

CODE OF CO-REGULATION OF ADVERTISING FOR FOOD PRODUCTS AND BEVERAGES DIRECTED TO CHILDREN, PREVENTION OF OBESITY AND HEALTH (PAOS CODE)

INTRODUCTION

The present Code, which falls within the framework of the NAOS Strategy launched in 2005 by the Spanish Ministry of Health and Consumption, aims at “reducing the prevalence of obesity and overweight and their consequences, in as much in the area of public health as in their social repercussions”. This goal is shared by the World Health Organisation and the EU institutions.

Childhood obesity is a multifactorial problem requiring a coordinated response from all the agents involved, including not only the industry, distributors, hotel trade, modern restaurant businesses and the advertising sector, but also health authorities, parents and educators in addition to many others. Measures must go beyond the mere control of the promotion of food products, a necessary measure, but not sufficient when taken in isolation on its own.

In this context it is important to underline that a sedentary lifestyle and insufficient burning of energy, caused by the new models and habits of behaviour of our modern society, play a major role in increasing obesity and overweight, and it serves no purpose to place the burden of responsibility on the Spanish food and beverage industry – nor on specific food products or their advertising. However, aware of the problem, the Spanish Federation of Food and Drinks Industries (FIAB) agreed to take a constructive and proactive role in the complex and collective battle against obesity, setting high levels of social responsibility in advertising activities, in particular those directed to children, so that they contribute to promoting the adoption of healthy diets and physical activity with a positive effect on their health and well-being.

To this end, and as part of its compromise, FIAB promoted in 2005 the drafting of the sectorial Code (PAOS Code) aiming at establishing a set of rules to guide adhering companies through the development, implementation and dissemination of their advertising messages directed to children under 12 years of age. The Code was developed in line with the Principles of Food and Beverage Product Advertising of the EU Agro-Food Industries Confederation (FoodDrinkEurope), approved in February 2004.

Seven years after having entered into effect, the Code has proven to be a useful tool in order to improve the quality of advertising directed to children under 12 years of age, and its impact has been evaluated through independent research. For this reason, a series of business sector associations and other entities committed with the objectives of the PAOS agreement have adhered to it.

The implementation of this Code has managed to improve the quality of the advertising messages directed to children, a segment of the population that deserves a special attention, following the international recommendations on food products marketing aimed at children by the World Health Organisation (WHO).

In order to reinforce the application of the Code, in September 2009, AESAN, FIAB, AUTOCONTROL and the TV operators next mentioned, signed a collaboration agreement to be applied by the Federación de Organismos de Radio y Televisión Autonómicos – FORTA (Federation of Radio and Television Organisations of the Spanish Autonomous Regions) and the Unión de Televisiones Comerciales Asociadas – UTECA (Associated Trade TV Union), the latter representing Antena 3 Televisión, Gestevisión Telecinco, Grupo Sogecable, La Sexta Televisión, Veo and NET Televisión.

The PAOS Code was born to be applied on advertising of food products directed to children under 12 years of age, independently of the advertiser. FIAB member companies and non-members have adhered to this Code that pretends that any advertising encompassed within its scope will fulfil the ethical rules, that advertisers remain adhering to it and that they comply with the Code's implementation rules.

After the important initial effort made by the advertisers to adapt their advertising actions to the deontological rules of the Code, the compliance dynamics has increased while increasing the quality of advertising object of the Code, not only by the companies adhered to it, but by the rest of them. The objective pursued since the creation of the PAOS Code still remains, and it is being reached as the Code is known and respected by a wider number of companies.

Self-regulatory systems have been enjoying a considerable and growing recognition both by the EU and international authorities as well as by the national legislator. In fact, for some time now a remarkable evolution towards a position of straightforward fostering of self-regulatory instruments has been observed, constituting a useful and necessary complement to the traditional administrative and/or legal instruments existing in all Member States of the European Union. Such is reflected, amongst others, in Directive 84/450/CEE on misleading advertising or in Directive 2005/29/CE concerning unfair business-to-consumer commercial practices.

Within the Spanish legal system, there are a good number of laws that include references to self-regulation of advertising. Due to its importance it should be highlighted the Law 3/1991, of January 10, on Unfair Competition, which, after being modified by the Law 29/2009, recognises and expressly fosters the self-regulatory systems and, in particular, its characteristic elements (codes of conduct and extrajudicial systems to resolve controversial issues), establishing the requirements that such self-regulatory systems must fulfil to acquire legal recognition.

Furthermore, the EU White Paper ("A Strategy for Europe on Nutrition, Overweight and Obesity Related Health Issues"), of 30 May 2007, recognizes self-regulation initiatives on advertising of food products directed to children and defends that a good self-regulation depends on the existence of systems that allow monitoring the adherence to the agreed codes.

In this sense, since 1996 there exists in Spain an advertising self-regulation association named Asociación para la Autorregulación de la Comunicación Comercial (AUTOCONTROL), made up by advertisers, advertising companies, media and their corresponding associations. This non-profit Association is in charge of managing the advertising self-regulatory system in Spain by resolving claims on supposedly illicit advertising. Likewise it is in charge of the copy advice system for advertising companies, agencies and media and it actively collaborates with the public authorities so that the advertising is adjusted to the rules it is bound to.

The accumulated experience obtained through the seven years of effective application of the PAOS Code has been highly satisfactory, as revealed by the considerations this work has deserved by several organizations and the results of external analysis.

Pursuant to the commitments assumed by virtue of the PAOS code, companies adhered to the Code, which presently represent a substantial part of the investment in advertising directed to children under 12 years of age, submit their proposals for TV spots directed to this target to AUTOCONTROL's Technical Office to be reviewed before broadcasting. This procedure of forced and binding copy advice has been increasingly used by food and beverage companies that direct their advertising to children, leading to an increase of the quality and the fulfilment of the ethical criteria established by the PAOS Code. Thus, since the Code entered into force, on September 2005, until 31 October 2012, AUTOCONTROL's Technical Office has issued 2.979 legal consultations and copy advice[®] requested by advertisers, agencies and televisions regarding projects for food and beverage spots directed to children under 12 years of age before being broadcasted.

And regarding *a posteriori* controls, it should be pointed out that for these past years there has been a decrease in conflict in relation to the PAOS Code; having been filed a total of 20 complaints for its infringement, to AUTOCONTROL Advertising Jury since the Code's entering into force until 31 October 2012. The Jury's decisions and the compliance with them have contributed to the quality of advertising object of the Code.

In this sense, the PAOS Code has meant an advance in the regulation of food advertising directed to children, not only because it establishes the principles that have to rule the design, execution and broadcasting of advertising messages, but also because it establishes the mechanisms that will guarantee the control and application of rules.

In the past years significant advances have taken place in this sphere. Nonetheless, as it is established in the Resolution of the European Parliament, of 25 September 2008, on the White Paper of 2007 previously mentioned, the use of new commercial communications through electronic means should also be considered, given the fact that new media, such as the Internet, are increasing the presence of advertising directed to children and teenagers.

Some studies point out at the significant increase of advertising directed to children and teenagers on the Internet due to the vast use of this media by this segment of population.

The European Parliament Resolution, of 15 December 2010, on the "Effects of Advertising on the Behaviour of Consumers" suggests that Member States that do not yet have self-regulatory organisations, based on the better practices of other Member States, should facilitate their creation or that should formally recognise them.

Moreover, in such Resolution, the European Parliament specifically considers the problems generated by the development of the Internet and the new technologies, recommending the adequate protection of children and teenagers due to their vulnerability in these media.

For all of these reasons, the companies that advertise food and beverages directed to this public, in their efforts to improve the quality of communications about their products, and following the indications of the law, agree to increase their self-regulatory commitment regarding the advertising of food and beverages on the Internet directed to children under 15 years of age, considering the increasing use of this media also by this segment of the

population. In fact, the European Commission itself, in its Communication of 2 May 2012, on a “European Strategy for a Better Internet for Children” recognises the need to offer safe contents appropriate for this public on the Internet.

Consequently, and as a part of the active compromise of the food industry with self-regulation on its advertising activities through the new media, and also in order to comply with the content of articles 45 and 46 of the Law 17/2011, of July 5, on Food Safety and Nutrition, the FIAB deemed appropriate to propose a new PAOS Code adding a set of rules that will guide the companies adhered to it to the development, execution and broadcasting of their advertising of food products and beverages intended for Internet users under 15 years of age.

In fact, article 46 of the Law 17/2011, of July 5, on Food Safety and Nutrition, under the heading “Advertising on food products intended for consumers under 15 years of age” requests the establishment of codes of conduct that regulate the commercial communications on food and beverages directed to children under 15 years of age.

Finally, the companies adhered to this Code reiterate – as must be the case – their commitment with respect to the general advertising legislation, as well as to current legislation concerning advertising of food products, and the legal provisions referring to the protection of children, independent of the medium or means used in the dissemination of their advertising.

Additionally, the adhering companies, in their advertising directed to children under 12 years of age (in audiovisual and printed media) and to children under 15 years of age (on the Internet), agree to respect the rules contained in this Code, which specify and expand upon the scope of the legal requirements for the advertising and promotion of food products and beverages directed to this public, to the benefit of the general interest of consumers and of the market.

SCOPE

The application of the rules in this Code will take into consideration the age of the audience of the specific advertisement. This is not groundless, given that the younger the audience to whom the advertisement is addressed, the greater is their credulity and vulnerability, and therefore, the greater the need to offer them special protection. For this purpose, extra caution will be required in advertisements directed to **children under 12 years of age**.

The rules of the present FIAB Code will be applied to the advertising and promotion of food products and beverages carried out by companies adhered to the Code directed to children under 12 years of age in audiovisual and printed media (except for the labelling and packaging of these products, which will be governed by the applicable legislation) as well as that directed to children under 15 years of age on the Internet.

An advertisement will be considered to be directed to **children under 12 years of age** (in audiovisual and printed media) or to **children under 15 years of age** (on the Internet) according mainly to the following criteria:

- (i) **The type of food product being promoted:** it shall be deemed to be directed to children under 12 years of age or, if applicable, to children under 15 years of

age if it objectively promotes a food product primarily (*) addressed to the audience of said age;

() Measured by IRIHomescan or KantarWorldpanel.
Update with on-line measuring tool if necessary*

- (ii) **The design of the advertisement:** any commercial shall be deemed to be directed to children under 12 years of age (or, if applicable, to children under 15 years of age) when designed in such a way that the content, language and/or images are particularly suited to raise the attention or interest of the audience of the mentioned age.
- (iii) **The circumstances in which the dissemination of the advertisement is carried out:** any commercial shall be deemed to be directed to children under 12 years of age whenever it is transmitted through audiovisual or printed media, either in a media or medium objectively and mainly addressed (*) to the audience of the mentioned age, or by means of general communication media when inserted in timetables, programming blocks, sessions or spaces directed either to children under 12 years of age or with an audience composed mostly of children under 12 years of age.

() Measured by Sofres.*

Moreover, advertising is considered directed to children under 15 years of age, when it is broadcasted on the Internet, either uploaded into a website or to a section of a website where more than 50% of its audience are children under 15 years of age (**).

*(**) Measured by Comscore or another similar independent organisation, appointed by the Monitoring Commission of the present Code.*

A.- ETHICAL STANDARDS

I.- Principle of legality

The advertising of food products and beverages directed to children will be in accordance with the current legislation, whatever the content, the media or the form adopted.

In particular, any direct or indirect advertising or promotion of food products shall be in accordance with the prohibitions contained in articles 44.3 and 44.4 of the Law 17/2011, on Food Safety and Nutrition.

II.- Principle of loyalty.

The advertising of food products and beverages directed to children will be in accordance with the requirements of good faith and commercial good practice, whatever the content, media or form adopted.

III- Education and nutritional information

1- **As a general rule, advertising messages of food and beverages shall not promote or present unhealthy food habits or lifestyles, such as eating or drinking excessively, compulsively or without moderation, nor should they foster, approve or present sedentary life habits in a condescending manner.** To such effect, advertising of these products directed to **children under 12 years of age disseminated in audiovisual or printed media or directed to children under 15 years of age in the Internet** shall not show the promoted food product or beverage in excessive or disproportioned amounts. In addition, if the commercial displays the promoted food product or beverage in the context of a meal, it shall do so surrounded by a reasonable variety of food products in order for the advertising message to foster its consumption as part of a varied and balanced diet.

2- **The advertising of food and beverages shall not undervalue the importance of healthy eating habits such as a varied, balanced and moderate diet or the practice of physical activity.**

3- In advertising directed to children under 12 years of age object of the present Code, no product may be shown as a substitute for any of the three main meals (breakfast, lunch and dinner).

IV.- Presentation of the products

When making advertisements directed to **children under 12 years of age disseminated in audiovisual and printed media or directed to children under 15 years of age on the Internet**, it must be remembered that these are characterised by a lower degree of experience and greater credulity and ingenuity, and that, consequently, advertisements which in normal conditions might appear clear and true to an adult audience, might be considered to be misleading if the receiving audience is under that age.

4- **Special caution will be required in the making and spreading of advertising of food and beverages directed to children under 12 years of age disseminated in audiovisual and printed media or directed to children under 15 years of age on the Internet, in order to guarantee that the written, sound and visual features do-not mislead them as well as the characteristics of the product being promoted.**

5- **Advertisements of food products or beverages disseminated in audiovisual and printed media shall not mislead children under 12 years of age nor to children under 15 years of age on the Internet as to the benefits derived from the use of the product.** This includes, although the list is by no means exhaustive: the acquisition of strength, status, popularity, growth, ability and intelligence.

6- **Food and beverage advertisements directed to children under 12 years of age disseminated in audiovisual and printed media or to children under 15 years of age on the Internet shall not mislead children by suggesting that the food product being promoted has special characteristics, whenever all similar products have such characteristics.**

7.- **Food and beverage advertisements directed to children under 12 years of age disseminated in audiovisual and printed media or to children under 15 years of age in the Internet, must take precautions to avoid exploiting their imagination.** Fantasy, including animations and cartoons, is ideal as much for smaller children as for older ones. However, the use in advertising of such elements that create unobtainable expectations or that exploit the ingenuity of smaller children when distinguishing between fantasy and reality should be avoided.

8.- **Food and beverage advertisements directed to children under 12 years of age disseminated in audiovisual and printed media or to children under 15 years of age on the Internet, must avoid the use of frightening presentations.** Gratuitous descriptions of violence or excessive aggressive presentations must not be used.

V- Information about the products

Children, **especially those under 12 years of age**, have a more limited vocabulary and less developed linguistic skills than adults. Their level of reading is poor, if they do read, and they trust better the information offered through images than that offered through words. The use of simple language significantly increases comprehension.

9.- Advertisements of food and beverages directed to children under 12 years of age **must be expressed in a language which is comprehensible to this audience in a clear, legible and outstanding way.** With this in mind, if the additional information is offered by means of overprinting, the size of the instructions, the contrast with the background, and the time they are displayed on the screen must all be carefully considered.

VI- Sales pressure

Children, **especially those under 12 years of age**, are not prepared in the same way as adults are to make wise and independent purchasing decisions. Therefore food or beverage advertisements directed to under age audiences must avoid the use of excessive commercial pressure.

10.- **Advertising of food products or beverages must not make a direct appeal to children under 12 years of age to purchase the advertised product by exploiting their inexperience or credulity, nor shall it encourage them to ask or persuade their parents or other individuals to purchase the advertised product.** Neither should these advertisements suggest that a parent or an adult who purchases food products or beverages for a child is a better, more intelligent or more generous parent or adult than one who does not do so.

11.- **Advertising of food products or beverages directed to children under 12 years of age disseminated in audiovisual and printed media or directed to children under 15 years of age on the Internet must not urge them to obtain the advertised product nor shall it create a feeling of urgency or exclusivity or resort to using terms susceptible to generate such a feeling of urgency or exclusivity.**

12-. **In food and beverage advertisements spread in audiovisual and printed media directed to children under 12 years of age or to children under 15 years of age on the Internet, the benefits attributed to the food product or beverage must be inherent to their use.** The advertisement must not give the impression that acquiring or consuming food products or beverages will make the child more acceptable among his/her friends. Neither must it imply that the non-acquisition or consumption of a product will cause the rejection of the child among his/her peers. The advertisements must not suggest that the purchase and use of the product will provide the user with prestige, abilities and other special qualities as have the characters appearing in the advertisement.

13. **Prices shall be clearly and specifically expressed.** Reductionisms such as “only” or “no more than” must not be used. Nonetheless, advertisements in which the price is featured must comply with all the basic requirements of national legislation, in particular with those rules relevant to consumer protection.

VII-. Support and promotion through characters and programmes

14-. **In no event advertising of food and beverages directed to children under 12 years of age shall exploit the special trust which these children have in their parents, teachers or other persons, such as professionals from children’s programmes, or characters (real or fictitious) from films or TV series.** This is to prevent the presence or testimony of certain individuals or characters who are known to and admired by children in advertisements directed to them, from exercising undue influence over them, resulting in feeling encouraged to request the purchase of the advertised food product, not so much for the own characteristics of the product, but rather, simply due to the testimony or support of the character which appears in the advertisement.

The age of the children to whom the advertisement is directed to is a variable to be considered when checking compliance with this rule. For this purpose, special caution will be required in advertisements directed to children under 12 years of age.

The advertising of licensed food products will be subject to the same regulations. For this purpose, licensed food products is understood to mean those products which include in their commercial name, the name of real or fictitious characters from films, series or children’s programmes, or the name of famous characters who enjoy a high degree of popularity or standing among children.

To the effect of the above paragraphs:

14.1. In the advertising of food and beverages aimed to children under 12 years of age, those characters particularly close to this audience such as, for instance, presenters of children’s programmes, characters – real or fictitious – from films or TV series, or others, shall not take part or appear on them.

Nevertheless, food and beverage advertisements directed to **children under 12 years of age**, may show images which reproduce scenes from certain children’s programmes, films or series while they bear a direct relation to the promotion being carried out (for example, a gift of a DVD from a children’s programme for the purchase of a particular food product or beverages). However, when reproducing such scenes, no reference can be made, whether directly or indirectly, to the product being promoted, nor can it appear on the screen. Once these scenes are finished, and with a clearly defined

separation, the advertised product can be shown and information about its characteristics can be provided, however never using the image or the voice of the characters from the mentioned programmes, spaces or films.

Nonetheless, fictional characters which have been especially created for advertising purposes related to the product being promoted and which, consequently, are known by child audiences exclusively as a result of the character's participation in the advertising of the product, may be shown.

14.2. Advertising of food products or beverages directed to children under 12 years of age shall not feature famous characters or those well known by the general public and who enjoy a high degree of popularity among child audiences.

14.3. Without prejudice to the above mentioned, in any case, real or fictitious persons or characters who enjoy a high degree of popularity among child audiences may take part in public health and educational campaigns sponsored or promoted by food product companies with the specific aim of promoting healthy eating habits and physical exercise among children. In these public health or educational campaigns there may appear a particular reference to the name or logo of the company sponsoring or promoting said campaign.

15- Tele-promotions of food products or beverages shall not be made during programmes directed to children under 12 years of age. This is in order to prevent the exploitation of the special trust which children have in the presenters or fictional characters taking part in said programmes through this type of advertising, and to prevent children from confusing or not clearly distinguishing advertising content from editorials and programmes.

In spite of the above, presenters or fictional characters who take part on children programmes may appear on these programmes, in clearly differentiated public health or educational spots or "moments", with the specific aim of promoting healthy eating habits and physical education among children. In these educational or public health spots, a special reference may be made to the name or the logo of the company promoting and paying for the campaign.

VIII.- Identification of the Advertising

16- Food and beverage advertisements directed to children under 12 years of age must be clearly separated from the programmes. Situations, scenes and styles evoking the programmes must not be used in such a way that might confuse children or not allow them to clearly distinguish the advertising content of the programming.

Commercials should not be referred to as "programmes".

Expressions including "news flash" and the use of individuals who normally present the news or other programmes must not be used in advertising in order to avoid confusing the child about the commercial nature of the advertising.

Food and beverage advertisements which parody programmes are only acceptable whether it is obvious that the advertisement is merely a parody and if it portrays individuals who do not appear in the programme in question.

IX.- Comparative presentations

Sometimes advertising that compares the advertised product with another one may be difficult to understand and assess by **children under 15 years of age**. Comparative presentations must be based on the real advantages of the food product or beverage while being easily understood by this audience. In any case, the comparative nutritional claims shall respect the provisions stated in the Regulation (EC) No. 1924/2006 of the European Parliament and of the Council, of 20 December 2006, on Nutrition and Health Claims Made on Foods and its subsequent modifications.

17- Comparative presentations must be presented in such a way that **children under 15 years of age** shall be able to clearly understand them.

X-. Special offers, draws, competitions and children's clubs

In advertising, carrying out promotions including, among others, prizes, draws, competitions, discounts, free gifts, etc., is a marketing tool which undoubtedly has the capacity to increase the attractiveness of a product. Therefore, special attention must be paid to the advertising of these techniques **in audiovisual and printed media**, in order to protect **children under 12 years of age** from being exploited due to their immaturity.

18. Any advertisement including a special offer shall be designed in such a way that, in addition to transmitting the message relative to the promotional incentive, it should clearly show the product advertised.

19. The essential conditions of the special offers in audiovisual and printed media must be clearly and easily expressed in the advertisement, in such a way that they shall be easily legible and understandable by children under 12 years of age, or on the Internet by children under 15 years of age.

20. Advertising draws included in advertisements for food products or beverages in audiovisual and printed media directed to children under 12 years of age or directed to children under 15 years of age on the Internet, shall not generate unreal expectations as to the possibilities of winning or as to the prize which may be obtained. Therefore: (1) Prizes must be clearly indicated; (2) Being misleading as to the "possibilities" of winning should be avoided; (3) The prizes awarded must be appropriate to the underage audience.

21-. In order to avoid misleading children under 12 years of age, reference to children's clubs during the advertising of food products or beverages may only be made if the following requirements are met: (1) *Interactivity*: The minor must carry out some act implying intentional incorporation to the club and must receive something in exchange; (2) *Continuity*: A continuous relationship must exist between the club and the child member, for example through informative leaflets or regular activities; (3) *Exclusivity*: The activities or advantages derived from belonging to a club must be exclusive to its members and not merely available as a result of purchasing a specific product.

XI-. Security

Advertisements shall not show adults or children in unsafe situations or in acts which are harmful to themselves or others. Thus, for example, when scenes presenting sports (such as cycling or skateboarding) are shown in food and beverage advertisements, people that perform these activities should be equipped with the relevant safety gear.

22.- **Advertisements must avoid using scenes, images or messages which might encourage a dangerous or inappropriate use of the product advertised**, especially in those cases where such behaviour can be easily copied by children.

23.- **Food and beverage advertisements must not encourage children under 15 years of age to enter in strange places or to talk to strangers.**

XII.- Treatment of personal data

24.- Adhering companies will establish reasonable mechanisms that will ensure that children under 14 years of age have obtained their parents' or tutors' consent before providing personal data (including photographs and videos with their image and/or voice), thus complying with the Spanish Ley Orgánica (Constitutional law) 15/1999, of December 13, on Protection of Personal Data, and with the Spanish Royal Decree 1720/2007, of December 21, which approves the Regulation that develops the former.

25.- Parents or tutors may refuse the forwarding of advertising or information requested by children under 14 years of age under their care by contacting the webmaster through a system that ensures their identity.

26.- Adhering companies shall limit the use of any data forwarded by children under 14 years of age exclusively to the promotion, sale and supply of products or services clearly suitable for children.

27.- Under no circumstances must any adhering company transfer data regarding children under 14 years of age without the prior consent of their parents or tutors, and they shall write the terms of such request in a way that can be easily understood by this group of age.

28.- Companies adhered to the Code, through their websites directed to children under 14 years of age, must offer parents or tutors information on how they can protect the privacy of their children or wards online, providing the necessary mechanisms to exercise access, rectification, cancellation and determination rights on the final use of the children' data.

XIII.- Viral marketing

29.- Adhering companies, when using viral marketing techniques directed to children under 15 years of age, (e.g.: "forward to a friend" or electronic postcards), will not capture data of the third recipient of the viral marketing in the moment it is forwarded .

XIV.- Protection against inappropriate contents

30.- Companies adhered to the Code shall not present on their websites directed to children under 15 years of age, advertising contents, declarations or illicit visual presentations that might harm them mentally, morally or physically. If these companies were to display areas or sections in their websites intended for adults that might cause mental, moral or physical damage to children under 15 years of age, such areas or sections shall be identified as sites intended for adults prior to entering the web.

31.- Adhering companies shall not insert advertising messages or engage in advertising actions directed to children under 15 years of age on websites intended for adults or which content is inappropriate for them.

32.- Adhering companies shall do their utmost to support the initiatives proposed by the sector directed to promoting the protection of children under 15 years of age during advertising activities and electronic contracting, while raising awareness about this issue.

B.- STANDARDS OF APPLICATION OF THE CODE

I.- Binding to the Code

1. Companies that have expressly stated their adhesion to the FIAB's "Code of Co-Regulation of the Advertising of Food Products directed at Children" agree to respect the standards established in the code in their advertising of food products or beverages.
2. The adhered companies shall sign a document of adhesion to the present Code which shall reflect the commitment, as a result of such adhesion, to respect the standards of the Code when carrying out their advertising activities, as well as to observe and immediately comply with the content of rulings that might be issued by AUTOCONTROL's Advertising Jury when resolving claims which have been made with respect to this Code.
3. The list of companies adhered to the Code will be made public.

II.- Control of compliance to the Code

1.- A posteriori control of compliance to the Code

1. The control of compliance to the standards of the FIAB's "Code of Co-Regulation of the Advertising of Food Products Directed at Children" corresponds primarily to AUTOCONTROL's Advertising Jury, which will resolve the eventual claims concerning the advertising of the adhering companies received for infringements of the standards of said Code.
2. In this respect, companies adhered to the FIAB's Code of Co-Regulation of Advertising agree to put up the possible claims against advertising of other adhered companies initially, and prior to appealing to the Courts of Justice, before the Advertising Jury, and to observe and scrupulously and immediately comply with the content of rulings issued by the Advertising Jury when resolving claims which have been made with respect to the Code, either by suspending the advertising or by making the necessary modifications.
3. FIAB, in close collaboration with AUTOCONTROL, will present an Annual Report to the Monitoring Commission of the PAOS Code that will include a report regarding the compliance to the Code.

2.- Extrajudicial ruling of controversies and claims

1. In addition to the companies adhered to the FIAB's Code of Advertising Co-Regulation of Advertising, claims concerning infringements of the standards of this Code may be filed before the Advertising Jury by: the FIAB itself, consumer associations, AUTOCONTROL, Public Administrations, or any company or professional or business association, in addition to the

Monitoring Commission, ex officio or at the request of individual consumers, or any other individuals, bodies or collectives not included in this list.

2. For the effective application of the present Code and the processing and ruling of eventual claims received for infringements of this Code in the advertising of companies adhered to it, the actions of AUTOCONTROL's Advertising Jury will be governed by the principles of independence, transparency, the adversarial principle, effectiveness, legality, freedom of choice and consumer representation established in the European Commission Recommendation 98/257/EC, and will proceed in accordance with what is laid down in its Code of Conduct. The Jury will resolve the claims received, in the light of the ethical standards contained in the FIAB's Code of Co-Regulation, establishing, in each case, whether or not a violation of the standards has occurred and the degree of severity.

3. In the rulings, the Jury will determine which party or parties will bear the administrative costs arising from the processing of the claim before AUTOCONTROL. All fees arising before AUTOCONTROL for the handling of the procedure will be borne by the party whose claims have been rejected. In the event that the acceptance or rejection is partial, each party will bear its own costs, and the above-mentioned fees or administrative costs will be equally divided. The Administration, consumer associations and the Monitoring Commission of the Code shall be exempted from the payment of the mentioned fees or administrative costs before AUTOCONTROL and the handling and ruling of the proposed complaints shall be free. The rates applicable to companies adhered to the Code and who are also members of AUTOCONTROL shall be those established for its members by the association.

4. Rulings passed by the Advertising Jury in application of the present Code will be immediately communicated to the parties concerned for compliance, as well as to the FIAB for due action and, where appropriate, so that procedures may be initiated for the collection of the fines imposed by the Jury. Subsequently, rulings will be made public either on the web page or on other media belonging to the FIAB and AUTOCONTROL.

3.- Infringements and fines

1. In the resolution of complaints filed for infringements of the present FIAB's Code, the Jury will decide on the correctness or incorrectness of the promotional or advertising activities in each of the cases in the light of this Code. In addition to declare the incorrectness or illegality of the advertising object of the controversy and to seek the definitive suspension of it or its modification or rectification, the Jury's ruling which determines the infringement of the claimed advertising activity will impose, where applicable, a fine on the company claimed against in respect of the list of infringements and fines laid out in the following points, considered in view of the specific circumstances in each case.

2. Infringements will be classified as minor, serious or very serious according to the following criteria:

- a) Importance or repercussion of the infringement as regards consumers.
- b) Impact of the advertising: duration of the advertising activity claimed against, scope of the media used and number of consumers reached.
- c) Unfair competition.
- d) Damage to the image of the food industry or to one of its parts or sectors.

Having classified the infringement as minor, serious or very serious in accordance with the above criteria, there may be aggravating factors which will be taken into consideration by the Jury when imposing the relevant fines within the scale of point 3 below. The accumulation of aggravating factors may also cause an infringement to pass from an initial classification of “minor” to “serious” or from “serious” to “very serious”. The aggravating factors are as follow:

- e) Degree of intentionality.
- f) Non-compliance with prior warnings.
- g) Generalisation of the infringement.
- h) Recidivism.
- i) Concurrence of various infringements in the same event, or promotional or advertising activity.
- j) Financial profit for the advertiser derived from the infringement.
- k) Broadcasting during children’ protected viewing times, or using media or supports specifically directed to children under 12 years of age.
- l) Lack of collaboration with the control bodies of the Code.

3. In accordance with the above-mentioned criteria, the Jury will accord the imposition of the following fines:

- a) Minor infringements: from 6,000 to 30,000 Euros.
- b) Serious infringements: from 30,001 to 90,000 Euros.
- c) Very serious infringements: from 90,001 to 180,000 Euros.

4. The FIAB will carry out the fines imposed by the Jury, taking responsibility for the collection of the imposed fines. A special fund will be established in the FIAB with the monies from said fines which will be used to finance the cost of the programme for the control and application of this Code, and to carry out educational and public health campaigns promoting healthy eating habits and physical activity in collaboration with the competent authorities.

5. In the event of repeated infringements considered serious or very serious, or the non-compliance of a ruling issued by the Jury, the FIAB reserves the right to decide to withdraw the firm from the companies adhering to the present Code. The FIAB will make public the said expulsion and the reasons for it. Where withdrawal is for this reason, the company cannot be reconsidered for readmission as a company adhered to the Code in the term of at least one year. The readmission of the company as a company adhered to the present Code will only occur, following this period, where the company expressly agrees not to carry out practices forbidden by the Code, and once it satisfies the payment of the fines or of any other outstanding financial obligations.

6. Additionally, the FIAB reserves the right to report the offending company to the competent authorities and/or to appeal to the Courts of Justice in the event that any of the companies adhered to the present Code would not comply with the contents of a ruling issued by the Advertising Jury referring to the infringement of the current legislation with respect to food product advertising, or in the event of non-payment of the fines agreed in a Jury ruling.

4.- Copy advice procedures

1. In order to ensure that advertising is appropriate to the present FIAB's Code of Co-Regulation, the adhering companies agree to submit to the Technical Office of AUTOCONTROL, for prior examination through the confidential and binding copy advice procedure, all the advertisements directed to children under 12 years of age, and food and beverage television advertisements, which are to be broadcasted on children's protected viewing times, as established by the Code of Self-regulation for Television Content and Children and the Agreement for the Promotion of Self-Regulation of Television Content and Children signed by television operators and the Government in December 2004. The Technical Office will respond to these consultations within three working days from the request. The statements of this section refer to any advertising directed to children under 12 years of age.

2. Companies seeking advice will supply the Technical Office of AUTOCONTROL with any information regarding to the advertising in question it might require in order to carry out the copy advice.

3. In the event of disagreement with the content of the copy advice issued by the AUTOCONTROL's Technical Office, the advertiser may voluntarily request its revision by the Jury, who, in accordance with its Regulation and in view of the copy advice issued by the Technical Office and the allegations and documents provided by the advertiser, will decide to confirm or reject the content. The Jury's decision will always be binding. The section of the Jury which takes part in this review will refrain from participating in the procedure that would pass before the Jury in the event a complaint is filed against the advertising in question.

4. Companies adhered to the FIAB's Code of-Co-Regulation will not use in advertising either the content of the copy advice or the fact that it was requested. However, they may present said consultations before the Courts of Justice, administrative authorities and the AUTOCONTROL's Jury in the event of disagreement.

5.- Monitoring of advertising directed to children under 15 years of age on the Internet

Given the special characteristics of the Internet which do not allow for a regulated system of mandatory copy advice, it has been agreed to develop a specific monitoring mechanism for advertising broadcasted on the Internet directed to children under 15 years of age, which will allow for a periodical, agile and efficient follow up and evaluation. Such monitoring will be carried out once a year by an external and independent organisation.

To this effect, within a timeframe of 3 months of the coming into force of the present Code, the FIAB will present a detailed proposal of the methodology used for such a monitoring system.

III.- Monitoring Commission

1.- In order to follow-up the effective implementation of the assumed compromises within the framework of the PAOS Code, a mixed Monitoring Commission will be established, made up of a representative of the Agencia Española de Seguridad Alimentaria y Nutrición (Spanish Agency of Food Safety and Nutrition -AECO/AESAN) – which will hold the Commission's Presidency, and the following participants:

- one representative of the Ministry of Agriculture, Environment and Food,
- one representative of the Secretary of State for Telecommunications and Information Society (SETSI),
- three representatives of the Consumers and Users Council,
- one representative of the Spanish Advertisers Association (AEA),
- three representatives of the Spanish Food and Drink Industry Federation (FIAB),
- one representative of the Commercial Retailing Sector,
- one representative of the Hotel Trade and Modern Restaurant Businesses,
- and one representative of AUTOCONTROL who will act as Secretary.

2.-The functions of the Monitoring Commission will be as follows:

a) The Commission will regularly evaluate the application of the Code with respect to the goals established by the NAOS Strategy.

b) The Commission will propose improvements and reviews of the Code deemed necessary to the FIAB, and will be aware of the projects to modify the content of the Code when FIAB carries out reviews.

c) The Commission will regularly review the reports presented by AUTOCONTROL with respect to compliance with the Code.

d) The Commission, in all cases where it estimates that there has been an infringement of the standards contained in the Code, may decide to present the claims before AUTOCONTROL's Advertising Jury.

e) The Commission will also examine the claims or complaints presented by individual consumers or by any other individuals, bodies or collectives not included in the above list in section II.2.1, in order to clarify whether there are indications of infringement of the standards contained in the Code of Co-Regulation, and to decide, in each case, whether or not to send them to the Advertising Jury.

In those cases where the Commission considers that there is no indication of infringement of the standards of this Code, a reply will be sent to the claimant explaining the reasons behind the rejection of the claim.

In those cases where, to the contrary, the Commission believes that there are indications of infringement of the present Code, the claim will be submitted to the Advertising Jury for its processing as a claim.

f) The Commission may apply to AUTOCONTROL for information whether certain advertisements, publicly available as broadcasting has commenced, were the object of copy advice of AUTOCONTROL's Technical Office of and the result of it.

3.- The Monitoring Commission will meet as regularly as necessary in order to adequately carry out its functions, either summoned by its President or as requested by three or more of its members.

C.- DATE OF EFFECT

The drafting of the present revised Code, which substitutes the previous one dating back to 2005, comes into effect on **1 January 2013**, with a transitory period of 6 months to adapt advertising in Internet directed to children under 15 years of age, and it will be regularly reviewed, in order to adapt it and keep it up-to-date with respect to changes in society and the status of legislation. When, as result of the review, the necessary modifications are made to the Code, they shall be made with the necessary audience and publicity.

LIST OF STANDARDS THE PRESENT CODE IS BASED ON

This Code has taken into account the ethical standards promoted at European and International level concerning the advertising of food products: the *“Principles of Food and Beverage Product Advertising”* approved in February 2004 by the Confederation of the Food and Drink Industries of the EU (FoodDrinkEurope), and the *“ICC Framework for Responsible Food and Beverage Communications”* from the International Chamber of Commerce, approved in July 2004 and revised in August 2012.

In addition, the main legal regulations regarding advertising of food and beverages have been applied:

General Law 34/1988, of 11 November, on Advertising.

Law 3/1991, of 10 January, on Unfair Competition.

Royal Law Decree 1/2007, of 16 November, which approves the combined text of the General Law for the Defence of Consumers and Users and other complementary laws.

Royal Decree 1334/1999, of 31 July, approving the General Standards of Labelling, Presentation and Advertising of Food Products.

Royal Decree 1907/1996, of 2 August, concerning the Advertising and Commercial Promotion of Products, Activities or Services Intended for Health Purposes.

General Law 7/2010, of 31 March, on Audiovisual Communication.

Ley Orgánica 15/1999, of 13 December, on the Protection of Personal Data.

Royal Decree 1720/2007, of 21 December, which approves the Regulation implementing the Ley Orgánica 15/1999, of 13 December, on the Protection of Personal Data.

Law 17/2011, of 5 July, on Food Safety and Nutrition.

Regulation (EU) No. 1169/2011 of the European Parliament and of the Council, of 25 October 2011, on the provision of food information to consumers.

Regulation (EC) No. 1924/2006 of the European Parliament and of the Council, of 20 December 2006, on nutrition and health claims made on foods.

European Parliament Resolution of 15 December 2010 on the impact of advertising on consumer behaviour.

Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, of 2 May 2012, on a European Strategy for a Better Internet for Children.