

PolMark: Stakeholder views on policy options for the regulation of marketing foods and beverages to children

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Danish PolMark Report

PolMark (POLicy options for MARKeting Food and beverages to children)

Stakeholder views on policy options for the regulation of marketing foods and beverages to children

Preface

In February 2007, the EU Commission published the Work Plan for 2007 on public health. One of the points of the plan was the demand for evidence and tools to strengthen the formulation of policy on marketing of foods and beverages in the EU¹. In May 2007, the Commission's Strategy for Europe on Nutrition, Overweight and Obesity related health issues was launched which concludes that marketing does influence consumers' choice of foods and beverages². The strategy focuses on a voluntary approach to regulation; however, it emphasizes that the Commission in 2010 will evaluate the progression and consider whether further action is needed³.

The Work Plan and the Strategy form the base for an application to the Public Health Programme by the European Union with the purpose of achieving co-financing of the PolMark-Project with partners from 11 EU-countries. The overall aim of the project is to increase the understanding of the factors influencing children's choice of food and beverages, contributing to an improvement of the health status among European children along with facing the challenge of overweight and non-communicable diseases in all European Member States. This will be done by focusing on the marketing of energy-dense and nutrient-poor foods and beverages targeted children.

The Project Coordinator is International Association for the Study of Obesity in the UK and the Danish part is managed by SUHR'S Metropolitan University College. The other partners include: Research and Education Institute of Child Health in Cyprus, Institut de Recherche pour le Développement in France, Institute of Public Health in the Republic of Slovenia, Universidad de Alicante in Spain, Irish Heart Foundation in Ireland, Stockholms Lens Landsting in Sweden, University of Masarykova in the Czech Republic, Bureau European des Unions de Consommateurs in Belgium and Association of Polish Consumers in Poland. 59.54% of the project is financed by the Executive Agency for Health and Consumers (EAHC); the rest of the expenses are covered by the participating institutions mainly through working hours.

This report presents the findings from the data collection conducted in Denmark. I wish to express my gratitude to the stakeholders participating in the interviews who made the writing of this report possible. Also thanks to Aileen Robertson (former advisor for Nutrition and Food Security at WHO European Regional Office) and Jørgen Højmark Jensen (former Executive for the Danish Food Agency) who contributed with their knowledge and the editing of this report. The content of the report is the responsibility of the author alone.

Liselotte Hedegaard, Copenhagen, July 2009

¹ EU Commission Work Plan for 2007 for implementation of the program of Community Action in the field of Public Health (2003 – 2008), section 2.1.3.2

² White paper on A Strategy for Europe on Nutrition, Overweight and Obesity related health issues, p.6

³ Ibid

Executive Summary:

Levels of overweight and obesity are increasing in the European Union, particularly amongst children. Despite a lack of comparable data in Denmark, studies have indicated an increase in the number of overweight and obese children over the past 25 years. Amongst numerous initiatives that aim at reducing this number, one is to limit children's exposure to marketing and advertising of energy-dense and nutrient-poor foods and beverages.

The EU Commission's white paper A Strategy for Europe on Nutrition, Overweight and Obesity related issues from 2007 states that advertising and marketing are powerful in influencing consumers. The Commission has been in favour of a voluntary approach to the issue, but is planning to assess the effect of this approach in 2010. Polmark aims to provide support to this process by analysing key stakeholder organisations views of challenges for policy-development as regards to the regulation of the marketing to children of energy-dense and nutrient-poor foods and beverages. The interviews have been carried out in 11 EU-countries and have involved more than 130 key stakeholders. The project has received funding from the European Union, in the framework of the Public Health Programme.

Denmark has statutory regulation in the Law on Marketing and in the guidelines from the Consumer-ombudsman from 2006. Furthermore, there are a number of general provisions in the Food-law. As a supplement to the statutory regulation, a number of stakeholders in the food-industry, advertising, media and retailers' organisations launched a self-regulatory code in the beginning of 2008 limiting marketing and advertising of food and beverages to children. This report presents the results from the data collected among key stakeholders in Denmark between November 2008 and February 2009. 3 research-questions were guiding the data collection:

- How do stakeholders perceive the current regulation of marketing and advertising of food and beverages to children?
- Which opportunities and barriers do stakeholders see as regards to regulation of marketing and advertising of food and beverages to children?
- How do stakeholders envisage future regulation of marketing and advertising of food and beverages to children?

From a general point of view, stakeholders perceive the current statutory regulation as insufficient. Reasons for this are that statutory regulations do not specifically encompass energy-dense and nutrient-poor foods and beverages, and that the insufficient statutory regulations may distort competition. Several stakeholders perceive the economic sanctions imposed against offenders of regulation as insufficient. Self-regulation is seen as an effective supplement to statutory regulations, partly because this kind of regulation is regarded as ethically binding in another way than statutory regulation. There is a lack of consensus with regards to the sanctions in the self-regulatory code as some stakeholders think that sanctions are implicitly in the code whereas others emphasize the need for explicit sanctions.

With regards to opportunities in statutory regulation, stakeholders regard it as suitable for structural measures against obesity, e.g. differentiated taxes, but they do not perceive much enthusiasm from lawmakers for such initiatives. As for opportunities in self-regulation, stakeholders regard the attention on corporate responsibility as stimulating, and, furthermore, they emphasize that critical consumers are putting pressure on corporations to take more responsibility. With regards to barriers in both statutory regulation and self-regulation, stakeholders mention some of the challenges new media-platforms, like the internet and mobile phones, bring as they are difficult to survey. Lastly, stakeholders do not perceive lawmakers threats about imposing new laws in case self regulation is insufficient as sincere.

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In general, stakeholders do not expect a change in approach in Denmark in the nearest future. As regards to the EU-Commission's plan about evaluating the current regulation, stakeholders express doubt whether this will lead to further tightening of regulations.

This document is the sole responsibility of the author. The Executive Agency for Health and Consumers is not responsible

Background:

The number of overweight children in Europe is increasing. Overweight can have serious health consequences such as Type 2 diabetes and hypertension; however, it can also cause mental and social problems. There are only few estimations of the number of overweight and obese children in Denmark due to the lack of central registration of the measurements done by general practitioners and services such as nurses in schools in the local councils.⁴ Estimations can furthermore be difficult to compare because of the different ways of defining weight⁵. Nonetheless, the investigations available indicate an increase in the number of overweight children and adolescents in Denmark during the past 25 years. For 2003, 21% of girls in Copenhagen aged 6-8 and 14-16 years were overweight. For the boys, this number was 15% among the 6-8 year olds and 14% of the 14-16 year olds. Numbers from other parts of the country signify the same trend⁶.

The occurrence of overweight among children and adolescents is lower in Denmark compared to other countries in Europe⁷. In spite of the low prevalence, studies show that children have a high consumption of added sugar; one investigation of the dietary habits of the Danes show that added sugar on average constitute 14% of the total energy-intake among children⁸. The report on the dietary habits of the Danes during 2000-2002 shows that every 10th teenager consumes 120g added sugar per day⁹. Added sugar can be found in candy, cakes and soft drinks among others and contributes to childhood overweight along with other foods and beverages high in energy and low in nutrients.

There is generally no existing evidence on the factors influencing children to consume energy-dense and nutrient-poor foods and beverages. One cause could be children's exposure to marketing which could stimulate their consumption of these products. However, while the increasing rate of overweight children is a known fact and the consumption of energy-dense and nutrient-poor foods and beverages is high, the scientific evidence associating marketing of these products and children's food choices is not very strong¹⁰

The focus of the PolMark project is to examine views of stakeholders from several different sectors on policy options for marketing to children. These stakeholders include experts within industry, retail business, advertising, media-, consumer- and health professional organizations and academics.

Regulation in this context involves statutory regulation, co-regulation, self-regulation as well as voluntary initiatives in the individual EU-countries. The legislative point of departure in Denmark

⁴ Motions- or Ernæringsrådet. 2007. P. 20

⁵ Ibid. P. 17

⁶ Ibid. P. 20-21

⁷ Ibid. P. 23. DG Sanco. 2007. P.18

⁸ Danskernes kostvaner. 2005. P. 115

⁹ Ibid. P. 62

¹⁰ Hastings Review, UK Food Standards Agency, 2003; Food Marketing to Children and Youth: Threat or Opportunity? US National Academy of Science, 2006; Marketing of food and non-alcoholic beverages to children. Report of a WHO Forum and Technical Meeting, Oslo, Norway, 2-5 May 2006.

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is the Law on Marketing and the Revised Guidelines of the Consumer Ombudsman from 2006. Moreover, several general decisions in the FoodLaw form legal guidelines in the area. The overall impression of this legislation reveals a main focus on food safety and information; preventing disease from food-sources among the population has been important to policy-makers¹¹ while the nutritional composition of food has been subject to information and counselling¹². When it comes to marketing, the law states that information cannot be misleading¹³ and the Law on Marketing is formulated for this purpose by considering the natural credulity of children and adolescents¹⁴ which is commented upon in the guidelines of the Consumer Ombudsman¹⁵.

To supplement the legislation, the Forum for Responsible Marketing¹⁶ put forward a codex in December 2007, which ensures certain limitations on marketing of foods and beverages targeted to children. Through this initiative, the food industry, retail and media sectors accentuate commitment of the companies towards society; this is done by stressing the purpose of producing the codex which is facing the increasing overweight issues and taking responsibility¹⁷. However, the obligations of the codex only apply to the affiliated companies and organizations.

Methods, design and recruitment

Three work packages have been designed based on the existing evidence available on the topic and the overall aim of the project. The purpose of the first work package is to update the knowledge base presented in, among others, the 2006 report from WHO¹⁸ on regulating the marketing targeted children in all member states. The second involves identifying more than 100 fundamental stakeholders concerned with children's health, food production and marketing of food products (each of the 11 participating countries include at least 10 stakeholders). Interviews with each of these stakeholders have been conducted in order to map their views on regulation in this area in relation to barriers and opportunities. The third work package describes the use of the qualitative and quantitative data collected from the interviews to evaluate the effect marketing has on children's health. The intention is to improve the estimated health impact of different initiatives within regulation and thereby provide decision-makers with more useful tools.

This report presents the qualitative data gathered during 13 interviews with central stakeholders in Denmark. They are divided into the 9 groups defined in the beginning of the project: 1. Academic experts, 2. Consumer organizations, 3. Health- and public health organizations, 4. Food producers and retailers, 5. Advertisers and marketing organizations, 6. Government and regulators, 7. Family- and school advocates, 8. Media businesses, 9. Others – including politicians and economists.

The data collection is based on 3 questions of investigation:

What general impression do the stakeholders have on current regulations on marketing of food and beverages to children?

What opportunities and barriers do the stakeholders identify regarding marketing of food and beverages to children?

¹¹ Fødevareloven. Lov nr. 526 af 24.06.2005 (inkl. senere ændringer 2006 – 2009). §§ 4 - 9

¹² Ibid. §§ 10 - 13

¹³ Ibid. §§ 14 - 24

¹⁴ Lov om Markedsføring §8, stk. 1

¹⁵ Forbrugerombudsmanden. Børn, unge og markedsføring. Vejledning. 2006

¹⁶ An informal cooperation between Dansk Industri, Bryggeriforeningen, Dansk Erhverv, Dansk Dagblades Forening, De Samvirkende Købmænd, TV2, Dansk Annoncørforening, Foreningen for danske internetmedier, Dansk Reklame- og Relationsbureauers Brancheforening og Dansk Magasinpresses udgiverforening

¹⁷ Homepage of Forum for Fødevarereklamer: Til virksomheder

¹⁸ WHO. Marketing food and non-alcoholic beverages to children. 2006

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How will marketing be regulated in the future according the stakeholders?

To answer these questions, qualitative interviews with representatives from each of 9 groups of stakeholders recognized by the project partners have been completed. The recruitment for the interviews was performed by weighing the individual stakeholders' power and interest; this allowed for the most essential actors to express their opinions. Furthermore, the recruitment aimed for an equal representation of respondents among the different groups of stakeholders. A few interviews were attended by 2 persons from the same organization. The qualitative approach was selected as it allows the researcher to gain a more differentiated understanding of the stakeholders' attitudes through the opportunity to elaborate the discussions and incorporate relevant references into the interviews.

In total, 19 invitations were sent and 13 interviews were completed with a sum of 15 participants. With regards to the 6 invitations not resulting in an interview, 2 declined as they were in the process of finishing the report by the Commission for Prevention; 1 declined as the company believed other organizations would communicate their position better; and 3 invited stakeholders never responded to the enquiries.

All participants were informed about the idea behind the PolMark project, about the codex on marketing communication by International Chamber of Commerce (ICC) along with a few examples on statutory regulation and self-regulation within the EU before the interview; either by email or verbally before the interview. Apart from that, all stakeholders were ensured anonymity during the entire project.

The interviews were conducted based on a semi-structured interview-guide developed by the project coordinator and disseminated for commenting and corrections. As the interviews are conducted according to the same guide in 11 countries, the semi-structured interview-guide gives the possibility for adjusting a few questions to any regional conditions. At the same time, the general guide guarantees that interview discussions in all 11 countries consist of the same topics.

The interviews were carried out during the period of November 2008 until February 2009. Every interview lasted about an hour, varying between 45-90 minutes. The interviews were recorded and subsequently fully transcribed.

Interviews

The following section presents the analysis of the completed interviews. Key quotations from the respondents have been inserted with the purpose of providing a more nuanced illustration of the views put forward during the interviews. There are certain differences in viewpoints among the stakeholders within the different groups; therefore, the quotations are selected to express a general picture of the completed interviews and do not necessarily apply to all stakeholders in the individual groups.

The term 'regulation' refers to statutory, self-regulation and voluntary initiatives whenever applied alone. If referring to a certain type of regulation, this will be specified.

The analysis is divided into 3 sections; each referring to one of the questions investigated: What general impression do the stakeholders have on current regulations on marketing of food and beverages to children? What opportunities and barriers do the stakeholders identify regarding marketing of food and beverages to children? How will marketing be regulated in the future according the stakeholders?

What general impression do the stakeholders have on current regulations on marketing of food and beverages to children?

Initially, all respondents were asked to state their organization's view on marketing and children, to what extent they engage with this area in their daily work and if they believe the topic is important. The answers to this question revealed that all respondents believed the area involves extreme complexity and should be prioritized.

Concerning current statutory regulation in the area

9 of 13 respondents believe that marketing of food and beverages targeted children is insufficiently regulated in Denmark when it comes to statutory regulation. One participant specified:

“The statutory regulation is insufficient in several ways: it is insufficient because several areas are not covered, because there are areas where the legislation is not enforced in practice and it is insufficient because whenever enforced, the penalties are not severe enough to prevent repetition” (group 2, consumer organizations).

The lack of legislation was seen as the most important problem. However, the complications of penalty-sizes was also mentioned by a number of respondents who pinpointed how the current legislation allows for organizations to weigh cost-benefits of falling foul of the law and possibly benefiting more economically from accepting a penalty.

Several respondents referred to the Law on Marketing; one stressed that the paragraph of the Law on Marketing on considering “the natural credulity and lack of experience and critical thinking of children and adolescents”¹⁹ had to be seen in context to the Consumer Ombudsman's revised guidelines from 2006 on children, adolescents and marketing²⁰ which tightens the control of the law (group 5, advertisers and marketing organizations). Nonetheless, several respondents expressed concern towards what they believed to be an overall lack of statutory regulation of unhealthy foods. As one respondent put it:

“There is nothing specifically targeting unhealthy foods but the Law on Marketing includes something on marketing to children and the exploitation of their credulity and therefore it provides a sort of protection, but I don't have the impression that this is enough to prevent companies in marketing, so to speak, normal unhealthy foods to children, so in that way, I don't think the general legislation is very effective in relation to marketing to children” (group 6, government and regulators).

The group of respondents believing the legislation is defective wanted more legislation in the area; however, they had different motives. One respondent wanted more equality:

“We would actually rather have a legislation everybody has to obey than constantly being exposed to the pressure of “you should behave politically correct” whilst knowing that only a small part of the market do that which distorts competition. Here, we would rather have politicians taking responsibility and telling us, this you are allowed to do and this you are not. And then we will adjust to that” (group 4, food producers and retailers).

Another emphasized the political influence of the food industry:

“The politicians do not have to take full responsibility for the health of the public but I find the large amount of lobbyism by the food industry suspicious, or rather

¹⁹ Lov om Markedsføring §8, stk. 1

²⁰ Forbrugerombudsmanden. Børn, unge og markedsføring. Vejledning. 2006

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unfortunate, as it influences everything to suit industrially processed foods which become of poorer and poorer quality” (group 2, consumer organizations).

A common feature of all the respondents finding the legislation insufficient was the acknowledgement of the fact that legislation has certain limitations. Meaning that legislation is effective when applied to specific topics such as for example valued added tax but can hardly cover the area of marketing independently.

Concerning ‘Code on responsible marketing to children’

However, legislation does not regulate independently; all interviews also seemed to include a common theme of stressing the necessity of differing between the statutory regulation and self-regulation. In December 2007, the Forum for Responsible Marketing²¹ launched their “Code on responsible marketing to children” in which several restrictions on the types of food and beverages allowed to be advertised in Denmark were determined²². Of the 4 respondents with the opinion that the current statutory regulation was sufficient, 3 respondents are partners in the Forum for Responsible Marketing.

Generally speaking, this initiative is regarded positively among all respondents; especially due to the different components of the Forum:

“It is a great advantage that not only the food industry but also advertisers and retailers are included. That way you reach both producers and channels of marketing and sales” (group 3, health- and public health organizations)

On the one hand, the reasons given by the Forum for Responsible Marketing for developing their code are based on a will to take responsibility²³ and on the other hand a position where self-regulation is believed to be more efficient than legislation, as the incentive to search for loopholes to avoid restrictions by the companies would not be as prevalent:

“We think it is for the companies to take responsibility and for the agencies to take responsibility because that way you make a greater effort than had it been legislation where you spend more time pushing the limits. That is, to avoid the given legislation” (group 4, food producers and retailers).

One respondent took it further than simply having to take responsibility of the wording of the code as there were instances, which a narrow interpretation would not cover:

“There have been situations in which we have discussed whether it would be wise to behave according to the words of the code. That is, in cases something may have been permissible according to the code, but we have ended up by advising members not to do it anyway as it would have been against the spirit of the code” (group 5, advertisers and marketing organizations)

Even so, the idea that code would work to keep the partners on course was objected against:

21 An informal cooperation between Dansk Industri, Bryggeriforeningen, Dansk Erhverv, De Samvirkende Købmænd, TV2, Danske Dagblades Forening, Dansk Annoncørforening, Foreningen af danske Internetmedier, Danske Reklame- og Relationsbureauers Brancheforening og Dansk Magasinpresses Udgiverforening

22 Forum for Fødevarereklamer. Kodeks for Fødevarereklamer til børn. 2007

23 Homepage of Forum for Fødevarereklamer: Til virksomheder

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“I don’t know if you can say the code makes it less tempting for the companies to seek loopholes in the regulation – after all, loopholes are exactly what they have created” (group 6, government and regulators).

However, in some cases multinational companies have responded to the rules, which they think are tighter than in most other countries. It is up to the individual company whether they will follow them or not, but like one respondent expressed it, they need to be aware of the consequences:

“We have some international companies who think our code is tough, but what we have done now is to say, the rules are voluntary for you to obey but if you don’t keep to them and get exposed to criticism in the media, we can’t support you” (group 4, food producers and retailers)

Put in another way, there are no real sanctions related to the code. Instead, it includes several decisions, which can result in positive publicity for the companies if keeping to the rules. This should motivate them sufficiently to keep their marketing within the scope of the code. With regards to the criteria perceived to be strict compared to other countries, the rules are presently fixed; however, they are evaluated continuously. Still, evaluation and missing sanctions are points identified as weaknesses by respondents outside the Forum for Responsible Marketing. Two of these stated that internal evaluations would not be sufficient to legitimise the process and that external evaluations would be needed. Their statements on this issue were practically identical:

“But for it to be effective, evaluations are needed. Otherwise it becomes chit-chatting. It must be so that there are clear goals for the voluntary initiatives so that it can be evaluated – preferably every year – whether the regulation is effective [...] How to compose the forum, which is to do the evaluation must be discussed, but people from outside must be included. The process must be impartial to be reliable” (group 8, media businesses).

With regard to sanctions, especially the part of enforcement concerned with monitoring and reporting²⁴ called for attention as both the possibility for reporting and the following sanctions are unclear:

“We also need to have some sanctions specified, and we need to get this on the media agenda because what we don’t need is to end up with a reporting situation like this where people don’t even know the rules or the homepage” (group 3 health- and public health organizations)

Neither an impartial commitment in the area of evaluation nor sanctions, apart from that of a lack of support in the case of negative publicity, is currently a part of the process. On the other hand, there is an ongoing dialogue between stakeholders within and outside the Forum for Responsible Marketing and generally everyone agrees this dialogue is an advantage to the entire process:

“I believe one of the most positive results of the forum is our dialogue including so many parties – also from outside the food industry and media. With a tight statutory regulation, there would be no reason to engage in this contact” (group 5, advertisers and media organizations).

The last point concerning self regulation involves how practically all respondents recognize 2 reasons for why the code may result in being a good supplement to legislation: that generally speaking, the Danes are critical consumers and that the moral standards within industry, retail and

²⁴ On the homepage of Forum for Fødevarereklamer under the noticet: Har du set fødevarereklamer i børnemedier ?

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advertising in Denmark are relatively high. There are actually examples of companies going further than the obligations already committed to by joining code.

Concerning the freedom of being able to advertise

The level of agreement is high among the stakeholders. The dialogue is present in spite of disagreements. Only two respondents differ from the general opinion of the rest of the stakeholders; one did not believe regulation of marketing was an issue at all:

“I don’t have a problem with marketing targeted at children or other groups [...] I think it should be the business itself who develops its own approach to advertising and I have to say, that starting to legislate in this area is the worst possible thing we could do” (group 9, others – including politicians and economists)

The other respondent differing from the general opinions believed that advertising was not desirable at all:

“We have a deeply rooted wish of not advertising at all [...] We would much rather spend resources on increasing the knowledge of healthy foods” (group 2, consumer organizations)

What opportunities and barriers do the stakeholders identify regarding marketing of food and beverages to children?

To the question of opportunities and barriers in relation to marketing targeted at children, the respondents had different views. 6 respondents mainly supported statutory legislation, 6 respondents preferred self-regulation and one ended up maintaining the necessity of a combination of both. However, all responses had nuances to them.

Concerning the need for regulation

On a general level, the respondents agree that some form of regulation of marketing to children is needed. Some advocated for strict statutory regulation with the purpose of limiting the amount of contradicting information:

“Advertising is a power-tool. It influences consumers to make choices they would not otherwise have made [...] The increasing amount of advertising means that consumers get more information, but a smaller amount of relevant information” (group 2, consumer organizations).

However, some respondents believed that voluntary initiatives had the advantage of not complicating the situation for anybody but the ones intended to target with legislative regulation:

“If you wish for a message to reach a lot of people then it doesn’t matter how much legislation there is. It will come out anyway. So in a way you end up affecting the companies behaving responsibly while the rotten apples will advertise anyway” (group 5, advertisers and marketing organizations).

Concerning the basic problem

A point made by several respondents is that it will require an acknowledgement of the fact that the fundamental problem has societal importance in order for regulation to be widely respected. That is, to change views within advertising and marketing of unhealthy foods and beverages to children, the fact that children and adolescents are influenced to eat unhealthy products must be recognized as a problem. However, when asked the question of whether marketing of energy-dense and nutrient-poor foods and beverages is linked to overweight among children and adolescents, none of the respondents had a clear answer. There were voices both in favour of and against a link;

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however, several respondents specified that there is no clear evidence for the association. Sales of soft drinks and candy have increased along with the number of overweight children but on a general basis, the respondents replied that marketing was probably one of many factors. In this connection, several respondents mentioned the necessity of structural changes instead of trying to change lifestyles through information only. As respondent said:

“We need to realize that health information is not enough. We need structural changes to make the healthy choice the easy choice” (group 3, health- and public health organizations).

Even though the association between marketing/advertising and overweight was considered to be up for discussion, 6 respondents mainly supporting statutory regulation agreed that the problem is difficult to deny, nonetheless. Still, the lack of evidence is a challenge:

“It is my impression that there is a wish for more legislation in this area among those who work in the field. We are perfectly aware of the fact that there is no certain evidence to prove that marketing is the problem, but when companies spend so much money on something, you might think they kept some evidence to show that it is money well spent” (group 1, academic experts).

Another respondent emphasized:

“There are no immediate signs of increased legislation within the next few years [...] Usually, the reason for this is the lack of evidence; however, if you keep demanding bullet-proof evidence before legislating, then it is hardly possible to legislate in this area at all” (group 5, government and regulators).

Concerning equality before the law

Others chose to view the problem from another perspective. Instead of focusing on a possible association between overweight and advertising, one of the respondents focused on equality before the law by stressing how legislation treats all parties the same compared to voluntary initiatives, which might askew competition:

“Therefore we think, if the authorities want our members to take what is being said in this area seriously, they need to witness the consequences coming to those who do not obey the rules” (group 4, food producers and retailers).

How this legislation should be shaped was not agreed completely upon; however, the fact that formulating such legislation would hardly be an easy task seemed to be a shared opinion. As one respondent said:

“I get tired before even thinking about what a legislative process in Brussels would involve. With all the groups who want their interests protected, it will take way too long” (group 3, health- and public health organizations).

Concerning structural initiatives

The international aspect was mentioned in several contexts. Partly when regarding how advertisements go beyond boundaries and partly with regard to the conditions affecting Danish legislation:

“There has been a double sided policy; for instance the taxes on sugar which could be considered a health-tax but at the same time you have the cross-border trading which you have tried to lower and then you have lowered the taxes on sugar. And you could

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ask yourself if that was a sensible solution” (group 3, health- and public health organizations).

In connection to this comment, the respondent mentioned a topic, which several other supporters of statutory regulation brought up as well. That is the need for structural initiatives that could benefit the entire population. Especially the idea of differentiated value added tax (VAT) was mentioned by several respondents:

“Instead of lowering the tax on high sugar products, the politicians should consider applying differentiated value added tax. If we are going to reach all groups of society, a lot has to do with price. But the political will to introduce this tool has not been specifically strong” (group 3, health- and public health organizations).

As several respondents mentioned differentiated VAT as a good idea, a single respondent referred to positive experiences with differentiated VAT during a pilot scheme in which a supermarket-chain lowered the prices on fruit and vegetables for a period; it turned out the sales during same period had increased:

“By lowering the tax on fresh fruit and vegetables, you simplify the process for the ones who have to administer it as it involves a well defined food group. And it is a food group which all experts agree is healthy [...] That is, they eliminated the tax on all fresh fruit and vegetables and that resulted in a significant increase in sales” (group 4, food producers and retailers).

In addition to differentiated VAT, one respondent suggested that statutory regulation, too, would be a suitable tool to control production methods:

“The other day, I read in a newspaper that tests show that 8 out of 10 Danes support the idea of differentiated value added tax [...] And we would definitely be better off if healthy food were cheaper and if methods of production not harming the environment were rewarded (group 2, consumer organizations).

Concerning channels of marketing and advertising

Whether government and parliament will take action in this area is yet unknown; however, even if statutory regulation gets on the agenda, various respondents pointed out the fact that there are conditions to consider in such legislation. On the one hand, are the channels for marketing and advertising where the tendency has been to focus on television instead of newer media such as mobile phones and the internet:

“The biggest problem regarding TV is that we all focus on it but we forget that it is not the most important medium to young people. If we want to regulate, we must realize that TV is for us old people – the young have moved on. It puzzles me why there is so much focus on TV because it is the media used by young people we need to pay attention to – and I think that will be difficult” (group 5, advertisers and marketing organizations).

On the one hand there is an immediate need to investigate the media. Games and social network appeal to children and adolescents and there is no filter in the same way as with TV for instance where parents can control what the children view to a greater extent. And in that connection, the lack of regulation is a problem as studies show that children are unable to recognize advertisements for what they are²⁵:

²⁵ Vinderskov, Kirstine. Dark Marketing er ikke for børn. 2008

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“Studies show this paradox, the older children get, the less regulation is available. There is a gap in the regulation to children between 10 and 15 years old where neither parents nor society regulate but this group does not have the competences to decode the marketing and advertisements” (group 8, media businesses).

To be able to decode does not mean that you are not influenced by marketing and advertising; on this issue, various respondents had supplementary arguments to stress that:

“To say that children need to be able to decode advertising depends on them – and us – being rational beings who constantly reflect on our surroundings. But that is not true. We become affected by a lot of things we are not aware of” (group 2, consumer organizations).

Concerning the dynamics between legislation and self-regulation

One last perspective, which surfaced in connection to the possibilities of the statutory regulation, was the dynamics between legislation and self-regulation. Several respondents emphasized the necessity of recognizing the connection between the 2 approaches:

“You can’t ask the question as an either/or. Self-regulation arises because of the threat of further legislation in the area which is presented by the legislators in case nothing happens” (group 3, health- and public health organizations).

This point was widely acknowledged both among the supporters of legislation and those advocating for self-regulation. As one of the self-regulation advocators expressed:

“Of course we respect the pressure from legislators but we believe we can find better solutions ourselves and that we have a better grasp of the companies” (group 5, advertisers and marketing organizations).

Concerning motives for self-regulation

The 6 respondents preferring self-regulation generally agree on the motives. The main argument is that the companies want to take their part of the responsibility for public health and they think each company will commit with a more positive attitude when joining an agreement of self-regulation. The majority of respondents in this group pointed to the fact that the pressure from many critical consumers contributes to an increase in responsible marketing of products:

“It looks as if companies in Denmark – and other Nordic countries – have realized that consumers don’t accept anything” (group 5, advertisers and marketing organizations).

Consumers were not only viewed as being active and critical. One respondent opposed this interpretation and instead focused on consumer-protection as a basic concept of Danish thinking:

“I don’t know if it is the consumers who set the limits. I think it is the authorities and health organizations who prioritize consumer-protection more than anything [...] The attitude of the Danish society is that the consumers are the weak actor and that you need to take responsibility for them” (group 4, food producers and retailers).

A new theme, which was presented along with the motives for self-regulation was the flexibility of this regulation. Several respondents mentioned the difficulties of changing legislation while self-regulation is possible to change continuously as long as these changes are agreed upon among the stakeholders committed to the regulation. Another point agreed upon was the advantages within self-regulation in relation to new media such as mobile phones and internet:

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“As you can see by the Law of Marketing, it takes time to make changes. Through self-regulation, we can include the new media a lot faster” (group 4, food producers and retailers).

One of the respondents not being a member of the Forum for Responsible Marketing, commented on the idea of self-regulation being faster to formulate and implement:

“We can see that when the food industry and advertisers decided to make the Forum, it was organized immediately. It works a lot faster than the time required passing and executing a new law” (group 3, health- and public health organizations).

Concerning points of criticism of the ‘Code of responsible marketing’

Even if there are voices expressing criticism of code in its current form, there is also a general acknowledgement of the initiative. Nonetheless, a few respondents mention a list of issues they wish to discuss with the Forum for Responsible Marketing. One of them expressed it as 5 points of criticism:

“We have presented 5 points of critique: that the code is limited to food advertising and not all marketing [...] that there are exceptions making the criteria unclear [...] that the age cut-off is 13 years old which is quite low [...] that restrictions on TV are limited to children’s TV-shows and not including family-shows [...] and that sanctions are missing” (group 3, health- and public health organizations).

The responses to the criticism are similar among the self-regulation advocates. Several are engaged in other initiatives covering areas besides advertising, for instance the plan of 13-points which focuses on fighting overweight by increasing access to healthy foods in supermarket-chains²⁶. Regarding the unclear criteria, several mention that the code in its present form can be discussed and changed. The age cut-off of 13 years is commented by one of the respondents:

“The consumer ombudsman uses a concept including children up to 15 years which might be a reason to use this instead. But we also have to consider the big actors like Coca Cola and Pepsi and Danone who say 12 years on an international basis. And then it would be difficult for us to make the cut-off of 15 years in this country” (group 4, food producers and retailers).

The problem with restrictions limited to children’s TV-shows has apparently been discussed in the Forum for Responsible Marketing. There are various opinions pointing in different directions:

“We have said that we want regulation on programmes which are viewed by children alone. That is, that there are no advertisements on children’s-media and during programmes for children. Regarding programmes for the family, we have decided that the parents are the ‘gate-keepers’” (group 4, food producers and retailers).

In opposition to:

“You have to target the shows where the majority of the viewers are children. You know which they are because you are measuring everything possible” (group 5, advertisers and marketing organizations).

The final point of criticism was the lack of sanctions and the answer to this was overall that code includes sanctions implicitly as companies do not wish to harm their brand:

²⁶ Dagligvarehandlens 13-punkts plan. 2007

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“I believe you can say self-regulation goes further than legislation because you can expose the rotten apples if that is what you want and it is more efficient than penalties” (group 5, advertisers and marketing organizations).

Overall, all respondents could agree that self-regulation and legislation could supplement each other and several pointed out that it would take time before it would be possible to evaluate whether self-regulation was effective:

“We have been legislating for thousands of years whereas self-regulation is new. Maybe we should give it a chance to show its potential after all” (group 6, government and regulators).

How will marketing and advertising be regulated in the future according the stakeholders?

In relation to future regulation, especially 2 areas were mentioned: that the dynamic between legislation and self-regulation play a crucial role and that the EU Commission’s announced evaluation of the present regulation will be of high importance.

Concerning the dynamic between statutory regulation and self-regulation

Several respondents acknowledge the dynamic between the threat of legislation and the formulation of self-regulation as being a key factor in future regulation. Not only because of the pressure of the threat but also because it stimulates a tighter self-regulation:

“You can express it in the following way: when legislators use statutory regulation as a threat, the self-regulation becomes more detailed than the legislation ever could be” (group 3, health- and public health organizations).

The dynamic is considered important, both among legislative advocates and among those preferring self-regulation. Especially the last group stressed that legislation would not be able to stand alone:

“It has to be a combination. Regulation alone is not enough. To achieve improved regulation, the best would be for the companies themselves to take responsibility. And here we see movement. CSR is growing; that is, the idea that companies have moral and ethical obligations. It might move too slowly and to this, threat of legislation may play a role – so companies start regulating themselves because they fear legislation in the area if they don’t” (group 8, media businesses).

Even so, various respondents highlight that in order for the threat to work, it has to be real. Therefore, it is not enough to mention a risk of legislative measures without a trustworthy will behind to implement them. And to this point, several expressed doubts in relation to future procedures:

“Politically, we see greater will to seriously consider regulation in other countries than in Denmark. At least the possibility is more likely elsewhere and right now is a signal of no upcoming legislation – even though marketing to children has been a point entrusted by the Commission of Prevention” (group 6, government and regulators).

Nonetheless, the members of the Forum for Responsible Marketing want the code to work in order to minimize the threat of further statutory regulation:

“There is a threat of further legislation if the Code doesn’t work. So we really want the Code to be a success” (group 5, advertisers and marketing organizations).

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Concerning EU

But even if there is a general agreement that no further statutory regulation is on its way in Denmark, the stakeholders are aware of possible upcoming initiatives in EU which will influence Danish conditions. However, doubts have also been expressed on the reliability of these threats:

“I’m not sure. It has been discussed for long but EU sends so many signals. First in 2004 and now in 2010. But I find it hard to imagine that it won’t lead to anything at all – especially now that your project is being co-funded by EU” (group 4, food producers and retailers).

Hence, in spite of the doubt, some respondents believe that since PolMark is being organized, the EU Commission might this time complete the evaluation of the current regulation, which has been announced since 2004.

Concerning future regulation

Of the 6 respondents advocating for statutory regulation, 4 think upcoming legislation is unlikely. 1 respondent refrained from answering and 1 believed that any possible future statutory regulation would require a recommendation from the Commission for Prevention. Of the 6 preferring self-regulation, 4 did not expect any upcoming changes in the present policy in the area. 2 respondents conveyed hesitation; one without further comments while the other referred to PolMark as being a possible indicator without being convinced of any upcoming changes.

Discussion

The partners of PolMark collect data from essential stakeholders in 11 EU-countries and as each partner is obliged to conduct a minimum of 10 interviews, more than 110 respondents representing overall organizations or academic experts will be included. The problem might seem trivial in a Danish context; however, the investigation is nonetheless relevant, because though the Nordic countries are often highlighted as being pioneering countries in relation to marketing to children²⁷, the latest announcements from the Commission should be interpreted as if an evaluation of regulation in EU is on the way. Such an initiative could mean a revision of the strategy that has up until now been giving voluntary solutions pride of place and this will affect the Danish market too. It is therefore crucial for Danish experiences to be heard by EU decision-makers; especially in the light of the efforts made in the area since the end of 2007 with the launch of the Code by the Forum for Responsible Marketing and the beginning of a new dialogue among the partners in the area.

Media of marketing and advertising

The main focus of PolMark involves different forms of regulation and the stakeholders’ views of these. The media used for marketing and advertising are only included indirectly in the questions for the stakeholders. Hence, a group of questions focus on comments relating to TV advertisements and in connection to this, several respondents have mentioned other channels for marketing and advertising they found more interesting. Especially the internet and mobile phones, as most agree these are the media used mostly by children and adolescents. Estimations within the last year also show the greatest increase in advertising-space among these media – from 2006 to 2007, the increase was of 39.5% alone and so the total turnover amounted to 2.502 million Danish crowns²⁸. These numbers refer to the total amount advertising-space and therefore not advertising-space reserved to foods and beverages exclusively; however, the increase indicates a shift towards more advertising via the internet as the turnover during same period for TV and cinemas only increased

²⁷ McGinnis et al. Food Marketing to Children and Youth. P. 354 ff

²⁸ Reklameforbrugsundersøgelsen 2007, p. 39 & p. 59

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by 1.8% and 1.8%, respectively²⁹. At the same time, the existing knowledge on children's receptiveness towards marketing and advertising is rather limited³⁰; a fact worth considering in the near future.

Responsibility of the companies

The initiative launched by the Forum for Responsible Marketing through their Code shows that Corporate Social Responsibility (CSR) has gained footing in Denmark. This has not necessarily come about because of idealistic reasons; although the reason the forum gives for creating the code is taking responsibility regarding the issues of overweight³¹. However, it may just as well be due to the consideration of the companies' reputation and competitive power, which is also emphasized by a number of respondents. Regardless of the motives behind, the different stakeholders agree that self-regulation within the Danish market is a success in relation to marketing of energy-dense and nutrient-poor foods and beverages.

On the overall, the stakeholders have the impression that the code has functioned from the day it was introduced. Moreover, a dialogue is taking place among members of the Forum for responsible marketing and organizations outside who have called for attention to the need for adjustments. Nonetheless, it has been recognized that pressure of further legislation from the government would be suitable if self-regulation does not have the desired effect. This points to the necessity of a discussion of the government's role in relation to public health – and in this connection, a discussion of the government's role in public health via nutrition-related initiatives. Currently, the politicians talk about volunteering and the parents' responsibility when discussing the issues of overweight³² whilst not hesitating to command and ban when it comes to other areas such as the use of seatbelts or smoking-bans. You could question in which ways the population's choice of foods differentiate significantly from their choice of using a seatbelt or tobacco as all cases involve the protection of citizens and make savings in welfare-expenses.

Critical consumers

Regarding the citizens, several stakeholders point out that consumers show drive by remaining critical towards the food industry and advertisers. There is also one condition which cannot be avoided in the discussion of marketing and advertising of energy-dense and nutrient-poor foods and beverages to children: Denmark has a lower occurrence of overweight among children and adolescents when compared to other countries in Europe³³. Several respondents referred to 2 elements that might have importance in this connection: first of all, critical consumers help by pressuring companies to take responsibility and secondly, Danish companies have relatively high moral standards. However, there is no investigation into the possible association between lower prevalence of overweight among children and the pressure of critical consumers on the companies but it seems obvious to consider the possibility. That is, because of a critical mass of consumers, the companies may be willing to display higher moral standards. Still, it is worth noticing how social inequalities prevent some consumers from having a real opportunity to be critical when shopping. It is estimated that 66.000 citizens in Copenhagen are poor during shorter or longer periods of time³⁴ and it can be expected that price, for these citizens, is a heavier parameter than quality, health and variation when it comes to foods.

²⁹ Ibid, p. 37 & p. 59

³⁰ Fødevarerministeriet. Usund indflydelse. 2008. P. 6

³¹ Homepage of Forum for Fødevarereklamer: Til virksomheder

³² Sundhedsministeriet. En forstærket indsats mod overvægt. 2005. P. 15

³³ Motions- og Ernæringsrådet. 2007. P. 23

³⁴ Københavns Kommunes Socialforvaltning. Analyse af levevilkår og fattigdom i Københavns Kommune. 2007

Possibilities of future regulation

After the first announcement in 2004, advertisement and marketing to children was once again on the agenda of EU in 2007 through the Commission's Work Plan and Strategy. Herein, marketing and advertising are mentioned as factors affecting consumer's choice³⁵; however, the question as to what extent marketing of energy-dense and nutrient-poor foods and beverages can be directly associated with the increasing number of overweight children has not been unequivocally clarified. A study conducted for the EU-Parliament in 2008 acknowledged a link between advertisements and overweight but adds that social and environmental factors may also influence the development of childhood overweight. Nonetheless, the study concludes that even though there is no certain evidence proving the association, the regulation in the area should be lead by the precautionary principle³⁶.

Provided the legislators chose to introduce the precautionary principle in the Danish legislation on food and marketing, noticeable consequences would come about. In the existing food legislation, food safety is rather central as avoiding food-related illnesses among the population has been of great importance to the legislators³⁷. However, the health promoting effects of the food and thereby the nutritional composition has not gained as much attention and tools applied to improve the nutritional status of the population basically consist of information distribution and counselling³⁸. The question is whether information about health will be sufficient if implementing the precautionary principle in legislation. Since studies show an increase in overweight among children in groups of society with lower income³⁹, then price is a parameter hardly to be ignored. In this case, structural measures such as lower taxes on fruit and vegetables, also mentioned by various respondents, would contribute to making the healthy choice more accessible to financially challenged groups of society. The Law of Marketing does not include any formulations explicitly involving the concept of 'unhealthy foods'. If implementing the precautionary principle in legislation, the possibility of including children's exposure to marketing of this group of food and beverages specifically in the regulation, should be considered.

Advantages and disadvantages of regulation

Until now, legislators have chosen to focus on increased voluntary initiatives; however, the threat of statutory regulation if the initiatives fail to function has been minimal. The pressure of regulating marketing of unhealthy foods and beverages could come from 2 angles: either the legislators would tighten legislation specifically, but this seems quite unlikely according to most respondents. Or, the other possibility, the pressure could be a generally formulated one where the initiative could be related to the government's action plan for the corporate responsibility of the companies from 2008. None have explicitly suggested a link; however the first performance objective of the action plan stresses that the government intends to introduce statutory control, requiring the companies to account for their corporate responsibility in their annual report⁴⁰. The interviews reveal a doubt among the respondents concerning the reliability of pressure from legislators, both Danish and European; although the PolMark Project itself has awakened the idea that EU this time might actually carry out the evaluation of the current regulation in the area. If the legislators decide to keep voluntary initiatives as the main principle, they should be aware of the unfortunate side-effect of self-regulation pointed out by a number of respondents which is that agreements like this only include companies who join. This could potentially distort the market. Put in another way, the companies wanting to take responsibility in the overweight discussion may risk losing some of their market share because they have been subject to limitations, which could result in decreasing sales of specific products and thereby total income.

³⁵ White paper on a Strategy for Europe on Nutrition, Overweight and Obesity related health issues, p.6

³⁶ Barnabè, D. The effect of Advertising and Marketing Practices on Child Obesity. 2008

³⁷ Fødevareloven. Lov nr. 526 af 24.06.2005 (inkl. senere ændringer 2006 – 2009). §§ 4 - 9

³⁸ Ibid. §§ 10 - 13

³⁹ Motions- og Ernæringsrådet. 2007. p. 21

⁴⁰ Handlingsplan for virksomheders samfundsansvar, p. 7

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The question of whether statutory- or self-regulation is the tool to limit children's exposure to marketing influencing their eating habits in an unsuitable direction is difficult to answer. Both forms of regulation have obvious advantages and disadvantages beyond simple ideological agendas. You can hardly disagree that initiatives of this character must be subjected to some form of evaluation as resources would be wasted by either demanding or voluntarily agreeing to restrictions without the desired effect. Regarding legislative measures, they require enforcement as a violation of the law results in sanctions such as penalties or such like. But to establish a violation, procedures of reporting and control arrangements must be in place and are expensive to the taxpayers. In this case, control might possibly take place via the present food agency, yet, this is likely to require additional resources. As for self-regulation, the control is cheaper for the consumers in the first instance as the companies themselves are in the receipt of the expenses for the following procedures. However, as several respondents call attention to, the lack of sanctions and external evaluations constitute a problem when trying to legitimise this sort of regulation to the consumers. The members of Code accentuate the risk of the companies of being exposed as unethical in their marketing if not respecting Code like they also point out the possibility of reporting via the homepage; however, the question is whether these tools are sufficiently effective if the more reluctant companies decide to join Code and whether the consumers have a fair knowledge of the possibility of reporting violations.

Conclusion

The analysis of the Danish data collection reveals the complexity of the area of marketing of energy-dense and nutrient-poor foods and beverages targeted children. The interviews have been characterized by nuanced views and it is not possible to make clear distinctions between the different groups of stakeholders based on available data. Differences in attitude appear both among the groups as well as within the individual groups. However, most groups of stakeholders participate in a dialogue in the area identified in the PolMark Project. Main conclusions of the data collection are the following:

What general impression do the stakeholders have on current regulations on marketing of food and beverages to children?

The majority of stakeholders found the statutory regulation ineffective; partly because it does not target energy-dense and nutrient-poor foods and beverages specifically and partly because the lack of legislation could cause market distortions.

The penalties used for violating the law are not considered adequate in deterring those who launch marketing which conflicts with the law.

A majority of respondents acknowledge the limitations of statutory regulation and that it will hardly be able to cover the area of marketing of energy-dense and nutrient-poor foods and beverages.

Self-regulation is generally considered a good supplement to legislation; especially as the initiative has started a dialogue on regulation in the area.

A majority of respondents consider self-regulation morally obligating in another way than statutory regulation.

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The question of sanctions in relation to self-regulation reveals differing opinions as some believe the code includes sanctions implicitly while others call for attention to the need for specified sanctions.

Regarding the evaluation of the efficiency of the code, respondents disagree on whether external evaluation is required in order to legitimise the code.

What opportunities and barriers do the stakeholders identify regarding marketing of food and beverages to children?

The stakeholders generally agree on the need for some form of regulation in the area.

Several respondents acknowledge that the strength of the evidence associating overweight and the amount of marketing is questionable. The same respondents recognize the complications of this in justifying regulation.

The possibilities for regulation are generally perceived to be the following: legislative measures could help prevent competitive distortion; legislative measures could play a role in structural measures against overweight; increased focus on the ethical responsibility of the companies stimulates self-regulation; critical consumers influence the companies into taking responsibility.

The barriers generally identified in relation to regulation are the difficulties in monitoring the new media channels; the unreliable threat of legislation if self-regulation is found ineffective; the lack of sanctions in self-regulation can be a hindrance to its efficiency.

How will marketing be regulated in the future according the stakeholders?

The general impression among the stakeholders is that there are no upcoming changes to the current policy in Denmark.

In relation to the plan of the EU Commission of scrutinizing the current regulation for the need of changes, the majority of respondents express doubts as to whether that will happen.

Overall, the respondents believe the future regulation will be a combination of statutory- and self-regulation; most likely with emphasis on self-regulation.

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