



Baby Milk Action comments on WHO DRAFT guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes

IBFAN warmly welcomes the guidelines, especially para 8 that acknowledges the need to address a constantly evolving market. The Guidance could better help governments future-proof and strengthen their national safeguards if they:

- mention Bottles, Teats and Foods for Infants and Young Children more frequently to offset their omission in the Title and Purpose (Para 1);
- refer to '**Designated Products**' to encourage and empower legislators to include products that are not mentioned in the scope of the Code but when inappropriately marketed can undermine optimal maternal and child health; for example, pacifiers, breastpumps and ultra-processed products and formulas for pregnant and lactating mothers and children beyond 36 months (Para 6, 25 and Rec 4)
- Expand the list of **definitions** (Para 10 Terminology)
- Strengthen Recommendation 1.2 to prohibit labelling, packshots and packaging of designated products and Include safeguards to protect privacy and prevent inappropriate marketing via QR codes or other digital labelling schemes.(Para 14)
- prohibit financial or other incentives to professionals, health workers or their associations (Para 16 Rec 1.4)
- prohibit the inappropriate promotion of products marketed for emergency situations or malnutrition, in line with WHA 55.25 (Para 23 Rec 3.2) and Operational Guidance for Infant and Young Child Feeding in emergencies.
- include a specific prohibition of the commercialization of products made through freeze-drying, cloning or industrial processing of breastmilk
- require monitoring, enforcement and proportionality of fines to be protected from commercial influence (Para 26 Rec 5, Para 30, Rec 8)
- We strongly support Recommendations 9, 9.1.9.2.9.3 that address cross border marketing.

IBFAN suggestions for text changes are in **RED**

PURPOSE

IBFAN suggestion: INSERT the word **ALL** in the first sentence to read:

*"The purpose of the Guidelines is to provide support to Member States for developing and applying regulatory measures aimed at restricting digital marketing of **ALL** products that fall within the scope of International Code of Marketing of Breast-milk Substitutes and other subsequent relevant resolutions of the Health Assembly (hereafter collectively referred to as "the Code"), **including bottles and teats and foods for infants and young children** by applying the Code to digital environments in response to a request from the 77th World Health Assembly...."*

Rationale: While the Guidance covers all products covered by the Code and subsequent relevant Resolutions, the title of this draft refers only to **breastmilk substitute (BMS)** and readers may not realise that Bottles, Teats and Foods for Infants and Young Children are also covered. While Para 6 of the scope does include them, the omission in the Title and elsewhere could weaken and undermine the effectiveness of the safeguards.

BACKGROUND

Para 4 ~~“Yet, few countries have~~ **144 countries have** adopted legal measures aligned with the provisions of the Code, **commercial and trade pressures have led to the majority of laws having limited scope and serious weaknesses.** In addition, enforcement of legal measures that have been adopted remains weak. Regulatory measures aimed at restricting digital marketing of breast-milk substitutes will be most effective in the context of comprehensive implementation of the Code.”.

Rationale: It is incorrect and not helpful to say that ‘few countries have legal measures that are aligned with the Code’ when 144 countries do have at least some legal measures on the Code. The text places all the blame on governments and overlooks the interference from corporations and pressure from powerful exporting countries. It also minimizes the responsibilities of manufacturers and distributors to be in full compliance with the Code.

SCOPE

Para 6. Scope Inclusion of Designated Products.

This section would benefit from more specificity and references to **Designated Products**, as described in IBFAN’s Model Law and WHO’s Model Law for the European region as “such other product as the Minister of Health may, by Notice in the Official Gazette, declare to be a “designated product” for the purposes of this Act.” This would encourage and empower legislators to include safeguards for products that may not be in the scope but whose marketing has the potential to undermine optimal maternal and child health by creating confusion, doubt and loss of confidence in breastfeeding.

Products that could be listed as examples:

Commercial milk formulas for pregnant and lactating mothers, galactogogues or other products claimed to increase the production of breastmilk, or probiotic supplements. These products claim to enhance nutrition and/or lactation performance. **Rationale:** Mothers and babies should be considered together as a dyad and the commercial formulas marketed to pregnant and lactating women are a continuing concern, especially in low-resource regions. The marketing of these expensive ultra-processed products, invariably over-emphasises micro-nutrients. This leads parents to forgo purchasing and consuming bio-diverse, nutritious local foods believing that these products are essential. Idealization and cross promotion with BMS increases the risk that illiterate women will struggle to know whether the formula is for them or their infant.¹

Pumps, pacifiers, nipple shields and creams, and bottle preparation devices, although not mentioned in the scope of the Code, are often promoted inappropriately with idealisation with no mention of risks.

RECOMMENDATION 1.1: Regulatory measures should prohibit the use of digital marketing tools for the promotion of products within the scope of the Code **or any designated product** including, but not limited to, the following activities.....

1.1.h any other digital marketing practices, including cross-promotions, used to promote products within the scope of the Code, **product placement or establish relationships between consumers and manufacturers or distributors of products within the scope of the Code or their brands, including celebrities and or influencers.**

Para 7 Mummy Vloggers The Guidance must cover formal and informal ‘mummy bloggers’ - self-declared ‘experts’ who may be celebrities and knowingly (deliberately) or unknowingly propagate incorrect information to unsuspecting parents. It is not clear whether such misinformation would be covered by the Indian Law. See para 10.² The International Code includes 30 references to

¹ WHO’s 2016¹ and 2018¹ Code report included reports from 3 countries about *Milks for mothers* as a designated product within their laws. However, the datasets for *Milks for mothers* did not appear in the 2020¹ and 2022¹ reports.

² Hickman et al, 2021, <https://journals.sagepub.com/doi/10.1177/08903344211018161>

INFORMATION, recommending that correct and expert information reaches parents through appropriate channels. Today, anyone can start a Social Media channel, become a Vlogger and upload 'educational/informational' videos.³

Examples of Mummy Vloggers and corporate Social Media sites

<https://www.youtube.com/watch?v=RBZ2rsw-lds> This vlogger also has a website which is in English check: <https://momcomindia.info/how-to-choose-the-right-formula-milk-for-your-baby/>; <https://momcomindia.info/baby-bottles-all-about-baby-feeding-bottles/>

Danone India social media sites/channels/pages openly advertise products covered by the Code:

Aptamil <https://www.danone.in/products/aptamil-gold/>

Danone India, Instagram page promotes its infant formula with 'FOS' probiotics. https://www.amazon.in/Nutricia-Dexolac-Stage-Up-Months/dp/B07CV5DXCY/ref=sr_1_1_f3_0o_fs_mod_primary_alm?crd=256G0FRZ6ZQC&keywords=danone+fos+food&qid=1694697747&sbo=m6DjfpMzMLDmL8pSMKX8hw%3D%3D&sprefix=drone+for+foo%2Caps%2C362&sr=8-1

TERMINOLOGY

10.b Cross-promotion (also called brand crossover promotion, line extension or brand stretching) is a form of marketing promotion where customers of one product or service are targeted with promotion of a related product. This can include packaging, branding and labelling of a product to closely resemble that of another (brand extension). In this context, it can also refer to use of particular promotional activities for one product and/or promotion of that product in particular settings to promote another product (7,8). **Cross promotion with breastmilk substitutes may also extend to non-food items e.g. baby toiletries, drinks and services. (Hickman et al, 2021)**

Given the fast-moving and evolving nature of this market it would be helpful to define or clarify the following terms:

- **Commercial ultra-processed products:** products or supplements made through or any industrial or ultra-processing (including freeze drying, cloning of breastmilk).
- **Pharmacies:** are clearly sales outlets and certainly distributors, but in many countries they *are* considered part of the health care system. This can lead to confusion and a relaxing of controls so this may benefit from clarification.
- **Bottles/Teats/Pacifiers/Dummies:** There are many types of product used for preparing and feeding children, bottles, syringes, teats, pacifiers and cleaning products where bottles are an integral part.
- **Breast pumps** (are not themselves strictly covered by the Code) but are often marketed in ways that promote the use of bottles and promote 'breastmilk feeding' over 'breastfeeding'.
- **Health Professional/worker associations:** These associations are a major or priority target of companies so a definition would be useful.
- **Commercial milk formulas for pregnant and lactating mothers:** products marketed for use during pregnancy and lactation purporting to enhance nutrition and lactation performance; may include presumed galactogogues or other products claimed to increase the production of breastmilk or improve its composition, such as nutritional supplements.
- **Influencers:** these can be people who review and recommend BMS, formal and informal 'mummy bloggers' (Hickman et al, 2021) with little or no transparency regarding sponsorship. They may do this work in exchange for products rather than money. In India, for any product sold on social media the influencer or celebrity has to declare sponsorship in the post and in the video, but it is not clear if these 'mummy bloggers' are covered.
- **Product Placement/ embedded marketing strategy.** Product placement is a marketing technique in which a product or service is showcased in some form of media, such as television shows, movies, music videos, social media platforms, or even ads for other products and may or may not include shoppable content.

³ <https://www.youtube.com/watch?v=RBZ2rsw-lds> This vlogger also has a website in English <https://momcomindia.info/how-to-choose-the-right-formula-milk-for-your-baby/>; <https://momcomindia.info/baby-bottles-all-about-baby-feeding-bottles/>

Para 11.e. Sponsorship includes any form of contribution made, **including via product placement**, with the aim, effect or likely effect of increasing recognition, recommendations, or appeal of commercial foods or **drinks for pregnant and lactating mothers**, infants and young children, **including Feeding Bottles and Teats**, and formula milks for children up to 36 months **and beyond** or their consumption, either directly or indirectly (12).

Rationale: If the Guidance is to help governments keep pace with marketing developments this para should be as inclusive as possible. Ultra-processed formulas and other products targeting mothers and children **up to and over 36 months**, especially when idealized with promotional claims and cross-promoted with infant formula, are especially confusing and problematic for illiterate parents.

The warnings about sponsorship should include the giving of branded gifts by **influencers**⁴

RECOMMENDATIONS

Para 12. Recommendation 1. we suggest including **ALL**: “...prohibit the promotion of **ALL** products within the scope of the Code, **foods for infants and young children and any designated product** ...”

Para 13. Recommendation 1.1: Regulatory measures should prohibit the use of digital marketing tools for the promotion of products within the scope of the Code, **foods for infants and young children and any designated product** including, but not limited to, the following activities:

Para 14 RECOMMENDATION 1.2: Prohibition of packshots and packages

“Regulatory measures should prohibit the display of **images, packshots, product labels or packages of proprietary products within the scope of the Code, foods for infants and young children or any designated product** ~~that does not satisfy the relevant provisions of the Code (particularly Article 9 of the International Code of Marketing of Breast-milk Substitutes, WHA58.32, WHA61.20, WHA63.23 and the Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children)~~ in any information, educational materials, materials, or any other content in the digital environment. **Regulatory measures prohibit promotional claims and idealisation**⁵, **require full warnings, protect privacy and prevent inappropriate marketing via QR codes or other digital schemes.**

Para 14 Rec 1.2 Rationale:

Packshots: While it may not be feasible to prohibit online sales of all the relevant products, and since there is a need for purchasers to read and identify products before buying, the Code and subsequent WHA Resolutions have consistently warned of the risks of informational materials referring to proprietary products within the scope of the Code and the need for parents and carers to seek independent advice from health care professionals before making a decision to use the products. Few proprietary labels are fully Code compliant, and even when they are, their display online, invariably alongside other text and images is promotional. There is a risk that Recommendation 1.2, carrying the endorsement of WHO will legitimise such promotion. Written descriptions with full warnings should be sufficient for identification. Failing that a thumbnail of a Code compliant packshot.

E-commerce and privacy: The Report of the 47th Codex Committee on Food Labelling (CCFL) details consumer protection, privacy and marketing concerns relating to QR Codes and other digital ways of conveying food information. It was suggested that “*food information described or presented using technology shall be presented in one place, separately from other commercial information intended for sale or marketing purposes*” and that no user data should be collected or tracked through these means.⁶

⁴ Hickman et al, 202

⁵ Cheung, K.Y., et al. (2023) Health and nutrition claims for infant formula: international cross sectional survey. *BMJ* 2023;380 doi.org/10.1136/bmj-2022-071075

⁶ 47th CCFL (Ottawa), Canada 15 – 19 May 2023 (paras 123-130)

Para 16. Recommendation 1.4: Regulatory measures should prohibit manufacturers of products within the scope of the Code or any entities acting on their behalf, acting directly or indirectly, from offering or providing advice..... This should include prohibiting offering or providing financial or other incentives to **professionals, health workers or their associations** or other entities for these purposes. 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.⁷

Para 17. RECOMMENDATION 2: Regulatory measures should prohibit promotion of products within the scope of the Code **and any designated product** through health care systems **or health professional or health worker associations** using digital technologies. **Health workers should also be co-responsible regarding the prohibition of promotion described here.**

Rationale: This recommendation will be stronger with the inclusion of **'or any designated products'** and **or health professional associations** after 'health care systems'

Health & Personal Care > Diet & Nutrition > Family Nutrition > Infant Nutrition

2 VIDEOS

UP TO 6 MONTHS

DEXOLAC

1

36 Vital Nutrients

Infant Formula Powder

IMPORTANT NOTICE: MOTHER'S MILK IS BEST FOR YOUR BABY

Roll over image to zoom in

Price: ₹430 (₹107.50 /100 g) **Fulfilled**
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Use by: 01 APR 2024

Brand Dexolac
Size 400 g (Pack of 1)
Item Weight 400 Grams
Item Form Powder
Age Range (Description) Infant
Speciality suitable for vegetarians

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About this item

- Dexolac Stage 1 Infant Formula is a powdered milk substitute for babies upto 6 months of age. It contains nutrients that support overall growth & development.
- Contains FOS – Fructo-oligosaccharides, supports digestive health
- Dexolac is scientifically formulated with 36 growth nutrients to support baby's overall growth & development
- It contains energy for increased needs during growth & protein that helps support growth. Calcium, Phosphorus, Magnesium, and Vitamin D help support the formation of strong bones
- Iron-fortified to meet baby's daily requirement
- Whey proteins that help support easy digestion
- More than 50% of Indian infants have growth nutrient deficiencies leading to poor growth. Dexolac contains optimal levels of key growth nutrients (Ca, Fe, Vit C, Vit D) to support the overall growth & development of Indian infants

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Para 21. Recommendation 3: Regulatory measures should prohibit promotion of products within the scope of the Code at point-of-sale in digital environments **such as custom adverts, 'featured' products, product placement, best sellers, 'frequently purchased with' customer reviews etc** in alignment with the Code provisions on point-of-sale promotions, information and education and labelling.

⁷ Hickman et al, 2019; Westland and Crawley, 2016; Westland and Sibson, 2022

The need for safeguards regarding Products for Emergencies

Para 23: Recommendation 3.2: *Regulatory measures should prohibit promotional practices for products within the Scope of the Code as required in Article 9, WHA 58.2, 63.23, 69.9 and **WHA 55.25** and any other text that is not prescribed by law at the point-of-sale in digital environments. **Measures should ensure that digital marketing follows the Operational Guidance for Infant and Young Child Feeding in emergencies and does not promote the introduction of micronutrient interventions and nutritional supplements in ways that undermine support for the sustainable practice of exclusive breastfeeding and optimal complementary feeding.***

Rationale: The need for safeguards regarding Products for Emergencies

Emergencies responses are often characterized by large influxes of unsolicited donations of breastmilk substitutes, bottles, teats, and other baby food and milk products, and evidence has shown that donations can often do more harm than good in emergencies situations. Recommendation 3.2 should prohibit the inappropriate promotion of products marketed for emergency situations or malnutrition, in line with Para 2.4 of WHA 55.25 (2002)⁸ The Infant Feeding in Emergency guidance,⁹ notes that breastpumps can be especially problematic in resource poor and emergency situations and should not be donated.

Para 24. Recommendation 3.3. Regulatory measures should prohibit point-of-sale promotions described in **Article 5.3** of the Code in digital environments.

RATIONALE: all five paragraphs in Article 5 are relevant and potentially undermine health, so they should all be included.

Para 25. Recommendation 4. Member States should prohibit inappropriate **promotion not only of breastmilk substitutes, but all ultra-processed foods** for **pregnant and lactating women and** infants and young children in digital environments.

Para 26 Recommendation 5: Member States should confer legal duties of compliance to monitor and take action **without delay** to prevent or remedy prohibited marketing on entities along the digital marketing value chain.

Rationale: The Guidance should include clarification that such agencies should be **independent of the baby feeding products industry**. As a consequence of multi-stakeholder ideology and resource constraints, many governments have allowed corporations to fund and become partners in setting and managing food safety, nutrition, marketing and monitoring policies. When this happens, every aspect of legislation can be weakened.

Para 30. RECOMMENDATION 8: *Member States should enforce regulatory measures that implement the Code, including in digital environments, and apply effective, proportionate, dissuasive sanctions for non-*

⁸ WHA 55.25 calls on Member States “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”

⁹ <https://www.enonline.net/ife> [https://www.enonline.net/attachments/4343/Preventing-and-managing-inappropriate-donations-of-BMS-\(ENGLISH\).pdf](https://www.enonline.net/attachments/4343/Preventing-and-managing-inappropriate-donations-of-BMS-(ENGLISH).pdf)

compliance, informing and educating all parties regarding these obligations. Decisions regarding enforcement, monitoring and proportionality of sanctions should be protected from commercial influence.

Rationale: Para 30 seems reasonable, but proportionality is subjective. As mentioned above, undue commercial influence at any level can lead to loopholes and poor enforcement of the laws. Re-stating fundamental Conflict of Interest principles that policy setting should be free of commercial influence would help ensure that the full impact of the harm is not overlooked or externalized to governments, health care systems and families.

Breastmilk Products. The Guidance should include a specific prohibition of the commercialization and promotions of products made through freeze-drying or industrial processing of breastmilk.

Exports and Global Trade

Paras 33, 34, 35 Recommendation 9, 9.1.9.2.93.

These Recommendations are excellent and reflect IBFAN's long-held concerns about the impact of powerful exporting countries on trade. It is essential that these are fully implemented by all countries.

It has always been unfair to expect poorly-resourced countries to tackle cross-border marketing problems alone, and babies in these countries stand to suffer the most when breastfeeding is undermined. Exporting nations that profit from sales, must start taking responsibility for the harm caused by their corporations, who have been allowed to externalize all the 'costs' to governments, families and babies for far too long. The adoption of controls in line with the Code on export and cross-border marketing is a much needed start.

In 1992, in an attempt to address problems with the EU's substantial export of breastmilk substitutes to Africa and other developing countries, an EU Council Resolution was passed, calling on EU-based companies to comply with the Code when marketing in importing countries. The Resolution also outlined monitoring, reporting and accountability proposals.^{10 11}

[Para 4.4 of the Code of Ethics for International Trade in Food](#) calls on National authorities to "be aware of their obligations under the International Health Regulations (2005) with regard to food safety events, including notification, reporting or verification of events to the World Health Organisation (WHO). **They should also make sure that the international code of marketing of breast milk substitutes and relevant resolutions of the World Health Assembly (WHA) setting forth principles for the protection and promotion of breast-feeding be observed.**"¹²

It goes without saying that all the recommendations require an effective enforcement mechanism.¹³

¹⁰ EU Council Resolution on marketing of breast-milk substitutes in third countries by Community-based manufacturers. (Official Journal C 172, 08/07/1992): "Whereas the application of the International Code provides without doubt an excellent way to achieve this in these countries ... 1. The Community will contribute to the application of appropriate marketing practices for breast-milk substitutes in third countries.2.....the Commission will instruct its delegations in third countries to serve as contact points for the competent authorities. Any complaints or criticisms with respect to the marketing practices of a manufacturer based in the Community could be notified to them.3. The Commission will be ready to examine such cases and to assist in the search for a satisfactory solution for all parties concerned." EU [Export Directive](#) (required labels in the appropriate language)

¹¹ Code of Ethics for International Trade in Food including Concessional and Food Aid Transactions (CXC 20-1979) is a critically important safeguard on the marketing of foods for infants and young children.

¹² CAC/RCP 20-1979.

¹³ Hickman et al, 2019; Westland and Crawley, 2016; Westland and Sibson, 2022

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