



Die Werbewirtschaft

**Zentralverband der deutschen Werbewirtschaft ZAW e.V.**

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# Position of the advertising industry on the WHO draft resolution to ban digital communication on breast-milk substitutes

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The WHO draft resolution of 10 February 2025 'Regulating the digital marketing of breast-milk substitutes' calls on member states to enact laws that would prohibit manufacturers of breast-milk substitutes from communicating about their products; both to parents and to medical and nursing staff. The advertising industry rejects such a comprehensive ban on communication about a product for which there is no alternative for the feeding of infants if they cannot be fed breast milk, which is always to be preferred. The advertising industry therefore calls for opposition to the adoption of the resolution within the WHA.

The [draft resolution](#) adopted on 10 February 2025, which is to be adopted at the 78th WHO Assembly from 19-27 May 2025 in Geneva, calls on WHO member states to support and implement the regulation banning commercial communication for breast-milk substitutes from the '[Guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes](#)'.

The resolution, which is to be adopted at the WHO Assembly in May, is intended to make the 'recommendations' from the guidance binding. Recommendation 1 contains a complete ban on digital communication for all breast-milk substitutes. In Recommendation 4, digital advertising of foods that can be consumed by infants and children should only be allowed under very restricted conditions. Recommendation 3 prohibits commercial communication at the point of sale. While Recommendations 1, 3 and 4 prohibit communication with parents and consumers, Recommendation 2 also seeks to introduce a ban on digital communication with healthcare professionals. This would mean that commercial communication for breast-milk substitutes would be regulated much more strictly than commercial communication for prescription-only medicines.

### **Existing regulation in Europe is sufficient and appropriate**

The recommendations of the Guidance, which are to become binding for the Member States of the WHO with the adoption of the resolution, would mean an almost complete ban on communication for the manufacturers of breast-milk substitutes. This interference with the constitutionally protected freedom of communication of companies is neither justified nor necessary: In Europe advertising for breast-milk substitutes is already comprehensively and sufficiently regulated. For Germany the regulation is found in § 7 of the Ordinance on Food for Specific Consumer Groups (LMBVV) in conjunction with European Regulation (EU) No. 609/2013 and Delegated Regulation (EU) 2016/127. The regulation ensures that appropriate information is provided on breast-milk substitutes, which must be used when breastfeeding, which is always preferable, is not possible. At the same time, it is regulated in Germany, among other things, by the National Strategy for the Promotion of Breastfeeding of 2021, that breastfeeding is always to be preferred to a breast-milk substitute.

Further restrictions on communication and information for expectant parents and medical and nursing staff cannot be justified. The adoption of the resolution must therefore be rejected. The consequences of such an absolute ban on communication would be harmful for expectant or young parents and their babies.

### **Consequences of an absolute ban on communication for parents and children**

If it is no longer allowed to communicate about breast-milk substitutes, expectant and young parents who are unable to feed their infant with breast milk – for whatever reason – have no objective information about which product they should choose for their child.

In the first months of an infant's life, a variety of situations are conceivable in which a mother is unable to breastfeed (any longer). This may be for medical reasons, but also for highly personal reasons. In any case, however, the infant's healthy nutrition must be ensured and factual information on the nutrition options must be available. Feeding an infant with products that are not suitable as infant formula would have fatal consequences for the infant.

A proposal to prohibit digital information-sharing with medical and nursing staff would make communication about infant formula more tightly regulated than that of prescription medications. Furthermore, it would be virtually impossible for healthcare professionals to obtain information about the properties, special features and innovations of the various products in order to ensure that the parents they care for receive competent advice. There is no apparent objective reason to doubt that medical and nursing staff are unable to understand the communication from manufacturers.

### **Interference in the freedom of communication of companies**

Within the European legal framework, commercial communication by companies enjoys protection as part of the fundamental right to freedom of expression. Of course, this fundamental right can be limited by general laws. In the area of breast-milk substitutes, this is done by the regulations of food law. Further encroachments on the fundamental right of freedom of expression must, however, be justified. This means that a further in-depth intervention must lead to greater protection for another fundamental right. Thus, infants would have to be better protected in terms of their health by the communication ban than is already the case through the advertising restrictions in food law. However, a lack of information on breast-milk substitutes would rather lead to a risk to the care of infants who cannot be breastfed. Furthermore, existing regulation clearly already regulates the information regarding the benefits of breastfeeding, which must precede any communication on breast-milk substitutes, making it clear to expectant and young parents that breast milk is always the best choice. It cannot therefore be assumed that a ban on communication offers more protection here. Rather, it is to be feared that the health of infants will be endangered as a result.

## **Restriction of innovation**

Commercial communication is necessary for companies to compete for the best product, including in the field of breast-milk substitutes. Research and innovation to improve existing products only makes sense for companies operating on the market if improvements in the product can be communicated. Absolute bans on communication therefore inhibit innovation and prevent scientific research and product improvement. Advertising bans lead to a reduction in competition, new companies have no opportunity to enter the market and existing structures become entrenched at the expense of consumers.

## **Europe should speak out against the resolution banning digital communication**

A tightening of the regulation of commercial communication for breast-milk substitutes in Europe is to be rejected. As far as the legal situation in other countries and on other continents is not compatible with the European situation, regulation of advertising law may be sought there. However, no WHO-wide binding requirement is necessary for this.

The advertising industry expresses its concern regarding the adoption of the resolution within the WHA. No resolution should be adopted that is binding on all member states. Insofar as countries of the Global South see the need to tighten up their advertising rules and require guidance from the WHO, this should only be provided in the form of a 'note with appreciation', but not in the form of a resolution that is binding for Europe.

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**The German Advertising Federation (ZAW)** represents 43 associations and organizations from the advertising industry, the media, advertising agencies and professions, and research. As the industry's 'round table', it formulates joint policies and balances advertising industry interests. The Federation represents the advertising industry in all fundamental issues and does so against the backdrop of the freedom to advertise as protected in the EU Charter of Fundamental Rights, and particularly in relation to freedom of expression and the freedom to conduct a business. It is registered at the EU Register under 12238962750-40.