



Global Congress on Implementation of
the Code of Marketing of Breast-milk Substitutes
June 2023



Welcome!

Please take your seats.

The program will begin shortly.



Global Congress on Implementation of
the Code of Marketing of Breast-milk Substitutes
June 2023

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THE INTERNATIONAL CODE OF MARKETING OF BREASTMILK SUBSTITUTES

What I Should Know About 'the Code'

A guide to implementation,
compliance and identifying violations



Global Congress on Implementation of
the Code of Marketing of Breast-milk Substitutes
June 2023

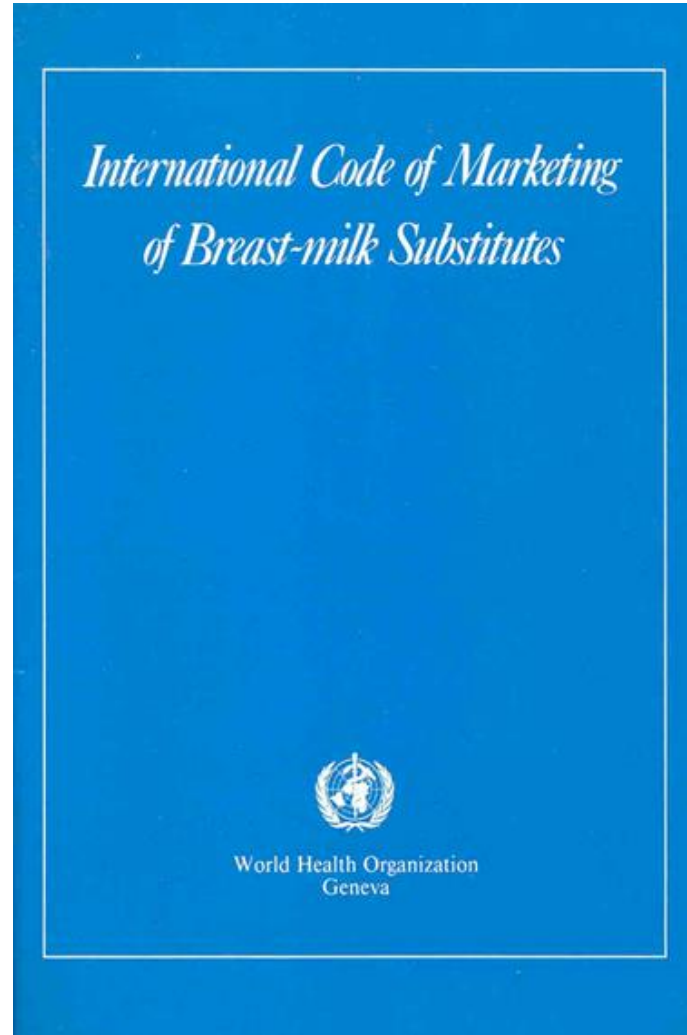
Understanding the Code

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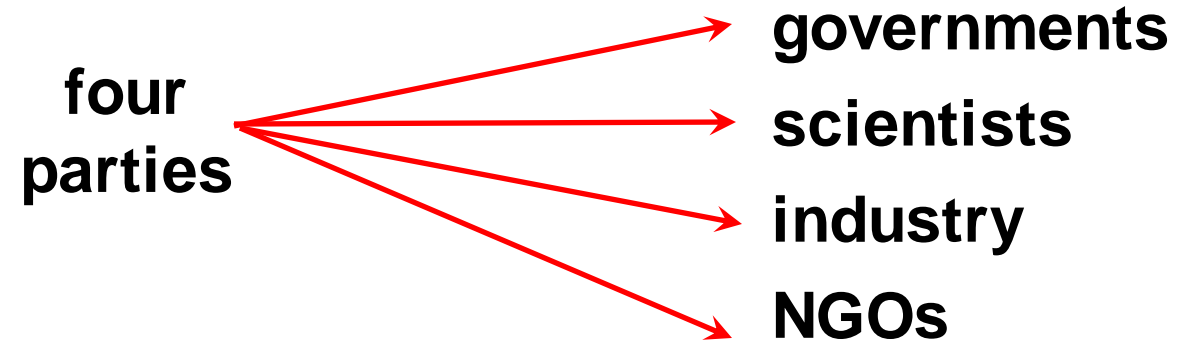
International Code adopted by the World Health Assembly in 1981



- Recommendation to all governments to adopt national regulations.
- Updated regularly by subsequent WHA Resolutions that clarify, reinforce, expand and close loopholes; must be read together with the Code.
- Protects caregivers from misinformation by prohibiting all advertising or any other forms of promotion of BMS, feeding bottles and teats.
- Prohibits the use of the health care system to promote BMS, feeding bottles and teats.
- Requires Governments to provide parents and caregivers with objective and consistent information on IYCF.

Joint WHO/UNICEF Meeting on Infant & Young Child Feeding

October 1979

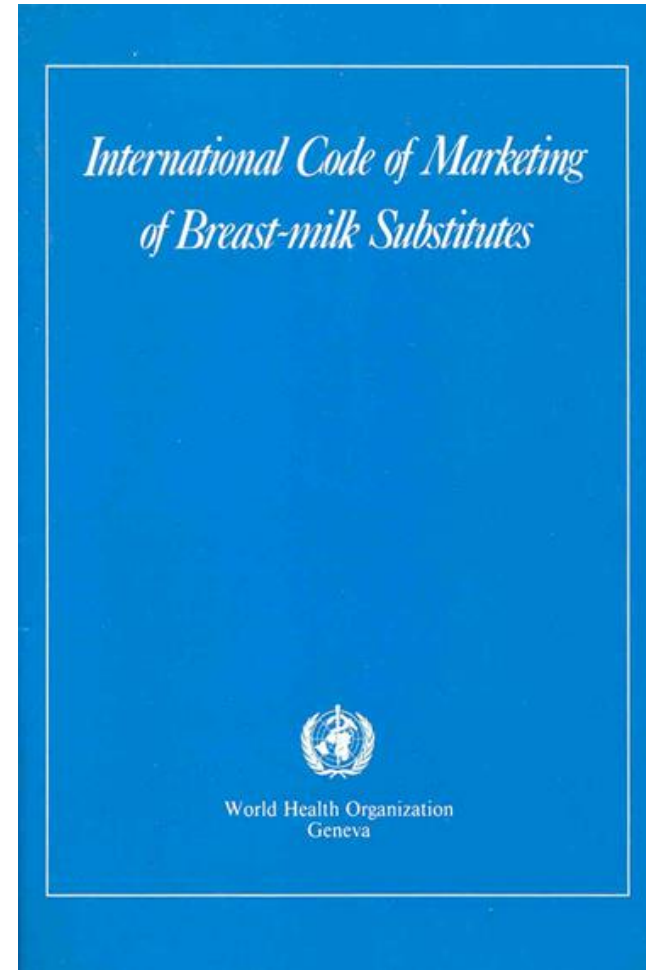


Statement and recommendations:

There should be an international code of marketing of infant formula and breastmilk substitutes, supported by both exporting and importing countries and observed by all manufacturers.

“In view of the **vulnerability** of infants in the early months of life and the risks involved in inappropriate feeding practices, including the **unnecessary and improper use of breastmilk substitutes**, the marketing of breastmilk substitutes requires special treatment, which makes **usual marketing practices unsuitable for these products.**”

Preamble to the Code
WHO, Geneva, 1981



QUIZ!

There is an obligation under international law for a country to implement the Code

TRUE?

or

FALSE?

TRUE!



- UN Special Rapporteur on the Right to Food
- UN Special Rapporteur on the Right to Health
- Working Group on Discrimination against Women in law and in practice
- Committee on the Rights of the Child

“We call upon States to ... fully align with the recommendations contained in the International Code and the aforementioned new WHO Guidance. Adopting such measures must be recognized as part of **States’ core obligations under the Convention on the Rights of the Child** and other relevant UN human rights instruments.”

“Those who make claims about infant formula that **intentionally undermine** women’s confidence in breastfeeding are not to be regarded as clever entrepreneurs just doing their job, but as **human rights violators** of the worst sort”

Stephen Lewis, then Deputy Executive Director, UNICEF
April 1999



QUIZ!

The term "breastmilk substitutes" means infant formula and follow-on formulas intended for children up to the age of 24 months

TRUE?

or

FALSE?

FALSE!



Guidance on ending inappropriate promotion of foods for infants and young children (WHA 2016).

Recommendation 2: Breastmilk Substitutes

“Products that function as breastmilk substitutes should not be promoted”



A breastmilk substitute includes any milks (including non-dairy milk), in either liquid or powdered form, that are specifically marketed for feeding infants and young children **up to the age of 3 years (including follow-up formula and growing-up milks)**

Article 2. Scope of the Code



Applies to breastmilk substitutes or any food being marketed or otherwise represented as a partial or total replacement for breastmilk.

This includes:

- Infant formula.
- Follow-up formula.
- Growing-up milk.
- Any other milk for children 0 < 36 months.
- Any other food or liquid (such as cereal, jarred food, infant tea, juice and mineral water) that is represented as suitable to be fed to infants less than six months of age.
- Bottles and teats.



Note: WHA 69.9 extends to foods for infants and young children, but these do not fall under the same prohibition of promotion, requiring the regulation of *inappropriate* promotion.

Article 5: No advertising or other promotion to the general public



Images courtesy of WHO/WPRO

This includes promotion via internet including social media

Facebook



Twitter



YouTube



France - A 30 second YouTube ad on **Guigoz 2** shows how its *Optipro* formulation contributes to the normal functioning of the immune system and development of the brain.

QUIZ!

Products under the scope of the Code should not be sold in shops or supermarkets.

TRUE?

or

FALSE?

FALSE

The Code is intended to prohibit all forms of promotion of products under its scope but **does not** prohibit their sale.

Article 5. Promotion to the public

5.2 **NO samples** of products within the scope of this Code to pregnant women, mothers or members of their families.



5.3 **NO point-of-sale advertising**, samples, or any other promotion devices in shops, to induce sales directly to the consumer at the retail level, including:

- special displays, special sales, loss-leaders, tie-in sales, discount coupons or premiums.



Article 5. Promotion to the public



5.4 **NO gifts** of articles or utensils which may promote the use of breastmilk substitutes or bottle feeding to pregnant women or mothers of infants and young children



5.5 Marketing personnel, in their business capacity, should not seek direct or indirect **contact of any kind with pregnant women or with mothers** of infants and young children.



Cross-promotion



Guidance on Inappropriate Promotion of Foods for Infants and Young Children (WHA 2016)

“There should be no **cross-promotion** to promote breastmilk substitutes indirectly via the promotion of foods for infants and young children.”



ARCH Study Senegal 2016

78% commercially produced complementary food labels contained elements of cross promotion for the manufacturer's breastmilk substitute products

Cross-promotion

- In July 2022, a Brazilian court granted an injunction against Nestlé Brazil for its deceptive marketing practices that promoted ultra-processed toddler milk as an alternative to infant formulas and gave Nestlé 60 days to add a warning sticker to its products:

“ATTENTION CONSUMERS! This product called growing-up milk should not be confused with infant formula or whole cow's milk. Growing-up milks have packaging and labels very similar to those of infant formulas, they are usually placed side by side on the shelves of supermarkets and pharmacies and have lower prices. According to the Ministry of Health, they do not replace breast milk or infant formula, and should not be offered to babies and children under 2 years of age.”

- Nestlé has appealed, and has not added the warning sticker as ordered, nor paid the fine.
- The case continues.

Produtos Nestlé



Fórmulas Infantis

Composto Lácteo

Produtos Danone



Fórmulas Infantis

Composto Lácteo

Produtos Mead Johnson



Fórmulas Infantis

Composto Lácteo

QUIZ!

Labels of BMS and complementary foods should inform consumers of the health benefits of the products.

TRUE?

or

FALSE?

FALSE

No health claims on breastmilk substitutes or foods for infants and young children



WHA Resolutions in 2005 and 2010

Nutrition and health claims **not** permitted for **breastmilk substitutes** or for **foods for infants and young children**, **except** where specifically provided for, in relevant Codex Alimentarius standards or national legislation

More recently...

Open Access

Feature Paper

Article

Old Tricks, New Opportunities: How Companies Violate the International Code of Marketing of Breast-Milk Substitutes and Undermine Maternal and Child Health during the COVID-19 Pandemic

by  Constance Ching ^{1,*} ,  Paul Zambrano ² ,  Tuan T. Nguyen ³  ,  Manisha Tharaney ⁴ ,
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Academic Editors: Genevieve Becker and Maria Noonan

Int. J. Environ. Res. Public Health **2021**, *18*(5), 2381; <https://doi.org/10.3390/ijerph18052381>

Received: 5 January 2021 / Revised: 16 February 2021 / Accepted: 18 February 2021 / Published: 1 March 2021

Screenshots of advertisements from Nestlé's Nangrow 3 Facebook page in Pakistan, featuring immunity claims and fear-provoking questions.

Fig 2, Ching et al. 2021

Only the best for your child. NESTLÉ NANGROW 3 with HMO to help support your child's daily nutritional needs for stronger immunity.

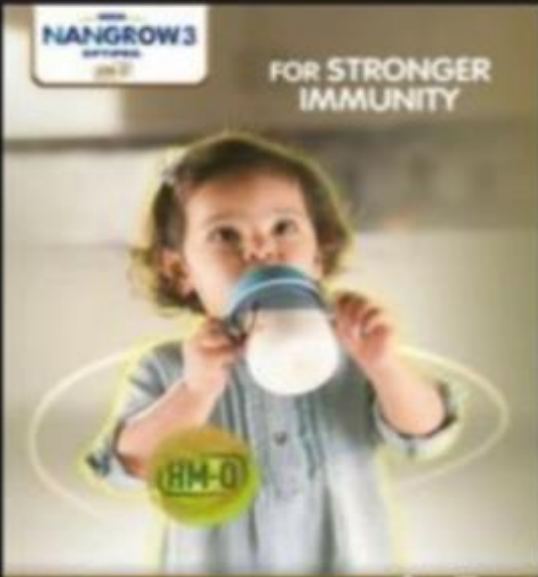
#HMOforImmunity #OurBestForYou

Hey Mama, now's the right time to start giving them immunity boosting nutrition. NESTLÉ NANGROW 3 has HMO which is the best you can give to them to strengthen their immunity #HMOforImmunity #OurBestForYou

Nestlé Nangrow 3 •
August 28 at 12:06 PM · 🌐

Only the best for your child. NESTLÉ NANGROW 3 with HMO to help support your child's daily nutritional needs for stronger immunity.

#HMOforImmunity #OurBestForYou




0:08 / 0:08

Nestlé Nangrow 3 •
August 22 at 9:05 PM · 🌐

Your choices today can impact their future tomorrow. Now is the right time to get them started on NESTLÉ NANGROW 3 with HMO


#HMOforImmunity #OurBestForYou



Are you worried about your child's immunity?

Nestlé Nangrow 3 •
August 3 · 🌐

Hey Mama, now's the right time to start giving them immunity boosting nutrition. NESTLÉ NANGROW 3 has HMO which is the best you can give to them to strengthen their immunity #HMOforImmunity #OurBestForYou



How are you preparing your toddler for the World outside?

DARAZ PK
NESTLÉ NANGROW 3 900g - Growing Up Formula

Shop Now

Article 6. Health care systems

6.2 Health care facility NOT to be used for the **promotion of products** within the scope of this Code.

6.3 No **display of products**...



A poster in the clinic tells mothers they can submit a request to Abbott to get a free big tin of Total Comfort formula and an exclusive gift set.

VIOLATION



Guidance A69/7 Add.1 [2016]:
Manufacturers and distributors ... should not **donate or distribute equipment or services** to health facilities.

Article 7: Health workers

7.1 Health workers ... should **make themselves familiar with their responsibilities** under this Code...

Guidance A69/7 Add.1 [2016]

No **gifts or incentives** should be offered by companies that market foods for infants and young children ...



7.4 **Samples** of infant formula or other products within the scope of this Code, or of equipment or utensils for the preparation or use, should not be provided to health workers ...

Health workers should not give samples of infant formula to pregnant women, mothers of infants and young children, or members of their families.

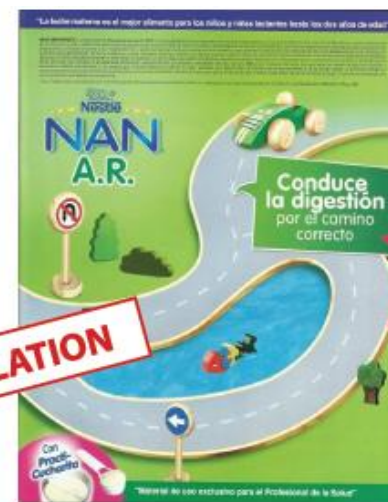


Unsolicited samples with promotional labelling for mum; given on the pretext of professional evaluation.

Article 7.2 Information for health workers

Information by companies on products should:

- Be restricted to scientific and factual matters.
- Include information specified in 4.2 (benefits & superiority of breastfeeding, costs & dangers of artificial feeding, proper use of formula etc).
- NOT imply or create a belief that bottle feeding is equivalent or superior to breastfeeding.



QUIZ!

Powdered milk formulas are not sterile and may contain pathogenic microorganisms.

TRUE?

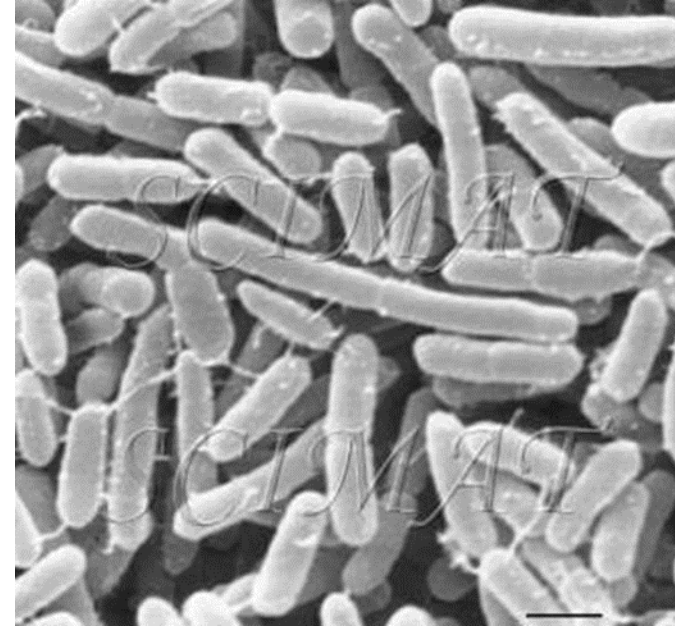
or

FALSE?

TRUE

Labelling – pathogen warnings

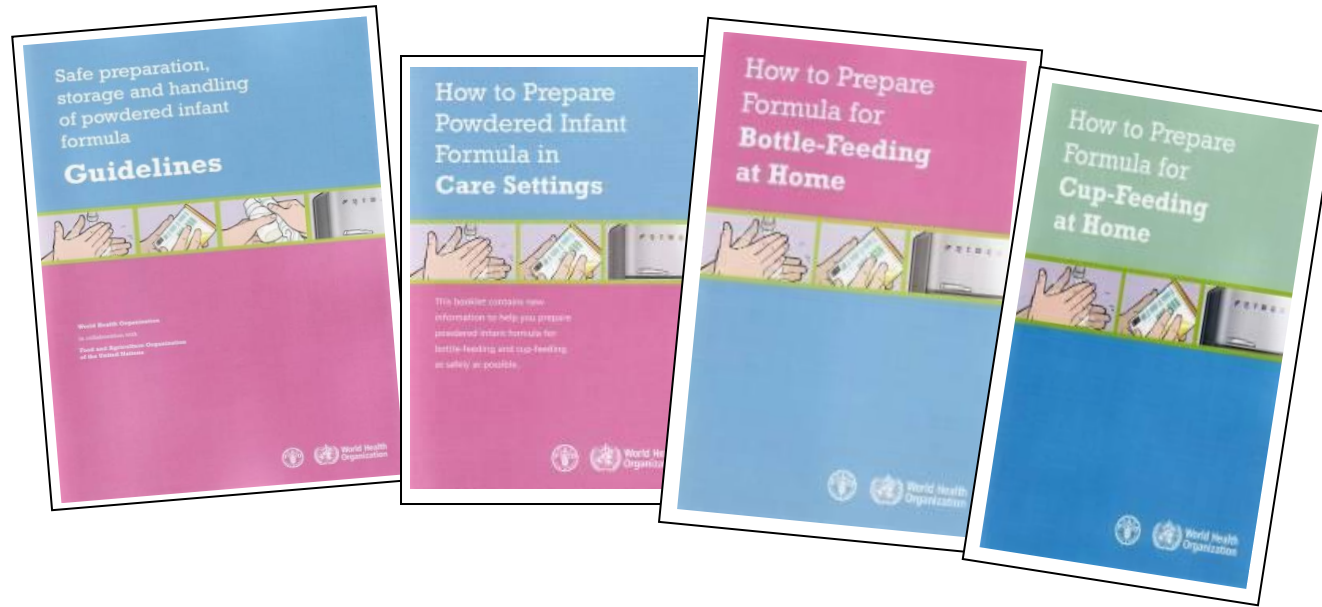
- Powdered infant formulas are NOT sterile products
- They can become contaminated at factory level with heat resistant, pathogenic and highly contagious bacteria such as *Cronobacter sakazakii* (which before 2007 was named *Enterobacter sakazakii*)



In 2005, WHA called on governments to:

- Inform that powdered infant formula may contain **pathogenic microorganisms** and must be prepared and used appropriately
- Ensure explicit warning on packaging

WHO Guidelines for minimizing risks of contamination (2007)



Step 5

Taking care to avoid scalds, pour the correct amount of boiled water into a cleaned and sterilized feeding bottle. The water should be no cooler than 70°C, so do not leave it for more than 30 minutes after boiling.

CHILDREN'S HEALTH



FDA warns against using another powdered baby formula after a 2nd death

Updated March 2, 2022 · 12:38 PM ET

RINA TORCHINSKY

FOOD

Baby formula recall expands to include Similac PM after another baby dies of Cronobacter



Kelly Tyko
USA TODAY

Published 7:08 p.m. ET Feb. 28, 2022 | Updated 10:35 a.m. ET March 1, 2022



FDA Investigation of Cronobacter and Salmonella Complaints: Powdered Infant Formula (February 2022)

Do not use recalled Similac, Alimentum, or EleCare powdered infant formulas produced at Abbott Nutrition's Sturgis, MI facility

Subscribe to Email Updates

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If you want to check if your powdered formula is part of the recall, you can enter the product lot code on the bottom of your package on the [company's website](#).

If you have questions or need information about the recall, you can [Submit Questions/Get Assistance](#).

If your infant is experiencing symptoms related to *Cronobacter* or *Salmonella* infection, such as poor feeding, irritability, temperature changes, jaundice, grunting breaths, abnormal movements, lethargy, rash, or blood in the urine or stool; contact your health care provider to report their symptoms and receive immediate care.

To report an illness or adverse event, you can

- Call an FDA [Consumer Complaint Coordinator](#) if you wish to speak directly to a person about your problem.
- Complete an [electronic Voluntary MedWatch form](#) online.
- Complete a [paper Voluntary MedWatch form](#) that can be mailed to FDA.

The FDA, along with CDC and state and local partners are investigating consumer complaints and/or reports of infant illness related to products from Abbott Nutrition's Sturgis, MI facility. All of the ill patients are reported to have consumed powdered infant formula produced from Abbott Nutrition's Sturgis, MI facility.

As of February 28, CDC has announced one additional illness of *Cronobacter sakazakii* with exposure to powdered infant formula produced at Abbott Nutrition's Sturgis, MI facility. *Cronobacter* infection may have been a contributing cause of death for this patient. In total, this investigation includes four reports

Labelling

- Product labels must clearly state the superiority of breastfeeding, the need for the advice of a health care worker and a warning about health hazards.
- No pictures of infants, other pictures, or text idealising the use of formula.
- Labels must have the warning that powdered infant formula may contain pathogenic microorganisms and must be prepared and used appropriately.
- Labels on complementary foods should not cross-promote breastmilk substitutes, should not promote bottle feeding, and should state the importance of continued breastfeeding.



[Home](#) > [Baby Feeding & Development](#) > [Formula Feeding](#) > [How to Make a Bottle](#)

How to Make a Baby Bottle

Guidelines on how to mix and store baby formula for your little one

Preparing formula with boiled water

Ask your baby's doctor if you need to use cooled, boiled water for mixing and if you need to boil (sterilize) bottles, nipples, and rings before use. If you choose to boil, follow these steps:

1. Bring water to a rolling boil for 1 minute, then turn off the heat. Overboiling can increase the concentration of impurities.
2. Let the water cool to room temperature before adding formula. Making formula with boiling water can cause clumping and decrease the nutritional value.
3. Before feeding, sprinkle a few drops on the inside of your wrist to make sure it is not too hot.
4. Feed or refrigerate the prepared formula.

Note: If you are concerned about lead or other harmful substances in your water, talk to your healthcare professional before making formula with tap water. Bottled or filtered water can contain bacteria and should still be boiled.

Accessed June 2023

QUIZ!

There are exceptions to the Code for emergencies or humanitarian settings

TRUE?

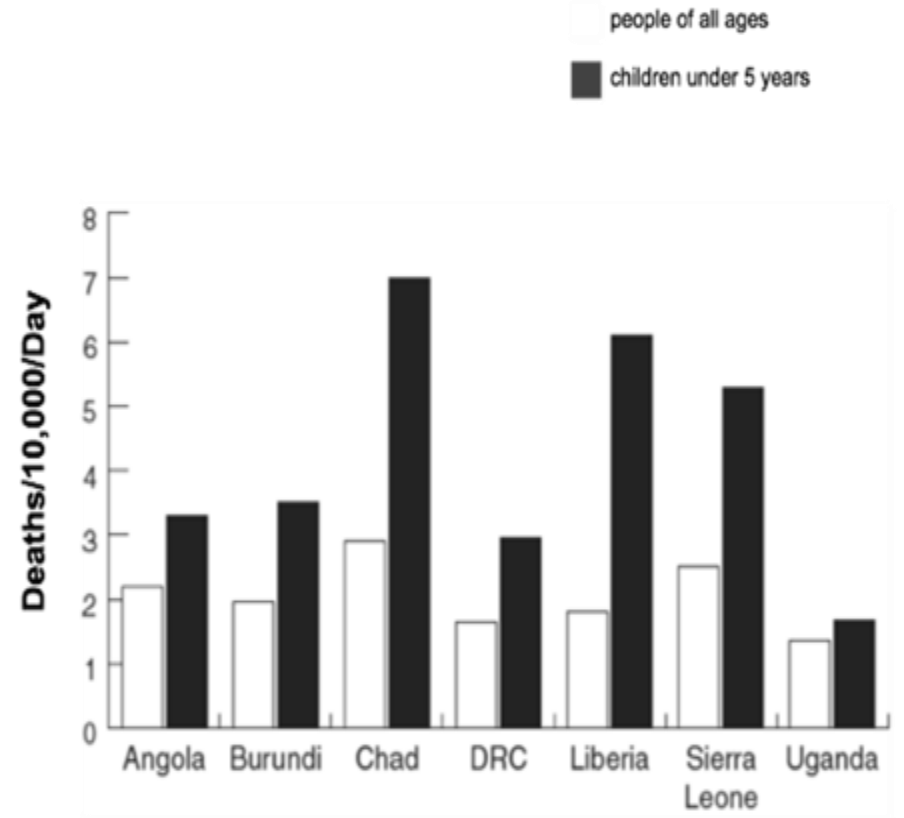
or

FALSE?

FALSE!

Why promote, protect, and support infant and young child feeding in emergencies?

- Infants and young children are the MOST vulnerable
- Even in healthy populations child morbidity and crude mortality can increase by 20% in two weeks
- In emergencies rates of child mortality can increase from 2 to 70 times



Published total mortality rates for children younger than one year in emergencies are as high as **53%**.
(...) [Carothers, C., & Gribble, K. \(2014\)](#)

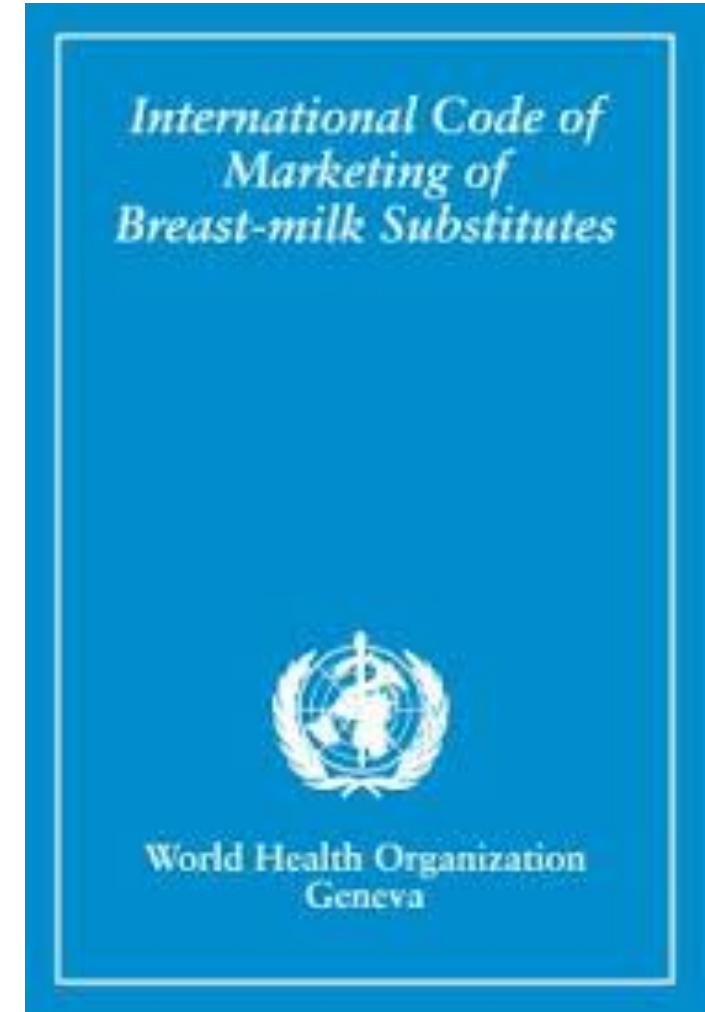
Why Uphold the Code in emergencies?

- Protect and promote of **breastfeeding**
- **Proper use of BMS** when required
- **Stop** the aggressive marketing of products covered by the Code
- Sets out the **responsibilities** of the infant food industry, health workers, governments and organisations.

The Code is especially important in emergencies

- Controlling donations
- Preventing the distribution of unsuitable products
- Preventing companies from using emergencies to increase market share or for public relations.

[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)



What is the problem with donations?

- Unsafe (expired, the wrong type & quality etc.)
- Labelled in the wrong language / unlabeled
- The wrong quantity (usually too much)
- Inconsistently / unreliably supplied
- Used by breastfeeding mothers
- Not targeted to those who need them
- Lacking the instructions, supplies to minimise risk (e.g. safe water)
- Excessive time and resources to manage (transport, storage),
- Contributing to conflict relations **donations and uncontrolled distributions undermine the health of all infants in all emergencies**

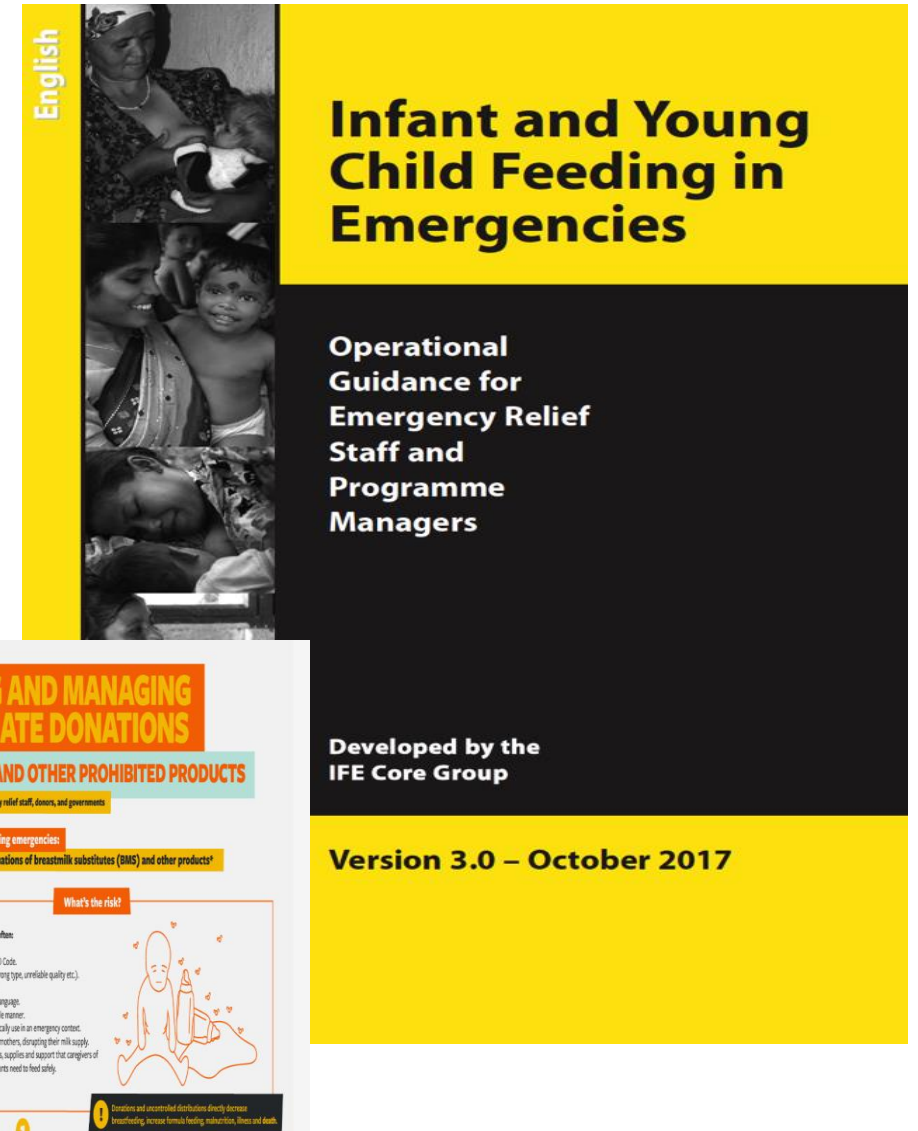


The IFE Operational guidance... on donations

6.1 Do **NOT** call for, support, accept or distribute donations of:

- Breastmilk substitutes e.g. infant formula, growing up milks (> 3 years)
- Other milk products e.g. powdered milk
- Feeding equipment e.g. bottles and teats
- Commercial complementary foods

6.3 – Do not send supplies of **donor human milk** to emergencies that are not based on identified need and a part of a coordinated, managed intervention



Some examples from recent emergencies

Türkiye/Syria
Earthquake

Government calls for
help.

Embassies put out
appeals and include
formula on their lists



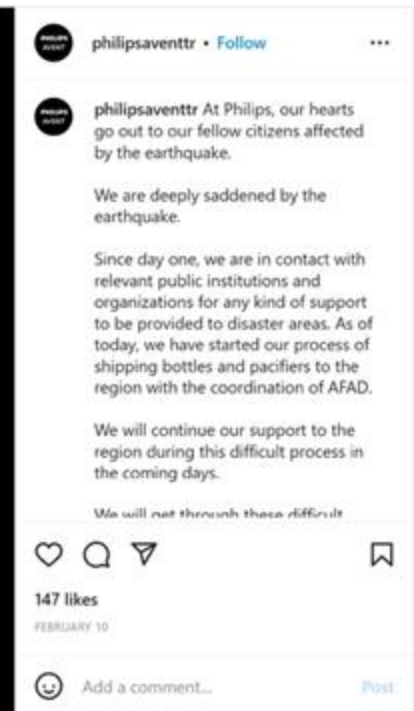
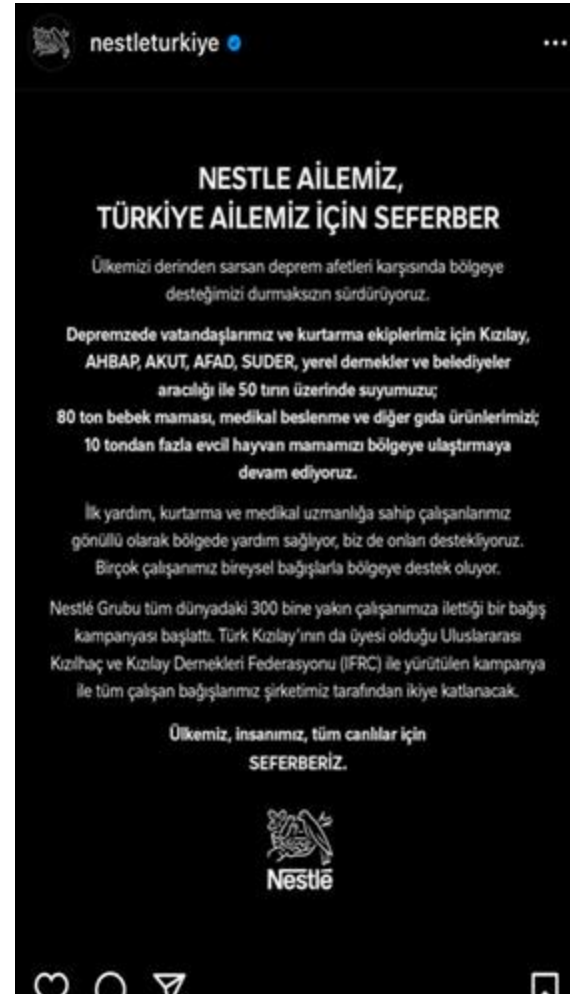
Sometimes we are part of the problem

This fundraising agency appeal for Ukraine is intended to drive funds to support mothers and their newborns... *it reinforces perception of need which leads to donations of bottles and formula.*



And companies are always ready to “lend a helping hand”

Nestlé, Philips announce
they are donating infant
formula, bottles and
teats in Turkey



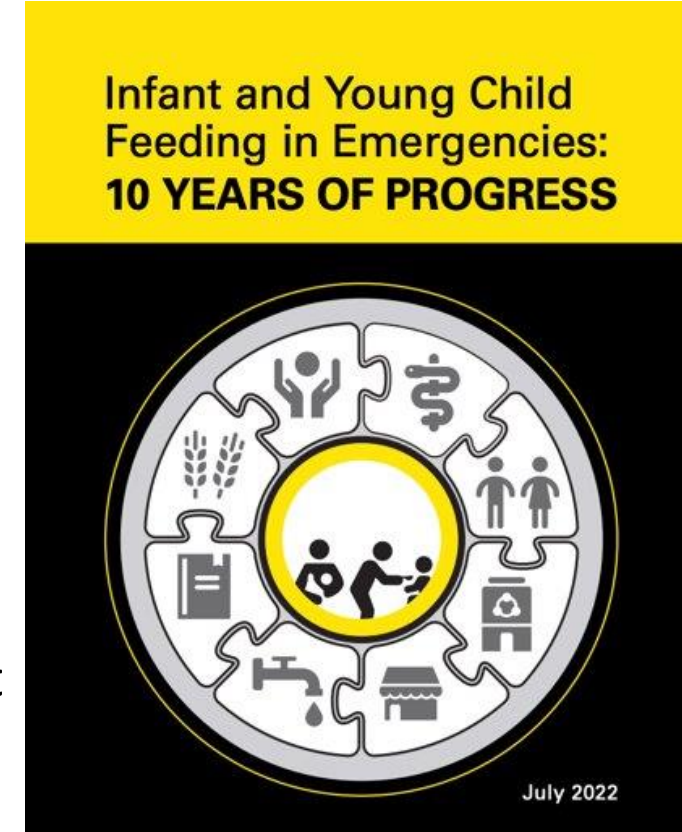
What can we do?

In 2010 the World Health Assembly urged member states to.....ensure that that national and international **emergencies preparedness** and response plans

follow the evidence-based IYCF-E operational guidance ...”

... to save lives.

- **Enact the Code** into national legislation in preparedness and enforce at all times, including during emergency response.
- Ensure that existing **legislation is fully in line with the Code.**
- Monitor and report Code violations.
- Enact legislation and adopt policies **in line with the WHA 69.9.**



[Infant and Young Child Feeding in Emergencies: Ten Years of Progress | Save the Children's Resource Centre](#)

Resources

INFANT AND YOUNG CHILD FEEDING IN EMERGENCIES: KEY GLOBAL RESOURCES

GLOBAL CODE CONGRESS
JUNE 20-22, 2023



Infant and Young Child Feeding in Emergencies: Operational Guidance v.3
IFE Core Group (2017)

The OG-IFE is concise, practical guidance on how to ensure appropriate infant and young child feeding in emergencies. It applies to emergency preparedness, response and recovery worldwide.

Procurement and use of breastmilk substitutes in humanitarian settings
UNICEF (2021)

Outlines UNICEF's commitments, guiding principles, and procedures for managing the procurement and use of breastmilk substitutes (BMS) for UNICEF staff in humanitarian settings. Includes a summary of the International Code of Marketing of Breastmilk Substitutes and subsequent relevant WHA resolutions specific to donations of BMS in emergency settings.

Operational Guidance on Breastfeeding Counselling in Emergencies
IFE Core Group (2021)

This Operational Guidance on Breastfeeding Counselling in Emergencies [OG-BFC/E] is a pragmatic guide that covers key considerations and potential adaptations when applying WHO's 2018 guidelines in an emergency setting.



WE MUST TAKE COLLECTIVE ACTION NOW TO MEET SDG TARGETS

Find out what governments and the humanitarian and development community can do to accelerate action to improve **infant and young child feeding** practices in **emergencies, disasters and conflict**. **We will not meet our Sustainability Development Goals** for infants and young children if we do not **consider these contexts**.

Recommendations include a call to member states to:

- > **Fulfill their commitments under WHA Resolution 63.23** (2010) and ensure that national and international preparedness plans and emergency responses, such as national development plans and humanitarian response plans, include the actions outlined in the OG-IFE and also include adequate funding to implement those actions.
- > **Continue to invest in implementing the Code**, including monitoring Code violations, and adopt legislation to prevent BMS donations in emergencies.



Preventing and Managing Inappropriate Donations: Breastmilk Substitutes and other Prohibited Products
IFE Core Group (2021)

Infographic Series
IFE Core Group (2021)

The infographics are based on the Operational Guidance on IYCF-E (OG-IFE) and aim to assist in implementing specific actions and recommendations within the guidance.

Available in Arabic, Armenian, English, French, Italian, Japanese, Russian, Spanish, Ukrainian and Turkish.



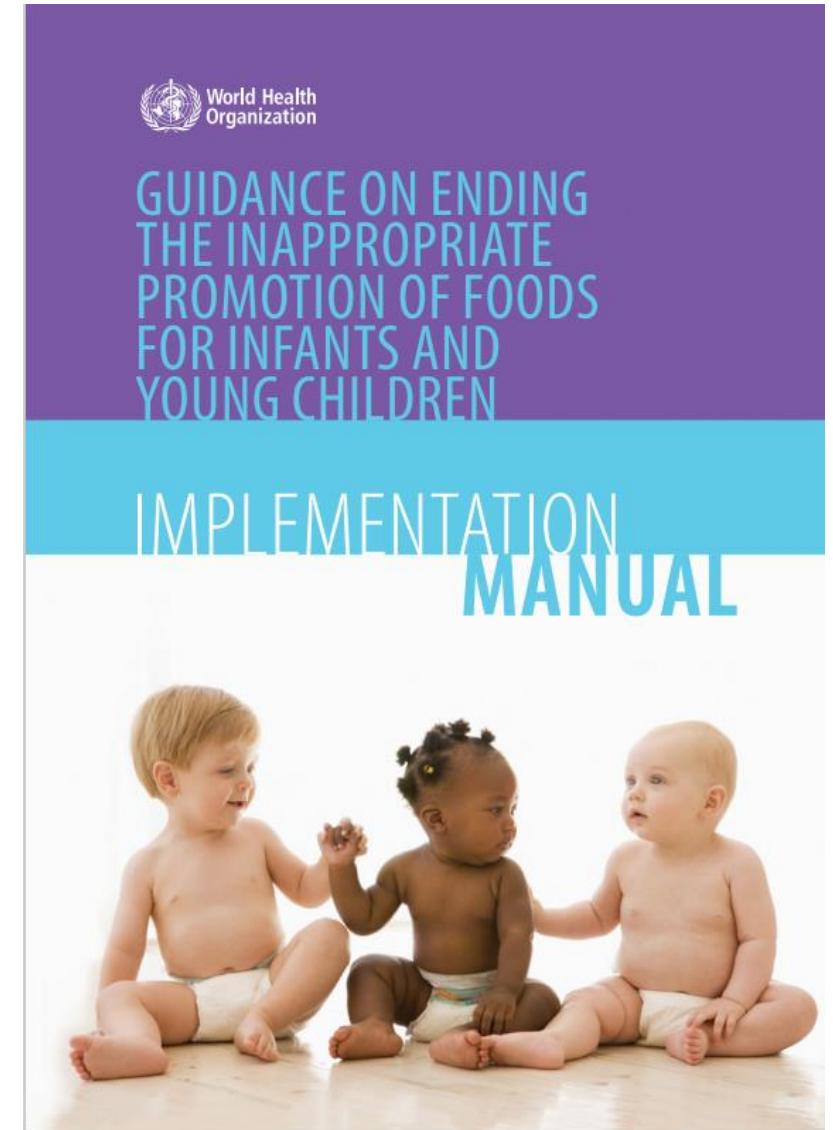
enonline.net/ife ife@enonline.net



Foods for infants and young children



The 2016 Guidance covers all commercially produced foods that are marketed for infants and children six months to three years of age.



QUIZ!

There should be no promotion of commercially produced complementary foods.

TRUE?

or

FALSE?

IT DEPENDS!

Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children (WHA 2016)

Recommendation 3: Foods for infants and young children

Should be promoted **only** if they meet relevant **standards** for composition, safety, quality and nutrient levels and in line with national dietary guidelines.

Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children (WHA 2016)

Recommendation 4: **Promotional messages for foods for infants and young children**

Messages should support optimal feeding and always include the **importance of continued breastfeeding** and of not introducing **complementary feeding before 6 months** of age

Inappropriate messages should not be included (suggesting use under 6 months, promoting bottle feeding, undermining breastfeeding or conveying an endorsement by a professional body).

Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children (WHA 2016)

Recommendation 6: Companies must not create conflicts of interest

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 avoid such conflicts of interest.

Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children (WHA 2016)

Recommendation 6: Companies must not create conflicts of interest

- No free samples passed on through health workers
- No donated equipment or services to health facilities
- No gifts or incentives to health care staff
- No use health facilities to host events, contests or campaigns
- No gifts or coupons to parents, caregivers and families
- No provision of education to caregivers on infant and young child feeding in health facilities
- No information for health workers other than that which is scientific and factual
- No sponsorship of meetings of health professionals and scientific meetings

New resource on industry interference and conflicts of interest

www.globalbreastfeedingcollective.org



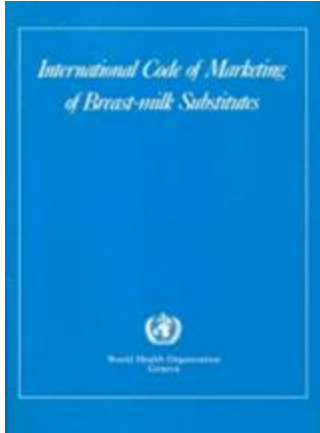
THE INTERNATIONAL CODE OF MARKETING OF BREAST-MILK SUBSTITUTES

Protecting Infant and Young Child Nutrition from Industry Interference and Conflicts of Interest



unicef  | for every child

Implementation and Monitoring



Article 11: “Governments should take action to give effect to the principles and aim of the Code, as appropriate to their social and legislative framework, including the adoption of national legislation, regulations or other suitable measures.”



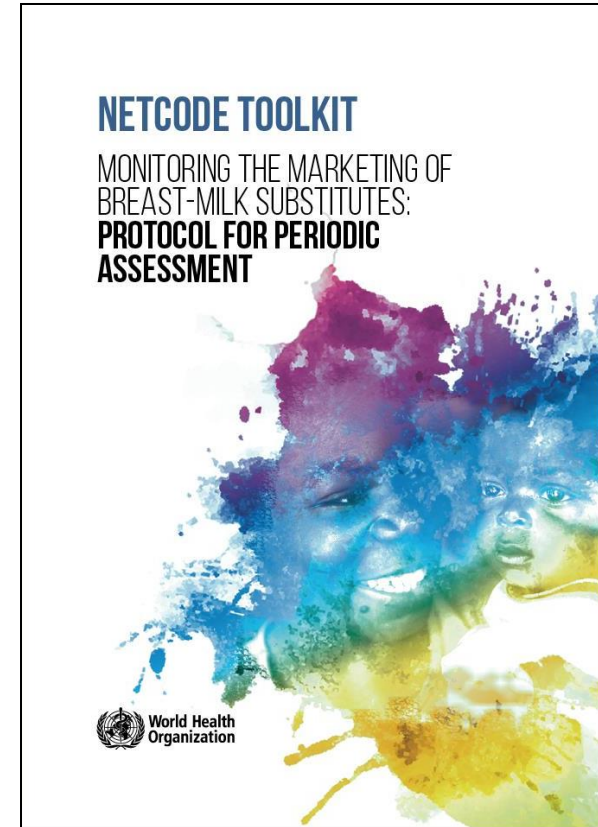
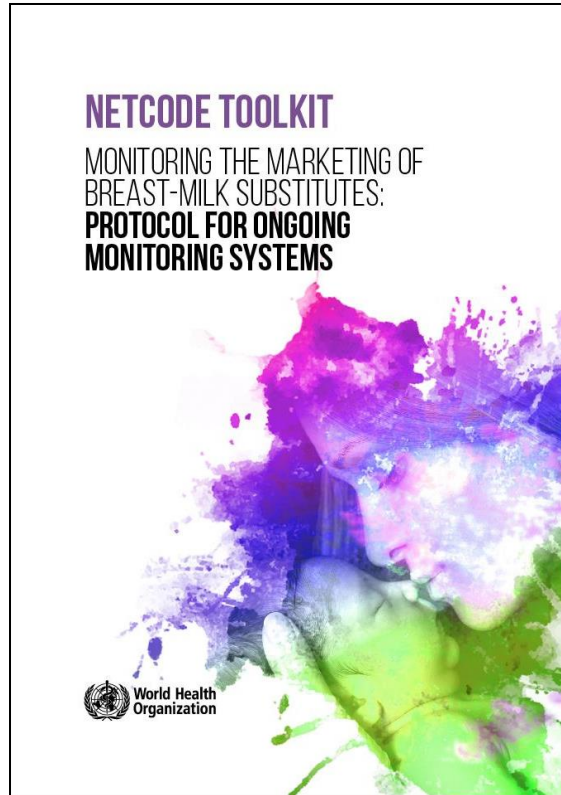
Resolution WHA 69.9 [2016]

“Manufacturers and distributors of foods for infants and young children are called upon to end all forms of inappropriate promotion, as set forth in the guidance recommendations.”

Resolution WHA 49.15 [1996]

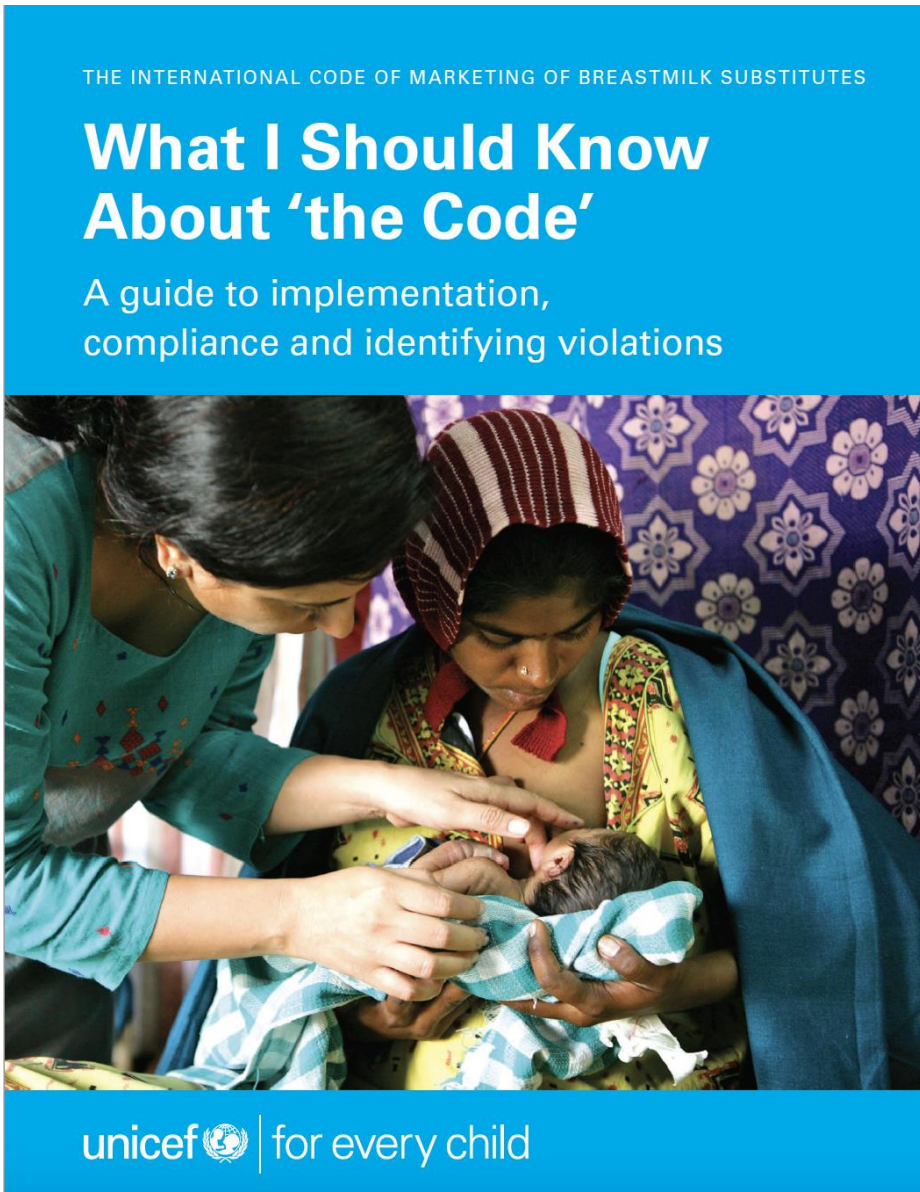
Urges Member states to “ensure that monitoring the application of the International Code and subsequent relevant resolutions is carried out in a **transparent, independent manner, free from commercial influence.**”

Monitoring Framework Toolkit



**Network for Global Monitoring and Support for Implementation
of the International Code of Marketing of Breast-milk Substitutes
and Subsequent Relevant World Health Assembly Resolutions (NetCode)**

New Resource on the Code



www.globalbreastfeedingcollective.org

Conclusions

- Code implementation is an effective measure to decrease harmful marketing practices that undermine breastfeeding
- Governments have an international human rights law obligation to take measures to protect infant feeding, including by introducing laws to implement the Code
- Lack of regulation allows companies to continue to undermine caregivers' rights to make informed decisions and the child's right to the highest attainable standard of health.

Thank you

unicef 
for every child

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**Global Congress on Implementation of
the Code of Marketing of Breast-milk Substitutes**
June 2023

Kate Robertson

Technical officer, public health, law and policies
Department of Health promotion
WHO

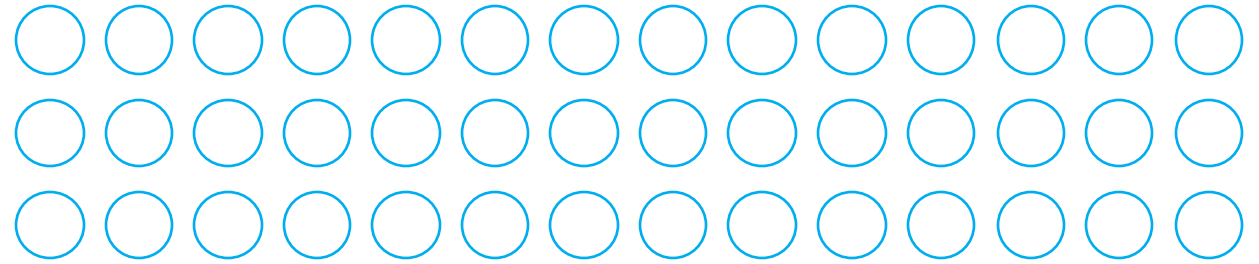


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the Code of Marketing of Breast-milk Substitutes
June 2023

The BMS Code and International and National Laws

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Outline



International Law

1. Trade law
2. Human Rights treaties
3. Codex

Domestic Law

1. Human rights in national law
2. Food laws
3. Media and advertising laws
4. Consumer and competition laws
5. Other relevant legal frameworks

The WTO Agreements

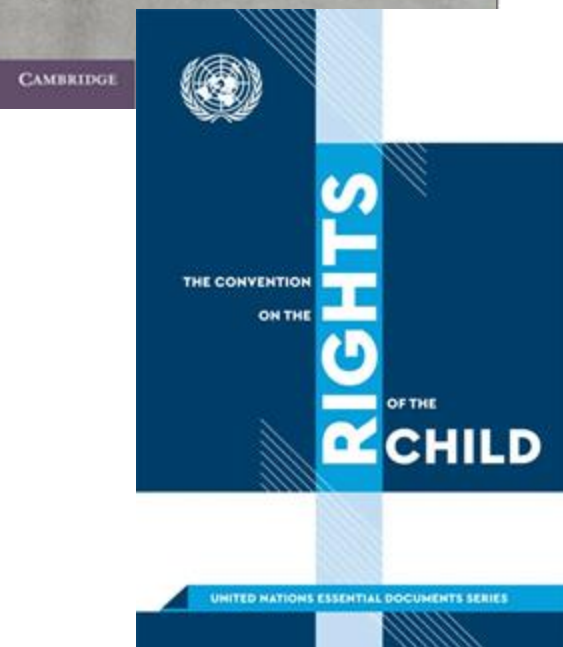
The Marrakesh Agreement Establishing the World Trade Organization and its Annexes



Global Congress on Implementation of
the Code of Marketing of Breast-milk Substitutes
June 2023

International Law

Relevant treaties and principles



INTERNATIONAL TRADE AGREEMENTS
AND IMPLEMENTATION OF THE
INTERNATIONAL CODE OF MARKETING
OF BREAST-MILK SUBSTITUTES
Frequently Asked Questions

WHO/UNICEF Information Brief



1. International Trade Law Framework

World Trade Organization

- 'Umbrella' agreement
- Rules govern trade in goods, services and protection of intellectual property
- Enforced through dispute settlement system

Free trade agreements (FTAs) and customs unions

- Eliminate substantially all barriers to trade
 - Go beyond WTO law
- Can involve formation of a single customs territory (customs unions)

Investment treaties

- Standalone, or as investment chapters in FTAs
- Protect foreign investors and their investments, including from expropriation and through fair and equitable treatment

1. World Trade Organization (WTO) Law

- WTO covered agreements most relevant to domestic implementation of the Code:
 1. General Agreement on Tariffs and Trade (GATT)
 2. Technical Barriers to Trade (TBT)
 3. Sanitary and Phytosanitary Measures (SPS)
 4. Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Members must generally comply with each agreement cumulatively
- Exception = SPS and TBT Agreements (A measure is covered by one or the other - Members have tended to address BMS regulations through the TBT Committee)
- Dispute settlement system between WTO Members
- No formal WTO disputes to date on measures implementing the BMS Code

Core WTO Principles: Non- discrimination

- Discrimination is prohibited:
 - Between WTO Members (**most-favored-nation principle**)
 - Against imported products (**national treatment principle**)
 - For example, GATT Art. III:4 prohibits less favorable treatment of imported goods as compared to like products of national origin through laws, regulations or requirements.
 - Basic principles of GATT 1994 reelected in other WTO Agreements
- Discrimination may occur through the **form or effect** of a measure.
- Any discrimination must be based solely on a **legitimate regulatory distinction** between the products in question

WTO Law - General Exceptions

- WTO law recognizes a balance between rights (to regulate) and obligations.
- Each agreement permits WTO Members to implement measures to protect human health as a legitimate regulatory objective.

GATT Article XX:

*Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, **nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: ...***

*(b) **necessary to protect human, animal or plant life or health;***

TBT preamble:

*“no country should be prevented from taking measures **necessary** ... for the protection of human ... health”*

Core WTO Principles - Necessity

- TBT Agreement applies to technical regulations and standards
- Article 2.2 of the **TBT Agreement**:
 - (mandatory) technical regulations must be no more trade restrictive than necessary to achieve a legitimate objective such as protection of human health or prevention of deceptive practices.
 - There is an obligation to use relevant international standards as a basis for technical regulations unless they would be inappropriate or ineffective (to fulfil the legitimate objective). (Article 2.4)
 - A technical regulation in accordance with relevant international standards is rebuttably presumed to be not more trade restrictive than necessary. (Article 2.5)
- **Is a measure 'necessary to achieve the objective'?**
 - WTO Panels weigh and balance the **contribution** of a measure to the goal, against the **extent to which trade is restricted**, in light of the **importance of the objective**.
 - Legal analysis of necessity will depend on **evidence of risk and contribution**
- There must be **no less trade restrictive reasonably available alternative** measure to achieve the goal
- It is possible that the Code or Codex Standards (or parts of them) could constitute relevant international standards (open question)

TRIPS Agreement

- TRIPS may be **relevant** if measures restrict use of words and imaging which are trademarks
- TRIPS obliges WTO Members to **ensure minimum standards of protection for intellectual property rights**, including trademarks.
 - e.g. Article 20: The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings
- These minimum standards generally require WTO Members to grant **negative rights** (rights to exclude others from one's intellectual property) rather than positive rights (rights to use one's intellectual property).
- WTO Members are **obliged to permit registration of trademarks** in certain circumstances (Article 15.1)
- There is **no** general obligation under TRIPS to permit **use** of trademarks.
- For the most part, TRIPS obligations are subject to '**flexibilities**' rather than exceptions (e.g. Doha Declaration).

Harmonization and Notification

- Regional trade agreement and customs unions go beyond WTO law and can require **harmonization** of technical measures, including labelling.
 - For example, EU law and MERCOSUR require harmonized approaches to some aspects of food labelling (subject to exceptions, including for regulations necessary to protect health).
- Other regional trade agreements encourage Parties to harmonize and this may also be done as a matter of practice.
- **Notification requirements:**
 - TBT Agreement obligations to notify TBT Committee of draft measures and share for comment by WTO Members
 - may also apply in addition under regional trade agreements to which a state is party

2. Human rights - UN Convention on the Rights of the Child

- **Article 2:**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**

2. States Parties undertake to **ensure the child such protection and care as is necessary for his or her well-being**, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, **shall take all appropriate legislative and administrative measures.**

- **Article 4:** States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

- **Article 6:**

1. States Parties recognize that every child has the inherent **right to life.**

2. States Parties shall ensure to the maximum extent possible the **survival and development** of the child.

2. Human rights - UN Convention on the Rights of the Child

Article 24 of the UN Convention on the Rights of the Child

1. States Parties recognize **the right of the child to the enjoyment of the highest attainable standard of health** and to facilities for the treatment of illness and rehabilitation of health [...].

2. States Parties shall pursue full implementation of this right and, **in particular**, shall take appropriate measures: [...]

(c) To combat disease and malnutrition, including within the framework of primary health care [...] through the **provision of adequate nutritious foods and clean drinking-water** [...];

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of **basic knowledge of child health and nutrition, the advantages of breastfeeding** ...

- The above provisions provide support for a **human rights-based approach** to implementing the BMS Code

3. Codex Alimentarius Commission - Nutrition and Labelling

- Codex provides **guidance** :
 - on the compositional requirements of foods so that they are nutritionally safe.
 - on general labelling of foods and the health or nutrient claims producers make on labels.
 - to ensure that consumers understand what they are buying and that "it is what it says it is".
- The Codex Committee on Nutrition and Foods for Special Dietary uses (CCNFSDU) addresses a wide range of technical and regulatory issues for foods that can contribute to the prevention of nutritional deficiencies and diet-related non-communicable diseases.
- The Codex Committee on Food Labelling (CCFL) sets **standards and guidelines** for nutrition information on food packages enabling consumers to make informed food choices.
- Nutrition and Labelling committees are **fora** in which member countries, industry associations and consumer organisations participate.
- Codex documents are **international standards, guidelines and recommendations, but not legally binding**.
- Potential to be considered international standards under **TBT Agreement**

3. Codex Alimentarius International Food Standards

Examples of Codex Guidance and Standards relevant to implementation of the BMS Code

Reference	Name	Last modified
CXG 2-1985	Guidelines on Nutrition Labelling	2021
CXS 1-1985	General Standard for the Labelling of Prepackaged Foods	2018
CXG 23-1997	Guidelines for Use of Nutrition and Health Claims	2013
CXS 72-1981	Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants	2020
CXG 10-1979	Advisory Lists of Nutrient Compounds for Use in Foods for Special Dietary Uses intended for Infants and Young Children	2015
CXG 8-1991	Guidelines on Formulated Complementary Foods for Older Infants and Young Children	2017
CXS 156-1987	Standard for Follow-up formula	2017
CXS 73-1981	Standard for Canned Baby Foods	2017
CXS 74-1981	Standard for Processed Cereal-Based Foods for Infants and Young Children	2019



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June 2023

Domestic Law

**National and sub-national laws
potentially relevant to
implementation of the BMS Code**

1. Human rights under national law

- National **Constitution**

- may include guarantees of fundamental rights and duties on government **supportive** to regulations to implement BMS Code
 - rights to life, health, food and nutrition
 - duties to protect public health, children or consumers
- may include guarantees to fundamental commercial rights which can support arguments against regulations to implement BMS Code
 - rights to property, freedom of expression, right to trade or run a business

- Domestic human rights laws

- Laws to protect the welfare of children, women or families

2. Food Laws

- Food safety laws
- Laws / Regulations / Standards governing food:
 - packaging and labelling
 - advertising, marketing and sponsorship
 - sale and supply
- Pre-market registration processes
- Licensing of food suppliers and vendors
- Regulation of sale or marketing of certain food products in specific zones, settings or within retail locations

3. Media and Advertising laws

- Legislation, regulations or codes of conduct covering relevant media channels:
 - broadcasting (TV, radio, telephone promotions)
 - media laws
 - digital - internet, information / entertainment, social media
 - Information and Communications Acts
 - Advertising laws/regulations - may be general or specific to products or media
 - Regulation of advertising or sponsorship in specific settings (e.g. government facilities)
-
- Restrictions on marketing to children or generally
 - May target food, advertising to children, or BMS and IYC

4. Consumer protection / Competition law

- Legislation / regulation prohibiting;
 - **unlawful, misleading, deceptive or unfair business conduct**
 - **anti-competitive conduct**to **protect consumers**.
- May also be drafted from the perspective of protecting fair competition or consumer economic interests from unfair business-to-consumer commercial practices, as **unfair exploitation of consumers can distort markets and undermine fair competition**.
- Regulation of **health and nutrition claims**
- **Disclosure** requirements
- Often include mechanisms for **monitoring and enforcement**

Example: Australia – *ACCC action vs Heinz* - action by consumer and competition regulator for misleading conduct in advertising of foods being marketed for consumption by young children

5. Other domestic legal frameworks potentially relevant to implementation of the BMS Code

regulations:

- To be issued by Ministry of Health
- to protect public health
- to regulate health

Property

- registration of trademarks
- trademark rights
- limitation of trademark

public

procurement laws

- contracts for food and product procurement for healthcare and

laws

- paid maternity leave
- leave and/or facilities for breastfeeding

Privacy

- data privacy
- restrictions on use of personal information

Healthcare professionals

- codes of conduct
- conflicts of interest
- training

Thank you!



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June 2023

Elizabeth Zehner

Project Director

Helen Keller International's Assessment and Research on Child
Feeding project



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Tools for Understanding the International Code of Marketing of Breastmilk Substitutes

Elizabeth Zehner
Director, ARCH Project
Helen Keller Intl.



World Health
Organization

unicef 
for every child

What resources are available for understanding and implementing the Code?

- The Code and subsequent relevant WHA Resolutions
- Model Code laws
- Code eCourse
- FAQs documents and Information Notes
- NetCode Toolkit
- WHO/UNICEF/IBFAN Code Status Reports

and many more useful resources!

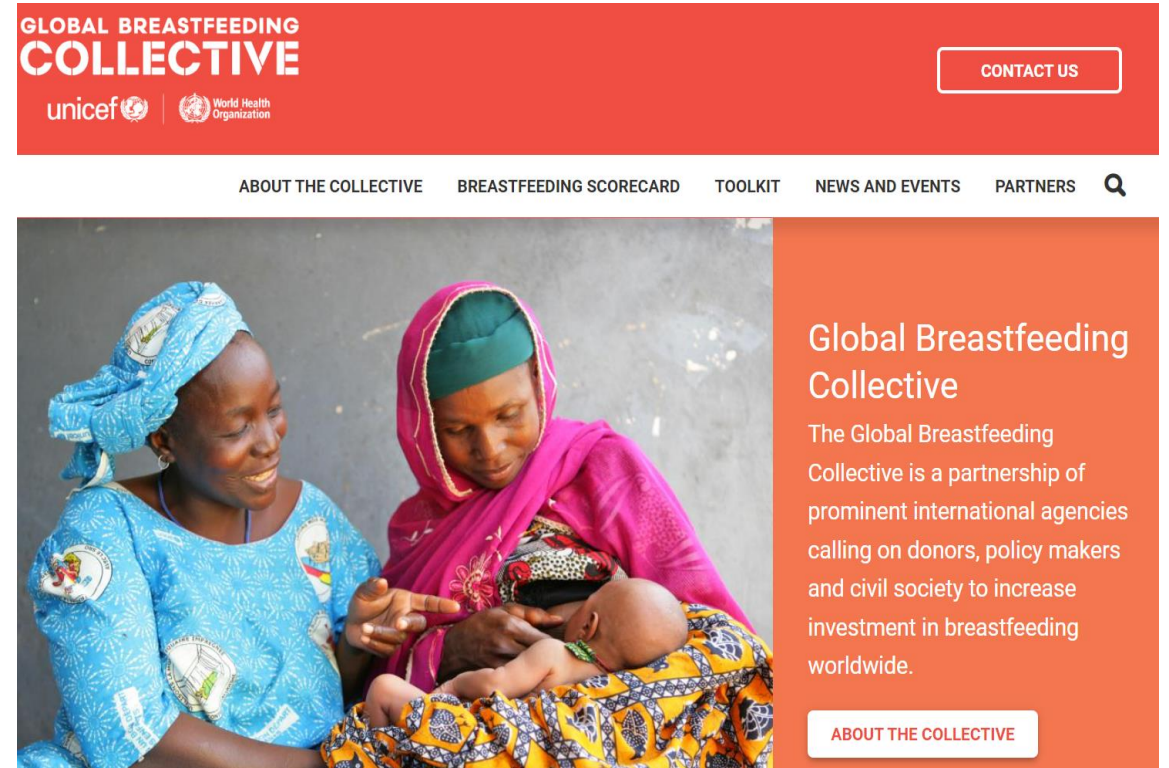
The Global Breastfeeding Collective Website

www.globalbreastfeedingcollective.org



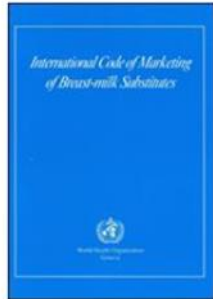
Code

You will find many resources!



qr.link/4SRjei

The Code and Subsequent Resolutions



FEATURED PUBLICATION | 27 JANUARY 1981

International Code of Marketing of Breast-Milk Substitutes

The World Health Organization and UNICEF have for many years emphasized the importance of maintaining the practice of breastfeeding, and of reviving the practice where it is in decline, as a way to improve the health and nutrition of infants and young...

Download

Read More

Resolutions

WHA75(21) Maternal, infant and young child nutrition

Agenda item 18.1, 28 May 2022

[Arabic](#) | [Chinese](#) | [English](#) | [French](#) | [Russian](#) | [Spanish](#)

WHA73(26) - Maternal, infant and young child nutrition

Agenda item 15.2, 13 November 2020

[Arabic](#) | [Chinese](#) | [English](#) | [French](#) | [Russian](#) | [Spanish](#)

WHA71.9 - Infant nutrition and breastfeeding

Agenda item 12.6, Geneva, 26 May 2018

[Arabic](#) | [Chinese](#) | [English](#) | [French](#) | [Russian](#) | [Spanish](#)

WHA69.9 - Ending inappropriate promotion of foods for infants and young children

Agenda item 12.1, 28 May 2016

[Arabic](#) | [Chinese](#) | [English](#) | [French](#) | [Russian](#) | [Spanish](#)

A69/7 Add. 1 - Maternal, infant and young child nutrition - Report by the Secretariat

Guidance on ending the inappropriate promotion of foods for infants and young children

Provisional agenda item 12.1, 13 May 2016

[Arabic](#) | [Chinese](#) | [English](#) | [French](#) | [Russian](#) | [Spanish](#)

Actions in health systems

[NetCode](#)

[Ten steps to successful breastfeeding](#)

[Global Breastfeeding Collective](#)

[Code and subsequent resolutions](#)

WHO website:

Nutrition and Food Safety



Code and Subsequent Resolutions

www.who.int/teams/nutrition-and-food-safety/food-and-nutrition-actions-in-health-systems



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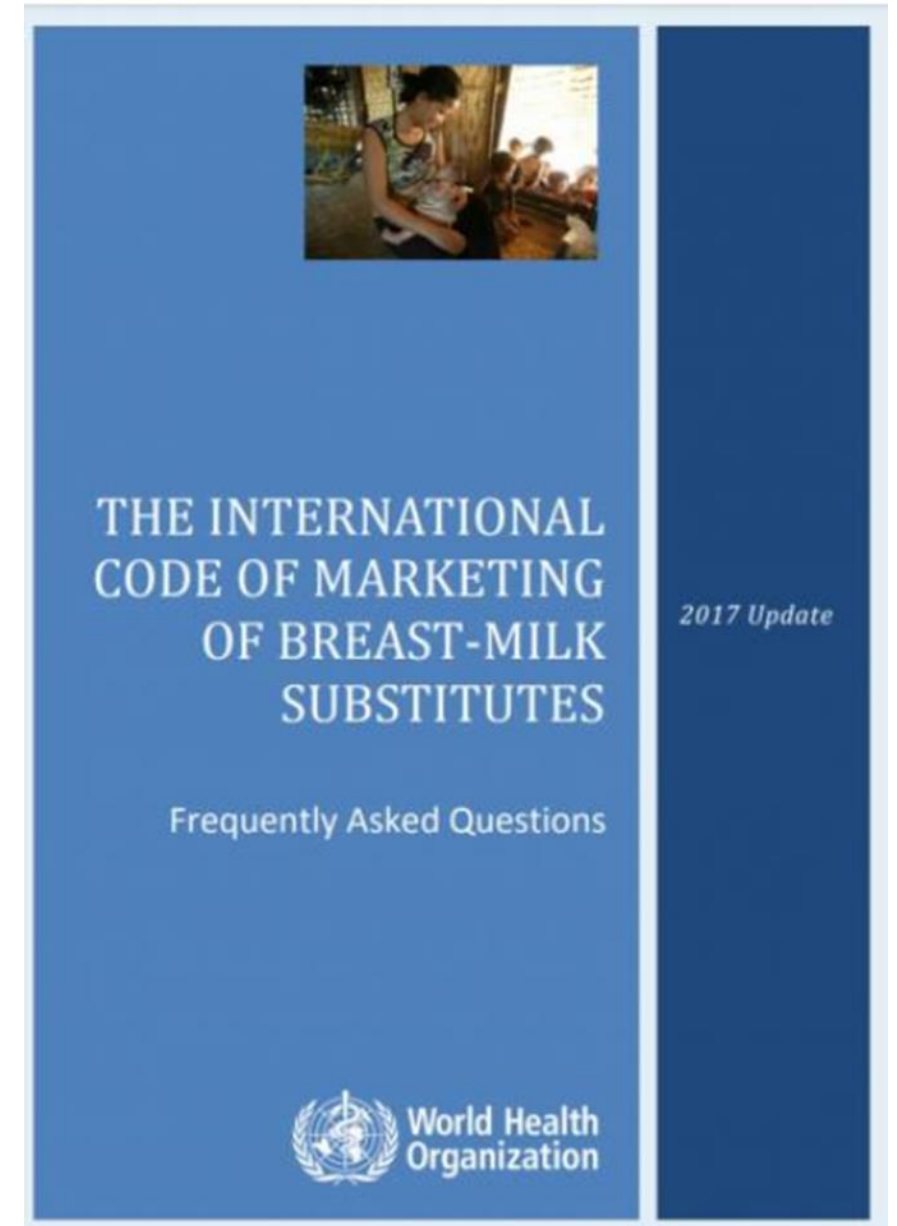
The International Code of Marketing of Breast-Milk Substitutes

Frequently Asked Questions

Languages: English, French, Spanish, Arabic, Chinese, Russian



qr.codes/w0fbXx



The International Code of Marketing of Breast-Milk Substitutes

Frequently asked questions on the roles and responsibilities of health workers

Language: English



qr.codes/wiLXFq



The International Code of Marketing of Breast-milk Substitutes:

Frequently asked questions
on the roles and responsibilities of
health workers



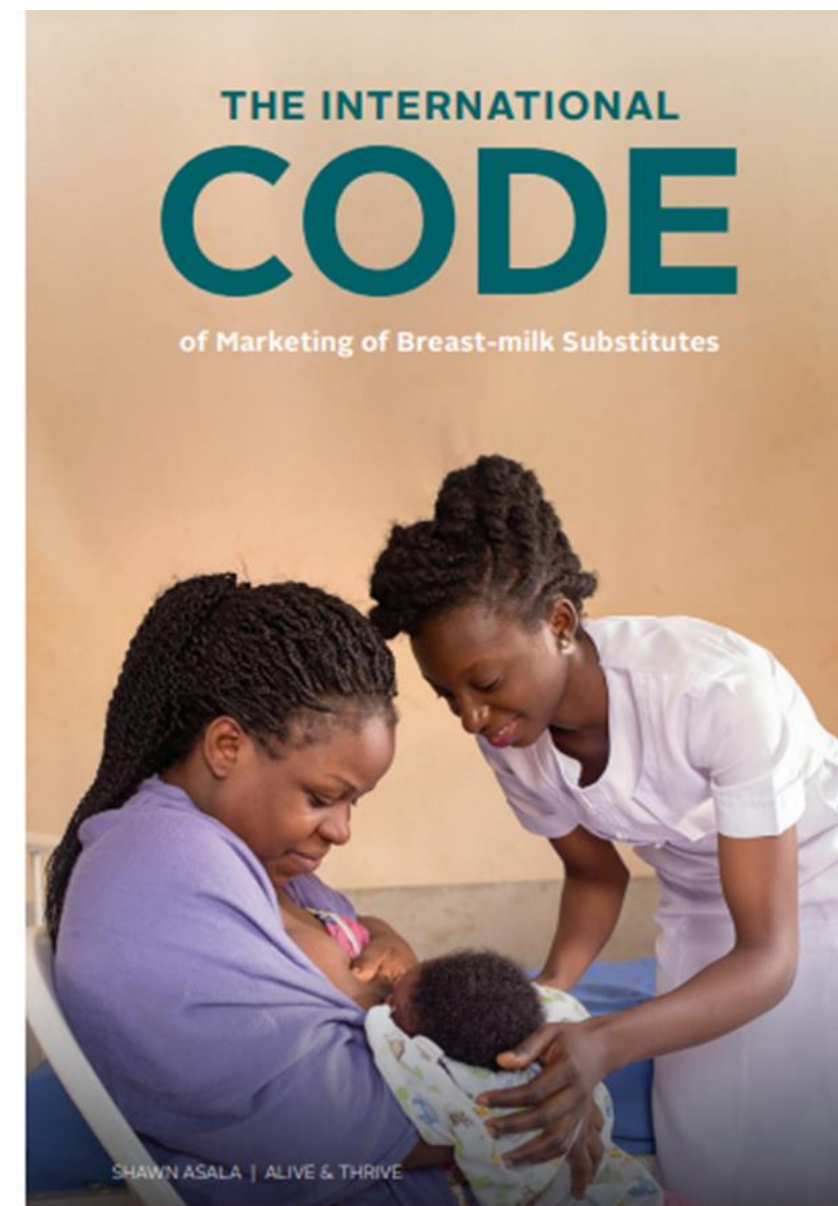
The International Code of Marketing of Breast-Milk Substitutes

A quick guide to summarizing the Code and relevant resolutions of the World Health Assembly

Language: English



qr.codes/IIU4An



The International Code of Marketing of Breast-Milk Substitutes e-course



Language: English



qr.link/pYSO7H

A promotional banner for the e-course. The left side has a light blue background with logos for the World Health Organization (a blue globe with a caduceus), UNICEF (the word 'unicef' in blue with a small globe icon), and the Australian Breastfeeding Association (a blue circular logo with a white silhouette of a mother and child). The right side has a dark teal background with the title 'Introduction to the International Code of Marketing of Breast-Milk Substitutes' in white. Below the title, it says 'Add the FREE e-course to your cart. You will not be charged at checkout.' and 'Go to e-course shop' with a right-pointing arrow icon.

Marketing of Breast milk Substitutes

National Implementation of the International Code

Status Report

Language: English



qr.link/Zs2fBk



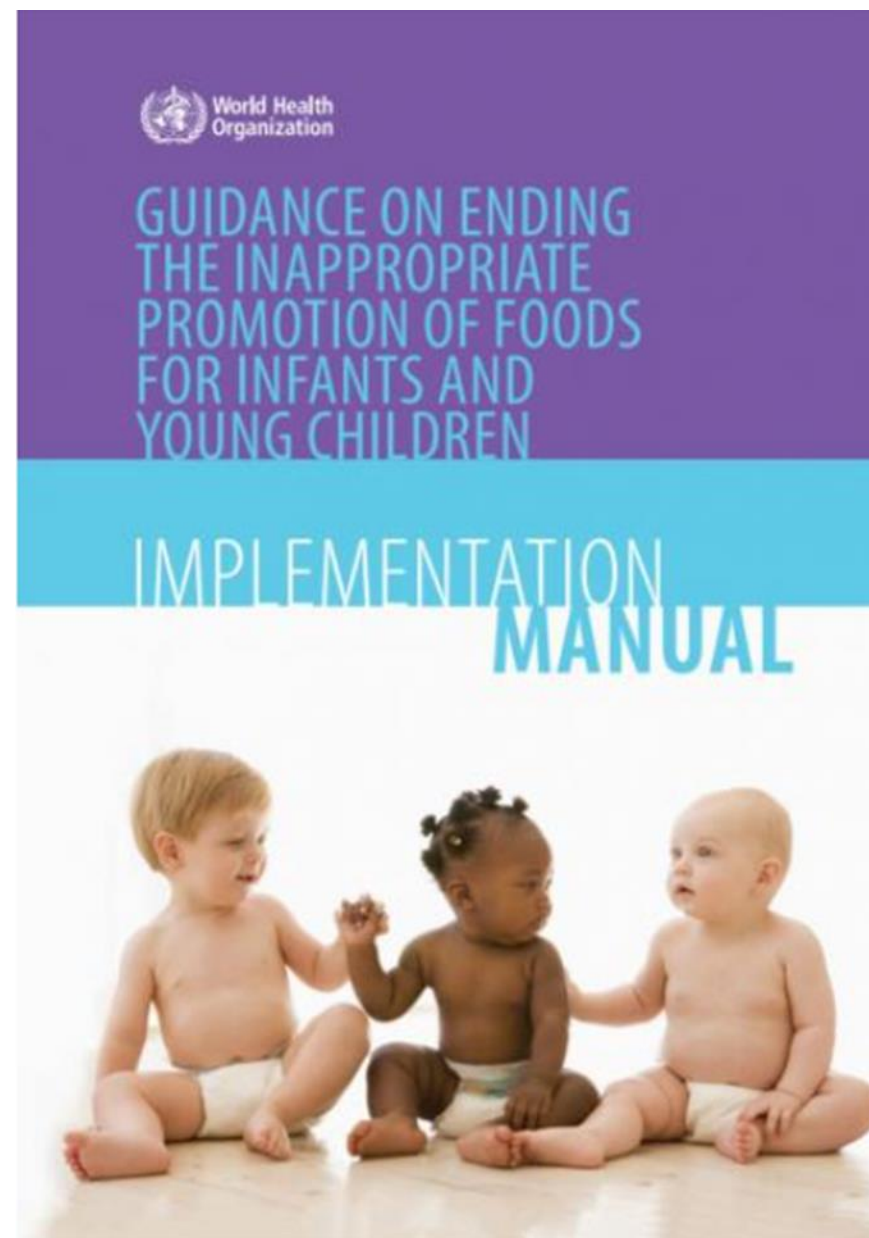
Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children

Implementation manual

Language: English



qr.link/A5Pme6



Information Notes

Clarification on the classification of follow-up formulas for children 6-36 months as breastmilk substitutes

Language: English



qr.codes/glc7Ev

International trade agreements and implementation of the Code

Language: English



qr.codes/I1M8uT

Clarification on sponsorship of health professional and Scientific meetings by companies that market foods for infants and young children

Language: English



<https://qr.link/jmVQn>

Netcode Toolkit

Monitoring the Marketing of Breast-milk Substitutes:

- *Protocol for Ongoing Monitoring Systems*
- *Protocol for Periodic Assessments*

Languages: English, French, Spanish,
Russian



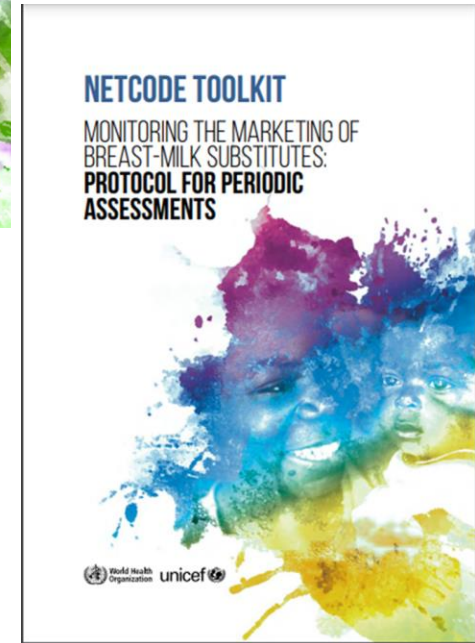
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Model Laws

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Effective regulatory frameworks for ending inappropriate marketing of breast-milk substitutes and foods for infants and young children in the WHO European Region

16 February 2022 | Policy brief



Download (1.9 MB)


Overview

This Policy Brief is intended to guide Member States in the WHO European Region as they embark on the vital task of safeguarding parents and caregivers from all forms of promotion of breastmilk substitutes (BMS) and the inappropriate promotion of foods for infants and young children (FIYC). Such promotion undermines optimal infant and young child feeding practices, including breastfeeding and safe and appropriate complementary feeding, placing a child's survival, growth and development at risk. It can also contribute to the growing public health problem of childhood overweight and obesity, which can lead not only to premature mortality from non-communicable diseases (NCDs), but also to adverse health outcomes throughout life. In Eastern Europe and Central Asia, the number of children under five with overweight has increased from 1.6 million in 2000 to 4.5 million in 2016. United Nations human rights experts have reminded States of their obligations under human rights treaties to "take all necessary measures to protect, promote, and support breastfeeding, and end the inappropriate promotion of breast-milk substitutes and other foods intended for infants and young children up to the age of 3 years".

The International Code of Marketing of Breastmilk Substitutes and subsequent Resolutions by the World Health Assembly, along with the 2016 WHO Guidance on ending the inappropriate promotion of foods for infants and young children provide the regulatory framework to put an end to unethical marketing practices. This policy brief provides step-by-step guidance on how to review the current level of national implementation of these instruments and then proceed to strengthen measures and establish effective systems for implementation and enforcement. This includes the use of a "model law" developed specifically for the Region to demonstrate what effective regulations should look like.

WHO TEAM
Nutrition, Physical Activity & Obesity (NAO)

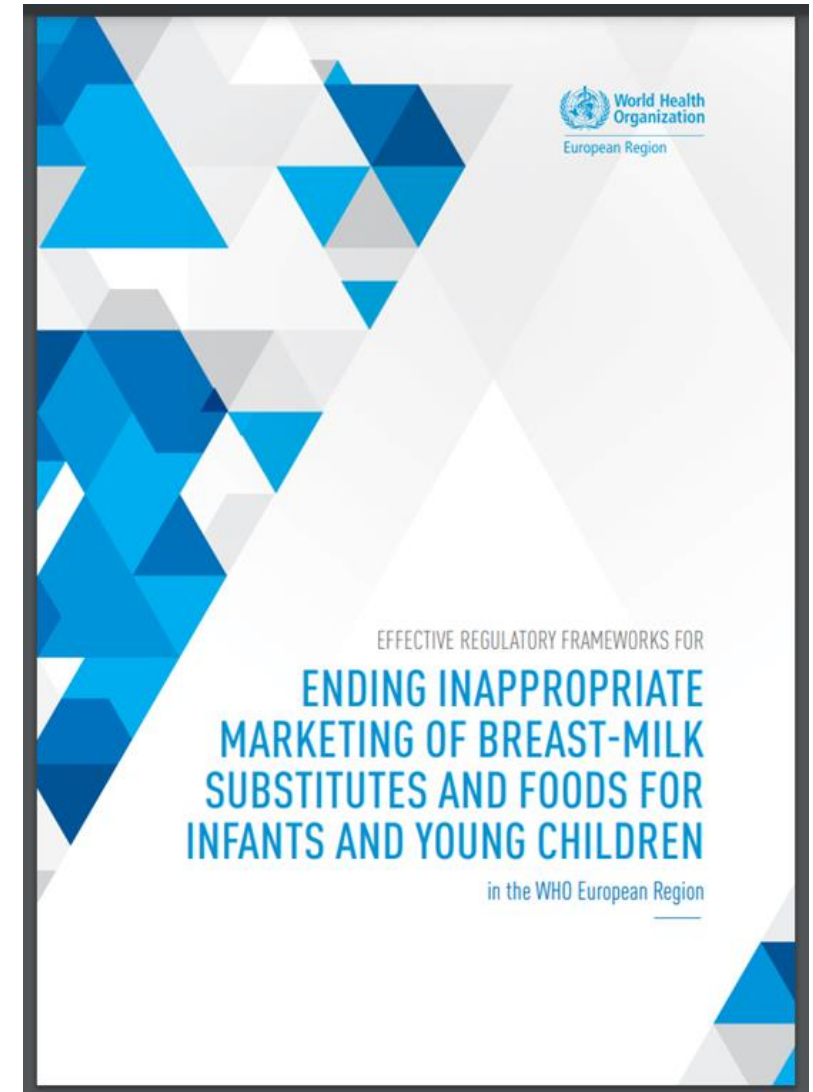
REFERENCE NUMBERS
WHO REFERENCE NUMBER:
WHO/EURO 2022-4885-44648-63367

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Language: English

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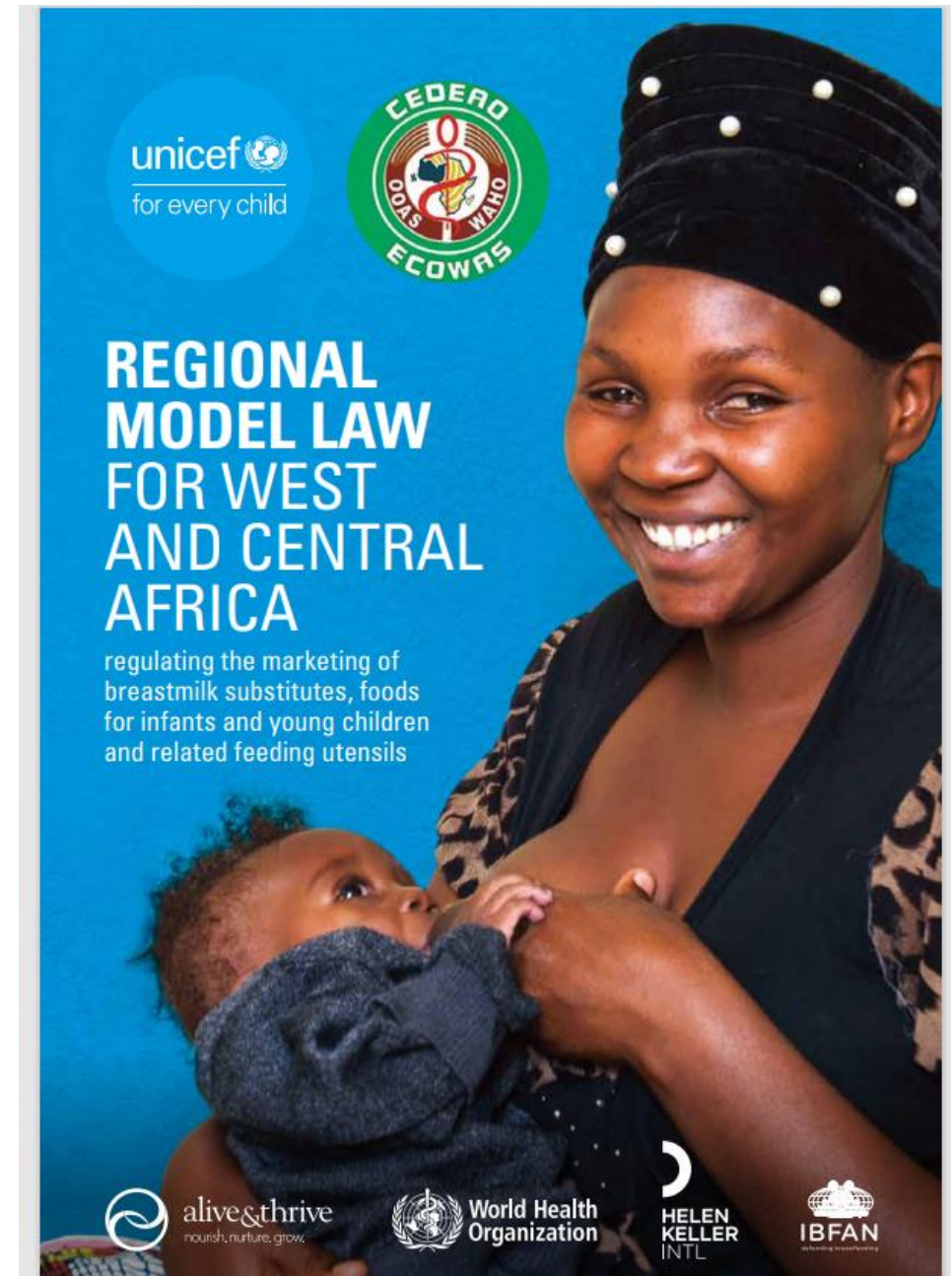
Regional Model Law for West and Central Africa

Regulating the marketing of breastmilk substitutes, foods for infants and young children, and related feeding utensils

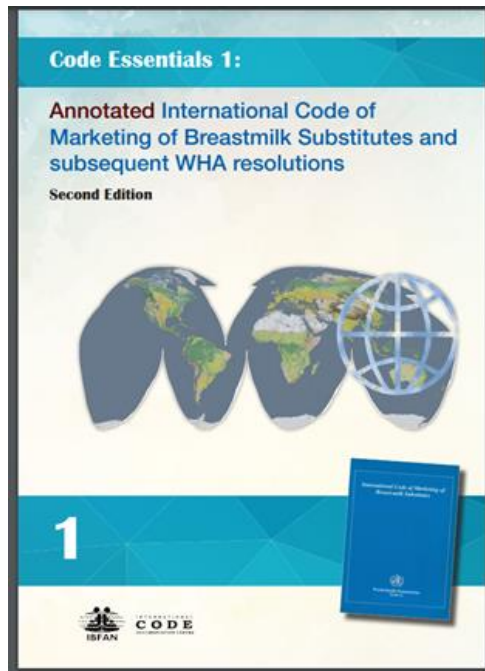
Language : English and French



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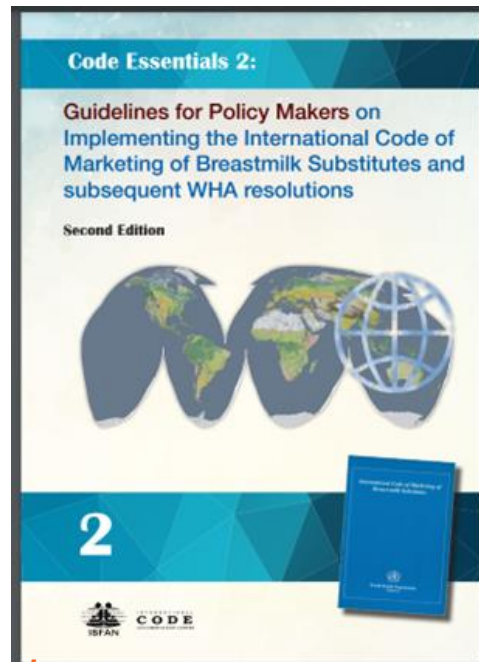


IBFAN Code Essentials and Model Law



qr.link/GHfLaA
Baby Milk Action

Shop, Membership & Donations
Code Essentials



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Free downloads and Virtual Shop

Baby Milk Action is the UK member of the [International Baby Food Action Network \(IBFAN\)](#) a network of over 348 citizens groups in more than 108 countries. In order to protect our independence and ability to speak out, we accept no commercial funding of any kind.

We are funded by membership fees, donations and the sales of a limited number of materials that are available from our [VIRTUAL SHOP](#). Page down for notes about the materials. Thank you for helping to make our work possible.

FREE DOWNLOADS OF ICDC MATERIALS

For more than 30 years the IBFAN/International Code Documentation Centre in Penang has monitored and reported on violations of the International Code and Resolutions and assisted countries in drafting or strengthening national legislation. Following the closure of the ICDC Penang office, IBFAN's regional offices are taking up this work. Many ICDC materials are available as free downloads – see below – some hard copies are from the [VIRTUAL SHOP](#)

[Code&Resolutions pdf](#) (Updated 2022)

[Code Essentials 1 \(CE1\) 2nd Edition](#)

[Code Essentials 2 \(CE2\) Includes the Model Law 2nd Edition](#)

[Code Essentials 3 \(CE3\) 2nd Edition](#)

[Code Monitoring Kit](#) (Update 2019)

IBFAN Website

Many resources are available on various IBFAN sites!



www.ibfan.org



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WEBSITES



Association of Free
Breastfeeding Groups



IBFAN Brasil



Breastfeeding Promotion
Network Of India – BPNI



IBFAN Italia



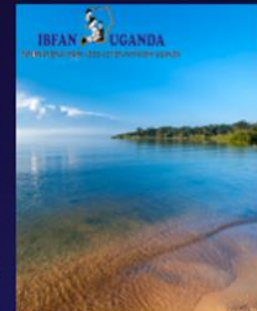
Baby Milk Action



IBFAN Greece



Geneva Infant Feeding
Association-GIFA



IBFAN Uganda



Alive & Thrive Website



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Tools & Resources

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- West Africa (2)

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JOURNAL ARTICLE

FEB 08 2021



Advice to use infant formula and free samples are common in both urban and rural areas in China: A cross-sectional survey (Li, J., 2021. Public Health Nutrition)

Breastmilk substitute (BMS) companies are targeting mothers using aggressive and unethical marketing strategies that violate the WHO Code in both urban and rural areas in China, this study reveals.

LEARN MORE



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June 2023

Thank you!

Breakout Room Assignments Wednesday

Africa (English)	Room V
French	Auditorium left side / Z1
Arabic	Room X
Asia (English)	Room U
America & Caribbean (English)	D46025
Spanish	Room T
Europe & Central Asia (English)	Auditorium right side / Z4



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June 2023

Coffee break

10:20 – 10:45

Group work

10:45 – 12:00

Lunch

12:00 – 13:30