Draft Guidance on Regulating Digital Marketing of Breast-milk Substitutes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(TAG) to provide technical, legal, policy, and implementation advice and expertise to inform the development of the draft Guidance to Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes.

The purpose of this open public consultation is to gather feedback from diverse stakeholders on the draft Guidance to Member States.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 Read the draft Guidance to Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes.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

Quynh Lam

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? *

Asia Pacific Infant and Young Child Nutrition Association (APIYCNA)

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

APIYCNA Secretariat

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

   secretariat@apiycna.org

6. What country do you live in? *

   Vietnam

7. Comments on Purpose section

   APIYCNA aligns with our shared goal of promoting the provision of safe and sufficient nutrition for infants. This is achieved through the protection and promotion of breastfeeding, as well as ensuring the appropriate use of breast-milk substitutes when they are necessary. This is done by providing accurate information and implementing suitable marketing and distribution strategies. We respectfully propose considering the inclusion of this objective in this context.

   Breastfeeding is widely recognised as a beneficial method to support the healthy growth and development of infants in the early stages of life. But when breastfeeding is not feasible, there are alternative options available that have been scientifically developed, clinically demonstrated, and proven to be safe. These alternatives are known as breast-milk substitutes and are manufactured in accordance with internationally recognised standards (Codex Alimentarius) and local regulations.

   No single factor is determinative of breastfeeding rates. APIYCNA advocates for a comprehensive approach that takes into consideration various factors, such as enhancing maternity leave, implementing supportive workplace policies, providing counselling services, and securing adequate funding.

8. Comments on Background section

   APIYCNA supports the implementation of an evidence-based strategy. We respectfully suggest including references to the United Nations Convention on the Rights of the Child, such as Article 24 which requires "State Parties to recognise the right of the child to the highest achievable standard of health."

9. Comments on Scope section

   APIYCNA holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the proposed guidance should only address topics that are not

already addressed by existing WHO instruments.

APIYCNA concurs that "digital marketing involves a broader range of actors." Any guidance related to it must include all relevant actors in the digital environment, especially those who control the vast majority of digital information about breast-milk substitutes. Manufacturers estimate that 80% of the information about their products that is available on the Internet is not disseminated by the manufacturers or under its control. Our members have already implemented stringent requirements for digital marketing compliance and comply with local interpretations of the Code and regulations. However, manufacturers are unable to alter or remove information that is not under their control.

10. Comments on Terminology section

APIYCNA recommends deferring to Member States regarding the definition of "regulatory measures." Member States are in the best position to determine, within their respective national contexts, which implementation measures they wish to pursue.

In addition, the definitions listed in paragraph 10 that are reportedly "used as they are in the Code" may benefit from a closer examination. For instance, the definition of "breast-milk substitutes" goes beyond the Code's definition.

To ensure consistent interpretation of terms, APIYCNA supports the use of the same definitions as in the Code, or as in other relevant international standards or other international organisations competent in the matter, such as Codex Alimentarius.

This section would also be strengthened by the addition of a definition of the term "influencer."

11. Comments on Recommendation 1

APIYCNA 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).

It is essential that consumers have access to factual information when making decisions about breastfeeding practices, as these items are of critical importance to mothers. In the Asia-Pacific region, the breast-milk substitutes industry operates in accordance with the respective national legal frameworks and international trade agreements. Manufacturers also abide by local laws and regulations in the countries where they do business. On their websites and platforms, care is taken to ensure that the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant, and young child nutrition, as well as parenting-related topics.

12. Comments on Recommendation 2

APIYCNA respectfully suggests modifying this recommendation so that all of its provisions are in accordance with the Code. Healthcare professionals ensure that caregivers, parents, and people with special dietary needs have access to evidence-based nutrition information so that they can make informed decisions for themselves and their families.

The interactions of APIYCNA and its members with HCPs (such as in Thailand and Malaysia) 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.

Under the ASEAN Socio-Cultural Community's policy priorities, ASEAN is committed to advancing healthcare through standardised regulations and improved digital infrastructure. This was subsequently echoed by some Member States like Malaysia, which stated its commitment to achieve healthcare digitalisation transformation by 2030.

13. Comments on Recommendation 3

APIYCNA respectfully suggests distinguishing between electronic commerce (the subject of this recommendation) and digital marketing. The WHO Secretariat was tasked by Decision WHA75(21) to develop guidance for Member States regarding the latter, but not the former.

Recommendations within this guidance may not align with the principle of the recently announced Digital Economy Framework Agreement (DEFA) at the ASEAN level in terms of "developing a modern, comprehensive, and coherent digital transformation strategy towards an ASEAN Digital Economy, where the seamless and secure flow of goods, services, and data is underpinned by enabling rules, regulation, infrastructure, and talent."

14. Comment on Recommendation 4

As with the other recommendations, this recommendation may benefit from additional clarification.

15. Comment on Recommendation 5

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

Our members, in whichever market they operate, have strong internal codes of conduct. In Indonesia and Thailand, these compliance mechanisms include control over the creation, publication, distribution, and removal of content that does not comply and has been proven effective. In Vietnam, it also includes monitoring the emerging violations on digital platforms and are in the process of connecting with e retailers such as Lazada and Shopee. Other existing self-

regulatory for Member States such as Singapore and Australia have proven effective in ensuring robust compliance.

16. Comments on Recommendation 6

APIYCNA respectfully suggests that Member States are in the best position to determine inter-agency mechanisms in implementing, monitoring, and enforcing national measures they wish to pursue. Involvement of the likes of relevant information and communications or digital transformation government agencies or bodies is crucial to strike a balance in regulating digital marketing practices and ensuring information dissemination for consumers.

17. Comments on Recommendation 7

APIYCNA welcomes discussions on the efficacy of potential monitoring systems with individual Member States.

For example, APIYCNA members through local associations in Indonesia, Singapore and Thailand are together working with the main online marketplaces to actively raise awareness of the Code and applicable laws and regulations through education and training. APIYCNA and our members also monitor independent websites to identify regulatory and compliance issues. Manufacturers continue to evaluate new technologies and methods for monitoring independent websites, but no optimal solution has yet been identified.

Enhancing monitoring systems can play a crucial role in creating a safer online environment and improving consumer access to trustworthy information. However, such monitoring processes must be conducted with the utmost care and transparency in order to mitigate any potential risks of censorship and violations of freedom of expression and information.

18. Comments on Recommendation 8

APIYCNA respectfully suggests that Member States are in the best position to determine, within their respective national contexts, the appropriate enforcement mechanisms and other national measures they wish to pursue.

19. Comments on Recommendation 9

APIYCNA respectfully suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations. APIYCNA's members are already subject to trade regulations that emphasise transparency and the free flow of goods.

20. Comments on Recommendation 10

APIYCNA respectfully suggests that Member States are in the best position to determine, within their respective national contexts and in accordance with Article 23 of the WHO Constitution ("recommendations"), the national measures they wish to pursue.

21. Comments on Recommendation 11

APIYCNA 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?

N/A

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

APIYCNA 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.

(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) APIYCNA 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. APIYCNA would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

In the ASEAN context, the goal of Member States to accelerate digital economy adoption, including digital marketing, may conflict with restrictive measures.

To align with the region's digitalisation ambitions while addressing the diverse consumer needs, regulations should be based on a specific national context.

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