



Baby Milk Action comments on the DRAFT DHSC Guidance Notes on Commission Delegated Regulation (EU) 2016/127 (supplementing Regulation (EU) No 609/2013)

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These comments endorse those submitted by Dr Vicky Sibson on behalf of the Baby Feeding Law Group. Baby Milk Action has been involved in the development of the EU baby food legislation, including on the improvement of transparency and conflicts of interest safeguards, since 1983.¹

Baby Milk Action is the UK member of the global network, the International Baby Food Action Network, and has worked for over 40 years, alongside WHO and UNICEF, to improve UK and EU legislation. WHO and UNICEF celebrated the 40th Anniversary of the International on the 21st May this year,² and we are all now redoubling efforts to remind governments of their obligations to protect breastfeeding and child health from commercial exploitation.³ As the UK PHE report and consultation showed, harmful marketing, driven by the US\$ multi-billion baby food industry,⁴ is constantly evolving and remains a critical factor in the misleading of health workers and parents and the undermining of government attempts to protect child health in particular, breastfeeding and bio-diverse and appropriate foods for young children.⁵

We strongly recommend that the UK Government takes this opportunity to revisit the UK law, building on the EU regulations and going further. Families in the UK need much stronger protection from marketing and we strongly advise that legislation in this area should include wherever possible relevant sections of the IBFAN Model Law.⁶

¹ Chronology of the Code in Europe [Baby Milk Action IBFAN UK EU Chronology](#)

² 40th Anniversary of the International Code of Marketing of Breastmilk Substitutes and Launch of World Breastfeeding Protection Day. 21 May 2021 <http://www.babymilkaction.org/policy/consultations>

³ Baby Milk Action's work has centred on the implementation of [International Code of Marketing of Breastmilk Substitutes](#) and the subsequent relevant WHA resolutions (The Code). The Code is a regulation sui generis (in a class by itself", therefore "unique") that Member States have an obligation to implement and enforce and commercial companies to comply with as an element of the international human rights law. Baby Milk Action has also focused on helping governments and UN institutions improve transparency and Conflicts of interest (COI) safeguards.

⁴ Revenue of the smallest of Fortune's Global 500 companies (<https://fortune.com/global500/2019/search/>)—approximately US\$25 billion annually—exceeds the Gross National Income of the entire economies of each of 106 countries, <https://unstats.un.org/unsd/snaama/Downloads> including 78 countries designated as low- and middle-income countries by the World Bank. <https://blogs.worldbank.org/opendata/new-country-classifications-income-level-2018-2019>

⁵ WHO UNICEF IBFAN Global Code Report 2020

⁶ [2018 Model Law](#)

Some key points:

- **Independence.** The application and enforcement of the regulations and guidelines MUST be independent and free from any commercial influence or financing and any fines or sanctions for contraventions must be meaningful and effective. The ASA is funded by the advertising industry so cannot be considered independent.
- The purpose of the Guidance Notes should be to optimize the protection to children afforded by whatever legislation is in force and go further wherever possible.
- The strengthening of the Guidelines and legislation to cover the marketing of all formulas targeting babies 0-36 months could have an important impact of child protection, not only in the UK but globally. In international fora such as the forthcoming Codex Alimentarius, discussions on the revision of the Follow-on Formula Standard are near conclusion with so far inadequate safeguards on marketing.^{7 8} 'Cross Promotion' or 'brand stretching' - a well-known, deceptive marketing technique used to expand the sale of products such as alcohol, tobacco and soft drinks is a key problem that increases the risk of young infants being fed with entirely inappropriate products. The baby food industry's refusal to stop this practice has wreaked havoc on child health, fuelling the obesity epidemic. In one third of the world's countries breastfeeding is a lifeline and the majority of children are breastfed in the 2nd year of life.
- Stronger Guidelines and, eventually, UK legislation would not only have long-term human health advantages but would mitigate some of the risks associated with ecological footprint of Industrially produced and traded formulas.⁹ Many contain palm oil derived from deforestation, are sold in single-use non-biodegradable plastic and contribute to Greenhouse Gas Emissions. Breastfeeding contributes to the reduction of Green House Gasses (GHG) and to water conservation; is a natural and renewable food, environmentally safe, produced and provided without pollution, unnecessary packaging and no waste.
- The DH has, until now, assured us that no permission has been given to baby food companies to provide information materials for NHS or other distribution. It is critically important that this safeguard is maintained and extended to online communications. Labels should be clear that formulas should only be used on the advice of independent health workers. Ample argumentation for such safeguards to be added to Guidelines will be found in the eight WHO Resolutions -all endorsed by the UK - that focus on conflicts of interest and forbid companies from producing and sponsoring materials or advising on infant and young child feeding. (see Box on next page)

⁷ <http://www.babymilkaction.org/policy/consultations> DRAFT REVISED STANDARD FOR FOLLOW-UP FORMULA (CXS 156-1987) SECTION B: DRINK/PRODUCT FOR YOUNG CHILDREN WITH ADDED NUTRIENTS OR DRINK FOR YOUNG CHILDREN

⁸ CODEX: Exporting countries put trade before the health of the planet and children <http://www.babymilkaction.org/archives/23295>

⁹ Footprints-Due-to-Milk-Formula.pdf <https://www.bpni.org/wp-content/uploads/2018/11/Green-Feeding-RC-Carbon-Footprint-10-Asian-Countries.pdf> <https://internationalbreastfeedingjournal.biomedcentral.com/articles/10.1186/s13006-019-0243-8> IBFAN's Greenfeeding papers.

WHA Resolutions that refer to Conflict of Interest Safeguards. **1996 WHA Res 49.15:** Preambular para: “Concerned that health institutions and ministries may be subject to subtle pressure to accept, inappropriately, financial or other support for professional training in infant and child health”...urged Member States:...(2) to ensure that the financial support for professionals working in infant and young child health does not create conflicts of interest, especially with regard to the [WHO/UNICEF Baby Friendly Hospital Initiative](#); (3) to ensure that monitoring the application of the International Code and subsequent relevant resolutions is carried out in a transparent, independent manner, free from commercial influence; http://www.who.int/nutrition/topics/WHA49.15_icycn_en.pdf?ua=1 **2001 WHA Res 54.2** 2. *REQUESTS the Director-General: (2) to foster, with all relevant sectors of society, a constructive and transparent dialogue in order to monitor progress towards implementation of the International Code of Marketing of Breastmilk Substitutes and subsequent relevant Health Assembly resolutions, in an independent manner and free from commercial influence, and to provide support to Member States in their efforts to monitor implementation of the Code;* (4) to ensure that the introduction of micronutrient interventions and the marketing of nutritional supplements do not replace, or undermine support for the sustainable practice of, exclusive breastfeeding and optimal complementary feeding. **2002 WHA Res 55.25:** “CALLS UPON other international organizations and bodies, in particular ILO, FAO, UNICEF, UNHCR, UNFPA and UNAIDS, to give high priority, within their respective mandates and programmes and consistent with guidelines on conflict of interest.....”http://www.who.int/nutrition/topics/WHA55.25_icycn_en.pdf?ua=1 **2003 Global Strategy for Infant and Young Child Feeding outlines the two – and only two – roles for companies in relation to infant feeding. Paragraph 44 Commercial enterprises:** “Manufacturers and distributors of industrially processed foods intended for infants and young children also have a constructive role to play in achieving the aim of this strategy. They should ensure that processed food products for infants and children, when sold, meet applicable Codex Alimentarius standards and the Codex Code of Hygienic Practice for Foods for Infants and Children. In addition, all manufacturers and distributors of products within the scope of the International Code of Marketing of Breast-milk Substitutes, including feeding bottles and teats, are responsible for monitoring their marketing practices according to the principles and aim of the Code. They should ensure that their conduct at every level conforms to the Code, subsequent relevant Health Assembly resolutions, and national measures that have been adopted to give effect to both.” **2004 WHA Res 57.17 Global Strategy on Diet, Physical Activity and Health** 5. REQUESTS the Director-General: **(6)** to cooperate with civil society and with public and private stakeholders committed to reducing the risks of noncommunicable diseases in implementing the Strategy and promoting healthy diet and physical activity, **while ensuring avoidance of potential conflicts of interest;** **2005 WHA Res 58.32:** urged Member States: “to ensure that financial support and other incentives for programmes and health professionals working in infant and young child health do not create conflicts of interest” http://www.who.int/nutrition/topics/WHA58.32_icycn_en.pdf?ua=1 **2012 WHA Res 65.6** urged Member States to implement a plan “establishing a dialogue with relevant national and international parties and forming alliances and partnerships to expand nutrition actions with the establishment of adequate mechanisms to safeguard against potential conflicts of interest” http://www.who.int/nutrition/topics/WHA65.6_resolution_en.pdf?ua=1&ua=1 **2014 WHA Res 67(9)** requested the Director-General to convene informal consultations with Member States² to complete the work, before the end of 2015, on risk assessment and management tools for conflicts of interest in nutrition, for consideration by Member States at the Sixty-ninth World Health Assembly; http://apps.who.int/gb/ebwha/pdf_files/WHA67/A67_DIV3-en.pdf?ua=1&ua=1 **2016 WHA Res 69/9 welcomed with appreciation the WHO Guidance on ending inappropriate marketing of foods for infants and young children (WHA 69/7 Add1)** whose **Recommendation 6** stated that: “Companies that market foods for infants and young children should not create conflicts of interest in health facilities or throughout health systems. Health workers, health systems, health professional associations and nongovernmental organizations should likewise avoid such conflicts of interest.” http://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_7Add1-en.pdf?ua=1 **16. Recommendation 6.** Companies that market foods for infants and young children should not create conflicts of interest in health facilities or throughout health systems. Health workers, health systems, health professional associations and nongovernmental organizations should likewise avoid such conflicts of interest. Such companies, or their representatives, should not: • provide free products, samples or reduced-price foods for infants or young children to families through health workers or health facilities, except:– as supplies distributed through officially sanctioned health programmes. Products distributed in such programmes should not display company brands;• donate or distribute equipment or services to health facilities;• give gifts or incentives to health care staff;• use health facilities to host events, contests or campaigns• give any gifts or coupons to parents, caregivers and families; • directly or indirectly provide education to parents and other caregivers on infant and young child feeding in health facilities; • provide any information for health workers other than that which is scientific and factual; • sponsor meetings of health professionals and scientific meetings. **17.** Likewise, health workers, health systems, health professional associations and nongovernmental organizations should not: • accept free products, samples or reduced-price foods for infants or young children from companies, except:– as supplies distributed through officially sanctioned health programmes. Products distributed in such programmes should not display company brands; • accept equipment or services from companies that market foods for infants and young children • accept gifts or incentives from such companies; • allow health facilities to be used for commercial events, contests or campaigns; • allow companies that market foods for infants and young children to distribute any gifts or coupons to parents, caregivers and families through health facilities;• allow such companies to directly or indirectly provide education in health facilities to parents and other caregivers;• allow such companies to sponsor meetings of health professionals and scientific meetings.