENT



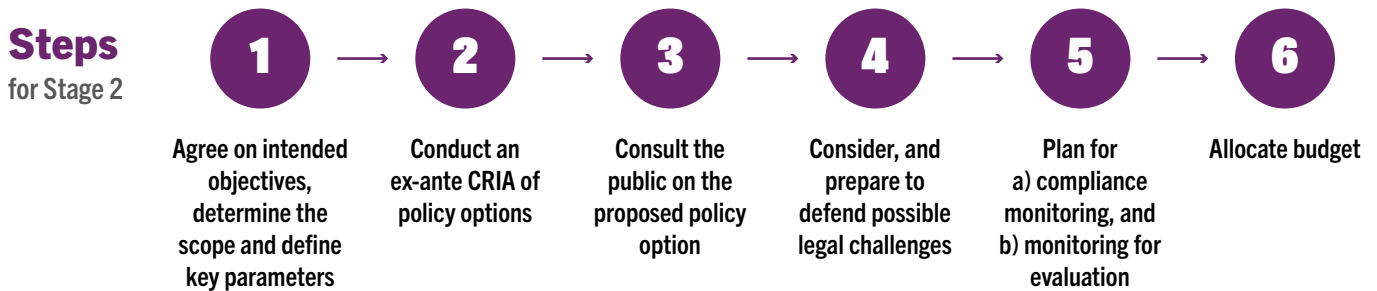
By the end of Stage 2, a government has:

- ✓ produced a draft of the proposed food marketing restrictions;
- ✓ set clear goals and objectives, with clear scope and definitions;
- ✓ aligned policies to promote healthy diets;
- ✓ ensured that goals and processes do not impact negatively on children’s rights;
- ✓ anticipated possible legal challenges;
- ✓ put a draft policy through public consultation; and
- ✓ allocated appropriate resources (human and financial) to act.

This stage covers the steps needed to move from commitment to action and implementation. Development involves six steps (Fig. 6), from agreeing on the key components of food marketing restrictions to producing a draft of the regulation or legislation and ushering it through consultation and adoption. Ideally, much of this work is done by the steering committee established in Stage 1, which agrees upon content to develop a draft. In Stage 2, it is also important to anticipate any possible legal challenges, anticipate the impact of the draft food marketing restrictions on children’s rights, and move to adopt the regulation or legislation.

For many countries, it can be useful to start by finding pre-existing examples to provide inspiration for scope, as well as previously tested language for the restrictions. This might come from a model policy or from the regulations that other countries have adopted to restrict food marketing or the marketing of other products, such as tobacco or alcohol.

Fig. 6. Steps in the policy development stage



Step 1. Agree on the intended objectives, determine the scope and define the key parameters of the restrictions, ensure alignment with other policies and laws, and incorporate cross-border provisions

Agree on the intended regulatory objectives

From the outset of the drafting process, it is crucial to clearly define the objectives of the marketing restrictions to:

- increase transparency regarding what the government intends to achieve;
- support the drafting process and the definition of the scope of the restrictions;
- increase wide support for the restrictions;
- provide a framework against which the restrictions can be evaluated; and
- help manage litigation risks and support litigation strategies should measures be challenged before a court of law, a tribunal or another dispute settlement body.

The specific policy objectives, and how they are framed, will depend on the country context. However, given that the harmful impact of food marketing is a function of both exposure and power, the objectives of the marketing restriction should include protecting health and children's rights by reducing both the exposure of children to, and power of, marketing of foods high in saturated fats, *trans*-fatty acids, free sugars or salt (or that lead to excess intakes of nutrients of public health concern). Taking such an approach will ensure that the best interests of the child are upheld as a primary consideration and will offer children protection from the harmful impact of food marketing. Some governments, such as in Brazil, Quebec (Canada) and Norway, have gone beyond restricting only food marketing by aiming to protect children from all commercialization through a prohibition on specific forms of commercial marketing directed at children. These policies cover both food products and other products and industries that are being marketed to children – such as food, toys, clothing, technology, sports equipment and entertainment (157, 158).

Governments should ensure that the objectives they pursue can be related to the existing evidence and linked directly to children's rights, which they have committed to respect, protect and fulfil. Following information gathered in Stage 1, Step 2, governments can draw on both national and international evidence to define policy objectives. For example, a country can argue that exposure to food marketing is extensive in the country, based on a monitoring study, and that existing evidence consistently demonstrates that such exposure is detrimental to children.

As explained in more detail in Stage 2, Step 4, objectives can be defined in a way that links the policy to recognized treaties. For example, governments can refer to general comments of the Committee on the Rights of the Child and reports of other treaty bodies that have explicit recommendations for steps that countries can take. This helps clarify the link between food marketing and human rights, and strengthens the case that food marketing is a threat to children's rights.

Governments can define health-related objectives with more immediate outcomes, such as shifting food preferences and food purchasing behaviour, or longer-term objectives, such as improving dietary intake and body weight (31).

Child rights-related policy objectives can include:

- restricting commercial practices that exploit children's specific vulnerabilities;
- enabling children to access information in the digital environment without exposure to advertising material that is harmful to their health;
- protecting children's personal data and ensuring non-interference in their right to privacy;
- reducing the appeal of food products and brands among children;
- reducing demand for, purchase and consumption of foods by children;
- ensuring that children and caregivers have access to accurate, non-misleading information on the relative healthfulness of different products;
- avoiding targeting of children based on their interests, ethnicity and all forms of profiling; and
- ensuring that settings where children gather (e.g. schools, parks) are free from food marketing.

Determine scope and define key parameters of the restrictions

Once the objectives of the restrictions have been established, governments need to determine the scope of the restrictions and key parameters to ensure that their coverage is sufficiently broad to protect children from the harmful impact of food marketing. The scope and parameters adopted should be as comprehensive as possible. If a comprehensive approach is not immediately possible, the restrictions should commit to a goal of a comprehensive approach, with a specific, timebound schedule for the phased introduction of more comprehensive measures over time. This includes ensuring that all forms of media can be covered by the chosen legislation or regulations.

STAGE 2

At a minimum, the following questions should be considered, in the best interests of the child.

- What is food marketing?
- What types of marketing should be restricted and in what circumstances?
- Which media will be covered?
- Which groups need protection?
- What foods are to be restricted from marketing?

It is critical that governments adopt a comprehensive definition of marketing, consistent with the WHO definition (see Box 1). This needs to be translated into clear provisions in the marketing restrictions so that they are effective in reducing children's exposure to food marketing in all areas of their lives and reducing the persuasive appeal of food marketing to children (even where it is not directed exclusively or primarily at children). A combination of approaches will be needed to achieve this. For example, broader time-based restrictions on marketing may be considered for television, radio and cinema, because measures that rely on measuring the percentage of children in the audience, or definitions of child programming, are unlikely to stop marketing when the highest numbers of children are watching or listening. This may require extending time-based restrictions up to or beyond 21:00 hours, for example. This type of measure needs to be combined, however, with additional measures to ensure that food marketing is also restricted on other communication channels where time-based restrictions are less practical, such as non-linear media (e.g. on-demand media, online), where time of day is neither a determining factor in what content is consumed nor a proxy for establishing who is likely to consume it. In these instances, restrictions may need to apply to all food marketing communications on these channels. In addition, prohibitions will be needed on the use of techniques that appeal to children, such as use of celebrities, cartoons, competitions and prizes.

Marketing restrictions should cover all children up to 18 years of age to reduce the harmful impact of food marketing to which children are exposed. In doing so, it is important to reflect on recent evidence on the vulnerability of both adolescents and younger children (see Part I). Expanding the scope of restrictions to cover adolescents will likely be resisted by industry, but there is good evidence to justify it and also legal precedence for broad restrictions on the marketing of certain products to ensure protections against harm; general prohibitions on advertising, promotion or sponsorships for tobacco products and breast-milk substitutes are two examples. As such, the proposal to expand the scope of regulations to protect all children and their best interests is easily justifiable. Of particular concern in this regard are adolescents, who have been largely excluded from discussions about food marketing.

Governments can adapt the applicable WHO regional nutrient profile models (18–23) when defining the foods to be restricted from marketing. This is important because, without explicitly defined nutrition criteria or thresholds, implementing food marketing restrictions becomes practically impossible, a challenge that has been one of the biggest obstacles to policy development. When establishing an appropriate system for categorizing food, governments should make sure that it is evidence based, and aligned with international and national dietary guidelines. The choice of a nutrient profile model can have a significant impact on how strict the marketing restrictions are in practice. Governments can strengthen and adapt the nutrient profile models as needed for their country context. Models developed by industry as part of self-regulation tend to be less strict than those developed by WHO (159) or national governments. Further, models developed by industry are not uniformly applied or enforced by companies, and are therefore less effective in achieving the policy objective of restricting food marketing.

Ensure alignment with other policies and laws

Food marketing restrictions may be part of a wider package of policies to promote healthier diets, and uphold the right to health and the right to adequate food. However, these policies do not always work in tandem. For example, some countries have important ongoing fortification programmes to address persistent micronutrient deficiencies, but, in some contexts, this has led to the fortification and subsequent promotion of foods high in saturated fats, *trans*-fatty acids, free sugars or salt, which may undermine efforts to combat overweight and obesity (160). Such actions are inconsistent with food marketing restrictions (i.e. such a product, albeit fortified for addressing micronutrient deficiencies, should not be marketed) and should be avoided. The lack of policy alignment can hinder governments from upholding children's best interests. In some countries, for example, fortified milks with added micronutrients are promoted through the school system, but there are no limits on the amount of sugar that can be added.

In other countries, governments have promoted “better for you” endorsement labelling schemes. These usually apply to unprocessed, whole foods. However, in some instances, the label can also be used on packaged snack foods to identify the least unhealthy option (e.g. a “better for you” chocolate bar). Such endorsement schemes would be misaligned with, and counterproductive to, food marketing restrictions.

Governments are encouraged to implement a comprehensive package of coherent policies that promote healthy diets and are mutually aligned. Although every policy will have its own distinct regulatory objectives and some aspects may differ, each policy should endeavour to contribute to the same public health and child rights goals, be based on the same evidence base about healthy diets, and use broadly consistent definitions and categorizations to avoid contradictions.

That said, ensuring alignment should not be a barrier to developing and enforcing comprehensive restrictions to protect children from harmful food marketing; such restrictions should still be developed and implemented, even if other policies do not yet align or have not yet been developed. These policies can then be reviewed or developed once the regulation on food marketing is finalized.

Policies on the following issues should be aligned:

- regulation of school food environments (including feeding programmes and foods sold in schools);
- procurement of food for public institutions;
- nutrition labelling regulations, including nutrient declarations, health and nutrition claims, and front-of-pack labels (e.g. warning logos for foods high in, or with an excess of, nutrients of public health concern);
- rules on retail environments, including supermarket check-out policies and shelf placement;
- fiscal policies to limit consumption of targeted foods and encourage consumption of healthier foods; and
- identification of foods to be provided by social programmes to vulnerable groups, including in emergency contexts.

BOX 12

Country example of policy coherence: Chile

In Chile, the Food Act provides an example of a comprehensive package of policy options, including marketing restrictions, front-of-pack labelling and school food policies. The nutrition criteria adopted for front-of-pack nutrition warning labels for foods high in calories, saturated fats, sugars and sodium are also used to determine foods that cannot be sold in preschools, elementary schools and high schools. In addition, as part of the front-of-pack labelling rules, packages that bear one or more warning logos cannot display cartoon characters, and cannot be advertised to children (see, for example, 161, 162).

Incorporate cross-border provisions

Government lawyers are best placed to support policy-makers to identify entry points for incorporating and enforcing cross-border marketing restrictions using legal instruments. This includes enforcing restrictions on broadcasters, digital platforms, importers, distributors and other suppliers of the foods in question. The WHO set of recommendations already recognizes the importance of tackling cross-border marketing to ensure that national policies are effective, calling upon Member States to cooperate to put in place mechanisms for reducing the impact of inflowing and outflowing cross-border marketing (Recommendation 8).

One example is the EU General Data Protection Regulation (GDPR), which is designed to protect the rights of data subjects to privacy and data protection, while facilitating the free movement of data (163). The GDPR identifies privacy implications of digital marketing, including food marketing and the vulnerability of children, placing restrictions on the profiling of children for marketing purposes. The GDPR maximizes its jurisdictional reach by setting a broad territorial scope, applying to businesses incorporated or located outside the EU that have a commercial presence in the EU, or provide services or products to people located in the EU. To deter non-compliance, penalties are sufficiently large to be meaningful to global corporations, including fines of up to €20 million or 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher.

Step 2. Conduct an ex-ante child rights impact assessment of policy options

To ensure that children's best interests are adequately considered in food marketing restrictions, governments should consider carrying out an ex-ante child rights impact assessment (CRIA). Such an assessment, aimed at anticipating how the proposed law or regulation might affect children's rights, should be conducted before the restrictions come into effect; this is potentially just as important as monitoring actual effects on children afterwards.

As the Committee on the Rights of the Child has argued, CRIAs provide a means of "ensuring that the best interests of the child are a primary consideration in business-related legislation and policy development" (11, 164). CRIAs provide a way for governments to understand how their actions will affect children. Assessments should look not only at potential impacts on children as a whole, but also at the impact on specific groups of children (e.g. migrants, indigenous people, children in rural areas, children with disabilities), while also considering other factors, such as gender or ethnic background. In all cases, CRIAs must ensure that the human rights principles of equality and non-discrimination are implemented in practice.

A CRIA is also necessary to ensure that the human rights principles of indivisibility, interdependence and interrelatedness (see Table 2 and Annex 1) are taken into account in the process of enacting food marketing restrictions. If planned appropriately, food marketing restrictions can contribute to the realization of several children's rights, without undermining any.

On a practical level, countries may already require that impact assessments be performed, either more broadly for human rights or more specifically for individual sectors of the economy or discrete issues of concern. Where this is the case, governments should embed child rights considerations within established impact assessment models. Regardless of the approach, CRIAs should always be grounded in the CRC and its Optional Protocols, and follow a logical, consistent process

STAGE 2

(162). Where impact assessments are not already performed, a CRIA may be conducted independently. This requires that a person or entity be given a specific mandate. It is also important to determine at the outset whether decision-makers will be required to act on the findings.

To determine the scope, assessments can ask for feedback and information from children, CSOs, independent experts, relevant agencies or departments, universities, researchers and other sources. Completed assessments should be published and made available to anyone interested in reading them, with transparency about the evidence and data used to evaluate competing interests (165).

Governments may consider hiring an outside expert in children's rights to carry out impact assessments. A person who does not work for the government is likely to give a more honest review than someone who already has an idea of what the government hopes the assessment will find.

Step 3. Consult the public on the proposed policy options

As with all legislative processes, there is a need to gather input from a range of actors, including government agencies, CSOs and the private sector. A public consultation process to inform and seek input from a range of stakeholders during the policy development and implementation processes can allow practical input on the policy options under consideration through access to broader experiences and alternative views (141). Public consultation processes should be undertaken where required by due process under domestic laws or other policy; such processes are considered good governance, including for promoting transparency (see below). It is also important to comply with applicable national and international due process requirements.

A public consultation process may also be an appropriate way to ensure that the principles of participation, accountability and non-discrimination are met. Information should be provided to the public in an accessible format and language, and the consultation process needs to be shared widely to ensure that rights holders are informed of their right to contribute via public consultations.

In line with managing and avoiding conflicts of interest, consideration must be given to how vested commercial interests and conflicts of interest are managed in the consultation process, particularly where private sector entities (with commercial interests in the area of input), or other bodies or individuals linked to such private sector entities, are involved. Requirements for transparency and strategic involvement of different actors at different stages of the policy process could be considered as strategies to address these issues (see Stage 1, Step 5).

Care is needed to ensure that the process of public consultation does not allow undue influence over policy

development or delay the process. This may include requiring written submissions during a specific period, publishing all written submissions, avoiding bilateral face-to-face meetings or telephone calls with stakeholders during consultation, and recording and publishing the nature of all interactions. A collective assessment of submissions received can then be conducted and published by the government, setting out the overall nature of submissions, and describing which comments were considered relevant and how it plans to respond.

Step 4. Consider, and prepare to defend, possible legal challenges against the policy

As discussed in Stage 1, Step 4, some stakeholders are likely to be opposed to food marketing restrictions and may apply common industry tactics to claim that such measures are unlawful. Litigation may be used by business actors to contest regulation, and the threat of litigation may also be used to discourage governments from adopting laws that could adversely impact business interests, or to delay or weaken laws under development.

Legal claims have been made against governments that restrict marketing. For example, the Government of Chile faced legal claims related to restrictions applied to marketing on product packaging. These claims, which ultimately failed, alleged that the restrictions interfered with the right to property – specifically, the use of trademarks on product packaging (166).

In the tobacco context, there have been many legal proceedings challenging tobacco control measures. These challenges have been brought before domestic and international courts, and provide insight into the types of legal claims that might be attempted by the food industry. Counterarguments to these claims should be considered in policy design to strengthen a government's position against potential legal challenges. Importantly, governments should note that the vast majority of legal claims challenging bans on tobacco advertising, promotion and sponsorship have been rejected by courts.⁴

The extensive experience relating to industry challenges of bans on tobacco advertising, promotion and sponsorship can help to anticipate the types of challenges that might arise in the context of restrictions on food marketing (Box 13). Although these types of claims may not necessarily arise, let alone succeed, governments should consider that such claims are possible and prepare to counter them early in the policy process. The United Nations Special Rapporteur on Cultural Rights stated in report A/69/286 that: "Restrictions to freedom of expression should always be the least restrictive and be proportionate to achieving the purported aim... however, commercial advertising and marketing may be granted less protection than other forms of speech" (paragraph 10).

⁴ See cases available at <https://www.tobaccocontrolaws.org/litigation/pending-litigation>.

BOX 13.**Grounds of legal challenge to consider****Domestic**

→ Procedural challenges claim that the policy-maker has failed to follow procedural requirements (e.g. public consultation, impact assessment) in the policy process, or failed to afford due process to industry stakeholders.

→ Ultra vires (beyond the powers) challenges claim that the policy-maker lacked the legislative power or mandate to adopt the challenged legislation or regulation. Particular care is needed in this respect when implementing restrictions on food marketing because different agencies, or levels of government, may have responsibilities for regulating different types of media, or for implementing, monitoring or enforcing the restrictions. Each government body must have the necessary legislative authority and powers to perform its intended role.

→ Unconstitutionality challenges:

- Claims that the law impermissibly infringes fundamental rights under the constitution, or other bill of rights or legislation (e.g. the right to property, freedom of speech or expression; the right to trade or to operate a business). Where business rights compete with other constitutional rights (e.g. the

right to health, life or food), courts will seek to balance the competing rights, frequently resulting in the restriction of economic rights in favour of measures designed to protect public health, consumers or children.

- Claims that the measure is not a valid, reasonable or proportionate exercise of legislative or regulatory power for a legitimate objective and, in particular, public health, consumer or children's rights protection.
- Inconsistency with domestic law: these challenges will differ significantly from one legal system to another, but can include the claim that food marketing restrictions are inconsistent with the right to property, specifically with respect to trademarks. This argument has failed in numerous legal challenges concerning tobacco packaging.

International

→ Breach of trade agreements (multilateral, bilateral or regional):

- Discrimination claims, such as the claim that imported products have been treated less favourably than "like" domestic products

(breach of the principle of non-discrimination).

- Claims that the food marketing restrictions affecting product characteristics, such as packaging, are more trade-restrictive than necessary to achieve a legitimate objective, such as the protection of human health or the prevention of deceptive practices.
- Claims that the use of a trademark has been unjustifiably encumbered by restrictive requirements.
- Claims that the food marketing restrictions are inconsistent with requirements under regional trade or customs agreements to harmonize regulations, such as requirements that labelling shares common elements among countries in a customs union – that is, that an existing legal instrument prevents countries from adopting new labelling or packaging requirements.

→ Breach of international investment agreements that protect foreign investors and their investments against expropriation, and oblige States to provide fair and equitable treatment.

It is difficult to generalize about legal issues across different jurisdictions as there are significant differences between domestic laws, which can lead to different legislative or regulatory approaches and legal outcomes. The legal implications of a proposed measure for implementing food marketing restrictions, and how such a measure is best implemented, demand a situation-specific analysis in each jurisdiction. Accordingly, close collaboration with domestic lawyers throughout the process, assisted as necessary by international lawyers, is crucial to strengthening the government's position against potential legal challenges. Such collaboration is particularly important in drafting legislation.

Recommendations to strengthen a government's legal position

Governments have a fairly broad margin of discretion to regulate in order to protect the health of their citizens, especially children. This right to regulate is retained in international law, often through express exceptions. For example, Article XX of the 1994 World Trade Organization General Agreement on Tariffs and Trade provides for measures that are necessary to protect human life or health. However, some public health measures are still challenged. Governments can take several steps to strengthen their legal position from the outset of the regulatory process (Table 7).

Table 7. Steps to strengthen a government's legal position

Step	Description
Consider legal issues throughout the policy process	From the outset, work with lawyers to evaluate legal issues that may arise throughout the process and agree on a process for managing these issues.
Define robust regulatory objectives (see also Stage 2, Step 1)	<p>Define regulatory objectives in a way that:</p> <ul style="list-style-type: none"> • links the law or measure to internationally recognized treaties (including human rights treaties), conventions, standards and rights set out in national law, under which the government has defined responsibilities to protect citizens, including children as rights holders; • links the law or measure to supportive evidence that marketing restrictions are effective in achieving the government's public health and other objectives; • links the law or measure to the World Health Assembly recommendations to align with international consensus and global expert guidance; and • includes proximal objectives that are achievable in the short to medium term, and for which achievement can be used to establish progress towards broader public health goals and realization of the rights of the child.
Implement marketing restrictions as part (or the first step) of a comprehensive package of coherent measures (see also Stage 2, Step 1)	<ul style="list-style-type: none"> • A comprehensive approach, including other interventions such as labelling measures, price policies, school food standards, and public education and awareness raising, is more likely to achieve maximum impact on the government's policy goal. • Implementing a framework of measures may strengthen the government's position against legal claims that alternative, less trade-restrictive measures should have been adopted instead.
Adopt a whole-of-government approach	<ul style="list-style-type: none"> • There will be a need for input, at an appropriate point in the policy process, from a range of government agencies, such as those with responsibility for health, children and families, legal and constitutional affairs, trade and industry, consumer protection, communications, broadcasting, marketing and advertising, and intellectual property. • Advice should be sought from government lawyers to assess domestic legal implications of design and implementation of the law/measure. Potential constitutional challenges should be considered, as well as domestic case law for balancing competing rights, to ensure that the law or measure is a valid, proportionate, reasonable exercise of power. • Ensure that new commitments are not made to investors in the food and beverage sector for purposes of inducing foreign investment that may be inconsistent with proposed marketing restrictions.
Ensure flexibility in the law to permit amendment if necessary	Consider delegating authority to a relevant agency in the executive branch of government to make or amend regulations. This may allow the government to address unintended or unanticipated impacts and loopholes once restrictions are implemented, as well as developments in marketing technology, practices and food products.
Gather the best available evidence of risk and policy effects	<ul style="list-style-type: none"> • Use domestic evidence on marketing exposure, power, behaviours and health impacts, where available. • Use regional or international evidence and articulate its application to national circumstances. • Identify the evidence used as the basis for the marketing restrictions proposed.
Respect due process rights and procedural requirements in the policy development process	<ul style="list-style-type: none"> • Domestic processes for developing policy, enacting legislation or publishing regulations differ between jurisdictions and may be set out in law, established through government procedure or established through usual practice. • Comply with procedural requirements to reduce the risk of a successful legal challenge. Due process requirements also exist under international law, such as notification procedures of the World Trade Organization Technical Barriers to Trade Committee, and under regional trade agreements or customs unions. • Where due process requires public consultation on a policy, law or regulation, consider documenting compliance with evidence that submissions from the public consultation process were given due consideration.

Step	Description
Create a document development, retention and management policy	<ul style="list-style-type: none"> • An effective document management system will assist a government in organizing and effectively using evidence. It will also establish that the marketing restrictions are evidence based and that due process requirements have been met in the event of a challenge. • Freedom of information requests are a tactic used by industry to tie up government resources and delay implementation. Where freedom of information laws are in place, governments should prepare to respond to such requests by providing sufficient resources and developing an approach to document management from the outset of the policy development process.
Apply marketing restrictions consistently using evidence-based approaches	<ul style="list-style-type: none"> • Adopt a nutrient profile model as the basis for objective classification of foods and establishing thresholds or categories to which restrictions will apply. • Apply restrictions consistently to domestic and imported products, and to products meeting established thresholds across product categories. This strengthens the government position against legal claims that the application of restrictions is discriminatory, arbitrary or otherwise unfair. • If distinctions between products are made, or products are excluded from the scope of the restrictions, ensure that clear public health justifications for these distinctions are provided.
Provide sufficient notice, and practical solutions, to allow compliance	<ul style="list-style-type: none"> • Provide notice before the law comes into force, or before compliance becomes mandatory, to ensure that producers have sufficient time to adapt to the new regulatory environment. Sufficient notice weakens any industry argument that it has suffered loss as a consequence of the new regulations. What constitutes a sufficient period of time differs between jurisdictions, but guidance may be available from prior national experience or from other jurisdictions implementing food marketing restrictions. • Where doing so does not undermine the policy goal, permit repackaging of products at the point of importation to reduce the risk of claims that the law is more trade-restrictive than necessary.
Manage intellectual property, including trademarks	<p>Ensure that:</p> <ul style="list-style-type: none"> • the right to register trademarks in the jurisdiction is retained (provided they are not misleading), despite any restrictions placed on the use of a trademark; • trademarks restricted under this law are protected from deregistration through non-use (which can occur in many jurisdictions); and • marketing restrictions still enable brands to be distinguished from one another in the course of trade.



STAGE 2

As legal issues differ from one jurisdiction to another, the strategies set out in the table are intended to assist in the development and design of marketing restrictions. They do not constitute legal advice, nor are they a substitute for engaging qualified lawyers with jurisdiction-specific expertise to assist in the process. Nothing set out below is intended to suggest that taking a different approach will violate the law.

Step 5a. Plan for compliance monitoring and enforcement

It is important to ensure an adequate mandate for monitoring and enforcement, including the application of deterrent sanctions for non-compliance. A law is more likely to be effective if continuous monitoring and enforcement mechanisms are established (including a complaints procedure available to those with a legitimate complaint), and if it includes sanctions designed to be sufficiently meaningful to deter non-compliance. It is important to ensure that clear authority to enforce the restrictions is allocated right from the start of the policy process.

In establishing monitoring and enforcement mechanisms (whether specified in food marketing restrictions or through other related legislation), governments should consider and include actions on the following matters.

- **Standing:** determine who can file a complaint about non-compliance and how. This could include public agencies responsible for protection of public interest; children, parents or other members of the public; representative organizations (e.g. CSOs with a public interest in media, children or health); legal representatives of individuals impacted by non-compliance; and economic operators. It should also include clear details as to how complaints can be submitted and to whom, such as via an online reporting portal.
- **Roles and responsibilities:** determine the government agency or agencies that will be responsible for monitoring compliance, receiving and investigating complaints, prosecuting non-compliance, and enforcing compliance. It is important to consider whether the agencies proposed have the legislative mandate, resources and capacity to carry out their designated functions; adequate legislative powers to investigate, inspect or collect evidence of non-compliance, or to refer matters to an agency with such powers; and adequate jurisdiction to prosecute or issue penalties for non-compliance.
- **Budget:** estimate the cost of operationalizing monitoring and enforcement activities. The results of the costing exercise will help the country to identify existing resources or monitoring systems (human and financial) that can be allocated or used for monitoring and enforcement; estimate resources that need to be requested and/or advocated for; and review systems and plans to ensure their sustainability and efficiency.
- **Penalties and sanctions:** penalties or sanctions must be meaningful in the business context. Consider different

aspects, such as different penalty scales to apply to individuals and corporations, fines per exposure to increase impact, graded penalties by repeated non-compliance, personal civil or criminal liability of directors or company officers for corporate breaches, and withdrawal of products from the market or business licences as sanctions.

- **Jurisdiction:** determine the jurisdiction to enforce compliance, such as cross-border marketing, domestic presence of corporations and the cost of compliance.
- **Transparency:** identify and/or create mechanisms designed to ensure transparency (including feedback to complainants) and prevent corruption in enforcement.

See Stage 3, Step 2, for setting up the monitoring and enforcement system.

Step 5b. Plan for monitoring and evaluation

Monitoring should be established early on to allow for pre- and post-policy comparison. The pre-policy monitoring would ideally be implemented well before the regulation comes into force, to establish a baseline and ensure that data actually reflect the situation before any pre-emptive changes are made.

Step 6. Allocate a budget to support implementation, monitoring, enforcement and evaluation


The realization of children's rights demands financial resources, and many countries face challenges in implementing restrictions on food marketing due to significant budgetary constraints. These constraints can take the form of insufficient allocations, where the true costs (human resources and administrative costs) of developing, implementing, monitoring, enforcing and evaluating marketing restrictions cannot be met; or inefficient allocation, where funds are available, but not when needed, and do not reach the intended recipient.

The process of developing food marketing restrictions should ideally include a detailed and realistic costing of plans for development and implementation, including the monitoring and evaluation system that will accompany adoption, and the costs involved in enforcing the new (or amended) regulation or legislation. In this way, the necessary resources are identified from the outset, increasing the chances of implementing effective food marketing restrictions as originally intended.

Ideally, budgeting would be an integral part of the process of developing and adopting the food marketing restrictions. At a minimum, budget should be anticipated for costs related to parliament, the lead ministry and impact evaluation. If complementary fiscal measures are introduced at the same time, they could help generate funds to cover any costs associated with planning, implementing and enforcing the restrictions.

STAGE 2: CHECKLIST

Use this checklist to check whether all desirable points from Stage 2 (Policy development) that are relevant for the country context have been considered.

Description	Status 
<p>A draft of the proposed food marketing restriction has been prepared. It includes:</p>	
<ul style="list-style-type: none"> • a clear, overarching goal that considers the harmful impact of marketing and the need to address it as a measure to protect children’s rights; 	
<ul style="list-style-type: none"> • clear objectives that include restrictions on both exposure to, and power of, marketing; 	
<ul style="list-style-type: none"> • identification of related, complementary objectives; 	
<ul style="list-style-type: none"> • a clear scope, including definitions of food marketing and its types, age groups of children covered, foods that should be restricted from marketing, and marketing strategies covered by the restrictions; 	
<ul style="list-style-type: none"> • an estimate of the budget allocation required to ensure proper implementation, monitoring and enforcement; and 	
<ul style="list-style-type: none"> • meaningful sanctions for non-compliance with the food marketing restrictions. 	
<p>The draft is aligned with other policies, laws and regulations in the country, such as regulations on school food environments and nutrition labelling.</p>	
<p>The draft has been put through transparent public consultation, and all affected parties, including rights holders or their representatives, have had the chance to submit contributions to the consultation process.</p>	
<p>A child rights impact assessment has been conducted to ensure that no child rights are violated by the proposed food marketing restrictions.</p>	
<p>Possible legal challenges, domestically or internationally, have been anticipated and prepared for.</p>	
<p>The mandate and mechanisms for monitoring and enforcement have been defined and planned for, and sanctions have been proposed.</p>	
<p>Budget is allocated to support implementation, monitoring and enforcement.</p>	



STAGE 3 IMPLEMENTATION



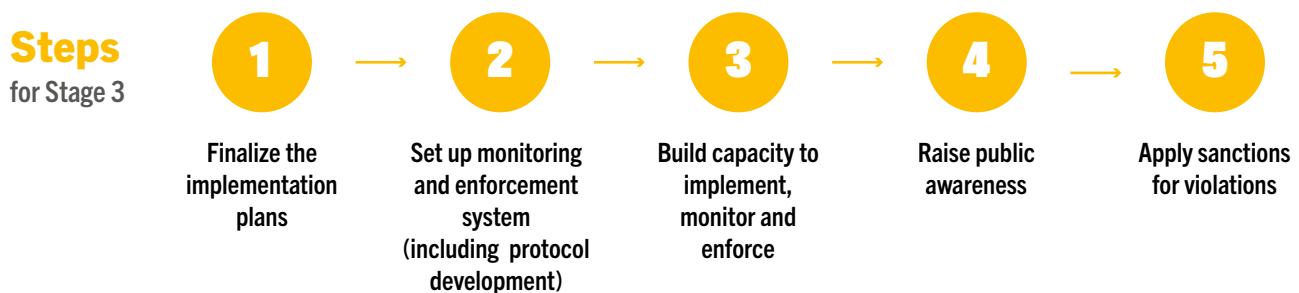
By the end of Stage 3, a government:

- ✓ has established clear and realistic timelines and targets for implementation (including monitoring for compliance and enforcement) of food marketing restrictions;
- ✓ has built the capacity of relevant government agencies to implement, monitor and enforce the restrictions;
- ✓ has developed a plan to communicate the content of the marketing restrictions to the general public, including children;
- ✓ has set up a complaints mechanism; and
- ✓ is ready to enforce the marketing restrictions.

Countries will need to consider necessary steps for implementation, and establish a sustainable monitoring system for compliance and enforcement, even before a food marketing restriction has been drafted. If compliance with food marketing restrictions is not monitored, violations can pass unnoticed and business actors can continue to carry out their harmful marketing campaigns with impunity.

Preparation is also needed for the transition period after the adoption of the restrictions until the date they come fully into force. This stage includes five steps (Fig. 8), from the finalization of a detailed implementation plan with clear targets and timelines to being ready to enforce the restrictions.

Fig. 8. Steps in the implementation stage



Step 1. Finalize the implementation plans

In anticipation of the adoption of regulations, countries should consider preparing a multi-year implementation plan to help put marketing restrictions into practice. The plan should ideally be endorsed by the highest levels of government.

Effective implementation is highly operational and sets out clear, attainable steps in the short, medium and long terms. In so doing, these plans designate concrete targets and milestones, assign management responsibility, and describe how and to whom financial and human resources will be allocated. In setting timelines, the implementation plan

should include realistic expectations of the time taken to complete each target, while taking into account the urgency of addressing the harmful impact of food marketing on children.

Building on the landscape analysis (Stage 1, Step 3), the implementation plan ideally considers and links with other planning processes, noting any other sector-level policies that may require amendment. For example, if the new food marketing restrictions have implications for schools (e.g. no marketing in and around schools, no sponsorship of school sports), the education sector needs to be engaged, and existing school health-related policies considered.

Where indicated, financial and human resources may need to be increased or reallocated to ensure that they are sufficient to realize all elements of the plan (140). The level of detail in the implementation plan may vary from one country to another; an important common element is clearly defining the roles and responsibilities of each implementing agency, so that everyone is aware of what they are expected to deliver and conflicts of interest are prevented.

In some instances, the body responsible for following up implementation may not be the same as the lead government authority responsible for policy development. Establishing or appointing a main institution or agency, as appropriate, to be responsible for following up the law or regulation and monitoring its implementation can help ensure ultimate accountability for implementation. Examples include the ministry of health, a consumer ombudsperson or

ombudsperson for children, or a consumer protection agency.⁵ Regular coordination meetings should be arranged to bring all implementing agencies and partners together to facilitate ongoing cooperation.

Step 2. Set up the monitoring and enforcement system (including protocol development)

Regular monitoring of the implementation of food marketing restrictions is necessary to help enforce compliance and identify violations.

Enforcement mechanisms should be both reactive and proactive, meaning that they should be open to both receiving notification of infringements, and detecting infringements through screenings and ongoing monitoring. Clear criteria

BOX 14.

Establishing sustainable monitoring and enforcement mechanisms: the experience with NetCode

The Code was adopted in 1981, and, by 2016, 135 countries around the world had adopted some form of regulation to give it effect. But of those 135 countries, only 35 reported having monitoring systems in place, of which only 15 had ever imposed sanctions.

Concern over the lack of monitoring and enforcement led WHO and UNICEF to establish the Network for Global Monitoring and Support for Implementation of the International Code of Marketing of Breast-milk Substitutes and Subsequent Relevant World Health Assembly Resolutions (NetCode). The objective of NetCode is to strengthen the capacity of Member States and civil society to monitor the Code; and to facilitate the development, monitoring and enforcement of national Code legislation by Member States, by bringing together a group of committed actors to support these processes.

This has led to the publication of a protocol for ongoing monitoring systems, intended to:

- detect violations of the national laws and/or the Code;
- document and report such violations;
- investigate and validate whether the reported activities are indeed violations;
- activate an enforcement mechanism that will stop such violations and deter future violations; and
- hold manufacturers, distributors and retail outlets to account for their breaches of national laws and/or the Code.

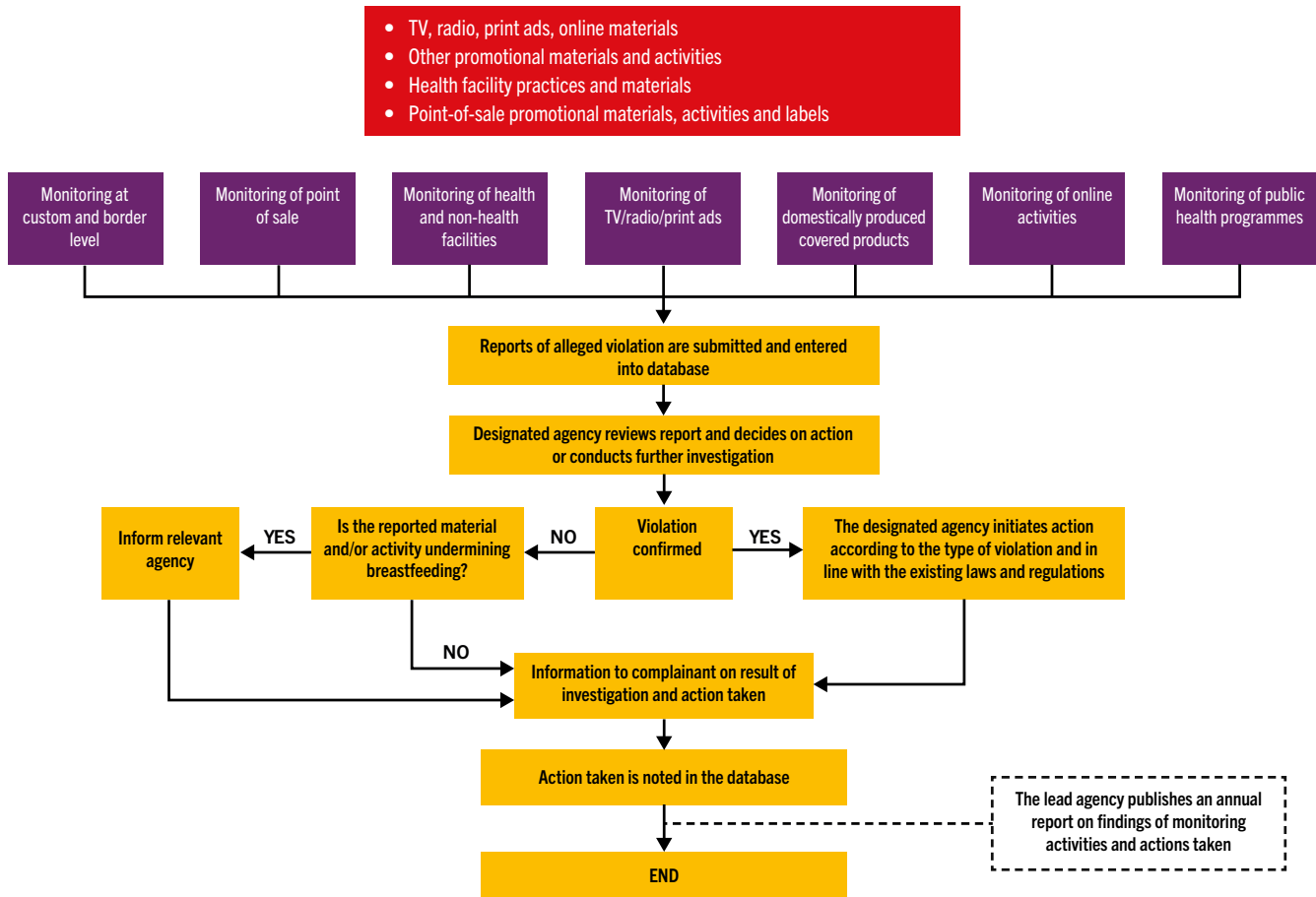
Recognizing that monitoring should be an ongoing process designed to identify violations as and when they occur, the protocol recommends that monitoring be integrated into existing monitoring processes and outlines a process for identifying existing mechanisms that can be adapted to include the monitoring of food marketing.

The protocol also highlights the potential for participation by NGOs, public interest civil society groups and the general public to assist in monitoring and reporting violations to the designated agency. In India, for example, monitoring of the Infant Milk Substitutes, Feeding Bottles, and Infant Foods (IMS) Act is undertaken by four NGOs, food safety officials, and other government officials authorized by the government. A 2016 study on the prevalence of formula marketing found almost full compliance with the Code in India, and noted that “this is a credit to the strength of the IMS Act, and to diligent application by health care workers and vigilant monitoring by local stakeholders” (168).

Learning from the NetCode experience when implementing food marketing restrictions, public interest civil society groups and human rights institutions could be involved in the monitoring of compliance and could assist in identifying violations.

⁵ Note that conflict of interest concerns remain here, and food industry representatives should be excluded to avoid narrow and selective reporting.

Fig. 9. NetCode flow chart for monitoring, reporting and acting on violations (130)



should be established to appraise complaints received, and a systematic process should be established from the identification of infringement to the application of sanctions. This process includes communication with, and notification to, relevant actors; recourse mechanisms; and archiving of cases and queries in a central database.

Box 14 describes the experience of establishing monitoring and enforcement mechanisms in implementing the International Code of Marketing of Breast-milk Substitutes (the Code) and subsequent World Health Assembly resolutions. Fig. 9 shows a flow chart for monitoring, reporting and acting on violations, which could be adapted for the case of food marketing restrictions. The types of marketing and settings to be monitored must be in line with the scope of the policy.

The experience with NetCode (Box 14) also shows that it is important to identify existing monitoring mechanisms and processes that can be leveraged for the monitoring of food marketing restrictions. Such mechanisms could include existing health monitoring assessments, media monitoring (television, radio, print, internet and social media), and monitoring of health and nutrition programmes at community level, such as inspections in school and preschool settings.

A monitoring system should be standardized, establishing a central database where violations can be reported. Procedures should be established to deal with violations, and standard **monitoring tools** should be used, such as monitoring protocols, forms and checklists, data collection tools, and capacity-building resources.

Monitoring of the status of enforcement should be conducted regularly, with periodic reports being made available, ideally taking into account how different population groups are likely to be affected. Consider introducing mandatory reporting requirements for food marketing activities (e.g. media platforms used, shifts in expenditure across media, reach of marketing campaigns) and expenditure on marketing by the food industry. Some countries may need to include mandatory reporting requirements directly in their legislation or regulations if the relevant implementing authority does not already have these powers.

Mechanisms are also needed through which the public (including children and their caregivers) can report any action that they understand or experience as an infringement of their rights. If not already in place, governments should ensure that widely accessible, user-friendly complaint mechanism



platforms are available once the food marketing restrictions come into force. Complaint mechanisms could use a variety of channels, including online channels, and facilities in schools, police stations, medical centres and other public spaces.

The complaint mechanisms should be directly linked to the broader monitoring mechanism established for the marketing restrictions, as public reporting is an effective tool to help monitor compliance and infringements.

Governments may already have monitoring tools for their inspectors and monitors. For example, where there are existing tools used to monitor point-of-sale promotion or media advertising, the integration of additional information on the marketing restrictions is recommended. As a minimum, the following types of information should be integrated into the existing monitoring tools used by monitors:

- date
- place or media channel where monitoring is being conducted
- product monitored
- type of violation observed/documentated
- brand
- company name
- sample or picture/screenshot of violation
- action taken, as appropriate.

Where monitoring tools do not already exist, a practical, user-friendly universal monitoring form based on the minimum standards set by the marketing restrictions should be developed.

Parliaments play an important role in overseeing implementation of regulations. Parliamentary standing committees may organize transparent hearings with relevant ministries on progress in implementation and limitations of the regulation. To ensure that this happens, countries may need to include a parliamentary/legislature review process within the legislation to look at the impact of the restrictions post-implementation, as well as any known gaps.

CSOs, including consumer associations, can play a supporting role in working together with governments and parliaments on gathering information and communicating it widely.

Step 3. Build capacity to implement, monitor and enforce

A key step in the implementation stage is to build the capacities of staff who will be involved in implementing, monitoring and enforcing the marketing restrictions. This includes communicating the content of the food marketing restrictions to agency staff (and what change it represents in relation to previous policies, laws or regulations), and conducting training courses and workshops for those directly involved with day-to-day implementation and monitoring.

STAGE 3

Bear in mind that some of the monitors identified may have no prior knowledge of the harmful impacts of food marketing and why it undermines children's rights; as such, this needs to be part of the training curriculum. Training units have been developed and can be a useful starting point; for example, the WHO Regional Office for Europe has developed a training unit that provides step-by-step protocols and coding templates for monitoring food marketing on television and the internet.

Having identified the monitors – and clarified their roles and responsibilities, scope and coverage – it is time to provide them with basic, hands-on training to prepare them for the work ahead. The monitoring team should consider whether all monitoring agencies will be trained together or whether training should be tailored to individual agencies. Training for monitors should include how to identify marketing that appeals to children, how to accurately code information around products being promoted, and how to obtain and interpret information on products' nutritional composition (to determine whether the product is subject to marketing restrictions). These aspects may need to be actively discussed during training and eventually captured in a clear monitoring/surveillance and inspection guideline that monitors can follow. Chile, for example, has developed a guideline to support compliance monitoring of its food labelling, sales and advertising regulations (169).

Although initial training will be necessary to initiate the monitoring system, capacity-building on monitoring should be integrated into induction and in-service training, where appropriate. In addition, monitoring responsibilities should be included in the job descriptions of relevant monitors.

Step 4. Raise public awareness

In preparation for the adoption and enforcement of food marketing restrictions, it is necessary to communicate the policy and implement media campaigns to raise awareness and engage a wider range of actors with a role in realizing children's rights and protecting children from the harmful impact of food marketing. This includes communicating with the general public, including children, to ensure that rights holders are aware of their rights. It also requires communication with actors whose activities are directly impacted by food marketing restrictions, such as the food industry, to set out the new requirements and share guidance with them on how to fully implement the new restrictions.

Communicating with rights holders and the general public:

As rights holders, children must understand that business actors have responsibilities towards them. They must also have the opportunity to participate in processes that affect them. Accordingly, governments should launch public campaigns to educate and inform children, parents and caregivers about children's rights in relation to business, specifically those related to their rights to health and to adequate food. These campaigns can be rolled out in schools and other places

visited by children, with the assistance of children's clubs or organizations, and through traditional and digital media.

It is important to ensure participation, inclusion, equality and non-discrimination by adopting a communication strategy that reaches a broad audience: women, rural people, indigenous people, low-income families, and people with disabilities, among others. Information should be accessible and child-friendly. It should show how food marketing can impact children's rights, including their right to health, and explain how both governments and businesses must take steps to protect children from these negative impacts (in this case, by regulating food marketing and implementing related measures to protect children from obesogenic food environments). Details should also be provided on how and where children and their representatives can complain if they experience food marketing that is not in accordance with the marketing restrictions (see Step 4), and how they can seek access to an effective remedy when their rights have been infringed (167).

To design the campaign, governments might form special committees, or cooperate with CSOs, professional groups or associations, and national human rights institutions. Furthermore, governments should ask children how business is affecting them. They might contact children through social media channels, local or national youth councils, student government associations, youth groups, or other child-led or child-focused organizations.

Examples from Chile and Mexico are given in Box 15.

BOX 15

Awareness campaigns in Chile and Mexico

The Ministry of Health of Chile launched two mass media campaigns consisting of announcements, videos and posters, available for download, to advertise the new front-of-pack labelling law. The purpose of the campaign was to position the "high in" (e.g. salt, sugar, fat) warning label as a necessary information tool that makes it easier to choose and purchase healthier food. The campaign was also designed to publicize the legal measure prohibiting the sale of foods high in calories, saturated fats, sugar and sodium at educational establishments, and reach out to children and adolescents.

In Mexico, UNICEF supported the roll-out of the government's front-of-pack labelling with child-led videos and mass media messaging, with tips to encourage children and adolescents to use the labels to make healthier choices.

Communicating with stakeholders directly affected by marketing restrictions: Food marketing restrictions represent changes in the usual practice of business actors, such as the food industry. For that reason, it is fundamental to ensure that

appropriate information is shared with the business actors directly affected by the food marketing restrictions. This includes a description of the requirements of the restrictions (highlighting changes and what they represent for business practice), when they are expected to come into force, and the sanctions involved. Providing enough notice before the restrictions come into force, or before compliance becomes mandatory, strengthens a government's position to withstand legal challenges to the marketing restrictions (see Table 7). Any mandatory reporting requirements for marketing activities and expenditures by the food industry should be communicated, if included in the marketing restrictions.

Governments can consider preparing written guidance materials or workshops for business actors on how to prepare and comply, and how they will be monitored. CSOs can also support the effort by sharing information on the new marketing restrictions through their channels and networks, and running their own awareness campaigns.

Step 5. Apply sanctions for violations

Failure to comply with food marketing restrictions established through laws or regulations must lead to the application of effective sanctions. When complaints about non-compliance are received, the appropriate authority should verify the completeness of the information provided and, if necessary, obtain further information to investigate the complaint. Next, the designated agency will trigger the appropriate enforcement process. Sanctions applied should be sufficient to have a deterrent effect, with different levels depending on the degree, frequency and recurrence of infringement. Adverse publicity and the requirement to withdraw a marketing campaign that does not comply with the marketing restrictions are insufficient to ensure effective enforcement. By the time the marketing campaign is withdrawn, many children will already have been exposed to it and the harm will have been done.

In Chile, the Ministry of Health coordinates the implementation of the country's warning labels and marketing regulations, including compliance and enforcement, which are implemented in all regions by the regional health authorities. Compliance monitoring consists of inspections to assess warning labels, marketing restrictions and/or sales, depending on the institution visited. If violations are found, the inspection report must detail the non-compliance issue and require an

investigation. Depending on the investigation findings, the resolution will vary from a reprimand to a fine or prohibition from selling a given product. The reprimand consists of warning the company, and demanding that it comply with the regulation within 30–60 days and verify compliance with a new inspection. A re-offence may be sanctioned with double the original fine. Additionally, and depending on the risk for the population's health, the sanction could require the company to suspend distribution or destroy the product (169). Examples of other possible sanctions are provided in Box 16.


BOX 16

Examples of sanctions. Adapted from (170)

- Modify or withdraw the marketing campaign.
- Require that the business actor post a notification about the requirement to withdraw the marketing campaign on their relevant internet and social media pages.
- Impose a requirement for pre-clearance of further advertisements by an offending party.
- Prohibit an offending party from using a particular communication channel, such as broadcast, for a specific period of time.
- Prohibit an offending party from marketing or selling a product for a specific period of time.
- Suspend or revoke the licence of the broadcaster.
- Invoke individual civil or criminal liability for company officers or directors for breaches by a corporation.
- Impose monetary fines for infringement, with different levels of severity graded for seriousness of the breach or repetition of non-compliance; and issue a fine proportionate to the global turnover of the entity or corporate group that has violated the restrictions.
- Pursue criminal liability, including imprisonment, under appropriate circumstances.

STAGE 3: CHECKLIST

Use this checklist to check whether all points from **Stage 3 (Implementation)** that are relevant for the country context have been considered.

Description	Status 
A multi-year implementation framework plan to help put the marketing restrictions into practice has been finalized and includes:	
<ul style="list-style-type: none"> • clear targets/milestones, and clear and realistic timelines, roles and responsibilities of the different sectors and actors involved in implementation; and 	
<ul style="list-style-type: none"> • necessary mechanisms and allocation of resources, including a plan on how monitoring for compliance and enforcement will be conducted and resourced. 	
The date at which marketing restrictions will come into full force has been set and communicated, including any transition phases.	
Guidance documents have been developed to clearly communicate the new restrictions to stakeholders, including requirements and where to find additional information on their obligations.	
A monitoring and enforcement system has been established, which is standardized, includes a central database where violations can be reported and has procedures for dealing with violations. Standard monitoring tools, such as monitoring forms and other data collection tools, have been developed.	
Capacity of staff involved in implementing, monitoring and enforcing the marketing restrictions has been developed or further strengthened.	
Public awareness has been raised, targeting actors with a role in realizing children’s rights and protecting children from the harmful impact of food marketing.	
The monitoring and enforcement system has been activated, violations are being identified, and enforcement actions are taking place, including deterrent sanctions.	
The system:	
<ul style="list-style-type: none"> • can receive notification of infringements submitted by the public; 	
<ul style="list-style-type: none"> • can detect infringements through screenings and periodic monitoring; 	
<ul style="list-style-type: none"> • allows the participation of children; and 	
<ul style="list-style-type: none"> • includes mandatory reporting of marketing activities (including media platforms used, shifts in expenditure across media, reach and public of marketing campaigns) and expenditure on marketing by businesses. 	



STAGE 4 MONITORING AND EVALUATION



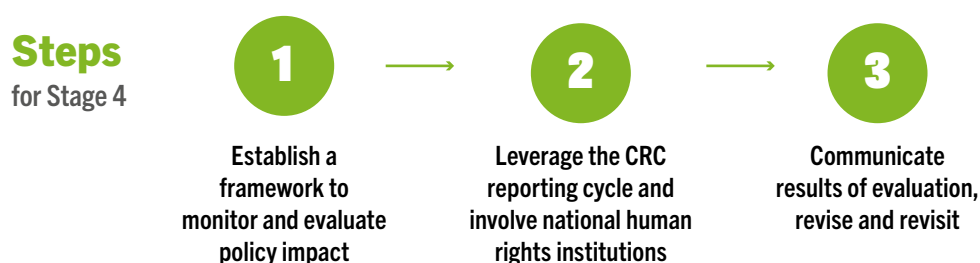
By the end of Stage 4, a government:

- ✓ is prepared to monitor progress and evaluate the impact of food marketing restrictions; and
- ✓ has identified entry points in the human rights reporting cycle that can be used to strengthen enforcement of marketing restrictions.

In addition to monitoring compliance with the policy for enforcement and sanction purposes, periodic monitoring is also essential to assess progress towards set objectives. This stage describes action to be taken to regularly monitor progress, and to evaluate how policies are implemented and what longer-term impacts policy implementation may have. Together, the results of monitoring and evaluation provide insights into whether the policy meets the objectives determined in the preparation phase (Stage 1), and what elements of implementation are effective or pose barriers. The process establishes whether the restrictions had the expected effects in terms of a reduction in exposure (i.e. the amount of food marketing seen by children) and a reduction in the power of food marketing (i.e. the use of techniques that appeal to children), and the possible longer-term (health) impacts of marketing restrictions. Governments should also be encouraged to evaluate the extent to which the restrictions are consistent with child rights obligations (as discussed in Stage 2).

Fig. 10 shows the steps in the monitoring and evaluation stage.

Fig. 10. Steps in the monitoring and evaluation stage



Step 1. Establish a framework to monitor and evaluate policy impact – define methods, indicators and data needs

For monitoring and evaluation to be informative and assess the impact of the restrictions, a clear set of indicators needs to be established.

As advised in Stage 2, a baseline assessment is important for determining the impact of the policy change. Using consistent indicators provides for greater accountability by setting clear benchmarks for a baseline assessment against which later developments can be measured once the policy

has been implemented. The definition of indicators, and the establishment of a baseline, should be linked to the preparation process in Stage 1, Step 1, where information is gathered, and Stage 2, Step 1, where the policy objectives are defined.

The monitoring and evaluation process helps measure the impact of the restrictions as designed. It can also be useful for identifying possible loopholes, unintended consequences, and gaps in restrictions; and advocating for the revision and strengthening of existing restrictions. Therefore, rather than limiting the scope of the evaluation to the restrictions only, it is important to also consider aspects excluded from the restrictions. For example, many existing restrictions do

STAGE 4

not cover older children. Capturing information about older children's exposure to marketing helps identify how marketing evolves and possibly impacts older children. If exposure has increased over time, possibly as a result of the gap in restrictions, this may help build the case for extending the scope of the restrictions to cover older children, in line with the CRC.

Monitoring can be initiated, led and conducted by independent agencies (academia or civil society), but evaluation should be initiated and led by government, and may be carried out by a government-appointed independent body and in conjunction with children's rights organizations. Data collected as part of monitoring and evaluation should be as detailed as is practicable and disaggregated wherever possible by relevant demographic factors. Disaggregating data better enables governments to take the rights of all children into account, and more readily reveals patterns of discrimination in the application of laws and policies.

Information captured through monitoring should consider the following questions at a minimum.

- What foods are being marketed, and where and when?
- How much food and beverage marketing are children (<18 years of age) likely exposed to on television, through digital media and through other communication channels? In and around which settings is this exposure taking place?
- How powerful is the marketing in potentially influencing behaviour? What persuasive techniques are used?

Exposure can be assessed using indicators such as frequency or rate of promotion across media and in various settings. The power of food marketing is most commonly evaluated by content analyses of marketing communications, specifically of persuasive techniques such as characteristic melodies, dynamic audiovisual components, brand equity characters, licensed characters, celebrity endorsers, premium offers, sponsorship, website addresses, links to social media platforms, brand logos, images of packaging and products, and health claims. Manual analysis by well-trained coders is still likely to be necessary, as automated processing of marketing characteristics is complex, and current existing methods are very crude (see Stage 3).

How to monitor depends on the communication medium (28, 77), with some methods being well established. WHO regional offices have developed guidance on monitoring food marketing to children. For example, the WHO Regional Office for Europe has developed a training unit that provides step-by-step protocols and coding templates for monitoring food marketing in audiovisual media (television and internet) (171), and the WHO Regional Office for the Western Pacific has developed an action framework that provides practical considerations for developing and implementing a monitoring and evaluation framework, as appropriate to the national context (10).

Experience with monitoring digital marketing is increasing; yet assessing the scale of children's exposure in digital media remains challenging. Efforts are under way by the WHO Regional Office for Europe to develop methods to measure individual children's exposure to digital marketing across the European Region. A first study from Norway piloting the CLICK monitoring framework was developed by the WHO Regional Office for Europe. CLICK can assist countries to monitor children's exposure to food advertisements. It has five steps – Comprehend the digital ecosystem, Landscape of campaigns, Investigate exposure, Capture on-screen, and Knowledge sharing – focusing on different areas of digital marketing, with the overall goal to support policy-makers to implement effective regulations restricting harmful digital marketing to children. The Norwegian study looked at the digital landscape for marketing of foods and drinks directed at children aged 3–17 years, revealing that the majority of the products advertised were foods and beverages high in fat, salt and sugars (172). UNICEF is piloting similar methods to evaluate exposure and power of digital marketing in Argentina, Mexico and the Philippines. By 2021–2023, the delivery of more precise monitoring methods and regional monitoring frameworks is anticipated.

Box 17 provides an example from the United Kingdom of marketing restrictions on broadcast advertising.

The following questions can be considered when assessing the impact of a policy and identifying loopholes that need to be addressed.

- Did the marketing of foods shift to times, places and channels not covered by the regulation? Here, the evaluation would attempt to quantify and describe changes in company strategies or activities related to product, price, promotion and place.
- Did the marketing balance shift to age groups not covered by the policy (e.g. adolescents)?
- Did the marketing shift to techniques that may not be covered by the regulation? For example, what proportion of advertisements for foods feature celebrities or contests?

It is important to keep in mind common unintended consequences of food marketing restrictions when revisiting or updating the policy. Possible unintended consequences may include:

- an increase in brand advertising and sponsorship for brands commonly associated with foods high in saturated fats, *trans*-fatty acids, free sugars or salt (rather than advertising the products themselves) during children's airtime, if brand advertising is not included in the scope of the restrictions; and
- an increase in the amount of marketing during periods immediately outside children's airtime and during popular family viewing.

Furthermore, aspects relating to process that might be examined as part of an evaluation include:

- changes in marketing spending from targeted foods to other foods and/or other product categories; possible indicators include advertising industry expenditures;
- views of different stakeholder organizations (NGOs, government authorities and industry) regarding measures; and
- in-person surveys among children and parents to map knowledge about the restrictions and their self-reported impressions of children's exposure to marketing of foods and beverages. Note that this should supplement, rather than replace, quantitative content analysis of marketing.

Some evaluations may also include optional outcome indicators, such as children's awareness of, and attitudes towards, brands and/or advertisements; children's intent to purchase advertised food products and/or purchase requests to parents; product sales; and children's purchase behaviours, food consumption, dietary patterns and obesity prevalence. However, these variables are influenced by factors beyond marketing alone, and therefore the success or failure of the policy should not be judged based on a short-term change in any of these indicators. Evaluation studies have been conducted by governments and peer-reviewed studies by independent researchers in Canada, Chile, Ireland, Norway, the Republic of Korea and the United Kingdom (173).

BOX 17.

Lessons from monitoring and evaluating broadcast advertisement restrictions in the United Kingdom

When the Government of the United Kingdom introduced advertising restrictions, it committed to assessing whether these restrictions were having the expected effect in terms of reducing the amount of advertising for foods seen by children (as defined by a nutrient profile model), and the use of advertising techniques considered to appeal to children in food advertising (8). In addition, the government attempted to quantify the impact of these restrictions on broadcasting revenues. The formal evaluation of the United Kingdom's legally binding broadcast regulations conducted by the Office of Communications (the regulatory authority for broadcasting) reported that children saw around 37% fewer advertisements for foods high in fat, salt and sugar (HFSS foods) following the introduction of the restrictions. The evaluation also found that the restrictions on HFSS food and drink advertising were not the most significant factor affecting broadcasters in the period under review.

The reported effects were greatest for younger children, who saw 52% fewer HFSS food advertisements, while adolescents saw 22% fewer.

The evaluation reported that exposure to HFSS food advertising was eliminated during children's airtime, and that children's exposure to HFSS advertising declined during all parts of the day before 21:00 and by 25% during the peak hours of 18:00–21:00. It was also reported that the regulations resulted in a sharp drop in HFSS advertising featuring techniques considered attractive to children, such as popular cartoon characters. Although the use of celebrities increased, both in children's and adult airtime, it was argued that most of these celebrities were likely to appeal principally to adults. Further, the evaluation concluded that there was a significant shift in the balance of food and drink advertising on television towards non-HFSS products: non-HFSS products accounted for an estimated 41.1% of all food and drink advertisements that children were exposed to (known as "child impacts") in 2009, compared with 19.3% in 2005.

The reductions observed were driven mainly by the decline in exposure during children's airtime. In fact, children saw 46% more HFSS food

advertising on commercial non-public service broadcast channels during adult airtime, and there was an overall increase in the volume of HFSS advertising aired throughout the day. Academic evaluations reflect this latter finding – that actual changes in children's exposure were limited and confined to reductions during dedicated children's programming. This means that, although scheduling restrictions were largely effective in excluding HFSS food advertising from the broadcast slots to which they applied, they did not achieve the stated aim "to reduce significantly the exposure of children under 16 to HFSS advertising", and therefore, did not achieve the aim of the WHO set of recommendations.

As a result of these findings, there has been ongoing discussions in the United Kingdom around how to extend the level of protection from food marketing restrictions. In 2020, the government announced its intention to put in place a ban on HFSS advertising before 21:00 as a way of reducing children's exposure to food marketing during popular family viewing timeslots.

STAGE 4

Further academic studies may be considered as part of a wider evaluation. For example, it might be interesting to quantify the impact of restrictions on household expenditures (by comparing periods of no restrictions versus restrictions) or to understand whether the restrictions had an impact on fast food consumption. However, it should be noted that such studies are complex to design, usually requiring a natural experiment model, and are rarely able to account for the full range of factors influencing purchasing behaviours.

Step 2. Leverage the CRC reporting cycle for additional evaluation purposes and involve national human rights institutions

In evaluating food marketing restrictions, governments should also consider how the CRC reporting cycle can be leveraged to assess remaining child rights issues and close any remaining loopholes. The CRC reporting cycle is important because it can be used to increase awareness about child rights issues in the media and the general public, and affected groups can raise concerns and suggestions about the child rights situation in their country related to food marketing.

As part of their obligations under the CRC and Optional Protocols, governments must submit regular reports to the Committee on the Rights of the Child outlining how children's rights have been implemented within their jurisdiction. The initial report is due within 2 years of the entry into force of the convention for the State Party, and periodic reports are due every 5 years thereafter. These reports cover the full spectrum of rights. General Comment 16 calls on governments to include information about the role of the private sector in realizing children's rights, and any steps envisaged or taken to shape the impacts of business activities and operations on children. This not only allows the committee to recommend targeted measures for individual governments to improve the situation of children's rights with respect to the business community, but also contributes to both the committee's general understanding of the subject matter and its ability to guide other governments facing similar challenges (140, 144). The committee has made recommendations for strengthened country action on food marketing restrictions on several occasions (see Box 18).

BOX 18.

Committee on the Rights of the Child recommendations for country action on food marketing restrictions

The Committee on the Rights of the Child expressed concern about the high level of obesity among children in Brazil and their vulnerability to unregulated advertising promoting food. Consequently, it recommended that “the State Party take all necessary measures to address obesity among children, including by promoting healthy lifestyles and raising awareness of healthy nutrition” (7). The Committee also recommended that the State Party establish a regulatory framework for advertisements, with a view to protecting children from misleading advertising.

In 2012, the Committee on the Rights of the Child expressed concern about the high incidence of obesity among children in **Canada** and the “lack of regulations on the production and marketing of fast foods and other unhealthy foods, especially as targeted at children”.

Chile was similarly urged to “strengthen measures to address underweight and overweight among children, promote a healthy lifestyle that includes physical activity and take the necessary measures to reduce the pressure of food marketing on children, in particular with regard to food high in fat, sugar and salt”.

The committee also recommended that **Poland** “collect data on child nutrition, covering both undernutrition and overweight, and further develop measures for improved child nutrition, which should include regulations to restrict advertising and marketing of junk, salty, sugary and fatty foods and their availability to children”.

Expressing concern at “the increase in the prevalence of obesity among children and the aggressive marketing of unhealthy food targeting children” in **South Africa**, the committee

recommended that the government “regulate the marketing of unhealthy foods to children in order to address the rise in child obesity and introduce strategies that enable poor households to access healthy food”.

Similarly, in 2015, the committee called on **Switzerland** to “strengthen measures to address overweight and obesity in children, promote a healthy lifestyle among adolescents, including physical activity, and take the necessary measures to reduce food marketing pressure on children with regard to food high in fat, sugar and salt”.

After noting the paucity of data available on measures to address overweight, obesity and the marketing of food, the committee urged the **United Arab Emirates** to “regulate the marketing of unhealthy food, especially when such marketing is focused on children, and regulate the availability of such food in schools and other places”.

The committee has adopted treaty-specific guidelines on the form and content of periodic reports to be submitted by State Parties under Article 44, paragraph 1(b) of the CRC to facilitate and standardize the reporting process. These guidelines address the following rights:

- general measures of implementation (Article 4);
- general principles
 - non-discrimination (Article 2)
 - best interest of the child (Article 3)
 - right to life, survival and development (Article 6)
 - respect for the views of the child (Article 12);
- disability, basic health and welfare
 - survival and development (Article 6)(2)
 - health and health services, particularly primary health care (Article 24); and
- special protection measures
 - economic exploitation (Article 32).

An overview of how food marketing undermines each of these rights is provided in Table 2.

State Parties provide information on the ways in which business operations and activities impact children’s rights. Relevant requests from the CRC include:

- information about how the committee’s previous recommendations have been addressed in practice by the State Party; if recommendations have not been implemented, this must be explained, and any details

on the principal obstacles encountered should be provided, as well as information on measures envisaged to overcome such obstacles; and

- information on whether the impact of activities by business corporations (extractive, pharmaceutical, agro-industry, among others) is likely to affect the enjoyment by children of their rights.

Governments should engage national human rights institutions and CSOs to ensure that the evaluation process is comprehensive and participatory.


Step 3. Communicate results of evaluation; revise and revisit

Monitoring for evaluation purposes aims to assess the effect of the policy on reducing the exposure to, and power of, marketing. It is usually done 2–3 years after implementation and can serve to identify loopholes in the policy that may have resulted in smaller reductions to exposure than anticipated. These data should then be used for continued policy improvement.

Wide dissemination of the evidence and information gathered as part of monitoring and evaluation, including to key government stakeholders, may assist in building the case for policy action and amendments to address current limitations. However, the individual context will vary from country to country, and it may be important to consider the wider political economy and any ongoing or threatened litigation.

STAGE 4: CHECKLIST

Use this checklist to check whether all points from **Stage 4 (Monitoring and evaluation)** that are relevant for the country context have been considered.

Description	Status 
A monitoring framework has been established to evaluate the impact of the policy, which includes a clear set of indicators, guidance on methods and data needed.	
Baseline data have been collected, and there is a clear plan to repeat the exercise after a period of implementation.	
National human rights institutions are involved in monitoring and evaluation of the marketing restrictions.	
The CRC reporting cycle is considered as part of the monitoring and enforcement system.	
The policy has been revised and revisited as needed.	

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Annex 1. Human rights principles

Principle	Description
Universality and inalienability	Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from them.
Indivisibility	Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.
Interdependence and interrelatedness	The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.
Equality and non-discrimination	All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as discrimination on the basis of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
Participation and inclusion	Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of, civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.
Accountability and rule of law	Governments, as duty bearers, are answerable for the observance of human rights. In this regard, they must comply with the legal norms and standards enshrined in human rights instruments to which they are party. Where they fail to do so, aggrieved rights holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. However, it is important to note that the extent to which this entitlement actually exists under domestic law varies between jurisdictions.

Source: The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies. Attachment 1. https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf



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