

Report on public consultation on the draft

WHO Guidance for Member States on regulatory responses aimed at restricting digital marketing of breast-milk substitutes

Comment period:

30th August – 17th September 2023

Summary of responses

Background to public consultation

The International Code of Marketing of Breast-milk Substitutes and subsequent relevant World Health Assembly resolutions (collectively referred to as “the Code”), aims to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution (WHA34.22). The Code recognises that promotion of BMS is harmful and contrary to public health interest.

In November 2020, the Seventy-third World Health Assembly requested in decision WHA73(26) that the Director-General review current evidence and prepare a comprehensive report to understand the scope and impact of digital marketing strategies for the promotion of BMS to the Seventy-fifth World Health Assembly in 2022.

This report found that breast-milk substitutes are routinely promoted across a wide range of online channels and social media platforms and that the use of digital marketing strategies dramatically increases the reach and impact of breast-milk substitutes promotions.

Applying the Code to digital environments requires the development of specific regulatory mechanisms, coordination across a broader set of government bodies, and the establishment of specific legal duties on the range of entities involved in the digital marketing value chain.

The Seventy-fifth World Health Assembly (WHA 75(21)) requested that the Director General develop guidance for Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes, so as to ensure that existing and new regulations designed to implement the Code adequately address digital marketing practices.

To develop this report, WHO assembled a steering committee from across WHO departments to decide upon scope, methodology and process. WHO solicited subject matter experts in public health law and regulation, digital marketing social science, epidemiology, marketing, global health, nutrition, psychology and consumer behaviour, human rights law, Code monitoring and implementation policy to serve on a technical advisory group (TAG). TAG members were drawn from all WHO regions. All members were required to complete the WHO declaration of interest. The WHO secretariat assessed declarations and excluded experts with material conflicts. The TAG met every three weeks for nine months to advise on proposed scope, develop the overall approach, identify potential sources of evidence, discuss priority country actions, and review draft recommendations.

The TAG examined several sources of evidence, including the WHO report on Scope and impact of digital marketing strategies for promoting breast-milk substitutes, a review of relevant previous WHO recommendations, a comparative legal review on restricting digital marketing of unhealthy products, and qualitative research on technical and legal considerations for regulating the digital marketing of breast-milk substitutes.

WHO posted the Draft Guidance on the WHO website on 20th August 2023 and called for comments in an online public consultation open until 17th September 2023. The Call was disseminated widely amongst stakeholders using Campaign Monitor and the Global Breastfeeding Collective. A total of 65 submissions were received from respondents representing Member States, Civil Society Organisations, national and regional industry associations and individuals (see annex). Each of these was considered and the document amended where appropriate. Responses to the submissions received are summarised below.

Overall comments and responses

Background

Some comments suggested including more information on the underlying purpose of the document and recommended explicit reference to the human rights duties of governments and commercial entities to implement the Code. As a result, WHO updated the background section to clarify the importance of restricting digital marketing of breast-milk substitutes to protect infant health. Reference was added to the duties conferred on governments by certain human rights treaties (International Convention on the Rights of the Child and the International Convention on Ending Discrimination against Women).

Requests were made for more clarity on the process of developing the guidance. In response, a methodology section was added to preserve transparency. This section describes:

- the establishment of the steering committee
- the involvement of subject matter experts from various fields such as public health law, digital marketing, and nutrition;
- the evidence compiled to inform the guidance;
- the public consultation process.

Scope

Comments received sought greater clarity on the scope and application of the guidance, especially its application to the Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children. The revised Guidance now clearly identifies which recommendations pertain to products within the scope of the Code and which pertain to foods for infants and young children that are not breast-milk substitutes (FIYC).

Several comments from industry stakeholders asserted the view that the Code applies only to the marketing of formula milks presented as suitable for feeding infants up to six months of age and requested that the scope of the guidance be modified to reflect this view. However, WHO has previously clarified in the Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children (para 11):

Products that function as breast-milk substitutes should not be promoted. A breast-milk substitute should be understood to include any milks (or products that could be used to replace milk, such as fortified soy 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). It should be clear that the implementation of the International Code of Marketing of Breast-milk Substitutes and subsequent relevant Health Assembly resolutions covers all these products.

Therefore, no modification was made on this point.

Similarly, some stakeholders asserted that the guidance should not include recommendations for regulatory measures aimed at restricting the inappropriate promotion of FIYCs that are not products that function as breast-milk substitutes in digital spaces. WHO sought advice from the TAG on this issue. The TAG recommended that WHO include recommendations for regulatory measures aimed at restricting inappropriate digital marketing of foods for infants and young children for several reasons. First, these products are often presented as belonging to a brand-family or a group of products that share a brand with products that are unquestionably breast-milk substitutes (such as infant formula) and promotions for these products have been shown to function as cross-promotions for breast-milk substitutes. Second, national legislation to implement the Code in many countries already includes complementary foods and thus guidance is needed to cover digital marketing for both breast-milk substitutes and complementary foods. Third, the issues and challenges faced by Member States in developing regulatory measures aimed at restricting the digital marketing of breast-milk substitutes are very similar to those encountered by Member States seeking to end inappropriate digital promotions of FIYC.

Some comments suggested that regulatory measures aimed at restricting marketing of processed human milk should be included in the guidance. This was considered outside of the scope of WHA75's request for guidance. Others suggested including recommendations for restricting sponsorship of research or researchers in the guidance. Research sponsorship is not digital marketing and was therefore considered outside the scope of this guidance.

Terminology

Requests for changes to terminology used in the guidance were received from stakeholders across the sectors. Retaining consistency with terminology used in the Code and subsequent relevant resolutions were considered paramount. Further consideration was given to ensure that terminology used in this guidance was aligned with uses given in other WHO guidance on regulatory measures for restricting promotion of other products or product groups in the interest of protecting public health.

Recommendations

Some stakeholders noted that brand promotions can, and often do, function as cross promotions for products within the scope of the Code. Others objected to the inclusion of recommendations for restricting brand promotions. The TAG discussed this issue and advised that brand promotions are a key feature of modern marketing practice. Since brand promotion has largely replaced product promotions in strategic marketing campaigns, the TAG recommended including recommendations for regulatory measures aimed at restricting promotions for brands associated with products within scope of the Code. This is reflected in both the definitions and Recommendations 1-3 of the guidance.

Some comments noted the need to explicitly call out newer marketing practices that are inconsistent with the aim of the Code, including influencer marketing, cross-promotion, and user-generated content. This have all been called out explicitly in Recommendation 1. More specific illustrative

examples were suggested by some stakeholders, but these were considered unnecessary and have not been included.

Comments from stakeholders from across the sectors suggested further clarification on the application of the Code in digital point-of-sale platforms. To address this, recommendations for regulatory measures aimed at restricting digital marketing of products within the scope of the Code through online point-of-sale platforms have been gathered into Recommendation 3.

In response to concerns raised by Civil Society stakeholders, Recommendation 6 was expanded to include an explicit recommendation about protecting regulation, monitoring and enforcement from conflicts of interest.

Several stakeholders commented that the recommendations on digital marketing that cross international borders lacked clarity and specificity. Therefore, recommendation 9 was restructured and expanded. These changes were examined for consistency with the principles that underpin WHO recommendations for regulatory measures aimed at restricting digital marketing of other products and product categories in the public health interest.

Some comments suggested that some of the recommendations call on Member States to act in ways contrary to principles of national sovereignty. WHO sought legal advice both internally and externally and confirmed that the recommended actions do not threaten national sovereignty.

Other comments requested the inclusion of recommendations to protect provision of scientific and factual information to health care workers and consumers. The Code acknowledges the need for information on scientific and factual matters and nothing in the recommendations contradicts this, so no change was warranted on this point.

Some stakeholders suggested consideration of including recommendations on the use of voluntary measures to restrict digital marketing of breast-milk substitutes. Voluntary measures are not regulatory measures and thus do not fall within the scope of WHA75's request for guidance on regulatory measures. WHO does not consider voluntary measures to conform to the provisions contained in Article 11 of the Code.

Requests were made to include recommendations on regulatory measures that would restrict or prohibit a variety of commercial activities that are not addressed in the Code and its subsequent relevant resolutions. These requests included establishing a WHO function to monitor and enforce compliance with the Code, establishing effective safeguards against conflicts of interest across government, licensing of commercial operators, and depiction of the use of breast milk in art and visual media. These issues were considered to fall outside the request of the WHA and therefore were not included.

Annex

Submissions received in response to public consultation
on the draft

WHO Guidance for Member States on regulatory responses
aimed at restricting digital marketing of breast-milk
substitutes

Sector	Civil Society Organization
Country	Argentina
Role	Member of Public Nutrition Council
Organisation	Argentine Association of Public Health (AASAP)
Purpose	<p>Paragraph 1: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Background	<p>Paragraph 1: After "the impact of the promotion of breast-milk substitutes on breastfeeding practices", add "and the consequent increased risk of chronic diseases later in the life course of infants and mothers".</p> <p>Rationale: Evidence shows that one million cases of childhood obesity can be attributed to not breastfeeding according to recommendations each year. For women, breastfeeding is estimated to have the potential to prevent near 100000 deaths from breast and ovarian cancers as well as type II diabetes each year.</p> <p>Reference: Walters DD, Phan LTH, Mathisen R. The cost of not breastfeeding: global results from a new tool. Health Policy Plan. 2019 Jul 1;34(6):407-417. doi: 10.1093/heapol/czz050</p>
Scope	<p>Paragraph 6: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Terminology	<p>Paragraph 11, section e: Include brands and companies names in the definition of sponsorship, not only products (commercial foods or drinks for infants and young children).</p> <p>Rationale: unhealthy food sponsorship, which is often reciprocated through the advertisement of sponsors' brands, has been shown to increase brand awareness and preference for branded products. Legal responses that do not incorporate brand marketing may also result in the unintended consequence of shifts in marketing spend from restricted forms of food marketing to unrestricted marketing of brands and logos.</p> <p>Reference: Sing F, Backholer K. Strengthening Global Legislative Actions to Protect Children from the Harmful Impacts of Unhealthy Food and Non-alcoholic Beverage Marketing. Curr Obes Rep. 2023 Mar;12(1):1-9. doi: 10.1007/s13679-023-00492-6</p>

Rec 1	<p>Paragraph 12, 13: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p> <p>Paragraph 16: Replace "scientific and factual product information" by "mandatory information" to avoid manipulation of the term 'scientific information'</p> <p>Rationale: scientific basis of claims made to consumers and healthcare professionals for infant formula is weak. Concerns include the risk of bias in scientific evidence and selective use of data.</p> <p>Reference: Munblit D, Crawley H, Hyde R, Boyle R J. Health and nutrition claims for infant formula are poorly substantiated and potentially harmful BMJ 2020; 369 :m875 doi:10.1136/bmj.m875</p>
Rec 2	<p>Paragraph 17: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Rec 8	<p>Paragraph 32: Add "publishing the list of infractions in an official and public repository of Code violations".</p> <p>Eliminate the example "counter-advertising campaigns to correct misleading claims".</p> <p>Rationale: counter-advertising campaigns have not proved to correct misleading claims, especially if made by the company itself.</p>
Rec 9	<p>Paragraph 33: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Other Comments?	AASAP strongly supports the recommendations of this proposed guidance

Sector	Civil Society Organization
Country	Argentina
Role	Project and strategic alliances coordinator
Organisation	Fundación InterAmericana del Corazón Argentina
Purpose	<p>Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Background	<p>After "the impact of the promotion of breast-milk substitutes on breastfeeding practices", add "and the consequent increased risk of chronic diseases later in the life course of infants and mothers".</p> <p>Rationale: Evidence shows that one million cases of childhood obesity can be attributed to not breastfeeding according to recommendations each year. For women, breastfeeding is estimated to have the potential to prevent near 100000 deaths from breast and ovarian cancers as well as type II diabetes each year.</p> <p>Reference: Walters DD, Phan LTH, Mathisen R. The cost of not breastfeeding: global results from a new tool. Health Policy Plan. 2019 Jul 1;34(6):407-417. doi: 10.1093/heapol/czz050</p>
Scope	<p>Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Terminology	<p>Include brands and companies names in the definition of sponsorship, not only products (commercial foods or drinks for infants and young children).</p> <p>Rationale: unhealthy food sponsorship, which is often reciprocated through the advertisement of sponsors' brands, has been shown to increase brand awareness and preference for branded products. Legal responses that do not incorporate brand marketing may also result in the unintended consequence of shifts in marketing spend from restricted forms of food marketing to unrestricted marketing of brands and logos.</p> <p>Reference: Sing F, Backholer K. Strengthening Global Legislative Actions to Protect Children from the Harmful Impacts of Unhealthy Food and Non-alcoholic Beverage Marketing. Curr Obes Rep. 2023 Mar;12(1):1-9. doi: 10.1007/s13679-023-00492-6</p>

- Rec 1 Add "and other products designated in national regulations".
Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.
Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023
Replace "scientific and factual product information" by "mandatory information" to avoid manipulation of the term 'scientific information'
Rationale: scientific basis of claims made to consumers and healthcare professionals for infant formula is weak. Concerns include the risk of bias in scientific evidence and selective use of data.
Reference: Munblit D, Crawley H, Hyde R, Boyle R J. Health and nutrition claims for infant formula are poorly substantiated and potentially harmful BMJ 2020; 369 :m875 doi:10.1136/bmj.m875
- Rec 2 Add "and other products designated in national regulations".
Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.
Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023
- Rec 8 Add "publishing the list of infractions in an official and public repository of Code violations".
Eliminate the example "counter-advertising campaigns to correct misleading claims".
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- Rec 9 Add "and other products designated in national regulations".
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Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023

Sector	Civil Society Organization
Country	Argentina
Role	Member of the Work team "Breastfeeding Support and Promotion"
Organisation	SANAR Foundation
Purpose	<p>Paragraph 1: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children's Fund (UNICEF), What I Should Know About 'the Code': A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Background	<p>Paragraph 2: After "the impact of the promotion of breast-milk substitutes on breastfeeding practices", add "and the consequent increased risk of chronic diseases later in the life course of infants and mothers".</p> <p>Rationale: Evidence shows that one million cases of childhood obesity can be attributed to not breastfeeding according to recommendations each year. For women, breastfeeding is estimated to have the potential to prevent near 100000 deaths from breast and ovarian cancers as well as type II diabetes each year.</p> <p>Reference: Walters DD, Phan LTH, Mathisen R. The cost of not breastfeeding: global results from a new tool. Health Policy Plan. 2019 Jul 1;34(6):407-417. doi: 10.1093/heapol/czz050</p>
Scope	<p>Paragraph 6: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children's Fund (UNICEF), What I Should Know About 'the Code': A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Terminology	<p>Paragraph 11, Section e: Include brands and companies names in the definition of sponsorship, not only products (commercial foods or drinks for infants and young children).</p> <p>Rationale: unhealthy food sponsorship, which is often reciprocated through the advertisement of sponsors' brands, has been shown to increase brand awareness and preference for branded products. Legal responses that do not incorporate brand marketing may also result in the unintended consequence of shifts in marketing spend from restricted forms of food marketing to unrestricted marketing of brands and logos.</p> <p>Reference: Sing F, Backholer K. Strengthening Global Legislative Actions to Protect Children from the Harmful Impacts of Unhealthy Food and Non-alcoholic Beverage Marketing. Curr Obes Rep. 2023 Mar;12(1):1-9. doi: 10.1007/s13679-023-00492-6</p>

Rec 1	<p>Paragraphs 12, 13: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p> <p>Paragraph 16: Replace "scientific and factual product information" by "mandatory information" to avoid manipulation of the term 'scientific information'</p> <p>Rationale: scientific basis of claims made to consumers and healthcare professionals for infant formula is weak. Concerns include the risk of bias in scientific evidence and selective use of data.</p> <p>Reference: Munblit D, Crawley H, Hyde R, Boyle R J. Health and nutrition claims for infant formula are poorly substantiated and potentially harmful BMJ 2020; 369 :m875 doi:10.1136/bmj.m875</p>
Rec 2	<p>Paragraph 17: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Rec 8	<p>Paragraph 32: Add "publishing the list of infractions in an official and public repository of Code violations".</p> <p>Eliminate the example "counter-advertising campaigns to correct misleading claims".</p> <p>Rationale: counter-advertising campaigns have not proved to correct misleading claims, especially if made by the company itself.</p>
Rec 9	<p>Paragraph 33: Add "and other products designated in national regulations".</p> <p>Rationale: some countries have added pacifiers and formula milk for mothers in their national regulations, not included under the scope of the Code by now.</p> <p>Reference: United Nations Children’s Fund (UNICEF), What I Should Know About ‘the Code’: A Guide to Implementation, Compliance and Identifying Violations, 2023</p>
Other Comments?	<p>The draft is very solid and comprehensive. SANAR Foundation strongly supports it</p>

Sector	Civil Society Organization
Country	Australia
Role	Senior Manager Breastfeeding Information and Research
Organisation	Australia Breastfeeding Association
Background	In point 4 - you might like to consider providing a reference to the statement about a few countries adopting legal measures – possibly the Status of the Code report 2022? And in point 5 provide a link to the digital report.
Scope	In point 6 it would be great to have a bit more clarification around powders marketed to infants for eg. Probiotics there is some confusion around where these fit especially powders marketed for infants <6 Months. In point 7 could you please provide a definition of ‘influencer’ unless you feel it will provide unwanted limitations.
Terminology	In point (e) we are uncertain as to why pharmacists are excluded from the definition of health worker. We see pharmacists as being on the frontline and in a position to influence decisions made when families are experiencing difficulties. Pharmacy retailers sell commercial milk formulas. In point 11d. we think that this statement “Voluntary measures are not regulatory measures and are not suitable for restricting marketing of breast-milk substitutes (11).” should be made more visible.
Rec 2	Could you please clarify if by digital technologies you mean TV Screens and in house advertisements in pharmacies? And by online meetings do you also mean the emails and facebook posts about online meetings?
Additions?	This is well done - thank you

Sector	Civil Society Organization
Country	Australia
Role	Breastfeeding Advocacy Coordinator
Organisation	Breastfeeding Advocacy Australia (BAA)
Purpose	Breastfeeding Advocacy Australia agrees with the purpose.
Background	<p>Breastfeeding plays a critical role in mitigating the risk of non-communicable diseases, including obesity, diabetes, allergies, asthma, and gastrointestinal illnesses. Unnecessary use of infant formula can result in an increased risk of these non-communicable diseases, as well as increased risk of illnesses resulting from contamination in both the non-sterile UPF, exacerbated by potential improper preparation. The risks of engaging in unnecessary and improper preparation or use of BMS must be included in labelling of infant formula.</p> <p>BAA recommends that there be a warning label, not only on the infant formula tin, but also on any digital marketing of both infant formulas and growing up milks (GUMs). An example may be a statement to include the increase of both long term and short term negative health outcomes associated with UPF use.</p>
Scope	<p>BAA requests clarification of the first sentence of point 6. We believe there is contradiction, and this sentence will lead to debate regarding what products are covered under the Code. There has been ongoing discussion surrounding what is and is not covered under the Code. There needs to be a clear, independent guideline of included products, due to the Code predating current marketing techniques.</p> <ul style="list-style-type: none"> - AI needs special mention in the scope as it is the most current, up-and-coming technology which will have large impact in the marketing landscape in this digital era. - Products targeted for maternal use must be included within the scope. <p>Breastfeeding is a human right for both mother and child, and so the mother must be equally protected from the same aggressive and predatory marketing techniques. "The Convention on the Elimination of All forms of Discrimination Against Women recognises that governments have a duty to safeguard women's right to health, including by ensuring, effective regulation of the marketing of breast-milk substitutes and the implementation and monitoring of the International Code of Marketing of Breast-milk Substitutes." Furthermore, the scope must extend to include any product that may replace breastmilk- including, probiotics and other products that are novel food or additives and RUTFs.</p> <p>The final sentence needs clarification. The scope needs to be pre-pregnancy, pregnancy, birth and beyond. From cradle to grave, maternal, and infant protection should not be separated. Point 15 "prohibit manufacturers and distributors of products within the scope of the Code from contacting or seeking or soliciting direct or indirect contact with pregnant women, parents or caregivers of infants and young children in digital environments." further highlights that there must be protection from pregnancy, and so, the scope of products should also include this demographic.</p>

- Regarding the age scope, it is inappropriate to put an upper limit on the protection of children's health and the impacts of UPF. mothers are targeted with products from pre-pregnancy and all the way through until birth, then children are introduced to UPF as their sole diet from birth, with follow-on UPF and growing up milks as the next step/level product. From there, cross promotion continues at every stage of life which suggests that children need to be protected for as long as possible.

Additionally, the age range should be "from birth onwards" to avoid any confusion.

- "Filmmaking" needs to be included as it is a major form of subliminal marketing. Subliminal marketing is a tactic used to influence consumer behaviour, such as the tobacco industry influence over motion pictures and the inclusion of tobacco products. It has been concluded that there is causation between young people being exposed to tobacco imagery and the uptake of smoking- hence the introduction of "tobacco depictions" warnings. It should be expected that the Code applies to the film industry and should abide by the same expectations as any other digital media.

As above, film industry is a large contributor to digital marketing, and so it is reasonable to expect that it is explicitly recognised in the list of examples.

- Using the term "should" allows for a weakening of these guidelines. As stated previously, there needs to be a clear standard from the introduction and first implementation. The word "should" needs to be replaced with "must".

- This paragraph only serves as a loophole. There needs to be a universal collaboration and standards to ensure that the Code is effective in its purpose. By indicating that this is an adaptable guideline, here is an allowance for countries to continue to be "not aligned" with the Code. Furthermore, this enables countries to continue ignoring their responsibility in the protection of mothers and their children from predatory digital marketing practices. This paragraph needs to be completely removed.

Terminology

There must be the clear inclusion of “bottles, teats and complementary foods”, with a broader scope to include pre-pregnancy, birth and beyond. Cradle to grave protections.

- This requires a broader scope to include pre-pregnancy, birth and beyond. Cradle to grave protections. Alternatively, another point is to be made to protect breastfeeding mothers from digital marketing of products that undermine the quality, supply or / (but not limited to) “mummy shakes”, pre/pro biotics, galactagogues, teas and other beverages. Additionally, the age range should be “from birth onwards” to avoid any confusion.

- The inclusion of pharmacies is required as they are often viewed as a trusted source for medical advice, and still there are breaches in the Code in their online shopping platforms. Any established sales outlet that is viewed as a means to accessing healthcare advice or products must be included.

Considering that “point f” determines that a “health worker means a person working in a component of such a health care system, whether professional or non-professional”, then this would include pharmacists/chemists and those who work alongside in the same establishment, or in a digital capacity.

Allied health professionals and registered healthcare professionals must be included because the formula industry actually employs a diverse range of health professionals, as a marketing technique, to appear that they are aligned with healthy lifestyle choices. Supporting evidence below: COMPLIANCE WITH THE INTERNATIONAL CODE OF MARKETING OF BREAST-MILK SUBSTITUTES - Baby-Friendly Hospital Initiative - NCBI Bookshelf (nih.gov)

The International Code of Marketing of Breast-milk Substitutes (who.int) / <https://apps.who.int/iris/rest/bitstreams/1278517/retrieve>

- Marketing must also include influential content. The statement is not making it clear that it is content which must also be considered. Marketing goes beyond a product or a tangible item or service- it must take into consideration the psychology and what behaviours, or social norms are being changed. For example, an image of a bottle or the use of the bottle-feeding emoji (the content) markets bottle feeding and implies formula use in general and is encouraging a change in behaviour- social engineering. - Influential content expands the scope to include psychosocial factors. There needs to be clarification regarding what “traditional communication channels” covers, as well as “other marketing media”. BAA acknowledges the importance of the wording “but are not limited to...” when it comes to a diverse and ever-changing technological era. Another example of leniency and a potential loophole. There needs to be a strong expectation that this document **REQUIRES** implementation, not that it is optional. Most countries do not have appropriate legislative or regulatory frameworks to begin with, so an introduction of strong and ethical guidelines from the beginning will set a standard into the future. Voluntary measures must first be eradicated as a valid response to the Code from countries who have implemented it. Doing so strengthens these guidelines and ensures that it will be complementary to the Code and enforced as international standard. Infant formula is a “gateway UPF”, and as such, it is inappropriate to put an upper limit on the protection of children’s health and the impacts of UPF. mothers are targeted with products from pre-pregnancy and all the way through until birth, then children are introduced to UPF as their sole diet from birth, with follow-on UPF and growing up milks as the next step/level product. From there, cross promotion continues at every stage of life which suggests that children need to be protected for as long as possible.

Rec 1

Using the term “should” allows for a weakening of these guidelines. As stated previously, there needs to be a clear and strong stance from the introduction and first implementation of these guidelines.

a. The word “should” needs to be replaced with “must” in EVERY recommendation.

Marketing must also include influential content and subliminal marketing.

The statement is not making it clear that it is content which must also be considered. Marketing goes beyond a product or a tangible item or service- it must take into consideration the psychology and what behaviours, or social norms are being changed.

For example, an image of a bottle or the use of the bottle-feeding emoji (the content) markets bottle feeding and implies formula use in general and is encouraging a change in behaviour- social engineering.

b. Influential content expands the scope to include psychosocial factors.

Subliminal marketing is a tactic used to influence consumer behaviour, such as the tobacco industry influence over motion pictures and the inclusion of tobacco products. It has been concluded that there is causation between young people being

exposed to tobacco imagery and the uptake of smoking- hence the introduction of “tobacco depictions” warnings. It is not necessarily a brand being marketed, but the act itself that is being promoted, which must be considered as predatory marketing due to social behaviours/choices being subconsciously manipulated by imagery.

Digital marketing can create new social norms, and when these are creating poor health outcomes for a vulnerable population, there must be a firm regulatory stance on social engineering and subliminal marketing of these behaviours and products.

c. This statement requires wording to allow for future ways in which industry can entice individuals, groups, or businesses. For example, an offering of services.

Add: “and other incentives” to ensure better coverage of potential future incentives.

e. This must be strengthened to ensure there is NO interaction with consumers in any way. For example, using the “reaction” features (e.g., ‘likes’) to comments can send a particular message to consumers, as can replying to comments and engaging in consumer forums. Just as the next point below states (See: f.) that there should be no “encouraging or enabling consumers to share, react or comment on marketing content”, there should be no sharing, reacting, or commenting on consumers engagement or content either.

h. This needs to expand to include social influencer and/or celebrity digital content, and the relating of adverse breastfeeding experiences. Social media influencers are engaged by industry as an effective way for brands to reach/target potential customers, and in turn those influencers target mothers with 'explainer videos', endorsements, product mentions, giveaways, incentives, 'story telling' of adverse breastfeeding experiences and 'solutions' to their breastfeeding issues which invariably include formula, pumping, bottles, teats, lactation cookies, pregnancy and breastfeeding milks, probiotics etc.

1.2 Bottles and teats must be included.

1.3 This statement serves well to reiterate our earlier point that the scope needs include pre-pregnancy, pregnancy, birth and beyond. From cradle to grave, maternal, and infant protection should not be separated.

1.4 specific guidance and pre-approved statements that can be used and not changed. This could be facilitated with the assistance of WHO and will include a risk warning and a UPF classification notice. It must only state facts and data and will not include any emotive language or omit any information in order to persuade decision making.

Rec 2	<p>The word “should” needs to be replaced with “must”.</p> <p>The term “health care system” should be replaced with “health system”. These both have different meanings, and, in this context, we want to refer to the system as an industry rather than the acts of care. Therefore, “health system: must be used in this point.</p> <p>2.1 There must be the inclusion of “....and WHA resolutions”, as well as the clear inclusion of AI as a digital marketing technique or as a form of education and/or guidance which replaces any professional advice.</p> <p>2.2 The inclusion of the words “payment-in-kind (PIK)” would strengthen this point. PIK is the use of a good or service as payment instead of cash.</p> <p>2.3 On the surface, “endorsement” and “sponsorship” are very similar terms. They’re both tools that brands use to increase brand awareness and boost a company’s reputation. Both sponsorships and endorsements are a form of partnership marketing designed to align a business with a specific entity, individual, or organization. Both terms must be included to ensure that there is no room for misinterpretation, and will read: “Regulatory measures must prohibit sponsorship and/or endorsement...”</p>
Rec 3	<p>The word “should” needs to be replaced with “must”.</p>
Rec 4	<p>The word “should” needs to be replaced with “must”.</p> <p>The product range of this point needs to be made clearer by using the words: “Foods and products designed for human consumption” which includes products such as probiotics, tonics, teas etc.</p>
Rec 5	<p>The word “should” needs to be replaced with “must”.</p> <p>It is imperative that this is independent. Measures must be taken to ensure that there is no industry influence or any industry associates involved in this action.</p> <p>There are examples of industry being involved with the monitoring and compliance resolutions, which defeats the purpose. By ensuring that there is an independent body who oversees this point, there is likelihood for better protections and compliance.</p> <p>The word “should” needs to be replaced with “must”.</p> <p>5.1 Clarification is required. This is not a clear guideline and allows for loopholes to be identified. What constitutes as “actors involved in the digital marketing value chain”. A more succinct and user-friendly recommendation is required.</p>
Rec 6	<p>The word “should” needs to be replaced with “must”.</p>

Rec 7	<p>The word “should” needs to be replaced with “must”.</p> <p>a. The actions need to be monitored, EVALUATED, and reported.</p> <p>By evaluating the activities that are being undertaken, the guidelines can be adapted and evolutionary in nature.</p> <p>b. First, this would need to be proven, effective, efficient, and user-friendly. If they are not all these things combined, it will not be a useful mechanism.</p>
Rec 8	<p>The word “should” needs to be replaced with “must”.</p> <p>8.2 Breastfeeding Advocacy Australia STRONGLY agrees with this recommendation. Recommendation 8.2 should be a global standard.</p>
Rec 9	<p>The word “should” needs to be replaced with “must”.</p> <p>There must be the addition of “products for oral human consumption”, to replace “foods for infants. and young children” into this recommendation.</p> <p>9.1 Breastfeeding Advocacy Australia STRONGLY agrees with this recommendation.</p> <p>9.3 There must be the addition of “products for oral human consumption”, to replace “foods for infants. and young children” into this recommendation.</p>
Rec 10	<p>The word “should” needs to be replaced with “must”.</p> <p>BAA strongly recommends including ALL WHA resolutions, not just 69.9.</p> <p>The term “health care system” should be replaced with “health system”. These both have different meanings, and, in this context, we want to refer to the system as an industry rather than the acts of care. Therefore, “health system: must be used in this point.</p>
Additions?	<p>BAA further recommends:</p> <ol style="list-style-type: none"> 1. Universities must be covered under health workers. 2. There must be a clause that covers individuals or groups who do not disclose their relationships with brands or media outlets and the like, when in comments section or writing an opinion piece. 3. There must be a clause that prohibits individuals being paid to write reviews or relatives/associates of organisations that market/sell/distribute, etc BMS.

Sector	Civil Society Organization
Country	Australia
Role	Board Member
Organisation	Lactation Consultants of Australia and New Zealand
Purpose	Excellent. The purpose of this guidance is to provide support to Member States for developing and applying regulatory measures aimed at restricting digital marketing of 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”) by applying the Code to digital environments in response to a request from the 77th World Health Assembly (1).
Background	Excellent. Add something related to acknowledging that Health worker/professionals/organizations are influential in parents determining infant feeding practices and targeted by digital marketing.
Scope	Excellent. Important to include follow up formula in the scope. Important to acknowledge the unique reach and fluid nature of marketing of products with the Code.
Terminology	Excellent. Comprehensive.
Rec 1	Excellent. Great to include effective regulatory measures to prohibit the promotion. Great to include influencers, baby clubs, gifts.
Rec 2	Great to include health care systems and health care workers and health care training.
Rec 3	Good to include point of sale safety messages.
Rec 4	Not sure what this means - Member States should prohibit inappropriate promotion of foods for infants and young children that are not breast-milk substitutes in digital environments.
Rec 5	excellent to have monitoring of compliance, blocking abilities and penalties attached to breaches.

Rec 6	Excellent to identify government agencies responsible for implementation, monitoring, and enforcement of the Code and the Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children, including in digital environments, establish mechanisms for inter-agency collaboration, allocate adequate resources and establish powers necessary for discharging these duties. Consider adding an independent body to monitor governments' compliance and report to WHO.
Rec 7	good to monitor and have real ability to penalize breaches.
Rec 8	Great to include effective, proportionate, dissuasive sanctions for non-compliance.
Rec 9	Great to include international companies and extending reach beyond member states.
Additions?	<p>Recommendation 11 should be split</p> <p>11. 1 Monitor developments and adapt regulatory measures to capture new digital technologies, channels and marketing practices</p> <p>11. 2 Monitor impacts developments in digital technologies and their impact on Code compliance.</p> <p>Add 11. 3 Monitor impacts developments in digital technologies and their impact on breastfeeding rates/community health.</p>
Other Comments?	Thank you for the opportunity to comment.

Sector	Civil Society Organization
Country	Bangladesh
Role	Chairperson
Organisation	Training and Assistance for Health and Nutrition Foundation (TAHN)
Purpose	This is a much needed guidance, and the purpose is clear.
Background	Sufficient information has been provided.
Scope	Very comprehensive.
Terminology	All the relevant terminology is spelt out, as mentioned in the Code.
Rec 1	All the Recommendations are excellent, timely, and exactly what is needed!
Rec 2	Good!
Rec 3	Good!
Rec 4	Agree
Rec 5	Agree
Rec 6	Crucial! Can some examples of regulatory measures be provided in a separate document?
Rec 7	Agree
Rec 8	Agree
Rec 9	I am especially pleased to see Recommendation no. 9. Thank you!
Rec 10	Very important!
Additions?	Not at this stage.
Other Comments?	Overall, this is an excellent draft Guidance, timely and extremely crucial! Thank you for sharing!
	By the way, reference nos. 11 and 12 are the same.

Sector	Civil Society Organization
Country	Brazil
Role	Lawyer
Organisation	Brazilian Institute for Consumer Defense (IDEC)
Purpose	Include the word “all” in the first sentence: "... restricting digital marketing of all products that fall within the scope..."
Background	<p>Change the word “infants” by “young children” and “months” by “years” in the first sentence: "Recognizing the vulnerability of infants young children in the early months years of life..."</p> <p>Include the words: “feeding bottles and teats” three times in the following part of the first sentence: "...the health risks introduced by the unnecessary and improper use of breast-milk substitutes, feeding bottles and teats and the impact of the promotion of breast-milk substitutes, feeding bottles and teats on breastfeeding practices, Member States agreed that the marketing of breast-milk substitutes, feeding bottles and teats requires special treatment, which makes usual marketing practices unsuitable for these products (2)."</p>
Scope	<p>Include “formulas commercialized to pregnant and lactating women - whether or not suitable for that purpose - in particular with cross promotion labels and packaging similar to those for infant and young children”.</p> <p>Change the words “plant-based fortified milk” by “a plant-based product similar to milk” Include “childcare products” in the following part of the sentence: “whether or not suitable for that purpose, including bottle-fed complementary foods; feeding bottles and teats and childcare products"</p> <p>Include the words "QR Codes" in in the following part of the sentence “These entities may include, but are not limited to, data management platforms,...app owners, gaming service providers and QR Codes.</p>
Terminology	<p>Sponsorship: Include the words “feeding bottles and teats” as follows:</p> <p>Sponsorship includes any form of contribution made with the aim, effect or likely effect of increasing recognition, recommendations, or appeal of commercial foods, drinks, feeding bottles or teats for infants and young children...</p> <p>After the definition of breast-milk substitutes, include as letter b. the definition of “feeding bottles and teats”.</p> <p>Bottle: a special container made of an impermeable material (such as glass, plastic) with a rubber top for giving milk and other drinks to a baby</p>

Teat: a flexible part of the bottle that the baby will suck from, and contains a hole through which the milk will flow.

Include the definition of influencers as follows: Influencers: individuals who generate income (from companies, such as BMS manufacturers) by creating informative or entertaining content to attract followers, in effect creating a digital distribution list that is populated almost exclusively with people who respect or admire them.

Influencers are paid to publish content that promotes products and brands to people who hold their endorsement in high regard. (OR) Influencers: people who build a reputation for their knowledge and expertise on a specific topic, make regular posts about that topic and generate large followings of enthusiastic, engaged people who pay close attention to their views. Brands love social media influencers because they can create trends and encourage their followers to buy products they promote.

(OR)

Influencers: these can be people who review and recommend BMS, formal and informal 'mummy bloggers' (Hickman et al, 2020) with little or no transparency regarding sponsorship. In India, for any product sold on social media the influencer or celebrity has to declare sponsorship in the post and in the video.

Rec 1

Include the word "all" in the sentence: Member States should ensure that regulatory measures effectively prohibit the promotion of all products within the scope of the Code..."

Include the sentence: Member States should ensure that regulatory measures effectively prohibit the promotion of ultra-processed products to infants and children in digital environments

Include the sentence: Regulatory measures should prohibit the use of digital marketing tools to provide information about products other than instructions how to use and include mandatory information about the benefits and superiority of breastfeeding; guidance on adequate nutrition for pregnant women and nursing mothers, with emphasis on preparation for the start and maintenance of breastfeeding up to 2 (two) years of age or more; the negative effects of using a bottle, nipple or pacifier on natural breastfeeding, particularly with regard to the difficulties in returning to breastfeeding and the inconveniences inherent in preparing food and cleaning these products; the economic implications of opting for foods used to replace breast or human milk, in addition to the damage caused to the infant's health by the unnecessary or inappropriate use of artificial foods; the relevance of developing educational and cultural habits that reinforce the use of foods that constitute the family diet.

RECOMMENDATION 1.4: Include in the second sentence the words: "professionals, health workers or their associations"

This should include prohibiting offering or providing financial or other incentives to other entities, professionals, health workers and their associations for these purposes.

Rec 2

Include in the sentence the words: “or health professional associations”

Regulatory measures should prohibit promotion of products within the scope of the Code through health care systems or health professional associations using digital technologies.

Include the sentence: “Regulatory measures must be applied to healthcare professionals and professional associations”

Rec 3

RECOMMENDATION 3.3

Replace Article 5.3 by Article 5, because all the items in Article 5 are appropriated to be included. Regulatory measures should prohibit point-of-sale promotions described in Article 5 of the Code in digital environments.

Rec 4

Include the sentence:

"Regulatory measures should require that content displayed about products covered by the Code at points of sale in digital environments is limited to the correct and appropriate use of the product and include mandatory information about the benefits and superiority of breastfeeding; guidance on adequate nutrition for pregnant women and nursing mothers, with emphasis on preparation for the start and maintenance of breastfeeding up to 2 (two) years of age or more; the negative effects of using a bottle, nipple or pacifier on natural breastfeeding, particularly with regard to the difficulties in returning to breastfeeding and the inconveniences inherent in preparing food and cleaning these products; the economic implications of opting for foods used to replace breast or human milk, in addition to the damage caused to the infant's health by the unnecessary or inappropriate use of artificial foods; the relevance of developing educational and cultural habits that reinforce the use of foods that constitute the family diet.

Rec 7

Include the word “immediately” in item a., as follows:

a. Requiring entities in the digital marketing value chain to monitor and report the actions they have taken to moderate, block, filter or immediately remove prohibited digital marketing content or activity and ensure compliance with regulatory measures to specified government agencies;

Sector	Civil Society Organization
Country	Brazil
Role	Director council member
Organisation	IBFAN Brasil - International Baby Food Action Network
Purpose	<p>The document is good and absolutely necessary, the purpose is clear and respond to IBFAN Brasil discussions and expectations, particularly during our annual monitoring of Brazilian Code. We support the document to be submitted to the next WHA and then, if approved will help Code enforcement.</p> <p>Considering the scope of the Code, we suggest that the word ALL be included all over the document when referring to the products under the Code. Therefore, FEEDING BOTTLES AND TEATS should first be included in the title of the document.</p> <p>The "Purpose" of this document clearly should also covering the pervasive digital marketing practices of the bottles and teats producers and distributors.</p>
Background	<p>Just important to clarify that not only a few, but 144 countries have adopted legal measures aligned with the provisions of the Code, according to the 2022 WHO-UNICEF-IBFAN Code Report.</p> <p>This number is already a commitment that governments showed; and this must be highlighted. However, as we all know, the responsibilities of compliance are not only with governments but responsibilities of manufacturers and distributors for full compliance with the Code should be emphasized.</p>
Scope	<p>In this section it is important to include FEEDING BOTTLES AND TEATS, and also MILK FOODS FOR INFANTS AND YOUNG CHILDREN, taking into account these are breastmilk substitutes (recommended as such...) according to Resolution WHA 69.9 of 2016.</p> <p>IBFAN suggest the adoption of the term DESIGNATED PRODUCTS - as decribed in IBFAN MODEL LAW, and WHO document for the European region.</p> <p>"Designated products", besides the products already included in any scope of Code , allow government to include new ultraprocessed products that have been produced and commercialized to "replace" breastmilk, as well as to be used by women like the Commercial milk formulas for pregnant and lactating women.</p> <p>Even devices might be " Designated products", such as breastpumps, nipple shields and similar when suggested to replace breastfeeding best practices.</p>

Terminology	<p>In this section we believe it is lacking important terminology:</p> <ul style="list-style-type: none"> - pharmacies -health professional association - feeding bottles -teats/dummies/pacifiers -ultra-processed products -commercial milk formulas for pregnant and lactating women -influencers -SPONSORSHIP <p>in this terminology it is lacking and we suggest to include " (...) any form of contribution of PRODUCERS AND/OR DISTRIBUTORS OF FEEDING BOTTLES AND TEATS"</p>
Rec 1	<p>Recomm. 1 - we suggest including ALL products withing the scope of the Code.."</p> <p>Recomm. 1.2 - we suggest including LABELLING and QR Codes.</p> <p>Recomm. 1.4 - we suggest including .."this should include PROFESSIONAL HEALTH ASSOCIATIONS..." ETC</p>
Rec 2	<p>Recomm. 2 - Regulatory measures should prohibit manufactures OR DISTRIBUTORS of ALL products within the scope... "etc ..." through the health care sustems OR HEALTH PROFESSIONAL ASSOCIATIONS... ETC. we suggest including: "HEALTH PROFESSIONALS should also be co-responsible regarding the prohibition of promotion described here".</p>
Rec 3	<p>Recomm. 3.3 - Regulatory measures should cover all itens mentioned in ARTICLE 5 of the Code and not only the Article 5.3, as all of them are relevant to regulate all forms of digital marketing .</p>
Rec 4	<p>We suggest including a carefull review of this recommendation, as we understand that the importance here is to include:</p> <p>ALL ULTRA-PROCESSED MILK FOODS FOR INFANTS, YOUNG CHILDREN AND PREGNANT AND LACTATING WOMEN.</p> <p>We understand that this recommendation can cover those products not designated as breastmilk substitutes, but yes used many times as such, replacing the healthy familiar or indigenous traditional foods.</p>

Rec 5	<p>Recomm. 5 is fine,</p> <p>and we only suggest that "...Member states should confer legal duties of compliance...WITH TRANSPARENCY AND TAKEN ACTION IMMEDIATELY to prevent or remedy... etc"</p>
Rec 6	Ok
Rec 7	Ok
Rec 8	<p>we suggest including :</p> <p>- ..." educating all responsible companies, health professionals, other related parties regarding the obligations of knowing and compliance..."</p> <p>"The proportionality of sanctions should be discussed and applied with due transparency."</p>
Rec 9	Excellent recommendation.
Rec 10	Ok
Other Comments?	<p>As a general comment we wish this Guidance should be published upon approval of the WHA in May 2024 without any more delays</p> <p>because it is absolutely necessary to regulate the digital marketing of breastmilk substitutes and all ways publicity interferes in breastfeeding practices.</p>

Sector	Civil Society Organization
Country	Canada
Role	Co-Founder, Communications Lead
Organisation	Safelyfed Canada
Background	<p>We request the following text be inserted as the second sentence of 3.</p> <p>"The Code and resolutions are important in all situations for protecting infants and caregivers from inappropriate marketing of breast-milk substitutes. In emergency situations, the Code is particularly important for controlling donations and ensuring appropriate distribution of infant feeding products. (add relevant reference.)" It would read as follows: The United Nations Commission on the Rights of the Child recognises that governments have an obligation to implement and enforce the Code, States are required to introduce into domestic law, implement and enforce internationally agreed standards concerning children's right to health including the International Code of Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions. The Code and resolutions are important in all situations for protecting infants and caregivers from inappropriate marketing of breast-milk substitutes. In emergency situations, the Code is particularly important for controlling donations and ensuring appropriate distribution of infant feeding products. (add relevant reference.) Manufacturers and distributors also have an obligation to comply with the International Code of Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions. The Convention on the Elimination of All forms of Discrimination Against Women recognises that governments have a duty to safeguard women's right to health, including by ensuring, effective regulation of the marketing of breast-milk substitutes and the implementation and monitoring of the International Code of Marketing of Breast-milk Substitutes.</p>
Terminology	<p>We suggest the following amended text for 11.e Sponsorship to be consistent with consistent with 2.3 and the scope section: "...or appeal of any products covered by the Code, including commercial foods or drinks for infants and young children, including formula milks for children up to 36 months, or their consumption, either directly or indirectly..."</p>

Rec 1	<p>Recommendation 1.1.a needs comma after “...dark posts, influencer marketing...”</p> <p>We request that you add a section in Recommendation 1.1 prohibiting calls for, offers of, or promotion of donations and mass distribution in emergencies, and suggest that this be inserted as the first point, so before the existing point a, to read as follows:</p> <p>Member States should ensure that regulatory measures effectively prohibit the promotion of products within the scope of the Code across all channels and media, including digital media.</p> <p>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 including, but not limited to, the following activities: "a. in emergencies, promotion of mass distribution or donations, offers of donations, or calls for donations of products covered by the Code and the Operational Guidance for Infant and Young Child Feeding in Emergencies.”</p>
Additions?	<p>We would like the issue of calls for, or promotions of donations in emergency settings included in this Guidance. Thus, we have included the suggestions to reference emergencies in the background, and in recommendation 1.1</p>
Other Comments?	<p>The draft is excellent and we look forward to being able to advocate for the adoption of this guidance to our national government when it is complete.</p> <p>We applaud the inclusion of specific language referencing bottles and teats, which sometimes falls off. We welcome this inclusion, especially since they contribute to the lowering of breast milk supply and increased risk of infection in emergency settings.</p>

Sector	Civil Society Organization
Country	Germany
Role	Vorsitzender der Ernährungskommission
Organisation	Deutsche Gesellschaft für Kinder- und Jugendmedizin (DGKJ)
Other Comments?	<p>Die Deutsche Gesellschaft für Kinder- und Jugendmedizin begrüßt und unterstützt die Initiative, die Mitgliedsstaaten zur Einführung von Restriktionen aufzufordern, welche eine unangemessene digitale Vermarktung von Muttermilchersatzprodukten sowie einer an Kinder gerichteten digitalen Vermarktung anderer Lebensmittelprodukte betreffen, z.B. über Websites, soziale Medien und Influencer.</p> <p>Die Maßnahmen der Mitgliedsstaaten sollen mit ihren anderen Vermarktungsvorschriften für Muttermilchersatzprodukte in Einklang stehen.</p>
Sector	Civil Society Organization
Country	Germany
Role	Memberships Secretary and Codex Representative
Organisation	World Public Health Nutrition Association
Terminology	Expand the list of definitions (Para 10 Terminology)
Rec 1	<p>Ensure safeguards are included to protect privacy and prevent inappropriate marketing via QR codes or other digital labeling programmes (Para 14 Rec 1.2)</p> <p>Ban incentives, financial and of other kind, to professionals, health workers or their associations (Para 16 Rec 1.4)</p>
Rec 3	Ban the ill-suited promotion of products marketed for emergency situations or malnutrition, in line with WHA 55.25 (Para 23 Rec 3.2)
Rec 4	make a reference to 'Designated Products' to incentivize legislators to include products that may not be in the scope of the Code but when inappropriately marketed undermine optimal maternal and child health; such is the case of ultra-processed products and formulas for pregnant and lactating mothers and children beyond 36 months (Para 6, 25 and Rec 4)
Rec 8	Ensure policy setting, monitoring, enforcement and proportionality of fines be required so as to be protected from commercial influence.(Para 26 Rec 5, Para 30, Rec 8).
Rec 9	We strongly support Recommendations 9, 9.1.9.2.9.3 that address concerns regarding cross border marketing.

Additions?

The World Public Health Nutrition Association (WPHNA) welcomes this draft Guidance containing numerous key safeguards and acknowledges that addressing a dynamic market is warranted. The suggestions listed below outline a way in which the Guidance could be additionally strengthened to support governments in ensuring their national safeguards are future-proof.

It is the opinion of the WPHNA that The Guidelines could:

- Name Bottles, Teats and Foods for Infants and Young Children directly with more regularity to compensate for their omission in the Title and Purpose (Para 1)
- Mention a specific ban of the commercialization of products made through freeze-drying, cloning or industrial processing of breastmilk.

Sector	Civil Society Organization
Country	Indonesia
Role	Founder and member
Organisation	PelanggaranKode.org (Indonesia Breastfeeding Mothers' Association (AIMI), Ayah-ASI-ID, Indonesia Breastfeeding/Nutrition advocacy network/GKIA)
Terminology	<p>We would like to add the following terminology to be included in the section:</p> <p>Influencer: Anyone or a third party who creates and posts content on the digital platform that may include products within the scope of the Code as well as all commercially produced foods and beverage products (including complementary foods) for infants and young children that are not breast-milk substitutes that are specifically marketed as suitable for feeding infants and children from 6 months up to 36 months of age, in any type of digital platform, with or no transparency regarding sponsorship or collaboration. They may voluntarily or in exchange for products rather than money that significantly shapes the customer's purchasing decision but may never be accountable for it. An influencer usually has many followers on her/his social media accounts.</p>
Rec 9	<p>RECOMMENDATION 9.3</p> <p>Please specifically mention the designated jurisdiction to enact sanction if a borderless IEC (information, education, and communication), including training materials for health professionals or the general public on maternal and child health and infant and young child feeding/nutrition topics.</p> <p>One example of the case can be seen here: https://wyethnutritionsc.org/ and https://www.danoneinstitute.org. The web offers a wide range of educational topics for health workers worldwide. Hence, all health professionals who sign up and join its training could be exposed to biased information/education.</p> <p>Member states, through their national regulatory measures, must ensure that manufacturers, producers, and all their affiliates, including a sound-like non-profit organization that they create, must not use the .org domain name.</p>

Sector	Civil Society Organization
Country	Ireland
Role	Educator and researcher
Organisation	BEST Services
Purpose	" to provide support" - provide information might be better word than support as regards clarity and translation. "Support" can be used as both a verb and a noun as well as a descriptive or modifier (e.g. supportive guidance),
Scope	good to specifically list influencers. Perhaps to say "influencers whether compensated or uncompensated"
Terminology	<p>Bottles and artificial teats remain absent from this document. These may be used in cross-promotion as well as their marketing used to undermine feeding at the breast.</p> <p>10 h and 10i: check these definitions match with "Promotion" in Recommendations. (see next comment also). Promotion is a sub-section of Marketing. Marketing as a broader term may be more appropriate to use in the recommendations than only promotion.</p>
Rec 1	<p>Check that activities listed here fit with the definition of Promotion in 10i. Terminology 10i seems to describe promotion as messages. 13c "gifts ... samples" (and other sections) may not clearly fit as "messages".</p>
Rec 6	<p>Add: Establishing cross-country agency collaboration to ensure protection from prohibited marketing when the marketing is carried out in a language or for products unfamiliar to the national agency.</p> <p>For example, a web site registered in an English speaking country aimed at migrant parents from another country and the web site is in that language - and the monitoring and enforcing agency does not have personnel that can read that language. Or an on-line shop aimed at migrant parents that is selling infant food products not available in their new country that are imported by means other than the main infant food distributors, and the agency does not have adequate knowledge of these products.</p>
Additions?	<p>The marketing within media (which may appear on-line) such as product placement and use of a visibly branded product by actors within the programme which may act similarly to influencers.</p> <p>Clarity on on-line versions of print media, e.g. if a traditionally print newspaper has a website with on-line publication of their newspaper content (including articles by influencers, company sponsored content etc) would this be covered by this guidance?</p>

Other
Comments?

The Online Safety and Media Regulation Act 2022 of the Irish Government could be listed as a reference to legislation that already is enacted to protect from digital marketing. This Act also has definitions useful to read in preparation of this WHO guidance. 46N (7) and 139K (5) specifically mention infant formula, follow-on formula.

<https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>

Sector	Civil Society Organization
Country	Luxembourg
Role	board member
Organisation	BFHI Network
Purpose	<p>THE BFHI Network recommends to include the word ALL in the second line to read: ...restricting digital marketing of ALL products that fall within the scope of the International Code of Marketing of Breast-milk Substitutes...</p> <p>Rationale: BOTTLES AND TEATS are not included in the title of this draft, but only BMS. In the scope they are clearly included. "...This guidance applies to digital marketing of products within the scope of the Code as well as foods for infants and young children that are not breast-milk substitutes (2,7,8). Products within the scope of the Code include breast-milk substitutes including infant formula and other milks or products that could be used to replace milk, such as fortified plant-based milks, in either liquid or powdered form that are specifically marketed for feeding infants and young children up to the age of three years including follow-up formula and growing-up milks; any foods that are marketed or otherwise represented as being suitable for infants less than six months or as a partial or total replacement for breastmilk, whether or not suitable for that purpose, including bottle-fed complementary foods; and feeding bottles and teats."</p> <p>THE BFHI Network insists that this must be clarified in the purpose.</p>
Background	<p>Point 3: THE BFHI Network welcomes the introduction of the child right lens and the CEDAW convention here.</p> <p>Point 4. This should be formulated more positively by highlighting first the more than 100 countries that have taken some action before pointing to the fact that this is not enough.</p> <p>We suggest including the same as in the PURPOSE ("aimed at restricting digital marketing of products that fall within the scope of International Code of Marketing of Breast-milk Substitutes) i.e. in all the sentences throughout the text that name BMS it is important to replace BMS by "ALL THE products that fall within the scope of the Code" in order to be consistent throughout the text and not opening loopholes for misinterpretation. This is needed to be coherent with the Scope.</p>

Scope	<p>Number 8: We suggest to change to read: “Digital marketing practices are diverse and constantly evolving. Therefore, examples of digital marketing practices OR PRODUCTS given in this document should not be considered an exhaustive list of practices AND PRODUCTS. RECENTLY FORMULAS FOR PREGNANT AND LACTATING WOMEN HAVE CROSS-PROMOTING LABELS WITH BMS. THEY SHOULD BE RULES BY THE SAME REGULATORY MEASURES.</p> <p>We suggest to have an additional paragraph (a NUMBER 10 or 6A) in the SCOPE to include products that are promoting breastmilk feeding instead of breastfeeding as well as BMS preparation machines.</p>
Terminology	<p>In number 10 c. it is necessary to include pharmacies as they are excluded of the health care system HCS. (10 e) They are a typical place for marketing products under the scope of the Code. As in some countries they are part of the HCS it might be best to include a specific definition for them.</p> <p>A definition about bottles and teats needs to be included. This might be the moment to define that teats include dummies/pacifiers. Breastmilk substitute (BMS) is a PRODUCT, while substituting Breastfeeding is a PROCESS that implies in the use of a device – a bottle, a teat or similar. This must be clarified in the draft document, as this is increasingly a digital marketing technique.</p> <p>Health professional association, this would be another needed definition to include.</p> <p>Under 11 e Sponsorship include BOTTLES AND TEATS to read: “... including formula milks for children up to 36 months AND BOTTLES AND TEATS”</p>
Rec 1	<p>12. Recommendation 1. we suggest including ALL: “...prohibit the promotion of ALL products within the scope...”</p> <p>13. Recommendation 1.1 again add ALL before products</p> <p>14. Recommendation 1.2: we suggest including: “ ...any information, ANYOTHER LABEL, educational materials, materials,...”</p> <p>16. Recommendation 1.4: we suggest including here: “...” providing financial or other incentives to other entities, PROFESSIONALS, HEALTH WORKERS, PHARMACISTS OR THEIR ASSOCIATIONS”</p>
Rec 2	<p>17. Recommendation 2: we suggest including HEALTH PROFESSIONAL ASSOCIATION AND PHARMACIES to read: Regulatory measures should prohibit promotion of products within the scope of the Code through health care systems, HEALTH PROFESSIONAL ASSOCIATION AND PHARMACIES using digital technologies.</p> <p>18-20. Recommendations 2.1-2.3 : we suggest including HEALTH PROFESSIONAL ASSOCIATION AND PHARMACIES</p>
Rec 3	<p>The BFHI Network supports this recommendation</p>

Rec 4	25. Recommendation 4. we suggest including formula for pregnant and lactating women, bottles and teats
Rec 5	The BFHI Network supports this recommendation
Rec 6	The BFHI Network supports this recommendation
Rec 7	29. Recommendation 7.a we suggest including IMMEDIATELY in the sentence: "...block, filter or IMMEDIATELY remove prohibited digital marketing..."
Rec 8	The BFHI Network welcomes this recommendation
Rec 9	The BFHI Network supports this recommendation
Rec 10	The BFHI Network supports this recommendation
Other Comments?	We would suggest to include a recommendation for countries to collaborate on transnational level to be able to tackle transnational promotions and exchange good practices and tools for monitoring digital media.

Sector	Civil Society Organization
Country	New Zealand
Role	Baby Friendly Advisor
Organisation	New Zealand Breastfeeding Alliance
Background	The proposed guidelines are an important update to the International Code of Marketing of Breast-milk Substitutes and its application in digital environments.
Terminology	Would suggest including the term “commercial milk formula” (CMF) which is increasingly being used in the literature about The Code and marketing of breastmilk-substitutes. e.g. The Lancet Series on Breastfeeding 2023
Rec 1	Agree. This is a comprehensive list of digital marketing tools. However, we would suggest adding in “QR codes” as this is a common, anonymous-type marketing tool used in Aotearoa New Zealand to take people from a social media site to specific marketing content.
Rec 2	Appreciate the specificity of health care systems with respect to digital resources/technologies. This is something we have already adapted within our BFHI documents for Aotearoa New Zealand.
Rec 3	none- agree
Rec 4	Agree
Rec 5	Agree
Rec 6	Agree
Rec 7	Agree
Rec 8	Agree
Rec 9	Agree
Rec 10	Agree
Additions?	No, not that we can see

Other
Comments?

Hei te tini, hei te mano, e rau rangatira mā, tēnā koutou, tēnā koutou, tēnā koutou katoa.

Thank you for the opportunity to provide feedback on the DRAFT guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes (Maternal, Infant and Young Child Nutrition) proposed by the 77h World Health Assembly.

The New Zealand Breastfeeding Alliance (NZBA) is a collaborative of 34 + breastfeeding member organisations that promotes, protects and supports breastfeeding in Aotearoa New Zealand. The NZBA was established in 1999 and is primarily funded by Manatū Hauora/Ministry of Health (MoH) to administrate the WHO/UNICEF's Baby-Friendly Hospital Initiative (BFHI) in Aotearoa New Zealand and to provide a national advocacy platform for projects that improve breastfeeding rates.

The proposed guidelines are an important update to the International Code of Marketing of Breast-milk Substitutes and its application in digital environments.

Given that digital marketing involves a broader range of actors than those involved in traditional marketing practices, the NZBA supports this guidance as a key component in strengthening the Code for the evolving digital age.

Sector	Civil Society Organization
Country	New Zealand
Role	President of the Board of Directors
Organisation	New Zealand Lactation Consultants Association
Rec 1	Can we suggest adding QR codes to the ways digital marketing is accessed as they are quite commonly used in Aotearoa New Zealand.
Rec 2	<p>Appreciate the specificity of including online meetings</p> <p>including webinars and e-learning courses. We continue to have formula manufacturers</p> <p>offering to “helpfully” provide education to community-based healthcare organisations.</p>
Rec 10	<p>Grateful to see this included so that implementation of</p> <p>this guidance is possible even prior to regulatory measures that may or may not be implemented at national and subnational levels.</p>
Other Comments?	<p>Thankyou for the opportunity to feedback on the draft guidance on regulation digital marketing of breastmilk substitutes.</p> <p>These proposed guidelines offer an important and needed update to how the International Code of marketing of breastmilk substitutes can be managed in a digital environment. Those with a commercial interest in promoting their products are quick to utilise every inch of opportunity available to them and this guidance will strengthen the codes relevance in managing this in our digital age.</p> <p>Who we are: New Zealand Lactation Consultants Association (NZLCA) is the professional organisation for International Board Certified Lactation Consultants (IBCLCs) in Aotearoa New Zealand. The 250 - 300 IBCLCs in Aotearoa New Zealand work in a variety of settings including hospital, community and private practice. Many IBCLCs are also registered health professionals such as midwives, nurses or doctors. An IBCLC specialises in the clinical management of complex breastfeeding and lactation matters. We work with Māmā (mothes) and their pēpi (babies)/whānau (family), providing care that is whānau focused and planned respecting individual cultural needs. IBCLCs are required to re-certify every 5 years and maintain evidence of current clinical practice, basic life support plus ongoing lactation education. Our vision is to see Aotearoa/New Zealand’s health transformed through enabling whānau to meet their breastfeeding goals. NZLCA works to advance the IBCLC profession in Aotearoa through leadership, advocacy, professional development, and research</p>

Sector	Civil Society Organization
Country	Republic of Ireland
Role	Chairperson
Organisation	Baby Feeding Law Group Ireland
Background	<p>COMMENT ON POINT 4</p> <p>SUGGESTION #1 - The Code, an abiding intervention:</p> <p>While Code adoption has been “weak”, the Code’s effectiveness (when implemented and enforced) as a public health intervention remains strong. It continues to progress as new countries bring about legal measures to increase alignment with the Code.</p> <p>In December 2022 the Irish Government implemented new legislation to regulate for commercial communications relating to infant and follow-on formulae via the Online Safety and Media Regulation Act, despite heavy opposition from agriculture and industry lobbyists influencing public representatives: OSMR Act - https://www.irishstatutebook.ie/eli/2022/act/41/enacted/en/print.html</p> <p>Political opposition - https://extra.ie/2021/11/09/news/irish-news/advertising-baby-formula-ban</p> <p>Using words such as “Yet,” and “weak” undermines the effectiveness and value of the Code as a public health intervention when fully implemented. Consider removing and rewording point 4. as follows: Suggested wording of point 4 “While many countries to date have adopted legal measures aligned with the provisions of the Code, only some have made full legal provisions. Despite lobbying efforts from trade, industry, and agricultural groups impeding wider adoption, Member States continue to recognize the value of the Code as an effective public health intervention, preventing exploitation and upholding the human right to health. ”</p>
Scope	<p>COMMENTS ON POINT 7</p> <p>SUGGESTION #2 - Ancillary Beneficiaries:</p> <p>When referring to application of the Code in digital environments, consider adding reference to those that may benefit indirectly by participation in a digital marketing campaign, thereby enhancing their own profiles and benefiting in ways other than direct product sales. For example social media influencers, third party associated brands, political entities/regimes or movements.</p> <p>Suggested wording: “Applying the Code to digital environments requires the development of specific implementation mechanisms, coordination across a broader set of government bodies, inter-governmental or federal bodies and the establishment of specific legal duties on the range of entities involved in the digital</p>

marketing value chain and also applying such to ancillary beneficiaries of digital marketing platforms or campaigns. “

Ancillary beneficiaries refers to entities who benefit indirectly from digital marketing of a brand. Example include:

*Social media influencers who are not paid for promotion, but who benefit by using videos of infant formula product reviews in order to gain more followers or subscribers, thereby increasing their Ad revenue paid to them by the hosting platform they publish content using services such as AdSense on. They may also benefit by allowing ads to be shown in their videos.

<https://www.epidemicsound.com/blog/which-social-media-platform-pays-the-most/#:~:text=YouTube%20wasn't%20far%20behind,over%20on%20TikTok%20and%20YouTube.>

*Public or private trade/enterprise/industry/research promotion bodies who invest public money in marketing initiatives that can be utilised by manufacturers and distributors. E.g. In Ireland Bord Bia developed a brand known as “Origin Green” which was utilised by manufacturers and distributors for marketing purposes. This complementary branding was then used in digital marketing campaigns by manufacturers devised in a consumer insights project targeting the Chinese market know as “Billion Dollar Baby”: <https://studylib.net/doc/11015004/infant-formula-exporting-is-ireland%E2%80%99s-best-kept-secret>.

Terminology

Under 11. c):

SUGGESTION #4 - Ancillary Beneficiaries: (See SUGGESTION 2 above for examples of ancillary beneficiaries.) “Distributors are persons, corporations or any other entities in the public or private sector engaged in the business of marketing at the wholesale or retail level a product (9), or ancillary beneficiaries who may extend, contribute to, or distribute marketing content.”

Under 11 (a).

SUGGESTION #5 - Key Platforms: Reword to include key areas of emerging and fast adoption technologies currently in use: “These include but are not limited to social media, websites, email services, text or voice or image or video messaging services, streaming services, online news services, search engines, eCommerce providers, peer commerce, automated/autonomous agent services, mobile/wearable/biometric technologies, digital advertising platforms, personalisation services.

Rec 1

Under 1.1 (b).

SUGGESTION # 6 - Content Creation:

Add a reference to auto-generated content, in this case “user/direct” meaning content generated by an individual or company, or auto-generated where live content is generated based on auto-generated content. While this the Guidance provided in paragraph 8 recognises the rapidly evolving nature of digital marketing, more generic terminology at the outset may help for future proofing. For example, the term “bot” may quickly become outdated in the same way “infant formula” was replaced with “follow-on formula”.

Reword as follows: “establishing or participating (user/direct or auto-generated) in online social or support groups or communities, including baby clubs, parents' clubs, social or support groups for pregnant women or parents whether these are visible to non-participants or not;”

Ref: UGC vs. AI content creation: <https://embedsocial.com/blog/ugc-ai-generated-content/>

Under 1.1 c).

SUGGESTION #7 - Digital Bridging: Add specific reference to materials which may provide a bridge to digital marketing sources.

Suggested wording: “offering or providing gifts, discounts or product samples directly or by providing a link or code that can be used to obtain a gift, discount or sample. Including links on printed materials including but not limited to QR codes on labelling/packaging/promotional materials that provide connection to digital marketing campaigns; “

Under 1.1 d).

SUGGESTION #8 - Data Protection: Add reference to data collection and profiling exercises that may compromise privacy rights and serve to offer commercial advantages for targeting of digital marketing campaigns. Suggested wording: “providing or promoting software applications (apps), entertainment services, or games aimed at, or profiling of pregnant women, parents, children, caregivers or health workers;”

Under 1.1 f).

SUGGESTION #9 - User Engagement: Expand reference to nature of promotional engagements and collective term “engage” as share/react/comment may soon be replaced. Not all digital media users will be consumers, some may be carers or health professionals for example.

Suggested wording: “Encouraging, enabling or enticing users to engage with marketing content”;

Word count for this comment box seems to be exceeded so please see additional Suggestions #10 & #11 with referenced to RECOMMENDATION 1 below in Additional Comments.

Rec 1

Under 1.1 (b).

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Suggested wording: “Encouraging, enabling or enticing users to engage with marketing content”;

Word count for this comment box seems to be exceeded so please see additional Suggestions #10 & #11 with referenced to RECOMMENDATION 1 below in Additional Comments.

Rec 2

SUGGESTION #12 - Profiling and Data Protection:

Include “children” as a target, where information such as birth date of teenagers for example may be used by manufacturers or distributors to target for advertising at a later time . Include reference to acquisition of metadata regarding these groups for profiling and targeted marketing activities.

“Regulatory measures should prohibit manufacturers and distributors of products within the scope of the Code from contacting or seeking or soliciting direct or indirect contact with pregnant women, parents, children or caregivers of infants and young children in digital environments, or purchasing/acquiring metadata relating to these groups for digital marketing of products within scope of the Code, for targeting purposes.”

Rec 3

SUGGESTION #13 - Ancillary products/services: Digital content that may promote ancillary products or services should be considered, as they may link to promotion of products within scope of the Code. For example, demonstrations of convenience and use of formula “express machines” or “dispensers” via video or immersive platforms, or can play on difficulties for parents with regard to time and influence decision making, without first seeking consultation with a skilled health care professional for guidance and the proximity of adverts for formula products may unduly influence infant or young child feeding decisions.

- For example a search for formula preparation devices shows infant formula products in “Customers who viewed also liked”: https://www.boots.ie/nuby-rapidcool-flask-10291917?cm_mmc=ROI_PPC_-_Shopping_-_Shopping_GA_-_Nuby&utm_source=roi_ppc&utm_medium=shopping&utm_campaign=shopping_ga&utm_term=Nuby&gclid=Cj0KCQjwx5qoBhDyARIsAPbMagBf7F9rbXM22Tgj82BuHiHfax5mQpo-zGzr-uxHDYhhBnIS1mofA7AaAn1MEALw_wcB&gclidsrc=aw.ds

- Utilisation of Demand Side software (referenced in Scope) such as advert Retargeting Providers can extend exposure to promotion of these products means you will continue to see digital marketing of these products on other digital platforms. Similarly, use of metadata may be utilized to personalise and remarket products which were explored. Reference: <https://mobecls.com/power-of-retargeting-in-ecommerce/>

Consider rewording:

“These prohibitions apply to all elements at point-of-sale in digital environments, including but not limited to images or depictions of products or their labels, any other static or dynamic content that relates to such products, or ancillary products or services that are directly linked to, or indirectly market products within scope of the Code.”

Rec 4

SUGGESTION #14 - Food Branding:

Consider rewording:

. “Member States should prohibit inappropriate promotion of foods or food brands for infants and young children that are not breast-milk substitutes in digital environments.”

Rec 7

SUGGESTION #15 - Preventive and Remedial Technologies:

Consider adding additional terms below to offer guidance on tools that can be leveraged to ensure compliance at source, and for monitoring and enforcement purposes when breaches occur:

“d. Using digital technologies for preventive, remedial and regulatory purposes, such as software solutions including, but not limited to, compliance, auditing, digital rights management, eDiscovery, reporting, analytics, multimedia capture, content filtering, blockchain verification, data protection, traffic analysis, and artificial intelligence tools to identify potentially non-compliant digital marketing content for further investigation by specified government agencies. “

Rec 8

SUGGESTION # 16 - Exploitation of Emergencies/Health System Vulnerabilities:

In the case of emergency or situations of vulnerability in the context of infant feeding digital platforms can offer rapid and convenient opportunities for promotional activities by manufacturers, distributors or ancillary beneficiaries without little consequence due to the vast pace at which an emergency situation can arise.

-For example a digital marketing message may go viral in the case of emergency scenarios like we saw in US with mass formula recall and digital marketing took place to exploit the emergency.

CEO of formula company - ‘Baby formula shortage is ‘very surreal’ and ‘not slowing down’: <https://www.youtube.com/watch?v=Lh1hBXZR5hM>

“How This Baby Food Company is Helping to Fix the Baby Formula Crisis | Inc.-”

<https://www.youtube.com/watch?v=49Ls1grQOJo>

-“Breaking The Law To Give Struggling Families Formula” | Good Morning Britain - Supermarket Iceland boss Richard Walker on Inflation: <https://www.youtube.com/watch?v=Y66QidNwfOY>

-Consider rewording as follows: “Member States should enforce regulatory measures that implement the Code, including in digital environments, and apply effective, proportionate, dissuasive sanctions for non-compliance. In the case of digital marketing that may occur of products within scope of the Code that may pose a more immediate threat to infant and young child health to due to use of digital marketing

technologies, regulatory bodies should have powers of intervention to halt exploitative practices for digital marketing purposes that gain ground quickly through digital technologies and platforms that offer viral sharing of digital information.”

SUGGESTION #17 - Inclusion of broadcasting and media outlets:

As primary purveyors of current affairs broadcasters and news outlets have wide reach and provide quick access for mass sharing of information and may be utilised to

counter, correct or address breaches that pose immediate threat and require swift action.

-“Regulatory measures should establish a range of sanctions that are sufficient to deter all types of violations; are proportional to the nature and seriousness of the violation and increase for repeat violations. Sanctions may include criminal and administrative or statutory penalties, financial penalties and fines, non-financial penalties such as restrictions on licensing, product recalls, and corrective actions such as counter-advertising campaigns to correct misleading claims, communications to media outlets including but not limited to broadcasters and news outlets, for rapid correction of inappropriate digital marketing references, among others. “

- SUGGESTION #18 - Inclusion of requirement of completion of a Childs' Right Impact Assessment

- Child rights impact assessment (CRIA) should be mandated. UNICEF and WHO have recommended that in order to ensure that children’s best interests are adequately considered in food marketing restrictions, governments should consider carrying out an ex-ante child rights impact assessment (CRIA). CRIAs should help ensure that the best interests of children are taken into consideration during the policy and legislation development process and what the impact will be.

- Indeed, the Convention on the Rights of the Child states, “ensuring that the best interests of the child are a primary consideration in business related legislation and policy development and delivery at all levels of government demands continuous child-rights impact assessments”

Additions?

With reference to RECOMMENDATION 1 BFLGI believes there should be additional regulatory measures.

SUGGESTION #10 - Additional Regulatory Measures:

Consider adding the following suggested regulatory measures for common but indirect forms of marketing:

UTILISING NEWS PLATFORMS FOR MARKETING PURPOSES: Utilising brand journalism as a medium for mass marketing campaigns, or, issuing press releases as part of marketing campaigns. Examples: Manufacturer announce Carbon Neutrality and directly references infant formula brands:

<https://www.agriland.co.uk/farming-news/danone-wexford-unveiled-as-worlds-first-carbon-neutral-infant-formula-plant/>

In the same campaign Irish teenagers were targeted with digital content presented in an educational scenario by manufacturers to teenage students. : <https://teen-turn.com/procurement/>

Video: <https://www.youtube.com/watch?v=w3xGBhP4DIg>

Formula companies issue press releases with news of company acquisition as opportunity for brand promotion:

<https://www.businesswire.com/news/home/20230712698516/en/Bobbie-Acquires-Nature%E2%80%99s-One-with-the-Most-Innovative-Infant-Formula-Manufacturing-Facility-in-the-U.S.-to-Fast-Track-the-Future-of-Formula>

Brand Journalism: <https://review.content-science.com/what-is-brand-journalism/>
PROMOTION BY PUBLIC SERVANTS: Interaction with Governments or use by Government officials to promote directly or indirectly via digital media the commercial objectives that benefit manufacturers or distributors that conflict with scope of the Code and public health. Example: Promotion by Irish Government Minister of infant formula brand in China:

<https://www.farmersjournal.ie/kerry-launch-irish-made-infant-nutrition-product-in-china-168717>

INAPPROPRIATE RESEARCH INTERACTIONS: Interaction with the public via digital media to garner participation in research studies for commercial objectives for products in the scope of the Code, Example: Irish university study, funded by Enterprise Ireland to test a supplement trademarked by a manufacturer for mothers that may affect breastmilk or present risk: Study of trademarked product funded by Government industry development body:

<https://www.ucd.ie/foodandhealth/more/humanhealthstudies/wellfed/>

FALSE INFORMATION: Producing content with false / misleading / distorted / inappropriate / unlawful messaging or use of such information that has the purpose of promoting products or product brands. This content may be generated by manufacturers, distributors, third parties or auto-generation entities. Study on “fake news”: <https://news.usc.edu/204782/usc-study-reveals-the-key-reason-why-fake-news-spreads-on-social-media/>

COPYRIGHTED/DIGITALLY MANIPULATED CONTENT: Generating/Utilising/facilitating distribution of copyrighted content, images or video for use in a digital marketing campaign. In addition, digitally manipulated content that may be tampered with to use an individual's digital representation (including voice or image) for digital marketing purposes, currently termed "Deep Fake". Example: "Deepfakes: Deceptions, mitigations, and opportunities":
<https://www.sciencedirect.com/science/article/abs/pii/S0148296322008335>

GARNERING SUPPORT FOR INDUSTRY LOBBIES: Use of digital media by industry for purposes of lobbying or encouraging political interactions to benefit and enhance brand reputation. For example, development of campaigns for individuals or voters to contact their politicians to overturn/distort/discourage support for legislative measures that would cause a regression in implementation of the Code.

Examples of infant formula branding communications in the context of political actions:

Letter from CEO of formula company claiming to represent interests of families during the US formula recall crisis, while simultaneously promoting brand,
<https://www.businesswire.com/news/home/20220531005380/en/Bobbie-Urges-Congress-to-Address-Infant-Formula-Industry-Vulnerabilities>.

Other
Comments?

RECOMMENDATION 1: Include ancillary products as promotion of such in digital environments may link to promotions of products in scope

Include support/carelines as another tactic being utilised that exploits gaps in countries where insufficient infant and young child support services exist. Example, Ireland where insufficient support services take place, manufacturers offered families free support. Reference: "A qualitative analysis of women's postnatal experiences of breastfeeding supports during the perinatal period in Ireland"
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10370717/>

Facebook digital marketing campaign offering help line for mothers to phone for all infant support: https://www.aptaclub.ie/aptaclub-careline.html?&&gclid=Cj0KCQjwx5qoBhDyARIsAPbMagCPV4NFYUCcr25J68bHo-Rk4jyE-09UNOd11JSGGQuiWBRPxTpo2ZkaAv2tEALw_wcB&gclsrc=aw.ds

Change "interactive" to dynamic, to encompass both interactive and dynamic content. --- Consider rewording as follows: "Regulatory measures should prohibit manufacturers of products/ancillary products within the scope of the Code or any entities acting on their behalf, acting directly or indirectly, from offering or providing advice, information (other than product information as required to provide by law), support/carelines or education about infant and young child care, nutrition and feeding, maternal nutrition, pregnancy, child development, health and wellbeing or parenting, as static or dynamic content in digital environments, including but not limited to through e-learning courses, chat and messaging 5 services, commenting on content posted on webinars, chatbots, or other tools powered by artificial intelligence. Measures should also prohibit use of digital media to advertise engagements listed above in non digital environments such as phone based services or direct human engagement."

Sector	Civil Society Organization
Country	Senegal
Role	Nutrition Policy and Advocacy Advisor
Organisation	Helen Keller International
Background	Paragraph 4: Add to Code subsequent World Health Assembly resolutions.
Rec 1	Recommendation 1.2: Add WHA resolution 69.9
Additions?	No everything is covered in this draft guidance
Other Comments?	No thank you

Sector	Civil Society Organization
Country	South Africa
Role	Co-Chair
Organisation	IBFAN - Global Council
Purpose	<p>IBFAN suggestion: INSERT the word ALL in the first sentence to read:</p> <p>“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....”</p> <p>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.</p>
Background	<p>DELETE “Yet, few countries have” And change to read as follows: “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.”.</p> <p>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 suggests that the blame lies with 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.</p>

Scope	<p>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 that both refer to “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.</p> <p>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.</p> <p>(Note: WHO’s 2016 and 2018 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 2020 and 2022 reports.)</p>
Terminology	<p>Para 10.b ADD AT THE END OF THE PARA: 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:</p> <p>Commercial ultra-processed products: products or supplements made through or any industrial or ultra-processing (including freeze drying, cloning of breastmilk).</p> <p>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.</p> <p>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.</p> <p>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’.</p> <p>Health Professional/worker associations: These associations are a major or priority target of companies so a definition would be useful.</p>

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.

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.

Examples of discounted online sales:

https://www.amazon.in/Philips-Avent-Natural-Feeding-Bottle/dp/B013SJEKQE/ref=as_li_ss_tl?ie=UTF8&qid=1546553326&sr=8-3&keywords=philips%2Bavent%2Bnatural%2Bbottles&linkCode=sl1&tag=whsmyta-21&linkId=e99d0a7b1b97e17765c42be68d48a177&language=en_IN&th=1

https://www.amazon.in/Pigeon-PERISTALTIC-Nursing-Transparent-88143/dp/B097363D5C/ref=sr_1_21?crid=592KXMKU3VA3&keywords=FEEDING+BOTTLES&qid=1694874558&srefix=feeding+bottle%2Caps%2C241&sr=8-21

https://www.amazon.in/MEE-Premium-Steel-Feeding-Bottle/dp/B085QH2JDC/ref=sr_1_28?crid=592KXMKU3VA3&keywords=FEEDING%2B

BOTTLES&qid=1694874558&srefix=feeding%2Bbottle%2Caps%2C241&sr=8-28&th=1

https://www.amazon.in/Nestle-Cerelac-Fortified-Cereal-Wheat/dp/B00I4SYT48/ref=sr_1_24_f3_0o_fs_mod_pri

Rec 1

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.

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. The International Code includes 30 references to 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.

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?crid=256G0FRZZ6ZQC&keywords=danone+foss+food&qid=1694697747&sbo=m6DjfpMzMLDmL8pSMKX8hw%3D%3D&srefix=drone+for+foo%2Caps%2C362&sr=8-1

<https://www.amazon.in/Phili>

Recommendation 1: IBFAN suggests to include ALL to read as follows:

“...Member States should ensure that regulatory measures effectively prohibit the promotion of ALL products within the scope of the Code, foods for infants and young children and any designated product ...”

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: - any other digital marketing practices, including cross-promotions, used to promote products within the scope of the Code, INSERT: 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.

RECOMMENDATION 1.2: Prohibition of packshots and packages CHANGE TO READ: “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... in any information, educational materials, materials, or any other content in the digital environment. Regulatory measures must prohibit promotional claims and idealisation , require full warnings, protect privacy and prevent inappropriate marketing via QR codes or other digital schemes.”

DELETED TEXT [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]

Rationale: Packshots of proprietary products. IBFAN recognises that it may not be feasible to prohibit online sales of all the relevant products and that there is a need for purchasers to identify products before buying. However, the Code and subsequent WHA Resolutions have consistently warned of the risks of advertising and informational materials referring to proprietary products within the scope of the Code and the need for parents and carers to seek advice from independent 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, will carry the endorsement of WHO and will legitimise code contravening promotion. Written descriptions with full warnings, should be sufficient for identification. A thumbnail of a Code compliant packshot would still contravene the Code and create risks, but may be accepted as a compromise in some jurisdictions.

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.

47th CCFL (Ottawa), Canada May 2023 (paras 123-130). Hickman et al, 2019; Westland and Crawley, 2016; Westland and Sibson, 2022.

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 INSERT: 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.

Rec 2 CHANGE as follows: Regulatory measures should prohibit promotion of products within the scope of the Code INSERT: and any designated product through health care systems INSERT or health professional or health worker associations using digital technologies. INSERT: 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'.

Rec 3 Change as follows: "Regulatory measures should prohibit promotion of products within the scope of the Code at point-of-sale in digital environments INSERT: 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." 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 INSERT: WHA 55.25 and any other text that is not prescribed by law at the point-of-sale in digital environments. INSERT 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) The Infant Feeding in Emergency guidance, notes that breastpumps can be especially problematic in resource poor and emergency situations and should not be donated. 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”

<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)

Recommendation 3.3. Regulatory measures should prohibit point-of-sale promotions described in Article 5. DELETE. 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.

Rec 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.

Rec 5 Recommendation 5: Member States should confer legal duties of compliance to monitor and take action INSERT 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

Rec 6 INSERT at the END: ensuring effective safeguards against conflicts of interested and commercial influence.

Rec 7 Member States should strengthen monitoring systems for capturing violations in the digital environment, including by: ADD reference to WHA49.15 Para 3 (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.

Rec 8

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

Rec 9

Recommendation 9 that addresses cross border marketing and trade is critically important - and something IBFAN has been highlighting. (see comments)

These Recommendations are very good and important and reflect IBFAN's long-held concerns about the impact of powerful exporting countries on trade and our call exporting nations to control their nationally domiciled businesses. 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 allow 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.

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."

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

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)

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.CAC/RCP 20-1979.

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

Rec 10 INSERT: as a minimum requirement - before irrespective

Additions? It would be great if this was not just voluntary Guidance!

The need for safeguards regarding Products for Emergencies is very important and is missing. Other concerns:

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. There should also be references to 'designated products'.

Other
Comments?

IBFAN warmly welcomes the proposals for this Guidance, that is badly needed. However, we are worried that some sections (ie packshots) might inadvertently legitimise (convey WHO endorsement) of Code violating practices.

Sector	Civil Society Organization
Country	South Africa
Role	Program Manager
Organisation	International Baby Food Action Network – Africa
Purpose	Change “other” subsequent to “its” subsequent relevant resolutions of the “World” Health Assembly (not just Health Assembly).
Background	<p>2. Recognizing the vulnerability of infants in the early months of life supports the inclusion of Neonatal in the heading: Maternal, Neonatal, Infant, and Young Child Nutrition.</p> <p>3. ...governments have an obligation to implement, monitor, and enforce internationally agreed standards... and the implementation, monitoring, and enforcement of the International Code of Marketing of the “so-called Breastmilk Substitutes”.</p> <p>4. ...legal measures that are substantially aligned with the provisions... and that the enforcement of legal measures...</p>
Scope	6. Change to: ...as well as Commercial Complementary Feeds (CCFs) instead of foods for infants and young children that are not breastmilk substitutes... Feeds (not foods) for infants and young children means all commercially produced feeds (not food) or beverage products (including complementary feeds)...
Terminology	<p>a. The following terms are used as they are in the Code (removed “as” before are)</p> <p>d. Feeds (not foods) for infants and young children... products (including complementary feeds).</p>
Rec 1	<p>e. ... commercial feeds (not foods). Substitute reference “(12)” with reference “(11)” because it is repetition (Reference 11 is the same as reference 12)</p> <p>16. 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. – This is very risky for consumers (pregnant women and lactating mothers).</p>
Rec 4	This recommendation DOES NOT sound right... It should read: Member States should prohibit inappropriate promotion of feeds for infants and young children in digital environments.
Rec 5	<p>Member States should confer legal duties of compliance to implement, monitor, and enforce regulatory measures as well as take action...</p> <p>... may be held accountable for NOT complying with duties conferred to them.</p>

Rec 6	Change “Foods” to “Feeds”.
Rec 7	<p>Member States should strengthen implementation, monitoring, and enforcement of systems...</p> <p>... artificial intelligence tools to identify potentially non-compliant digital marketing content for sanctioning (not further investigation) by specified government agencies.</p>
Rec 8	... regulatory measures that are in line with the implementation, monitoring, and enforcement of the Code...
Rec 9	<p>Change “foods” to “feeds for infants and young children”</p> <p>... regulatory measures that are in line with the implementation, monitoring, and enforcement of the Code...</p>
Rec 10	Change “Foods” to “Feeds” for Infants and Young Children
Additions?	Remove Reference 12 because it is the repetition of Reference 11.
Other Comments?	<p>The draft should be named Maternal, Neonatal, Infant, and Young Child Nutrition to highlight the Neonatal Nutrition and emphasize the need for specific and sensitive interventions e.g. avoidance of pre-lacteal feeds. This is motivated by a Global NMR that is at 18 deaths per 1000 (as per 2023 UNICEF Report); IMR @ 28 per 1000; and U5MR at 68 per 1000 births.</p> <p>The term BMS should be clarified (not only under its definition) and be changed to digital marketing of the "so called BMS" - because these “so-called BMS” have no potential nor ability to substitute a living fluid such as a breastmilk with all its more than 200 known properties.</p>

Sector	Civil Society Organization
Country	Switzerland
Role	General Secretary of ESPGHAN
Organisation	European Society for Paediatric Gastroenterology, Hepatology and Nutrition (ESPGHAN)
Purpose	ESPGHAN welcomes and supports the initiative to promote the introduction of regulations on inappropriate digital marketing of breast-milk substitutes as well as digital marketing directed at children for other food products, e.g via websites, social media, and influencers.
Terminology	ESPGHAN notes that actions of member states need to be aligned with their definitions and other marketing regulations of breast-milk substitutes.
Rec 1	<p>ESPGHAN welcomes and supports the initiative to promote the introduction of regulations on inappropriate digital marketing of breast-milk substitutes as well as digital marketing directed at children for other food products, e.g via websites, social media, and influencers.</p> <p>Actions of member states need to be aligned with their definitions and other marketing regulations of breast-milk substitutes.</p>
Rec 2	<p>ESPGHAN does not support recommendation 2.3 which calls for the prohibition of sponsorship of online meetings of health professional and scientific meetings including webinars and e-learning courses by manufacturers and distributors of products within the scope of the Code or foods for infants and young children.</p> <p>As per our statement (https://www.espghan.org/our-organisation/Publications/Societal-Statements) “we consider that financial support of medical education events by commercial organisations should be considered acceptable if scientific, ethical, societal and legal standards are followed. Conferences and educational events which are part of continuing medical education (CME) should be organised under the direction and supervision, and within the regulatory framework, of independent scientific societies, professional organisations, governmental or public bodies. These bodies should ensure that programmes are balanced, provide evidence-based information and strictly exclude any influence of commercial interests. All interactions between breast milk substitute companies and paediatric associations should be governed by robust and transparent procedures to mitigate the risk of perceived or actual inappropriate influence on healthcare professional behaviour”. This statement applies to online educational events, meetings, webinars and e-learning events as well as to those conducted face-to-face.</p>

Sector	Civil Society Organization
Country	Trinidad and Tobago
Role	Director / Breastfeeding Counsellor / Code Officer
Organisation	The Breastfeeding Association of Trinidad and Tobago
Purpose	Concur
Background	Concur
Scope	Concur
Terminology	Concur
Rec 1	<p>We agree, however in</p> <p>1.1 b - we suggest to include - educational activities for pregnant women, mothers and families; childbirth preparation activities and month by month pregnancy programmes.</p> <p>1.3 - regulatory measures should prohibit manufacturers and distributors using initial questions or statements seeking "parents"; "acceptance or parents" request" to link to digital information.</p>
Rec 2	...digital presences including video streaming
Rec 3	Agree
Rec 4	Agree
Rec 5	Agree
Rec 6	Agree
Rec 7	Agree
Rec 8	Agree
Rec 9	Especially when digital marketing practices may cross into several countries in a Region, where not all may have similar regulatory measures.
Rec 10	Agree

Sector	Civil Society Organization
Country	Uganda
Role	Co-chair of Breastfeeding and Nutrition Committee
Organisation	International Pediatric Association
Purpose	For emphasis, “ALL” should be added, after "The purpose of this guidance is to provide support to Member States for developing and applying regulatory measures aimed at restricting digital marketing of", so that all products under the scope of the Code are covered.
Scope	Whereas most of the products under the scope of the Code have been included, it may be helpful to include this phrase “such other product as the governments may, by Notice in the Official Gazette, declare to be a “designated product”.
Terminology	Para 11 (e) include all the products under the scope of the Code
Rec 1	Add "including professionals, health workers or their associations" after "This should include prohibiting offering or providing financial or other incentives to other entities"
Rec 2	Add "or health professional Associations" after "through health care systems"
Rec 8	Efforts should be made to raise awareness on specific roles and responsibilities of all concerned parties.

Sector	Civil Society Organization
Country	United Kingdom of Great Britain and Northern Ireland
Role	Secretariat
Organisation	Baby Feeding Law Group-UK
Purpose	<p>The scope given in the purpose is “products covered in the scope of the Code”. However this is inconsistent with the scope as described in the other sections of the report, e.g. background point 4 refers only to breastmilk substitutes; scope point 6 refers to products within the scope of the Code and foods for infants and young children. We request that the scope is made clear and consistent throughout and includes at minimum commercial milk formulas marketed for use from birth to 36 months, bottles and teats, and foods for infants and young children. In addition, we request that a reference is added to 'designated products' in order that domestic legislation can cover additional products that are a concern in their context because they are marketed in a way which undermines breastfeeding and/or safe and appropriate formula feeding. Such products may include commercial milk formulas marketed for pregnant and lactating women, breast pumps, and formula preparation devices. From a UK perspective this would also provide the necessary consistency with WHO Europe's 'model law': "Effective regulatory frameworks for ending inappropriate marketing of breast-milk substitutes and foods for infants and young children in the WHO European Region" (Feb 2022). (https://apps.who.int/iris/bitstream/handle/10665/352003/WHO-EURO-2022-4885-44648-63367-eng.pdf)</p>
Background	<p>Point 2 refers to "the health risks introduced by the unnecessary and improper use of breast-milk substitutes". We would like to recommend that this is broadened out to incorporate the health risks of inappropriate commercial milk formulas. For example, in the UK formula milk companies market specific types of commercial milk formulas which lack evidence for effectiveness, under regulations for 'foods for special medical purposes', and some of these pose additional health risks to those posed by infant formula (Westland and Sibson, 2022) (https://static1.squarespace.com/static/5c6bb04a65a70771b7cbc916/t/638f348264c6ec61b3b0704c/1670329478025/FSN_FSMP+Report_A4_DIGITAL.pdf). Clearly explaining how the Code is also relevant to formula fed infants, as well as protecting breastfeeding, is vital for those of us working in Member States where formula feeding is the norm and the Code is judged as irrelevant or inappropriate.</p> <p>Point 4 needs editing with respect to the scope of this document (see comment on purpose above).</p>

Scope	<p>In point 6 we would like clarification on the scope, as per our comments on the purpose above.</p> <p>In point 7 we would like to request that it is made clear that influencers may be formal or informal. An example of an informal influencer is a ‘mummy blogger’ (Hickman et al, 2020).</p>
Terminology	<p>In point 10b ‘cross promotion’ we would like to request that it is made explicit that products used for cross promotion may be non-food items as well as food items and both are to be avoided, e.g. bath products may be marketed under the same brand name as commercial milk formulas and foods for infants and young children (Hickman et al, 2020).</p> <p>https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/605363e5a4c746541de7cd5b/1616077802431/Online_marketing_report_final.pdf</p> <p>In point 11e ‘sponsorship’ we would like to request that it is made explicit that contributions could include branded gifts. This is particularly important with respect to influencers’ work but could also encompass a scenario where parents/carers are sent branded gifts and encouraged to post them on digital platforms (Hickman et al, 2020).</p> <p>In addition it might be important to note that sponsorship may be covert; for example in the UK we have social media groups ostensibly set up and run by mothers seemingly to provide free peer support on formula feeding and who also promote a specific brand of commercial milk formula (including offering discount codes), but any commercial milk formula company involvement has been denied.</p>

Rec 1

Recommendation 1, please make the scope clear and consistent throughout, as per comment on purpose, above

Recommendation 1.1, please make the scope clear and consistent throughout, as per comment on purpose, above

Recommendation 1.1 b, please include those set up to facilitate parent to parent interaction (see comment on sponsorship, above) and company advice lines which can take the form of instant messaging on social media

Recommendation 1.1 h, on the point on brands, we agree this is important and it could be made clearer by making the suggested clarifications to the point on sponsorship, as outlined above.

Recommendation 1.4, for clarity and consistency, we suggest it is made clear whether 'product information as required to provide by law' is relevant/allowed in recommendation 1.3, para 15.

Recommendation 1.4, we agree that "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". However, we request that it is made clear that for this to be allowed there needs to be a suitable enforcement mechanism. In the UK the provision of scientific and factual information on infant formula via ads to health care professionals is permitted by law. However, there is no suitable enforcement mechanism to assess this legal requirement is met, and as a consequence this law is widely flouted (Hickman et al, 2019; Westland and Crawley, 2016; Westland and Sibson, 2022).

(<https://journals.sagepub.com/doi/pdf/10.1177/08903344211018161>)

(https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/5d00a07858660d0001500ca0/1560322176680/Scientific_and_Factual_booklet_June_2019_for_we_b.pdf. (https://static1.squarespace.com/static/5c6bb04a65a70771b7cbc916/t/638f348264c6ec61b3b0704c/1670329478025/FSN_F_SMP+Report_A4_DIGITAL.pdf)

Rec 3

21 Recommendation 3. We agree with this recommendation and would like to highlight that in the UK online market places use promotional devices to sell commercial milk formulas, foods for infants and young children, bottles and teats, such as: custom adverts, 'featured' products, 'bestsellers', 'frequently purchased with', and customer reviews. In addition, search functions may be set up to return products within the scope of these guidelines, where this may not be what the consumer was looking for, leading to inappropriate advertising of commercial milk formulas etc.

23 Recommendation 3.2. We would like to request that custom adverts are listed (Hickman et al, 2020).

(https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/605363e5a4c746541de7cd5b/1616077802431/Online_marketing_report_final.pdf)

Rec 6	28 Recommendation 6. We would like to request that it is made explicit that government agencies responsible for implementation, monitoring, and enforcement of the Code and the Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children should be entirely independent of industry, with respect to the scope of these guidelines. In the UK it is our understanding that this is not the case, as the local authority Trading Standards Officers who hold 'primary authority' with commercial milk formula companies are in part funded by those companies.
Rec 8	30 Recommendation 8. With respect to the reference for 'proportionate' sanctions, we would like to highlight that proportionality is subjective and in the UK is used as a defence for poor enforcement of the laws informed by the Code. Reference to proportionality therefore requires clarification.
Other Comments?	This guidance is much needed and we would to thank all of those involved in its development to date and this consultation.

Sector	Civil Society Organization
Country	United Kingdom of Great Britain and Northern Ireland
Role	Policy Director, IBFAN Global Advocacy
Organisation	Baby Milk Action IBFAN UK
Purpose	<p>Please INSERT the word ALL in the first sentence to read:</p> <p>“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....”</p> <p>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. Please also see comments later regarding Designated products.</p>
Background	<p>Para 4 DELETE THE FOLLOWING WORDS: “Yet, few countries have” INSERT " 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.”.</p> <p>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 suggests that 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.</p>

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 that both refer to "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.

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. Note: WHO's 2016 and 2018 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 2020 and 2022 reports.

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 so should be covered. For more on Designated products See comments on Recommendation 1.1. and 1.1.h

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 also para 10. The International Code includes 30 references to INFORMATION, and recommends 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

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?crid=256G0FRZZ6ZQC&keywords=danone+fos+food&qid=1694697747&sbo=m6DjfpMzMLDmL8pSMKX8hw%3D%3D&prefix=drone+for+foo%2Caps%2C362&sr=8-1

Terminology

Para 10b: Add the following text at the end of the para: 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

Hickman et al, 2021,

<https://journals.sagepub.com/doi/10.1177/08903344211018161>

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

Recommendation 1. include ALL to read: “...prohibit the promotion of ALL products within the scope of the Code, foods for infants and young children and any designated product ...”

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:

RECOMMENDATION 1.2: CHANGE TO READ: “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 in any information, educational materials, materials, or any other content in the digital environment. Regulatory measures must prohibit promotional claims and idealisation, require full warnings, protect privacy and prevent inappropriate marketing via QR codes or other digital schemes.

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, that will carry the endorsement of WHO will legitimise code contravening promotion. Written descriptions with full warnings, should be sufficient for identification. A thumbnail of a Code compliant packshot would still contravene the Code and create risks but may be considered acceptable in some jurisdictions.

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

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

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.

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

Rec 2

RECOMMENDATION 2: Regulatory measures should prohibit promotion of products within the scope of the Code INSERT: and any designated product through health care systems INSERT or health professional or health worker associations using digital technologies. INSERT 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’

Rec 3

Recommendation 3: Regulatory measures should prohibit promotion of products within the scope of the Code at point-of-sale in digital environments INSERT: 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.

Recommendation 3.2: CHANGE TO READ: 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 INSERT WHA 55.25 and any other text that is not prescribed by law at the point-of-sale in digital environments. INSERT: 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) The Infant Feeding in Emergency guidance, notes that breastpumps can be especially problematic in resource poor and emergency situations and should not be donated. 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”

<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)

<https://www.ibfan.org/infant-feeding-in-emergencies/>

Recommendation 3.3. Regulatory measures should prohibit point-of-sale promotions described in Article 5 [DELETE: 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.

Rec 4

Recommendation 4. Change to read: 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.

- Rec 5 Recommendation 5: Member States should confer legal duties of compliance to monitor and take action INSERT: 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.
- Rec 6 Regulatory measures should identify government agencies responsible for implementation, monitoring, and enforcement of the Code and the Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children, including in digital environments, establish mechanisms for inter-agency collaboration, allocate adequate resources and establish powers necessary for discharging these duties, INSERT ensuring effective safeguards against conflicts of interested and commercial influence.
- Rec 7 29. RECOMMENDATION 7: Member States should strengthen monitoring systems for capturing violations in the digital environment, including by:
- ADDA reference to WHA49.15 Para 3 (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;
- Rec 8 RECOMMENDATION 8: Member States should enforce regulatory measures that implement the Code, including in digital environments, and apply effective, proportionate, dissuasive sanctions for non-compliance, informing and educating all parties regarding these obligations. Decisions regarding enforcement, monitoring and proportionality of sanctions should be protected from commercial influence.
- Although proportionality sounds reasonable, it 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.

- These Recommendations are very good and important and reflect IBFAN's long-held concerns about the impact of powerful exporting countries on trade and our call exporting nations to control their nationally domiciled businesses. 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 allow 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.

- 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."

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

Refs: 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)

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.

CAC/RCP 20-1979.

Other
Comments?

We warmly welcome these Guidelines and the acknowledgement that this is a constantly evolving market. These comments are made in an effort to future-proof and strengthen their national safeguards and ensure that the recommendations do not inadvertently legitimise practices that contravene the Code.

Sector	Civil Society Organization
Country	United Kingdom of Great Britain and Northern Ireland
Role	Programme Director
Organisation	UNICEF UK The Baby Friendly Initiative
Purpose	Explicitly mention the products that fall within the scope of the Code as these will not be widely known to be included. So mention Bottles, Teats and Foods for Infants and Young Children more frequently to offset their omission in the Title and Purpose (Para 1) and as appropriate throughout the consultation.
Background	Include the following additional elements into the background section. First, it's important to recognise that the Code is in place to protect all babies however they are fed. This is especially important for high income countries like the UK where formula feeding is the norm and where commercial harms of formula are not readily understood or accepted. Second, important to recognise the potential health risks associated with inappropriate breastmilk substitutes. For example in the UK CMF companies market formula milks which lack evidence of effectiveness and under 'foods for specialist medical purposes' which may pose additional harms in comparison to some infant formulas.
Scope	<p>Refer to 'Designated Products' to encourage and empower legislators to include products that may not be in the scope of the Code but when inappropriately marketed can undermine optimal maternal and child health; for example, ultra-processed products and formulas for pregnant and lactating mothers and children beyond 36 months (Para 6, 25 and Rec 4)</p> <p>The role of influencers could be more explicitly set out including where these are more informally in place such as through a blog. Impact of influencers is pervasive with some receiving significant CMF company sponsorship https://www.tiktok.com/@tommeetippee_/video/7276089552916221217</p>
Terminology	<p>Definitions – cross promotion can be between formula food and also between formula and non-formula food items.</p> <p>Health worker in the UK context would not include a volunteer.</p> <p>Sponsorship, could the description be expanded to include product placement and promotion by influencers who often provide relatable content to parents that undermines information and support offered by the health care professional.</p>
Rec 1	No comment. In agreement with recommendation.
Rec 2	No comment. In agreement with recommendation.

Rec 3	No comment. In agreement with recommendation.
Rec 4	No comment. In agreement with recommendation.
Rec 5	This recommendation could specifically include safeguards to protect privacy and prevent inappropriate marketing via QR codes or other digital labelling schemes.
Rec 6	Final sentence regarding scientific and factual. This is fine and currently in place in the UK but is widely abused by manufacturers and distributors because an enforcement mechanism is not in place. Recommendation should be expanded to include suitable enforcement mechanisms to be in place to prevent abuse of this principle.
Rec 7	No comment. In agreement with recommendation.
Rec 8	No comment. In agreement with recommendation.
Rec 9	No comment. In agreement with recommendation.
Rec 10	No comment. In agreement with recommendation.

Sector	Civil Society Organization
Country	United Kingdom of Great Britain and Northern Ireland
Role	Head of Policy and Public Affairs
Organisation	World Cancer Research Fund International
Purpose	No comments.
Background	No comments.
Scope	We propose that Paragraph 6 includes reference to 'Designated Products'. This would be to encourage and empower legislators to include products that may not be in the direct scope of the Code, but when inappropriately marketed can undermine optimal maternal and child health. This could include for example, ultra-processed food products high in free sugars which are aimed at infants and children.
Terminology	No comments.
Rec 1	<p>Recommendation 1.2 - we suggest including safeguards to protect privacy and prevent inappropriate marketing via QR codes or other digital labelling schemes.</p> <p>Recommendation 1.4 – we suggest adding here the need to prohibit financial or other incentives being given to professionals, health care workers or their associations.</p>
Rec 2	No comments.
Rec 3	We suggest adding an additional point after recommendation 3.2 in order to include a prohibition on the inappropriate promotion of products marketed for emergency situations or malnutrition, in line with WHA 55.25.
Rec 4	No comments.
Rec 5	Recommendation 5.1 - We propose including an additional point here to require policy setting, monitoring, enforcement and proportionality of fines for non-compliance to be protected from commercial influence.
Rec 6	No comments.
Rec 7	No comments.
Rec 8	We suggest adding the following to recommendation 8.2: The setting of sanctions including the level and proportionality of fines for non-compliance must be protected from commercial influence.

Rec 9	We strongly support recommendations 9, 9.1, 9.2, 9.3, which we believe are necessary to address problems that can arise as a result of cross-border marketing evading regulation.
Rec 10	No comments.
Additions?	No comments.
Other Comments?	WCRF International welcomes this draft Guidance as necessary to address digital marketing in order to strengthen the International Code of Marketing of Breastmilk Substitutes.

Sector	Civil Society Organization
Country	United States of America
Role	Global Advocacy Adviser
Organisation	International Lactation Consultant Association
Terminology	In Terminology section (11.e), Sponsorship, only commercial foods and drinks for infants and young children are identified. However, Recommendation 2.3 includes prohibition of sponsorship of all products within the scope of the Code. This discrepancy should be resolved.
Other Comments?	The International Lactation Consultant Association (ILCA), the member association for International Board Certified Lactation Consultants® (IBCLC®) and other healthcare professionals who care for breastfeeding families, supports the draft guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes. ILCA urges all member states of the World Health Assembly to adopt the recommendations and incorporate them into any existing or new regulatory measures aimed at restricting the marketing of breast-milk substitutes. As the professional association for lactation consultants, ILCA recognizes how digital marketing of breast-milk substitutes can further interfere with breastfeeding and results in families not meeting their personal breastfeeding goals, contributing to poorer health outcomes.

Sector	Civil Society Organization
Country	United States of America
Role	President
Organisation	National Lactation Consultant Alliance
Terminology	There should be additional definition of terms such as: machine learning, artificial intelligence (AI), data broker, digital accelerators, predictive analytics, history sniffing, bots
Additions?	<p>Consumer data is collected across connected devices, including smartphones, tablets, personal computers, smart televisions, and even smart watches and other wearables. An inquiry online or pregnancy announcements can trigger targeted advertising for baby products on all of a person's digital devices. The use of predictive analytics identifies customers who are most likely to purchase infant formula. Machine learning learns a person's buying habits and offers targeted ads. History sniffing captures web browsing data. Consumer data is purchased from ad-targeting services and data brokers. How will these issues be addressed and monitored?</p> <p>Specific interventions should be mentioned such as: Asking the Network Advertising Initiative and the Digital Advertising Alliance to include pregnancy and breastfeeding to be covered in their marketing codes to restrict formula advertising. These are self-regulatory bodies for how the digital advertising industry collects and uses sensitive information. Ask Facebook, Instagram, and Google to restrict infant formula advertising on their platforms like they do for tobacco advertising.</p> <p>The Public Health Advocacy Institute published an entire document on reducing digital marketing of infant formulas but was not mentioned or referenced in the Guidance. None of its recommendations seemed to be integrated into the draft Guidance. See https://www.phaionline.org/wp-content/uploads/2020/11/IF-Digital-Marketing-Full-Report-Nov-2020.pdf</p> <p>Monitoring should not be left up to the Members states as this simply does not work. There should be an entity created to whom violations are reported and a method created for that entity to issue public reports on Guidance violations</p>

Sector	Civil Society Organization
Country	Vietnam
Role	Technical Advisor
Organisation	Alive & Thrive, FHI 360
Background	<p>2. “the vulnerability of infants in the early months of life, ”should be changed to ” the vulnerability of infants and young children.” Industry promoted far beyond early months, even beyond 36 months or longer. “Early months” is vague.</p> <p>4. “Yet, few countries have adopted legal measures aligned with the provisions of the Code and enforcement of legal measures that have been adopted remains weak.” Please specify that it is for the digital marketing. The current write up would make people think that it is for the Code and enforcement.</p>
Scope	<p>7. “Digital marketing involves a broader range of actors than those involved in traditional marketing practices.” Would need to define or give some examples of traditional vs. modern/digital marketing.</p> <p>9. I am not sure the content is under SCOPE</p>
Terminology	<p>10.d Suggest changing “Foods for infants and young children” to “Commercial foods for infants and young children” to ensure the consistent in the contents.</p> <p>11.a: “eCommerce providers,” does not in parallel with the remaining items in the list. Consider changing.</p>
Rec 1	<p>Suggest using the same wording relating to “all channels and media, including digital media” or “using digital technologies” in the following two recommendations.</p> <p>12. RECOMMENDATION 1: Member States should ensure that regulatory measures effectively prohibit the promotion of products within the scope of the Code across all channels and media, including digital media.</p> <p>17. RECOMMENDATION 2: Regulatory measures should prohibit promotion of products within the scope of the Code through health care systems using digital technologies.</p>

Rec 2	<p>Suggest using the same wording relating to “all channels and media, including digital media” or “using digital technologies” in the following two recommendations.</p> <p>12. RECOMMENDATION 1: Member States should ensure that regulatory measures effectively prohibit the promotion of products within the scope of the Code across all channels and media, including digital media.</p> <p>17. RECOMMENDATION 2: Regulatory measures should prohibit promotion of products within the scope of the Code through health care systems using digital technologies.</p> <p>20. The key here is to promote through digital platforms. However, what if they sponsor and offline meeting, seminar, but inside, they promote a digital tool or contents. Please rewrite to be more inclusive.</p>
Additions?	Virtual Reality (VR) should be added somewhere.
Other Comments?	Great job. Thanks.

Sector	Food Industry
Country	Australia
Role	Chief Executive Officer (CEO)
Organisation	Infant Nutrition Council Australia & New Zealand (INC)
Purpose	<p>The INC supports the aim of the WHO Code to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and appropriate marketing and distribution, Breastfeeding is the optimal way to ensure the healthy growth and development of infants during the first months of life. When breastfeeding is not an option, however, the only recognised alternatives are scientifically developed, clinically demonstrated and safe breast-milk substitutes, which are manufactured in accordance with internationally recognised standards (Codex Alimentarius) and local laws and regulations. INC considers that the DRAFT Guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes (the Draft Guidance) is unnecessarily duplicative of the International Code of Marketing of Breast-milk Substitutes (the Code).</p> <p>The TITLE and PURPOSE of the Draft Guidance should not be limited to regulatory measures since the Code is not so limited. The definition of marketing in the Code is not limited to any particular form of advertising or promotion including digital marketing as set out in Article 5.1 which reads: “There should be no advertising or other form of promotion to the general public of products within the scope of this Code.”</p>
Background	<p>INC notes that the elements referred to in the background are limited to ‘breast-milk substitutes’. INC notes that there is no international agreement on what defines ‘breast-milk substitute’.</p> <p>Article 11 of the WHO Code does not stipulate that Member States must only use regulatory measures as the means to implement the Code in their member countries.</p> <p>Article 11.1 states:</p> <p>“Governments should take action to give effect to the principles and aim of this Code, as appropriate to their social and legislative framework, including the adoption of national legislation, regulations or other suitable measures.”</p> <p>Member States are best placed to decide, within their respective national contexts, which measures they wish to pursue when implementing the proposed guidance. Moreover, the Code correctly does not purport to have the legal authority to propose regulatory obligations.</p>

Scope

We believe this not to be in the child's best interest based on evidence concerning the vitamins, minerals and other nutrients necessary for the healthy growth and development of the child.

INC notes the guidance combine "products within the scope of the Code" and "foods for infants and young children that are breastmilk substitutes" and notes that breast-milk substitutes are described in the Scope as "...including infant formula and other milks or products that could be used to replace milk such as fortified plant-based milks, in either liquid or powdered form ...[and] any foods marketed or otherwise represented as being suitable". Such foods may in fact be formulated to address Member State vitamin and mineral deficiencies of this population group or for medical conditions. New Zealand and Australia both have significant levels of iron deficiency in the 0 to 2 year population group and fortified products are a vital addition to their nutrition.^b It is up to Member State governments to determine the scope and age applicability of their local codes within their national context.

Toddler milk drinks, that is, formulated supplementary drinks for young children from 1 year to 3 years, are not recognised as breastmilk substitutes by the New Zealand or Australian Governments. In any event, digital marketing is already covered under Article 5.1 of the Code, which reads: "There should be no advertising or other form of promotion to the general public of products within the scope of this Code."

Manufacturers are unable to manage – or influence – information that is not under their control.

Terminology

Member States are best placed to decide, within their respective national contexts, which measures they wish to pursue when implementing the proposed guidance. Moreover, the Code does not have the legal authority to propose regulatory obligations.

Regulatory Best Practice in New Zealand and Australia applies the principle of 'minimum effective regulation' since regulation is costly for regulators and the regulated parties. 'Minimum effective regulation' is not just about legislative measures. Our respective Parliaments intend that organisations deliver services, educate and inform and make sure people follow the rules and support resolution of disputes at least cost. None of these need to be mandated. The rules, organisations and their practices – the whole regulatory system – work together to shape people's behaviour. This applies to regulations made under the law and voluntary arrangements that may be more cost-effective.

INC does not agree with the claim that voluntary measures are not suitable for restricting marketing of breast-milk substitutes. The systems currently operating in New Zealand and Australia for applying the Code are both voluntary but both involve the respective government agencies responsible for health and related services to monitor compliance with the Australian and New Zealand Codes through a robust complaints process established by each government.

The WHO Code in Australia and New Zealand is implemented under the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF Agreement) and the Implementing and Monitoring the International Code of Marketing of Breast-milk Substitutes in New Zealand which is the Code in New Zealand and which includes The Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand (INC Code of Practice).

The MAIF Agreement and INC Code of Practice apply to the marketing of infant formula products suitable for infants up to the age of 12 months. The MAIF Agreement and the INC Code of Practice are regarded as examples of successful self-regulation as very few breaches of either are determined by the respective government complaints and compliance panels that determine breaches of the Codes. If breaches occur the resulting publication of these breaches causes considerable damage both internally within the company concerned and externally to the general public.

INC does not agree with the definition of 'breast-milk substitutes'. In New Zealand and Australia, breast-milk substitutes are recognised by the respective governments as those up to the age of 12 months, not up to three years.

Rec 1

This recommendation is already covered by the Code in Article 5.1 which reads:

"There should be no advertising or other form of promotion to the general public of products within the scope of this Code." The Recommendation is therefore unnecessary.

Paragraph 15. Recommendation 1.3 Not all infant formulas are the same and INC believes families have the right to scientific and factual information about infant formula. The aim of the Code is the provision of good infant nutrition through the protection and promotion of breastfeeding and through the provision of information about formula when necessary. Manufacturers and distributors must be permitted to respond to and return calls from consumers and provide scientific and factual information and referrals to health care professionals where there may be health, nutrition and safety matters at risk.

Paragraph 14. Recommendation 1.2 On manufacturers' own websites and platforms, care is taken to ensure the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant and young child nutrition and parenting-related topics. INC members comply with local laws and regulations in countries in which they do business.

Paragraph 16. Recommendation 1.4 INC strongly opposes this recommendation. Health professionals must have a breadth of information on which to care for their clients. This goes beyond scientific and product specifications. Providing advice, information and education is the right of the consumer to information relevant to the products they are using or are recommended to use by a health professional. This is an essential human right. It is covered in Articles 4 to 7 in the Code. The UN Convention on the Rights of the Child are added, for example Article 24 which calls on: "State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health." More specifically, Article 24.2 mandates State Parties to: "...pursue full implementation of this right and, in particular, ...to ensure that all segments of society, in particular parents and children, are informed, ... and are supported in the use of basic knowledge of child health and nutrition."

Rec 2

This recommendation is already covered by the Code in Articles 4, 5, 6 and 9 and therefore unnecessary. It is specifically addressed in the Code in Article 5.1 which reads:

"There should be no advertising or other form of promotion to the general public of products within the scope of this Code." In any event, the interactions between INC members and health professionals are consistent with, and supportive of, the medical responsibility of such professionals. This is particularly in health professionals providing nutrition recommendations to caregivers, parents and people with special dietary needs that are evidence-based and meet rigorous scientific standards.

Paragraph 18. Recommendation 2.1 While INC supports prohibition on promotion, this recommendation is unnecessary as the Code already prohibits this particularly in Article 5.1 which reads: "There should be no advertising or other form of promotion to the general public of products within the scope of this Code."

Paragraph. 19 Recommendation 2.2 INC supports the principle of prohibiting financial or material inducements and notes this is covered in the Code in Articles 4 to 8. Article 4.3 specifically notes that under certain circumstances donations of informational or educational equipment or materials can be made by manufacturers or distributors. INC recommends this recommendation is deleted.

Paragraph. 20 Recommendation 2.3 INC strongly opposes any prohibition on the sharing of scientific knowledge. This is excessive, out of scope, unnecessary and a significant limitation on the innovation in medical and nutritional science relevant to the future advances in infant and young child health and wellbeing and to the education of health professionals. Most importantly it is contrary to the Code which states in Article 6.2: "This Code does not, however, preclude the dissemination of information to health professionals as provided in Article 7.2". Prohibiting the dissemination of scientific and factual information is contrary to the health and wellbeing of infants and young children. Recommendation 2.3 should allow sponsorships that provide scientific and factual information to health care professionals and are not intended to promote or increase formula consumption. Many infants have

formula and special product needs and clinicians need to have access to factual and science-based information to inform parents and caregivers of the options available to them. Not all infant formulas are the same as they must meet the particular nutritional requirements and support the different physiological and medical needs of the infant.

The ability for specialised nutrition experts from the infant formula sector to interact with health professionals in an ethical and transparent way ensures that nutrition products are relevant and adapted for the caregivers and to the needs of the patients concerned.

As noted in the WHO Code in the Preamble:

“Affirming that health care systems, and the health professionals and other health workers serving in them, have an essential role to play in guiding infant feeding practices, encouraging and facilitating breast-feeding, and providing objective and consistent advice to mothers and families about the superior value of breastfeeding, or, where needed, on the proper use of infant formula.”

Rec 3

This recommendation is already covered in the Code in Article 5.3 which reads:

“In conformity with paragraphs 1 and 2 of this Article, there should be no point of sale advertising, giving of samples or any other promotion device to induce sales directly to the consumer at the retail level ...”.

In addition, labelling requirements are covered by the expert and evidence-based work of Codex Alimentarius and duplication with its work should be avoided.

INC believes it is important for parents and caregivers to have access to nutrition products for infants and young children online. A distinction needs to be clearly made between electronic commerce (e-commerce) and digital marketing. Decision WHA75(21) which provided a mandate for the WHO Secretariat to develop guidance for Member States refers to digital marketing not to e-commerce.

We also believe it is irresponsible to condemn e-commerce when this is a significant feature of consumer, national and international trade and commerce. This form of communication is essential for families in remote and some regional areas, was an essential component of addressing the Covid pandemic and will be in the future, should more crises such as the Covid pandemic arise.

Recommendation 3.1: This recommendation is already covered in the Code but particularly in Articles 5.1 and 5.3 and is therefore duplicative and unnecessary.

Recommendation 3.2: This recommendation is already covered in the Code in Article 5.1 which reads: “There should be no advertising or other form of promotion to the general public of products within the scope of this Code.” --The recommendation is therefore unnecessary.

Recommendation 3.3: The digital form in this recommendation is already covered in the Code in Article 5.1 which reads: “There should be no advertising or other form of promotion to the general public of products within the scope of this Code.” Codex Alimentarius covers the breadth of labelling matters in international environments as noted above and duplication should be avoided. --The recommendation is therefore both duplicative and unnecessary.

Rec 4 INC strongly opposes any prohibition on the promotion of foods for infants and young children other than those for infants and older infants to 12 months of age. It could significantly impact the recommendation of foods that feature in National Nutrition Guidelines.

It is important that foods for infants and young children that are beneficial for growth and development and that contain additional micronutrients that may be required are able to be communicated. This is especially important considering the status of this population group in different Member States.

Rec 5 Although INC agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups, we strongly oppose legal duties being conferred on compliance of regulated entities. It is up to Member State governments to determine the appropriate sharing of responsibilities and to do otherwise interferes with the legitimate operation of Member State governments and their role in governing the population.

Paragraph 27 Recommendation 5.1: INC considers the ‘value chain’ of creativity to be a democratic pursuit. The assignment of duties is a matter for Member States to determine and to do otherwise is to interfere with the legitimate operation of Member State governments and their role in governing the population.

Rec 6 Any Member States implementing the Code would need to identify responsible agencies as New Zealand, Australia and many other Members have done. These do not need to be regulatory. In any case, the recommendation is covered in the Code which recognises the national sovereignty of Member States in Article 11.1 and which reads:

“Governments should take action to give effect to the principles and aim of this Code, as appropriate to their social and legislative framework.”.

Not only does it ignore this Article, it goes further to interfere with the legitimate operation of Member State governments and their role in governing the population. It is up to Member State governments to determine the way they operate and their role in governing their population.

- Rec 7 INC strongly opposes this recommendation including recommendations 7a., 7b., 7c., and 7d. as collectively and individually they are covered by in Article 11.1 which reads:
- “Governments should take action to give effect to the principles and aim of this Code, as appropriate to their social and legislative framework...”.
- Not only does the recommendation ignore Article 11.1, this recommendation could be seen to interfere with the legitimate operation of Member State governments and the role of those governments to govern the population. It could also be seen to dictate what should or should not go to authorities in Member State justice systems.
- Rec 8 INC strongly opposes references to sanctions throughout Recommendations 8, Paragraph 31. Recommendation 8.1 and Paragraph 32. Recommendation 8.2. These collectively reach into the responsibilities and work of the World Trade Organization (WTO) and the operation of various bilateral and multilateral treaty arrangements made with reference to the WTO.
- We note that members of the WTO are in the final stages of negotiating international rules on e-commerce. Their scope is broad, encompassing international rules that aim to ensure ‘openness’, ‘open internet access’ and the free flow of digital information cross border. This recommendation is not aligned with those aims.
- In any case, the core of these recommendations are covered in Article 11.1 which reads:
- “Governments should take action to give effect to the principles and aim of this Code, as appropriate to their social and legislative framework.”.
- Not only do Recommendations 8, 8.1 and 8.2 ignore Article 11.1 in the Code, they could be seen to be:
- interfering with the legitimate operation of Member State governments and the role of those governments to govern the population
 - determining the elements of relationships across and between Member States counter to WTO legitimate work and its operations.
- Rec 9 INC considers this recommendation is ultra vires.
- Paragraph 35. Recommendation 9.2 INC considers this recommendation interferes with the legitimate operation of Member State governments and the role of those governments to govern the population.
- Paragraph 36 Recommendation 9.3 INC considers this recommendation is ultra vires. Individual Member State governments have no jurisdiction over the activities of commercial agencies operating in other Member State jurisdictions.

Rec 10

This recommendation should be amended to:

limit application to agencies within the jurisdiction of individual Member State governments remove reference to the Guidance on inappropriate marketing of foods (outside the scope of the Code) and remove the prospect of public and private agencies ignoring any national, regional or local legislative requirements within the jurisdiction of Member State governments.

The recommendation would then read “All entities along the digital marketing value chain and in health care systems should ensure that their marketing practices conform to the Code.”

Additions?

INC considers the Draft Guidance is duplicative of the Code, exceeds the scope of the Code and, in many areas, interferes with the legitimate operation of Member State governments and the role of those governments to govern the population. In other areas it appears ultra vires or beyond Member States’ legitimate jurisdiction.

Other
Comments?

INC considers the Draft Guidance to be unnecessary and in areas such as scope, duplication with the Code, beyond Member States’ jurisdiction and goes beyond the powers that might be exercised by Member States, ultra vires and authoritarian.

We consider the expansion of scope to include any foods for population groups aged 0 to 3 years inappropriate, especially as this would be contrary to many Member States National Nutrition Guidance. We are disappointed at the lack of consideration of Member State’s sovereignty and particularly to the fact that it ignores the Code’s very clear principle that the Code should be implemented as appropriate to Member State’s social and legislative frameworks. We consider this guidance to be unnecessary and unenforceable in the current context in Australia and New Zealand.

Sector	Food Industry
Country	Belgium
Role	Secretary General
Organisation	International Special Dietary Foods Industries (ISDI)
Purpose	<p>ISDI supports our common objective – to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and appropriate marketing and distribution. We respectfully suggest this objective be added here.</p> <p>Breastfeeding is the optimal way to ensure the healthy growth and development of infants during the first months of life. When breastfeeding is not an option, however, the only recognised alternatives are scientifically developed, clinically demonstrated and safe breast-milk substitutes, which are manufactured in accordance with internationally recognised standards (Codex Alimentarius) and local laws and regulations.</p> <p>No single factor is determinative of breastfeeding rates. ISDI supports a holistic approach which includes all factors (including strengthening maternity leave, workplace policies, counselling and funding) while seeking to help parents and caregivers who are unable to, or choose not to, breastfeed.</p>
Background	<p>ISDI agrees with the application of an evidence-based approach. We respectfully suggest to add references to the UN Convention on the Rights of the Child, for example Article 24 which calls on “State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health.” More specifically, Article 24.2 mandates State Parties to “pursue full implementation of this right and, in particular,to ensure that all segments of society, in particular parents and children, are informed, ... and are supported in the use of basic knowledge of child health and nutrition” (Art. 24.2(e)).</p>

Scope	<p>ISDI holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the draft guidance should focus only on those items that are not already covered by existing WHO instruments. For a more considered response, please see our comment to Question #23, below.</p> <p>ISDI agrees that “digital marketing involves a broader range of actors.” Any guidance must include all relevant players in the digital environment, in particular those that control the vast majority of digital information about breast-milk substitutes. This is particularly important since manufacturers estimate that 80 percent of information about their products that is available on the internet is not disseminated by the manufacturer or under its control. Our members comply with local interpretations of the Code, and regulations, and have implemented stringent requirements for digital marketing compliance.</p> <p>However, manufacturers are unable to modify/take down information that is not under their control. The challenge manufacturers face is to encourage third parties – with whom manufacturers do not have a contractual relationship – to apply the same responsible marketing standards.</p>
Terminology	<p>ISDI suggests to defer to Members States on the definition of “regulatory measures.” Member States are best placed to decide, within their respective national contexts, which measures Member States wish to pursue when implementing the proposed guidance.</p> <p>In addition, the definitions listed in paragraph 10 – which are reportedly “used as they are in the Code” – may benefit from closer review. For example, the definition of “breast-milk substitutes” goes beyond the definition contained in the Code.</p> <p>ISDI supports the use of the same definitions as in the Code, or as in other relevant international standards or by other international organizations competent on the matter, such as Codex Alimentarius, to ensure consistent interpretation of terms.</p> <p>Lastly, this section would benefit from adding a definition of the term “influencer.”</p>
Rec 1	<p>ISDI respectfully suggests amending this recommendation to ensure all its provisions, in particular Recommendation 1.4, are consistent with the Code provisions on “information and education” (Article 4 of the Code). Recommendation 1.4 recognizes that “[m]anufacturers 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.”</p> <p>On manufacturers’ own websites and platforms, care is taken to ensure the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant and young child nutrition and parenting-related topics. Manufacturers comply with local laws and regulations in countries in which they do business.</p>

- Rec 2 ISDI respectfully suggests amending this recommendation to ensure all its provisions are consistent with the Code, in particular Articles 6 and 7 of the Code.
- Healthcare professionals (HCPs) ensure that caregivers, parents and people with special dietary needs have access to science-based information in order to make informed nutrition choices for themselves and their families.
- The interactions of ISDI and its members with HCPs are consistent with, and supportive of, the medical responsibility of HCPs in providing nutrition recommendations to caregivers, parents and people with special dietary needs that are evidence-based and meet rigorous scientific standards.
- Industry interactions with HCPs are responsible, transparent, ethical and in full compliance with local laws and regulations.
- ISDI will work constructively with all relevant stakeholders, including policymakers and HCPs, to promote evidence-based policies and ethical frameworks that enable caregivers, parents and people with special dietary needs to receive the best possible nutrition education and advice to help them make informed nutrition choices.
- Rec 3 ISDI believes it is important for parents and caregivers to have access to nutrition products for infants and young children online. ISDI respectfully suggests to draw a distinction between electronic commerce (addressed in this recommendation) and “digital marketing.” Decision WHA75(21) provides a mandate for the WHO to develop guidance for Member States regarding the latter, but not the former.
- The draft guidance’s proposed recommendations on labelling should also take into account existing – as well as future – international standards. For example, the Codex Alimentarius Commission has relevant standards and texts including the recently completed Standard on Follow-up Formula (CX STAN 176-1987).
- Rec 4 This recommendation may benefit from additional clarification, as has been provided for the other recommendations.
- Rec 5 ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, the nature of measures Member States wish to pursue. ISDI fully agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups.
- Rec 6 ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate inter-agency consultations and coordination, as well as other national measures Member States wish to pursue.

Rec 7	ISDI would be happy to discuss the efficacy of potential monitoring systems with the WHO as well as with individual Member States.
	<p>For example, ISDI members are individually working with the main online marketplaces and search engines to actively raise awareness of the Code and applicable laws through education and training. In addition, ISDI members are also monitoring independent websites to identify regulatory and compliance issues. ISDI members frequently contact third parties and individuals, including through legal means, who misrepresent their breast-milk substitutes products or act in a manner that is not in compliance with laws and regulations and request such actions to cease and desist.</p> <p>Manufacturers continue to evaluate new technologies and means to help monitor independent websites, but at present there is no optimal solution.</p>
Rec 8	ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate enforcement mechanisms, as well as other national measures Member States wish to pursue.
Rec 9	<p>ISDI respectfully suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations.</p> <p>For example, Members of the World Trade Organization (WTO) are in the final stages of negotiating international rules on e-commerce. Their scope is broad, encompassing international rules that aim to ensure “openness,” “open internet access” and the free flow of digital information cross-border. This recommendation is not aligned with those aims.</p>
Rec 10	ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, and pursuant to Article 23 of the WHO Constitution (“recommendations”), the national measures that Member States wish to pursue.
Other Comments?	<p>ISDI respectfully submits the below overarching comments on the draft:</p> <p>1. Digital marketing is already covered by the Code, relevant WHA resolutions and several national laws. To avoid duplication, any additional guidance should focus on only those items that are not already covered by existing WHO instruments, including the Code and WHA resolutions.</p> <p>For example, the Code defines marketing in broad terms – as “product promotion, distribution, selling, advertising, product public relations, and information services – allowing for any form of marketing, including digital, to be included within its scope. Resolution WHA69.9 specifies that “promotion” should be “broadly interpreted” to include communications “through traditional mass communication channels, the Internet and other marketing media using a variety of promotional methods.”</p>

2. Preserving access to factual, scientific information in digital channels, where many parents and caregivers seek information, is essential to providing timely information that furthers public health goals.

3. ISDI supports efforts by national governments to ensure that compliance with national laws extends to all stakeholders in the digital ecosystem, beyond manufacturers. Manufacturers continue to evaluate new technologies and means to help monitor independent websites. ISDI would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

Sector	Food Industry
Country	Belgium
Role	Regulatory & Scientific Manager
Organisation	Specialised Nutrition Europe
Scope	<p>With regard to point 6, SNE would like to highlight the following:</p> <ul style="list-style-type: none"> - Including complementary foods under the scope of this Guidance is highly questionable. Complementary foods are very different products from breastmilk substitutes and are not regulated as such in the EU. They can be introduced alongside with breastfeeding and as such are not liable to undermine breastfeeding. Complementary foods should therefore not be included in this Guidance. - Similarly, growing-up milks should not be included in the scope of the Guidance, as they should not be considered as breastmilk substitutes. These products, which are targeting young children after the age of 1 year, are a complement to the diet. They are not intended to be used as a substitute to breastmilk and should therefore not be included in the scope of the Guidance. - In the EU, follow-on formula (for infants from 6 to 12 months) is not considered as a breastmilk substitute. SNE supports this approach and therefore recommends that the scope of the Guidance should only cover infant formula. <p>With regard to point 9, SNE supports that statement that 'This guidance recognises that national regulatory environments vary, and effective implementation mechanisms will adapt to country contexts and regulatory frameworks.' In this context, the following should be noted:</p> <ul style="list-style-type: none"> -In the EU, the composition, labelling and marketing of specialised nutrition products is already covered by a strict and efficient regulatory framework: -Regulation (EU) No 609/2013 provides that 'the labelling and advertising of infant formula and follow-on formula is to be designed so as not to discourage breastfeeding' Commission Delegated Regulation (EU) 2016/127 (Articles 8 and 10) restricts advertising of infant formula to 'publications specialising in baby care and scientific publication' and prohibits the use of nutrition and health claims on infant formula. The aim of these provisions, as stated in the recitals of the Regulation, is to make sure that the information provided ensures an adequate use of the products in question and is not counter to the promotion of breast feeding, in line with the principles of the WHO code. -These provisions apply to all communication channels, including online communication.

-The impact of marketing and advertising practices on breastfeeding rates should be critically assessed in a European context. EU Member States have the same legislation, companies, products, and advertising. Notwithstanding this, breastfeeding rates across EU Member States vary a lot (from 98% in Sweden to 55% in Ireland). The differences can be explained by socioeconomic and cultural factors at the national level (e.g. length of full-paid maternity leave, public support, culture of breastfeeding).

Rec 1

As already mentioned in our comments on the scope, the EU regulatory framework already effectively restricts the promotion of infant formula across all channels:

- Regulation (EU) No 609/2013 provides that 'the labelling and advertising of infant formula and follow-on formula is to be designed so as not to discourage breastfeeding'

- Commission Delegated Regulation (EU) 2016/127 (Articles 8 and 10) restricts advertising of infant formula to 'publications specialising in baby care and scientific publication' and prohibits the use of nutrition and health claims on infant formula. The aim of these provisions, as stated in the recitals of the Regulation, is to make sure that the information provided ensures an adequate use of the products in question and is not counter to the promotion of breast feeding, in line with the principles of the WHO code.

- These provisions apply to all communication channels, including online communication.

Rec 2

SNE does not agree with this recommendation. Collaborative and inclusive dialogue between healthcare professionals and the manufacturers of breastmilk substitutes is essential to ensure optimal nutrition for infants and young children, for the following reasons:

- Appropriate communication enables HCPs to obtain accurate, science- based information on latest innovations, formulations and Products, thereby enabling HCPs to support caregivers in making appropriate nutritional choices for infants in a manner that protects breastfeeding.

- In the interest of consumers and patients, HCPs should have access to the expertise which BMS manufacturers acquired when developing specialised foods for infants in order to ensure an appropriate use of these products.

For more information, please visit our SNE webpage on interactions with healthcare professionals (<https://www.specialisednutritioneurope.eu/interactions-with-healthcare-professionals/>) and our recently adopted Code of Conduct (https://www.specialisednutritioneurope.eu/wp-content/uploads/2023/07/2023317_SNE-Code-of-Practice_July-2023.pdf).

- Rec 3 The EU regulatory framework already restricts the promotion of infant formula across all channels, including at digital point-of-sale.
- Rec 4 Including complementary foods under the scope of this Guidance is highly questionable. Complementary foods are a very different type of products from breastmilk substitutes and are not regulated as such in the EU. They can be introduced alongside with breastfeeding and as such are not liable to undermine breastfeeding. Complementary foods should therefore not be included in this Guidance.

Sector	Food Industry
Country	Brazil
Role	Executive Director
Organisation	Brazilian Association of the Food Industry for Special Purposes and Similar - ABIAD
Purpose	<p>ABIAD works with companies that produce, sell, distribute, and import food for special purposes, including those intended for infants and young children.</p> <p>Furthermore, ABIAD understands its contribution to this Public Consultation as essential and fully corroborates ISDI's comments, described below.</p> <p>ISDI, supports our common objective – to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and appropriate marketing and distribution. We respectfully suggest this objective be added here.</p> <p>Breastfeeding is the optimal way to ensure the healthy growth and development of infants during the first months of life. When breastfeeding is not an option, however, the only recognised alternatives are scientifically developed, clinically demonstrated and safe breast-milk substitutes, which are manufactured in accordance with internationally recognised standards (Codex Alimentarius) and local laws and regulations.</p> <p>No single factor is determinative of breastfeeding rates. ISDI supports a holistic approach which includes all factors (including strengthening maternity leave, workplace policies, counselling and funding) while seeking to help parents and caregivers who are unable to, or choose not to, breastfeed.</p>
Background	<p>ABIAD fully corroborates ISDI's comments, described below.</p> <p>ISDI agrees with the application of an evidence-based approach. We respectfully suggest to add references to the UN Convention on the Rights of the Child, for example Article 24 which calls on “State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health.” More specifically, Article 24.2 mandates State Parties to “pursue full implementation of this right and, in particular,to ensure that all segments of society, in particular parents and children, are informed, ... and are supported in the use of basic knowledge of child health and nutrition” (Art. 24.2(e)).</p>
Scope	<p>ABIAD fully corroborates ISDI's comments, described below.</p> <p>ISDI holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the draft guidance should focus only on those</p>

items that are not already covered by existing WHO instruments. For a more considered response, please see our comment to Question #23, below.

ISDI agrees that “digital marketing involves a broader range of actors.” Any guidance must include all relevant players in the digital environment, in particular those that control the vast majority of digital information about breast-milk substitutes. This is particularly important since manufacturers estimate that 80 percent of information about their products that is available on the internet is not disseminated by the manufacturer or under its control. Our members comply with local interpretations of the Code, and regulations, and have implemented stringent requirements for digital marketing compliance.

However, manufacturers are unable to modify/take down information that is not under their control. The challenge manufacturers face is to encourage third parties – with whom manufacturers do not have a contractual relationship – to apply the same responsible marketing standards.

Terminology

ABIAD fully corroborates ISDI's comments, described below.

ISDI suggests to defer to Member States on the definition of “regulatory measures.” Member States are best placed to decide, within their respective national contexts, which measures Member States wish to pursue when implementing the proposed guidance.

In addition, the definitions listed in paragraph 10 – which are reportedly “used as they are in the Code” – may benefit from closer review. For example, the definition of “breast-milk substitutes” goes beyond the definition contained in the Code.

ISDI supports the use of the same definitions as in the Code, or as in other relevant international standards or by other international organizations competent on the matter, such as Codex Alimentarius, to ensure consistent interpretation of terms.

Lastly, this section would benefit from adding a definition of the term “influencer.”

Rec 1

ABIAD fully corroborates ISDI's comments, described below.

ISDI respectfully suggests amending this recommendation to ensure all its provisions, in particular Recommendation 1.4, are consistent with the Code provisions on “information and education” (Article 4 of the Code). Recommendation 1.4 recognizes that “[m]anufacturers 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.”

On manufacturers’ own websites and platforms, care is taken to ensure the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant and young child nutrition and parenting-related topics. Manufacturers comply with local laws and regulations in countries in which they do business.

Rec 2

ABIAD fully corroborates ISDI's comments, described below.

ISDI respectfully suggests amending this recommendation to ensure all its provisions are consistent with the Code, in particular Articles 6 and 7 of the Code.

Healthcare professionals (HCPs) ensure that caregivers, parents and people with special dietary needs have access to science-based information in order to make informed nutrition choices for themselves and their families. The interactions of ISDI and its members with HCPs are consistent with, and supportive of, the medical responsibility of HCPs in providing nutrition recommendations to caregivers, parents and people with special dietary needs that are evidence-based and meet rigorous scientific standards.

Industry interactions with HCPs are responsible, transparent, ethical and in full compliance with local laws and regulations. ISDI will work constructively with all relevant stakeholders, including policymakers and HCPs, to promote evidence-based policies and ethical frameworks that enable caregivers, parents and people with special dietary needs to receive the best possible nutrition education and advice to help them make informed nutrition choices.

Rec 3

ABIAD fully corroborates ISDI's comments, described below.

ISDI believes it is important for parents and caregivers to have access to nutrition products for infants and young children online. ISDI respectfully suggests to draw a distinction between electronic commerce (addressed in this recommendation) and “digital marketing.” Decision WHA75(21) provides a mandate for the WHO to develop guidance for Member States regarding the latter, but not the former.

The draft guidance’s proposed recommendations on labelling should also take into account existing – as well as future – international standards. For example, the Codex Alimentarius Commission has relevant standards and texts including the recently completed Standard on Follow-up Formula (CX STAN 176-1987).

Rec 4

ABIAD fully corroborates ISDI's comments, described below.

This recommendation may benefit from additional clarification, as has been provided for the other recommendations.

Rec 5

ABIAD fully corroborates ISDI's comments, described below: ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, the nature of measures Member States wish to pursue. ISDI fully agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups.

In addition, ABIAD cites examples that are already part of the national regulatory measures and strictly followed by companies. It is important to mention that the current Brazilian legislation (Law n. 11265/2006) already prohibits, on its Article 4, the promotion of (i) Infant formula (0-6 months); (ii) follow-up formula (6-12 months); (iii) nutrient formulas presented or indicated for high risk newborns; and (iv) nursing bottles, bottle nipples and pacifiers.

Article 5 of the Law n. 11265/2006 establishes that promotional activities are permitted for Follow-up Formula for Young Children (1-3 years old), as well as for Complementary Foods for infants older than 6 months and young children, if a mandatory warning message from the Ministry of Health is in place, reinforcing the importance of breastfeeding:

For Follow-up Formula for Young Children (1-3 years old), promotions must include the following message: "The Ministry of Health informs: Breastfeeding prevents infections and allergies and is recommended until 2 (two) years of age or more".

For Complementary Foods for infants older than 6 months and young children, promotions must include the following message: "The Ministry of Health informs: after 6 (six) months of age, continue breastfeeding your child and offer new foods".

Finally, abovementioned Brazilian Law also prohibits promotional activities of in-scope products (i.e. from 0 to 36 months) in healthcare units. Article 6 determines that medical delegates are allowed to present technical and scientific materials only to healthcare professionals in such healthcare units.

Rec 6

ABIAD fully corroborates ISDI's comments, described below.

ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate inter-agency consultations and coordination, as well as other national measures Member States wish to pursue.

Rec 7	<p>ABIAD fully corroborates ISDI's comments, described below.</p> <p>ISDI would be happy to discuss the efficacy of potential monitoring systems with the WHO as well as with individual Member States. For example, ISDI members are individually working with the main online marketplaces and search engines to actively raise awareness of the Code and applicable laws through education and training. In addition, ISDI members are also monitoring independent websites to identify regulatory and compliance issues. ISDI members frequently contact third parties and individuals, including through legal means, who misrepresent their breast-milk substitutes products or act in a manner that is not in compliance with laws and regulations and request such actions to cease and desist. Manufacturers continue to evaluate new technologies and means to help monitor independent websites, but at present there is no optimal solution.</p>
Rec 8	<p>ABIAD fully corroborates ISDI's comments, described below.</p> <p>ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate enforcement mechanisms, as well as other national measures Member States wish to pursue.</p>
Rec 9	<p>ABIAD fully corroborates ISDI's comments, described below.</p> <p>ISDI respectfully suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations. For example, Members of the World Trade Organization (WTO) are in the final stages of negotiating international rules on e-commerce. Their scope is broad, encompassing international rules that aim to ensure “openness,” “open internet access” and the free flow of digital information cross-border. This recommendation is not aligned with those aims.</p>
Rec 10	<p>ABIAD fully corroborates ISDI's comments, described below.</p> <p>ISDI respectfully suggests that Member States are best placed to determine, within their respective national context, and pursuant to Article 23 of the WHO Constitution (“recommendations”), the national measures that Member States wish to pursue.</p>
Other Comments?	<p>ABIAD fully corroborates ISDI's comments, described below.</p> <p>ISDI respectfully submits the below overarching comments on the draft:</p> <ol style="list-style-type: none"> 1. Digital marketing is already covered by the Code, relevant WHA resolutions and several national laws. To avoid duplication, any additional guidance should focus on only those items that are not already covered by existing WHO instruments, including the Code and WHA resolutions. For example, the Code defines marketing in broad terms – as “product promotion, distribution, selling, advertising, product public relations, and information services – allowing for any form of marketing, including digital, to be included within its scope. Resolution WHA69.9 specifies that “promotion” should be “broadly interpreted” to include communications “through

traditional mass communication channels, the Internet and other marketing media using a variety of promotional methods.”

2. Preserving access to factual, scientific information in digital channels, where many parents and caregivers seek information, is essential to providing timely information that furthers public health goals.

3. ISDI supports efforts by national governments to ensure that compliance with national laws extends to all stakeholders in the digital ecosystem, beyond manufacturers. Manufacturers continue to evaluate new technologies and means to help monitor independent websites. ISDI would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

Sector	Food Industry
Country	Brazil
Role	Regulatory and Scientific Affairs Director
Organisation	Brazilian Food Industry Association (ABIA)
Purpose	<p>ABIA supports our common objective – to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and appropriate marketing and distribution. We respectfully suggest this objective be added here.</p> <p>Breastfeeding is the optimal way to ensure the healthy growth and development of infants during the first months of life. When breastfeeding is not an option, however, the only recognised alternatives are scientifically developed, clinically demonstrated and safe breast-milk substitutes, which are manufactured in accordance with internationally recognised standards (Codex Alimentarius) and local laws and regulations.</p> <p>No single factor is determinative of breastfeeding rates. ABIA supports a holistic approach which includes all factors (including strengthening maternity leave, workplace policies, counselling and funding) while seeking to help parents and caregivers who are unable to, or choose not to, breastfeed.</p>
Background	<p>ABIA agrees with the application of an evidence-based approach. We respectfully suggest to add references to the UN Convention on the Rights of the Child, for example Article 24 which calls on “State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health.” More specifically, Article 24.2 mandates State Parties to “pursue full implementation of this right and, in particular,to ensure that all segments of society, in particular parents and children, are informed, ... and are supported in the use of basic knowledge of child health and nutrition” (Art. 24.2(e)).</p>

Scope	<p>ABIA holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the draft guidance should focus only on those items that are not already covered by existing WHO instruments. For a more considered response, please see our comment to Question #23, below.</p>
	<p>ABIA agrees that “digital marketing involves a broader range of actors.” Any guidance must include all relevant players in the digital environment, in particular those that control the vast majority of digital information about breast-milk substitutes. This is particularly important since manufacturers estimate that 80 percent of information about their products that is available on the internet is not disseminated by the manufacturer or under its control. Our members comply with local interpretations of the Code, and regulations, and have implemented stringent requirements for digital marketing compliance.</p> <p>However, manufacturers are unable to modify/take down information that is not under their control. The challenge manufacturers face is to encourage third parties – with whom manufacturers do not have a contractual relationship – to apply the same responsible marketing standards.</p>
Terminology	<p>ABIA suggests to defer to Member States on the definition of “regulatory measures.” Member States are best placed to decide, within their respective national contexts, which measures Member States wish to pursue when implementing the proposed guidance.</p> <p>In addition, the definitions listed in paragraph 10 – which are reportedly “used as they are in the Code” – may benefit from closer review. For example, the definition of “breast-milk substitutes” goes beyond the definition contained in the Code.</p> <p>ABIA supports the use of the same definitions as in the Code, or as in other relevant international standards or by other international organizations competent on the matter, such as Codex Alimentarius, to ensure consistent interpretation of terms.</p> <p>Lastly, this section would benefit from adding a definition of the term “influencer.”</p>
Rec 1	<p>ABIA respectfully suggests amending this recommendation to ensure all its provisions, in particular Recommendation 1.4, are consistent with the Code provisions on “information and education” (Article 4 of the Code). Recommendation 1.4 recognizes that “[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.”</p> <p>On manufacturers’ own websites and platforms, care is taken to ensure the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant and young child nutrition and parenting-related topics. Manufacturers comply with local laws and regulations in countries in which they do business.</p>

- Rec 2 ABIA respectfully suggests amending this recommendation to ensure all its provisions are consistent with the Code, in particular Articles 6 and 7 of the Code.
- Healthcare professionals (HCPs) ensure that caregivers, parents and people with special dietary needs have access to science-based information in order to make informed nutrition choices for themselves and their families.
- The interactions of ABIA and its members with HCPs are consistent with, and supportive of, the medical responsibility of HCPs in providing nutrition recommendations to caregivers, parents and people with special dietary needs that are evidence-based and meet rigorous scientific standards.
- Industry interactions with HCPs are responsible, transparent, ethical and in full compliance with local laws and regulations.
- ABIA will work constructively with all relevant stakeholders, including policymakers and HCPs, to promote evidence-based policies and ethical frameworks that enable caregivers, parents and people with special dietary needs to receive the best possible nutrition education and advice to help them make informed nutrition choices.
- Rec 3 ABIA believes it is important for parents and caregivers to have access to nutrition products for infants and young children online. ABIA respectfully suggests to draw a distinction between electronic commerce (addressed in this recommendation) and “digital marketing.” Decision WHA75(21) provides a mandate for the WHO to develop guidance for Member States regarding the latter, but not the former.
- The draft guidance’s proposed recommendations on labelling should also take into account existing – as well as future – international standards. For example, the Codex Alimentarius Commission has relevant standards and texts including the recently completed Standard on Follow-up Formula (CX STAN 176-1987).
- Rec 4 This recommendation may benefit from additional clarification, as has been provided for the other recommendations
- Rec 5 ABIA respectfully suggests that Member States are best placed to determine, within their respective national context, the nature of measures Member States wish to pursue. ABIA fully agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups. In Brazil, articles 4; 5th and 6th of Law 11,265/2006 already contain express restrictions on commercial promotion for infant formulas for infants and follow-on infant formulas for infants; transitional foods and cereal-based foods suitable for infants and young children, as well as other dairy-based or non-milk foods or beverages, when marketed or otherwise presented as appropriate for feeding infants and young children , including the insertion of messages that reinforce the importance of breastfeeding.

- Rec 6 ABIA respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate inter-agency consultations, and coordination, as well as other national measures Member States wish to pursue.
- Rec 7 ABIA would be happy to discuss the efficacy of potential monitoring systems with the WHO as well as with individual Member States.
- For example, ABIA members are individually working with the main online marketplaces and search engines to actively raise awareness of the Code and applicable laws through education and training. In addition, ABIA members are also monitoring independent websites to identify regulatory and compliance issues. ABIA members frequently contact third parties and individuals, including through legal means, who misrepresent their breast-milk substitutes products or act in a manner that is not in compliance with laws and regulations and request such actions to cease and desist. Manufacturers continue to evaluate new technologies and means to help monitor independent websites, but at present there is no optimal solution.
- Rec 8 ABIA respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate enforcement mechanisms, as well as other national measures Member States wish to pursue.
- Rec 9 ABIA respectfully suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations. For example, Members of the World Trade Organization (WTO) are in the final stages of negotiating international rules on e-commerce. Their scope is broad, encompassing international rules that aim to ensure “openness,” “open internet access” and the free flow of digital information cross-border. This recommendation is not aligned with those aims.
- Rec 10 ABIA respectfully suggests that Member States are best placed to determine, within their respective national context, and pursuant to Article 23 of the WHO Constitution (“recommendations”), the national measures that Member States wish to pursue.

Other
Comments?

ABIA respectfully submits the below overarching comments on the draft:

1. Digital marketing is already covered by the Code, relevant WHA resolutions and several national laws. To avoid duplication, any additional guidance should focus on only those items that are not already covered by existing WHO instruments, including the Code and WHA resolutions. For example, the Code defines marketing in broad terms – as “product promotion, distribution, selling, advertising, product public relations, and information services – allowing for any form of marketing, including digital, to be included within its scope. Resolution WHA69.9 specifies that “promotion” should be “broadly interpreted” to include communications “through traditional mass communication channels, the Internet and other marketing media using a variety of promotional methods.”
2. Preserving access to factual, scientific information in digital channels, where many parents and caregivers seek information, is essential to providing timely information that furthers public health goals.
3. ABIA supports efforts by national governments to ensure that compliance with national laws extends to all stakeholders in the digital ecosystem, beyond manufacturers. Manufacturers continue to evaluate new technologies and means to help monitor independent websites. ABIA would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

Sector	Food Industry
Country	Mexico
Role	General Director
Organisation	Cámara Nacional de Industriales de la Leche (Canilec)
Purpose	<p>CANILEC supports our common objective – to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and appropriate marketing and distribution. We suggest this objective be added here.</p> <p>Breastfeeding is the optimal way to ensure the healthy growth and development of infants during the first months of life. When breastfeeding is not an option, however, the only recognized alternatives are scientifically developed, clinically demonstrated and safe breast-milk substitutes, which are manufactured in accordance with internationally recognized standards (Codex Alimentarius) and local laws and regulations.</p> <p>No single factor is determinative of breastfeeding rates. CANILEC supports a holistic approach which includes all factors (including strengthening maternity leave, workplace policies, counselling, and funding) while seeking to help parents and caregivers who are unable to, or choose not to, breastfeed.</p>
Background	<p>CANILEC agrees with the application of an evidence-based approach. We suggest to add references to the UN Convention on the Rights of the Child, for example Article 24 which calls on “State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health.” More specifically, Article 24.2 mandates State Parties to “pursue full implementation of this right and, in particular,to ensure that all segments of society, in particular parents and children, are informed, ... and are supported in the use of basic knowledge of child health and nutrition” (Art. 24.2(e)).</p> <p>It is recommended that Member States, when implementing, should take into account the context of local regulation.</p>
Scope	<p>CANILEC holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the draft guidance should focus only on those items that are not already covered by existing WHO instruments. For a more considered response, please see our comment to Question #23, below.</p> <p>CANILEC agrees that “digital marketing involves a broader range of actors.” Any guidance must include all relevant players in the digital environment, in particular those that control most of the digital information about breast-milk substitutes. This is particularly important since manufacturers estimate that 80 percent of information about their products that is available on the internet is not disseminated by the</p>

manufacturer or under its control. Our members comply with local interpretations of the Code -where they exist-, and current regulations, and have implemented stringent requirements for digital marketing compliance.

However, manufacturers are unable to modify/take down information that is not under their control. The challenge manufacturers face is to encourage third parties – with whom manufacturers do not have a contractual relationship – to apply the same responsible marketing standards.

Members States must ensure the proper distinction of those responsible for information and promote compliance.

Terminology

CANILEC suggests to defer to Members States on the definition of “regulatory measures.” Member States are best placed to decide, within their respective national contexts, which measures Member States wish to pursue when implementing the proposed guidance.

In addition, the definitions listed in paragraph 10 – which are reportedly “used as they are in the Code” – may benefit from closer review. For example, the definition of “breast-milk substitutes” goes beyond the definition contained in the Code.

CANILEC supports the use of the same definitions as in the Code, or as in other relevant international standards or by other international organizations competent on the matter, such as Codex Alimentarius, to ensure consistent interpretation of terms.

Lastly, this section would benefit from adding a definition of the term “influencer.” In addition, we suggest the modification as continue:

b. Digital marketing means advertising that is conducted or disseminated in digital environments and/or facilitated by digital technologies.

Rec 1

CANILEC suggests amending this recommendation to ensure all its provisions, in particular Recommendation 1.4, are consistent with the Code provisions on “information and education” (Article 4 of the Code). Recommendation 1.4 recognizes that “[m]anufacturers 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.”

On manufacturers’ own websites and platforms, care is taken to ensure the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant and young child nutrition and parenting-related topics. Manufacturers comply with local laws and regulations in countries in which they do business.

Rec 2	<p>CANILEC suggests amending this recommendation to ensure all its provisions are consistent with the Code, in particular Articles 6 and 7 of the Code.</p> <p>Healthcare professionals (HCPs) ensure that caregivers, parents and people with special dietary needs have access to science-based information in order to make informed nutrition choices for themselves and their families.</p> <p>The interactions of CANILEC and its members with HCPs are consistent with, and supportive of, the medical responsibility of HCPs in providing nutrition recommendations to caregivers, parents and people with special dietary needs that are evidence-based and meet rigorous scientific standards.</p> <p>Industry interactions with HCPs are responsible, transparent, ethical and in full compliance with local laws and regulations.</p> <p>CANILEC will work constructively with all relevant stakeholders, including policymakers and HCPs, to promote evidence-based policies and ethical frameworks that enable caregivers, parents and people with special dietary needs to receive the best possible nutrition education and advice to help them make informed nutrition choices.</p>
Rec 3	<p>CANILEC believes it is important for parents and caregivers to have access to nutrition products for infants and young children online. CANILEC suggests to draw a distinction between electronic commerce (addressed in this recommendation) and “digital marketing.” Decision WHA75(21) provides a mandate for the WHO to develop guidance for Member States regarding the latter, but not the former.</p> <p>The draft guidance’s proposed recommendations on labelling should also take into account existing – as well as future – international standards. For example, the Codex Alimentarius Commission has relevant standards and texts including the recently completed Standard on Follow-up Formula (CX STAN 156-1987).</p>
Rec 4	<p>This recommendation may benefit from additional clarification, it is necessary a description of inappropriate to describe what is inappropriate, which might be considered different from one entity to another.</p>
Rec 5	<p>CANILEC suggests that Member States are best placed to determine, within their respective national context, the nature of measures Member States wish to pursue. CANILEC fully agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups.</p>
Rec 6	<p>CANILEC suggests that Member States are best placed to determine, within their respective national context, the appropriate inter-agency consultations and coordination, as well as other national measures Member States wish to pursue.</p>

Rec 7	<p>CANILEC would discuss the efficacy of potential monitoring systems with the WHO as well as with individual Member States.</p> <p>For example, CANILEC members are individually working with the main online marketplaces and search engines to actively raise awareness of the Code and applicable laws through education and training. In addition, CANILEC members are also monitoring independent websites to identify regulatory and compliance issues. CANILEC members frequently contact third parties and individuals, including through legal means, who misrepresent their breast-milk substitutes products or act in a manner that is not in compliance with laws and regulations and request such actions to cease and desist. Manufacturers continue to evaluate new technologies and means to help monitor independent websites, but at present there is no optimal solution.</p>
Rec 8	<p>CANILEC suggests that Member States are best placed to determine, within their respective national context, the appropriate enforcement mechanisms, as well as other national measures Member States wish to pursue.</p>
Rec 9	<p>CANILEC suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations. For example, Members of the World Trade Organization (WTO) are in the final stages of negotiating international rules on e-commerce. Their scope is broad, encompassing international rules that aim to ensure “openness,” “open internet access” and the free flow of digital information cross-border. This recommendation is not aligned with those aims.</p>
Rec 10	<p>CANILEC suggests that Member States are best placed to determine, within their respective national context, and pursuant to Article 23 of the WHO Constitution (“recommendations”), the national measures that Member States wish to pursue.</p>
Additions?	<p>CANILEC has no suggestions on additional topics that should be included, beyond the analysis that each Member State in its local context must guarantee during the adoption of these guidelines.</p>

Other
Comments?

CANILEC submits the below overarching comments on the draft:

(1) Digital marketing is already covered by the Code, relevant WHA resolutions and several national laws. To avoid duplication, any additional guidance should focus on only those items that are not already covered by existing WHO instruments, including the Code and WHA resolutions.

For example, the Code defines marketing in broad terms – as “product promotion, distribution, selling, advertising, product public relations, and information services – allowing for any form of marketing, including digital, to be included within its scope. Resolution WHA69.9 specifies that “promotion” should be “broadly interpreted” to include communications “through traditional mass communication channels, the Internet and other marketing media using a variety of promotional methods.”

(2) Preserving access to factual, scientific information in digital channels, where many parents and caregivers seek information, is essential to providing timely information that furthers public health goals.

(3) CANILEC supports efforts by national governments to ensure that compliance with national laws extends to all stakeholders in the digital ecosystem, beyond manufacturers. Manufacturers continue to evaluate new technologies and means to help monitor independent websites. CANILEC would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

Sector	Food Industry
Country	Mexico
Role	Chairman of Food & Beverage Commission
Organisation	Confederación de Cámaras Industriales de los Estados Unidos Mexicanos (CONCAMIN)
Purpose	<p>CONCAMIN supports our common objective – to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, based on adequate information and appropriate marketing and distribution. We suggest this objective to be added here.</p> <p>Breastfeeding is the optimal way to ensure the healthy growth and development of infants during the first months of life. When breastfeeding is not an option, however, the only recognized alternatives are scientifically developed, clinically demonstrated and safe breast-milk substitutes, which are manufactured in accordance with internationally recognized standards (Codex Alimentarius) and local laws and regulations.</p> <p>No single factor is determinative of breastfeeding rates. CONCAMIN supports a holistic approach which includes all factors (including strengthening maternity leave, workplace policies, counselling and funding) while seeking to help parents and caregivers who are unable to, or choose not to, breastfeed.</p>
Background	<p>CONCAMIN agrees with the application of an evidence-based approach. We suggest to add references to the UN Convention on the Rights of the Child, for example Article 24 which calls on “State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health.” More specifically, Article 24.2 mandates State Parties to “pursue full implementation of this right and, in particular,to ensure that all segments of society, in particular parents and children, are informed, ... and are supported in the use of basic knowledge of child health and nutrition” (Art. 24.2(e)).</p> <p>It’s recommended for all country members to consider local regulation by the time of implementing.</p>

Scope	<p>CONCAMIN holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the draft guidance should focus only on those items that are not already covered by existing WHO instruments. For a more considered response, please see our comment to Question #23, below.</p> <p>CONCAMIN agrees that “digital marketing involves a broader range of actors.” Any guidance must include all relevant players in the digital environment, in particular those that control the vast majority of digital information about breast-milk substitutes. This is particularly important since manufacturers estimate that 80 percent of information about their products that is available on the internet is not disseminated by the manufacturer or under its control. Our members comply with local interpretations of the Code, and regulations, and have implemented stringent requirements for digital marketing compliance.</p> <p>However, manufacturers are unable to modify/take down information that is not under their control. The challenge manufacturers face is to encourage third parties – with whom manufacturers do not have a contractual relationship – to apply the same responsible marketing standards.</p> <p>Country members must assure the distinction of the responsible of developing the information and ensure its compliance.</p>
Terminology	<p>CONCAMIN suggests deferring to Members States on the definition of “regulatory measures.” Member States are best placed to decide, within their respective national contexts, which measures Member States wish to pursue when implementing the proposed guidance.</p> <p>In addition, the definitions listed in paragraph 10 – which are reportedly “used as they are in the Code” – may benefit from closer review. For example, the definition of “breast-milk substitutes” goes beyond the definition contained in the Code.</p> <p>CONCAMIN supports the use of the same definitions as in the Code, or as in other relevant international standards or by other international organizations competent on the matter, such as Codex Alimentarius, to ensure consistent interpretation of terms.</p> <p>Lastly, this section would benefit from adding a definition of the term “influencer.” In addition, we suggest the modification as continue:</p> <p>b. Digital marketing means advertising that is conducted or disseminated in digital environments and/or facilitated by digital technologies.</p>

- Rec 1 CONCAMIN suggests amending this recommendation to ensure all its provisions, in particular Recommendation 1.4, are consistent with the Code provisions on “information and education” (Article 4 of the Code). Recommendation 1.4 recognizes that “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.”
- On manufacturers’ own websites and platforms, care is taken to ensure the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant and young child nutrition and parenting-related topics. Manufacturers comply with local laws and regulations in countries in which they do business.
- Rec 2 CONCAMIN suggests amending this recommendation to ensure all its provisions are consistent with the Code, in particular Articles 6 and 7 of the Code.
- Healthcare professionals (HCPs) ensure that caregivers, parents and people with special dietary needs have access to science-based information in order to make informed nutrition choices for themselves and their families.
- The interactions of CONCAMIN and its members with HCPs are consistent with, and supportive of, the medical responsibility of HCPs in providing nutrition recommendations to caregivers, parents and people with special dietary needs that are evidence-based and meet rigorous scientific standards.
- Industry interactions with HCPs are responsible, transparent, ethical and in full compliance with local laws and regulations.
- CONCAMIN will work constructively with all relevant stakeholders, including policymakers and HCPs, to promote evidence-based policies and ethical frameworks that enable caregivers, parents and people with special dietary needs to receive the best possible nutrition education and advice to help them make informed nutrition choices.
- Rec 3 CONCAMIN believes it is important for parents and caregivers to have access to nutrition products for infants and young children online. CONCAMIN suggests drawing a distinction between electronic commerce (addressed in this recommendation) and “digital marketing.” Decision WHA75(21) provides a mandate for the WHO to develop guidance for Member States regarding the latter, but not the former.
- The draft guidance’s proposed recommendations on labelling should also consider existing – as well as future – international standards. For example, the Codex Alimentarius Commission has relevant standards and texts including the recently completed Standard on Follow-up Formula (CX STAN 156-1987).

- Rec 4 This recommendation may benefit from additional clarification, it is necessary to describe what is inappropriate, which might be considered different from one entity to another.
- Rec 5 CONCAMIN suggests that Member States are best placed to determine, within their respective national context, the nature of measures Member States wish to pursue. CONCAMIN fully agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups.
- Rec 6 CONCAMIN suggests that Member States are best placed to determine, within their respective national context, the appropriate inter-agency consultations and coordination, as well as other national measures Member States wish to pursue.
- Rec 7 CONCAMIN would discuss the efficacy of potential monitoring systems with the WHO as well as with individual Member States.
- For example, CONCAMIN members are individually working with the main online marketplaces and search engines to actively raise awareness of the Code and applicable laws through education and training. In addition, CONCAMIN members are also monitoring independent websites to identify regulatory and compliance issues. CONCAMIN members frequently contact third parties and individuals, including through legal means, who misrepresent their breast-milk substitutes products or act in a manner that is not in compliance with laws and regulations and request such actions to cease and desist. Manufacturers continue to evaluate new technologies and means to help monitor independent websites, but at present there is no optimal solution.
- Rec 8 CONCAMIN suggests that Member States are best placed to determine, within their respective national context, the appropriate enforcement mechanisms, as well as other national measures Member States wish to pursue.
- Rec 9 CONCAMIN suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations. For example, Members of the World Trade Organization (WTO) are in the final stages of negotiating international rules on e-commerce. Their scope is broad, encompassing international rules that aim to ensure “openness,” “open internet access” and the free flow of digital information cross-border. This recommendation is not aligned with those aims.
- Rec 10 CONCAMIN suggests that Member States are best placed to determine, within their respective national context, and pursuant to Article 23 of the WHO Constitution (“recommendations”), the national measures that Member States wish to pursue.

Additions?

CONCAMIN submits the below overarching comments on the draft:

Digital marketing is already covered by the Code, relevant WHA resolutions and several national laws. To avoid duplication, any additional guidance should focus on only those items that are not already covered by existing WHO instruments, including the Code and WHA resolutions.

For example, the Code defines marketing in broad terms – as “product promotion, distribution, selling, advertising, product public relations, and information services – allowing for any form of marketing, including digital, to be included within its scope. Resolution WHA69.9 specifies that “promotion” should be “broadly interpreted” to include communications “through traditional mass communication channels, the Internet and other marketing media using a variety of promotional methods.”

(Preserving access to factual, scientific information in digital channels, where many parents and caregivers seek information, is essential to providing timely information that furthers public health goals.

CONCAMIN supports efforts by national governments to ensure that compliance with national laws extends to all stakeholders in the digital ecosystem, beyond manufacturers. Manufacturers continue to evaluate new technologies and means to help monitor independent websites. CONCAMIN would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

Sector	Food Industry
Country	Spain
Role	Regulatory Affairs Manager
Organisation	ASOCIACIÓN NACIONAL DE FABRICANTES DE PRODUCTOS DE DIETÉTICA INFANTIL
Scope	<p>With regard to point 6, ANDI would like to highlight the following:</p> <ul style="list-style-type: none"> -Including complementary foods under the scope of this Guidance is highly questionable. Complementary foods are very different products from breastmilk substitutes and are not regulated as such in the EU. They can be introduced alongside with breastfeeding and as such are not liable to undermine breastfeeding. Complementary foods should therefore not be included in this Guidance. -Similarly, growing-up milks should not be included in the scope of the Guidance, as they should not be considered as breastmilk substitutes. These products, which are targeting young children after the age of 1 year, are a complement to the diet. They are not intended to be used as a substitute to breastmilk and should therefore not be included in the scope of the Guidance. -In the EU, follow-on formula (for infants from 6 to 12 months) is not considered as a breastmilk substitute. ANDI supports this approach and therefore recommends that the scope of the Guidance should only cover infant formula. <p>With regard to point 9, ANDI supports that statement that 'This guidance recognises that national regulatory environments vary, and effective implementation mechanisms will adapt to country contexts and regulatory frameworks.' In this context, the following should be noted:</p> <ul style="list-style-type: none"> - In the EU, the composition, labelling and marketing of specialised nutrition products is already covered by a strict and efficient regulatory framework: - Regulation (EU) No 609/2013 provides that 'the labelling and advertising of infant formula and follow-on formula is to be designed so as not to discourage breastfeeding' - Commission Delegated Regulation (EU) 2016/127 (Articles 8 and 10) restricts advertising of infant formula to 'publications specialising in baby care and scientific publication' and prohibits the use of nutrition and health claims on infant formula. The aim of these provisions, as stated in the recitals of the Regulation, is to make sure that the information provided ensures an adequate use of the products in question and is not counter to the promotion of breast feeding, in line with the principles of the WHO code. - These provisions apply to all communication channels, including online communication.

- The impact of marketing and advertising practices on breastfeeding rates should be critically assessed in a European context. EU Member States have the same legislation, companies, products, and advertising. Notwithstanding this, breastfeeding rates across EU Member States vary a lot (from 98% in Sweden to 55% in Ireland). The differences can be explained by socioeconomic and cultural factors at the national level (e.g. length of full-paid maternity leave, public support, culture of breastfeeding).

Rec 1

As already mentioned in our comments on the scope of the draft Guidance, the EU regulatory framework already effectively restricts the promotion of infant formula across all channels:

Regulation (EU) No 609/2013 provides that 'the labelling and advertising of infant formula and follow-on formula is to be designed so as not to discourage breastfeeding'

Commission Delegated Regulation (EU) 2016/127 (Articles 8 and 10) restricts advertising of infant formula to 'publications specialising in baby care and scientific publication' and prohibits the use of nutrition and health claims on infant formula. The aim of these provisions, as stated in the recitals of the Regulation, is to make sure that the information provided ensures an adequate use of the products in question and is not counter to the promotion of breast feeding, in line with the principles of the WHO code.

-These provisions apply to all communication channels, including online communication.

Rec 2

ANDI does not agree with this recommendation. Collaborative and inclusive dialogue between healthcare professionals and the manufacturers of breastmilk substitutes is essential to ensure optimal nutrition for infants and young children, for the following reasons:

Appropriate communication enables HCPs to obtain accurate, science- based information on latest innovations, formulations and Products, thereby enabling HCPs to support caregivers in making appropriate nutritional choices for infants in a manner that protects breastfeeding.

In the interest of consumers and patients, HCPs should have access to the expertise which BMS manufacturers acquired when developing specialised foods for infants in order to ensure an appropriate use of these products.

For more information, please visit our ANDI webpage on interactions with healthcare professionals and our Code of Conduct.

<https://dieteticainfantil.es/>

<https://www.autocontrol.es/wp-content/uploads/2016/02/c%C2%A2digo-deontol%C2%A2gico-de-buenas-pr%E2%80%A0cticas-comerciales-para-la-promoci%C2%A2n-de-los-productos-dietcticos-infantiles-andi.pdf>

- Rec 3 The EU regulatory framework already restricts the promotion of infant formula across all channels, including at digital point-of-sale.
- Rec 4 Including complementary foods under the scope of this Guidance is highly questionable. Complementary foods are a very different type of products from breastmilk substitutes and are not regulated as such in the EU. They can be introduced alongside with breastfeeding and as such are not liable to undermine breastfeeding. Complementary foods should therefore not be included in this Guidance.

Sector	Food Industry
Country	Spain
Role	Regulatory Affairs Manager
Organisation	ASOCIACIÓN NACIONAL DE FABRICANTES DE PRODUCTOS DE DIETÉTICA INFANTIL (ANDI)
Purpose	<p>ANDI supports our common objective – to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate information and appropriate marketing and distribution. We respectfully suggest this objective be added here.</p> <p>Breastfeeding is the optimal way to ensure the healthy growth and development of infants during the first months of life. When breastfeeding is not an option, however, the only recognised alternatives are scientifically developed, clinically demonstrated and safe breast-milk substitutes, which are manufactured in accordance with internationally recognised standards (Codex Alimentarius) and local laws and regulations.</p> <p>No single factor is determinative of breastfeeding rates. ANDI supports a holistic approach which includes all factors (including strengthening maternity leave, workplace policies, counselling and funding) while seeking to help parents and caregivers who are unable to, or choose not to, breastfeed.</p>
Background	<p>ANDI agrees with the application of an evidence-based approach. We respectfully suggest to add references to the UN Convention on the Rights of the Child, for example Article 24 which calls on “State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health.” More specifically, Article 24.2 mandates State Parties to “pursue full implementation of this right and, in particular,to ensure that all segments of society, in particular parents and children, are informed, ... and are supported in the use of basic knowledge of child health and nutrition” (Art. 24.2(e)).</p>

Scope	<p>ANDI holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the draft guidance should focus only on those items that are not already covered by existing WHO instruments. For a more considered response, please see our comment to Question #23, below.</p>
	<p>ANDI agrees that “digital marketing involves a broader range of actors.” Any guidance must include all relevant players in the digital environment, in particular those that control the vast majority of digital information about breast-milk substitutes. This is particularly important since manufacturers estimate that 80 percent of information about their products that is available on the internet is not disseminated by the manufacturer or under its control. Our members comply with local interpretations of the Code, and regulations, and have implemented stringent requirements for digital marketing compliance.</p> <p>However, manufacturers are unable to modify/take down information that is not under their control. The challenge manufacturers face is to encourage third parties – with whom manufacturers do not have a contractual relationship – to apply the same responsible marketing standards.</p>
Terminology	<p>ANDI suggests to defer to Member States on the definition of “regulatory measures.” Member States are best placed to decide, within their respective national contexts, which measures Member States wish to pursue when implementing the proposed guidance.</p> <p>In addition, the definitions listed in paragraph 10 – which are reportedly “used as they are in the Code” – may benefit from closer review. For example, the definition of “breast-milk substitutes” goes beyond the definition contained in the Code.</p> <p>ANDI supports the use of the same definitions as in the Code, or as in other relevant international standards or by other international organizations competent on the matter, such as Codex Alimentarius, to ensure consistent interpretation of terms.</p> <p>Lastly, this section would benefit from adding a definition of the term “influencer.”</p>
Rec 1	<p>ANDI respectfully suggests amending this recommendation to ensure all its provisions, in particular Recommendation 1.4, are consistent with the Code provisions on “information and education” (Article 4 of the Code). Recommendation 1.4 recognizes that “[m]anufacturers 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.”</p> <p>On manufacturers’ own websites and platforms, care is taken to ensure the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant and young child nutrition and parenting-related topics. Manufacturers comply with local laws and regulations in countries in which they do business.</p>

- Rec 2 ANDI respectfully suggests amending this recommendation to ensure all its provisions are consistent with the Code, in particular Articles 6 and 7 of the Code.
- Healthcare professionals (HCPs) ensure that caregivers, parents and people with special dietary needs have access to science-based information in order to make informed nutrition choices for themselves and their families.
- The interactions of ANDI and its members with HCPs are consistent with, and supportive of, the medical responsibility of HCPs in providing nutrition recommendations to caregivers, parents and people with special dietary needs that are evidence-based and meet rigorous scientific standards.
- Industry interactions with HCPs are responsible, transparent, ethical and in full compliance with local laws and regulations.
- ANDI will work constructively with all relevant stakeholders, including policymakers and HCPs, to promote evidence-based policies and ethical frameworks that enable caregivers, parents and people with special dietary needs to receive the best possible nutrition education and advice to help them make informed nutrition choices.
- Rec 3 ANDI believes it is important for parents and caregivers to have access to nutrition products for infants and young children online. ANDI respectfully suggests to draw a distinction between electronic commerce (addressed in this recommendation) and “digital marketing.” Decision WHA75(21) provides a mandate for the WHO to develop guidance for Member States regarding the latter, but not the former.
- The draft guidance’s proposed recommendations on labelling should also take into account existing – as well as future – international standards. For example, the Codex Alimentarius Commission has relevant standards and texts including the recently completed Standard on Follow-up Formula (CX STAN 176-1987).
- Rec 4 This recommendation may benefit from additional clarification, as has been provided for the other recommendations.
- Rec 5 ANDI respectfully suggests that Member States are best placed to determine, within their respective national context, the nature of measures Member States wish to pursue. ANDI fully agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups.
- Rec 6 ANDI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate inter-agency consultations and coordination, as well as other national measures Member States wish to pursue.

Rec 7	<p>ANDI would be happy to discuss the efficacy of potential monitoring systems with the WHO as well as with individual Member States.</p> <p>For example, ANDI members are individually working with the main online marketplaces and search engines to actively raise awareness of the Code and applicable laws through education and training. In addition, ANDI members are also monitoring independent websites to identify regulatory and compliance issues. ANDI members frequently contact third parties and individuals, including through legal means, who misrepresent their breast-milk substitutes products or act in a manner that is not in compliance with laws and regulations and request such actions to cease and desist. Manufacturers continue to evaluate new technologies and means to help monitor independent websites, but at present there is no optimal solution.</p>
Rec 8	<p>ANDI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate enforcement mechanisms, as well as other national measures Member States wish to pursue.</p>
Rec 9	<p>ANDI respectfully suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations. For example, Members of the World Trade Organization (WTO) are in the final stages of negotiating international rules on e-commerce. Their scope is broad, encompassing international rules that aim to ensure “openness,” “open internet access” and the free flow of digital information cross-border. This recommendation is not aligned with those aims.</p>
Rec 10	<p>ANDI respectfully suggests that Member States are best placed to determine, within their respective national context, and pursuant to Article 23 of the WHO Constitution (“recommendations”), the national measures that Member States wish to pursue.</p>
Other Comments?	<p>ANDI respectfully submits the below overarching comments on the draft:</p> <p>Digital marketing is already covered by the Code, relevant WHA resolutions and several national laws. To avoid duplication, any additional guidance should focus on only those items that are not already covered by existing WHO instruments, including the Code and WHA resolutions. For example, the Code defines marketing in broad terms – as “product promotion, distribution, selling, advertising, product public relations, and information services – allowing for any form of marketing, including digital, to be included within its scope. Resolution WHA69.9 specifies that “promotion” should be “broadly interpreted” to include communications “through traditional mass communication channels, the Internet and other marketing media using a variety of promotional methods.”</p> <p>Preserving access to factual, scientific information in digital channels, where many parents and caregivers seek information, is essential to providing timely information that furthers public health goals.</p>

ANDI supports efforts by national governments to ensure that compliance with national laws extends to all stakeholders in the digital ecosystem, beyond manufacturers. Manufacturers continue to evaluate new technologies and means to help monitor independent websites. ANDI would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

Sector	Food Industry
Country	Switzerland
Role	Secretary General
Organisation	SANI - Swiss Association of Nutrition Industries
Purpose	<p>SANI supports our common objective – to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breast-feeding, and by ensuring the proper use of breast-milk substitutes, when these are necessary, on the basis of adequate of adequate information and appropriate marketing and distribution. We respectfully suggest this objective be added here.</p> <p>Breastfeeding is the optimal way to ensure the healthy growth and development of infants during the first months of life. When breastfeeding is not an option, however, the only recognised alternatives are scientifically developed, clinically demonstrated and safe breastmilk substitutes (BMS), which are manufactured in accordance with internationally recognised standards (Codex Alimentarius) and local regulations.</p> <p>No single factor is determinative of breastfeeding rates. SANI supports a holistic approach which includes all factors (including strengthening maternity leave, workplace policies, counselling and funding) while seeking to help parents and caregivers who are unable to, or choose not to, breastfeed.</p> <p>In the Switzerland, the composition, labelling and marketing of specialised nutrition products is already covered by a strict and efficient regulatory framework.</p>
Background	<p>SANI agrees with the application of an evidence-based approach. We respectfully suggest to add references to the UN Convention on the Rights of the Child, for example Article 24 which calls on “State Parties [to] recognize the right of the child to the enjoyment of the highest attainable standard of health.” More specifically, Article 24.2 mandates State Parties to “pursue full implementation of this right and, in particular,to ensure that all segments of society, in particular parents and children, are informed, ... and are supported in the use of basic knowledge of child health and nutrition.” (Art. 24.2(e)).</p>

Scope

SANI holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the draft guidance should focus only on those items that are not already covered by existing WHO instruments. For a more considered response, please see our comment to Question #23, below.

SANI agrees that “digital marketing involves a broader range of actors.” Any guidance must include all relevant players in the digital environment, in particular those that control the vast majority of digital information about breastmilk substitutes. This is particularly important since manufacturers estimate that 80 percent of information about their products that is available on the internet is not disseminated by the manufacturer or under its control. Our members already comply with local interpretations of the Code, and regulations, and have implemented stringent requirements for digital marketing compliance.

However, manufacturers are unable to modify / take down information that is not under its control. The challenge manufacturers face is to encourage third parties – with whom manufacturers’ do not have a contractual relationship – to apply the same responsible infant formula marketing standards.

With regard to point 6, SANI would like to highlight the following:

- Including complementary foods under the scope of this Guidance is highly questionable. Complementary foods are very different products from breastmilk substitutes. They can be introduced alongside with breastfeeding and as such are not liable to undermine breastfeeding. Complementary foods should therefore not be included in this Guidance.

- SANI does not consider follow-on formula (for infants from 6 to 36 months) as a breastmilk substitute. SANI therefore recommends that the scope of the Guidance should only cover infant formula.

With regard to point 9, SNE supports that statement that 'This guidance recognises that national regulatory environments vary, and effective implementation mechanisms will adapt to country contexts and regulatory frameworks.' In this context, the following should be noted: -The regulatory framework in Switzerland is clear and adapted to the Swiss environment; - Advertising for infant formula is prohibited according to Article 41 of the Ordinance of 16 December 2016 on Foodstuffs and Utility Articles (SR 817.02). Article 2 defines "advertising" as product information for promotional purposes, any form of promotion, and direct marketing, which includes digital marketing through remote communication; - The FDHA Ordinance of 16 December 2016 on Foodstuffs for Persons with Special Dietary Requirements (Articles 7-10) restricts advertising of infant formula to 'publications specialising in baby care and scientific publication' and prohibits the use of nutrition and health claims on infant formula.

The aim of these provisions, as stated in the recitals of the Regulation, is to make sure that the information provided ensures an adequate use of the products in question and is not counter to the promotion of breast feeding, in line with the principles of the WHO code; -The impact of marketing and advertising practices on breastfeeding rates should be critically assessed in a Swiss and European context. Switzerland and the EU Member States have the same or very similar legislation, companies, products, and advertising. Notwithstanding this, breastfeeding rates across EU Member States vary a lot (from 98% in Sweden to 55% in Ireland). The differences can be explained by socioeconomic and cultural factors at the national level (e.g. length of full-paid maternity leave, public support, culture of breastfeeding).

Terminology

SANI suggests to defer to Member States on the definition of “regulatory measures.” Member States are best placed to decide, within their respective national contexts, which measures Member States wish to pursue when implementing the proposed guidance.

In addition, the definitions listed in paragraph 10 – which are reportedly “used as they are in the Code” – may benefit from closer review. For example, the definition of “breast-milk substitutes” goes beyond the definition contained in the Code.

SANI supports the use of the same definitions as in the Code, or as in other relevant international standards or other international organizations competent on the matter, such as Codex Alimentarius, to ensure consistent interpretation of terms.

Lastly, this section would benefit from adding a definition of the term “influencer.”

Rec 1

As already mentioned in our comments on the scope of the draft Guidance, the Swiss regulatory framework already effectively restricts the promotion of infant formula across all channels.

SANI respectfully suggests amending this recommendation to ensure all its provisions, in particular Recommendation 1.4, are consistent with the Code provisions on “information and education” (Article 4 of the Code). Recommendation 1.4 recognizes that “[m]anufacturers 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”.

On manufacturers’ own websites and platforms, care is taken to ensure the content does not promote BMS, but rather provides science-based information on maternal, infant and young child nutrition and parenting-related topics. Manufacturers comply with local laws and regulations in countries in which they do business.

- Rec 2 SANI does not agree with this recommendation. Collaborative and inclusive dialogue between healthcare professionals and the manufacturers of breastmilk substitutes is essential to ensure optimal nutrition for infants and young children, for the following reasons:
- Appropriate communication enables HCPs to obtain accurate, science- based information on latest innovations, formulations and Products, thereby enabling HCPs to support caregivers in making appropriate nutritional choices for infants in a manner that protects breastfeeding.
 - In the interest of consumers and patients, HCPs should have access to the expertise which BMS manufacturers acquired when developing specialised foods for infants in order to ensure an appropriate use of these products.
- SANI commits to the SNE Code of Conduct for interactions with healthcare professionals.
- Rec 3 SANI believes it is important for parents and caregivers to have access to nutrition products for infants and young children online. SANI respectfully suggests to draw a distinction between "electronic commerce" (addressed in this recommendation) and "digital marketing". Decision WHA75(21) provided a mandate for the WHO Secretariat to develop guidance for Member States regarding the latter, but not the former.
- The draft guidance's proposed recommendations on labelling should also take into account existing – as well as future – international standards. For example, the Codex Alimentarius Commission has relevant standards and texts including the recently completed Standard on Follow-up Formula (CX STAN 176-1987).
- Rec 4 Including complementary foods under the scope of this Guidance is highly questionable. Complementary foods are a very different type of products from breastmilk substitutes. They can be introduced alongside with breastfeeding and as such are not liable to undermine breastfeeding. Complementary foods should therefore not be included in this Guidance.
- Rec 5 SANI respectfully suggests that Member States are best placed to determine, within their respective national context, the nature of measures Member States wish to pursue. ISDI fully agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups.
- Rec 6 SANI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate inter-agency consultations and coordination, as well as other national regulatory measures Member States wish to pursue.

Rec 7	<p>As a member of ISDI, SANI agrees refers to their comments to this question:</p> <p>ISDI would be happy to discuss the efficacy of potential monitoring systems with the WHO as well as with individual Member States.</p> <p>For example, ISDI members are individually working with the main online marketplaces and search engines to actively raise awareness of the Code and applicable laws through education and training. In addition, ISDI members are also monitoring independent websites to identify regulatory and compliance issues. ISDI members frequently contact third parties and individuals, including through legal means, who misrepresent their BMS products or act in a manner that is not in compliance with laws and regulations and request such actions to cease and desist. Manufacturers continue to evaluate new technologies and means to help monitor independent websites, but at present there is no optimal solution.</p> <p>SANI holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the draft guidance should focus only on those items that are not already covered by existing WHO instruments. For a more considered response, please see our comment to Question #23, below.</p> <p>SANI Members have discussed digital marketing and have found some common practices in order to go beyond the legal provisions on this topic.</p>
Rec 8	<p>SANI respectfully suggests that Member States are best placed to determine, within their respective national context, the appropriate enforcement mechanisms, as well as other national measures Member States wish to pursue.</p>
Rec 9	<p>SANI respectfully suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations. For example, Members of the World Trade Organization (“WTO”) are in the final stages of negotiating international rules on e-commerce. Their scope is broad, encompassing international rules that aim to ensure “openness,” “open internet access” and the free flow of digital information cross-border. This recommendation is not aligned with those aims.</p>
Rec 10	<p>SANI respectfully suggests that Member States are best placed to determine, within their respective national context, and pursuant to Article 23 of the WHO Constitution (“recommendations”), the national measures that Member States wish to pursue.</p>
Other Comments?	<p>SANI respectfully submits the below overarching comments on the draft:</p> <p>(1) Digital marketing is already covered by the Code, relevant WHA resolutions and several national laws. To avoid duplication, any additional guidance should focus on only those items that are not already covered by existing WHO instruments, including the Code and WHA resolutions.</p> <p>For example, the Code defines marketing in broad terms – as “product promotion, distribution, selling, advertising, product public relations, and information services –</p>

allowing for any form of marketing, including digital, to be included within its scope. Resolution WHA69.9 specifies that “promotion” should be “broadly interpreted” to

include communications “through traditional mass communication channels, the Internet and other marketing media using a variety of promotional methods.”

(2) Preserving access to factual, scientific information in digital channels, where many parents and caregivers seek information, is essential to providing timely information that furthers public health goals.

(3) SANI supports efforts by national governments to ensure that compliance with national laws extends to all stakeholders in the digital ecosystem, beyond manufacturers. Manufacturers continue to evaluate new technologies and means to help monitor independent websites. ISDI would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

Sector	Food Industry
Country	United Kingdom of Great Britain and Northern Ireland
Role	Director General
Organisation	British Specialist Nutrition Association (BSNA)
Purpose	BSNA is an International Special Dietary Foods Industries (ISDI) member and fully supports the responses to all questions as submitted by ISDI. Please see our additional response to question 15.
Rec 5	BSNA has a Code of Practice that already includes coverage of digital marketing - https://d1otsxbtxs06ly.cloudfront.net/secure-files/INI-Code-of-Practice-Brochure-Master.pdf

Sector	Food Industry
Country	Vietnam
Role	APIYCNA Secretariat
Organisation	Asia Pacific Infant and Young Child Nutrition Association (APIYCNA)
Purpose	<p>APIYCNA aligns with our shared goal of promoting the provision of safe and sufficient nutrition for infants. This is achieved through the protection and promotion of breastfeeding, as well as ensuring the appropriate use of breast-milk substitutes when they are necessary. This is done by providing accurate information and implementing suitable marketing and distribution strategies. We respectfully propose considering the inclusion of this objective in this context.</p> <p>Breastfeeding is widely recognised as a beneficial method to support the healthy growth and development of infants in the early stages of life. But when breastfeeding is not feasible, there are alternative options available that have been scientifically developed, clinically demonstrated, and proven to be safe. These alternatives are known as breast-milk substitutes and are manufactured in accordance with internationally recognised standards (Codex Alimentarius) and local regulations.</p> <p>No single factor is determinative of breastfeeding rates. APIYCNA advocates for a comprehensive approach that takes into consideration various factors, such as enhancing maternity leave, implementing supportive workplace policies, providing counselling services, and securing adequate funding.</p>
Background	APIYCNA supports the implementation of an evidence-based strategy. We respectfully suggest including references to the United Nations Convention on the Rights of the Child, such as Article 24 which requires "State Parties to recognise the right of the child to the highest achievable standard of health."
Scope	<p>APIYCNA holds the view that digital marketing is already covered by the Code and relevant WHA resolutions. To avoid duplication, the proposed guidance should only address topics that are not already addressed by existing WHO instruments.</p> <p>APIYCNA concurs that "digital marketing involves a broader range of actors." Any guidance related to it must include all relevant actors in the digital environment, especially those who control the vast majority of digital information about breast-milk substitutes. Manufacturers estimate that 80% of the information about their products that is available on the Internet is not disseminated by the manufacturers or under its control. Our members have already implemented stringent requirements for digital marketing compliance and comply with local interpretations of the Code and regulations. However, manufacturers are unable to alter or remove information that is not under their control.</p>

Terminology	<p>APIYCNA recommends deferring to Member States regarding the definition of "regulatory measures." Member States are in the best position to determine, within their respective national contexts, which implementation measures they wish to pursue.</p> <p>In addition, the definitions listed in paragraph 10 that are reportedly "used as they are in the Code" may benefit from a closer examination. For instance, the definition of "breast-milk substitutes" goes beyond the Code's definition.</p> <p>To ensure consistent interpretation of terms, APIYCNA supports the use of the same definitions as in the Code, or as in other relevant international standards or other international organisations competent in the matter, such as Codex Alimentarius.</p> <p>This section would also be strengthened by the addition of a definition of the term "influencer."</p>
Rec 1	<p>APIYCNA respectfully suggests amending this recommendation to ensure all its provisions, in particular recommendation 1.4, are consistent with the Code provisions on "information and education" (Article 4 of the Code).</p> <p>It is essential that consumers have access to factual information when making decisions about breastfeeding practices, as these items are of critical importance to mothers. In the Asia-Pacific region, the breast-milk substitutes industry operates in accordance with the respective national legal frameworks and international trade agreements. Manufacturers also abide by local laws and regulations in the countries where they do business. On their websites and platforms, care is taken to ensure that the content does not promote breast-milk substitutes, but rather provides science-based information on maternal, infant, and young child nutrition, as well as parenting-related topics.</p>
Rec 2	<p>APIYCNA respectfully suggests modifying this recommendation so that all of its provisions are in accordance with the Code. Healthcare professionals ensure that caregivers, parents, and people with special dietary needs have access to evidence-based nutrition information so that they can make informed decisions for themselves and their families.</p> <p>The interactions of APIYCNA and its members with HCPs (such as in Thailand and Malaysia) are consistent with, and supportive of, the medical responsibility of HCPs in providing nutrition recommendations to caregivers, parents and people with special dietary needs that are evidence-based and meet rigorous scientific standards.</p> <p>Under the ASEAN Socio-Cultural Community's policy priorities, ASEAN is committed to advancing healthcare through standardised regulations and improved digital infrastructure. This was subsequently echoed by some Member States like Malaysia, which stated its commitment to achieve healthcare digitalisation transformation by 2030.</p>

- Rec 3 APIYCNNA respectfully suggests distinguishing between electronic commerce (the subject of this recommendation) and digital marketing. The WHO Secretariat was tasked by Decision WHA75(21) to develop guidance for Member States regarding the latter, but not the former.
- Recommendations within this guidance may not align with the principle of the recently announced Digital Economy Framework Agreement (DEFA) at the ASEAN level in terms of “developing a modern, comprehensive, and coherent digital transformation strategy towards an ASEAN Digital Economy, where the seamless and secure flow of goods, services, and data is underpinned by enabling rules, regulation, infrastructure, and talent.”
- Rec 4 As with the other recommendations, this recommendation may benefit from additional clarification.
- Rec 5 APIYCNNA respectfully suggests that Member States are best placed to determine, within their respective national context, the nature of measures Member States wish to pursue. APIYCNNA fully agrees that digital marketing is a shared responsibility across governments, industry, digital marketing platforms and other stakeholder groups.
- Our members, in whichever market they operate, have strong internal codes of conduct. In Indonesia and Thailand, these compliance mechanisms include control over the creation, publication, distribution, and removal of content that does not comply and has been proven effective. In Vietnam, it also includes monitoring the emerging violations on digital platforms and are in the process of connecting with e retailers such as Lazada and Shopee. Other existing self-regulatory for Member States such as Singapore and Australia have proven effective in ensuring robust compliance.
- Rec 6 APIYCNNA respectfully suggests that Member States are in the best position to determine inter-agency mechanisms in implementing, monitoring, and enforcing national measures they wish to pursue. Involvement of the likes of relevant information and communications or digital transformation government agencies or bodies is crucial to strike a balance in regulating digital marketing practices and ensuring information dissemination for consumers.

- Rec 7 APIYCNA welcomes discussions on the efficacy of potential monitoring systems with individual Member States.
- For example, APIYCNA members through local associations in Indonesia, Singapore and Thailand are together working with the main online marketplaces to actively raise awareness of the Code and applicable laws and regulations through education and training. APIYCNA and our members also monitor independent websites to identify regulatory and compliance issues. Manufacturers continue to evaluate new technologies and methods for monitoring independent websites, but no optimal solution has yet been identified.
- Enhancing monitoring systems can play a crucial role in creating a safer online environment and improving consumer access to trustworthy information. However, such monitoring processes must be conducted with the utmost care and transparency in order to mitigate any potential risks of censorship and violations of freedom of expression and information.
- Rec 8 APIYCNA respectfully suggests that Member States are in the best position to determine, within their respective national contexts, the appropriate enforcement mechanisms and other national measures they wish to pursue.
- Rec 9 APIYCNA respectfully suggests amending this recommendation, taking into account existing legislation and policies, as well as existing – and future – international obligations. APIYCNA’s members are already subject to trade regulations that emphasise transparency and the free flow of goods.
- Rec 10 APIYCNA respectfully suggests that Member States are in the best position to determine, within their respective national contexts and in accordance with Article 23 of the WHO Constitution ("recommendations"), the national measures they wish to pursue.

Other
Comments?

APIYCNA respectfully submits the below overarching comments on the draft:

(1) Digital marketing is already covered by the Code, relevant WHA resolutions and several national laws. To avoid duplication, any additional guidance should focus on only those items that are not already covered by existing WHO instruments, including the Code and WHA resolutions.

(2) Preserving access to factual, scientific information in digital channels, where many parents and caregivers seek information, is essential to providing timely information that furthers public health goals.

(3) APIYCNA supports efforts by national governments to ensure that compliance with national laws extends to all stakeholders in the digital ecosystem, beyond manufacturers. Manufacturers continue to evaluate new technologies and means to help monitor independent websites. APIYCNA would welcome further discussions with the WHO, Member States and relevant stakeholders in the digital ecosystem.

In the ASEAN context, the goal of Member States to accelerate digital economy adoption, including digital marketing, may conflict with restrictive measures.

To align with the region's digitalisation ambitions while addressing the diverse consumer needs, regulations should be based on a specific national context.

Sector	Government or Ministry
Country	Australia
Role	Acting Director, International Strategies Branch
Organisation	Australian Government Department of Health
Purpose	Purpose is clear. Support the decision that this advice is to support member states who may be looking to increase regulatory action or enforcement in digital platforms.
Background	Clear background section. Succinct timeline of key decision points. No changes proposed.
Rec 1	<p>Note that this includes 12 components and is very broad in its scope to limit loopholes for marketing of products across various digital platforms.</p> <p>Given the breadth of this recommendation, implementation would likely need to be phased.</p>
Rec 3	Note that this recommendation is more targeted at the retailer setting, rather than the manufacturers themselves. Manufacturers don't always have control over the operation of retailers websites at point-of-sale.
Rec 5	This is likely to be difficult to implement.
Rec 7	Some of the recommendations would require significant resourcing and may not be feasible.
Rec 8	As this is linked to Rec 5 and 7 there may be challenges for this.
Rec 9	<p>Recommendation 9.1 currently reads as though a local company should be held accountable for digital marketing undertaken a separate overseas based company.</p> <p>Recommendations 9.2 and 9.3 may not be feasible.</p>
Rec 10	This recommendation suggests that stakeholders and business across the food supply and distribution system should uphold the WHO Code, including in digital spaces, even in the absence of local regulation. This recommendation appears aspirational in nature and would be challenging to monitor or evaluate at a government level.
Other Comments?	Australia is currently undergoing a review of the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF Agreement). As such, Australia is not in a position to vote on, or commit to implementing any guidance until 2024.

Sector	Government or Ministry
Country	Canada
Role	Senior Policy Analyst
Organisation	Government of Canada
Other Comments?	<p>As a signatory to the WHO International Code of Marketing of Breast-milk Substitutes (the Code), Canada supports the development of strategies and tools that aim to enhance the application of the Code, to protect and promote breastfeeding, both within Canada and globally.</p> <p>Canada recognizes the importance of the Draft guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes (draft guidance), as it provides Member States with key considerations regarding the implementation of the Code, including specific strategies to restrict the digital marketing of breastmilk substitutes (BMS). Canada is at the beginning stages of modernizing its regulations for infant formula and other foods for a special dietary purpose. This draft guidance therefore represents a useful resource as Canada evaluates the feasibility of integrating certain aspects of the Code within the modernized regulations.</p> <p>Canada looks forward to engaging in ongoing global conversations on the topic of restricting digital marketing of BMS.</p>

Sector	Government or Ministry
Country	Chile
Role	Directora
Organisation	CESFAM Concon
Purpose	me parece bien

Sector	Government or Ministry
Country	Chile
Role	Encargada regional de Lactancia Materna
Organisation	Secretaría Regional Ministerial de Salud, Región de La Araucanía
Purpose	Me parece adecuado
Background	Me parece adecuado
Scope	Me parece adecuado
Terminology	Me parece adecuado
Rec 1	De acuerdo
Rec 2	De acuerdo
Rec 3	De acuerdo
Rec 4	De acuerdo
Rec 5	De acuerdo
Rec 6	De acuerdo
Rec 7	De acuerdo
Rec 8	De acuerdo
Rec 9	De acuerdo
Rec 10	De acuerdo
Additions?	Me parece que es bien amplio el documento y abarca las principales materias.
Other Comments?	Considero muy relevante se lleve a cabo este documento, ya que los medios digitales son muy influyentes en la sociedad, en particular a padres y madres que están constantemente buscando información digital. Ojalá los estados miembros puedan adherir al CICSLM y estas recomendaciones para fomentar y proteger la lactancia materna.

Sector	Government or Ministry
Country	Chile
Role	Nutricionista
Organisation	Servicio de Salud Tarapacá
Background	<p>Se debería destacar el derecho del niño a la salud y a la mejor alimentación posible que es la lactancia materna exclusiva hasta los 6 meses.</p> <p>Considerar las redes sociales como fuente de publicidad, ya que incluso en estas se transan sustitutos de la leche materna, especialmente los entregados por el gobierno.</p>
Scope	Se restringe la publicidad en alimentación complementaria desde los 6 meses hasta los 3 años, sin embargo, a esta edad comienza la alimentación complementaria y no queda claro el porqué de la restricción, se puede inferir que es para mejorar el consumo de alimentos caseros y no fabricados, sin embargo, no se evidencia cómo afectarían la lactancia materna.
Terminology	A lo mejor se debería incorporar a las farmacias en la terminología o como parte de la cadena de valor, ya que en Chile son una fuente importante de obtención de fórmulas lácteas y generan mucha propaganda.
Rec 1	Considerar las compras online en supermercados y farmacias
Rec 2	Consider online shopping at supermarkets and pharmacies

Sector	Government or Ministry
Country	Kenya
Organisation	Ministry of Health
Purpose	The purpose is agreed as is.
Background	The background is agreed as is.
Scope	Expand the scope to include lactating mothers Consider including cups with spouts, pacifiers, equipment and machineries used to constitute breast milk substitutes in the list of designated products.
Terminology	There is need to expound the definition of healthcare systems to include online pharmacies and sales outlets.
Rec 1	Recommendation 1.3 add “agents” of manufacturers/distributors Recommendation 1.4 i. Along manufacturers and distributors, add “influencers” ii. Clarify the interaction between manufactures and consumers. The manufacturers only provide scientific evidence to health care workers and not the consumers in line with the code.
Rec 2	Recommendation 2.1 and 2.2: Apart from manufacturers and distributors falling within the scope of code, we recommend addition of “agents, e- pharmacies and pharmacists” in the scope.
Rec 3	The recommendations are agreed as is.
Rec 4	The recommendations are agreed as is.
Rec 5	i. The penalties have not been spelt out/addressed ii. In relation to penalties, at the end of the sentence, add wording that specifies, e.g., ‘.....shall be charged/face penalties, fines according to the laws of the country.’
Rec 6	Given the our recommendation on expansion of scope to include pregnant and lactating mothers, we propose inclusion of products marketed to them as they fall in the category of designated products since they undermine mothers' confidence to breastfeed.

Rec 7	The recommendations are agreed as is.
Rec 8	The recommendations are agreed as is.
Rec 9	The recommendations are agreed as is.
Rec 10	The recommendations are agreed as is.

Sector	Government or Ministry
Country	New Zealand
Role	Principal Clinical Advisor- Maternity
Organisation	Te Whatu Ora – Health New Zealand
Purpose	<p>New Zealand supports the intent of the draft Guidance, aimed at supporting Member States to restrict the digital marketing of breast-milk substitutes with the goal of protecting, promoting and supporting breastfeeding. We want the Guidance to be effective, properly targeted, and readily accessible.</p> <p>The WHA75 decision states that the guidance to be developed aims to ensure that existing and new regulations designed to implement the International Code of Marketing of Breast-milk Substitutes and relevant Health Assembly resolutions adequately addresses digital marketing practices.</p> <p>The WHA75 decision did not refer to food for infants and young children. It is considered that a separate piece of work would be required, and need to be agreed at WHA, to include these foods within the scope of this work.</p> <p>Consequently, New Zealand does not support the scope of products to which the guidance is to apply and has some concerns that the current wording of the recommendations may have unintended consequences beyond safeguarding and promoting the health of infants and young children.</p> <p>It is acknowledged that the WHA75 decision was to develop guidance on regulatory measures, New Zealand would support exploring non -regulatory effective measures which may be appropriate for some Member states.</p>
Background	<p>New Zealand acknowledges the background section which identifies the vulnerability of infants in the early months of life and aims to improve health by limiting the inappropriate promotion and use of breast-milk substitutes in a way that undermines breastfeeding.</p>

Scope	<p>New Zealand does not support the Scope as currently drafted, nor the expanded definition of a breast-milk substitute.</p> <p>The decision from the WHA75 was a directive to develop regulatory measures for products that fall within the scope of the WHO Code. The Draft Guidance extends the scope to include foods for infants and young children that are not breast-milk substitutes. This includes foods that are specifically marketed as suitable for infants and young children aged 6 to 36 months of age.</p> <p>There are foods for infants and young children for which it would be appropriate to promote. It is considered that a separate piece of work would be required, and need to be agreed at WHA, to further consider this issue. For example, it would be appropriate for some foods for infants and young children to be promoted in accordance with dietary guidelines.</p> <p>New Zealand notes that globally there are divergent approaches as to what constitutes a breast-milk substitute. Whilst Codex defines infant formula products (for infants 0 – 12 months) to be breast-milk substitutes, the draft Codex Standard for Follow-up Formula notes that in some countries products for children aged 12 months and older are regulated as breast-milk substitutes, and in other countries they are not. Any guidance for Member States should take national circumstances into account.</p>
Terminology	<p>As noted in the response to question 9, at Codex there is agreement that infant formula (products for infants 0 – 12 months) is a breast-milk substitute, however, there are divergent views and approaches internationally as to whether formula type products for young children from 12 – 36 months of age are considered breast-milk substitutes. Consequently, a footnote was inserted that in some countries these are regulated as breast-milk substitutes and in other countries they are not. Any guidance would need to acknowledge this distinction to avoid confusion.</p> <p>The definition used in the draft guidance is a variation of all the WHO references used and extends beyond the WHO Code definition of a breast-milk substitute.</p> <p>New Zealand has reservations regarding the expanded definition of breast-milk substitute, particularly the inclusion of ‘any milks (or products that could be used to replace milk, such as plant-based milks), in either liquid or powdered form, that are specifically marketed for feeding infants and young children up to the age of 3 years’. In the context of this work, there could be issues regarding promoting the suitability of milk-based products (that are not formula) as suitable for feeding young children, in accordance with national food based dietary guidelines.</p>

Rec 1	<p>This recommendation is limited to those products that are within the Scope of the Code. As noted above, New Zealand does not support the scope of products to be covered by this Guidance.</p>
	<p>It is important that the ability of 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.</p>
Rec 4	<p>New Zealand does not support Recommendation 4. This recommendation is targeted to foods for infants that are not breast-milk substitutes and goes beyond the directive from the 75th World Health Assembly.</p> <p>There are commercial products for infants and young children that are recommended in dietary guidelines for this age group, for example iron fortified cereal-based foods, for which promotion may be considered appropriate. This recommendation does not distinguish between commercial products which are suitable for infants and young children, and those that are not.</p> <p>We are concerned that this recommendation is vague and may have unintended consequences far beyond infant and child nutrition. It is essential that the Guidance support optimal nutrition for infant and child health – including for those who rely on safe, high-quality milk and milk products for complementary feeding, and foods that are aligned with national dietary guidelines for this age group.</p> <p>Removal of this recommendation would not impact on the overall purpose of this Guideline as foods for infants and young children are not included in the purpose statement.</p>
Additions?	<p>The Guidance does not consider national contexts in any of the recommendations, nor does it acknowledge the variation in national/regional nutrition policies and legislation in place. The following text from the Codex Standard for Follow up Formula for older infants and product for young children may be useful:</p> <p>The application of this Standard should be consistent with national/regional health and nutrition policies and relevant national/regional legislation and take into account the recommendations made in the International Code of Marketing of Breast-milk Substitutes, as per the national/regional context.</p>

Other
Comments?

Any guidance should not be limited to only exploring regulatory measures, it should also consider other effective non-regulatory measures which may be appropriate for some Member States. While regulatory measures could be interpreted to extend to the Codex Alimentarius Standards, it should be up to Codex itself to determine whether and how these issues are taken up.

This response is a collective submission from the following agencies: Manatū Hauora (the Ministry of Health) and Te Whatu Ora (Health New Zealand), the Ministry for Primary Industries, the Ministry for Foreign Affairs and Trade.

Sector	Government or Ministry
Country	Nigeria
Role	Director
Organisation	Food Safety and Applied Nutrition Directorate, National Agency for Food and Drug Administration and Control
Rec 4	"It would be useful to be explicit and mention some examples of foods for infants and young children that are not breast-milk substitutes but which are inappropriately promoted in digital environments."

Sector	Government or Ministry
Country	Nigeria
Role	Nurse practitioner
Organisation	Hospital
Purpose	Draft guidance on regulation of digital marketing of breast milk substitute. It long overdue.
Background	This regulation will attract wide views from business community.
Scope	This regulation should be domesticated by WHO members countries. It should be at international national and regional level
Terminology	Strong worded
Rec 1	The business community should write bold instructions on their package label that breast milk is the best for your babies..
Rec 2	The federal and state governments should enact laws mandatory a mother to breastfeed their babies for the first six months of life.without any other drink.
Rec 3	There should be punishments for violators of this law of mandatory six months breast milk only.
Rec 4	Maternity leave with pay should be extended to six months.
Rec 5	Incentive should be given to mother who are not financially strong.
Rec 6	The family should support breastfeed mother.
Rec 7	The community should encourage breastfeeding

Sector	Government or Ministry
Country	United Kingdom of Great Britain and Northern Ireland
Role	SACN Team Leader
Organisation	Department of Health and Social Care
	[No submission received]

Sector	Individual
Country	Australia
Role	Dietitian & IBCLC
Rec 2	Include: prohibit funding of health professional research by industry.
Additions?	<p>Prevention of political campaigning through the use of social media for industry benefit:</p> <p>Zenone, M., Kenworthy, N., Maani, N. (2023). 'The Social Media Industry as a Commercial Determinant of Health', International Journal of Health Policy and Management, 12(Issue 1), pp. 1-4. doi: 10.34172/ijhpm.2022.6840</p> <p>'Social media platforms provide powerful targeting tools and data for businesses, special interest groups, and politicians to target defined demographics with business or political ads.</p> <p>Industries may also utilize social media for political and social purposes related to the regulation of their products, such as preventing taxes on certain products including sugar-sweetened drinks, where content in advertisements may be misleading due to lack of Facebook oversight on truthfulness in political advertising.¹ Finally, social media platforms may sell data, which is then used by health-harming industries for advertising purposes.'</p>

Sector	Individual
Country	Brazil
Role	International Health Consultant
Purpose	<p>The purpose of this guidance is BEYOND TO SUPPORT Members States, but to DRIVE Members States concerned to compliance of the International Code of Marketing of Breastmilk Substitutes IN THE DIGITAL ERA. THE WORLD HEALTH ORGANIZATION INTERNATIONAL CODE OF MARKETING OF BREASTMILK SUBSTITUTES WAS ADOPTED IN 1981 BY THE WORLD HEALTH ASSEMBLY (WHA) TO PROMOTE SAFE AND ADEQUATE NUTRITION FOR INFANTS, BY THE PROTECTION AND PROMOTION OF BREASTFEEDING AND BY ENSURING THE PROPER USE OF BREAST-MILK SUBSTITUTES, WHEN THESE ARE NECESSARY.</p>
Background	<p>Recognizing the vulnerability of infants in the early months of life, the health risks introduced by</p> <p>the unnecessary and improper use of breast-milk substitutes, and the NEGATIVE impact of the promotion of breast-milk substitutes on breastfeeding practices, Member States agreed that the marketing of breast-milk substitutes requires STRONG COMPLIANCE, which makes usual marketing practices unsuitable for these products (2). In 1981, the World Health Assembly adopted the International Code of Marketing of Breast-milk Substitutes to prohibit all forms of promotion of breast-milk substitutes WHICH ALSO NEEDS TO INCLUDE NOWADAYS THE DIGITAL MARKETING OF ALL PRODUCTS WITHIN THE SCOPE OF THE CODE, RELEVANT AND SUBSEQUENT WORLD HEALTH ASSEMBLY, INCLUDING BOTTLE FEEDING, TEATS AND PACIFIERS, FREE FROM ANY CONFLICT OF INTERESTS OF MEMBERS STATES AND INTERNATIONAL AGENCIES. INFANTS SHOULD BE EXCLUSIVELY BREASTFED FOR THE FIRST SIX MONTHS OF LIFE TO ACHIEVE OPTIMAL GROWTH, DEVELOPMENT AND HEALTH. THEREAFTER, INFANTS SHOULD RECEIVE NUTRITIONALLY ADEQUATE AND SAFE COMPLEMENTARY FOODS WHILE BREASTFEEDING CONTINUES FOR UP TO TWO YEARS OF AGE OR BEYOND.</p>
Scope	<p>The scope of the digital code did not clearly include bottle-feed, teats, and pacifiers. it was mentioned "including bottle-fed complementary foods" that is highly confuse and unclear. Indeed, it needs to specify that bottle-feed, teats and pacifiers are in the scope of the code. Thus, it is not allowed any kind of promotion, marketing, and commercialization of bottle-feed, teats and pacifiers in any digital market.</p>
Terminology	<p>11.a - Digital environments are the operational or information technology systems, networks, any internet-enabled applications, devices and/or data contained within such systems and networks and any other related digital system. These include but are not limited to social media, websites, email services, text or voice or image or video messaging services, streaming services, search engines, eCommerce providers, E-MANUFACTURERS, peer commerce and smartphone applications.</p>

Rec 1	<p>1.4 - PROHIBIT FINANCIAL OR ANY OTHER INCENTIVES TO PROFESSIONALS, HEALTH WORKERS, PROFESSIONALS BODY ASSOCIATIONS, INTERNATIONAL AGENCIES AND NGOS.</p> <p>To add recommendation 1.6: Prohibit manufacturers of products within the scope of the Code, subsequent and relevant WHA to offer any kind of course to any public (general public and professional of any field) in any social media.</p>
Rec 2	<p>2. Regulatory measures should prohibit promotion of products within the scope of the Code through NOT JUST health care systems, BUT ALSO THROUGH PROFESSIONAL BODY ASSOCIATIONS, INTERNATIONAL AGENCIES AND NGOS using digital technologies.</p> <p>To add recommendation 2.4: Prohibit logo of manufacturer of products within the scope of the code and relevant, subsequent world health assembly in website and or social media of professional body associations, international agencies, governments, and NGOs using digital technologies.</p>
Rec 3	To add recommendation 3.4: Prohibit promotion of any products within the scope of the code and relevant world health assembly 55,5 in the emergency context.
Rec 4	Agreed
Rec 5	Member States should confer legal duties of compliance to monitor and take action IN FORM OF FINES AND LEGAL PROSECUTION to prevent or remedy prohibited marketing OF ANY PRODUCTS WITHIN THE SCOPE OF THE CODE on entities along the digital marketing value chain.
Rec 6	Agreed
Rec 7	Agreed
Rec 8	Agreed
Rec 9	Agreed
Rec 10	All entities along the digital marketing value chain and in health care systems should ensure that their marketing practices conform to the Code (including the Guidance on Ending ANY KIND OF Promotion of Foods for Infants and Young Children) in digital environments, irrespective of any regulatory measures implemented at national and subnational levels.

Additions?	I understand that any kind of advertisement, information and promotion of any products within the scope of the Code and subsequent, relevant WHA is inappropriate. Thus, does not exist "appropriate promotion" of any products within the scope of the code and subsequent, relevant WHA. Thus, the terminology "appropriate promotion" cannot be applicable to products within the scope of the code. Additionally, no product within the scope of the code should not be commercialized in e-commerce.
Other Comments?	It might be added in the draft that the e-commerce and sites of manufacturers will have 1 to 2 months to exclude all the advertisements of products within the scope of the code and subsequent, relevant WHA. If it is not attended sanctions and or fines might be applied.

Sector	Individual
Country	Chile
Role	Health Advisory Nurse
Purpose	I find it very relevant and necessary since today we are exposed to digital advertising, the majority of people use digital technology and producers do their marketing this way and significantly influence parents, especially mothers.
Background	If breastfeeding has decreased due to the influence of digital marketing, this has been a setback to the work carried out in health centers to promote exclusive breastfeeding up to 6 months.
Scope	Agree
Terminology	I am from the health area, understandable
Rec 1	In Chile, Law No. 20,869 contains regulations that not only reiterate the prohibition of advertising of foods indicated in Article 5, first paragraph of Law No. 20,606 aimed at minors under 14 years of age, but also regulates the actions of advertising of said foods carried out through film and television services, setting time restrictions for their transmission, as well as exceptions to said measure. Likewise, it prohibits any advertising action aimed at promoting the consumption of foods that substitute breast milk.
Rec 2	I think it is very good that the state prohibits the inappropriate promotion of foods for infants and children on networks and digital marketing is carried out at scientific meetings and especially in the health area.
Rec 3	I think it is very good that the state prohibits the inappropriate promotion of foods for infants and children on networks and digital marketing is carried out.
Rec 4	I think it is very good that the state prohibits the inappropriate promotion of foods for infants and children.
Rec 5	Regulatory measures must be clear, and those who monitor must be clear in their actions.
Rec 6	There should be institutions that work collaboratively to enforce the regulations

Rec 7	There should be mechanisms for constant complaints of non-compliance with regulations
Rec 8	Sanction mechanisms should be required for non-compliance with regulations.
Rec 9	Establish mechanisms to ensure the delivery of authorizations to companies that market dairy products
Rec 10	<p>Establecer reglas y normas a los productores de leche y sucedaneos.</p> <p>Establish rules and regulations for milk and substitute producers.</p>
Additions?	It seems very complete to me
Other Comments?	Yes, the WHO and UNESCO should be demanding in compliance with the agreements made with the associated countries.

Sector	Individual
Country	England
Purpose	I am consistently reporting Facebook ads which undermine and are adverse to the advertising guidelines regarding marketing breast milk replacements. Facebook has no adequate provision and seems to be flouting the law. It is high time that digital marketing is held accountable to the same advertising standards as other forms of media. The world health organisation guidance is there for a reason. And the UK has such poor breastfeeding rates. We must not let the standards slip. It is vital.
Other Comments?	I am consistently reporting Facebook ads which undermine and are adverse to the advertising guidelines regarding marketing breast milk replacements. Facebook has no adequate provision and seems to be flouting the law. It is high time that digital marketing is held accountable to the same advertising standards as other forms of media. The world health organisation guidance is there for a reason. And the UK has such poor breastfeeding rates. We must not let the standards slip. It is vital.

Sector	Individual
Country	Nigeria
Role	Consultant Paediatrician, Professor of Paediatrics & Child Health
Purpose	<p>The purpose of the Guidance has not addressed all the issues related to the digital marketing of designated products(including those within the scope of the International Code of Marketing of Breast-milk Substitutes and other subsequent relevant resolutions of the Health Assembly (hereafter collectively referred to as “the Code”), foods for infants and young children(6-36 months), ultra- processed products and formulas for children beyond 36 months, pregnant women and lactating mothers and the need for this guidance to serve as the minimum standards to be implemented in its entirety to effectively address the challenges of the cross-border nature of digital marketing with the negative impact on countries with weak, none or poorly enforced related regulations. Expecting Member states to make their laws may imply waiting indefinitely while children, pregnant and lactating women continue to suffer from the harmful effects of digital marketing of products targeted at them. For example, the Status of the Code Report in 2022 showed that forty-one years after the adoption of the International Code, out of 194 member countries, 50(25.8%) still had no legal provisions on the Code. Furthermore, among the 144(74%) countries with some legal provisions, only 32 (16.5%) have measures in place that are substantially aligned with the Code with various levels of enforcement. Thus, I suggest that this guidance should serve as the minimum to be implemented in its entirety in all member nations and that WHO should support member states to make national regulations to strengthen the recommendations in this guidance to ensure that where no regulations have been made, these minimum recommendations can be used to regulate the digital marketing practices within and across the borders of Member states.</p> <p>I therefore suggest that the Purpose of the Guidance should be revised to read as follows:</p> <p>The purpose of this guidance is to provide the minimum recommendations/standards to be implemented in their entirety for the prohibition of digital marketing of all designated products(including those 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”), foods for infants and young children(6-36 months), ultra-processed products and formulas for children beyond 36 months, pregnant women and lactating mothers. Additionally, this Guidance aims to support Member States to develop and apply regulatory measures aimed at prohibiting digital marketing of these designated products(including those within the scope of the International Code of Marketing of Breast-milk Substitutes and other subsequent relevant resolutions of the Health Assembly (hereafter collectively referred to as “the Code”), foods for infants and young children(6-36 months), ultra-processed products and formulas for children</p>

beyond 36 months, pregnant women and lactating mothers by applying the Code to digital environments in response to a request from the 77th World Health Assembly (1).2

(REF. 2. Marketing of breast-milk substitutes: national implementation of the international code, status report 2022. Geneva: World Health Organization; 2022. Licence: CC BY-NC-SA 3.0 IGO.)

Background

The background should be expanded to cover the products whose digital marketing impacts on children's nutrition health, growth, and development in the early years when they are very vulnerable and require protection, pregnant women and lactating mothers.

I therefore suggest that the Background information should be expanded to read as follows: Recognizing the vulnerability of infants in the early months of life and young children (6-36 months and beyond), pregnant women, and lactating mothers, the health risks introduced by the unnecessary and improper use of these designated products (including those 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"), foods for infants and young children (6-36 months), ultra-processed products and formulas for children beyond 36 months, pregnant women and lactating mothers, and the impact of the promotion of these products on breastfeeding and optimal infant and young child feeding practices, and the nutrition and health of children, pregnant women and lactating mothers Member States agreed that the marketing of breast-milk substitutes and by inference, these designated products) require special treatment, which makes usual marketing practices unsuitable for these products 1981. Thus, from 1981 when the World Health Assembly adopted the International Code of Marketing of Breast-milk Substitutes subsequent relevant WHA Resolutions to prohibit all forms of promotion of designated products (including breast-milk substitutes, teats, feeding bottles, pacifiers, breast-milk pumps), foods for infants and young children, ultra-processed products and formulas for children beyond 36 months, pregnant women and lactating mothers have been adopted.

Scope

The scope should be expanded to read as follows so as to address the wide range of products that affect the nutrition and health of children, pregnant women, and lactating mothers which are often targeted through digital and non-digital promotional activities. These "Designated products" (include those within the scope of the International Code of Marketing of Breast-milk Substitutes and other subsequent relevant resolutions of the Health Assembly (hereafter collectively referred to as "the Code"), foods for infants and young children (6-36 months), ultra-processed products and formulas for children beyond 36 months, pregnant women and lactating mothers.

Terminology	<p>The terminology is largely adequate but in order to address the wide range of products that could be targeted through digital marketing, I suggest that "Designated products" should be added and defined to cover the following:</p> <p>Designated products(include those 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”), foods for infants and young children(6-36 months), ultra-processed products and formulas for children beyond 36 months, pregnant women and lactating mothers.</p>
Rec 1	<p>In view of the impact of digital marketing on the health and nutrition of children, pregnant women, and lactating mothers, the low level of compliance of Member nations through the adoption and enforcement of national regulations that are substantially aligned with the Code (32(16.5%) out of 194 countries(Code Status Report 2022), and the cross -border and pervasive nature of digital marketing, I suggest that the WHO should provide Recommendations/guidelines which should be implemented in their entirety as the minimum requirements for effective prohibition of digital marketing of designated products.</p> <p>Consequently, this Recommendation could be modified to read as follows:</p> <p>Member States should adopt and enforce these Guidelines/ Recommendations in this Guideline as the minimum requirements in their entirety for the effective prohibition of digital marketing of designated products(including those within the scope of the International Code of Marketing of Breast-milk Substitutes and other subsequent relevant resolutions of the Health Assembly (hereafter collectively referred to as “the Code”), foods for infants and young children(6-36 months), ultra- processed products and formulas for children beyond 36 months, pregnant women and lactating mothers across all channels and media, including digital media. Additionally, Member states should adopt and enforce national regulations to strengthen these recommendations/guidelines</p>
Rec 2	<p>The expanded scope of application should apply as follows:</p> <p>Regulatory measures should prohibit the promotion of "designated products"(including those within the scope of the International Code of Marketing of Breast-milk Substitutes and other subsequent relevant resolutions of the Health Assembly (hereafter collectively referred to as “the Code”), foods for infants and young children(6-36 months), ultra- processed products and formulas for children beyond 36 months, pregnant women and lactating mothers through health care systems using digital technologies.</p>

- Rec 3 The expanded scope of coverage should apply as follows:
- Regulatory measures should prohibit the promotion of designated products(including those within the scope of the International Code of Marketing of Breast-milk Substitutes and other subsequent relevant resolutions of the Health Assembly (hereafter collectively referred to as “the Code”), foods for infants and young children(6-36 months), ultra-processed products and formulas for children beyond 36 months, pregnant women and lactating mothers at point-of-sale in digital environments, in alignment with the Code provisions on point-of-sale promotions, information, and education and labelling.
- Rec 4 The use of the term "inappropriate" promotion creates room for various interpretations and has resulted in continued overt and subtle violations. I suggest that this recommendation should prohibit all forms of promotion and the expanded scope of products should be covered as follows.
- Member States should prohibit the promotion of designated products (including those within the scope of the International Code of Marketing of Breast-milk Substitutes and other subsequent relevant resolutions of the Health Assembly (hereafter collectively referred to as “the Code”), foods for infants and young children(6-36 months), ultra-processed products and formulas for children beyond 36 months, pregnant women and lactating mothers.
- Rec 5 While the WHO will strengthen to implement this recommendation, I suggest that the WHO should also establish an independent body to monitor and enforce this compliance because some Member states (50(25.8%)have not even established Code-related regulations, 41 years after the adoption of the Code. Consequently, waiting for them will continue to expose the vulnerable targets to the risks of their continued marketing across the invisible boundaries of digital marketing.
- Rec 6 Consequent to the poor enforcement of the Regulations even in the 32(16.5%) Member states whose legal measures have substantially aligned with the Code 41 years after its adoption, this expectation from Member states will require a WHA - appointed body to ensure its compliance especially considering the cross-border nature of digital marketing and the cost-intensiveness of the efforts to control it.
- Rec 7 This should be supported by an internationally appointed monitoring system for effectiveness because of the cross-border nature of digital marketing.
- Rec 8 The Guidance should establish standard sanctions for international violations which may be outside the scope of Member nations because of the cross-border nature of digital marketing.

Rec 9	<p>I strongly support this recommendation but suggest that its scope should be expanded to all Designated products as follows.</p> <p>Member States should exercise jurisdiction to ensure manufacturers and distributors of these "designated products"(including those 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”) and foods for infants and young children(6-36 months), ultra processed products and formulas for children beyond 36 months, pregnant women and lactating mothers can be held liable for digital marketing practices that cross into or out of their countries and do not comply with regulatory measures that implement the Code.</p>
Rec 10	<p>This voluntary self-monitoring by these entities has not worked with the Code and will not work in the regulation of digital marketing which is very pervasive, subtle and heavily funded. An international body to monitor and enforce internationally adopted standards should be set up to strengthen the member countries and sanction entities involved in violations especially cross border offenders.</p>
Additions?	<p>I have raised many of these issues in the comments above. I am wondering if the WHO and UNICEF cannot more actively support the 50 nations that are yet to adopt the Code to do so and strengthen those whose laws are not fully aligned with the Code to do so. With digital marketing, lack of effective regulation in one country will enhance the risk of other countries and therefore more global efforts should be instituted to address the establishment of legal measures in different countries for effective Code compliance.</p>
Other Comments?	<p>The title should be reviewed to cover designated products including those within scope of the Code (breastmilk substitutes, Bottles and Teats) and Foods for Infants and Young Children (6-36 months), ultra processed products and formulas for children beyond 36 months, pregnant women and lactating mothers.</p> <p>It should read as follows.</p> <p>DRAFT guidance on regulatory measures aimed at restricting digital marketing of designated products (including breastmilk substitutes, bottles, and teats) and foods for infants and young children(6-36 months), ultra processed products and formulas for children beyond 36 months, pregnant women and lactating mothers. This will minimize the harm done by promotion and cross-promotion of products</p>

Sector	Individual
Country	Scotland (United Kingdom of Great Britain and Northern Ireland)
Role	Midwife
Purpose	<p>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</p>
Scope	<p>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. Productsthat could be listed as examples:</p> <p>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 ultraprocessed 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.</p> <p>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.</p> <p>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.</p>
Terminology	<p>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</p>

another product (7,8). Cross promotion with breastmilk substitutes may also extend to non-food items e.g. baby toiletries, drinks, services etc (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 'mummybloggers' (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.

Sponsorship includes any form of contribution made 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).

Rec 1

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: “Regulatory measures should prohibit the display of any images of a product label 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, labelling, educational materials, materials, or any other content in the digital environment. Regulatory measures must protect privacy and prevent inappropriate marketing via QR codes or other digital schemes.

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.

Rec 2

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.

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, best sellers, 'frequently purchased with' customer reviews etc in alignment with the Code provisions on point-of-sale promotions, information and education and labelling.

- Rec 3 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
- Para 24. Recommendation 3.3. Regulatory measures should prohibit point-of-sale promotions
- described in Article 5.3 of the Code in digital environments.
- Rec 4 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.
- Rec 5 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.
- Rec 8 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 noncompliance, informing and educating all parties regarding these obligations. Decisions regarding enforcement, monitoring and proportionality of sanctions should be protected from commercial influence.
- Rec 9 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.

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. We hope that they will be 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 allow to externalize all the 'costs' to governments, families babies for far too long. 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, on EU-based companies to comply with the Code when marketing in importing countries. The Resolution also outlined monitoring, reporting and accountability proposals.

7 8 It goes without saying that all the recommendations require an effective enforcement mechanism.

Other
Comments?

Advertising of all baby milks, newborn or follow-on should be banned altogether.

Sector	Individual
Country	United Kingdom of Great Britain and Northern Ireland
Role	Consultant
Purpose	No digital marketing should be permitted
Background	No digital marketing should be permitted
Scope	No digital marketing should be permitted
Terminology	no digital marketing should be permitted
Rec 1	no digital marketing should be permitted
Rec 2	no digital marketing should be permitted
Rec 3	no digital marketing should be permitted
Rec 4	no digital marketing should be permitted
Rec 5	no digital marketing should be permitted
Rec 6	no digital marketing should be permitted
Rec 7	no digital marketing should be permitted
Rec 8	no digital marketing should be permitted
Rec 9	no digital marketing should be permitted
Rec 10	no digital marketing should be permitted
Additions?	Absolutely no digital marketing should be permitted
Other Comments?	Digital marketing undermines breastfeeding and should be illegal and not permitted in any way!

Sector	Individual
Country	United States of America
Role	Consultant
Background	<p>This section refers only to the marketing of breastmilk substitutes, whereas the draft guidance is also, quite correctly, intended to include the digital marketing of foods for infants and young children. The 2016 Guidance on ending the inappropriate promotion of foods for infants and young children is referred to in Recommendations 1.2, 6 and 10 and should thus be mentioned in this section, particularly since the “Scope” section states that “This guidance applies to digital marketing of products within the scope of the Code as well as foods for infants and young children that are not breast-milk substitutes”. The 2016 Guidance is thus an integral part of the background to these recommendations.</p> <p>In addition to making reference to the 2016 Guidance, the second sentence of paragraph 4 should read: “Regulatory measures aimed at restricting digital marketing of breast-milk substitutes, bottles, teats and foods for infants and young children will be most effective in the context of comprehensive implementation of the Code”.</p>
Rec 1	<p>Recommendation 1 appropriately goes into some detail of the sorts of digital marketing practices related to products within the scope of the Code that should be prohibited through regulatory measures. This is in stark contrast to the complete lack of detail provided in terms of the prohibition of inappropriate promotion of foods for infants and young children that are not breast-milk substitutes in digital environments in Recommendation 4. This seems to relegate the need for regulation of inappropriate promotion of foods for infants and young children to lesser category of priority and fails to provide Governments with adequate guidance in this respect. The 2016 Guidance provides assistance in identifying what is and isn’t appropriate promotion in general and the recommendations in the 2016 Guidance should be extracted and adapted to the digital context to provide Governments with meaningful advice. It is further suggested that Recommendation 1 and the expanded Recommendation 4 be amalgamated into a single recommendation dealing with regulation of digital marketing of products under the scope of the Code and foods for infants and young children. Recommendation 1.1, and its various sub-regulations should deal with the prohibition of digital marketing of products under the scope of the Code, While Recommendation 1.2 and its various sub-clauses (yet to be drafted) should deal with the prohibition of inappropriate marketing of foods for infants and young children.</p>
Rec 2	<p>As written, Recommendation 2 does not apply to foods for infants and young children that are not breast-milk substitutes. Recommendation 6 of the 2016 Guidance on ending inappropriate promotion of foods for infants and young children was intended to prevent companies that market foods for infants and young children from creating conflicts of interest in health facilities or throughout health systems, clearly aiming to prohibit such companies from engaging in any form of promotion in the health care</p>

system. This would include through digital means. The term “products within the scope of the Code” in Draft Recommendation 2 should thus be replaced with “products within the scope of the Code as well as foods for infants and young children that are not breast-milk substitutes” throughout the draft recommendation.

Rec 4

As mentioned in the comment on Regulation 1, there is a complete lack of detail provided in Recommendation 4, compared with the detailed guidance given in the case of digital marketing of products under the scope of the Code. This seems to relegate the need for regulation of inappropriate promotion of foods for infants and young children to a lesser category of priority and fails to provide Governments with adequate guidance in this respect. The 2016 Guidance on ending the promotion of foods for infants and young children provides assistance in identifying what is and isn’t appropriate promotion in general and the recommendations in the 2016 Guidance should be extracted and adapted to the digital context to provide Governments with meaningful advice. It is further suggested that Recommendation 1 and the expanded Recommendation 4 be amalgamated into a single recommendation dealing with regulation of digital marketing of products under the scope of the Code and foods for infants and young children. Recommendation 1.1, and its various sub-regulations, should deal with the prohibition of digital marketing of products under the scope of the Code, While Recommendation 1.2 and its various sub-clauses (yet to be drafted) should deal with the prohibition of inappropriate marketing of foods for infants and young children.

Sector	Individual
Country	United States of America
Role	Sole proprietor
Terminology	<p>Health care system means governmental, non-governmental or private institutions or organizations engaged, directly or indirectly, in health care for PARENTS, mothers, infants and pregnant women; and nurseries or child-care institutions. It also includes health workers in private</p> <p>practice. For the purposes of the Code, the health care system does not include pharmacies or</p> <p>other established sales outlets (7,8,9).</p>
Additions?	Where to sanction collusion? As in a commercial milk formula company engaging in a joint marketing scheme with a breast pump manufacturer and a feeding teat/bottle manufacturer?
Other Comments?	Thank You