



BFLG-UK submission to WHO Online public consultation: draft guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes

Submitted on Friday 15 September 2023

<https://www.who.int/news-room/articles-detail/who-open-online-public-consultation-draft-guidance-on-regulatory-measures-aimed-at-restricting-digital-marketing-of-breast-milk-substitutes>

Draft Guidance on Regulating Digital Marketing of Breast-milk Substitutes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(TAG) to provide technical, legal, policy, and implementation advice and expertise to inform the development of the draft Guidance to Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes.

The purpose of this open public consultation is to gather feedback from diverse stakeholders on the draft Guidance to Member States.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 Read the draft Guidance to Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes.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? *

Victoria Sibson

2. What type of organization do you represent? *

Other

(Options: None (I am commenting as an individual)

Civil Society Organization

Government or Ministry

Food Industry

Digital marketing industry

Other private sector organization

Academia)

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

Baby Feeding Law Group-UK

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

Secretariat

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

vicky@firststepsnutrition.org

6. What country do you live in? *

UK

7. Comments on Purpose section

The scope given in the purpose is "products covered in the scope of the Code". However, this is inconsistent with the scope as described in the other sections of the report, e.g., background point 4 refers only to breastmilk substitutes; scope point 6 refers to products within the scope of the Code and foods for infants and young children. We request that the scope is made clear and consistent throughout and includes at minimum commercial milk formulas marketed for use from birth to 36 months, bottles and teats, and foods for infants and young children. In addition, we request that a reference is added to 'designated products' in order that domestic legislation can cover additional products that are a concern in their context because they are marketed in a way which undermines breastfeeding and/or safe and appropriate formula feeding. Such products may include commercial milk formulas marketed for pregnant and lactating women, breast pumps, and formula preparation devices. From a UK perspective this would also provide the necessary consistency with WHO Europe's 'model law':

"Effective regulatory frameworks for ending inappropriate marketing of breast-milk substitutes and foods for infants and young children in the WHO European Region" (Feb 2022).

(<https://apps.who.int/iris/bitstream/handle/10665/352003/WHO-EURO-2022-4885-44648-63367-eng.pdf>)

8. Comments on Background section

Point 2 refers to "the health risks introduced by the unnecessary and improper use of breast-milk substitutes". We would like to recommend that this is broadened out to incorporate the health risks of



inappropriate commercial milk formulas. For example, in the UK formula milk companies market specific types of commercial milk formulas which lack evidence for effectiveness, under regulations for 'foods for special medical purposes', and some of these pose additional health risks to those posed by infant formula (Westland and Sibson, 2022)

(https://static1.squarespace.com/static/5c6bb04a65a70771b7cbc916/t/638f348264c6ec61b3b0704c/1670329478025/FSN_FSMP+Report_A4_DIGITAL.pdf).

Clearly explaining how the Code is also relevant to formula fed infants, as well as protecting breastfeeding, is vital for those of us working in Member States where formula feeding is the norm and the Code is judged as irrelevant or inappropriate. Point 4 needs editing with respect to the scope of this document (see comment on purpose above).

9. Comments on Scope section

In point 6 we would like clarification on the scope, as per our comments on the purpose above.

In point 7 we would like to request that it is made clear that influencers may be formal or informal. An example of an informal influencer is a 'mummy blogger' (Hickman et al, 2020).

10. Comments on Terminology section

In point 10b 'cross promotion' we would like to request that it is made explicit that products used for cross promotion may be non-food items as well as food items and both are to be avoided, e.g., bath products may be marketed under the same brand name as commercial milk formulas and foods for infants and young children (Hickman et al, 2020).

(https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/605363e5a4c746541de7cd5b/1616077802431/Online_marketing_report_final.pdf)

In point 11e 'sponsorship' we would like to request that it is made explicit that contributions could include branded gifts. This is particularly important with respect to influencers' work but could also encompass a scenario where parents/carers are sent branded gifts and encouraged to post them on digital platforms (Hickman et al, 2020).

In addition it might be important to note that sponsorship may be covert; for example in the UK we have social media groups ostensibly set up and run by mothers seemingly to provide free peer support on formula feeding and who also promote a specific brand of commercial milk formula (including offering discount codes), but any commercial milk formula company involvement has been denied.

11. Comments on Recommendation 1

- Recommendation 1, please make the scope clear and consistent throughout, as per comment on purpose, above.
- Recommendation 1.1, please make the scope clear and consistent throughout, as per comment on purpose, above.
- Recommendation 1.1 b, please include those set up to facilitate parent to parent interaction (see comment on sponsorship, above) and company advice lines which can take the form of instant messaging on social media.
- Recommendation 1.1 h, on the point on brands, we agree this is important and it could be made clearer by making the suggested clarifications to the point on sponsorship, as outlined above.



- Recommendation 1.4, for clarity and consistency, we suggest it is made clear whether 'product information as required to provide by law' is relevant/allowed in recommendation 1.3, para 15.
- Recommendation 1.4, we agree that "Manufacturers 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". However, we request that it is made clear that for this to be allowed there needs to be a suitable enforcement mechanism. In the UK the provision of scientific and factual information on infant formula via ads to health care professionals is permitted by law. However, there is no suitable enforcement mechanism to assess this legal requirement is met, and as a consequence this law is widely flouted (Hickman et al, 2019; Westland and Crawley, 2016; Westland and Sibson, 2022). (<https://journals.sagepub.com/doi/pdf/10.1177/08903344211018161>) (https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/5d00a07858660d0001500ca0/1560322176680/Scientific_and_Factual_booklet_June_2019_for_web.pdf) (https://static1.squarespace.com/static/5c6bb04a65a70771b7cbc916/t/638f348264c6ec61b3b0704c/1670329478025/FSN_FSMP+Report_A4_DIGITAL.pdf)

Comments on Recommendation 2

- None

Comments on Recommendation 3

- Recommendation 3. We agree with this recommendation and would like to highlight that in the UK online market places use promotional devices to sell commercial milk formulas, foods for infants and young children, bottles and teats, such as: custom adverts, 'featured' products, 'bestsellers', 'frequently purchased with', and customer reviews. In addition, search functions may be set up to return products within the scope of these guidelines, where this may not be what the consumer was looking for, leading to inappropriate advertising of commercial milk formulas etc.
- Recommendation 3.2. We would like to request that custom adverts are listed (Hickman et al, 2020). (https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/605363e5a4c746541de7cd5b/1616077802431/Online_marketing_report_final.pdf)

Comment on Recommendation 4

- None

Comment on Recommendation 5

- None

Comments on Recommendation 6

- Recommendation 6. We would like to request that it is made explicit that government agencies responsible for implementation, monitoring, and enforcement of the Code and the Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children should be entirely independent of industry, with respect to the scope of these guidelines. In the UK it is our understanding that this is not the case, as the local authority Trading Standards Officers who hold 'primary authority' with commercial milk formula companies are in part funded by those companies.

Comments on Recommendation 7

- None



Comments on Recommendation 8

- Recommendation 8. With respect to the reference for 'proportionate' sanctions, we would like to highlight that proportionality is subjective and in the UK is used as a defence for poor enforcement of the laws informed by the Code. Reference to proportionality therefore requires clarification.

Comments on Recommendation 9

- None

Comments on Recommendation 10

- None

Comments on Recommendation 11

- None

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

No

Do you have any other comments on the draft?

This guidance is much needed and we would to thank all of those involved in its development to date and this consultation.

Baby Feeding Law Group UK Members:

Association of Breastfeeding Mothers (ABM), Association for Improvements in the Maternity Services (AIMS), Baby Milk Action, Best Beginnings, the Breastfeeding Network (BfN), Breastival, Code Monitoring Northern Ireland, the Community Practitioners' and Health Visitors' Association (CPHVA), Doula UK, The Fatherhood Institute, First Steps Nutrition Trust, GP Infant Feeding Network (GPIFN), HENRY, Hospital Infant Feeding Network (HIFN), the Human Milk Foundation, Institute of Health Visiting, Lactation Consultants of Great Britain (LCGB), La Leche League GB (LLLGB), Leicester Mammias, Centre for Lactation, Infant Feeding and Translational research (LIFT), Local Infant Feeding Information Board (LIFIB), Midwives Information and Resource Service (MIDIRS), National Breastfeeding Helpline, NCT (National Childbirth Trust), Royal College of Midwives (RCM), Save the Children, UK Association of Milk Banking (UKAMB), Unicef UK Baby Friendly Initiative, Unison, Women's Environmental Network (WEN), World Breastfeeding Trends Initiative (WBTi) UK, Dr Robert Boyle, Natasha Day, Dr Clare Patton (independent members).