

## Statement of Position

### on the Incidence of Overweight and Consequential Policy Measures

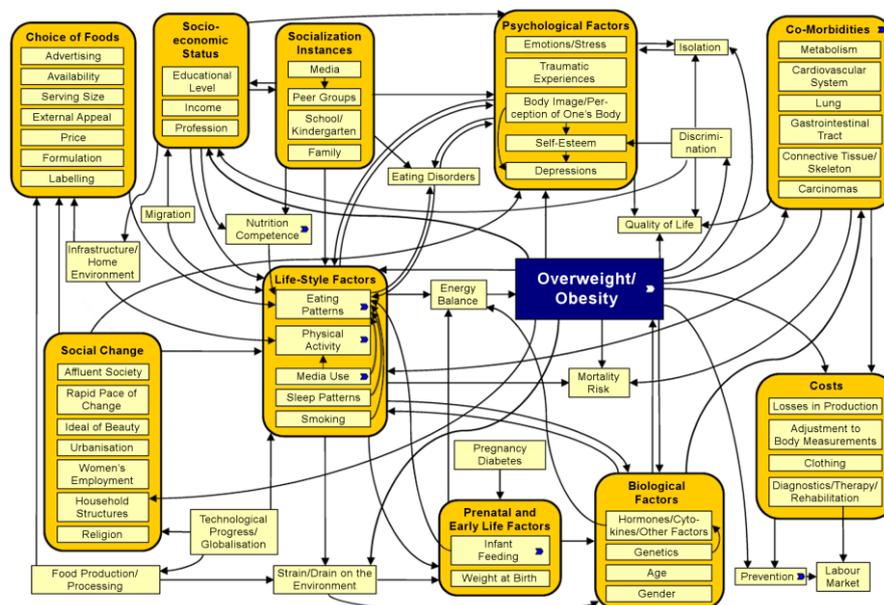
#### The BDSI's positions in brief:

- ▶ **Overweight has many causes. Putting the focus of preventing and curbing overweight on only one aspect such as nutrition or even the consumption of confectionery, is demonstrably uncondusive to resolving the issue.** The BDSI takes the view that cross-societal efforts are required to teach people decision-making skills in all walks of life from an early age onward. **Bans or warnings against eating individual foodstuffs** and the like are merely false-hope solutions. As opposed to adopting a nanny-state approach, providing positive guidance on healthy lifestyle choices is far more promising.
- ▶ The **German Platform on Diet and Physical Activity (peb)** aptly adopted an integrated approach to preventing overweight. The BDSI supports peb as an active member.
- ▶ Advertising is an indispensable element of any free-market economy. It serves to inform consumers and shores up the survival of a free and independent media. **Restricting or even banning food advertising** as a way of combating the problem of overweight misses its mark. For the occurrence of overweight is a complex issue, influenced by factors such as socio-economic background, lack of physical activity, an unbalanced diet, genetic predisposition, and psycho-social aspects. Today's food advertising directed towards children is already sufficiently regulated by numerous statutory provisions and voluntarily self-imposed restrictions. Shielding children from advertising is not the right approach, for it is part of their everyday lives. In the view of the BDSI, it is indispensable that initiatives teach children and young people media and advertising literacy.
- ▶ The confectionery industry offers a wide-ranging choice of products to suit every requirement and taste. It sees changing consumer demands as an opportunity, is continuously developing its range of products, and responds flexibly to new requirements and findings. In addition to its classic and traditional products, which have enjoyed long-standing market success and must be left to exist unchanged, it also offers numerous sugar-reduced, fat-reduced, salt-reduced, gluten-free and lactose-free versions as well as other innovative products. In addition, confectionery, snack products, and ice cream are available in very diverse **portion and pack sizes**, including many small and resealable packs. The

task of developing **formulations** is the direct responsibility of each company and must be free from intervention by the legislator.

- ▶ In addition to the list of ingredients, the Food Information Regulation (FIR) secures a high degree of product transparency for the consumer regarding energy and nutrient content such as carbohydrates, sugar, fat, saturated fatty acids, protein, and salt. **Guidance given to consumers in addition to mandatory nutrition labelling under FIR must be science-based, non-discriminatory, transparent, understandable, and, above all, voluntary, taking the specific role of confectionery in a balanced diet into account.** In the view of the BDSI, a visually informative nutrition labelling model must contain information on the individual nutrients of a product in order to provide the consumer with guidance and a freedom of choice based on an individual’s nutritional requirements. This is the case with the Nutrinform model, for example. Evaluatory and non-scientific-based labelling systems – such as “traffic-light labelling” – must be rejected.
- ▶ **Nutrient profiles** are no longer required after the adoption of the FIR. The FIR already comprehensively regulates all information required by the consumer. Hence, in the view of the BDSI, the EU Commission is no longer obliged to issue nutrient profiles. What is more, these are not only scientifically untenable but are politically motivated, fail to achieve their intended purpose, will hardly stand up to legal scrutiny according to experts in the field, act as an impediment to innovation, and stigmatise traditional products.

**Overweight has many causes. Putting the focus of preventing and curbing overweight on only one aspect such as nutrition or even the consumption of confectionery, is demonstrably uncondusive to resolving the issue. The BDSI takes the view that cross-societal efforts are required to teach people decision-making skills in all walks of life from an early age onward. Bans or warnings against eating individual foodstuffs and the like are merely false-hope solutions. As opposed to adopting a nanny-state approach, providing positive guidance on healthy lifestyle choices is far more promising.**



Qualitative causes-and-effects model showing the complex interplay of influential factors on, and effects of, overweight/obesity<sup>1</sup>

The occurrence of overweight is a multifactorial issue – a point on which scientists agree<sup>1</sup>. Factors such as heredity, socio-economic status, lifestyle (lack of physical exercise and long sitting periods, unbalanced diet, stress), lack of sleep, a diverse range of disorders, and also immobility, among other aspects, all these come together to form a complex web of causes<sup>2-11</sup>. Solution proposals must therefore be correspondingly holistic to cover all manner of living conditions and all age groups.

The significance of nutrition, and particularly the consumption of confectionery, is vastly overestimated in public debate<sup>11</sup>. Many scientists have found neither a correlation between dietary habits and overweight<sup>12,13</sup> nor between the consumption of confectionery and overweight<sup>14-18</sup>. In addition, researchers have discovered that people's calorie intake comes close to the recommendations issued by the corresponding expert agencies<sup>11,19-22</sup> and that people's average calorie intake has not noticeably changed over the years, although people have become more overweight<sup>23</sup>. This paradox is easily explained: we have moved away from a world of physical activity towards a world of sedentary habits<sup>11,24-33</sup>, i.e. calorie intake has remained largely unchanged but the calorie burn rate has dropped. This is only one aspect of the complex issue, albeit an important one.

Bans or warnings issued against consuming individual foods or food groups, evaluatory food labelling systems, additional advertising restrictions or bans, and special taxes, etc. are merely false-hope solutions. The BDSI calls for a departure from one-dimensional concepts and the categorization of foodstuffs into supposedly "good" and "bad" ones. Neither eating habits alone nor the consumption of individual foods or even the intake of certain nutrients can be made responsible for the problem of overweight. Far more promising than a nanny-state approach is a positive guide on leading a healthy life, including an appropriate diet, regular physical activity, limited sitting periods, active relaxation with sufficient sleep, and the capacity to experience pleasure and enjoyment.

Confectionery and snack products are primarily intended for pleasure and enjoyment and do not count as staple foods. They fit in with the concept of a balanced and enjoyable diet, provided people do not overindulge. Through a dedicated Internet platform, [www.genuss-tut-gut.de](http://www.genuss-tut-gut.de), the BDSI provides information on the significance of pleasure and enjoyment in all walks of life as part and parcel of a healthy lifestyle. In addition, the BDSI has elaborated various materials on learning how to experience pleasure and enjoyment intended for opinion multipliers.

**The German Platform on Diet and Physical Activity (peb) aptly adopted an integrated approach to preventing overweight. The BDSI supports peb as an active member.**

peb in Germany has brought together key stakeholders from the government, industry, sports, the health care sector, and civil society, to form a network for the prevention of overweight among children and adolescents. It unites action-oriented solution developments that are actively put into effect by a great many partners across a host of projects. peb provides a forum for the societal groups to work together with the children and adolescents concerned and their parents and those responsible for their living worlds. In doing so peb also develops measures for target groups that usually cannot be reached via preventive health care offerings, such as people with a migratory background (projects "Lale – Iss bewusst & sei aktiv" [*Eat consciously & be active*] and "ekip – Werkstatt Gesundheits-

förderung” [Workshop on Health Promotion]) or with a low social/educational level (project “Lecker tafeln – von der Tafel auf den Familientisch” [Delicious dining – from banquet to the family table]). The platform’s activities are all properly based on scientific knowledge and it has its activities reviewed for their effectiveness.

The BDSI has been a member of peb since its inception and in this respect actively promotes health conscious eating habits, more physical activity, less time spent sitting, and relaxation as key elements of a healthy lifestyle among children and adolescents. The success achieved by peb’s activities so far indicates that peb was the right approach to take in seeking to prevent overweight.

**Advertising is an indispensable element of any free-market economy. It serves to inform consumers and shores up the survival of a free and independent media. Food advertising restrictions and bans do not make people slimmer as overweight has many different causes. Preventing it is a challenge society faces as a whole and requires people to change their entire lifestyle choices. Today’s food advertising directed towards children is already sufficiently regulated by numerous statutory provisions and voluntarily self-imposed regulations which also apply to online advertising. The voluntary self-imposed restrictions were extended once again with effect from June 1, 2021. Shielding children from advertising is not the right approach, for it is part of their everyday lives. In the view of the BDSI, it is indispensable that initiatives teach children and young people media and advertising literacy.**

Companies use advertising to draw consumers’ attention to new and innovative products and inform them about the characteristics and features of these products. From the point of view of society as a whole, advertising investments, which contribute around 1.3% to Germany’s gross domestic product, ensure the existence of a free and independent media and hence contribute to maintaining media and press diversity.

Food advertising restrictions and bans are uncondusive to preventing and curbing overweight since its occurrence is caused by many different factors. This complex of problems requires the joint efforts of society as a whole and not one-dimensional approaches.

Today’s food advertising is already sufficiently regulated by numerous statutory provisions and voluntarily self-imposed regulations which also apply to online advertising. For example, in Germany it is forbidden for children’s TV and radio programmes to be interrupted by advertising. In addition, advertising must be made clearly distinguishable as such to children. The BDSI’s member companies comply, as does the entire German food industry, with the code of practice laid down by the German Advertising Standards Council (DW) governing the commercial communication on foods<sup>34</sup>, last extended with effect from June 1, 2021, and they support a catalogue of criteria that is to be observed in the case of online advertising on websites for children<sup>35</sup>. At European level renowned food manufacturing companies, including confectionery producers, have taken a united stand within the scope of the so-called EU Pledge. Among other things, they have agreed to not direct any advertising towards children under 12 years of age, except in the case of products fulfilling specific nutritional criteria.

Children should not be excluded from advertising but must learn how to deal with it and develop advertising literacy. That is how they will grow into, and learn to understand, today's media world. Hence it is more important to teach and strengthen media literacy than to impose tighter controls on advertising. But children can only develop these skills if they are taught to think independently at an early age and hence become empowered to think autonomously and independently about how they deal with media offerings. Media Smart, for example, is active in this field of teaching advertising literacy ([www.mediasmart.de](http://www.mediasmart.de)).

**The confectionery industry offers a wide-ranging choice of products to suit every requirement and taste. It sees changing consumer demands as an opportunity, is continuously developing its range of products, and responds flexibly to new requirements and findings. In addition to its classic and traditional products, which have enjoyed long-standing market success and must be left to exist unchanged, it also offers numerous sugar-reduced, fat-reduced, salt-reduced, gluten-free and lactose-free versions as well as other innovative products. In addition, confectionery, snack products, and ice cream are available in very diverse portion and pack sizes, including many small and resealable packs. The task of developing formulations is the direct responsibility of each company and must be free from intervention by the legislator.**

The confectionery industry offers consumers a choice of product formulations to suit their widely divergent needs. For example, in addition to the classic products, sugar confectionery includes sugar-free versions made using sugar substitutes and sweeteners, fine bakery wares include sugar-reduced and fat-reduced products, and snack products offer fat-reduced and also salt-reduced versions. In addition, the industry offers products with an increased high fibre or wholemeal content, gluten-free or lactose-free products, and products for consumers who favour a vegetarian or vegan lifestyle.

What is more, some years ago the confectionery industry already undertook broad ranging reformulation measures to considerably reduce acrylamide and trans fat content levels in the relevant products, such as fine bakery wares and snack products, so as to contribute to preventive consumer health protection.

Changes to formulations (reformulation) of confectionery products are only possible within parameters set by technological factors, existing statutory provisions, and product quality and product safety aspects. The same applies to the development of products (formulations). The confectionery industry is always open to new scientific findings and, in as far as new developments offer alternatives to the use of sugar, fat, and/or salt, the manufacturers take these into account in (re-)formulating their products.

In the case of confectionery, snack products, and ice cream, the aspect of pleasure and enjoyment comes first. Hence all changes to product formulation and the development of new products are crucially geared to ultimately ensuring the consumer finds the products tasty and enjoyable to eat.

Formulations are the sole responsibility of the companies who invented them and are in many cases the cornerstone of a brand. This must not change. Formulations may not be encroached on by legislative requirements and it should be left to the companies themselves to decide if and when changes are to be made to their

products and which new developments/innovations are to be implemented. State-prescribed product (re-)formulations limit both the entrepreneurial freedom of manufacturers as well as the freedom of choice and individual responsibility of consumers. The crucial task is to teach people how to manage their nutrition needs by informing them about the significance of nutrients within the framework of a balanced diet so as to enable them to make an informed choice from among the broad range of offered foods.

**In addition to the list of ingredients, the Food Information Regulation (FIR) secures a high degree of product transparency for the consumer regarding energy and nutrient content such as carbohydrates, sugar, fat, saturated fatty acids, protein, and salt. Guidance given to consumers in addition to mandatory nutrition labelling under FIR must be science-based, non-discriminatory, transparent, understandable, and, above all, voluntary, taking the specific role of confectionery in a balanced diet into account. In the view of the BDSI, a visually informative nutrition labelling model must contain information on the individual nutrients of a product in order to provide the consumer with guidance and a freedom of choice based on an individual's nutritional requirements. This is the case with the Nutrinform model, for example. Evaluatory and non-scientific-based labelling systems – such as “traffic-light labelling” – must be rejected.**

As regards nutrition labelling, the Food Information Regulation (FIR) makes it mandatory for energy, carbohydrates, sugar, protein, fat, saturated fatty acids, and salt per 100 g/ml of food or beverage to be declared in a nutrition table. The BDSI supports the more far-reaching approach of providing the consumer with additional, visually informative nutrition labelling on front of pack (FOP) to provide guidance in making food purchases.

Evaluatory and non-scientific-based labelling systems – such as “traffic-light labelling” – must be rejected. A single food should not be evaluated in terms of its health properties; its significance is only given within the context of all foods eaten by a particular person and only within the context of that person's overall lifestyle. Among other things, the frequency and quantity of the particular food consumed play an important role.

Furthermore, an extended nutrition labelling system must be transparent and comprehensible to the consumer. If the evaluation is based on an algorithm unknown to the consumer – as is the case with the Nutri-score model – the consumer is in no way able to understand how the food was assessed. Under Nutrinform, the Italian approach, the consumer receives a front-of-pack visualised representation of the nutrients listed in the nutritional table. This model is thus both informative and transparent, as the FOP labelling corresponds to and visualises the nutrition table.

For the aforementioned reasons, the BDSI believes a non-colour labelling model is the appropriate solution. However, if a colour-coded FOP labelling system is to be used, it should – in view of providing the desired information content – not be a monochrome one but the colours used should provide information on the respective content of individual nutrients stated in the nutrition table. If a coloured background is deemed necessary, this could also be implemented within the scope of the Nutrinform model, analogous to the British traffic light labelling system.

**Nutrient profiles are no longer required after the adoption of the FIR. The FIR already comprehensively regulates all information required by the consumer. Hence, in the view of the BDSI, the EU Commission is no longer obliged to issue nutrient profiles. What is more, these are not only scientifically untenable but are politically motivated, fail to achieve their intended purpose, will hardly stand up to legal scrutiny according to experts in the field, act as an impediment to innovation, and stigmatise traditional products.**

The BDSI calls for the planned introduction of nutrient profiles to be dropped. These have been made completely superfluous by the FIR and it would therefore be legally disproportionate to introduce market-communication bans via nutrient profiles when the consumer is simultaneously being offered information as a point of orientation.

Health claims are, for one thing, scientifically reviewed and approved by the European Food Safety Authority (EFSA). For another thing, the sense and purpose of nutrient profiles is already achieved by another legislative act, namely the Food Information Regulation. The FIR provides a high degree of product transparency in respect of energy and contained nutrients, such as information on carbohydrates, sugar, fat, saturated fatty acids, protein, and salt. The EU Commission is hence, in the view of the BDSI, no longer statutorily obliged to issue nutrient profiles.

Dividing foods into allegedly “good” and “bad” foods, as would be the case if nutrient profiles were introduced, is scientifically untenable and deceives the consumer. The EU Commission has so far failed to provide an explanation of how nutrient profiles are to be established in a scientifically sound manner.

Hence it is clear that the recently made proposals by the EU Commission were a politically motivated measure. This is already clear from the fact that only three nutrients were picked out from a host of around 40 nutrients required by the human body. What is more, the classification of foods into groups was so implemented that even traditional foods, such as chocolate, for example, are disadvantaged.

Nutrient profiles fall short of their original purpose to protect consumers from being misled and prevent overweight. What gives even greater cause for concern is that they even contribute to consumers being misled. If products fail to meet the nutrient profile prerequisites, they are barred from bearing any health or nutrition claims, even if these are scientifically proven and considered validated. This means that key product information is withheld from the consumer. How is he or she supposed to make self-determined and correct buying decisions?

Moreover, nutrient profiles also fail to achieve their self-set objective of combating overweight. Different consumption amounts of different foods throughout the diverse eating cultures of Europe are completely ignored. Many traditional products (for example wholegrain bread, cheese specialities, but also chocolate and wholegrain biscuits) will no longer stand a chance of making nutrition and health claims. What is more, there are now already so many exemptions in the offing that the nutrient profile concept seems haphazard and arbitrary.

In addition, according to experts in the field, nutrient profiles will not stand up to legal scrutiny by the European Court of Justice. Several legal opinions<sup>36-39</sup> see the concept as a violation of the principles of proportionality, legal certainty, and the prohibition of arbitrariness. It also infringes the so-called freedom of commercial speech.

The nutrient profile concept will prove to be an impediment to innovation since if, for example, wholegrain biscuits can no longer bear claims referring to fibre content and the “light variants” of a product can no longer claim to be “energy-reduced”, manufacturers will lack any innovation incentives.

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- <sup>37</sup> Professor Dr. Michael Schweitzer, Passau, Rechtsanwalt Dr. Hans-Georg Kamann, Frankfurt am Main, Wissenschaftlicher Mitarbeiter Assessor Florian Vogel, Passau, Centrum für Europarecht an der Universität Passau (CEP): *„Rechtsgutachten Zulässigkeit der geplanten Harmonisierung von Vorschriften über den Zusatz von bestimmten Stoffen zu Lebensmitteln sowie über Nährwert- und gesundheitsbezogene Angaben über Lebensmittel durch die Europäische Gemeinschaft“*, commissioned by the Association of the German Confectionery Industry (BDSI), October 2006
- <sup>38</sup> Professor Dr. Alfred Hagen Meyer, meyer//meistererst Rechtsanwälte, München: *„Expert Opinion on the Admissibility of Nutrient Profiles“*, commissioned by the Association of the German Confectionery Industry (BDSI), 5 May 2009
- <sup>39</sup> Professor Dr. Wolfgang Voit, Sprecher der Forschungsstelle für Deutsches und Europäisches Lebens- und Futtermittelrecht Philipps-Universität Marburg: *„Die Zulässigkeit und Erforderlichkeit von Nährwertprofilen in der Health-Claims-Verordnung“*, submitted to the German Federation for Food Law and Food Science (BLL), Marburg, 1 November 2011

For more information on the Platform on Diet and Physical Activity (peb) visit  
<http://www.pebonline.de/>

For more information on BDSI positions please visit  
<https://www.bdsi.de/en/association/priorities/>

Bonn, 1 June 2021

*The sector association:*

*The BDSI represents the economic interests of over 200 mostly medium-sized German confectionery companies. It is both a trade association and an employers' association. The German confectionery industry is the fourth-largest sector of the German food industry, accounting for around 10% of overall sales. It is particularly characterised by its strong focus on exports. Germany's confectionery manufacturers have an overall workforce of around 50,000 employees.*