



Draft final report of the Commission on Ending Childhood Obesity IBFAN/Baby Milk Action Comments November 2015

- 1) **Are the policy options proposed by the Commission feasible in your setting?**
 - Yes. But only if the European Commission does not undermine/block Member States duty under the Convention on the Rights of the Child and WHA Resolutions.
- 2) **If implemented, will these significantly address childhood obesity?**
 - Only if the proper safeguards outlined in our comments below are included.
- 3) **What are the important enablers and potential barriers for the implementation of these proposed policy options?**

Enablers:

 - The political will to tackle this problem and counter flawed industry arguments
 - The political will to counter the 'chilling effect' of Trade Agreements
 - Effective use of the Convention of the Rights of the Child

Barriers:

 - Terminology that blurs understanding such as: 'PPP,' 'stakeholder,' 'Non State Actor'..
 - UN and NGO fascination with short term Corporate Social Responsibility schemes that bring about small incremental changes (slightly-better-for-you-junk foods)
 - Failure to recognise that corporations have a fiduciary duty to maximize profits and that all their actions must deliver shareholder value.
 - Failure to regulate misleading marketing
 - Conflicts at the heart of policy setting: health/consumer protection vs. trade/economic growth and jobs. Citizen vs. corporate rights.
 - Lack of attention to and understanding of Conflict of Interest theory.
 - Corporate infiltration of scientific bodies – and science base resulting in policy-based science
 - Corporate takeover of education
- 4) **How can governments and other actors be held to account for implementing these policy options?**
 - Through citizens use of the Convention on the Rights of the Child,
- 5) **Any other comments about the draft final report?**
 - See General Comments below

General Comments:

The report is significantly improved from the Interim report and we are pleased that several of our comments have been taken on board, including better references to need for protection of breastfeeding, the control of marketing, references to the *Convention on the Rights of the Child* and its General Comment No. 15, stronger references to fiscal measures such as sugar taxes, greater emphasis on the risks of trade agreements and less emphasis on multi-stakeholder partnership approaches. However a number of concerns remain:

- Insufficient reference is given to the need for strong Conflict of Interest safeguards to ensure that policy setting processes and obesity reduction/prevention programmes are protected from commercial influence. COI safeguards are mentioned only once and then only in relation to governments in Para 54.

- There is continued use of the term “stakeholder.” This obscures the fact that the primary interest of corporations is not to act in the public interest (Jonathan H. Marks 2013). Their legal fiduciary duty is to maximise profits for their shareholders. So corporations cannot be “stakeholders” in public affairs, and should not be made so through principles of “inclusiveness.”
- The note on Page 2 states that the report “*does not necessarily represent the decisions or policies of WHO.*” However the report will carry the WHO logo so will be seen as being endorsed by WHO. We do not understand how WHO would agree to have their logo on a report if it is not in line with, and may contradict, WHO decisions or policies. Can this be clarified by WHO as our understanding is that the agency must inform the reader of the status of the global policies adopted by WHA and their appropriate implementation.
- All references to the *International Code* should include *the subsequent relevant WHA Resolutions*. These Resolutions have the same status as the *International Code*. However, they are regularly ignored by the baby feeding industry and thus a report of this nature must ensure they are duly mentioned and avoid creating opportunities for misinterpretation or selective quotation. Currently the Report mentions the Resolutions just once – while the *International Code* is mentioned on its own 4 times. There is no mention in the Glossary or in footnotes that all references to the International Code refer to the Resolutions also.

Pages 9-10 Paras 10 -11. While the references to epigenetic effects are interesting, the report needs to add a word of caution in relation to the conflicts of interest that exist in the research. Baby food manufacturer Nestlé is sponsoring research into the impact of maternal diet on infant genes and health in a jointly-funded CHF 22m public-private partnership. *“The company has announced it will contribute CHF 22 million to a six-year research partnership with an international alliance of researchers at institutions in Southampton, Auckland and Singapore, who make up the EpiGen Consortium. The jointly-funded public-private partnership will be one of the largest of its kind.*

The company is already using this research in its promotion for future products including formulas.¹ *“Nestlé scientists have shown for the first time how some heat-treated probiotics act on cells to potentially provide better balance for your immune system than their ‘live’ equivalents, in work that could help researchers develop more effective probiotic products such as infant formulas and drinks, with a longer shelf life.”*

“Science shows that the nutrition infants and young children receive in the first 1,000 days from conception has a long-lasting influence on their health, wellness and quality of life,” said Heiko Schipper, CEO of Nestlé Nutrition. *“At Nestlé, we embrace this unique window of opportunity to nurture a healthier generation by providing them with science-based products.”*²

Page 16 This section has been significantly improved. However we do not believe that the last sentence on the first paragraph is correct. *“Growing-up Milks, which fall outside the current Code of Marketing of Breast milk Substitutes are increasingly marketed to parents and caregivers”.*

As far as we are aware WHO has never provided an official interpretation that the so-called ‘Growing up milks’ are NOT covered by the *International Code* or Resolutions. These products, like follow-on formulas, invariably share brand names with infant formula. In 2013 WHO issued a clarification statement about formulas that target babies over 6 months: *“A number of studies strongly suggest a direct correlation between marketing strategies for follow-up formulae, and perception and subsequent use of these products as breast-milk substitutes. In many instances, the packaging, branding and labelling of follow-up formula closely resembles that of infant formula. This leads to confusion as to the purpose of the product, i.e. a perception that follow-up formula is a breast-milk substitute. This may result in its early introduction,*

¹ The new Nestlé study, published in the *Journal of Allergy and Clinical Immunology* explores how live and heat-treated
² <http://www.nestle.com/media/newsandfeatures/nestle-research-epigenetics>

thereby undermining exclusive breastfeeding up to six months of age and sustained breastfeeding up to two years or beyond.^{12, 13,14,15} As reported in a number of studies,¹²⁻¹⁴ while follow-up formula may not be explicitly promoted as a breast-milk substitute, documented marketing strategies, such as packaging, branding and labelling may induce mothers to use follow-up formula in the first six months of life and/or to stop breastfeeding after this period.... where follow-up formula is otherwise represented in a manner which results in such product being perceived or used as a partial or total replacement for breast milk, such product also falls within the scope of the Code.³

Page 21 Para 36. “...Exclusive breastfeeding for the first six months of life, followed by the introduction of appropriate complementary foods (in line with current WHO recommendations) is a significant factor in reducing the risk of obesity.”

The correct WHO recommendation on continued breastfeeding after 6 months and up to 2 years or beyond needs to be reflected in the document. For example in the *Global Strategy on Infant and Young Child Feeding*: “. exclusive breastfeeding for the first six months of life, and with nutritionally adequate and safe complementary feeding through introduction of safe and adequate amounts of indigenous foodstuffs and local foods while breastfeeding continues up to the age of two years or beyond.”

Page 22. Policy Action i: This should be directed to governments and the reference to guidelines should be removed to read: “Protect, promote and support breastfeeding according to WHA recommendations ~~guidelines by: using~~ through the implementation of the International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly resolutions, as a regulation”

Rationale: The implementation of the *International Code of Marketing of Breastmilk Substitutes* is a minimum requirement for all Member States. The Resolution that adopted the *International Code* in 1981 (WHA 34.22) stated that: “...the adoption of and adherence to the International Code...**is a minimum requirement** and only one of several important actions required in order to protect health practices in respect of infant and young child feeding... [WHA] urges **all Member States** to give full and unanimous support to the ...International Code **in its entirety** as an expression of the collective will of the membership of the World Health Organisation.” Other Resolutions refer to regulatory measures.⁴

Page 22. Policy Action ii. Change to read: “Ensuring that health care and education systems are free from commercial influence and provide families and carers with objective, full and consistent information and support about importance of breastfeeding and the risks of artificial feeding. Financial support and other incentives for programmes and health professionals working in infant and young child health must not create conflicts of interest”.

As mentioned in our comments on the Interim Report if health workers and educators are to give the truly consistent and objective information and provide support that mothers and families need, it is vital

³ **Information concerning the use and marketing of follow-up formula, July 2013**³ “WHO maintains, however, that breast milk remains the most appropriate liquid part of a progressively diversified diet for the vast majority of children between 6 and 24 months of age, once complementary feeding has begun...The Code “applies to the marketing, and practices related thereto, of the following products: breast-milk substitutes, including infant formula; other milk products, foods and beverages, including bottled complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breast milk.”

⁴ WHA Resolution 63.23 (2010) 1.3 “urges Member States (3) to develop and/or strengthen legislative, regulatory and/or other effective measures to control the marketing of breastmilk substitutes in order to give effect to the International Code of Marketing of Breastmilk Substitutes and relevant resolution adopted by the World Health Assembly.”

WHA Resolution 65.60 2012 requests the DG : (4) to report, through the Executive Board, to the Sixty-seventh World Health Assembly on progress in the implementation of the comprehensive implementation plan, together with the report on implementation of the International Code of Marketing of Breast-milk Substitutes and related Health Assembly resolutions.

that their knowledge and understanding are not undermined by conflicting and often inaccurate commercially inspired messages. Citizens have the right to health care and education systems that are free from commercial influence.

Page 30. This page is much improved from pages 10 and 11 of the Interim report that placed strong emphasis on multi-stakeholder partnership approaches. (*Consistent and coordinated multi-sectoral and multi-stakeholder approaches are required to address childhood obesity.....New approaches to addressing the challenge will require constructive, transparent and accountable relationships between government, the private sector and civil society.*) However there are still some concerns.

Page 30 Para 53 is ambiguous and no reference is given for the claim that *“The Commission is aware of a number of private sector initiatives that have the potential to significant impact on childhood obesity. These need to be encouraged while acknowledging the complexities of motive and interest that might exist.”* If this is so, it needs to be spelled out, as the Commission has to assume full responsibility for endorsing, by this statement, such initiatives.

Page 30 Para 55 *“...Scorecards can be useful tools in holding private sector actors to account, and institutional investors are increasingly aware of community expectations when making investment decisions”.*

The reference to score cards should stress the need for monitoring of the actual corporate marketing practices on the ground - rather than basing the scoring on compilations of companies’ policy statements and Corporate Social Responsibility promises. A number of business-friendly monitoring and scoring systems, such as the *Access to Nutrition Index* (ATNI) and *Behind the Brands* (that was inspired by ATNI) fail to monitor what companies actually do. Therefore these types of assessments are very risky, especially when used with weak conflict of interest rules.

An example of a faulty COI system is that devised by the Global Social Observatory (GSO) for the Scaling Up Nutrition initiative, that gives undue weight to such ‘promises’ and so encourages inappropriate involvement in policy setting and planning of corporations that are undermining agro-biodiversity and sustainable food systems or encouraging the over consumption of specific nutrients in highly processed foods

Page 30 Para 55 *“...While these examples do not cover all the accountability mechanisms that governments and civil society actors can seek to use, the point is that the optimal results will be achieved using a mix of accountability tools and strategies, within a framework of mutual accountability.”*

Governments should not be expected to be accountable to donors or corporations. The emphasis must be on democratic principles of accountability of elected governments to their own citizens and these principles must not be undermined. Therefore the notion of a *‘framework for mutual accountability’* needs to be clarified and how it will uphold the democratic principles.

Page 30 Para 56. Trade This section is much improved from the Interim report and no longer takes a simplistic constructive approach to trade. In this context it seems to be essential that the report highlights the ongoing discussions that are taking place in the Codex Alimentarius Nutrition Committee in Germany 21-27th November. Milk exporting governments such as New Zealand are pressing ahead with the revision of the follow-on formula standard against the strong advice of WHO, IBFAN and developing countries that are insisting that these products are not necessary and that safety concerns of products on the market can easily be accommodated by a footnote in the Infant Formula Standard.⁵ The adoption of the Follow on Formula standard in 1987 is recognised to be a great mistake that will be compounded if so called ‘growing up milks’ are included in its scope. It will be used by corporations to establish and expand

⁵ Codex Standard for follow-up formula Codex stan 156-1987 (amended 1989)

new markets, forcing governments to accept imports of these unnecessary and risky products to the detriment of child health. It will undermine the adoption of the essential strong marketing regulations that the Commission is calling for in this report.

Page 11 Para 20 In relation to Trade, we wonder at the inclusion of the reference to WHA Resolution 59.26 that was adopted in 2006. *“Member States of WHO have adopted a resolution to consider the interplay between international trade and health through multistakeholders dialogue.”* This is a totally inadequate response to the current threat of trade agreements that give power to TNCs to take our governments to court even for future profits.

For more information contact: Patti Rundall prundall@babymilkaction.org