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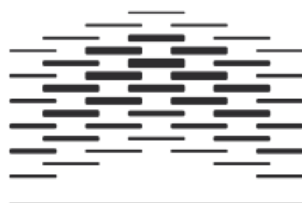
The Norwegian regulations on marketing of foods and beverages to children.

In respect of children's human rights?

Jenny Handal Sneve

Faculty of Health Sciences

Department of Public Health Nutrition



OSLO AND AKERSHUS
UNIVERSITY COLLEGE
OF APPLIED SCIENCES

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List of abbreviations

ECHR	European Convention on Human Rights
EU	European Union
FSS	Fat, Sugar and Salt
FNAB	Food and Non-Alcoholic Beverages
GC	General Comment
HFSS	Foods High in Fat, Salt and/or Sugar
HiOA	Oslo and Akershus University College of Applied Sciences (Høgskolen I Oslo og Akershus)
HRBA	Human Rights Based Approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MFU	Matbransjens Faglige Utvalg (Food and Drink Industry Professional Practices Committee)
MDG	Millennium Development Goals
NP	Nutrient Profiling
OHCHR	Office of the High Commissioner for Human Rights
SDG	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNSCN	United Nations Standing Committee on Nutrition
VG	Voluntary Guideline
WHO	World Health Organization

Summary

Background: Childhood overweight and obesity has increased significantly the last years and are recognized as a global health challenge. These trends can be caused by a number of environmental factors. Food marketing to children is one possible releasing factor. Norway has some legislation that protect children from certain types of marketing, as well as a self-regulatory system. Human rights provides an additional framework with several tools to protect the children from this kind of marketing.

Aim: The aim of the study is first to investigate the coverage of the international standards on marketing of foods and non-alcoholic beverages towards children, and see if there are coherence with laws and regulations in Norway.

Secondly, the aim is to investigate the Code on Marketing of Food and Non-Alcoholic Beverages to children, and to see if it covers the selected human rights principles; Participation, Accountability, Non-discrimination, Transparency and Rule of law.

Methods: The study combines document analysis with qualitative interviews. Document analysis has been used to analyse the content of the human rights instruments, the Norwegian legislation and the Norwegian Code.

Five interviews were conducted with key informants of three sectors of society; Authorities, Civil Society and Business sector. The interviews had a semi-structured approach. Microsoft Word was used to transcribing the material, and a simple content analysis were used after words. For the main analyse part of the interviews an assessment tool were developed in line with the FAO toolbox and the Human Right Indicators.

Results: The Norwegian legislation showed multiple gaps in the regulation of marketing of unhealthy FNAB to children. The Norwegian Code was found more “flexible” than the WHO recommendations, especially regarding to marketing techniques and nutrients. Overall, The Norwegian Code was found to be in partial compliance with core HRBA principles, in theory and practice. The business sector proved to be more protective in the interpretation of the guidelines. The authorities and civil society had resembling views and often a different view than the business sector.

Conclusion: The results highlight the need for a more involving government in the regulation of the marketing of FNAB to children. In addition, an increased focus on children’s fundamental rights and the use of a human rights based approach, would be of great value, in developing future Codes and Guidelines.

Definitions

Marketing

Marketing or marketing communication includes advertising as well as other techniques, such as promotions, sponsorships, packaging, direct marketing,

Food

The term “food” means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink (World Health Organization, 2010c)

Industry

The term industry is here referred to as the producers and providers of food and beverages.

Legislation

Laws that have been enacted by a legislature or the governing body of a country.

Regulation

Regulations in this regard, are the process of monitoring and enforcing a law as well as a document that contains the details of a written rule.

Human rights treaties

Document, in total nine treaties, that comprise the key definitions of human rights, in addition to the Declaration and nine optional protocols (United Nations General Assembly, n.d.).

General comments

General Comments are expert interpretations of human rights treaties or covenants, issued by the supervising treaty bodies (Eide, W B; Kracht, 2005).

Declaration

A declaration is understood as a document that states appropriate standards. It does not have legal validity.

Convention

Convention is an agreement among countries to act in a particular manner. The states that ratify the agreement have to act by the convention, which has legal validity

Constitutional provisions

Constitutional provision specifies that a rule or law comes from the constitution itself and not from statutory or common law

International human rights instruments

International human rights instruments comprise treaties and other international documents relevant to the international human rights law, and the protection of human rights in general. They are often classified in two categories; declarations and conventions.

Human rights standards

Standards are defined as internationally negotiated or endorsed human rights documents (instruments), whether these are binding or not binding.

Human rights principles

Principles that describes the essentials of human rights.

1. Introduction

1.1 Background

In recent decades the amount of overweight and obese children has grown rapidly around the world. The rising prevalence of childhood obesity can now be seen in developed economic countries, as well as in emerging and less developed economies (World Health Organization, 2016). Both overweight and obesity are well known risk factors for diet-related non-communicable diseases such as coronary heart disease, cancer and type 2-diabetes (World Health Organization, 2010a). The World Health Organization (WHO) declares overweight and obesity as the third most important risk factor to premature death and reduced life quality in high-income countries (World Health Organization, 2015). Numbers from 2016 in The Norwegian Children Growth Study¹ (Folkehelseinstituttet, 2016) revealed that 17 % of all eight year-old girls and 13 % of eight year-old boys are qualified as overweight. Average share with obesity were 2,3 % among boys and 3 % among girls.

The study indicates that the percentage of overweight children increased between the period of 1970 to the 2000s in Norway. Over the last ten years, the average proportion of overweight and obesity has not changed considerably among eight year-olds, but there seems to have been an increase among young people, in the age group 13-17 years (Folkehelseinstituttet, 2016).

The dramatic rise in childhood overweight can be caused by a number of environmental factors. In 2004 WHO categorized aggressive food marketing to children as one possible releasing factor, and studies have later confirmed that the impact of marketing of unhealthy foods, correlates with children's food preferences, purchases and consumption (Harris, Pomeranz, Lobstein, & Brownell, 2009). The majority of the products marketed to children contain high levels of saturated fat, sugar and salt that is a well-known risk factor to develop overweight (World Health Organization, 2004c). Research also shows an expanding growth of corporations using billions of dollars to develop a marketing strategy aimed at especially targeting children (Federal Trade Commission, 2008; Institute of Medicine, 2006). Children and their parents are an attractive group with considerable purchasing power and are therefore a natural target for marketing of commercial actors. Children and adolescents are particularly vulnerable and susceptible to such marketing because they do not have the necessary experience or critical thinking to objectively assess the content and purpose of the industry's marketing practices (Grow & Schwartz, 2014).

¹ Barnevektstudien 2012

The WHO has worked on the subject for several years, and calls for action to restrict marketing of unhealthy food and drinks to children. In 2008 a network on reducing marketing to children were established (World Health Organization, n.d.). The network is chaired by Norway and follows up the recommendations from WHO's global strategy on diet, physical activity and health (World Health Organization, 2004) and the recommendations on action from the report *Marketing Food to Children: the Global Regulatory Environment* (Hawkes, 2004). As a response to the growing global epidemic of overweight and obese children two additional tools were developed to help countries to take control over marketing of unhealthy food to children. The Set of Recommendations on Marketing of Food and Drinks to Children (World Health Organization, 2010c), and a following framework for implementing these recommendations (World Health Organization & World Health Organization, 2012). The main purpose of the recommendations is to guide countries in developing new or strengthening existing policies on the promotion of foods high in saturated fat, trans fat, sugar or salt to children.

As for the industry, several voluntary initiatives or pledges at the global, regional and national level are established to guide businesses in the process of marketing of their products to children. Two of these are especially addressing marketing of food and beverage to children, one of them, the European Action Network, is chaired by Norway (Helsdirektoratet, 2015).

Legislation and regulation of marketing of foods to children varies substantially worldwide, but especially in high-income countries there have been progress regarding implementing government-approved forms of self-regulation.

Norway is regarded as one of the role models on regulation of marketing of foods and non-alcoholic beverages to children (Skirstad, 2006). The government restricts all broadcast advertising to children under the age of 18 through two laws; *Kringkastingsloven* (1994) and *Markedsføringsloven* (2009). As a measure to achieve the objectives of the National Action Plan on Nutrition of 2007 (Departementene, 2007c), the Norwegian consumer council and some actors of the Norwegian food industry introduced voluntary guidelines to prevent the marketing of unhealthy products aimed at children and young people. As a result of this, The Food and Drink Industry Professional Practices Committee (MFU) was established with the function to monitor the marketing of foods and non-alcoholic beverages to children under the age of 13 and to ensure compliance with the Norwegian Code. It is a voluntary initiative that calls on industry to follow standards in a range of communication channels, such as marketing through television, cinema, video games and in stores.

In addition to the mentioned Norwegian legislation, many protections in Human Rights law, have been written into Norwegian law by legislation

The United Nations plays an important role in the protection and promotion of children's rights. The human right framework constitutes laws, rules and guidelines to be followed by States. It consists of specific treaties that recognize or endorse the provisions of the right to health, the right to food and can be of value in the protection of children of marketing. The rights are also further elaborated in several soft law documents. The human rights claims that States have the primary responsibility to respect, protect and fulfil the rights of its citizens, and are bound by law if they have ratified human rights conventions, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC) (United Nations General Assembly, 1966). Norway has, by ratifying these, an obligation to ensure to respect, protect and fulfil the right to health and the right to adequate food to the individual. Norway and other State Parties have a core responsibility to protect the health of vulnerable groups as children, who in regard to this are especially vulnerable due to their greater susceptibility to marketing (United Nations General Assembly, 1989). At this juncture, there is no legally binding instrument on the business sector's responsibilities regarding the human rights to its consumers.

2 Research objectives

2.1 Main objective

The main objective of this study is to investigate if Norwegian policy, legislation and regulation recognizes human rights and take them into account.

2.2 Specific objectives

The specific objectives of the study aim to see if there:

- 1. Is there coherence between the laws and regulation in Norway and the international standards on marketing of foods and non-alcoholic beverages towards children?*
- 2. Is the Code on Marketing of Food and Non-Alcoholic Beverages to Children in compliance with the selected human right principles; Participation, Accountability, Non-discrimination, Transparency, Rule of law?*

In order to assess this, the objectives of this thesis aim to explore the existing legislation, regulation and international instruments as they relate to the protection of children from marketing. It further seeks to analyse potential gaps in terms of the Norwegian legislation with regards to the human rights principles.

3 Theory

3.1 The human rights framework

This part of the chapter aims to present the concept of human rights and its framework as the comprehensive and unique tool it is, to protect humans.

3.1.1 What are human rights?

Human Rights are literally the rights we have because we are human beings. Human Rights are in the United Declaration of Human Rights (UDHR) defined as basic rights and freedoms that all people are entitled to (United Nations General Assembly, 1948). They are based on principles that describe the fundamentals of human rights. Two of the key principles of human rights are that they are universal and inalienable. They are a virtue for being human, and all humans possess them, regardless of nationality, sex, race, religion, language etc. They cannot be taken away, except in certain situations and according to due process. Human rights are indivisible and interdependent. Every right is equally important, and deserves equal protection and promotion, and can only be fully enjoyed if all other rights are currently implemented (United Nations General Assembly, n.d.-c).

3.1.2 What are the Human Rights instruments?

The international human rights instruments provide a comprehensive framework for the promotion and protection of a child's health. The foundation for the International Human Rights is the Universal Declaration on Human Rights (UDHR) adopted by the UN December 10, 1948 (United Nations General Assembly, 1948). The UDHR is a political (not legal) document, but over the years the commitment has been translated into law, in forms of treaties, general principles, international law and other agreements. This along with a number of declarations², conventions³ (international treaties or laws) and constitutional provisions⁴ constitutes a comprehensive legally binding system for the promotion and protection of human rights⁵ (United Nations General Assembly, 1948).

Two of the human right instruments, the ICESCR and the CRC, contain articles, which specifically highlight the rights of children regarding health and food. Under these conventions all children have

² Declaration can be understood as a document that states appropriate standards. It does not have legal validity (United Nations General Assembly, n.d.)

³ Convention is an agreement among countries to act in a particular manner. The states that ratify the agreement have to act by the convention, which has legal validity (United Nations General Assembly, n.d.)

⁴ Constitutional provision specifies that a rule or law comes from the constitution itself and not from statutory or common law (United Nations General Assembly, n.d.)

the same right to the highest attainable health and the best interest of the child as a primary consideration. When states ratifies⁶ the ICESCR (art.) and the CRC (art. 4) they are obligated to respect, protect and fulfil (facilitate and provide) the human rights to its citizens. It is also important to note that there are a number of other non-binding human rights mechanisms and instruments that are relevant to the right to food, the right to health and to the protection of the child. Standards, regulations, recommendations, voluntary guidelines (VG) and general comments⁷ (GC) are examples of such non-binding documents known as soft-law (United Nations General Assembly, n.d.-a). These soft-law documents aim to provide guidance to States on the meaning and requirements of implementing the rights in the covenants and conventions. Soft law can be seen as a first step in a norm-making process to providing detailed rules and technical standards required for the interpretation and the implementation of treaties (Lagoutte, S; Gammeltoft-Hansen, T; Cerone, 2016).

The right to food

The human right to adequate food is recognized in several instruments under international law. It is recognized in the UHDR, article 25 (1948) and is enshrined in the ICESCR from 1961 through article 11; the right to an adequate standard of living:

Art. 11:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. (United Nations General Assembly, 1966)

It is a legal obligation of State Parties who have ratified the ICESCR

The right to food is further elaborated in the general comment 12 (GC12), a quasi-legal document published by the Committee on ESCR, that provide an authoritative interpretation of the rights contained in article 11 of the ICESCR.

Art. 12:

“The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.” (UN Committee on Economic Social and Cultural Rights, 1999)

⁶ signing or giving formal consent to a treaty, contract, or agreement, making it officially valid.

⁷ General Comments are authoritative interpretations of individual human rights mentioned in a specific human rights treaty.

The right to health

The right to health is recognized in the UDHR, article 25. It arises from the right to an adequate standard of living, and is found in article 12 in the ICESCR. The right to health is elaborated in the General Comment 14. The comment notes that the right to health must not be understood as the right to be healthy, but be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health (UN Committee on Economic Social and Cultural Rights, 2000). Good health should not only be the absence of disease or injury, but also a state of adequate physical, mental and social wellbeing (Human Rights Committee, 2006)

Article 27(1) of the CRC also recognizes “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. It also recognizes that States Parties to the Convention have the duty to “take appropriate measures” to assist parents in fulfilling their primary responsibility to implement such right, “particularly with regard to nutrition” (art. 27.3) (United Nations General Assembly, 1989).

The use of human rights in protection children from marketing

Relevant to the issue of marketing of foods and non-alcoholic beverages to children is Article 3.1 of the CRC (United Nations General Assembly, 1989). It remarks “the best interests of the child shall be a primary consideration for States in all actions concerning children. States are obliged to integrate and apply this principle in all legislative, administrative and judicial proceedings concerning business activities and operations that directly or indirectly impact on children”. Article 17 in CRC that recognizes the child’s right to:

“access information aimed at promoting their social, spiritual and moral well-being and physical and mental health”.

Article 17e of the same convention remarks that the State Parties shall

“Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being” (UN, 1989).

Further on art.17 of the Convention, States have obligations to protect children from harmful information and obligate to

“Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;”

In 2013 the Committee on the Rights of the Child developed a General Comment (GC16) on *State Obligations regarding the Impact of the Business Sector on Children’s Rights* (UN Committee on

Rights of the Child, 2013c). The activities and operations of business enterprises can impact on the realization of article 6 (CRC) in different ways. The GC16 remarks that marketing to children of products such as cigarettes and alcohol as well as foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives can have a long-term impact on their health. The GC16 suggests preventive measures, such as effective regulation and monitoring of advertising and marketing industries.

3.2 What are the state obligations?

In international human rights law the citizens are seen as *right holders*, while the states have the corresponding duties as *duty bearers*. States obligate to respect human rights through membership in the UN or by ratifying human rights conventions and include them in their own legislation (United Nations General Assembly, n.d.-a).

After ratification State Parties have the primarily responsibility to fulfil that the rights in a convention is ensured. State Parties have as mentioned three types of obligations relating to the human rights; to *respect* freedoms and entitlements, to *protect* both freedoms and entitlements from third parties or from social or environmental threat, and to *fulfil* the entitlements through facilitation and direct provision (UN Committee on Rights of the Child, 2013a).

Norway has taken on human rights obligations as a member of international organizations such as the UN, International Labour Office, European Council and by ratifying international conventions (Sveen, Bergem, Ekeløve-Slydal, & Ekeløve-Slydal, 2009). The international Covenant on Civil and Political Rights (ICCPR) and the ICESCR were ratified by Norway in 1972 and CRC was ratified in 1991. These ratifications commit Norway to ensure that the rights recognized by the covenant and conventions are gradually implemented and ensured by the State.

In 1999 Norway adopted *Menneskerettighetsloven*⁸ with the purpose of strengthening human rights in Norwegian law. The law consists of five conventions with additional protocols, the European Convention on Human Rights (ECHR), ICESCR, ICCPR, CRC and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The provisions of the conventions and protocols have precedence over other Norwegian legislation.

3.3 A Human Rights Based Approach

In line with the issue of marketing of unhealthy foods to children the principles of a Human Rights Based Approach (HRBA) will be emphasized. A HRBA is a conscious and systematic integration

⁸ Universal Declaration of Human Rights (United Nations General Assembly, 1948)

of human rights standards and human rights principles in all aspects of programming work. It emphasises processes and outcomes, draws attention to marginalized populations (in this matter children) and strengthens accountability of all actors (Victorian Equal Opportunity & Human Rights Commission, 2008).

Right holders and duty bearers are basic concepts, and the relationship between them is essential within human rights thinking. This implies that where someone has a right, there is also a corresponding duty for someone to fulfill this right (Food and Agriculture Organisation, 2009).

A HRBA places the human being in the center. This study elucidates if and how the principles are protected through the Norwegian legislative and self-regulative scheme. The principles that are found applicable to this study are Participation, Accountability, Non-discrimination, Transparency and Rule of law. The principles of Empowerment, Dignity and Equity are also recognized as principles of value, but are not used in the assessment. Equity is integrated in the principle Non-discrimination. Dignity and empowerment were assessed to be principles on a more individual level, and not easy to use in an assessment of a framework.

Table 1 presents the selected principles and how they are defined in the.

Table 1 Principles of a human rights based approach

Participation	Participation means that all people should have the opportunity to participate in decisions that affect their lives and well-being. This means ensuring that political and democratic processes are institutionalized both locally and nationally.
Accountability	Accountability requires that States and other duty-bearers be held accountable for their actions through elections, judicial procedures or other mechanisms.
Non-discrimination	Human rights must be guaranteed without any form of discrimination, based on race, colour, gender, age, language, sexual orientation, disability, religion, political opinion, nationality, social or geographical origin. The principle is complemented by the principle of equity, that all humans are entitled to the same ability to enjoy human rights.
Transparency	Transparency means that governments and other duty bearers must be open about all information and decision-making processes related to rights.

Rule of law Rule of law requires that every member of society must comply with the law. By ratification of the human rights instruments the State Parties are held responsible to ensure the observance of human rights.

(United Nations, 2012; Victorian Equal Opportunity & Human Rights Commission, 2008)

The human rights principles should also be included in all stages of the process, from situation analysis for evaluation. The principles should also serve as guidance in the cooperation between the various sectors involved in the process. This may include the preparation of human rights-based strategies, guidelines, programs and activities that affect the right to food (SCN, 2001).

3.4 The role of business

The human rights constitute a set of commitments that are not aimed at the business community. They are designed as the state's obligations to its citizens and must be maintained by public authorities. The industry can consequently not be held liable under the international conventions, but will have to comply with national legislation, which in Norway regulates much of the same as human rights (Høstmælingen, 2010). The concept of human responsibility is with time replaced by the concept of Corporate Social Responsibility (CSR).

In 2000 the UN launched a voluntary initiative aimed at companies looking to drive sustainable and responsible business operations. The initiative is called UN Global Compact, and is now regarded as the world's largest initiative for CSR (United Nations Global Compact, n.d.). Today 162⁹ Norwegian businesses and corporations, 6 of them from the food-sector, have signed up and committed to abide ten principles on human rights, labour, environment and anti-corruption measures (United Nations, n.d).

In response to the growing concern about the impact of business activities on human rights and the lack of clarity about the human rights responsibilities of companies UN Guiding Principles (UNGP) was developed in the period 2005-2011. The Guiding Principles work as a framework and clarifies the roles States and industry have respectively to protect against and reduce the risk of human rights violations in connection with business. The UNGP on business and human rights is not a human right instrument to be ratified and binding in law. Instead, they clarify and elaborate on the implications of relevant provisions of existing international human rights standards, where some are legally binding on States, and provide guidance on how to put them into operation (Human Right Council, 2011).

⁹ 162 countries, 1.5.17

3.5 Measures to restrict marketing of foods and non-alcoholic beverages to children

Internationally the regulation of food marketing to children varies considerably, and ranges from statutory regulations to voluntary self-regulation initiatives often led by the food industries. The majority of the regulations are targeting marketing through television, although marketing to children through the Internet and social media have increased rapidly the last years. Sweden and Norway are two of few countries that have taken legislative measures to prohibit advertising to children on television.

3.6 International regulation of food industry

World Health Organization has been working on the issue of food marketing over several years. Their *Global Strategy on diet, physical activity and health* and reports on the marketing of foods to children (World Health Organization, 2004a) led to the development of the *WHO European Action Network on reducing marketing pressure on children*, led by Norway. Since the establishment in 2008, 28 countries have become members and are now working together to find ways to reduce the marketing pressure on children of energy-dense, micronutrient-poor foods and non-alcoholic beverages. A set of recommendations on marketing of food and non-alcoholic beverages to children has been developed with the purpose to support member countries in developing new policies or strengthen existing policies to achieve the goal of reducing the effects of marketing of "unhealthy" food and drinks to children. The WHO has also developed a nutrient profile model for use and adaption by Member States. This is based on the Danish and Norwegian nutrient profile models, and is specifically designed to help governments to classify food and drinks based on fat (saturated and trans), salt and added sugar content. Nutrient profiling is one mechanism that Member States can use in implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children (World Health Organization, 2010b). The profile intends to restrict the marketing of foods to children, with maximum limits on nutrients.

In Europe a major effort has been made to focus on marketing of healthier products or to remove the ads completely from children's television time. The European Union Pledge (European Union, 2015) is a voluntary initiative led by companies. It consists of leading companies in the food and beverage industry. The pledge member covers over 80 % of the total food marketing expenditure in the EU. The aim for the initiative is to reduce the marketing pressure towards children in EU under the age of 12. That includes no marketing of foods and non-alcoholic beverages through television, print and Internet, unless it fulfils certain criteria of nutrients. For the sixth year running the last report shows a downward trend in marketing of foods and non-alcoholic beverages towards children, especially through TV. The reduction in children's exposure to advertising for products that do not

meet nutrition criteria through children's programmes has reduced by 35 % (European Pledge, 2016).

3.7 The Norwegian context

The Norwegian government has placed restrictions on all broadcast advertising to children through legislation in Norway (Kringkastingsloven, 1994). This includes advertising related to children's programs, but also advertising which specifically target children through television.

In December 2005 EU published a Green Paper, Promoting Healthy Diets and Physical Activity, (European Commission, 2005), which suggested a more restrictive marketing practice, with focus on CSR, to reduce the increasing number of obese children. In response to this the Norwegian Consumer Council took initiative and developed voluntary guidelines of marketing of unhealthy products to children to the industry (Regjeringen, 2009). This was also in response to the National Action Plan on Nutrition¹⁰ where the prevention of marketing of unhealthy products towards children was one of the goals to achieve (Regjeringen, 2007).

3.7.1 Legislation on marketing in Norway

The legal framework of marketing consists of five national laws that regulate certain aspects of marketing to children in Norway. The following laws defines children as persons under the age of 18 years.

1. The Broadcasting Act¹¹
2. The Marketing control act¹²
3. The Food Act¹³
4. The Education Act¹⁴
5. The Independent Schools Act¹⁵

Norway have signed the Convention on the Rights of the Child, and by that incorporated it in Norwegian law. ICESCR are applying as Norwegian law to the extent that they are binding to Norway. A scope of the Norwegian legislation, including the international treaties, is presented in Table 2.

¹⁰ Nasjonal Handlingsplan for ernæring, 2007

¹¹ Kringkastingsloven, 1992

¹² Markedføringsloven, 2009

¹³ Matloven, 2004

¹⁴ Opplæringslova, 1998

¹⁵ Privatskolelova, 2003

Table 2 The scope of regulation and legislation in Norway

	§/art	Scope of regulation
Broadcasting Act	§ 3.1	Advertisements sent in connection with children’s programs or advertisements that specifically target children in broadcasting (TV and radio) are not allowed.
	§ 3.3	No forms of hidden advertising or other forms of hidden marketing to appear in television or audio-visual booking services.
	§ 3.6	Product placement in programs that are specifically aimed at children’s is not allowed.
Marketing Act	All	All provisions of the Act should be more strictly enforced if children and adolescents are target group.
	§ 2	Marketing must not be contrary to good marketing practice. When assessing the emphasis is on the marketing offends general ethical and moral beliefs, or whether it be offensive means.
	§ 3	All marketing shall be designed and presented so it clearly emerges as marketing – Especially regarding children
	§ 6-9	Unfair marketing practices are prohibited. Marketing is always regarded as unfair and therefore prohibited under § 6 if it is misleading § 7 or 8 or aggressive § 9, and likely to influence consumers to make an economic decision as otherwise would not have been hit.
	§ 19	When a commercial practice is directed at children, or may be seen or heard by children, particular care shall be exercised with regard to the impressionability, lack of experience and natural credulity of children (age, development and other factors that make children particularly vulnerable should be considered in the assessment)
	§ 20	In the assessment of whether a commercial practice is unfair pursuant to section 6, emphasis shall be given to whether the commercial practice is directed especially at children. Emphasis shall be given to whether the practice, by virtue of its nature or the product, is likely to influence children, and to whether the trader can be expected to foresee the particular vulnerability of children to the practice. It is prohibited to include in advertising direct exhortations to children to purchase advertised products or to persuade their parents or other adults to buy the advertised products for them.
Food Act	§ 10	Labelling, presentation, advertising and marketing must be correct, give the recipient adequate information and is not likely to mislead.
	§ 9.6	Taking place on school areas and is considered likely to create a commercial pressure or greatly influence attitudes, behaviour and values on children
Education Act	§ 7.1	a) Taking place on school areas and is considered likely to create a commercial pressure or greatly influence attitudes, behaviour and values on children
Independent	Art 3.1	In 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.

	Art 3.3	States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established
	Art 6.1	States Parties recognize that every child has the inherent right to life.
	Art. 6.2	States Parties shall ensure to the maximum extent possible the survival and development of the child.
	Art 17e	Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being
	Art 24	States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.
	Art 27.3	States take appropriate measures to assist parents and other responsible for the child. Especially regard to i.a. nutrition.
ICESCR	Art. 11	Art. 11 Right to adequate food
	Art 12	Art. 12 Right to enjoyment of the highest attainable standard of health

3.7.2 The Food and Drink Industry Professional Practices Committee

The Norwegian government was involved in development of the WHO Set of Recommendations. After its adoption by WHA in 2010, Norway conducted national hearings to determine whether it was possible implement a ban on the marketing of unhealthy foods aimed at children and youth. The bill received broad support from health agencies and NGOs, but met strong resistance from the food industry. As a response to the pressure from the Norwegian authorities on the regulation of marketing, the industry accepted to develop a self-regulation system for marketing of food to children. The Food and Drink Industry Professional Practices Committee, further referred to as MFU (Matbransjens Faglige Utvalg) was established in 2013. It serves as a secretariat which deal with complaints and violations of the guidelines on the marketing of unhealthy foods to children and adolescents (Matbransjens Faglige Utvalg [MFU], n.d.). The Committee is owned¹⁶ by Virke, Annonsørforeningen og Næringslivets Handelsorganisasjon. Together with the industry, MFU has developed a code, with accompanying Guidelines to regulate marketing of food and drinks to children (Matbransjens Faglige Utvalg, n.d.). The *Code of marketing of food and drinks aimed at children*¹⁷ (Appendix 1) reflects MFU's recommendations, which comprise the marketing strategies used to promote the product (not type of product or packaging). The guidelines have been indicative from 1. august 2013 and binding from 01. January 2014.

¹⁶ ANFO, VIRKE and NHO are responsible for ensuring the proper working of the scheme. They provide the financial means for the scheme.

¹⁷ Further referred to as the *Norwegian Code*

To support the marketing restrictions a nutrient profile model was developed by the Norwegian government and adapted by industry with minor changes for voluntary restrictions. The model outlines nutrient threshold for different categories, which are used to identify foods that should not be marketed to children. Additionally, the model prohibits marketing of foods that fall under specific categories (e.g. cakes/sweets).

3.7.3 The effect of marketing to children

Research (Jenkin, Madhvani, Signal, & Bowers, 2014; Winpenny, Marteau, & Nolte, 2014) has shown that children have more difficulties to understand what marketing is and what its purpose consists in, as well as to recognize the marketing and be able to distinguish this from other content. Their susceptibility and lack of experience makes them vulnerable to various means and forms of marketing, and therefore have a greater need for protection against the marketing pressures and influences than adults. Studies show that children already at age 11 can understand, to some extent, the purpose of advertising and marketing. A systematic review of the evidence of the effect of marketing for food directed at children, shows that marketing can affect children's food preferences, food choices and brand loyalty (Cairns, Angus, Hastings, & Caraher, 2013).

4 Methodology

Research areas

The study investigates two different research areas (RA) linked to the research questions:

RA.1 Compare law and regulations in Norway with international standards on food marketing to children

RA.2 Compare the human rights instruments and its principles with the Norwegian Code

Research area 1 is linked to objective 1 and aims to determine if the Norwegian policy on marketing of FNAB to children followed the WHO recommendations and framework on marketing of foods and non-alcoholic beverages to children.

Research area 2 is linked to objective 2 and aims to see if the Norwegian Code was in compliance with the selected human right principles in theory and practice. This research area was explored through two different data collection methods, which will be elucidated further in the following section.

4.1 Data collection methods

The devised research questions required a general overview of the current legislation and regulation on marketing to children in general and of FNAB, both nationally and internationally. The questions also required a deeper and more qualitative understanding to assess how Norway is complying with these issues in practice. In line with this, data was collected through primary and secondary sources, respectively through semi-structured interviews and relevant literature.

4.1.1 Secondary data collection

The secondary data used in this study were derived from relevant literature and databases to the research areas.

Research area 1 compared national policy documents and legislation relevant for the marketing regulation of FNAB towards children in Norway with the international standards on the marketing of FNAB to children. Research area 2 compared the human right instruments with the Norwegian Code.

Data on the Norwegian legislation and regulation applicable to protect children from marketing were identified and retrieved through from the databases of Lovdata, Regjeringen and MFU. The international standards on marketing of FNAB to children were identified and retrieved from the WHO global database.

4.1.2 Primary data collection

Interviews

Primary sources of data were collected from interviews with key informants related to the subject. The interviews had a semi-structured approach, with use of an interview guide that allowed flexibility and fluidity in the topics to be covered. The guide was based on the findings of the literature review of RA2; questions and themes were based on the framework used in the literature study and the analysis of the principles. The two tools Human right indicators and FAO methodological toolbox also added value to the interview guide.

An interview guide contains topics and key questions that are based on the study's objectives (Dalen, 2011). The interview guide was developed with the aim of enlighten the research objectives in the best possible way, with representatives from authorities, civil society and business. The guide was prepared in regard to the themes' order. There was room for the informant to come up with topics that were not part of the original interview guide. The Interview Guide contained three main parts (Appendix 2).

The aim of this part was to see if the human right principles complied with the Norwegian Code in practice.

The informants

The informants were selected by what Bryman (2012) calls a “purposive sampling”. The sample was not representative, but strategically put together to elucidate the research questions in best way possible. The informants represented three different sectors of society, where three actors of each sector were contacted:

Health Authorities: Norwegian Directorate of Health¹⁸, the Norwegian consumer ombudsman¹⁹ and SIFO

Civil society: Consumer Council²⁰, Diabetesforbundet, and the Norwegian Cancer Society²¹

Business: Coca Cola, Norgesgruppen and Matbransjens Faglige Utvalg

One actor from the health authorities were interviewed and two actors from the civil society and two from the business sector. For confidential reasons, they are not mentioned directly, just referred to through the different sectors.

¹⁸ Helsedirektoratet

¹⁹ Forbrukerombudet

²⁰ Forbrukerrådet

²¹ Kreftforeningen


The informants were asked to consent the use of voice recorder during interviews and had the right to withdrawal anytime.


4.2 Data analysis

Document analysis is used as research method for research area 1 and 2 in this study, This is a systematic procedure for reviewing or evaluating documents (Bryman, 2012). Like other analytical methods in qualitative research, such analysis requires that data is examined and interpreted in order to obtain meaning, gain understanding and develop empirical knowledge (Corbin & Strauss, 2008). There are different types of document analysis and content analysis is one of the approaches to use. The approach was used for arranging data into categories related to the research questions. Content analysis has been defined as a “systematic, replicable technique for compressing many words of text into fewer content categories based on explicit rules of coding” (Weber, 1990).

To analyse documents of research area 1 and 2, the content analysis was used in a simple approach, with the purpose to compare the documents, and reveal similarities and differences across the information.

Table 3 presents the identified documents of relevance to the thesis, categorised in colours referring to their relevant area of expertise.

 The documents outlined in red are the human rights instruments relevant to health, food and marketing to children.

 The documents marked in blue are the identified international standards on marketing of Food and Non-alcoholic Beverages to children.


 The documents in green represent the Norwegian legislation and regulation applicable to protect children from marketing.

Table 3 Identified documents

Short name	Full name	Coverage	Year	Legal Status	Organisation
UDHR	Universal Declaration of Human rights	Global	1948	Declaration	UN
ICESCR*	International Covenant on Economic, Social and Cultural Rights	Global	1966	Covenant	UN
CRC*	Convention on the Rights of the Child	Global	1989	Convention	UN
ECHR	European Convention on Human Rights	Europe	1950	Convention	COE
GC 12	General Comment 12 – right to food	Global	1999	General comment	UN (CESCR)
GC 14**	General Comment 14 – right to health	Global	2000	General comment	UN (CESCR)

GC 15**	General Comment 15 – right to health	Global	2013	General Comment	UN (CRC)
GC 16	General Comment 16 – State obligations on the impact of the business sector	Global	2013	General Comment	UN (CRC)
VG	Voluntary Guidelines to support the progressive realization of the right to adequate food	Global	2005	Guideline	FAO
SoR	Set of Recommendations on Marketing of Food and Beverages to Children	Global	2010	Recommendation	WHO
FSoR	Framework for implementing the set of recommendations on Marketing of Food and Beverages to children	Global	2012	Framework	WHO
ENP	European Nutrient Profile Model	Europe	2015	Model	WHO
Norwegian Code	The Code on Marketing Food and Drinks to Children	Norway	2007	Guideline	MFU
Marketing Act	The Marketing Act	Norway	2009	Law	Norwegian government
Broadcasting Act	The Broadcasting Act	Norway	1992	Law	Norwegian government
Food Act	The Food Act	Norway	2003	Law	Norwegian government
Education Act	The Education Act	Norway	1998	Law	Norwegian government
Independent Schools Act	The Independent Schools Act	Norway	2003	Law	Norwegian government

* ICESCR and CRC are also a part of the Norwegian legislation, as they are ratified and incorporated in Norwegian law.

** GC 14 and 15, are both focusing on the right to health, but interprets different provisions in different human right treaties. The GC 14 addresses art. 12 in ICESCR. The GC 15 addresses art. 24 in CRC.

4.2.1 Research area 1

Document analysis

The analysis of RA1 consisted of comparing the scope of the Norwegian legislation and regulation on marketing of FNAB to children with the WHO recommendations on the subject. After identifying documents of relevance a simple content analysis of the Norwegian legislation was conducted. This clarifies what Norwegian law covered and not covered, in terms of general marketing to children and marketing of FNAB to children.

Each of the WHO recommendations were thoroughly assessed to which extent there was compliance by the Norwegian legal framework. The degree of compliance was categorized in: *compliance*, *partial compliance* and *non-compliance*.

Table 4 Level of compliance

Compliance	The recommendation was considered to be fully reflected in the Norwegian legislation and the Norwegian code
Partial compliance	The recommendation was partial reflected in the Norwegian legislation and the Norwegian code
Non-compliance	The recommendation was little or not at all reflected in the Norwegian legislation and the Norwegian code.

4.2.2 Research area 2

Document analysis

Hard law- and soft law documents with relevance to the human right principles were identified and retrieved from the treating bodies of OHCHR.²² The Norwegian Code and nutrient profile were retrieved through MFUs webpage.

The analysis of the documents in research area 2 involved finding, selecting and organizing data through literature reviews. Key findings from the reviews were organized into core values that each reflected one of the human rights principles. Based on the core values that were identified through literature review, key questions were developed as a “check-list” to assess if the principles were implemented in the Code. Two relevant tools were used to add value to the questions; The Human Rights Indicators and the FAO methodological toolbox (FAO, 2009). These are important tools in protecting and promoting human rights. They can be used of governments, treaty bodies or NGOs in monitoring progress made by states regarding their implementation and level of fulfilling their human rights obligations. The indicators are especially helpful in monitoring the outcomes of programs implemented, but can also be used as a tool to monitor the different stages of development processes and to measuring human rights. The indicators and the toolbox were systematically used to identify and develop the questions needed to assess the compliance of the human rights principles

²² Office on the High Commissioner of Human Rights, with the monitoring bodies of ICESCR and CRC.

in the Norwegian Code. The complete list of core values and key questions are presented in appendix 3.

Table 5 presents the questions that were used to assess the level of compliance of the principles in the Norwegian Code.

Table 5 Key questions in assessing the principles

<i>Principle</i>	Key questions
Participation	<p>Were right holders or their representatives consulted during the design or the implementation of the Code?</p> <p>Were authorities consulted during the design and the implementation of the Code?</p> <p>Were right holders consulted during the design and the implementation of the code?</p> <p>Does the Code allow stake holders to take part in important decision-making processes?</p> <p>Can right holders report directly to the MFU-council?</p> <p>Can representatives report violations on behalf of the right holders?</p>
Accountability	<p>Violations of the code can be reported and explained for?</p> <p>If violating the Code, are there any remedies?</p> <p>Are the roles of rights-holders and duty-bearers clearly identified within the code?</p> <p>Does the code comply with the whole industry?</p> <p>Are key stakeholders involved in the process of handling the complaints?</p> <p>Is the Committee's composition in favour of the right holders?</p> <p>Are violations responded to and within a reasonable timeframe?</p>
Non-discrimination	<p>Is the system accessible to all, especially the most vulnerable or marginalized section of the population?</p> <p>Is the Code available in other languages except Norwegian?</p> <p>Does the code cover the whole target group?</p> <p>Is the code acceptable to all children irrespective of culture, sex or age?</p>
Transparency	<p>Are the decision-making processes transparent easy available and accessible?</p> <p>Is there transparency for how decisions are made?</p> <p>Is there information on what the Code aims to do?</p> <p>Are the processes and authorities responsible for designing the Code made known to the public?</p> <p>Is there a transparent and independent framework for monitoring and evaluation of the system?</p>
Rule of law	<p>Does the Code comply with the existing legislation on marketing of FNAB to children?</p> <p>Is there compliance of existing regulations/laws in the implementation of the code?</p> <p>Does the policy design include ways by which violations of the law are to be reported, and reported violations are to be processed?</p> <p>Are there any forms of sanctions or punishment if violating the regulations?</p>

Analysis of interviews

A content analysis strategy was also used to analyse the interviews. As the interviews were conducted the audio-material was transcribed from spoken to written language.

Analysis and interpretation of interviews is an ongoing process that occurs during both the interview, and the subsequent work with the interview data material. The transcripts of the interviews were conducted in parallel with the data collection during the period February 2016 to May 2016. The interviewer first heard each interview in full-length before starting the transcription process. The aim was to transcribe immediately after each interview. This is recommended, as the researcher has the opportunity to re-experience the interview situation and evaluate and learn from own practice (Kvale, 2015).

The transcription of one interview took up to 22 hours. This made it too comprehensive to complete the interviews before the next was to be conducted. The transcription was therefore carried out over a two-months period. The Microsoft Office program Word was used for transcribing the interviews. When transcribing raw data, one tried to interpret the audio files as literal as possible. Each interview took between 18-22 hours to transcribe.

The five interviews were transcribed literally by the author. The result was 74 pages and forms the basis for the analysis in part three.

The goal of the content analysis was to generate theory from the range of the participants experience (Bryman, 2012), in this case generate theory from the participants experience on the Norwegian regulation of marketing of foods and non-alcoholic beverages towards children, especially the case of MFU. On this basis meaning categorization and coding were used as an analytical method. This involves that the interview is coded into categories that are prepared on advance or that arises during the analysis (Kvale, 2015). In this matter, five categories were prepared in advance, based on the five human right principles presented in table 1; participation, accountability, non-discrimination, transparency and rule of law. Microsoft Office Excel was used as program to organize the transcripts to the data material in to these five categories. During the analysis, further sub categories were added. The analysis had a theme-based approach where the data gathered on each subject were compared to get a deeper understanding of each category (Kvale, 2015).

Ethical considerations

In line with Norwegian law, the Regional Ethical Committee approved the study in advance of the data collection (appendix 3). Participants were given written and oral information, and a written

inform consent was obtained for participation. All participants agreed to have their interview recorded, and had the right to withdraw at all times. All five participants completed their interviews, and were assured that their confidentiality *was assured during data collection, handling and reporting of the data.*

5 Results

This study has identified and explored national policy, legislation, relevant for ensuring the children's human rights, and used Human Rights standards to analyze the recognition of the human right principles in national policy, legislation and the self-regulatory system.

This chapter present the results of this study. They are presented in line with the research questions described in chapter 2.

5.1 Norwegian legislation vs the human rights standards

5.1.1 Legal and regulatory framework on marketing in Norway

As presented in table 2, five laws, two human rights treaties and a self-regulatory code apply to the advertising and promotion of food and non-alcoholic beverages to children. None of the laws are, however, designed specifically to regulate the marketing of food and non-alcoholic beverages targeted at children and youth.

The complete scope of the regulation is presented in table 2, but according to the presented laws and regulations marketing to children is allowed unless the marketing is:

- Sent in advertisements specifically targeting children, or in connection with children's programs in broadcasting
- Placed on pages of tele-text services targeting children
- Contrary to good marketing practices aimed at children
- Unfair to children, due to the use of instruments or because it's misleading, aggressive or covert.
- Directly encourage or persuade children to purchase a product
- Take place on school areas and is considered likely to create a commercial pressure or greatly influence attitudes, behaviour and values on children

The key findings of what the regulations allow is:

- Marketing, including co-branding, competitions and Promotional Gifts, shock merchants and taste samples of unhealthy FNAB handed out to children in shops.

- Ads for unhealthy FNAB in comic books and magazines for children and youth
- Marketing of unhealthy FNAB directed to children in public places, including on boards and posters
- Marketing of unhealthy FNAB directed to children on the Internet (YouTube, Facebook)
- Advertisements for unhealthy FNAB sent in Norwegian broadcasting in relation to family programs, such as X-Factor, Idol, Norwegian Talents, etc.

5.1.2 International standards on marketing of FNAB to children and their compliance in the Norwegian legislation and regulation

The majority of the WHO recommendations on the marketing of food to children (WHO, 2010) can be identified in the Norwegian legislation and especially in the Norwegian code. However, there are gaps in terms of coverage of each recommendation. The analysis shows that the Norwegian legislation and regulation is consistently more tolerant of marketing to children than the international standards. These inconsistencies are elaborated further in the next section. Table 6 provides a summary of the author's analysis of the recommendations (WHO, 2012) and their compliance in the Norwegian policy documents. Each recommendation is further elaborated in the next section.

Table 6 Compliance of the WHO Set of Recommendations

Recommendations		Present in legislation or regulation	Coverage
1	Reduce impact on children of marketing of food high in FSS	Broadcasting Act Marketing Act Schools Act The Code	Partial
2	Reduce exposure and power of marketing of food.	The Code	Partial
3	Consider different approaches to reduce marketing	Marketing Act Broadcasting Act Independent Schools Act Education Act	Partial
4	Set clear definitions	Marketing Act Broadcasting Act Independent Schools Act Education Act The Code	Partial
5	Food marketing free environment for children	Education Act Independent schools act	Partial
6	Governments should be the key stakeholders in the development of policy		Partial
7	Consider the most effective approach to reduce marketing	MFU	Partial

8	Put in place the means necessary to reduce the impact of cross- border marketing	Broadcasting Act MFU	Partial
9	Specify enforcement mechanisms in the policy FW	Marketing Act Broadcasting Act MFU	YES
10	All Policy FW should include a monitoring system		NO
11	All policy FW should include a evaluation system		NO
12	Member States are encouraged to identify existing information on the extent, nature and effects of food marketing to children in their country		NO

Recommendation 1 – partial compliance

1. The policy aim should be to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.

This recommendation specifies that the overall aim of the policy should be to reduce the impact on children of marketing high in FSS. The Norwegian Action Plan on Nutrition from 2007-2010 had reducing the impact on children of marketing as one objective to reach (Departementene, 2007a). Since then, a proposal for new statutory regulation has been submitted and declined, and a voluntary industry code has been submitted for a two-year trial, ending with an evaluation in 2015²³. Today there is no law that specific ban marketing of foods, but the Norwegian Code aim to regulate the marketing of food to children by classifying foods with significant amounts of nutrients that could have a negative impact on health or weight. The recommendation specifies further that Member States can “*choose to distinguish and classify foods in several ways. For example by using national dietary guidelines, definitions set by scientific bodies or by using nutrient profile models.*” MFU has established a nutrient profile with the purpose to supplement and strengthen existing laws and contribute to a good and responsible marketing practice, which includes a reduction of *marketing of foods high in saturated fats, trans fatty acids, free sugars or salt.*

Recommendation 2 – partial compliance

Given that the effectiveness of marketing is a function of exposure and power, the overall policy objective should be to reduce both the exposure of children to, and power of, marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.

²³ The evaluation of the self-regulation scheme is still not published

The WHO recommendations suggest a regulation of the exposure and power of marketing to children. Exposure in terms of reach and frequency of marketing, and power in the extent of creative content, design and execution of marketing message. The legislative framework in Norway regulates the broadcast exposure of marketing to children through the Broadcasting Act. The Marketing Act regulates direct marketing and marketing of unfair commercial practices to children. In accord with the recommendations it is established clear definitions of duty bearers and right holders through the Norwegian legislation and the Norwegian Code. Duty bearers are defined as the businesses, and right holders as children under the age of 13.

Policy Development

Recommendation 3 – partial compliance

To achieve the policy aim and objective, Member States should consider different approaches to reduce marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt, to children.

This recommendation distinguishes between two different approaches, stepwise and comprehensive. A comprehensive approach to marketing can be to restrict all marketing of FNAB high in fat, sugar and salt by law. This is considered to have the highest potential to achieve the desired policy impact (WHO, 2012). Both approaches are present in the Norwegian regulation of marketing to children. Any commercial products marketed to children in the broadcast media, are prohibited in Norway through the Broadcasting Act. However, these bans only apply to broadcasts originating in Norway, not broadcasting across borders. Through a stepwise approach the Norwegian Code serves to regulate marketing for children under a specific age, for specific designed products and through use of specific marketing techniques.

The WHO further recommends to progressively adding actions to build stronger protection of the stepwise approach. The Norwegian Code has not been revised since the implementation.

Recommendation 4 – partial compliance

“Governments should set clear definitions for the key components of the policy process ... Important definitions include the age group for which restrictions shall apply, the communication channels, settings and marketing techniques to be covered, what constitutes marketing to children according to factors such as product, timing, viewing audience, placement and content of the marketing message, as well as what foods are to be covered by marketing restrictions”

All the definitions mentioned above are outlined through the Norwegian legislation or the Norwegian Code. Table 7 presents the most significant similarities and differences, and which laws

or code that regulates the recommendation. Each definition is further elaborated throughout the section.

Table 7 Coverage of definitions recommendation 4

<i>Definition</i>	<i>Set of recommendations</i>	<i>Covered</i>	<i>Law/regulation</i>
Settings where children gather	Schools & School grounds	✓	Education Act & Independent schools act Marketing Act
	Nurseries	X	
	Playgrounds	X	
	Family and child clinics	X	
	Paediatric services	X	
	Sporting activities	X	
	Cultural activities	X	
Age of regulation	< 18 years	< 13 years	The Code
		13-18 y	
Marketing techniques	TV and radio	X	Broadcasting Act
	Sponsorships TV	✓	Broadcasting Act
	Product placement	✓	Broadcasting Act
	Print media	✓	Marketing Act, The Code
	Product design &	X	
	Packaging design	X	
	Shelf placement	X	
	Sponsors general	X	

Coverage of definitions

Children

The Recommendations do not cover a specific age group, but allows Member States to make the decision of what age group should be protected from the impact of marketing of FNAB. In article 1 of the United Nations Convention on the Rights of the Child, a child is defined as a person below 18 years of age, unless the relevant laws recognize an earlier age of majority (United Nations General Assembly, 1989). The Norwegian government defines a child as a person below the age of 18, but in specific assessments, like marketing to children, will the minor's age and development be

emphasized. The Norwegian Code on marketing of food and beverages towards children defines "children" as persons less than 12 years, and "youth" between 13 and 15 years²⁴.

Communication channels

The Broadcasting Act prohibit "advertisements sent in connection with children's programs or advertisements specifically aimed at children". There are still marketing activities that fall outside what this law defines as broadcasting. One example is so-called "user-initiated" or "interactive" services where the user chooses the time of viewing the broadcast. This comprises many broadcasts downloaded over the Internet.

Marketing techniques

The Norwegian legislation and Code include many of the marketing techniques the WHO presents as marketing with particular impact on children. Marketing through TV, radio, product placement and sponsorships in broadcasting are regulated. Marketing techniques as packaging design, shelf placement and sponsorships (which only involves the use of sponsors name/trademark) are not regulated through the Norwegian regulations. Two of the most contentious techniques are packaging design and point of sale/placement,

Packaging design

Section 2 of the Guidelines in the Norwegian Code states explicitly "these are not considered marketing: (1) the product, including packaging and (2) general presentation of products at retail outlets." According to the guidelines pct. 4 MFU's assessment depends on if the marketing specifically targets children, there should be given an overall assessment in which the following are emphasized:

To what extent the medium used appeals especially to children

To what extent the instruments used especially appeals to children

To what extent the products appeal especially to children

It is not set any limit on the size, colour or design in the recommended guidelines of MFU. In other words, there are opportunities to design products that are especially aimed at children, but it's the way marketing is done that will determine whether it is affected by the guidelines.

Point of sale/ordinary display

²⁴ The Code does not cover youth from 13-15 years, but the business is encouraged to show caution to this group.

Section 2b, exempts ordinary product display at the point of sale from “the definition of “marketing”, which will thus not be affected by the Code. Ordinary display includes shelf placement and rental of floor space for display of goods.”

Nutrients

The Nutrition Profile (NP) provides a means of differentiating between foods and non-alcoholic beverages (FNAB) that are more likely to be part of a healthy diet from those that are less likely. E.g foods that may contribute to excess consumption of energy, saturated fats, trans fat, sugar or salt. WHO have developed a nutrition profile model based on the existing Norwegian and Danish profile models on nutrition (WHO, 2013). The model categorises food and drinks into categories ranging from zero restrictions on marketing to total bans.

The NP developed by WHO include seven additional food-groups opposed to the Norwegian NP (NNP). In the NNP maximum limits of certain nutrients are higher in four food groups and three food groups lack limits on fats. There are several important differences between the Norwegian nutrient profile and the one developed by WHO. The WHO-model includes seven additional food categories with restrictions opposed to the NNP. Food groups like flavoured water, cheese, butter, fat, oils, sauces, dips and dressing are some of the food groups that are excluded in the Norwegian nutrition profile and are not subject to the Norwegian code.

In the NNP maximum limits of certain nutrients are higher in four food groups and three food groups lack limits on fats. The complete nutrient profiles are compared and presented in appendix 5.

Recommendation 5 - partial compliance

Settings where children gather include, but are not limited to, nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services, and during any sporting and cultural activities that are held on these premises.

The Education Act and The Independent Schools Act provides the opportunity to prohibit or prevent marketing of FNAB to children, provided that it takes place in school and is suitable for creating a commercial pressure it specifically prohibits marketing to children at schools, including marketing of FNAB. The legislation does not however, regulate sporting and cultural activities, which is proved to be two big and relevant arenas of exposure for children (WHO, 2010).

The Education Act and the Independent Schools Act provides the opportunity to forbid marketing of unhealthy FNAB to children, provided it take place in school and is likely to create a commercial pressure or greatly influence attitude, behaviour and values among children. There are several examples of marketing activities that that are likely to create a commercial pressure on children and

youth. Sporting and cultural activities, are proved to be two big and relevant arenas of exposure for children, and are not covered by these laws.

Recommendation 6 – partial compliance

Governments should be the key stakeholders in the development of policy and provide leadership, through a multi-stakeholder platform, for implementation, monitoring and evaluation. In setting the national policy framework, governments may choose to allocate defined roles to other stakeholders, while protecting the public interest and avoiding conflict of interest.

Policy on food marketing to children involves a wide range of stakeholders. WHO recommends that Member States ensure political consensus across the government and include the private sector and NGOs in the process of developing the guidelines. The Norwegian self-regulation has in line with this been established through collaboration between the industry and the Norwegian government. In addition, several relevant ministries, NGOs and actors¹⁴ of the private sector have given a statement throughout the process. The WHO further specifies that there should be widespread communication of the policy to all stakeholder groups. This includes; private sector, civil society, NGO's, media, parents and the wider community. There is not found any trace of communication from the MFU specifically aiming parents and the wider community in general.

Policy implementation

Recommendation 7 – partial compliance

Considering resources, benefits and burdens of all stakeholders involved, Member States should consider the most effective approach to reduce marketing to children of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Any approach selected should be set within a framework developed.

The Recommendations do not determine how policies developed by governments at national level should be implemented. Recommendation 7 only requires that implementation should be “set within a framework developed to achieve the policy objective”. This recommendation distinguishes between two regulatory approaches, statutory regulations and government-led self-regulation. The MFU and the Norwegian Code is an example of government-led self-regulation. The Norwegian government has agreed and approved the overall framework of the self-regulation (nutrient profile, policies, guidance), but the private sector leads the implementation and monitoring process.

Recommendation 8 – partial compliance

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

This include that member states should ensure that the restrictions also apply to marketing originating from their territory and reaching other countries. Cross-border marketing, marketing from other countries, are difficult to regulate and today there are no laws or restrictions that regulates this, other than the ones that applies to marketing in general. The Framework for implementing the set of recommendations offers some guidance as to how government might act. It refers to the needs of addressing cross-border marketing and to co-operate between Member States to agree on minimum standards. Particularly relevant to Norway is the Scandinavian countries and their national obligations on marketing regulations to children. Sweden has the same regulation as Norway regarding advertising in television broadcast to children under the age of 12 (WHO, 2012) and Denmark has adopted a similar body as the MFU to regulate marketing through complaints and conversations with the industry. (WHO, 2012).

Recommendation 9 – compliance

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

WHO considers that for an effective implementation of policies governments should insist that results on submitted complaints are published, that there are good opportunities for multiple parties to complain about the marketing and that the complaint process is transparent. The regulatory organ, MFU, serves as a system for reporting complaints on unacceptable marketing to children. The framework includes clear definitions of sanctions, although the sanctions are only affecting the stakeholder's reputation.

Policy monitoring

Recommendation 10 – no compliance

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

The WHO recommends that a stepwise approach to regulation should implement several initiatives underway to build a stronger protection. The guidelines in the self-regulation system has not been changed since their introduction.

Recommendation 11 – no compliance

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

The framework does not include a system to evaluate the impact and effectiveness of the policy. The Norwegian government announced an evaluation of the system the autumn 2015, but has not yet published a review.

Research

Recommendation 12 – no compliance

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

WHO recommends that monitoring and evaluation should be comprehensive. The monitoring and further research should include changes in child and adolescent diet pattern, weight status, attitudes to marketing and marketing exposure. In addition, information from the industry including marketing techniques should be obtained. Several studies have surveyed weight development, nutrition, media use and attitudes towards advertising among children and adolescents in Norway before restrictions were imposed (NIPH, 2013; Media Authority, 2014; Health and Social Affairs, 2002). There was a survey on the scope of marketing of unhealthy products aimed at children and young people in 2013 (Bugge & Rysst, 2013). There was also a small survey ahead of the government's regulatory proposals which mapped various marketing techniques the industry self-reported that they used. Since 2013, there is little research on the subject and especially on the impact a self-regulation has on marketing of foods and non-alcoholic beverages to children.

Table 8 Summary of compliance

	<i>Adequate compliance</i>	<i>Partial compliance</i>	<i>Inadequate compliance</i>	<i>Total</i>
<i>Recommendations</i>	1	8	3	12

5.2 Human rights principles vs the Norwegian Code

Five principles of a Human Rights Based Approach were found applicable and of relevance to assess the Norwegian Code. The concept of the principles was derived from the human right instruments and standards (Table 3). Based on these documents the understanding of each principle was made. To illustrate and evaluate the presence of each key principle in the Norwegian Code, certain control questions (appendix 4) were developed. In this process the FAO methodological toolbox and UN Human Rights Indicators served as important tools, and added value to the control questions. The complete framework is presented in table 1. This chapter will present the assessment of each principle and its compliance separately.

Table 9 Overall compliance of human right principles

<i>Human right principle</i>	<i>Compliance with the Norwegian Code</i>
Participation	Partial
Accountability	Partial
Non-discrimination	Partial
Transparency	Partial
Rule of Law	Adequate

Participation

Table 10 Participation

Principle	Key questions	Compliance
Participation	Were right holders or their representatives consulted during the design or the implementation of the Code?	NO
	Were authorities consulted during the design and the implementation of the Code?	YES
	Were right holders consulted during the design and the implementation of the code?	YES
	Does the Code allow stake holders to take part in important decision-making processes?	PARTIAL
	Can right holders report directly to the MFU-council?	PARTIAL
	Can representatives report violations on behalf of the right holders?	YES

The right to participation was found in partial compliance with the Norwegian Code. Six questions were asked to assess the compliance.

Participation of right holders in each step of the programme is important and necessary to be in line with the human rights principles (United Nations, 2012). Through the design- or the implementing stage of the Norwegian Code, there are found no evidence that right holders, here children (or their parents) have been involved in developing the Norwegian Code. The literature review confirmed that industry (right holders) worked out the structure and code through close contact with the Ministry of Health and the Ministry of Children (Matbransjens Faglige Utvalg, 2009)

However, there are opportunities for the public to participate in the decision-making process, by reporting violations directly to the Committee, through MFUs webpage. This is recognized as one way to participate, but is only assessed to have partially compliance. Right holders can file a complaint through email or post, but as the right holders in this subject are children under the age of 13 (and maybe not aware of the violations) its relevant that parents are able to report violations on their behalf. The complaint system has no limitations regarding who is filling the complaint or how many complaints you file.

Accountability

Table 11 Accountability

<i>Principle</i>	<i>Key questions</i>	<i>Compliance</i>
Accountability	Violations of the code can be reported and explained for?	YES
	If violating the Code, are there any remedies?	PARTIAL
	Are the roles of rights-holders and duty-bearers clearly identified within the code?	YES
	Does the code comply with the whole industry?	NO
	Are key stakeholders involved in the process of handling the complaints?	PARTIAL
	Is the Committee's composition in favour of the right holders?	PARTIAL
	Are violations responded to and within a reasonable timeframe?	NO

Accountability from a human rights perspective, refers to the "relationship of Government policymakers, and other duty bearers to the right holders affected by their decisions and actions" (United Nations, 2015). The Norwegian Code were assessed out of six key elements of accountability, and were found in overall partial compliance with the principle.

The protection of human rights is dependent that policy makers, programme administrators and others are held accountable for their actions. A mechanism to meet this requirement in this matter is a mechanism to handle complaints, such as The MFU Committee. If a duty bearer is violating the

Norwegian Code, the decision and a following report will automatically be sent to NTB as a press release, a so called “name and shame”-sanction. This is the only known remedy a duty bearer receives if violating the Code and executes marketing of FNAB directly to children²⁵. The violation has no legal significance. The complaint system works by reporting alleged violations through the webpage of MFU. Either by emailing the Secretariat or sending a complaint by post. There are no other ways or other organs to report these violations that falls outside the scope of the Norwegian legislation (Kringkastingsloven, 2000; Markedsføringsloven, 2009).

An important factor for achieving accountability is that residents have access to information. The MFU website facilitates the ability to complain, as well as providing information on the self-regulation system. The Code clearly defines duty bearers as children under the age of 13. Duty bearers are defined as “food industry” and comprises both manufacturers and suppliers.

There organizations ANFO, Virke and NHO are the members of MFU. The companies are directly attached to the scheme through membership in the three organizations. This implies that not all companies are directly members of MFU, but still have the obligation to comply with the regulations. Although the guidelines are considered applicable to the entire industry, there are no guarantee or mechanism that the companies falling outside the membership of ANFO, Virke and NHO are aware of the Norwegian Code and its regulations.

The Committee consists of seven members from seven different organizations or companies. The Committees leader is a lawyer from UiO, four members are from the industry, one from the authorities and one from the public. One key stakeholder, authorities, are represented by a member from the Norwegian Directorate of health. The committee is approved by 5 members / deputies present and the decisions are made by an ordinary majority. One question to debate is if the composition of the committee is in favour of the right holders or not. The industry is represented with an overwhelming majority of members versus the authorities, four representatives vs one. Based on this, the aspects of key stakeholders and the Committee’s composition reaches partial compliance with the principle.

Regarding responsiveness, it’s difficult to decide the level of compliance without being subjective in the evaluation. There is no common standard for what is considered as an adequate response time for complaints. In this case the procedure after MFU receives a complaint is following: The accused part in the complaint is contacted with a right to reply within 14 days. The complaint is then taken up to assessment in the Committee. After reviewing existing complaints, the appeal time have been found to be up to three months long, depending on when the Committee’s next

²⁵ Types of marketing that are not covered through the legal framework, table 2.

meeting is scheduled. With a timeframe like that, the accused marketing will have the opportunity to affect many children before it may be removed. On that basis, the responsiveness in this matter is found inadequate and therefore found of no compliance of the principle accountability.

Non-discrimination

Table 12 Non-discrimination

<i>Principle</i>	<i>Key questions</i>	<i>Compliance</i>
Non-discrimination	Is the system accessible to all, especially the most vulnerable or marginalized section of the population?	PARTIAL
	Is the Code available in other languages except Norwegian?	YES
	Does the code cover the whole target group?	NO
	Is the code suitable to all children irrespective of religion, sex or age?	PARTIAL

The principle of non-discrimination is at the core of all human rights obligations (UNDHR, CESC, CRC, CCPR CERD, CEDAW, CRC). Four key questions were developed and asked to evaluate the presence of this principle in the Norwegian Code. The result was partial compliance.

The current complaint system is accessible to those who have a computer. The system has also made it possible to send complaints by post, but the only way to be informed of this organ is through the webpage of MFU. The system is regarded as partially accessible based on their minor efforts to make the network visible to its audience, and the lack of information on other platforms than their own website.

The complete code and guidelines are published in Norwegian, and a short version in English is also available. The committee also facilitates submission of complaints in English.

The Code and guidelines apply to marketing especially aimed at children under the age of 13. This is not in line with the age used in UN CRC article 1 (1989), the Marketing Act chapter 4 (2009) or the Broadcasting Act chapter 3 (1994) where a child is defined as a person under 18 years.

Research shows that children up to 18 years old, also are influenced by this type of marketing (Harris, J L; Heard, A; Schwartz, 2014; Scully et al., 2012). The Code's target group is therefore found too narrow and discriminating to those over the age of 13 years.

There are no evidence of discrimination regarding culture and sex. When it comes to suitability, the Code, guidelines and website are not found suitable to read or understand for all children under

13 years. Although the industry has revised its Code and guidelines²⁶ to make them more easy to understand by users, the language and presentation have still been assessed as complicated and not suited for the target group. Further, there are some limitations linked to young children’s ability to use the complaint system. The complainant must have a computer and an email-account to file a complaint through the website. This is not common for young children to have.

Transparency

Table 13 Transparency

<i>Principle</i>	<i>Key questions</i>	<i>Compliance</i>
Transparency	Are the decision-making processes transparent easy available and accessible?	PARTIAL
	Is there transparency for how decisions are made?	PARTIAL
	Is there information on what the Code aims to do?	YES
	Are the processes and authorities responsible for designing the Code made known to the public?	PARTIAL
	Is there a transparent and independent framework for monitoring and evaluation of the system?	NO

Transparency is one of the key element to the enjoyment of human rights. Five key questions were developed and asked to evaluate the presence of the principle transparency in the Norwegian Code. The principle was found of an overall partial compliance.

The concept of transparency is dependent on citizens knowing who, how and why decisions have been made. The MFU ensures that complaints and violations of the Code are made public available, which is a factor that improves the principle of transparency. Transparency is also closely linked to the principle of democracy, and by knowing who, how and why, there is possibilities for the civil society to influence Committee or Government action. Especially if it is perceived that the Committee does not meet their obligations.

Accessibility is regarded as one of the core values of transparency. The Code is public available and accessible to all, if you have a computer to access MFUs webpage. By having published the Code and guidelines the Committee shows transparency on how the Code works and what it aims to do.

The designing of the Code and guidelines were a closed process run by the Industry (Anfo, Virke and NHO) with close dialogue with the Ministry of Health and the Ministry of Children (Matbransjens Faglige Utvalg, 2009). Documents from hearings related to purposed legislation are

²⁶ The Code and guidelines were revised 1.9.16 (Matbransjens Faglige Utvalg, 2016)

available through government channels and confirms an open process both in advance of and during the decision-making process. This, however, does not appear clearly through the Code, the guidelines or the website of MFU. There is no statement of the dialogue with the governments or how the process was run. So even though there are proof the process has been transparent about who has contributed and what was done, the MFU has not been very transparent through their own channels.

Regarding monitoring and evaluation of the system there is not found a framework to evaluate. The Government planned an evaluation of the self-regulatory system fall 2016, but there is no evidence that this is done yet, neither in the government's pages or SIFO, which was the designated body to assess the system. Therefore, it's not possible to evaluate if the monitoring and the evaluation system has been transparent.

Rule of law

Table 14 Rule of law

<i>Principle</i>	<i>Key questions</i>	<i>Compliance</i>
Rule of law	Does the Code comply with the existing legislation on marketing of FNAB to children?	YES
	Is there compliance of existing regulations/laws in the implementation of the code?	YES
	Does the policy design include ways by which violations of the law are to be reported, and reported violations are to be processed?	YES
	Are there any forms of sanctions or punishment if violating the regulations?	YES

The principle rule of law was evaluated by four questions, and found of adequate compliance in the Norwegian Code.

The Code comply with existing legislation with the existing legislation on marketing of FNAB to children. It aims to supplement and amplify the existing legislation and to encourage good and responsible marketing practices. The Code contains both the Marketing Act and the Broadcasting Act. If violating the Code, sanctions will follow. The violation has no legal significance, but follows the principle of name and shame.

Although, there is a complaint system present, there is no new appeal instance, if you disagree on the outcome of the decision. It's only MFU. This might be the biggest difference between legislation and self-regulation, where you in law have possibilities to appeal the process.

5.3 Interviews

This section of Chapter 5 explains the participants' views and comments on the self-regulation system and the comments on the principles in response to the themes in the interview guide (see Appendix 2).

Five interviews from 3 sectors of society participated in this study. 1 were from the sector health authorities, two from the civil society and two from the business sector.

The findings are presented sector by sector, starting with the authorities, followed by civil society and the business sector. By presenting it in this way, it becomes easier to clearly see each sector individually, before opposing them to each other. The findings of each sector are presented in line with the five human right principles.

5.3.1 Authorities

In this study the authorities were only represented with one actor. All citations therefore represent the same actor.

Participation

Ways of participation and the possibilities within the self-regulatory system, were recognized by the respondent. The participant expressed that the scheme works to the extent that many have been convicted last year, but it has taken time before the response became at that level. At the same time, the Cancer Society has increased the number of complaints this year with its action, which may raise the impression of that the system is very accessible.

“Unlike similar arrangements in other countries, Norway’s is unique in the way that anyone can complain.”

Further the respondent expresses the potential within the system, and that regarding accessibility there is some steps that could be taken to do it even more accessible to others.

“We have been in dialogue with MFU regarding publicity around the system. We are aware of the difficulties for children to access this site, some civil society organizations have mentioned this a few times”

Accountability

The informant tells about their role in the process with implementing what first was set out to be a legislative regulation, and that ended up as a self-regulative system. There were multiple hearings, were multiple actors from the Norwegian government and authorities, as well as many participants

from the business sector and civil society. Their role was to be a consultative body in regards to the implementing plans of the guidelines.

“It was a tough process, and hard pressure from the business. Many calls were made from business to business, trying to avert the legislative regulation to happen. Some of the business people I know joked about the phone lines across the Atlantic, that they were glowing”.

The informant presented a view on the implementing process, that clearly pointed out the tension during the hearings.

“They [the industry] were terrified that Norway could go very far and that it would set the standard. ... So, I don't think that the Norwegian industry stakeholders have gone so intensely into action.”

Further, the informant speculated about the foreign interests of the consultation proposal.

It also looked like, when it was out for hearing, that there were many foreign companies that issued hearing responses”

The hearing responses are public available at the webpage of the Norwegian Government. It is interesting to see how many representatives there were from the industry. Not only Norwegian companies, but many big transnational companies. This testifies of a united industry, with a huge engagement and fear for losing control of the market.

Non-Discrimination

Regarding the age definition on a child. The authorities clearly stated that they follow the UN's definition of a child.

In our work on this, we have used and worked with definition set by the UN, which defines children under the age of 18.

Further, when asked about the MFU's definition of a child:

“The industry has been very good at arguing what is towards adults, what is towards youth. And that's why they managed to lower the age limit as much as they did and ... First it was 18, then 15, and then they landed on 13 years.”

Transparency

The respondent was clearly aware of Norway's reputation as a role model on this subject. Many other countries do not have a system like this, and even fewer gives the possibilities to complaint, were two of the reasons highlighted.

“In many ways, I think it [the Norwegian Code] is much better than what you see in many other countries, and the best part is that it is surprisingly transparent as it opens so everyone can complain, and the way they handle it [complaints] that everything is published”.

Rule of law

“One thing that we see as necessary to improve, is the publicity around the complaints that are felled. In PFU [Pressens Faglige Utvalg²⁷], that has a part of this model, it is much more than a press release, they have to publish an apology...”

Further on this topic the Authorities expresses the need for strengthening the sanctions when violating the Code. The current solution is regarded as to “quiet”. There is not necessarily need for legislation, but on question of a stricter punishment, the answer was yes..

5.3.2 Civil society:

The civil society interviews were represented by two active persons. Both working for relevant organizations, which have big interests in marketing of food and non-alcoholic beverages to children.

Participation

Both respondents represented actors that have filed complaints to the MFU due to what they considered as marketing that violates the self-regulation system. They had shared views on certain challenges:

“..and the website is not known for more than a fraction of the society. It would be interesting to see how many hits the website gets over a one-year period.”

“We have pointed out, among other things, that the web address is not very available, mfu.as. Nobody knows or would like to apply for it and that's not good.

They also react on how little marketing there is done to promote this page.

«They are quite anonymous in their role, in a way they expect us or other consumers to find out who they are, and how to file a complaint”

An aspect that were not thought of when measuring the compliance of participation in the Norwegian Code, where the participation of civil society organizations. Both the respondents mentioned their meetings with MFU.

²⁷ The Norwegian Press Complaints Commission

“We have had dialogue meetings. ... I don’t have the specific number of times we have met since MFU was established, but maybe once every 6 months?”

“We have invited them in to tell about the scheme, and to ask questions to how it works, what doesn’t work.”

The reasons for these meetings were to understand each other’s way of working, and to get answers on certain questions regarding the complaint procedures and some of the cases where it was considered not marketing to children.

The other respondent did not mentioned meetings with the Committee, but expressed their concerns on the lack of influence and power the civil society had in the decisions.

“There is only one representative from the civil society ... We’re always outnumbered by the industry in that matter. But that doesn’t really make a difference, because the flexibility in the guidelines that allows certain type of marketing to children.”

So even though the representative from the authorities doesn’t agree with the type of marketing, it’s the guidelines that are assessed, and taken into consideration when they decide whether the marketing practice are allowed or not, the respondent outlined.

“That is why the argument of having the authorities in the Committee not necessarily is a strength.”

Accountability

The one respondent

“and MFU have in some way done improvements. They have for example. They started publishing the complaints online. They made time schedules that showed when they had meetings, and then they also sent the press release about the complaint’s results.”

Vedrørende evalueringen av retningslinjene som skulle gjennomføres

«It’s good that the authorities will have an evaluation on the Code, it’s written in the state budget, for a while ago, when the system would be evaluated within two years, and that would be fall 2015”.

Availability

“It's in a way not good enough, because one way to make it available is that there will be an established system that people know. We have repeatedly asked what they do to market their system to the population.”

Non-discrimination

In line with the CRC and the other international human right standards, the respondents were united in the definition of a child, in regards to age.

“the definition of a child is simple, it’s under 18 years”

“ ...so it’s natural for us to use the same definition as the existing framework [the Marketing Act] with the purpose to protect children and young”

Transparency

Regarding the complaint system:

“The complaint system itself is not well suited for children and young people in that group. It's hard to understand the guidelines, the product list ...

Further the respondent notes that to file a complaint as a child, you’re dependent on an adult to help. First because there is difficult to interpret all the documents when you’re under 13 years, but also because there are not many children that have email addresses to use.

So, that's the way you're dependent on an adult. At the same time, there are some such technical challenges with the system itself.

Rule of law

From the civil society’s point of view the engagement especially seems to be in towards having a legislative regulation vs a self-regulation. One of respondents clearly questions the process on how and why it ended up with self-regulation.

“We have always meant that self-regulation is not really enough.”

“So, by doing very active lobbying, the industry managed to put the purposed “bill in the drawer”.”

Both respondent’s organizations were involved in the hearing rounds, and took initiative to help with the development of the guidelines when it was decided that it wouldn’t be legislative. The impression from both respondents is that their suggestions regarding the guidelines were adjusted so much that the guidelines in the end had so many loop-holes that it became weak.

“Now there are too many holes in the scheme, it is too weak. The guidelines themselves are too wide, and in the past, there was no system that followed up to check whether the companies followed the guidelines or not. That's what we and xxx fixed.”

Further the other respondent point out the difficulties with the Committees composition.

“Inside the MFU, there is also a different power distribution because you have some big, strong, heavy actors who maybe represents [in the selection] with lawyers and everything, while the others may represent with a single nutritionist or market person into MFU. In one way, it becomes one word against one others, right. When participating in meetings with the MFU, you can see that a loss can cost a smaller business big. But this is big actors, often multinational actors.”

The last topic that came up when talking about the rule of law, were around the possibility to appeal a decision. One of the respondents outsourced this as clearly negative, and in favor of the industry not the consumers.

“It’s clearly a weakness that there is no way to appeal the decisions made by the Committee. And that is probably because it is a voluntary justice system. But it is certainly a weakness for the consumers.”

5.3.3 Business sector

Business sector were represented by two highly relevant actors on this subject. Both with good experience on the process of implementing the Code, and how the scheme works today.

Participation

The business sector accentuate participation as a strength with the self-regulation system. They outline the possibility to be anonymous and the unique aspect that everyone can complain.

“Everyone can complain. Individuals, companies, you name it. And you can be anonymous or you can go public”.

Accountability

One of the respondents specifically points the structure of the Committee as a strength, and a way to ensure accountability.

“There is a strength that those who lead the Committee doesn’t have anything to do with the Industry. She is actually a civilian district court judge.”

Furthermore, the composition of the Committee is mentioned as a strength. That there is a mix of people with nutritional backgrounds, market backgrounds and people with legal background from the businesses. In addition, there is one representative from the authorities, currently from the Directorate of Health, and one from the public. Both the respondents from this sector claims it as strengthening of the system that the authorities and public have a role in the Committee.

On question about the dialogue with the authorities, both respondents give responses that they have had regularly contact. One of them have had more regularly meetings, and the other have had meetings with MFU and actors involved in the Committee and Health Department.

“Yes, we have, we have talked to them at least a couple of times a year. Through some meetings and then we have dialogue along the way.”

The other respondent claims little involvement.

“We have had a few meetings with the whole Committee and the Health Department is one of the members there. We also had quite close contact during the hearings, were the business were involved to say their opinion about it. Other than that, we are little involved.”

Non-discrimination

The issue of age, and the definition of a child is one of the subjects that clearly have been worked a lot with and questioned by many.

“Age groups have absolutely been discussed, if you’re talking about 16-year-olds, so it is, what is the difference between a 16-year-old and marketing, and an 18-year-old and marketing. Then you are talking about a complete ban. “

The other respondent tell that they do not have a clear definition of what a child are. But that they are following the guidelines, where children are persons under the age of 13.

“We haven’t made own definitions of what a child is, but are we relate to the Marketing Act and the others there, as well as the Code of course”

Transparency

One of the respondent expressed positive remarks from both authorities and civilians on the transparency of the complaints. The other respondent mentioned how fast the word was spread out and around in the business, when their complaint was published.

Rule of law

At the beginning of the self-regulations, there were no form for sanctions if some violated the regulations. The complaint and the decision were published on the webpage of MFU, that’s all. Both respondents see the importance of having a sanction, but the opinions are divided regarding a stricter scheme in the future.

“Obviously, we like the system as it is, and we think the sanction with naming does its purpose. ... you could have used other channels to publish the complaints [when violating the regulations], but I think it would be difficult to achieve.

The respondent further elaborates on the difficulties reaching out to other medias, such as the newspapers VG and Dagbladet and Aftenposten. Such issues have limited value to these news agencies. Obviously, this would have been a worse punishment which influence the business' reputation and trademark in a larger extent.

“From a corporate perspective, the “name and shame” gives us a as deserved when violating the guidelines. We once got convicted, without obviously being aware of it, but I'll tell you that, as a company you feel it”.

6 Discussion

Summary of results

The Norwegian legislation were revealed to leave multiple gaps in the regulation of marketing of unhealthy FNAB to children. Marketing, including co-branding, competitions, promotional gifts, shock merchants and taste samples handed out to children in stores, are not regulated by law.

Regarding compliance of the WHO Sets of recommendations (World Health Organization, 2010c) the Norwegian legislation and Code were found of overall partial compliance. One of the recommendations were found to fulfilled by the Norwegian legislation and Code, 12 were found to be partial fulfilled and 3 were found inadequate.

Overall, The Norwegian Code was found to be in partial compliance with core HRBA principles, in theory and practice. The principle Rule of Law was the only principle which adequate compliance was observed. The four other principles; Participation, Accountability, Non-discrimination, and Transparency, were only partially covered by the Norwegian Code. There were slight differences between the results from comparing the literature and the results from the interviews.

After reviewing the results, three main features stood out as particularly interesting and will be elaborated and discussed in the next section. The three features were:

1. The Norwegian Code, in its current version, appears to allow for a more flexible interpretation of the recommendations than the WHO recommendations.
2. The repeatedly *partial compliance* of the human rights principles
3. Two sectors, authorities and civil society, had resembling views and often a different view than the business sector.

6.1 Main features

The first feature from the findings is that the regulation of marketing to children in Norway is specifically weak, opposed to the international standards, in two areas.

First, the existing legislation in Norway does not address particular issues of food advertising to children. The regulations aim to regulate the techniques and content of marketing to children, and do not directly work to promote health among children by reducing the intake of unhealthy food. This finding was as expected, that one of the reasons MFU was established was due to inadequate legislation and to strengthen the existing legislation (Matbransjens Faglige Utvalg, n.d.).

Secondly, the extent of marketing through newer channels, especially Internet and social media, are much less regulated than broadcast advertising to children. Unlike TV advertising, Internet advertising is not regulated by special laws but falls under the more generally formulated Marketing Act. The different marketing techniques used to target children are regulated by a wide variety of mechanisms, some specific to children, some not. The loop-holes for the industry are many.

Channels and techniques on food marketing to children is evolving rapidly. Advertising to children through important channels as internet and television (when sent from abroad) are not regulated. Internet marketing was in 2016 the largest channel of advertising in Norway, representing almost one third of the market share (IRM, 2016). Using internet as channel, the industry has the possibility to target the advertise to very specific groups, and see the effect immediately. This provides the opportunity to constantly change and adjust the advertise, to obtain maximum effect. Although, statistics and trends point out internet as the primary channel for current and future advertising, a legislation is still absent (IRM, 2016).

Another loop-hole is the huge selection of television channels from abroad, either through cable TV or through streaming services. These channels are subject to more liberal advertising regulation than Norwegian channels. The Marketing Act and Broadcasting Act apply to all Norwegian television channels and has the intention to protect of children against content that may be harmful. Other channels that broadcast from abroad and are aimed at Norwegian viewers are not subject to the Norwegian rules. Examples are the TV channels FEM, MAX, TV3, Viasat 4 and Canal +. These channels follow the rules that apply in the country they are sending from (Medietilsynet, n.d.).

The international standards on marketing and the legislative framework on marketing to children in Norway has a superficially compliance. In a detailed review, clear deviations in terms of coverage appears. It is consistent through the whole analysis that the international standards have more specified definitions and stricter requirements to marketing of food to children, than the Norwegian legislation and regulation have.

An example of this is Recommendation 4 in the Set of Recommendations on Marketing of food and non-alcoholic beverages to children. This Recommendation specifies the need of clear definitions. Especially interesting is the comparison of definitions in the nutrient profiles. In lack

of a golden standard for nutrient profiling, WHO's is used as a good alternative. When comparing the Set of Recommendations and the Norwegian Code there are some clear differences.

The WHO nutrient profile includes seven additional food categories with restrictions opposed to the Norwegian. Food groups like flavoured water, cheese, butter, fat, oils, sauces, dips and dressing are some of the food groups that are excluded in the Norwegian nutrition profile and are not subject to the Norwegian Code. In the Norwegian Code, maximum limits of certain nutrients are higher in four food groups and three food groups lack limits on fats.

One of the reasons for these differences can be the conflict of interest for the industry. The World Health Organization works primarily with promoting and ensuring good health through the life-course. In the process of developing and implementing the Set of Recommendations, the main focus of WHO was to protect children. The industry, on the other hand, will often have a divided focus. In this case, the development of the Norwegian Code shared a focus between protecting children from marketing and at the same time protecting themselves from a ban. One might speculate if this is one of the reasons the Norwegian Code is more "flexible" than WHO's.

Partial compliance of the human rights principles

In an overall assessment, the principles of a Human Right Based Approach were partially followed in the Norwegian Code. It is difficult to achieve total compliance of the human rights principles. One reason to this, is that several of the principles are dependent on each other, to be fulfilled. Transparency and accountability are mutually reinforcing and interdependent. Accountability can only be achieved if people have access to information. In turn, transparency is also dependent on accountability mechanisms, such as the rule of law, without which key transparency mechanisms such as the right to information will be seriously weakened.

Authorities/civil society vs business

Especially three of the principles, Participation, Accountability and Non-discrimination, shows clear contradictions between authorities/civil society and the business sector.

Both authorities and civil society expressed concerns on the difficulties in participation. They considered it difficult, due to three aspects. 1) Accessibility for children to file a complaint. 2) Technical limitations (email, computer). 3) Limited visibility of the scheme.

The business sector accentuates participation as a strength with the self-regulation system. They outline the possibility to be anonymous and the unique aspect that everyone can complain.

Civil Society:

“How many nine-year-olds have an email address?”

Business:

“Everyone can complain. Individuals, companies, you name it.”

The business sector almost boast about the possibilities with the system, without really noticing the limitations. The complaint system itself is found to not be well adapted to children and young people. It is difficult to understand the guidelines and product list for that group.

A mechanism to achieve accountability is to include stake holders in decision making processes. When implementing the Code, both representatives from the industry and health authorities worked together. This is positive, but some interesting views on the process were outlined during the interviews. Again, authorities and civil society shared a different impression than the business sector.

Authorities:

“Immediately after the meeting [the second hearing] was over, and all the civil society organizations had left, the industry pushed on the authorities until they got a breakthrough. ... The proposal was placed in the famous drawer”.

Civil society:

“and then the industry achieved, through very active lobbying, to dismiss the proposed law”

Business:

“We had a good dialogue with the authorities the whole way. ...the Industry spoke up when the bill was proposed. Everyone [the industry] meant it was a way too powerful in regards of the level we meant marketing to children were on.”

Civil society also outlined the weaknesses by having a self-regulatory system with a “clearly selfish agenda”. This aspect is worth thinking twice about. How much does the industry profit on the children’s wellbeing, versus the profit of marketing for children? The business sector even pointed out that some actors had been exposed multiple times, after violating the Code.

Non-discrimination

Non-discrimination is the third and last principle which shows clear contradiction between the sectors; authorities/civil society and business. The biggest contradiction where found in the definition of a child, regarding age. United Nations and the World Health Organization defines a

child as a person under the age of 18. The actors from civil society and authorities supports this definition, and use them in their work. The two actors from business sector, referred to MFU as their guidance regarding this, which defines children up to 13 years of age.

If we look at other regulations in Norway that aims to protect children and young people, children are defined as people under 18 years of age. Such as the Tobacco Act and the regulations of solarium use.

The children that falls outside the protection of the Norwegian Code are children in the age group 13-18 years. Studies indicate that you also in this age are exposed and susceptible for various kind of marketing (Jenkin et al., 2014; Wimpenny et al., 2014). There are big changes in this age groups life when they go over in their teens. They become more independent consumers, and are particularly vulnerable to external influences and commercial pressures. It is therefore important to also protect older children and adolescents.

6.2 Study limitations:

Sadly, the long and awaited evaluation of the self-regulation system (MFU) is not yet published in its final form. This evaluation could therefore not be used to guide the conclusion of this thesis.

Interviews

Finally, one of the participant decided to withheld their cooperation prior the interview, however I believe that the Authority-side of the story has been covered thoroughly of the other remaining participants.

Method

There is always a subjective element in the interpretation of interviews. In presenting the results, the interviewer has as often as possible tried to let the participant statements “talk for themselves” and thus avoid interpretation error bias.

Due to confidentiality agreements with the participants, the transcripts of the interviews can be not attached in their entirety.

7 Conclusion

The results highlight the need for a more involving government in the regulation of the marketing of FNAB to children. In addition, an increased focus on children's fundamental rights and the use of a human rights based approach, would be of great value, in developing future Codes and Guidelines.

The legislation in Norway is too flexible and with several loop-holes, for the industry to take advantage of. At the same time, self-regulation is left to be monitored by the industry itself. This is a business which has conflicting interest. On one hand, they are aiming to protect children from marketing of FNAB, and on the other hand they have personal interests in this specific market. If the coming evaluation does not show that self-regulation prevents children from consuming the intake of unhealthy products, it will be necessary with statutory regulations.

In the long run I also think that it would be a necessary to investigate whether product placement and packaging can be incorporated to the Norwegian regulation. This form of marketing has clearly impact on children and young people's preferences and buying behavior.

Norway is regarded as a global role model on this subject. My opinion on this matter, is that you should not refer to this as a good example before it is evaluated and you actually know that it works.

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9 Attachments

Oppdatert 1/9-2016

RETNINGSLINJER FOR MARKEDSFØRING AV MAT OG DRIKKE RETTET MOT BARN

De første retningslinjene på området ble utarbeidet i 2007 og oppdatert i juni 2009. I juni 2013 kom de nye retningslinjene som etablerte Matbransjens Faglige Utvalg. Retningslinjene her er en oppdatering av dem og gjelder fra 1.9.2016. Det er utarbeidet en veiledning til disse retningslinjene som utdypende informasjon.

1. Formål

Markedsføring av mat og drikke bør søke å bidra til et balansert og variert kosthold. Eksempelvis bør ikke markedsføring oppmuntre eller oppfordre til overforbruk. Bransjen skal fremme salg av sunne produkter.

Barn er en særlig sårbar gruppe, som skal beskyttes mot markedsføring særlig rettet mot dem. Så langt det er praktisk mulig, skal bransjen vise varsomhet ved vareplassering av produkter på MFUs produktliste. Disse retningslinjene gjelder som et supplement til øvrige lover og forskrifter om markedsføring, herunder markedsførings- og kringkastingsloven.

Disse retningslinjene gjelder for markedsføring rettet mot forbrukere i Norge, herunder også nettsalg av dagligvarer.

2. Forbud mot markedsføring overfor barn

Markedsføring av produkter, som er omfattet av produktlisten, skal ikke være særlig rettet mot barn under 13 år. Med markedsføring menes salgsfremmende tiltak.

Følgende anses ikke i seg selv som markedsføring særlig rettet mot barn i strid med disse retningslinjene:

- a) Selve produktet herunder emballasjen,
- b) Alminnelig oppstilling av produkter på utsalgssted.
- c) Sponsing som kun innebærer bruk av sponsors navn, sponsors- eller et produkts varemerke, herunder utdeling av vareprøver etter samtykke fra foreldre eller andre ansvarlige.

Reklame som sendes etter kl. 21.00 på TV vil ikke anses for å være markedsføring særlig rettet mot barn.

3. Markedsføring som alltid skal anses særlig rettet mot barn under 13 år.

Følgende markedsføring av produkter, som er omfattet av produktlisten, anses særlig rettet mot barn under 13 år og vil innebære en overtredelse av disse retningslinjene:

- Reklame på kino i tilknytning til filmer som er særlig rettet mot barn under 13 år, og som starter før kl 18.30.
- Interaktive spill særlig rettet mot barn og hvor et produkts varemerke, eller andre elementer fra markedsføringen av produktet inngår som en integrert del.
- Alle former for konkurranser med aldersgrense lavere enn 13 år.

4. Aktsom markedsføring overfor ungdom

Ved markedsføring av produkter som er omfattet av produktlisten, og som er særlig rettet til ungdom, skal det tas hensyn til og vises aktsomhet overfor alder og utvikling.

5. Vurdering av overtredelse

Det presiseres at et produkt, herunder emballasjen mv, ikke i seg selv er å anse som markedsføring særlig rettet

mot barn i strid med disse retningslinjene, jf. punkt 2 bokstav a. I helhetsvurderingen skal det likevel legges til grunn at jo mer barnerettet et produkt er, desto strengere krav stilles det til hvilke medier og virkemidler som er tillatt brukt i markedsføringen.

Ved vurderingen av om markedsføringen er særlig rettet mot barn, skal det foretas en helhetsvurdering hvor det skal legges vekt på:

a) I hvor stor grad appellerer det markedsførte produktet, herunder emballasjen, særlig til barn? Relevante momenter i vurderingen vil blant annet kunne være:

- Om produktet har en form, emballasje, innpakning el som særlig appellerer til barn
- Om produktet primært konsumeres av barn
- Om det benyttes tilleggsytelser som gaver mv som særlig appellerer til barn

b) I hvor stor grad appellerer medier som er brukt særlig til barn? Eksempler på medier som normalt vil kunne anses for å ha særlig appell til barn, er:

- Sosiale medier som chattetjenester, bloggeverktøy og nettsamfunn som særlig rettes mot barn
- Spill, lekesider og underholdningssider som særlig rettes mot barn
- Nettsider som markedsfører produkter som særlig retter seg mot barn
- Barneprogrammer i TV og radio
- E-post, SMS-tjenester eller annen mobilmarkedsføring særlig rettet mot barn
- Trykte medier, som for eksempel tidsskrifter, seriehefter mv som er særlig rettet mot barn

c) I hvor stor grad appellerer virkemidlene som er brukt særlig til barn? Relevante momenter i vurderingen vil blant annet kunne være:

- Om det er benyttet et barnlig språk
- Om det er benyttet tegnede figurer og/eller animasjon som særlig appellerer til barn
- Om barn medvirker i markedsføringen
- Om det i markedsføringen benyttes personer som særlig appellerer til barn, som for eksempel ungdomsskuespillere, popstjerner, superhelter eller kjente barneverter fra TV
- Om det i markedsføringen benyttes leker, spill, konkurranser el som særlig appellerer til barn

6. Markedsføring av en serie

I en serie av produkter, må ikke markedsføring av produkter utenfor produktlisten, fremstå som markedsføring for markedsføring for produkter som omfattes av produktlisten.

7. Tilsyn

Matbransjens faglige utvalg behandler klager.

8. Ikrafttredelse

De nye retningslinjene gjelder fra 1.9.2016

Intervjuguide

Formaliteter

Tid: > 60 minutter

Utstyr: Båndopptaker, penn, papir

Introduksjonsdel (5-10min)

- Informasjon, anonymitet, retten til å trekke seg.
- Personlig bakgrunn – informere om at det er konfidensielt

Hoveddel: (40 min)

Første del vil fokusere på hvordan myndighetene/organisasjonen/industrien jobber mot/med markedsføring av mat og drikke mot barn.

Tema 1: Organisatorisk

- **Struktur i organisasjonen**
- **Roller på området**
- **Samarbeid på tvers av sektorer**

Andre del vil fokusere på myndighetenes/organisasjonens/industriens bevissthet rundt det lovgivende og regulerende rammeverket for markedsføring til barn i Norge.

Tema 2: Bevissthet rundt aktuelle lover, forskrifter og anbefalinger / utviklingen av Koden

- Norsk lovgivning
 - WHO Set of rec./framework – kjennskap til?
 - GP business and HR?

- Annet?
- Norwegian Code
 - Inntrykk/tanker
 - Accountability:
 - Prosess
 - Utvikling av koden – deltagelse?
 - Evaluering
 - monitorering
 - Non-discrimination
 - Alder
 - Tilgang
 - Transparency
 - Åpenhet/dialog med MFU/bransjen/myndighetene
 - Tilgjengelighet
 - Participation
 - Aldersgrupper
 - Aktører
 - Møter
 - Rule of law
 - Lovpålagt – tanker
 - Sanksjoner

Tredje del vil fokusere på myndighetenes/organisasjonens/industriens erfaringer med den norske koden, og deres erfaringer med Matbransjens Faglige Utvalg

Tema 3: Erfaringer med selv-reguleringen

- Kjenner til selvreguleringsordningen i Norge?
 - Ser du selv noen forskjeller i deres retningslinjer og retningslinjene til MFU
- Noen fordeler?
- Noen utfordringer?

- Definisjoner/tanker
 - Barn
 - Markedsføring
 - Produkter

Videre tanker:

- Lovpålagt markedsføring
- Evaluering av dagens ordning
 - muligheter

Oppsummering (3-5 minutter)

- *Noe du vil legge til?*
- *Alt klart?*
- *Rett til å trekke seg.*

Attachment 3 - Core values and key questions to assessing the principles

Human right principle	Core values	Questions	Compliance
Participation	Decision-making	Were right holders or their representatives consulted during the design or the implementation of the Code?	NO
		Were authorities consulted during the design and the implementation of the Code?	YES
		Were right holders consulted during the design and the implementation of the code?	YES
	Response	Does the Code allow stake holders to take part in important decision-making processes?	Partial
		Can right holders report directly to the MFU-council? Can representatives report violations on behalf of the right holders?	Partial YES
Accountability	Responsibility	Violations of the code can be reported and explained for?	YES
		Are the roles of rights-holders and duty-bearers clearly identified within the code?	YES
	Monitoring	Does the code comply with the whole industry?	NO
		Are key stakeholders involved in the process of handling the complaints? Is the Committee's composition in favour of the right holders?	Partial Partial
	Sanctions	Are violations responded to and within a reasonable timeframe? If violating the Code, are there any remedies?	NO Partial
Non-Discrimination	Accessibility	Is the system accessible to all, especially the most vulnerable or marginalized section of the population?	Partial
	Acceptability	Is the Code available in other languages except Norwegian? Does the code cover the whole target group?	YES NO
		Is the code suitable to all children irrespective of religion, sex or age?	Partial
Transparency	Availability	Are the decision-making processes transparent easy available and accessible?	Partial
		Is there transparency for how decisions are made? Is there information on what the Code aims to do?	Partial YES
	Visibility	Are the processes and authorities responsible for designing the Code made known to the public? Is there a transparent and independent framework for monitoring and evaluation of the system?	Partial NO
		Legislation	Does the Code comply with the existing legislation on marketing of FNAB to children?
Rule of law		Is there compliance of existing regulations/laws in the implementation of the code? and reported violations are to be processed?	YES YES
	Remedies	Is there a mechanism for appealing decisions made by the Committee regarding complaints?	NO

Liv Elin Torheim

Institutt for helse, ernæring og ledelse Høgskolen i Oslo og Akershus

Postboks 4, St. Olavs plass

0130 OSLO

Vår dato: 25.01.2016

Vår ref: 46377 / 3 / ASF

Deres dato:

Deres ref:

TILBAKEMELDING PÅ MELDING OM BEHANDLING AV PERSONOPPLYSNINGER

Vi viser til melding om behandling av personopplysninger, mottatt 04.01.2016. Meldingen gjelder prosjektet:

46377	<i>Marketing of foods and beverages to children: A review of the Norwegian regulations on marketing of foods and non-alcoholic beverages towards children. Is it in respect of the human rights?</i>
Behandlingsansvarlig	Høgskolen i Oslo og Akershus, ved institusjonens øverste leder
Daglig ansvarlig	Liv Elin Torheim
Student	Jenny Handal Sneve

Personvernombudet har vurdert prosjektet og finner at behandlingen av personopplysninger er meldepliktig i henhold til personopplysningsloven § 31. Behandlingen tilfredsstiller kravene i personopplysningsloven.

Personvernombudets vurdering forutsetter at prosjektet gjennomføres i tråd med opplysningene gitt i meldeskjemaet, korrespondanse med ombudet, ombudets kommentarer samt personopplysningsloven og helseregisterloven med forskrifter. Behandlingen av personopplysninger kan settes i gang.

Det gjøres oppmerksom på at det skal gis ny melding dersom behandlingen endres i forhold til de opplysninger som ligger til grunn for personvernombudets vurdering. Endringsmeldinger gis via et eget skjema, <http://www.nsd.uib.no/personvern/meldeplikt/skjema.html>. Det skal også gis melding etter tre år dersom prosjektet fortsatt pågår. Meldinger skal skje skriftlig til ombudet.

Personvernombudet har lagt ut opplysninger om prosjektet i en offentlig database, <http://pvo.nsd.no/prosjekt>.

Personvernombudet vil ved prosjektets avslutning, 28.05.2016, rette en henvendelse angående status for behandlingen av personopplysninger.

Vennlig hilsen

Katrine Utaaker Segadal

Amalie Statland Fantoft

Dokumentet er elektronisk produsert og godkjent ved NSDs rutiner for elektronisk godkjenning.

Avdelingskontorer / District Offices:

OSLO: NSD, Universitetet i Oslo, Postboks 1055 Blindern, 0316 Oslo. Tel: +47-22 85 52 11. nsd@uio.no

TRONDHEIM: NSD, Norges teknisk-naturvitenskapelige universitet, 7491 Trondheim. Tel: +47-73 59 19 07. kyrre.svarva@svt.ntnu.no

TROMSØ: NSD, SVF, Universitetet i Tromsø, 9037 Tromsø. Tel: +47-77 64 43 36. nsdmaa@sv.uit.no

Kontaktperson: Amalie Statland Fantoft tlf: 55 58 36 41

Vedlegg: Prosjektvurdering

Kopi: Jenny Handal Sneve s177717@stud.hioa.no



INFORMASJON OG SAMTYKKE

Informantene informeres skriftlig og muntlig om prosjektet og samtykker til deltakelse. Informasjonsskrivet er generelt godt utformet, men det mangler informasjon om dato for forventet prosjektslutt og at dere skal anonymisere datamaterialet ved prosjektslutt. Vi ber om at dere enten tilføyer skrevet denne informasjonen eller informerer informantene muntlig.

REKRUTTERING

Dere har informert om at utvalget til intervjudelen av prosjektet velges ut fra tre ulike deler av samfunnet, nemlig myndighetene, det sivile samfunn og industrien. Førstegangskontakten skjer ved at studenten sender forespørsel om deltakelse til mulige informanter per e-post. Personvernombudet forutsetter at det tas hensyn til konfidensialitet og frivillighet når personene forespørres om deltagelse.

INFORMASJONSSIKKERHET

Personvernombudet legger til grunn at dere behandler alle data og personopplysninger i tråd med Høgskolen i Oslo og Akershus sine retningslinjer for innsamling og videre behandling av forskningsdata og personopplysninger

PUBLISERING

Dere har opplyst at informantene vil kunne gjenkjennes i publikasjonen, og vi legger til grunn at informantene samtykker eksplisitt til dette. Vi anbefaler at informantene gis anledning til å lese igjennom egne opplysninger og godkjenne disse før publisering.

PROSJEKTSLUTT OG ANONYMISERING

I meldeskjemaet har dere informert om at forventet prosjektslutt er 28.05.2016. Ifølge prosjektmeldingen skal dere da anonymisere innsamlede opplysninger. Anonymisering innebærer at dere bearbeider datamaterialet slik at ingen enkeltpersoner kan gjenkjennes. Det gjør dere ved å slette direkte personopplysninger, slette eller omskrive indirekte personopplysninger og slette digitale lydopptak.

Attachments 4 - Comparison of nutrient profiles

<i>Nutrients/product groups</i>	<i>WHO</i>	<i>Norway</i>	<i>Compliance</i>
Chocolate, confectionery, energy bars, sweet toppings and desserts	Not allowed	Not allowed	YES
Cakes, sweet biscuits and other pastries and dry mixes for making these products	Not allowed	Not allowed	YES
Snacks	Not allowed	Not allowed	YES
Juice	Not allowed	Allowed (not added sugar or sweetener)	NO
Milky drinks	Fats > 2,5 gram Sugar 0 gram (added)	No limit for fat > 15 gram (added)	NO
Energy drinks	Not allowed	Not allowed	YES
Other drinks (coca cola, lemonade, flavoured water and soft drinks containing added sugar or sweetening etc.)	Not allowed	Not allowed. Flavoured water and mineral water added artificial sweeteners are excluded.	(YES)
Ice-cream	Not allowed	Not allowed	YES
Cereals	Fats > 10 gram Sugar > 15 gram Salt 1,6 gram	No limit for fat Sugar > 20 gram No limit for salt	NO
Yogurt, sour cream, whipped cream and similar	Fats > 2,5 gram Saturated fats > 2,0 gram Sugar > 10 gram Salt > 0,2 g	Fats > 3,3 gram No limit for saturated fats Sugar > 11 gram No limit for salt	NO
Cheese	Fats > 20 gram Salt > 1,3 gram	Excluded	NO

Take-away	Fats > 10 gram Saturated fats > 4 gram Sugar > 4 gram Salt > 1 gram Kcal > 225	No limit on total amount of fats Saturated fats > 4 gram No limit for sugar Salt > 1 gram Kcal > 225	NO
Butter, fats and oils	Saturated fats > 20 gram Sugar > 10 gram Salt > 1,2 gram	Excluded	NO
Bread, bread products and crispbread	Fats > 10 gram Sugar > 10 gram Salt > 1,2 gram	Excluded	NO
Fresh or dried pasta, rice and cereals	Fats > 10 gram Sugar > 10 gram Salt > 1,2 gram	Excluded	NO
Processed meat, poultry, fish and similar items	Fats > 20 gram Salt > 1,7 gram	Excluded	NO
Processed fruits, vegetables and legumes	Fats > 5 gram Sugar > 10 gram Added sugar > 0 gram Salt > 1 gram	Excluded	NO
Sauces, dips and dressings	Fats > 10 gram Added sugar > 10 gram Salt > 1 gram	Excluded	NO

Attachment 5 – Comparison of nutrient profiles. WHO

Annex 1. WHO Regional Office for Europe nutrient profile model

Food category	Included in category (examples)	Not included in category (examples)	Customs tariff code (position and/or subposition number)*	Marketing not permitted if product exceeds, per 100 g ^b							
				total fat (g)	sat. fat (g)	total sugars (g)	added sugars (g)	non-sugar sweeteners (g)	salt (g)	energy (kcal)	
1	Chocolate and sugar confectionery; energy bars, and sweet toppings and desserts	Chocolate and other products containing cocoa; white chocolate; jelly, sweets and boiled sweets; chewing gum and bubble gum; caramels; liquorice sweets; spreadable chocolate and other sweet sandwich toppings; nut spreads, including peanut butter; cereal, granola and muesli bars; marzipan	Chocolate flavoured breakfast cereals; cakes and pastries; biscuits and other baked goods covered in chocolate	17.04; 18.06; some of 19.05; 20.06; some of 20.08; some of 21.06	Not permitted						
2	Cakes, sweet biscuits and pastries; other sweet bakery wares, and dry mixes for making such	Pastries; croissants; cookies/ biscuits; sponge cakes; wafers; fruit pies; sweet buns; chocolate-covered biscuits; cake mixes and batters	Bread and bread products	19.01.20; 19.05.20; 19.05.31; 19.05.32	Not permitted						
3	Savoury snacks	Popcorn and maize corn seeds; nuts and mixed nuts; savoury biscuits and pretzels; other snacks made from rice, maize, dough or potato		08.01; 08.02; 10.05; 19.04.10; 19.04.20; some of 19.05; 20.05.20; 20.08.11; 20.08.19; 20.08.99			0		0.1 ^c		
4	Beverages										
a)	Juices	100% fruit and vegetable juices; juices reconstituted from concentrates, and smoothies		20.09	Not permitted ^d						
b)	Milk drinks ^e	Milks and sweetened milks; almond, soya, rice and oat milks	Cream	Some of 04.01; some of 04.02; 22.02.90	2.5			0	0		
c)	Energy drinks ^f			Some of 22.02	Not permitted						
d)	Other beverages	Cola, lemonade, orangeade; other soft drinks, sweetened beverages, mineral and/or flavoured waters (including aerated) with added sugars or sweetener	100% fruit and vegetable juices; milk drinks	22.01; some of 22.02			0	0			
5	Edible ices	Ice cream, frozen yoghurt, iced lollies and sorbets		21.05	Not permitted						
6	Breakfast cereals ^g	Oatmeal; cornflakes; chocolate breakfast cereals; muesli		19.04.10; 19.04.20	10		15			1.6	
7	Yoghurts, sour milk, cream and other similar foods	Yoghurt; kefir; buttermilk flavoured sour; fermented milk and drinking yoghurt; fromage frais; cheese-based and other yoghurt substitutes; yoghurt products containing additional ingredients (such as fruit; muesli); cream	Milks and sweetened milks; almond, rice and oat milks	Some of 04.02; 04.03; 04.04; some of 04.06.10; 19.01.10; 19.01.90; some of 21.06	2.5	2.0	10			0.2 ^h	
8	Cheese	Medium-hard and hard cheeses; soft cheeses; fresh cheese (such as ricotta, mozzarella); grated or powdered cheese; cottage cheese; processed cheese spreads		04.06	20					1.3	
9	Ready-made and convenience foods and composite dishes	Pizzas; lasagne and other pasta dishes with sauces; quiches; ready meals; ready-made sandwiches; filled pastas; soups and stews (packaged or tinned); mixes and dough		Some of 16; some of 19.01.20; 19.02.19; 19.02.20; some of 19.05; some of 20.05; 21.04	10	4	10			1	225
10	Butter and other fats and oils	Butter; vegetable oils; margarines and spreads		04.05; 15		20				1.3	
11	Bread, bread products and crisp breads ⁱ	Ordinary bread (containing cereal, leavens and salt); gluten-free bread; unleavened bread; crisp breads; rusks and toasted breads	Sweet biscuits; pastries; cakes	19.05.10; 19.05.40; 19.05.90	10		10			1.2	
12	Fresh or dried pasta, rice and grains		Filled pasta and pasta in sauce	10; some of 11; 19.02 excluding 19.02.20	10		10			1.2	
13	Fresh and frozen meat, poultry, fish and similar	Eggs		02 excluding 02.10; some of 03 excluding 03.05	Permitted						
14	Processed meat, poultry, fish and similar	Sausages; ham, bacon; chicken nuggets; smoked and pickled fish; tinned fish in brine or oils; fish fingers and breaded/battered fish	Pepperoni pizza	02.10; some of 03; some of 16	20					1.7	
15	Fresh and frozen fruit, vegetables and legumes	Fruit and vegetables; legumes; starchy vegetables, roots and tubers	Tinned fruits, vegetables and legumes; fruit in syrup; dried fruit; frozen fruit with added sugar	07 excluding 07.10, 07.11, 07.12, 07.13; some of 08 excluding 08.01; 08.02; 08.11; 08.12; 08.13; 08.14	Permitted						
16	Processed fruit, vegetables and legumes	Tinned fruit, vegetables and legumes; dried fruit ^j ; dried vegetables and legumes; marmalade; jams; pickled vegetables and fruit; stewed fruits; fruit peel; frozen french fries; frozen fruit with added sugar	Fruit juice	07.10; 07.11; 07.12; 07.13; some of 08.03; some of 08.05; some of 08.06; 08.11; 08.12; 08.13 and 08.14; 20.01; 20.02; 20.03; 20.04; 20.05; 20.06; 20.07; 20.08.20; 20.08.30; 20.08.40; 20.08.50; 20.08.60; 20.08.70; 20.08.80; 20.08.93; 20.08.97; 20.08.99	5		10	0		1	
17	Sauces, dips and dressings	Salad dressings; tomato ketchup; mayonnaise; ready-to-use dips; soya sauce; mustard and mustard flour		21.03	10			0		1	

Sat. fat = saturated fat.

* Where appropriate, a four-digit position number has been given. Where "some of" is indicated, this means that most (but not all) food products in this position number are covered. In some instances a six-digit subposition is provided so as to pinpoint specific products more easily.

^b The food products should, where possible, be assessed as sold or as reconstituted (if necessary) according to the manufacturer's instructions.

^c Salt equivalent.

^d This is in line with the WHO Guidelines on Sugars Intake for Children and Adults (in press), as fruit juices are a significant source of free sugars for children. However, it is recognized that countries, according to national context and national food-based dietary guidelines, may take the decision to permit the marketing of 100% fruit juices in small portions.

^e Follow-up formulas and growing-up milks are not covered by this model. It should be noted that World Health Assembly Resolution WHA39.28, adopted in 1986, states that the practice of providing infants with specially formulated milks (so called "follow-up milks") is not necessary. Further, any food or drink

given before complementary feeding is nutritionally required may interfere with the initiation or maintenance of breastfeeding and should, therefore, be neither promoted nor encouraged for use by infants during this period.

^f There is no agreement on a definition of energy drinks. However, such a category of drinks includes a variety of non-alcoholic beverages. While caffeine is considered the main ingredient, a number of other substances are often present. The most common of these include guarana, taurine, glucuronolactone and vitamins. A common feature is that these beverages are marketed for their actual or perceived effects as stimulants, energizers and performance enhancers.

^g For this category, countries may choose to include a threshold for minimum dietary fibre content, for example >6g dietary fibre.

^h This is in line with the WHO Guidelines on Sugars Intake for Children and Adults (in press), as dried fruits are a significant source of concentrated sugars for children. However, it is recognized that countries, according to national context and national food-based dietary guidelines, may take the decision to permit the marketing of dried fruits in small portions.