

# **BFLGI**

**Baby Feeding Law Group Ireland**

**Consultation response:**

**Development of a National Plan on Business and Human Rights**

**Submitted to the Department of Foreign Affairs and Trade (Republic of Ireland) by the Baby Feeding Law Group Ireland and IBFAN Ireland**

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**Contact details for Baby Feeding Law Group Ireland:  
email: [BFLGIreland@gmail.com](mailto:BFLGIreland@gmail.com)**

## Key points

- Baby Feeding Law Group Ireland (BFLGI) and IBFAN Ireland are both members of the International Baby Feeding Action Network (IBFAN), a network of public interest groups working to reduce infant and young child morbidity and mortality.
- BFLGI and IBFAN Ireland are working to strengthen the Irish Government's commitment to the World Health Organization International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly Resolutions and related international agreements
- Our consultation response relates to
  - The three pillars of the UN Guiding Principles on Business and Human Rights in terms of
    - (i) the State duty to protect human rights
    - (ii) Corporate responsibility to protect human rights and to a lesser extent the issue of
    - (iii) access to remedy.
  - Ireland's domestic and international policies in terms of how Irish-made breast-milk substitutes and commercial infant foods are marketed abroad by both commercial companies including those working in partnership with state-funded agencies and with a particular focus on activities occurring in less developed countries.
  - The Rights of the Child as enshrined in the UNCRC and in particular with regard to Article 24
- BFLGI and IBFAN Ireland wish to highlight the extent of state involvement in the development of Ireland's infant formula industry domestically and abroad. On this basis we recommend that the National Plan on Business and Human Rights Plan make appropriate recommendations that are specific to the context of Ireland's infant formula industry and the Rights of the Child as enshrined in Article 24 of the UNCRC.
- BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights reflect the particular vulnerabilities of babies and infants resident in less developed countries. We recommend that a requirement be placed on Irish formula companies and involved state agencies to register those developing countries in which they are operating and be transparent on their marketing strategies and activities in the context of countries characterised by low education, high levels of communicable disease or conflict-affected areas.
- BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights include a requirement that Irish-based companies involved in the marketing of breast-milk substitutes provide a publicly-available annual report on their marketing activities and their compliance with the WHO Code, both domestically and abroad. In addition, BFLGI and IBFAN Ireland recommend that a periodic external and independent evaluation be undertaken in this regard.

- BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights commit to conducting an objective assessment of the adequacy of current regulations and legislation relating to the marketing of breast -milk substitutes by Irish-based infant formula companies. We recommend that such a review be undertaken in partnership with relevant state agencies involved in human nutrition and health.
- BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights for Ireland include a commitment to provide effective guidance to business enterprises on how to respect the right of children to be breastfed throughout their operations.
- BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights make provision for an independent assessment be undertaken on the degree to which women are supported to continue breastfeeding in line with the Breastfeeding at Work guidelines. In addition, we recommend that the National Plan on Business and Human Rights make provision for the assessment of appropriate facilities and time to breastfeed within periodic or bespoke surveys of Irish workplaces and their policies and procedures.

## 1. Baby Feeding Law Group Ireland and IBFAN Ireland

The Baby Feeding Law Group Ireland and IBFAN Ireland are newly formed groups in the Republic of Ireland. They aim to protect the health of babies by challenging marketing practices which commercialise infant and young child feeding, threaten breastfeeding and undermine good health. Both are members of the International Baby Feeding Action Network (IBFAN), an international group of organisations committed to ensuring that infant feeding decisions are based on accurate, unbiased information and on human rights.

The focus of BFLGI and IBFAN Ireland is the maintenance of breastfeeding as the biological norm and the protection of those infants and young children fed with commercial products.

BFLGI and IBFAN Ireland are working to strengthen the Irish Government's commitment to the World Health Organization International Code of Marketing of Breast-milk Substitutes and subsequent WHA Resolutions and related international agreements. In addition, we support the development of those practices which ensure adherence to the Code and World Health Assembly resolutions within Irish health services, Government departments and organisations funded either partially or totally by the state or its agents.

BFLGI will be liaising with relevant national and international organisations with a focus on the health and rights of children, women and parents. Our members engage in monitoring of the baby food industry against internationally agreed marketing standards and inform the relevant legislative authorities of any breaches, perceived breaches and any marketing or sponsorship which undermines the spirit and intent of the WHO Code and subsequent resolutions.

BFLGI welcomes the commitment by the Department of Foreign Affairs and Trade to develop a *National Plan on Business and Human Rights*. In addition, we thoroughly commend the Department's open and inclusive approach to consultation and engagement with all sectors achieved through both the hosted forum held in November 2013 and now in the form of an open consultation.

We welcome the response to date by the Department to the call by the United Nations and the European Union that all States develop National Plans in order to implement the *United Nations Guiding Principles on Business and Human Rights*.

We concur with Minister Flanagan's observation that it is important for Ireland's standing internationally and the reputation of Irish companies that we signal our commitment to placing human rights firmly on the business agenda. In addition, we wish to highlight that ensuring the protection of human rights in business operations has importance well beyond the issue of corporate reputation. A *National Plan on Business and Human Rights* in Ireland must have at its very core a commitment to upholding human rights as a means to protect the most precious commodity of all, child health and development.

## 2. Scope of BFGLI consultation response

Our consultation response relates to

- The three pillars of the UN Guiding Principles on Business and Human Rights in terms of (i) the State duty to protect human rights (ii) corporate responsibility to protect human rights and to a lesser extent the issue of (iii) access to remedy.
- Ireland's domestic and international policies in terms of how Irish-made breast-milk substitutes and commercial infant foods are marketed both domestically and abroad by commercial companies, including those working in partnership with state-funded agencies, and with a particular focus on preserving the rights of infants in less developed countries.
- The Rights of the Child as enshrined in the UNCRC and in particular with regard to Article 24

The call for consultation responses specifically requested concrete recommendations and we have included these within the document.

### 3. Ethical and legislative considerations in the context of marketing of breast-milk substitutes

#### 3.1 Infant feeding and human rights

Breast-milk provides children with the best start in life – both protecting them from significant communicable disease and contributing to many important aspects of a child’s growth and development.

Breastfeeding is important as the natural and most effective way to nurture children and to support their right to the best possible health as reflected in Article 24 of the UNCRC which states:

##### Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

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

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

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

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Ireland has signed and ratified the Convention on the Rights of the Child and is therefore bound to it by international law. Compliance with the convention is routinely monitored and Ireland is required to report to, and appear before, the United Nations Committee on the Rights of the Child periodically to be examined on their progress with regards to the advancement of the implementation of the Convention. In this context, the Seventh Report of the Special Rapporteur on Child Protection highlights some particular salient points including:

- Under General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration that States must ensure that the interests of the child have been assessed and have been a primary consideration in the actions of those in the private sector whose decisions concern or impact on a child or children.
- That States must review domestic legislation and other sources of law so as to incorporate the principle of the best interests of the child.
- The existence in Ireland of the Ombudsman for Children goes some way towards meeting the requirement under General Comment No. 14 for a complaints and redress mechanism where it is claimed the best interest principle has not been applied.
- The need for a more thorough approach to training and awareness-raising on the best interest principle in Ireland together with a proposal that government undertake a scoping exercise in order to ascertain this information.

In addition, the Rapporteur notes that in the context of the UNCRC General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health, the Committee makes the point that “the realisation of the right to health is indispensable for the enjoyment of all the other rights in the Convention”.

The Rapporteur concludes that:

*the marketing of baby formulas is also an area which could be improved in Ireland. There are many improvements which could be made to the standards around infant formula and related products in Ireland... The regulation of advertising should apply not merely to baby formula itself, but also to related products....More stringent policing of the implementation of the Regulations should be introduced*

### **3.2 Breastfeeding, breast-milk substitutes and government policy**

WHO and UNICEF recommend that exclusive breastfeeding be encouraged for the first 6 months followed by continued breastfeeding for two years or beyond, along with a complementary varied diet. This means that any product shown to be substituting for breast-milk in a baby’s or toddler’s diet such as follow-on/ growing up milks are breast-milk substitutes.

The International Code of Marketing of Breast-milk Substitutes is an international health policy framework first adopted by the WHO in 1981. A number of subsequent WHA resolutions have extended the provisions of the Code. [http://www.who.int/nutrition/publications/code\\_english.pdf](http://www.who.int/nutrition/publications/code_english.pdf)

The main points of the Code are that there should be no advertising of breast-milk substitutes to the general public, expectant and new parents and their families and this includes:

- no advertising of breast-milk substitutes and other related products to the public in any place e.g. Clinics, GP surgeries, shops etc
- no free samples to mothers or their families
- no promotion of products i.e. no product displays, posters, calendars, or distribution of promotional materials
- no donations of free or subsidised supplies of breast-milk substitutes or related products in any part of the health care system
- no company-paid personnel to contact or advise mothers
- no gifts or personal samples to health care workers
- no pictures of infants, or other pictures or text idealising artificial feeding, on the labels of the products;
- information to health care workers should only be scientific and factual

It is evident that parents have the right to receive unbiased information on infant feeding from health workers, - information, advice and support which is free from commercial influence. Equally, for parents who decide to use breast-milk substitutes they should be provided with information on how to use that product safely.

The Code recognises the vulnerability of infants in the early months of life and the importance of protecting infants from inappropriate feeding practices. The Code is important in all countries but the context of developing countries and conflict-affected areas where availability of clean water and sanitation may be compromised is of particular concern. When clean water and sanitation are absent, infant formula cannot be prepared safely increasing the risk of contamination and communicable disease. In addition, in areas characterised by low education and literacy, dilution of infant formula products has been described with consequences for infant health and mortality. The issue of donations of formula through charitable organisations for use overseas is also in need of careful consideration as continuation of breastfeeding should be prioritised.

The Infant and Follow on Formula Regulations are the law in Ireland. The Infant and Follow On Formula Regulations permit advertising and marketing of formula products for infants over 6 months of age whereas the Code does not.

The Broadcasting Authority of Ireland and the Advertising Standards Authority of Ireland have standards and codes which relate to infant formula products. In addition, the Food Safety Authority of Ireland has powers to investigate nutrition and health claims if an infant formula or follow on formula product makes particular claims in this regard.

The Irish government has articulated a clear commitment to support, promote and protect breastfeeding, as well as a commitment to protect children's rights through the leadership of the



Ombudsman for Children's Office. The current children's policy Better Outcomes, Brighter Futures reinforces the recommendations made in Breastfeeding in Ireland – a Five Year Strategic Action Plan. These policy documents demonstrate that there is a government mandate not just to promote and support breastfeeding but also to protect breastfeeding from inappropriate marketing of breast-milk substitutes.

It is also noted that supporting breastfeeding is core to the policy and programmes of Irish Aid within its donor aid and development programmes, operated under the auspices of the Department of Foreign Affairs and Trade – see <https://www.irishaid.ie/news-publications/news/newsarchive/2014/august/world-breast-feeding-week/>.

It would be particularly important to reinforce this approach and protect breastfeeding and the existing domestic and donor aid government investment in breastfeeding by enhancing regulation and transparency on Irish infant formula companies operating in developing countries.

A World Health Organization report reviewing the implementation of the WHO Code across both developed and developing countries noted that consistent, repeated and systematic violations by industry were common [http://apps.who.int/iris/bitstream/10665/85621/1/9789241505987\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/85621/1/9789241505987_eng.pdf)

#### **4. Ireland and the marketing of breast-milk substitutes**

Ireland is a major producer and major exporter of breast-milk substitutes. Therefore Ireland has a particular responsibility to ensure that the activities of the various businesses involved in the manufacture and marketing of these products protects at all times the human rights of children both in Ireland and abroad.

The Irish government is engaged in supporting a major investment in the expansion of this industry. This investment includes substantial funding of new product research and development centres as well as strategic partnerships with food science departments in our universities. In addition, Ireland's food and agriculture sector has been working with state agencies such as Bord Bia to develop and expand the market for Irish-made infant formula in other countries including China

(See <http://www.teagasc.ie/news/2011/201104-20.asp> ; <http://www.bordbia.ie/industry/manufacturers/insight/alerts/Pages/ChinasInfant.aspx?year=2013&wk=40>; <http://www.irishtimes.com/life-and-style/food-and-drink/bord-bia-researchers-sleep-on-floors-in-vietnam-to-help-sell-irish-food-abroad-1.1936905>; <http://www.irishexaminer.com/business/online-demand-for-infant-formula-in-china-real-opportunity-says-bord-bia-227096.html> )

The extent and nature of the market expansion with regards to infant formula in less developed countries is unclear.

Recent independent studies suggest that there are still substantial issues with regard to the compliance of marketing of infant formula in China in the context of the WHO Code <http://www.ncbi.nlm.nih.gov/pubmed/25026262>



## **Pillar1. The State Duty to Protect Human Rights**

The UN Guiding Principles on the development of Business and Human Rights Plans advises that States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. It also notes that all business enterprises domiciled in their territory respect human rights through their operation and emphasises the requirement of parent companies to report on the global operations of the entire enterprise. The UN Guiding Principles make specific mention of the State- Business nexus and emphasize that States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State or that receive substantial support and services from State agencies. The closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respect human rights.

In this regard, BFLGI and IBFAN wish to highlight the extent of state involvement in the development of Ireland's infant formula industry domestically and abroad. On this basis we recommend that the National Plan on Business and Human Rights Plan make appropriate recommendations that are specific to the context of Ireland's infant formula industry and the rights of the child as enshrined in Article 24 of the UNCRC.

BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights for Ireland reflect the particular vulnerabilities of babies and infants resident in less developed countries. We recommend that a requirement be placed on Irish formula companies and state agencies to register those developing countries in which they are operating and be transparent on their marketing strategies and activities in the context of countries of low education, low literacy and high levels of communicable disease.

BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights for Ireland include a requirement that companies involved in the marketing of breast-milk substitutes provide a publicly available annual report on their marketing activities and their compliance with the WHO Code, both domestically and abroad. In addition, BFLGI and IBFAN Ireland recommend that a periodic external and independent evaluation be undertaken in this regard.

BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights for Ireland include a commitment to conduct an objective assessment of the adequacy of current regulations and legislation relating to the marketing of breast-milk substitutes by Irish-based infant formula companies. We recommend that such a review be undertaken in partnership with the Ombudsman for Children's office and relevant state departments and agencies involved in child health and nutrition.

BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights for Ireland include a commitment to provide effective guidance to business enterprises on how to respect the right of children to be breastfed throughout their operations.

## **Pillar 2 – Corporate responsibility to respect human rights**

Breastfeeding at work should also be seen as part of a company's human rights obligations.

BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights commits to developing an independent assessment on the experiences of women and businesses in the context of continuing breastfeeding in line with the national Breastfeeding At Work guidelines. In addition, we recommend that the provision of appropriate facilities and time to breastfeed be assessed in periodic general surveys of Irish workplaces.

## **Pillar 3 – Access to remedy**

BFLGI and IBFAN Ireland recommend that the National Plan on Business and Human Rights consider how the government could take appropriate steps to ensure the effectiveness of domestic judicial mechanisms regarding the marketing of breast-milk substitutes, including considering ways to reduce legal, practical and other relevant barriers.

## References

WHO Code - [http://www.who.int/nutrition/publications/code\\_english.pdf](http://www.who.int/nutrition/publications/code_english.pdf)

UN Guiding Principles on Business and Human Rights -  
[http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)  
[http://www.ituc-csi.org/IMG/pdf/12-04-23\\_ruggie\\_background\\_fd.pdf](http://www.ituc-csi.org/IMG/pdf/12-04-23_ruggie_background_fd.pdf)

Seventh Report of the Special Rapporteur on Child Protection (2014)  
<http://www.dcy.gov.ie/documents/publications/SeventhSpecialRapReport2014.pdf>

UNCRC <http://childrensrights.ie/childrens-rights-ireland/un-convention-rights-child>

WHO and UNICEF recommend that exclusive breastfeeding be encouraged for the first 6 months-  
[http://www.who.int/nutrition/topics/global\\_strategy/en/](http://www.who.int/nutrition/topics/global_strategy/en/)

The Infant and Follow On Formula Regulations -  
[https://www.fsai.ie/legislation/food\\_legislation/foods\\_for\\_particular\\_nutritional\\_uses/infant\\_formula\\_and\\_follow\\_on\\_formulae.html](https://www.fsai.ie/legislation/food_legislation/foods_for_particular_nutritional_uses/infant_formula_and_follow_on_formulae.html)

Better Outcomes, Brighter Futures -  
[http://www.dcy.gov.ie/documents/cypp\\_framework/BetterOutcomesBetterFutureReport.pdf](http://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf)

Breastfeeding in Ireland – a Five Year Strategic Action Plan -  
<http://www.breastfeeding.ie/uploads/files/ACTIONplan.pdf>

Irish Aid  
<https://www.irishaid.ie/media/irishaid/allwebsitemedia/20newsandpublications/publicationpdfsenglish/one-world-one-future-irelands-new-policy.pdf>

and

<https://www.irishaid.ie/news-publications/news/newsarchive/2014/august/world-breast-feeding-week/>

Latest Press Release - <http://www.babymilkaction.org/archives/3200>

Bord Bia to develop and expand the market for Irish –made infant formula in other countries including China (REF). [http://www.irishfoodmagazine.com/images/pdf/2014/issue7\\_2014.pdf](http://www.irishfoodmagazine.com/images/pdf/2014/issue7_2014.pdf)

<https://www.kildarestreet.com/committees/?id=2015-02-03a.5>

Breastfeeding At Work guidelines <http://www.irishstatutebook.ie/2004/en/si/0654.html>

[http://www.breastfeeding.ie/?/news/article/breastfeeding\\_and\\_work/](http://www.breastfeeding.ie/?/news/article/breastfeeding_and_work/)

<http://www.independent.ie/business/farming/irish-dairy-brands-set-for-take-off-in-china-30733485.html>

<http://www.teagasc.ie/news/2011/201104-20.asp>

<http://www.bordbia.ie/industry/manufacturers/insight/alerts/Pages/ChinasInfant.aspx?year=2013&wk=40>; <http://www.irishtimes.com/life-and-style/food-and-drink/bord-bia-researchers-sleep-on-floors-in-vietnam-to-help-sell-irish-food-abroad-1.1936905>

<http://www.irishexaminer.com/business/online-demand-for-infant-formula-in-china-real-opportunity-says-bord-bia-227096.html>

Compliance regarding marketing of infant formula in China in the context of the WHO Code <http://www.ncbi.nlm.nih.gov/pubmed/25026262>

Report on compliance with the WHO Code  
[http://apps.who.int/iris/bitstream/10665/85621/1/9789241505987\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/85621/1/9789241505987_eng.pdf)