

Draft Guidance on Regulating Digital Marketing of Breast-milk Substitutes

The Seventy-fifth World Health Assembly (WHA 75(21)) requested that the Director General develop guidance for Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes, so as to ensure that existing and new regulations designed to implement International Code of Marketing of Breast-milk Substitutes, including subsequent relevant resolutions (the Code) adequately address digital marketing practices for the Seventy-seventh World Health Assembly in 2024.

Digital marketing technologies have created new marketing tools that are powerfully persuasive, extremely cost effective. Digital marketing is not always easily recognisable as advertising or promotion and can deliver breast-milk substitutes promotions covertly. It also involves a broader range of actors than those involved in traditional marketing practices. Applying the Code to digital environments requires the development of specific regulatory mechanisms, coordination across a broader set of government bodies, and the establishment of specific legal duties on the range of entities involved in the digital marketing value chain.

The WHO Secretariat convened a Technical Advisory Group (TAG) to provide technical, legal, policy, and implementation advice and expertise to inform the development of the draft Guidance to Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes.

The purpose of this open public consultation is to gather feedback from diverse stakeholders on the draft Guidance to Member States.

Anonymous submissions will not be accepted. Questions 1 - 6 are required. Providing a response that is incomplete or misleading will invalidate your submission.

You cannot make more than one submission.

Instructions for making a submission

NOTE: Submissions close at MIDNIGHT on 18 September 2023, Central European Time.

1. Read the draft Guidance to Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes.
2. Read the Consultation Questions.
3. Draft responses to Consultation Questions offline using a word processing platform such as MS

Word or Apple Pages.

4. Click on the link to open the Consultation Form.
5. Complete the short answer questions to provide information about you (anonymous submissions cannot be accepted).
6. Copy and paste your answers to the Consultations Question into the relevant fields in the Consultation Form.
7. Click SUBMIT to finalise your submission.

1. What is your full name? *

Jean Christophe Kremer

2. What type of organization do you represent? *

- None (I am commenting as an individual)
- Civil Society Organization
- Government or Ministry
- Food Industry
- Digital marketing industry
- Other private sector organization
- Academia
- Other

3. What is the name of the organization you represent? *

International Special Dietary Foods Industries (ISDI)

4. What is your role (job title)? *

Secretary General

5. What is your email address (work email if you're representing an organization)? *

secretariat@isdi.org

6. What country do you live in? *

Belgium

7. Comments on Purpose section

ISDI supports our common objective – to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and appropriate marketing and distribution. We respectfully suggest this objective be added here.

Breastfeeding is the optimal way to ensure the healthy growth and development of infants during the first months of life. When breastfeeding is not an option, however, the only recognised alternatives are scientifically developed, clinically demonstrated and safe breast-milk substitutes, which are manufactured in accordance with internationally recognised standards (Codex Alimentarius) and local laws and regulations.

No single factor is determinative of breastfeeding rates. ISDI supports a holistic approach which includes all factors (including strengthening maternity leave, workplace policies, counselling and funding) while seeking to help parents and caregivers who are unable to, or choose not to, breastfeed.

8. Comments on Background section

ISDI agrees with the application of an evidence-based approach. We respectfully suggest to add references to the UN Convention on the Rights of the Child, for example Article 24 which calls on "State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health." More specifically, Article 24.2 mandates State Parties to "pursue full

implementation of this right and, in particular,to ensure that all segments of society, in particular parents and children, are informed, ... and are supported in the use of basic knowledge of child health and nutrition" (Art. 24.2(e)).

9. Comments on Scope section

ISDI holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the draft guidance should focus only on those items that are not already covered by existing WHO instruments. For a more considered response, please see our comment to Question #23, below.

ISDI agrees that "digital marketing involves a broader range of actors." Any guidance must include all relevant players in the digital environment, in particular those that control the vast majority of digital information about breast-milk substitutes. This is particularly important since manufacturers estimate that 80 percent of information about their products that is available on the internet is not disseminated by the manufacturer or under its control. Our members comply with local interpretations of the Code, and regulations, and have implemented stringent requirements for digital marketing compliance.

However, manufacturers are unable to modify/take down information that is not under their control. The challenge manufacturers face is to encourage third parties – with whom manufacturers do not have a contractual relationship – to apply the same responsible marketing standards.

10. Comments on Terminology section

ISDI suggests to defer to Member States on the definition of "regulatory measures." Member States are best placed to decide, within their respective national contexts, which measures Member States wish to pursue when implementing the proposed guidance.

In addition, the definitions listed in paragraph 10 – which are reportedly "used as they are in the Code" – may benefit from closer review. For example, the definition of "breast-milk substitutes" goes beyond the definition contained in the Code.

ISDI supports the use of the same definitions as in the Code, or as in other relevant international standards or by other international organizations competent on the matter, such as Codex Alimentarius, to ensure consistent interpretation of terms.

Lastly, this section would benefit from adding a definition of the term "influencer."

11. Comments on Recommendation 1

ISDI respectfully suggests amending this recommendation to ensure all its provisions, in particular Recommendation 1.4, are consistent with the Code provisions on “information and education” (Article 4 of the Code). Recommendation 1.4 recognizes that “[m]anufacturers and distributors of products within the scope of the Code should not be prevented from providing scientific and factual product information to consumers as required by law.”

On manufacturers’ own websites and platforms, care is taken to ensure the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant and young child nutrition and parenting-related topics. Manufacturers comply with local laws and regulations in countries in which they do business.

12. Comments on Recommendation 2

ISDI respectfully suggests amending this recommendation to ensure all its provisions are consistent with the Code, in particular Articles 6 and 7 of the Code.

Healthcare professionals (HCPs) ensure that caregivers, parents and people with special dietary needs have access to science-based information in order to make informed nutrition choices for themselves and their families.

The interactions of ISDI and its members with HCPs are consistent with, and supportive of, the medical responsibility of HCPs in providing nutrition recommendations to caregivers, parents and people with special dietary needs that are evidence-based and meet rigorous scientific standards.

Industry interactions with HCPs are responsible, transparent, ethical and in full compliance with local laws and regulations.

ISDI will work constructively with all relevant stakeholders, including policymakers and HCPs, to promote evidence-based policies and ethical frameworks that enable caregivers, parents and people with special dietary needs to receive the best possible nutrition education and advice to help them make informed nutrition choices.

13. Comments on Recommendation 3

ISDI believes it is important for parents and caregivers to have access to nutrition products for infants and young children online. ISDI respectfully suggests to draw a distinction between electronic commerce (addressed in this recommendation) and “digital marketing.” Decision WHA75(21) provides a mandate for the WHO to develop guidance for Member States regarding the latter, but not the former.

The draft guidance’s proposed recommendations on labelling should also take into account existing – as well as future – international standards. For example, the Codex Alimentarius Commission has

relevant standards and texts including the recently completed Standard on Follow-up Formula (CX STAN 176-1987).

14. Comment on Recommendation 4

This recommendation may benefit from additional clarification, as has been provided for the other recommendations.

15. Comment on Recommendation 5

ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, the nature of measures Member States wish to pursue. ISDI fully agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups.

16. Comments on Recommendation 6

ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate inter-agency consultations and coordination, as well as other national measures Member States wish to pursue.

17. Comments on Recommendation 7

ISDI would be happy to discuss the efficacy of potential monitoring systems with the WHO as well as with individual Member States.

For example, ISDI members are individually working with the main online marketplaces and search engines to actively raise awareness of the Code and applicable laws through education and training. In addition, ISDI members are also monitoring independent websites to identify regulatory and compliance issues. ISDI members frequently contact third parties and individuals, including through legal means, who misrepresent their breast-milk substitutes products or act in a manner that is not in compliance with laws and regulations and request such actions to cease and desist.

Manufacturers continue to evaluate new technologies and means to help monitor independent websites, but at present there is no optimal solution.

18. Comments on Recommendation 8

ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate enforcement mechanisms, as well as other national measures Member States wish to pursue.

19. Comments on Recommendation 9

ISDI respectfully suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations.

For example, Members of the World Trade Organization (WTO) are in the final stages of negotiating international rules on e-commerce. Their scope is broad, encompassing international rules that aim to ensure “openness,” “open internet access” and the free flow of digital information cross-border. This recommendation is not aligned with those aims.

20. Comments on Recommendation 10

ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, and pursuant to Article 23 of the WHO Constitution (“recommendations”), the national measures that Member States wish to pursue.

21. Comments on Recommendation 11

ISDI would be happy to discuss the latest technologies for Code compliance monitoring with the WHO as well as with individual Member States.

22. Is there something that should be addressed in the Guidance that is missing from the draft?

Enter your answer

23. Do you have any other comments on the draft?

ISDI respectfully submits the below overarching comments on the draft:

- (1) Digital marketing is already covered by the Code, relevant WHA resolutions and several national laws. To avoid duplication, any additional guidance should focus on only those items that are not already covered by existing WHO instruments, including the Code and WHA resolutions. For example, the Code defines marketing in broad terms – as “product promotion, distribution, selling, advertising, product public relations, and information services – allowing for any form of marketing, including digital, to be included within its scope. Resolution WHA69.9 specifies that “promotion” should be “broadly interpreted” to include communications “through traditional mass communication channels, the Internet and other marketing media using a variety of promotional methods.”
- (2) Preserving access to factual, scientific information in digital channels, where many parents and caregivers seek information, is essential to providing timely information that furthers public health goals.
- (3) ISDI supports efforts by national governments to ensure that compliance with national laws extends to all stakeholders in the digital ecosystem, beyond manufacturers. Manufacturers continue to evaluate new technologies and means to help monitor independent websites. ISDI would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

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