

Directive XX/XXXX of the European Parliament and of the Council
XXX
on the approximation of the laws of Member States on the protection of
children from the marketing of nutritionally poor food

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1), 62 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

WHEREAS:

1. Disparities between national laws and practices on food marketing present an obstacle to the free movement of goods and the freedom to provide services and create an appreciable risk of distortion of competition. Without further action at Union level, those disparities are likely to increase over the coming years. The extensive cross-border trade in food calls for stronger legislative action at Union level to achieve the smooth functioning of the internal market. Therefore, it is necessary to approximate the laws, regulations and administrative provisions of the Member States on the marketing of food with cross-border effects, taking as a base a high level of protection of human health.
2. In accordance with Articles 114(3), 12 and 168(1) of the Treaty of the Functioning of the European Union (TFEU), as well as Article 35 of the Charter of Fundamental Rights of the European Union (EU Charter), a high level of health protection should be taken as a base for legislative proposals. In particular, any new developments based on scientific facts should be considered. Nutritionally poor food is not an ordinary commodity and in view of the harmful effects its excessive consumption has on human health, health protection and disease prevention can constitute a decisive factor in the adoption of this Directive.

3. Recalling the Council Conclusions *Towards Halting the Rise in Childhood Overweight and Obesity* of 29 June 2017 and the Council Conclusions on *Healthy Nutrition for Children: The Healthy Future of Europe* of 22 June 2018, and in accordance with Article 3(5) of the Treaty on the European Union and Article 24 of the EU Charter, children's rights must be at the heart of all EU policies and the EU must ensure that the best interests of the child are systematically upheld as a primary consideration. In particular, the EU must protect all children from exposure to harmful marketing and therefore protect their health and many of their rights, including the right to health, the right to food, the right to privacy and the right to be free from all forms of economic exploitation. The *EU Children's Rights Strategy 2021-2024* further recognises that nutrition – and child nutrition more specifically – has become a major EU children's rights concern. A healthy diet is vital to children's full physical and mental development and to the enjoyment of their rights.
 4. The EU *Farm to Fork Strategy* of May 2020 recognises that it is critical to reverse the rise in overweight and obesity across the EU, whilst *Europe's Beating Cancer Plan* of February 2021 states that addressing obesity should start in childhood, therefore echoing the earlier *EU Action Plan on Childhood Obesity 2014-2020*.
 5. The evidence is unequivocal that the marketing of nutritionally poor food affects children's consumption preferences, purchase requests, consumption choices and, ultimately, their health. Bearing in mind the high rates of child obesity and related non-communicable diseases (NCDs) throughout the Union, the *effective* regulation of marketing practices that incentivise the consumption of nutritionally poor food is urgently needed.
 6. Regulating such marketing is also a key pillar of effective strategies intended to create enabling food environments for the uptake of healthy and sustainable diets and the prevention of diet-related diseases. In particular, efforts to educate children on the importance of adopting healthy and sustainable diets throughout the lifecycle should not be jeopardised by the extensive and unregulated, or ineffectively regulated, marketing of nutritionally poor food.
 7. The imposition of restrictions on the marketing of nutritionally poor food to protect children from harm is even more warranted as the marketing strategies used to promote such food are increasingly integrated, immersive and personalised, and therefore likely to cause harm.
 8. Nutritionally poor food is promoted through a broad range of media, from traditional media with cross-border effects, including radio and television broadcasting, product packaging and sponsorship, to newer forms of cross-border media such as digital media which children use extensively.
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9. It is only by adopting a comprehensive approach to the regulation of the marketing of nutritionally poor food (subject to the limits set by the principle of attributed powers) that the EU is likely to address the problems stemming from such marketing. In effect, international organisations such as the World Health Organization and Unicef have called for the adoption of comprehensive child-rights based approaches to the regulation of food marketing to children, as such approaches are the most likely to achieve the objective of protecting children from the impact of the marketing of nutritionally poor food. The EU should therefore adopt a broad definition of marketing and ensure that all children are effectively protected from harmful marketing, and address both components of the impact of marketing, namely exposure and power.
10. The EU should aim to eliminate the exposure of children to the marketing of nutritionally poor food on all cross-border media. Measures intended to protect children often focus on marketing 'targeted/directed at' or 'appealing to' children, or on 'children's programming/media'. However, the largest absolute child audiences are found for mixed content specifically designed for general audiences, this is often not classified as children's content. The focus should be on children's actual exposure to harmful marketing. Therefore, as children are exposed to marketing through a range of programmes, on a range of media and in a range of settings that are not classified as children's programmes, children's media or children's settings, it is necessary to extend any marketing restrictions for nutritionally poor food to these mixed programmes, media or settings. From a rights perspective, the best interests of the child principle mandates that children be protected from actual exposure to harmful marketing. This interpretation is supported by General Comment No. 25 of the Committee on the Right of the Child on children's rights in relation to the digital environment (2021) that calls on States to make the best interests of the child a primary consideration when regulating advertising and other forms of marketing addressed to and accessible to children (emphasis added).
11. The EU should also aim to reduce the power of marketing of nutritionally poor food. In particular, it should not allow the use of marketing techniques that are appealing to children. These techniques include but are not necessarily limited to the use of claims; the use of celebrities, including social media influencers; the use of cartoon and other licensed characters; the use of equity brand characters; the offer of free toys, samples and other gifts; tie-in offers.
12. All children, including young children and adolescents, are influenced by the marketing of nutritionally poor food and need to be protected from its negative impact. For the purposes of this Directive, it is therefore appropriate to define a child as "every human being below the age of eighteen years", in line with the United

Nations Convention on the Rights of the Child and the *EU Children's Rights Strategy 2021-2024*.

13. The EU should adopt an EU-wide nutrient profiling model for the purposes of regulating food marketing to children and implement the model that was developed specifically for this purpose by the Regional Office for Europe of the World Health Organization.
14. The EU has recognised the importance of reducing the impact of the marketing of nutritionally poor food on children since 2007, but it has primarily relied on self- and co-regulation. Over the last 15 years, it has become increasingly clear that the voluntary pledges, not least the EU Pledge, that business operators have taken to restrict children's exposure to the marketing of nutritionally poor food have not led to their reduced exposure to such marketing and have therefore failed to fulfil their promise of 'marketing responsibly to children'. They are not – and should not be viewed as – an appropriate mechanism to ensure that children are effectively protected from harmful marketing. Furthermore, a child rights-based approach to the regulation of food marketing requires that competent public authorities do not engage in ineffective public-private partnerships amounting to the delegation of the mandate they have to protect child health and child rights to private business operators. This is all the more important when those operators invest very significantly and disproportionately in marketing campaigns intended to promote the consumption of nutritionally poor food and foster food environments skewed towards the consumption of unhealthy diets. A new approach is therefore warranted which relies on the approximation of the laws, regulations and administrative provisions of Member States rather than the adoption by business operators of voluntary, self-regulatory pledges.
15. Given that the effectiveness of marketing is a function of exposure and power, the overall policy objective is to reduce both the exposure of children to, and power of, marketing of nutritionally poor food through the prohibition of any cross-border marketing for nutritionally poor food to which children are exposed within any Union Member State.
16. Broadcast media continue to be used extensively to promote nutritionally poor food to children, subject to the provisions of Directive (EU) 2018/18 on audiovisual media services. Not only have existing rules failed to protect children effectively from exposure to the marketing of such food, but regulatory fragmentation is detrimental to the internal market. The rules applicable to television and radio broadcasts should therefore be amended and uniform rules adopted to prohibit the marketing of nutritionally poor food on all broadcast media at all times when children may reasonably be expected to be in the audience. The adoption of a 'watershed' will promote the smooth functioning of the internal market, whilst ensuring a high level

of public health protection throughout the European Union. Directive (EU) 2018/18 should therefore be amended accordingly.

17. Similarly, a new approach is needed on digital media where children are exposed to extensive marketing for nutritionally poor food. Companies in the digital ecosystem operate behind 'walled gardens'; in the absence of transparency regarding online marketing strategies, it should be assumed that children are exposed and prohibit such marketing to protect children. Such a precautionary approach is the only one likely to protect children effectively from actual exposure to harmful marketing without restricting their right to participation. It is therefore in keeping with both the letter and the spirit of the child's best interests principle. Directive 2018/18 should therefore be amended accordingly.
18. The laws, regulations and administrative provisions of the Member States relating to the sponsorship of nutritionally poor food with cross-border effects give rise to an appreciable risk of distortion of the conditions of competition for this activity within the Internal Market. In order to eliminate these distortions, it is necessary to prohibit such sponsorship. This prohibition applies only to those activities or events with cross-border effects and is intended to avoid the circumvention of the restrictions placed on direct forms of advertising. It does not regulate sponsorship operating at a purely national level and without cross-border effects.
19. The circulation in the Internal Market of publications such as periodicals, newspapers and magazines is subject to an appreciable risk of obstacles to free movement as a result of Member States' laws, regulations and administrative provisions which prohibit or regulate the marketing of nutritionally poor food in those media. In order to ensure free circulation throughout the Internal Market for all such media whilst promoting a high level of human health protection, it is necessary to limit the marketing of nutritionally poor food therein to those magazines and periodicals which are sold to adults only and those which are not intended for the general public, such as publications intended exclusively for professionals in the food trade.
20. Product packaging and labelling are often used as a vehicle for the promotion of nutritionally poor food. The use of marketing techniques appealing to children should therefore be prohibited, particularly on packages and labels of nutritionally poor food, throughout the Union.
21. This Directive is without prejudice to Regulation (EU) 1924/2006 on nutrition and health claims made on foods and to Regulation (EU) 1169/2011 on the provision of food information to consumers.

22. This Directive is also without prejudice to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
 23. In light of the different degrees of harmonisation achieved by this Directive, the Member States retain the power to impose further requirements in certain respects in order to protect public health. Firstly, this Directive only protects children from the harmful impact of the marketing of nutritionally poor food. It does not limit the freedom of Member States to regulate the marketing of nutritionally poor food to adults, provided that those provisions are compatible with the TFEU and with World Trade Organization (WTO) obligations, and that they shall not affect the full application of this Directive. Member States should notify any such national provisions to the Commission.
 24. Secondly, Member States also retain their freedom to introduce provisions mandating the use of health warnings or imposing further standardisation of the packaging of nutritionally poor food. Such provisions are subject to compliance with the TFEU and with WTO obligations, and they shall not affect the full application of this Directive. Member States should notify any such national provisions to the Commission.
 25. Finally, Member States retain their discretion to regulate marketing strategies based on the use of pricing instruments. Price is often used to incentivise the consumption of nutritionally poor food. However, this Directive does not harmonise the use of pricing strategies for marketing purposes. In particular, Member States can decide to introduce restrictions on certain price promotions, provided that those provisions are compatible with EU consumer protection rules, and specifically Directive (EU) 2005/29 on business-to-consumer unfair commercial practices, Directive (EU) 2019/2161 on the better enforcement and modernisation of Union consumer protection rules, with the TFEU and with WTO obligations, and that they shall not affect the full application of this Directive. Member States should notify any such national provisions to the Commission.
 26. This Directive does not apply to alcoholic beverages on the basis that the Union, its Member States and the international community, not least the World Health Organization, have traditionally dealt with the health risks posed by alcoholic beverages separately from those posed by other nutritionally poor food. This should not be read as suggesting that the effective regulation by the Union of the cross-border marketing of alcoholic beverages is not also a major public health and child rights priority.
 27. The remedies available for infringements of this Directive should be effective, proportionate and dissuasive.
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28. The Commission should monitor the developments as regards the implementation and impact of this Directive and submit a report by **XXX**, and when necessary thereafter, to the European Parliament, the Council and the European Economic and Social Committee, in order to assess whether amendments to this Directive are necessary.
29. The transnational character of advertising and other forms of marketing and their relationship to public health are acknowledged in many EU legislative instruments, including: Regulation (EU) 1924/2006 on nutrition and health claims made on foods; Regulation (EU) 1169/2011 on the provision of food information to consumers; Directive (EU) 2003/33 on the advertising and sponsorship of tobacco products; Directive (EU) 2014/14 on the manufacture, presentation and sale of tobacco and related products; Directive (EU) 2010/13 on the provision of audiovisual media services, as recently amended by Directive (EU) 2018/18.
30. The EU is better placed than Member States acting individually considering the cross-border dimension of food marketing (and food trade within the EU). The approximation of national laws, regulations and administrative provisions will benefit consumers whose health and rights will be placed firmly at the heart of the harmonisation process; it will provide a level playing field within which business operators will be required to operate; it will facilitate EU market integration; and it will allow the EU to lead by example on the global health scene, playing a key role in the global efforts to promote healthier diets, thereby helping to prevent child obesity and related chronic diseases and supporting Member States in their implementation of the commitments they have made to end child obesity, reduce the economic costs of unhealthy diets and promote sustainable development, whilst effectively upholding children's rights.
31. Since the objectives of this Directive, namely to approximate the laws, regulations and administrative provisions of the Member States concerning the cross-border marketing of nutritionally poor food, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in the third paragraph of Article 5 TEU, this Directive does not go beyond what is necessary in order to achieve those objectives.
32. This Directive respects the fundamental rights and observes the principles recognised by the EU Charter. This Directive seeks to ensure respect for children's rights, and in particular the right to the enjoyment of the highest attainable standard of health. The best interests of the child shall be a primary consideration in all decisions that concern them. As several fundamental rights are affected by this Directive, it is necessary to ensure that the obligations imposed on the business

operators involved in the marketing of food not only guarantee a high level of health and consumer protection, but also protect all other fundamental rights and are proportionate with respect to the smooth functioning of the internal market. The application of this Directive should respect Union law and relevant international obligations, not least the UN Convention on the Rights of the Child which binds all EU Member States.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1 – Subject-matter and objective


1. The purpose of this Directive is to protect children from the harm associated with the marketing of nutritionally poor food.
2. This Directive provides the basis for a high level of public health and consumer protection in relation to food marketing, whilst ensuring the smooth functioning of the internal market.
3. This Directive protects the fundamental rights and freedoms of children and in particular their right to the enjoyment of the highest attainable standard of health.
4. This Directive upholds the best interests of the child as a primary consideration.


Article 2 – Definitions

For the purposes of this Directive:

1. **‘Advertising’** means any form of announcement whether in return for payment or for similar consideration or for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.

2. **'Alcohol' or 'Alcoholic beverages'** means beverages containing more than 1,2 % by volume of alcohol.
3. **'Broadcast media'** means a media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.
4. **'Business operator'** means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to their trade, business, craft or profession and anyone acting in the name of or on behalf of a trader. Platform providers are business operators within the meaning of this Directive if they act for purposes relating to their own business and as the direct contractual partner of the consumer for the supply of digital content or a digital service.
5. **'Child'** means every person below the age of eighteen years.
6. **'Consumer'** means a natural person who is acting for purposes which are outside his or her trade, business, craft or profession.
7. **'Cross-border marketing'** means either:
 - a. marketing which takes place in the context of the activities of establishments in more than one Member State of a business operator in the Union where the business operator is established in more than one Member State; or
 - b. marketing which takes place in the context of the activities of a single establishment of a business operator in the Union but which substantially affects or is likely to substantially affect children in more than one Member State.
8. **'Digital media'** refers to content that is created, edited, stored, or accessed in digital form, through numeric encoding and decoding of data. For the purposes of this Directive this definition includes but is not limited to brand websites, social media services, video sharing platform services and on-demand audiovisual media services.
9. **'Exposure'** refers to the volume of marketing children see, as determined by the frequency and reach of marketing messages, and in particular which media children use.
10. **'Food'** means any substance or product, including non-alcoholic beverages, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.

11. **'Food business'** means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food.
 12. **'Health warning'** means a warning concerning the adverse effects on human health of a product or other undesired consequences of its consumption, including text warnings, combined health warnings, general warnings and information messages.
 13. **'Label'** means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to the packaging or container of food.
 14. **'Labelling'** means any words, particulars, trademarks, brand name, pictorial matter or symbol relating to a food and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such food.
 15. **'Mandatory food information'** means the particulars that are required to be provided to the final consumer by Union provisions.
 16. **'Marketing'** means any form of commercial communication or message that is provided on a voluntary basis and is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product, a service or a trade mark or brand. This definition includes but is not limited to advertising, teleshopping, sponsorship and product placement.
 17. **'Nutrient'** means protein, carbohydrate, fat, fibre, sodium, vitamins and minerals listed in point 1 of Part A of Annex XIII to Regulation 1169/2011, and substances which belong to or are components of one of those categories.
 18. **'Nutrient profile model'** means a model designed to classify food into categories depending on their nutritional quality.
 19. **'Nutritionally poor food'** means food which has been classified as such by a recognised nutrient profile model, such as the nutrient profile model developed by the Regional Office for Europe of the World Health Organization.
 20. **'On-demand audiovisual media service'** means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.
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21. **‘Power’** refers to the creative content, design and execution of the message that enhance its persuasive appeal, and in particular what techniques are particularly effective in persuading children.
 22. **‘Product placement’** means any form of marketing consisting of the inclusion of, or reference to, a product, a service or the trade mark thereof so that it is featured within a programme or a user-generated video, or during an event, in return for payment or for similar consideration. It specifically includes the use of social media influencers.
 23. **‘Programme’** means a set of moving images or sounds constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television or radio broadcasting. Examples of programmes include feature-length films, video clips, sports events, situation comedies, news and documentaries, children’s programmes and original drama.
 24. **‘Social media service’** refers to electronic communication through which users create online communities to share information, ideas, personal messages, and other content, such as videos.
 25. **‘Sponsorship’** means ‘any form of public or private contribution to any event, media services or video-sharing platform, activity or individual with the aim or direct or indirect effect of promoting their name, trade mark or brand, image, activities or products.
 26. **‘Teleshopping’** means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.
 27. **‘Video sharing platform service’** means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.
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Article 3 – Material scope

1. This Directive applies to all forms of cross-border marketing for nutritionally poor food, except when such marketing is explicitly excluded from the scope of this Directive.
2. This Directive does not apply to marketing activities involving the use of pricing instruments. Member States therefore retain their freedom to impose restrictions on promotional offers, such as multi-buy offers, provided that they comply with the requirements of Union law.
3. This Directive is only intended to protect children from the harm resulting from the marketing of nutritionally poor food. Member States therefore retain their freedom to adopt national laws, regulations and administrative provisions intended to protect adults from such marketing, provided that these laws, regulations and provisions comply with the requirements of Union law.
4. This Directive does not apply in the course of an activity which falls outside the scope of Union law. In particular, this Directive does not apply to activities by natural persons in the course of purely personal or household activities.
5. This Directive does not apply to the marketing of alcoholic beverages.

Article 4 – Territorial scope

1. This Directive applies to the marketing of nutritionally poor food in the context of the activities of a business operator established in the Union.
2. This Directive also applies to the marketing of nutritionally poor food in the Union by a business operator not established in the Union, where the marketing activities are related to:
 - a. the offering of goods or services, irrespective of whether a payment is required, in the Union; or
 - b. the monitoring of their behaviour as far as their behaviour takes place within the Union.
3. This Directive applies to the marketing of food by a business operator not established in the Union, but in a place where Member State law applies by virtue of public international law.

Article 5 – Internal market

Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive.

CHAPTER 2

Limiting children’s exposure to the marketing of nutritionally poor food


Article 6 – Comprehensive restrictions

Business operators shall not engage in any cross-border marketing for nutritionally poor food to which children are exposed within any Union Member State.

Article 7 – Nutrient profiling

1. The European Union should adopt an EU-wide nutrient profiling model for the purposes of this Directive by **XXX**.
2. To ensure that the EU-wide nutrient profiling model is objective, transparent, independent, non-discriminatory and uniformly applied, the EU should adopt the nutrient profiling model developed by the Regional Office for Europe of the World Health Organization.
3. Food categorised as ‘nutritionally poor’ by the EU nutrient profile model shall fall within the scope of the general prohibition of Article 6.

Article 8 – Broadcast media

1. The marketing of nutritionally poor food shall be prohibited on television broadcast from 6am to 11pm throughout the European Union.
 2. The marketing of nutritionally poor food shall be prohibited on radio broadcasts from 6am to 11pm throughout the European Union.
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Article 9 – Digital media

1. The marketing of nutritionally poor food shall be prohibited on digital media.
2. The Commission shall set up an expert committee to determine how digital marketing should be monitored and children effectively protected from the marketing of nutritionally poor food.

Article 10 – Press and other printed publications

1. Marketing of nutritionally poor food in the press and other printed publications shall be limited to:
 - a. publications intended for adults only; and
 - b. publications intended exclusively for professionals in the food trade.
2. All other marketing for nutritionally poor food in the press and other printed publications shall be prohibited.
3. Marketing that is not permitted in the press and other printed publications shall not be permitted in information society services.

Article 11 – Sponsorship

1. The sponsorship by food business operators of events or activities involving or taking place in several Member States or otherwise having cross-border effects shall be prohibited. These events include, but are not limited to, sports and cultural events.
2. Any free distribution and sampling of nutritionally poor food in the context of the sponsorship of the events referred to in paragraph 1 having the purpose or the direct or indirect effect of promoting such food shall be prohibited.
3. Paragraphs 1 and 2 do not apply to adult-only events where no child is allowed to attend the event or activity.
4. Food business operators are entitled to seek a specific exemption from the prohibition laid down in paragraph 1 if they can demonstrate, on the basis of scientific evidence, that their sponsorship of the event or activity will not lead to the exposure of children to any marketing for nutritionally poor food.

5. The Commission, after consulting the European Food Safety Authority, shall decide whether a specific exemption should be granted under paragraph 4.

Article 12 – Product packaging and labelling

1. The packaging and labelling of nutritionally poor food shall not be used as a marketing tool to promote the consumption of the products they contain or to which they are affixed.
2. In the absence of specific Union rules approximating national laws, regulations and administrative provisions, Member States retain their freedom to adopt national measures on the use of health warnings on nutritionally poor food, or other aspects relating to the standardisation of the packaging of nutritionally poor food. This is subject to compliance with Union law.

CHAPTER 3

Addressing the power of marketing

Article 13 – Marketing techniques appealing to children

1. No marketing for nutritionally poor food shall contain characters appealing to children, including licensed characters, equity brand characters and celebrities popular with children.
2. Business operators shall not use any other techniques appealing to children to advertise or otherwise promote nutritionally poor food. These techniques include (but are not necessarily limited to):
 - The offer of toys or other gifts
 - Tie-in offers
 - Promotion through games and competitions
 - The use of peers and role models
 - The use of claims likely to appeal to children (e.g. claims of popularity, social success, sporting or sexual achievement...)
 - The use of themes of fun likely to appeal to children

CHAPTER 4

Remedies, liability and penalties

Article 14 – Right to an effective judicial remedy

1. Without prejudice to any available administrative or non-judicial remedy, each child shall have the right to an effective judicial remedy where he or she considers that his or her rights under this Directive have been infringed as a result of the marketing of food in non-compliance with this Directive.
2. Proceedings shall be brought before the courts of the Member State where the business operator has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the child has his or her habitual residence.

Article 15 – Representation of children


1. The child and his or her parents shall have the right to mandate a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public interest, and is active in the field of public health and consumer protection to lodge the complaint on his or her behalf, to exercise the rights referred to in Article 14 on his or her behalf, and to exercise the right to receive compensation referred to in Article 16 on his or her behalf where provided for by Member State law.
2. Member States may provide that anybody, organisation or association referred to in paragraph 1 of this Article, independently of any natural person's mandate, can exercise the rights referred to in Article 14 if it considers that the rights of a child under this Directive have been infringed as a result of the marketing of nutritionally poor food.

Article 16 – Right to compensation and liability

1. Any child who has suffered material or non-material damage as a result of an infringement of this Directive shall have the right to receive compensation from the business operator for the damage suffered.

2. Any business operator involved in marketing shall be liable for the damage caused by marketing which infringes this Directive.
3. A business operator shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.
4. Where several business operators are involved in the same marketing and where they are, under paragraphs 2 and 3, responsible for any damage caused by such marketing, each business operator shall be held liable for the entire damage in order to ensure effective compensation of the child.
5. Where a business operator has, in accordance with paragraph 4, paid full compensation for the damage suffered, that business operator shall be entitled to claim back from the other business operators involved in the same marketing that part of the compensation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in paragraph 2.
6. Court proceedings for exercising the right to receive compensation shall be brought before the courts competent under the law of the Member State referred to in Article 14(2).

Article 17 – Penalties

1. Member States shall lay down the rules on other penalties applicable to infringements of this Directive, and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.
 2. Each Member State shall notify to the Commission the provisions it adopts pursuant to paragraph 1, by **XXX** and, without delay, any subsequent amendment affecting them.
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CHAPTER 5

The Expert Committee


Article 18 – Committee procedure

1. The Commission shall be assisted by an expert committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

CHAPTER 6

Final provisions

Article 19 – Coherence of EU rules

1. This Directive amends the relevant provisions of the Audiovisual Media Services Directive.
 2. This Directive is without prejudice to the Food Claims Regulation and the Food Information Regulation.
 3. This Directive is also without prejudice to the General Data Protection Regulation.
 4. In accordance with Article 3(4) of the Unfair Commercial Practices Directive, this Directive shall prevail in case of conflict between its provisions and those of the UCPD, as it regulates specific aspects of unfair commercial practices.
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Article 20 – Commission report

No later than four years after entry into force, or **XXX**, and when necessary thereafter, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive. That report shall be accompanied by any proposals for amendments to this Directive which the Commission deems necessary.

Article 21 – Entry into force and application

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **XXX**. They shall immediately communicate the text of those provisions to the Commission.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
4. This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
5. This Directive is addressed to the Member States.

Done at Strasbourg, **XXX**.

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November 2021

