



ACCESS TO  
**NUTRITION**  
INITIATIVE

# Germany country study

Marketing of Breast-milk  
Substitutes and  
Complementary Foods

August 2024



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# Abbreviations

<b>ATNI</b>	Access to Nutrition Initiative
<b>BMS</b>	Breast-milk substitutes
<b>CF</b>	Complementary foods (commercially produced)
<b>FUF</b>	Follow-up formula
<b>GUM</b>	Growing-up milk
<b>IF</b>	Infant formula
<b>NGO</b>	Non-governmental Organization
<b>UNICEF</b>	United Nations Children's Fund
<b>US</b>	United States
<b>WHA</b>	World Health Assembly
<b>WHO</b>	World Health Organization

# About the Access to Nutrition Initiative

The Access to Nutrition Initiative (ATNI) is a global nonprofit established in 2013 to transform markets so they provide more nutritious, affordable, and sustainable foods for all. ATNI empowers key actors in the global food system and at national levels – especially industry and investors – to accelerate access to nutritious, affordable, and sustainable foods for all.

ATNI – which is funded by governments and philanthropies – is dedicated to objectively assessing and improving the contribution made by the private sector to addressing global nutrition challenges. ATNI does this by designing and regularly publishing various indexes and other private sector accountability tools. These indexes and tools measure and track, over time, the extent to which companies are working to increase consumers' access to healthy foods and responsibly exercising their influence on consumer choice and behavior.

More about ATNI can be found on our website:

<https://accesstonutrition.org/mission-vision-values/>



# Executive summary

ATNI periodically assesses the extent to which companies that make formulas and foods for infants and young children market their products in line with the prevailing international gold standard: the 1981 International Code of Marketing of Breast-milk Substitutes<sup>a</sup>. The Code lays provisions on the responsible marketing of breast-milk substitutes (BMS) and complementary foods (CF)<sup>b</sup>.

ATNI's BMS and CF Marketing Indexes 2024 assess the 20 largest baby food companies globally.<sup>c</sup> In addition to these global results, five country markets have been assessed, including Germany. This report summarizes the context of the BMS and CF market in Germany and presents the country findings. Four companies were included in this assessment: Danone, Hero, HiPP, and Nestlé. Together, they comprise more than 60% of Germany's baby food market.<sup>d</sup> Three of these companies – Danone, HiPP, and Nestlé – sell both BMS and CF, while Hero only sells CF in Germany.

For this research ATNI assessed compliance with the International Code of Marketing of Breast-milk Substitutes, relevant subsequent WHA resolutions and WHO Guidance on Ending the Inappropriate Promotion of Foods for Infants and Young Children. ATNI did not assess compliance with local regulations or laws.

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<sup>a</sup> Here we include all subsequent, relevant World Health Assembly (WHA) resolutions up to WHA 71.9, collectively referred to hereinafter as 'the Code'.

<sup>b</sup> For the purpose of this report that focused on the assessment of industrial food products, when the term complementary foods or the acronym CF is used, it refers to commercially or industrially produced complementary foods.

The number of incidences of non-compliance for both BMS and CF varied between the companies. However, **none of the four companies assessed during the research period of January 2023 to July 2023 market their BMS and/or CF products in Germany fully in line with the Code.**

For BMS products, a total of 148 incidences of non-compliant marketing practices were found during the research period – of which 57 were from online media, four from traditional media, and all 87 product labels assessed were found to be non-compliant with the Code. The majority of the incidences of non-compliance were related to products with no age specified or observations where no specific product is promoted but rather the BMS brand is.

For CF products, a total of 92 incidences of non-compliant marketing practices were found during the research period - of which 24 were from online media, two from television, and all 66 product labels assessed were found to be non-compliant with the Code. Sixteen CF products were marketed as suitable for under six months during the time of research. This is not in line with the standards of the Code that suggests these products should not be available on the market for children younger than six months.

This report presents the key observations behind these incidences of non-compliance and provides recommendations for improvements.

ATNI recommends that companies strengthen their marketing policies and ensure their marketing practices comply fully with the recommendations of the Code and all subsequent relevant resolutions, including the guidance supported by World Health Assembly (WHA) resolution 69.9.

<sup>c</sup> The selection is based on 2021 retail sales estimates from Euromonitor International.

<sup>d</sup> Based on Euromonitor International Limited, Dairy Products and Alternatives Edition, 2022 data, © All rights reserved.



Companies should play their part in contributing to targets for optimal infant and young child nutrition, particularly those set by the World Health Organization (WHO) for 2025 and national governments, which combat growing levels of overweight and obesity and reduce deaths and illness from diet-related chronic diseases.<sup>1</sup> As there are few legal measures in place on national implementation of the International Code in Germany, policy makers such as the Federal Ministry of Food and Agriculture and the Institute of Child Nutrition (Institut für Kinderernährung) are encouraged to ensure these are developed. The findings presented in this study could be used to identify which areas need to be considered with the most urgency.

## BMS

Incidences of non-compliance with the Code in Germany



## CF

Incidences of non-compliance with the Code in Germany







# 1. Introduction

The Access to Nutrition Initiative (ATNI) is dedicated to objectively assessing and improving the contribution made by the private sector to addressing global nutrition challenges. ATNI does this by designing and regularly publishing various indexes and other private sector accountability tools. These indexes and tools measure and track, over time, the extent to which companies are working to increase consumers' access to healthy foods and responsibly exercising their influence on consumer choice and behavior.

One of ATNI's core activities is assessing the extent to which companies that make formulas and foods for infants and young children market their products in line with the prevailing international gold standard: the 1981 International Code of Marketing of Breast-milk Substitutes including all subsequent, relevant World Health Assembly (WHA) resolutions up to WHA 71.9, collectively referred to hereinafter as 'the Code'. The Code lays provisions on the responsible marketing of breast-milk substitutes (BMS) and complementary foods (CF). For the purpose of this report that focused on the assessment of industrial food products, when the term complementary foods or the acronym CF is used, it refers to commercially or industrially produced complementary foods.

Companies are expected to play their part in contributing to optimal infant and young child nutrition and achieving nutrition goals, particularly those set by the World Health Organization (WHO) for 2025 and national governments to combat growing levels of overweight and obesity and reduce deaths and illness from diet-related chronic diseases<sup>2</sup> - by complying with the Code and relevant national legal measures.

This report summarizes the context of the BMS and CF market in the United States (US) and presents the country findings of the BMS Marketing and the CF Marketing Indexes 2024 for the US.

## The importance of infant and young child nutrition and the Code

Adequate nutrition is particularly important within the first 1,000 days of a child's life (from conception to age two), a critical stage that shapes optimal growth and development.

The WHO recommends that infants everywhere be exclusively breastfed for the first six months, at which point safe, adequate and nutrient-rich foods should be introduced when breastmilk or milk formula alone are no longer adequate to meet the nutritional requirements of growing infants. This period is also known as complementary feeding, which generally starts at the age of six months and lasts up to 23 months of age, although breastfeeding may continue beyond this period as recommended by WHO<sup>3</sup>.

Optimal breastfeeding has myriad benefits on infants and young children and their mothers. Breastmilk is the most sustainable and nutritious source of food for infants carrying protective factors that safeguard children's health and their future well-being<sup>4 5</sup>. Studies estimate that breastfeeding can help prevent around 823,000 deaths in children younger than five years and 20,000 deaths in mothers from breast cancer annually<sup>6</sup>. Nevertheless, while breastfeeding up to the age of two years is encouraged, the importance of appropriate complementary foods from the age of six months onwards should not be overlooked. The complementary feeding period is critical to prevent all forms of childhood malnutrition, including stunting, wasting, micronutrient deficiencies, overweight, obesity and diet-related non-communicable diseases<sup>7</sup>. Complementary foods of poor nutritional quality, like those that are high in sugar and calories, can contribute to weight gain, while



those of suitable nutritional quality have the potential to reduce stunting in young children<sup>8</sup>. These foods should have appropriate energy density, macronutrient levels and levels of micronutrients, either inherently or through fortification, to provide all of the vitamins and minerals essential to healthy development<sup>9</sup>.

Due to the sub-optimal rates of breastfeeding worldwide, and continuing infant mortality and poor health outcomes, in 2014, WHO set the global target for 2025 of achieving 50% exclusive breastfeeding in the first six months of age in all countries and regions<sup>10</sup>. This target was extended in 2016 to at least 70% exclusive breastfeeding by 2030<sup>11</sup>. The latest UNICEF estimates of exclusive breastfeeding rates during the first six months of life show that globally, as of 2022, exclusive breastfeeding is up to 48% and on track to reaching the 2025 target but remains far from the 2030 target. It is worth noting that there are regional disparities as six of the nine global UNICEF regions have rates below 50%, while Western Europe has no regional data on these practices, and only South Asia and Eastern and Southern Africa surpass the 2025 target<sup>12</sup>.

Latest UNICEF estimates show that in 2021, only 18% of older infants and young children between 6-23 months of age globally consumed a minimum acceptable diet that is sufficient in diversity and frequency as per complementary feeding recommendations<sup>13</sup>.

With a rise in urbanization and income growth, coupled with inadequate parental work policies and insufficient health care advice, parents are faced with various challenges to practice optimal infant and young feeding<sup>14</sup>. Furthermore, the baby food market, consisting of breast-milk substitutes and commercial complementary foods, is also growing<sup>15</sup>, and studies are showing that these products are increasingly becoming a part of infant and young children's diets.

Evidence shows that the inappropriate marketing of breast-milk substitutes undermines breastfeeding. The analyses revealed that BMS sales were inversely associated with breastfeeding at one year of age in 126 countries. In addition, many commercial complementary foods are marketed as suitable from four months of age, potentially displacing breastmilk in the first six months of life as recommended by WHO<sup>16</sup>.

A recent study (2023) of mothers surveyed in five Southeast Asian countries revealed that more than one-third of them gave commercial complementary foods to their 6-23 month old child at least once a day, and almost half of mothers fed their child such products at every or most feedings or meals. While factors such as convenience and affordability influenced the purchase of these products, the mothers reported that the perceived nutritional benefits of commercial complementary foods were a primary reason for resorting to these foods<sup>17</sup>.

The responsible marketing of breast-milk substitutes and commercial complementary foods is imperative to ensure that they are not promoted in any way that would influence caregivers' decisions in feeding their infants and young children.

The WHO has been responding to concerns about irresponsible marketing of foods for infants and young children since 1981, when the International Code of Marketing of Breast-milk Substitutes was adopted by the World Health Assembly (WHA) as a minimum requirement to protect and promote appropriate infant and young child feeding. It sets out, inter alia, provisions on the appropriate labeling of breast-milk substitutes and restrictions on the promotion of these products in public settings and within the healthcare system<sup>18</sup>. Since 1981, several WHA resolutions have been passed that augment or reinforce the original Code given the evolving marketing challenges<sup>19</sup>. The resolution adopted in May 2016, WHA resolution 69.9, extended the scope of products covered by the Code to include any milks (or products that could be used to replace milk, such as fortified soya milk



alternatives), in either liquid or powdered form, that are specifically marketed for feeding older infants and young children up to the age of three years<sup>20</sup>. This resolution also supported the WHO Guidance on Ending Inappropriate Promotion of Foods for Infants and Young Children which introduced recommendations for the appropriate marketing of commercial complementary foods marketed as suitable for older infants and young children aged between 6 and 36 months<sup>21</sup>.



## 2. Context for the Germany study

### Infant and young child feeding practices in Germany

In Germany, from 2014 to 2017, 87% of women started breastfeeding, but only 13% followed the World Health Organization (WHO) recommendation of breastfeeding exclusively in the first six months.<sup>22</sup> These rates are lower than the global (48%) average rate of exclusive breastfeeding based on the latest (2022) UNICEF estimates.<sup>23</sup> Other studies have shown that the mother's level of education has an important impact on the initiation of breastfeeding. While only 69% of mothers with lower levels of education have ever breastfed, this rises to 95% of mothers with a higher level of education. The mother's age at childbirth also influences her breastfeeding behaviour. Older mothers are more likely to breastfeed than their younger counterparts (76% of mothers up to 24 years of age breastfeed in comparison to 85% of those 30 years and over).<sup>24</sup>

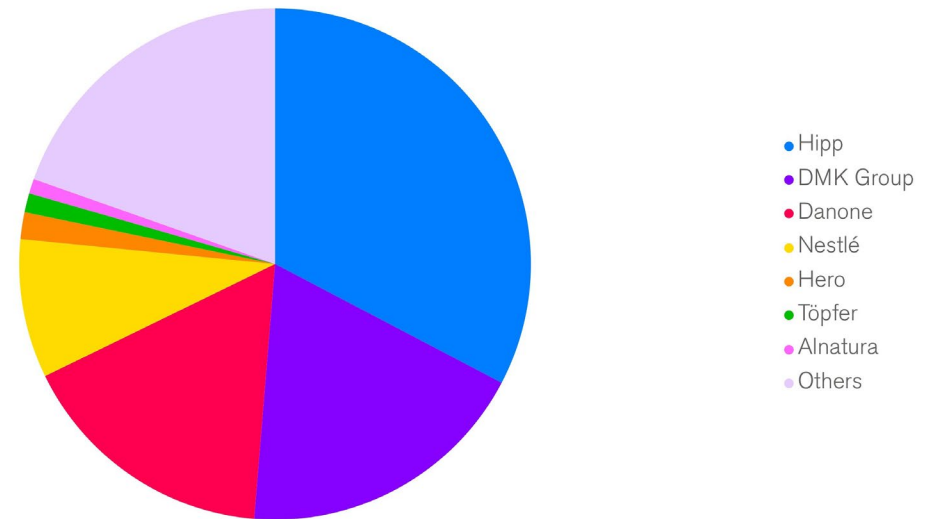
### Germany infant and young child food market

Globally, the baby food market is growing, reaching over USD 71 billion in 2022, an increase from over USD 68 billion in 2018.

The baby food market in Germany amounts to USD 1.30 billion (2024) and it is expected to grow annually by 5.6% with an increase up to USD 1.62 billion by 2028.<sup>25</sup>

The companies Danone, Hero, HiPP, and Nestlé collectively hold around 60% of the baby food market in Germany. HiPP has the largest market share in Germany compared to the other companies (33%) (Figure 1).

Figure 1 Company shares of Germany's baby food market (2022)



Source: Euromonitor International Limited, Dairy Products and Alternatives Edition, 2022 data, © All rights reserved.

The commercial baby food market constitutes two distinct markets: Breast-Milk Substitutes, which includes milk formula products, and commercial complementary foods, which includes different types of foods for older infants and young children.

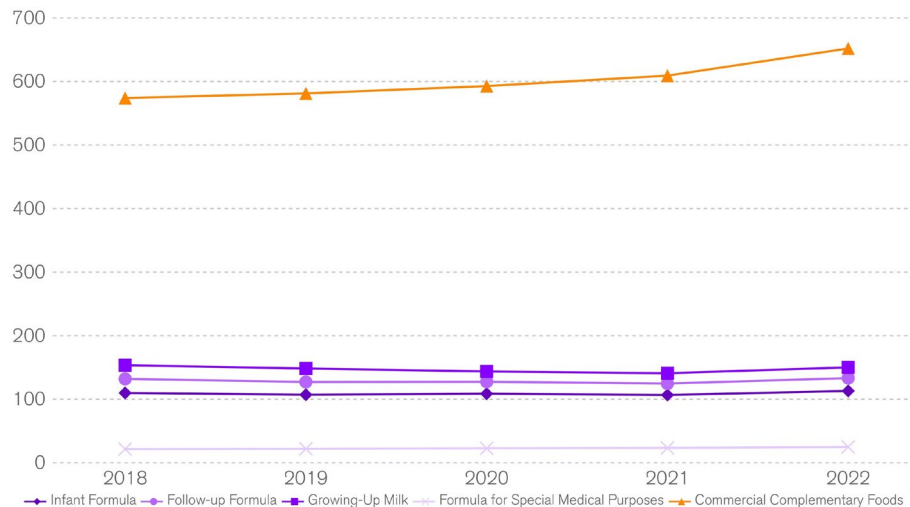
- In 2022, the global BMS market reached approximately USD 53 billion with Germany's market valued around USD 419 million (2022), showing an increase from about USD 5 million in 2018. Among the formula types, growing up milk leads the market, constituting around 36%, followed by follow-up formula (32%), infant formula (27%) and



formula for special medical purposes (6%). With the exception for growing-up milk, sales of all formula types show a marginal rise between 2018 and 2022 <sup>26</sup> (Figure 2).

- Globally, in 2022, the commercial CF market was worth over USD 18 billion, while the CF market in Germany was worth over USD 650 million (2022) an increase from about USD 78 million in 2018. Prepared baby food had a larger share (59%) with a rise from USD 342 million to 386 million between 2018 and 2022. Other baby foods increased from around USD155 million to 180 million, while dried baby food rose from around USD 77 million to 84 million in the same period <sup>27</sup> (Figure 2).

**Figure 2: Trends in baby food product sales in Germany (USD million)**



## Germany laws and regulations regulating the marketing of foods for infant and young children

According to a 2022 Status Report by the WHO, UNICEF, and International Baby Foods Action Network, Germany's national regulations cover some provisions of the Code.<sup>28</sup> Current regulations in Germany follow EU Regulation 609/2013 as supplemented by the EU Commission Delegated Regulation 2016/127, and they cover BMS products intended for infants up to 12 months of age.

In regard to labelling, Germany has several provisions in place for infant formula, including required warnings and instructions on the appropriate preparation and use of products as well as statements supporting breastfeeding and the prohibited use of nutrition and health claims; however, the regulations do not extensively cover required information and prohibited content for follow-up formula labels.

Although Germany's national regulations have some provisions in place to restrict BMS marketing at points-of-sale, there are gaps in restricting company advertising of BMS and contact with caregivers. In addition, Germany has no provisions in line with the Code on responsible marketing in healthcare facilities and engagement with health workers.

Current German recommendations on breastfeeding indicate:

- Infants should be breastfed for the first six months of their lives
- Infants should be exclusively breastfed at least until they are five months old– i.e. for at least four complete months
- The National Breastfeeding Committee does not explicitly recommend when the infant should be weaned, as they state no scientifically-based findings on this matter are available in Germany.<sup>29</sup>



In line with the German recommendations, the Federal Ministry of Food and Agriculture developed a National Strategy for the Promotion of Breastfeeding in 2021 in order to enhance women's motivation to breastfeed, provide them with individual breastfeeding support and increase public acceptance of breastfeeding. One of the strategies involves examining whether there is further need for regulation concerning the International Code of Marketing of Breastmilk Substitutes.<sup>30</sup>



## 3. Methodology

### Country assessments in ATNI's BMS and CF Marketing Indexes

ATNI's BMS and CF Marketing Indexes 2024 collectively assessed the 20 largest baby food companies globally, based on 2021 retail sales estimates. ATNI estimates these companies hold >70% of the global baby food market share of breast-milk substitutes and commercial complementary foods<sup>31</sup>.

Both the BMS and CF Marketing Indexes consist of two main types of assessment:

- the **Corporate Profile** assessment which examines global corporate policies and procedures
- the **Country Studies** assessment which measures companies' marketing practices in selected countries

The Corporate Profile and Country Studies evaluate the extent to which company policies and practices align with the various provisions of the Code. It is worth noting that while the Corporate Profile assesses company policies and commitments on all aspects of the Code, the Country Studies assess marketing practices against specific provisions of the Code.

The [methodology](#) for the BMS and CF Marketing Indexes 2024 includes additional information about the companies selected and the respective Index(es) they are assessed in, as well as the basis and nature of the assessments for each component and how they feed into the overall Indexes. For further details specifically on the Country Studies, refer to the section on 'In-country assessments' on pages 19-26 of the methodology. Annex I and Annex II of the methodology include a list of all the indicators against which companies are assessed on for the Corporate Profile of the BMS Marketing

Index and CF Marketing Index, respectively. Indicators with this symbol are those that are also used in the Country Studies to assess companies' practices against the specific Code requirement. More details on which Code requirements are assessed, and how, are explained in the section in this report on [Assessment methods and scoring](#).

ATNI's assessments are based on the standards of the Code and its definitions, the following products are assessed in each of the respective Indexes:

- The **BMS Marketing Index** assesses company standards on the marketing of breast-milk substitutes, hereinafter referred to as BMS products. These include any milks (or products that could be used to replace milk, such as fortified soya milk alternatives), in either liquid or powdered form, that are specifically marketed for feeding older infants and young children up to the age of three years; namely:
  - **IF:** infant formula (intended for infants younger than six months of age)
  - **FUF:** follow-up formula (intended for older infants between six months up to one year of age)
  - **GUM:** growing-up milks or toddler milks (intended for young children between one to three years of age)

It is important to note that the Code never made exceptions to formulas for special medical purposes therefore these products are also included within the scope of ATNI's studies. Bottles and teats, however, are not included in ATNI's assessments as these products generally would not be manufactured by food and beverage companies.

- The **CF Marketing Index** assesses the marketing of commercial complementary foods, hereinafter referred to as CF products. These include baby porridge and cereals, dairy/fruit/vegetable-based baby



purées, savory meals and snack foods, as well as baby teas, juices and water for infants and young children between six up to 36 months of age.

CF products marketed to infants aged under six months are considered unwanted breast-milk substitutes, as these products interfere with exclusive breastfeeding in the first six months. However, ATNI will assess these products in the CF Marketing Index rather than the BMS Marketing Index to emphasize that CF products are intended for older infants and young children aged from 6 to 36 months and not be introduced to infants aged under six months who should be exclusively breastfed.

The BMS Marketing and CF Marketing Indexes 2024 can be found here for the [BMS Marketing Index 2024](#) and the [CF Marketing Index 2024](#). Individual company scorecards are also available where company performance is compared across the selected markets.

## Country selection: Germany

As part of the Country Studies component of the BMS Marketing and the CF Marketing Indexes 2024, five countries in total were selected for assessment. This report focuses on the findings from Germany. Similar [in-country reports](#) are published for the other four countries selected: China, Indonesia, the US and Viet Nam.

As the company scope has expanded for the BMS and CF Marketing Indexes 2024 (from nine companies assessed in 2021 to 20 companies for this

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<sup>e</sup> The five countries in which ATNI conducted assessments of marketing practices for the BMS and CF Marketing Indexes 2024 are: China, Germany, Indonesia, United States, and Viet Nam.

assessment), the geographic variability of the companies' markets warranted the selection of a minimum of five countries, to ensure each of the 20 companies is assessed on BMS/CF marketing in at least one country. Germany was one of the five countries<sup>e</sup> selected for assessment for several reasons, all of which are linked to the country selection criteria as described on page 23 of the [methodology](#). The companies selected for Germany were HiPP, Danone, Hero and Nestlé. Germany is one of the largest baby food markets for HiPP. Collectively, the four companies constitute over 60% of Germany's baby food market<sup>f</sup>.

Three of the four companies, Danone, HiPP and Nestlé, sell BMS and CF products in Germany. Hero however only sells CF products in Germany. This report presents the companies' findings on the marketing practices of BMS products for all three companies, and the findings on CF products for the four companies, separately.

## Assessment methods and scoring

The methodology for the in-country assessments is guided by the second edition of the NetCode protocol for periodic assessment, published in 2017.<sup>32</sup> ATNI has adapted the scope to ensure that relevant elements of the guidance supported by WHA resolution 69.9 are incorporated.

<sup>f</sup> Euromonitor International Limited, Dairy Products and Alternatives Edition, 2022 data, © All rights reserved.





The main areas of marketing assessed in the country studies for the BMS and CF Marketing Indexes 2024 are online points-of-sale, traditional and online media outlets, and product labels. Data collection is conducted using forms adapted from the 2017 edition of the NetCode toolkit, namely:

- Form 5: List of relevant products sold at point-of-sale
- Form 6: Promotions at retail outlets and pharmacies
- Form 7: Desk review of labels
- Form 8: Desk review of promotions on the media

The aim is to assess compliance with the Code. This is not an assessment against local regulations.

In addition, due to the increased number of companies and countries assessed compared to the previous ATNI country studies, data collection methods were adapted by using online tools to capture marketing practices.

The three main forms of assessment are described below:

## I. Social listening<sup>g</sup>

**Purpose of the assessment:** Monitor companies' online marketing activities to determine level of compliance with Article 5 of the Code and the guidance supported by WHA resolution 69.9 (see Box 1).

### Objectives:

1. Identify the number of company paid advertisements<sup>h</sup> of BMS/CF or related company sponsored content, if any.
2. Identify the number of promotions<sup>i</sup> on BMS/CF products, if any.

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<sup>g</sup> Social listening involves monitoring the web and social media for mentions of defined key words or phrases, which can be gathered, organized, and analyzed.

<sup>h</sup> An advertisement can be any audiovisual material meant to promote relevant products.

### Box 1:

Article 5 of the Code includes provisions on advertising BMS to the general public, especially to caregivers. It stipulates that companies should not advertise or promote their BMS products on any form of media nor in retail environments (both physical and online). WHA 69.9 recommendations further prohibit companies that sell BMS from establishing contact with caregivers, providing them information on infant and young child feeding, and cross-promoting their BMS products in digital environments.

WHA 69.9 recommendations also include provisions on CF promotions. While these are not prohibited, certain requirements must be met to ensure the products are appropriately promoted. These specifically pertain to recommendation 4.

It is important to note that the Code recommends the introduction of CF products no earlier than six months of age to protect exclusive breastfeeding in this period. As those products should not be available on the market, they were counted as observations of non-compliance and not assessed on any further indicators that evaluate appropriate marketing practices.

Each identified advertisement and promotion of BMS is counted as an observation of non-compliance. Meanwhile, they are counted as such for CF if the advertisement or promotion is of a CF product intended for infants younger than six months of age (CF < 6), otherwise if it is of a CF product intended for older infants and young children between six months and three years of age (CF 6-36), the

<sup>i</sup> Promotions include any incentives for product purchase, such as discounts, offers, and giveaways, as well as information posts on infant and young child feeding, or they can be in the form of company contact via sign-up to baby clubs or contests.



advertisement/promotion would be counted as an observation of non-compliance if it does not meet recommendations 4 and 5 of WHA 69.9.

Each observed incidence of non-compliance is counted and used to calculate a company's country score.

**3.** Record additional incidences of non-compliance associated to an observed advertisement or promotion.

These are not counted towards the country score but provide context of the extent and nature of non-compliances. Examples include claims or solicited contact.

Note: Multiple forms of non-compliance may be attributed to a single BMS/CF product or brand advertisement or promotion; these would be considered collectively as a single incidence of a non-compliant observation. If the same advertisement is found on more than one social media platform, each instance would be counted as a separate observation of non-compliance.

**Methods:** Online platforms were monitored for mentions of a combined set of keywords across three main channels: web, social media and retail.<sup>1</sup>

The keywords, which are based on desk research in consideration of similar studies conducted, included:

- Names of the companies and BMS and CF brands assessed in a country, including the local company and brand names
- Wording related to infant and young child feeding, specifically breastfeeding, complementary feeding, baby formula, and commercial baby foods (e.g., baby formula, first milk, weaning food)

- Wording relating to promotions and claims (e.g., sale, discount, and immunity and comfort)

The service provider translated the keywords to the local language to ensure that local content was monitored and collected. In addition, ATNI worked closely with the service provider to revise and refine the list of keywords until relevant content was being delivered by the tool.

The platforms monitored were:

- Companies' local websites and social media channels
- Parenting websites: Up to 10 of the most popular websites and social media platforms (based on popularity and number of mentions), as captured by the social listening tool, that provide information to parents and caregivers on infant and young child feeding
- Retail websites: Up to five of the most popular local retail websites (based on popularity and number of mentions), as captured by the social listening tool, that sell BMS and CF products

See [Annex I](#) for a complete list of the websites and social media platforms monitored in Germany which was developed based on initial scoping and desk research, as well as based on the platforms that the tool could monitor and collect relevant content from.

**Time frame:** monitoring spanned for eight weeks between May 12, 2023 – July 6, 2023

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<sup>1</sup> ATNI contracted Digimind to conduct the social listening and collect relevant mentions.



## II. Traditional media monitoring

**Purpose of the assessment:** monitor companies' marketing activities on traditional media to determine the level of compliance with Article 5 of the Code and the guidance supported by WHA resolution 69.9 (see Box 1 above).

### Objectives:

1. Identify the number of company paid advertisements<sup>k</sup> of BMS/CF or related company sponsored content, if any.

Each identified advertisement of BMS is counted as an observation of non-compliance. For CF, advertisements of CF < 6 are counted as an observation of non-compliance, as well as advertisements of CF 6-36 products that do not meet recommendations 4 and 5 of WHA 69.9.

Each observed incidence of non-compliance is counted and used to calculate a company's country score.

2. Record additional incidences of non-compliance associated with an observed advertisement.

These are not counted towards the country score, but provide context of the extent and nature of non-compliances. Examples include promotions, claims, or solicited contact.

Note: Multiple forms of non-compliance may be attributed to a single BMS/CF product or brand advertisement; these would be considered collectively as a single incidence of a non-compliant observation. If the same advertisement is

found on more than one channel, each instance would be counted as a separate observation of non-compliance.

**Methods:** creatives by advertisers of the companies assessed were monitored on traditional media platforms (broadcast media and print) for content related to BMS and CF products and brands<sup>l</sup>.

The platforms monitored in Germany are:

- Television: a total of 1 16 government, private, and cable channels
- Radio: a total of 85 channels
- Print: a total of 1 150 print materials, including 245 newspapers and 905 magazines

See [Annex II](#) for a complete list of the broadcast channels and print media monitored in Germany.

The sources monitored have a reach of > 70% of the population in the country.

**Time frame:** Monitoring spanned a total of six months, between January 1 2023 and June 30 2023. Across all channels, live monitoring took place between May 4 2023 and June 30 2023 (two months), while historical content was obtained for the period between January 1 2023 and May 3 2023. The monitoring was continuous and not limited to a specific time interval during the day.

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<sup>k</sup> An advertisement can be any audiovisual material meant to promote relevant products.

<sup>l</sup> ATNI contracted Nielsen Ad Intel International to monitor traditional media channels and collect relevant creative advertisements.



### III. Review of product labels:

**Purpose of the assessment:** evaluate companies' product labels to determine their level of compliance with Article 9 of the Code and guidance supported by WHA resolution 69.9 (see Box 2).

#### Box 2:

Article 9 of the Code includes provisions on labelling requirements for BMS which are further augmented by recommendation 4 of WHA 69.9. Labelling requirements for CF products are specified in recommendation 4 of WHA 69.9.

Labels of CF < 6 products are counted as observations of non-compliance as those products should not be available on the market, thus they were not assessed on any further indicators that evaluate appropriate marketing practices.

#### Objectives:

1. Identify the number of non-compliant product labels, if any.

Each identified non-compliant label is counted as an observation of non-compliance, contributing to the country score.

2. Record additional non-compliances associated to an observation.

A non-compliant label may have more than one type of non-compliance. The various non-compliances identified per label are not added up to the country score, but provide context of the extent and nature of non-compliances. Examples include inappropriate use of pictures and images, claims, or missing instructions of appropriate preparation.

**Methods:** BMS and CF product information was obtained from a third-party product database<sup>m</sup> that also included images of the product labels.

**Time frame:** Products selected for the assessment included those launched between March 2020 and February 2023. The aim was to include BMS and CF products that were on the markets assessed in the first half of 2023.

For each company, the sum of all incidences of non-compliance with the Code identified from the social listening, traditional media monitoring, and product label review corresponds to a country score that feeds into the Index score (see Table 1 below). In this study, the higher the number of observed incidences of non-compliance for a company, the less compliant it is to the Code, whereas a company would be considered fully compliant with the Code if no incidences of non-compliance are found across online and traditional media and for product labels.

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<sup>m</sup> ATNI contracted Innova Market Insights to access the product database and obtain information on BMS and CF products in the markets of interest.



**Table 1 Company country scores based on observed incidences of non-compliance with the Code**

Observed incidences of non-compliance with the Code in a country	BMS or CF country score
0	100%
1-10	66%
11-20	33%
> 20	0%

## Data verification for Germany

Once data collection was completed, ATNI informed all 20 companies separately about the assessments and the countries they took place in, Germany being one of them. As part of ATNI's fact-checking process, each company was requested to confirm if the brands captured correctly represent the markets studied during the research timeframe. As the verification process entails fact-checks and requests for additional information, it has no influence on the assessments and findings.

For the label assessment, companies were specifically requested in some cases to share additional product information and materials that could not be found in the public domain if images of the product packages were missing or when the images available to ATNI were not clear enough to extract the information needed to complete the assessments.

In regard to the online findings, companies were asked to confirm whether they had contractual relationships with parenting websites (targeting parents/caregivers of infants and young children) in situations where company-related incidences of non-compliance were found, and with online retailers where point-of-sale promotions were monitored. As this is an assessment of company practices, ATNI verifies if companies have any

agreements with parenting websites and online retailers or influence on their marketing practices, to determine whether the companies are responsible in any way for the findings and thus if they should be attributed to the company or excluded from the assessments.

If companies did not respond to ATNI's requests, all identified incidences of non-compliance were included in the assessments, and where clear images were missing, the label assessments remained incomplete and are noted as such. See Table 2, below, for information on the companies' level of engagement in relation to Germany's findings.

During this process, companies can review their findings, along with the evidence of all observed incidences of non-compliance in the form of images and screenshots, videos, and links. ATNI follows an independent and transparent approach with the companies to confirm to them ATNI's observations of non-compliance and where they were identified. These details also serve to provide the companies with the information they need to take corrective action.



**Table 2. Level of company engagement on the Germany findings**

Company	Company engaged with ATNI on country findings	Changes to label findings			Changes to online findings		
		Excluded products	Reason for exclusion	Additional requested material provided	Excluded findings from online retailers	Excluded findings from parenting websites	Reason for exclusion
<b>Danone</b>	Yes	12	9 BMS discontinued 3 CF discontinued	Yes for BMS and CF	0 for BMS Not applicable for CF	Not applicable for BMS 22 CF	CF products were out of scope of this assessment (intended for children over 3 years of age)
<b>Hero</b>	No						
<b>HiPP</b>	Yes	1	CF for children over 3 years of age (product out of scope of this assessment)	Yes for BMS and CF	Not applicable for BMS and CF	0 for BMS Not applicable for CF	Not applicable
<b>Nestlé</b>	Yes	3	2 BMS delisted 1 human milk fortifier (product out of scope of this assessment)	Yes for BMS Incomplete for CF	Not applicable for BMS and CF	Not applicable for BMS and CF	Not applicable

Note: "Not applicable" indicates there was no observation of this company's BMS/CF products on the retailer or parenting websites monitored.



## 4. Marketing practices in Germany for BMS

The findings on the extent to which three selected companies market their BMS products in Germany in line with the Code are presented in Table 3. **A total of 148 incidences of non-compliant marketing practices for BMS products were found during the research period.** As seen in Table 3, non-compliant marketing practices were found for all three companies. In total, 57 (38%) of the total incidences of non-compliances found in this study were attributed to BMS-related promotions on online retail or online media channels. A total of four of the 148 incidences of non-compliances found in this study were attributed to traditional media promotions (on TV and print).

Eighty-seven (59%) of the total incidences of non-compliance found in this study were attributed to products with non-compliant labels with all labels assessed from the three companies having at least one incidence of non-compliance with the Code.

[Annex III](#) provides an overview of the brands captured for each company during the monitoring and across the different marketing channels.

**Table 3: Number of non-compliant marketing practices for BMS products by company and by marketing channel in Germany**

Company (Estimated BMS market share in Germany <sup>n</sup> )	Example of brands assessed	TOTAL number of incidences of non-compliance (n)	Promotions							Non-compliant labels out of number of product labels assessed (Of products launched between March 2020 and February 2023)
			Online (May 12 2023 – July 6 2023)			Traditional (January 1 2023 – June 30 2023)				
			Retail	Media	Total	TV	Radio	Print	Total	
<b>Danone (25%)</b>	Milumil, Aptamil, Alpro	80	2	42	44	0	0	1	1	35/35
<b>HiPP (17%)</b>	HiPP	36	1	10	11	1	0	0	1	24/24
<b>Nestlé (23%)</b>	Beba, Little steps	32	0	2	2	0	0	2	2	28/28
<b>TOTAL</b>		<b>148</b>	<b>3</b>	<b>54</b>	<b>57</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>4</b>	<b>87/87</b>

<sup>n</sup> Euromonitor International Limited, Dairy Products and Alternatives Edition, 2021 data, © All rights reserved.



## Online retailers

There were three point-of-sale promotions found on the website of one of the five most popular online retailers in Germany (Rossmann.de). Two were for Danone products and one for HiPP products, both companies having relatively high shares in the German BMS market. No online retail promotions were found for products from Nestlé in the eight-week period the channels were monitored.

One Danone product promotion was a follow-up milk and the other did not indicate the age range. The product for HiPP was for growing-up milk. All three findings contained at least one form of nutrition, health or marketing claim<sup>o</sup>.

Along with the promotions identified at points-of-sale, which are non-compliances with Article 5.3 of the Code, additional non-compliances were observed for Danone pertaining to Article 5 of the Code and recommendations 5 and 6 of the guidance supported by WHA resolution 69.9, such as company contact through an “expert chat”.

## Online media

For the three companies, a total of 54 advertisements and promotions related to BMS brands were found on online media channels during the research period. A relatively low number of online advertisements were found for Nestlé compared to the other two companies.

All of the BMS advertisements and promotions found on online media channels appeared on the company’s own social media pages. For Nestlé and HiPP, promotions were found mainly on Facebook. For Danone, most

promotions were found on Instagram (20/42) followed by YouTube (19/42). Danone also promoted through their Danone German website (2/42) and Facebook (1/42).

Along with the advertisements identified, which are non-compliances with Article 5.1 of the Code, additional non-compliances were observed pertaining to Article 5 of the Code and recommendations 5 and 6 of the guidance supported by WHA resolution 69.9. Examples include information on infant and young child feeding being provided by the companies to caregivers, offers of gifts or giveaways and company contact through solicited contest sign-ups. In addition, 37% contained a nutrition, health or marketing claim, with the most common being marketing and nutritional claims. However, it was also noted that Danone included the message “Important note: breastfeeding is best for your baby. Please talk to your pediatrician or midwife if you want to use infant formula” in 17 of its advertisements.

About 26% of the online adverts had no specific age indicated for the BMS product promoted. In total, 24% of the online adverts were not related to specific BMS products, but rather advertised brands associated with products within the scope of the study.

## Traditional media

During the research period, three BMS advertisements were found in print (two for Nestlé and one for Danone) and one on television for HiPP in the six months the channels were monitored. All advertisements were non-compliant with Article 5 of the Code. All four advertisements concerned follow-up milk products. All advertisements included claims such as “support your child's development and immune system” (a health claim).

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<sup>o</sup> In this study, ATNI referred to WHO Europe’s Nutrient and Promotion Profile Model for the definition of the different types of claims.





## BMS product labels

Of the 87 BMS labels assessed for the three companies, **all 87 labels** contained one or more instances of non-compliance (e.g. because of inappropriate claims or missing statements), with an average of five non-compliances per label. Danone had the highest average number of incidences of non-compliance per label with an average of seven non-compliances per label. See Table 4 for an overview of the number of product labels assessed per company and the respective non-compliances, including the most frequently identified ones.

The majority of the BMS labels assessed for Germany were from infant formula for ages 0-12 months (52%) followed by follow-up formula (30%) and growing up milks (18%).

As seen in Table 4, none of the 87 labels include a statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond, as per recommendation 4 of the WHO Guidance on the inappropriate promotion of foods for infants and young children supported by WHA resolution 69.9.

Furthermore, 80% of the labels contained one or several claims: nutritional claims (70 out of 87 labels), health claims (54 out of 87 labels), and/or marketing claims (77 out of 87 labels), for example “supports your baby's immune system with vitamins A, vitamin C and vitamin D” (a health claim) or “it has a unique combination of nutritional fibers GOS/FOS” (a nutrition claim) or “particularly creamy due to increased starch content” (a marketing claim)<sup>P</sup>.

Of all labels, 53% (46 out of 87 labels) did not contain a statement that the product should be used only on the advice of a health worker, in a font size that is easily visible, in bold and on a contrasting background, as required by

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<sup>P</sup> All claims were translated from German.

Article 9.2 of the Code. In addition, 54% (47 out of 87 labels) contained text that compared the product to breastmilk; e.g. “for over 40 years we have been researching the wonderful properties of breast milk and its inner formulation to nourish, develop and support the child's immune system to best prepare the child for the future.”

A full list on BMS product label results can be found in [Annex IV](#).



Table 4. Overview of product label assessment

	Number of (n)			Average number of non-compliances per non-compliant label (n)	Most common non-compliances on product labels			
	Products assessed	Products with missing images	Non-compliant labels		No statement on the importance of breastfeeding in line with WHO recommendations	Contain claims	No clear statement on the use of BMS on the advice of health workers	Contain text or images that may discourage or undermine breastfeeding or makes a comparison to breastmilk
<b>Danone</b>	35	0	35	7	35	24	18	24
<b>HiPP</b>	24	0	24	5	24	22	12	9
<b>Nestlé</b>	28	0	28	4	28	24	16	14
<b>TOTAL</b>	<b>87</b>	<b>0</b>	<b>87</b>		<b>87</b>	<b>70</b>	<b>46</b>	<b>47</b>



## 5. Marketing practices in Germany for CF

None of the marketing practices of commercial complementary foods observed during the research are fully compliant with the Code. The findings on the extent to which four companies (Danone, Hero, HiPP and Nestlé) market their CF products in Germany in line with the Code are presented in Table 5. A total of **92 incidences of non-compliant marketing practices for CF products** were found during the research period, of which 24 were from online media, two from television and 66 were found on all the CF product labels assessed for these companies.

[Annex V](#) provides an overview of the brands captured for each company during the monitoring and across the different marketing channels.

**Table 5. Number of non-compliant marketing practices for CF products by company and by marketing channel in Germany**

Company (Estimated CF market share in Germany <sup>9</sup> )	Example of brands assessed	TOTAL number of incidences of non-compliance (n)	Promotions							Non-compliant labels out of number of product labels assessed (Of products launched between March 2020 and February 2023)
			Online (May 12 2023 – July 6 2023)			Traditional (January 1 2023 – June 30 2023)				
			Retail	Media	Total	TV	Radio	Print	Total	
<b>Danone (12%)</b>	Milupa	13/13	0	7/7	7/7	0	0	0	0	6/6
<b>Hero (3%)</b>	Freche Freude	22/22	0	1/1	1/1	0	0	0	0	21/21
<b>HiPP (44%)</b>	HiPP	55/55	0	16/16	16/16	2/2	0	0	2/2	37/37
<b>Nestlé (&lt;5%)</b>	Cerelac	2/2	0	0	0	0	0	0	0	2/2
<b>TOTAL</b>		<b>92/92</b>	<b>0</b>	<b>24/24</b>	<b>24/24</b>	<b>2/2</b>	<b>0</b>	<b>0</b>	<b>2/2</b>	<b>66/66</b>

<sup>9</sup> Euromonitor International Limited, Dairy Products and Alternatives Edition, 2021 data, © All rights reserved.



## Online retail

There were no point-of-sale promotions found for CF products on the websites of the five most popular online retailers in Germany in the eight-week period the channels were monitored.

## Online media

A total of 24 non-compliant advertisements or promotions were found on online media channels: seven from Danone, one from Hero, 16 from HiPP, and none from Nestlé. These appeared on company or brand associated social media pages including Instagram (10) and Facebook (12), and on the company's website (2).

Two advertisements for HiPP were found to market CF as suitable for infants under six months of age, indicating the product is suitable from four months of age. The Code recommends the introduction of CF products no earlier than six months of age to protect exclusive breastfeeding in this period. As those products should not be available on the market, they were counted as non-compliances and not assessed on any further indicators that evaluate appropriate marketing practices. Seven of the advertisements did not have a clear age specified for the CF product promoted and in one case it concerned CF brand promotions. The remaining 14 advertisements were for CF products by Danone and HiPP aimed at children above six months of age.

All of the 22 advertisements assessed contained two to three incidences of non-compliance each. The company advertisements included incidences of non-compliance with recommendation 5 of the guidance supported by WHA resolution 69.9 by allowing company contact through sign-ups to baby clubs for example. The four companies also market BMS products, thus posing an unwanted risk of cross-promotion.

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<sup>r</sup> All claims were translated from German.

From all the advertisements assessed, around 55% contained a nutrition, health or marketing claim. The most used were marketing claims with examples<sup>r</sup> such as “tasty start to the day”, “delicious, nutty aroma”, among others. Further, none of the CF advertisements assessed included a statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond, as per recommendation 4 of the guidance supported by WHA resolution 69.9.

## Traditional media

During the research period, two CF television advertisements from HiPP were found in Germany. The advertisements did not clearly specify the recommended age of introduction. Both ads contained a claim (nutritional, and marketing claims) and did not include a statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond. These non-compliances all link to what is specified under recommendation 4 of the guidance supported by WHA resolution 69.9.

No observations of CF advertisements were found on traditional media for Danone, Hero or Nestlé during the time of the research.



## CF product labels

All 66 product labels assessed from the four companies were found to be non-compliant.

One CF product from Danone, two products from Hero and 11 products from HiPP were found to be marketed as suitable for infants under six months of age, indicating they are suitable from four months of age. As this product should not be available on the market, these were counted as a non-compliant label but not assessed on any further indicators that evaluate appropriate labeling practices. For the remaining labels assessed, all 52 labels contained one or more instances of non-compliance, with an average of two to three observed incidences of non-compliance per label<sup>s</sup>. See Table 6 for an overview of the number of product labels assessed per company and the respective non-compliances, including the most frequently identified ones.

All labels assessed contained at least one claim, 51 labels had nutritional claims, 45 contained marketing claims and 13 contained health claims<sup>t</sup>.

Forty-two out of 52<sup>u</sup> were missing a statement on the importance of exclusive breastfeeding in the first six months of life and continued breastfeeding for up to two years or beyond as per recommendation 4 of the guidance supported by WHA resolution 69.9.

Other incidences of non-compliance against recommendation 4 were identified on ten labels<sup>v</sup> that contained text, image or other elements that undermine or discourage appropriate complementary feeding or that may

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<sup>s</sup> It should be noted that there were in total 11 products with missing images (one from Nestlé and 10 from Hero), so for these products it was not possible to do the full assessment.

<sup>t</sup> Ten products by Hero did not have clear images to confirm if the labels included health claims or not.

suggest that the product is inherently superior to home prepared foods e.g. “We would like to help you to give your baby the basis for a balanced diet”.

Other incidences of non-compliance were identified for seven out of the 52 assessed labels because they were labelled only in English with no information stated in the local language, which is contrary to WHO guidance that products should be in the appropriate local language(s) to ensure consumers’ awareness of the product and its appropriate use.

A full list of CF product label results can be found in [Annex VI](#).

<sup>u</sup> Ten products (nine from Hero and one from Nestlé) had missing images, resulting in incomplete assessments for these products on this requirement (see Table 6).

<sup>v</sup> Ten products (nine from Hero and one from Nestlé) had missing images, resulting in incomplete assessments for these products on this requirement (see Table 6).



**Table 6. Overview of product label assessment**

	Number of (n)			Average number of non-compliances per non-compliant label (n)	Most common non-compliances on product labels			
	Products assessed	Products for which clear images were not available	Non-compliant labels		Contain claims	No statement on the importance of breastfeeding in line with WHO recommendations	Contains any text, image or other element that may undermine appropriate complementary feeding	Labelled in English only
<b>Danone</b>	6	0	6	3	5*	5*	3*	5*
<b>Hero</b>	21	10	21	2	19**	10**	1**	0**
<b>HiPP</b>	37	0	37	2	26***	26***	6***	0***
<b>Nestlé</b>	2	1	2	3	2	1	0	2
<b>TOTAL</b>	<b>66</b>	<b>11</b>	<b>66</b>		<b>52</b>	<b>42</b>	<b>10</b>	<b>7</b>

\* Of the 6 non-compliant CF labels, one belongs to a product intended for infants under six months. Only the five other products were assessed on the indicators that evaluate appropriate labeling practices, as CF should not be marketed to infants under six months.

\*\* Of the 21 non-compliant CF labels, two belong to products intended for infants under six months. Only the 19 other products were assessed on the indicators that evaluate appropriate labeling practices, as CF should not be marketed to infants under six months.

\*\*\* Of the 37 non-compliant CF labels, 11 belong to products intended for infants under six months. Only the 26 other products were assessed on the indicators that evaluate appropriate labeling practices, as CF should not be marketed to infants under six months.

Note: Shaded values in red indicate images were missing or unclear to complete the assessment on the respective indicators.



## 6. Conclusions and recommendations

This study was guided by the [NetCode](#) protocol with the Code as a benchmark. Although the number of incidences of non-compliance varied between the companies, **none of the four companies assessed in Germany during the research period between January 2023 to July 2023 market their BMS and CF products fully in line with the Code.** All the labels assessed for BMS (87 products) and CF (66 products) contained several non-compliances each. A total of 61 BMS product promotions and 26 CF product promotions were observed on online or traditional media during the time of research, and all advertisements assessed contained one or more incidences non-compliances, mostly claims.

There was **a total of 148 incidences of non-compliant marketing practices found for BMS products during the research period.** Most of these incidences were from BMS products from Danone (80). Danone also has the biggest market share (around 25%) for BMS products in Germany of the three companies with BMS products in this study.

A total of **92 incidences of non-compliant marketing practices for CF products** were found during the research period. The majority of the incidences of non-compliant marketing practices were found for HiPP CF products, which accounted for 60% (55 of the 92 incidences). HiPP has the biggest market share for CF products in Germany (around 44%) from the companies selling CF in this study.

For the BMS products, the majority of the incidences of non-compliance (a total of 52 out of 148) related to products with no age specified or observations where no specific product is promoted but rather the BMS brand

is. For the CF products, most of the observed incidences of non-compliance concerned products for older infants and young children above six months of age (66 out of 92). However, there were 16 CF products marketed as suitable for under six months during the time of research, while these products should not be available on the market as per the Code.

In Germany, national regulations cover only some provisions of the Code and there is limited monitoring and enforcement of responsible marketing of BMS or CF products. This could partially explain the high number of incidences of non-compliant marketing practices found for BMS and CF products in Germany during the time of the research. Current regulations in Germany only cover the marketing of BMS intended for infants up to 12 months of age and mainly address the appropriate labeling of these products, especially for infant formula, while there are gaps in restricting the public promotion of BMS products to caregivers.

ATNI recommends that companies strengthen their marketing policies and ensure their marketing practices comply fully with the recommendations of the Code and all subsequent relevant resolutions, including the guidance supported by WHA resolution 69.9. ATNI has developed a [model company policy](#) on the responsible marketing of breast-milk substitutes which can guide companies on how to incorporate Code provisions and align with the latest public health requirements in practice.

### Recommendations to companies

#### Online media and traditional media channels

ATNI urges companies selling products within the scope of the Code to take responsibility for monitoring their marketing practices beyond local regulations, according to the principles and the aim of the Code and subsequent relevant resolutions, and to take steps to ensure this includes online media channels as well as traditional media channels. Given the extent of online media findings in



this study, it is clear that companies need to set stronger standards and create procedures and control mechanisms for responsibly marketing their products in digital environments that are in line with the latest guidance by the World Health Organization on restricting digital marketing of foods for infants and young children.<sup>33</sup>

### **Promotion on online retailers' platforms**

ATNI recognizes that not all promotions found within the selected online retail sites will have been initiated by, or agreed between, companies and retailers. Nevertheless, it is the responsibility of all market participants to monitor their marketing practices and take steps to ensure they conform to the Code. ATNI recognizes that companies must operate in compliance with anti-trust regulations which prevents, inter alia, any company influencing the pricing decisions of another. Within that context, companies are encouraged to look for ways to engage with their industry associations, retailers and/or regulators to ensure there are no promotions of BMS products in the retail environment, and see that CF products are appropriately promoted in line with the 2016 WHO Guidance on ending the inappropriate promotion of foods for infants and young children.

### **Product labelling**

The companies that reviewed the initial label assessments by ATNI all indicated that product labels are reviewed and approved by the local authority and compliant to the country regulations. However, according to WHA resolution 63.23, nutrition and health claims shall not be permitted for foods for infants and young children, except where specifically provided for in relevant Codex Alimentarius standards or national legislation; thus the labels were found to be non-compliant with the Code if they included claims that are not required according to local regulations.

All companies are urged to adopt Code-aligned policies and practices so their products are labelled according to the Code as well as relevant elements of the guidance supported by WHA resolution 69.9. Based on this resolution, the scope of the Code has extended to growing-up milks, which companies should also cover in their policies and practices.

In addition, the WHA 69.9 guidance includes recommendations on which messages should be present on CF labels to support optimal infant and young child feeding and which are inappropriate and could undermine recommended practices. Companies should incorporate these recommendations in their policies and apply them to their CF products as most of the CF products in this assessment didn't fully meet these requirements.

### **Recommendations to policy makers**

This country study confirms the assessment in the WHO/UNICEF 2022 Code Status report that Germany's regulations cover some provisions of the Code. The findings presented in this study illustrate which areas authorities could consider to strengthen legal measures relating to the marketing of BMS and CF. It is important to fill the gaps between the current legal measures and the Code, as well as extend the scope of all of those measures to encompass formulas intended for older infants and young children up to 36 months of age, and all types of commercial CF for children up to three years of age – which, as shown earlier, are products that represent the largest and growing proportion of the baby food market in Germany.

ATNI also advises German authorities and local stakeholders to implement regular monitoring of the marketing of BMS and CF marketed as suitable for infants and young children up to three years of age, and to design control mechanisms to drive more compliance with local regulations and the Code. The results of this study indicate that monitoring and enforcement of advertising and promotion on all forms of media and the labelling of products should be strengthened.





Authorities are encouraged to ensure that distributors and retailers understand their obligations under local regulations and the Code, and that suitable penalties are in place to deter infractions of those obligations. Specifically, attention should be focused on price-related discounts or gifts, given the high number of such incentives that were found.

It is evident that digital marketing is now the primary means of promotion of BMS brands and products for national and multinational BMS companies, representing up to 70% of total advertising spend.<sup>34</sup> Based on the evolving digital marketing space, regulatory clarity and possibly amended or additional laws and regulations are needed to address newer digital strategies, such as: social media influencers, promoting and disseminating user-generated content, online social networks or “baby clubs”, professional advisory lines, and data harvesting for message targeting.<sup>35</sup>

### Recommendations to civil society and NGOs

Article 11.4 of the Code calls for non-governmental organizations (NGOs), professional groups, institutions and individuals, to draw the attention of manufacturers or distributors to activities that are incompatible with the principles and aim of the Code. Most of the companies assessed in this study for example have reporting channels which any member of the public can use to report on an observed non-compliance by a company, so that it can take any necessary action to rectify the non-compliant practice.

It is worth acknowledging that NGOs, civil society, and academia also have a critical role in continuously developing tools and means to address current public health concerns. In light of the rise in digital marketing of BMS, an innovative tool was developed by Alive & Thrive and the FHI Solutions Innovation Incubator, called [VIVID](#). This tool uses artificial intelligence to scan the internet for BMS Code violations, and it is hosted on the CATCH platform which acts as a virtual hub to disseminate, communicate, and connect the

auto-detected findings. It is hoped this tool can be used by governments to support overall Code monitoring, enforcement, research, and adoption, or the strengthening of national legal measures to restrict inappropriate digital marketing.<sup>36</sup>



## 7. Study limitations

The increased number of selected companies and countries assessed for the BMS and CF Marketing Indexes 2024 warranted a modified approach to conducting the assessments for the Country Studies, considering the resources available to ATNI. ATNI undertook an [extensive consultation process](#) in which these changes were discussed. Despite the modifications, the methods are still guided by the NetCode protocol.

- The increased number of selected companies and countries assessed for the BMS and CF Marketing Indexes 2024, versus the resources available to ATNI, limited the capacity to assess and report on other companies which are not part of the BMS and CF Marketing Indexes 2024 but which sell BMS and CF products in Germany (as done in previous BMS and CF Marketing assessments).
- Although commitments in the following areas are assessed to a certain extent within the Corporate Profile component of the BMS and CF Marketing Indexes 2024, ATNI recognizes the limitation in not capturing how companies' commitments are reflected in practice on these issues:
  - Articles 1-3 (the aim, scope, and definitions of the Code), including recommendations 1 and 2 of the guidance associated with WHA resolution 69.9, provide the context and structure for the in-country studies but are not monitored, per se.
  - While point-of-sale promotions were monitored online, they were not monitored in physical retail stores given limitations in conducting this form of on-the-ground assessment for the BMS and CF Marketing Indexes 2024.
- Due to a number of limitations, articles 6 and 7 of the Code and recommendation 6 of the guidance supported by WHA resolution 69.9, which address marketing within healthcare systems and to healthcare workers, were not within the scope of the in-country studies for the BMS and CF Marketing Indexes 2024.
- Article 10 of the Code requires special inspection of manufacturing processes, which is not covered by the NetCode protocol and, therefore, not within the scope of the on-the-ground assessments.
- Similarly, Article 11 of the Code primarily targets governmental responsibilities. However, the NetCode protocol did not address this and is therefore not within the scope of the in-country studies. Furthermore, corporate lobbying is not monitored as part of the on-the-ground studies; however, this topic may be explored in future iterations, as noted in ATNI's consultation report.
- While ATNI's methodology in this study is based on the Code, including all WHA resolutions up to WHA 71.9, it is worth acknowledging that the provisions of the Code can be further clarified and updated in future resolutions by the World Health Assembly and/or other relevant international guidance and guidelines published by the World Health Organization and UNICEF.
- It is possible that some non-compliances may not have been captured by the social listening method. Limitations may be attributed to the keywords used or website access restrictions, for example. Also, the social listening tool was only able to capture newly published content during the research period, therefore it is possible that not all non-compliances from the websites and social media platforms monitored were captured. In addition, there are possible limitations in the scope of the websites and social media platforms selected for monitoring,



depending on the sources the social listening tool was able to collect data from. Therefore, the channels monitored may not be representative of all local company/brand, retailer, and parenting websites and social media platforms.

- Due to the intricacies and various forms of contractual relationships that can exist between companies and online retailers or parenting websites, the extent to which these relationships could be confirmed was limited. ATNI had limited capacity and resources in this research to perform additional and thorough external validation checks.
- Some products did not have images for every side of the package, or images were blurry, which limited the completion of the label assessments for these products and it was not possible to confirm if certain requirements were met or not.
- The extent of products and brands assessed may not be an exhaustive list of the products and brands covered by each company's BMS/CF market in Germany, despite ATNI's efforts to ensure so. Although assessing more products would likely mean an increase in the number of incidences of non-compliance found, this is not a limitation as Code-compliant labels were found in the other country studies.



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# Annex I List of websites and social media platforms monitored

Type of Source	Company			
	Danone	Hero	HiPP	Nestlé
<b>Company / Brand website</b>	<a href="https://www.fruchtzwerge.de">https://www.fruchtzwerge.de</a> <a href="https://www.nutricia.de/">https://www.nutricia.de/</a> <a href="https://www.milupa.de/">https://www.milupa.de/</a> <a href="https://www.aptaclub.de/">https://www.aptaclub.de/</a>	<a href="https://www.frechefreunde.de">frechefreunde.de</a>	<a href="https://www.hipp.de/milchnahrung/aktuelles/">https://www.hipp.de/milchnahrung/aktuelles/</a>	<a href="https://www.babyandme.de">https://www.babyandme.de</a>
<b>Company/ Brand Facebook account</b>	<a href="#">FruchtZwerge</a> <a href="#">Milupa</a> <a href="#">Aptaclub</a>	<a href="https://www.facebook.com/frechefreunde">https://www.facebook.com/frechefreunde</a>	<a href="https://www.facebook.com/HiPPDeutschland">https://www.facebook.com/HiPPDeutschland</a>	<a href="https://www.facebook.com/babyservice/">https://www.facebook.com/babyservice/</a> <a href="https://www.facebook.com/Babyandme.de">https://www.facebook.com/Babyandme.de</a>
<b>Company/brand Instagram</b>	<a href="#">FruchtZwerge</a> <a href="#">Nutricia</a> <a href="#">Milupa</a> <a href="#">Aptaclub</a>	<a href="#">@frechefreunde</a>	<a href="#">@hipp</a>	<a href="#">@ nestlebabybe</a>
<b>Company/brand pinterest account</b>	<a href="https://www.pinterest.com.mx/aptaclub_de/">https://www.pinterest.com.mx/aptaclub_de/</a>	<a href="https://www.pinterest.de/frechefreunde/">https://www.pinterest.de/frechefreunde/</a>		
<b>Company Youtube account</b>	<a href="https://www.youtube.com/@fruchtzwerge_de_at">https://www.youtube.com/@fruchtzwerge_de_at</a> <a href="https://www.youtube.com/c/Nutriciadach">https://www.youtube.com/c/Nutriciadach</a> <a href="https://www.youtube.com/user/Milupade">https://www.youtube.com/user/Milupade</a> <a href="https://www.youtube.com/channel/UCU AeMXycGox6z3KZ8Cp81Vg">https://www.youtube.com/channel/UCU AeMXycGox6z3KZ8Cp81Vg</a> <a href="https://www.youtube.com/@Aptaclubde">https://www.youtube.com/@Aptaclubde</a>	<a href="https://www.youtube.com/user/ErdbaerTV">https://www.youtube.com/user/ErdbaerTV</a>	<a href="https://www.youtube.com/user/hippde">https://www.youtube.com/user/hippde</a>	<a href="https://www.youtube.com/user/NestleBabyservice">https://www.youtube.com/user/NestleBabyservice</a>



<b>Company Twitter account</b>			https://twitter.com/hipporganic	https://twitter.com/nestlegermany
<b>Parenting websites</b>	<a href="http://www.babyclub.de">www.babyclub.de</a> <a href="http://www.babywelt.club">www.babywelt.club</a> <a href="http://www.mueller.de">www.mueller.de</a> <a href="https://www.humana.de/">https://www.humana.de/</a> <a href="https://www.globus.de/">https://www.globus.de/</a> <a href="https://filiale.kaufland.de">https://filiale.kaufland.de</a> <a href="https://www.humana.de">https://www.humana.de</a> <a href="https://www.budni.de/mein-baby-club">https://www.budni.de/mein-baby-club</a> <a href="https://www.lidl.de/c/lidl-liddle-club/">https://www.lidl.de/c/lidl-liddle-club/</a>	<a href="http://www.babyclub.de">www.babyclub.de</a> <a href="http://www.babywelt.club">www.babywelt.club</a> <a href="http://www.mueller.de">www.mueller.de</a> <a href="https://www.humana.de/">https://www.humana.de/</a> <a href="https://www.globus.de/">https://www.globus.de/</a> <a href="https://filiale.kaufland.de">https://filiale.kaufland.de</a> <a href="https://www.humana.de">https://www.humana.de</a> <a href="https://www.budni.de/mein-baby-club">https://www.budni.de/mein-baby-club</a> <a href="https://www.lidl.de/c/lidl-liddle-club/">https://www.lidl.de/c/lidl-liddle-club/</a>	<a href="http://www.babyclub.de">www.babyclub.de</a> <a href="http://www.babywelt.club">www.babywelt.club</a> <a href="http://www.mueller.de">www.mueller.de</a> <a href="https://www.humana.de/">https://www.humana.de/</a> <a href="https://www.globus.de/">https://www.globus.de/</a> <a href="https://www.mueller.de">/</a> <a href="https://filiale.kaufland.de">https://filiale.kaufland.de</a> <a href="https://www.humana.de">https://www.humana.de</a> <a href="https://www.budni.de/mein-baby-club">https://www.budni.de/mein-baby-club</a> <a href="https://www.lidl.de/c/lidl-liddle-club/">https://www.lidl.de/c/lidl-liddle-club/</a>	<a href="http://www.babyclub.de">www.babyclub.de</a> <a href="http://www.babywelt.club">www.babywelt.club</a> <a href="http://www.mueller.de">www.mueller.de</a> <a href="https://www.humana.de/">https://www.humana.de/</a> <a href="https://www.globus.de/">https://www.globus.de/</a> <a href="https://filiale.kaufland.de">https://filiale.kaufland.de</a> <a href="https://www.humana.de">https://www.humana.de</a> <a href="https://www.budni.de/mein-baby-club">https://www.budni.de/mein-baby-club</a> <a href="https://www.lidl.de/c/lidl-liddle-club/">https://www.lidl.de/c/lidl-liddle-club/</a>
<b>Online retailer website</b>	<a href="http://dm.de">dm.de</a> <a href="http://amazon.de">amazon.de</a> <a href="http://rewe.de">rewe.de</a> <a href="http://apotal.de">apotal.de</a> <a href="http://rossmann.de">rossmann.de</a>	<a href="http://dm.de">dm.de</a> <a href="http://amazon.de">amazon.de</a> <a href="http://rewe.de">rewe.de</a> <a href="http://apotal.de">apotal.de</a> <a href="http://rossmann.de">rossmann.de</a>	<a href="http://dm.de">dm.de</a> <a href="http://amazon.de">amazon.de</a> <a href="http://rewe.de">rewe.de</a> <a href="http://apotal.de">apotal.de</a> <a href="http://rossmann.de">rossmann.de</a>	<a href="http://dm.de">dm.de</a> <a href="http://amazon.de">amazon.de</a> <a href="http://rewe.de">rewe.de</a> <a href="http://apotal.de">apotal.de</a> <a href="http://rossmann.de">rossmann.de</a>

\* Highlighted are the platforms where the findings presented in this study were captured.



## Annex II List of broadcast channels and print monitored

The full list is presented in the following [excel file](#).



## Annex III BMS brands identified

Company	Brand	Number of non-compliant product labels out of number of products assessed			Product/brand promotion found during online monitoring?	Product/brand promotion found during traditional media monitoring?
		IF	FUF	GUM		
Danone	Alpro	N/A	N/A	1/1	No	No
	Aptamil	16/16	9/9	2/2	Yes	Yes
	Milupa	2/2	2/2	3/3	Yes	No
HiPP	HiPP	12/12	7/7	5/5	Yes	Yes
Nestlé	Beba	13/13	6/6	4/4	Yes	Yes
	Little steps	2/2	2/2	1/1	No	No

\* N/A indicates that this product type does not fall under the respective brand.



## Annex IV Performance on BMS product label Code requirements

The full assessment is presented in the following [excel file](#).



## Annex V Commercial CF brands identified

Company	Brand	Number of non-compliant product labels out of number of products assessed			Product/brand promotion found during online monitoring?	Product/brand promotion found during traditional media monitoring?
		CF <6	CF 6-36	No age		
Danone	Milupa	1/1	5/5	0/0	Yes	No
Hero	Freche Freude	2/2	19/19	0/0	Yes	No
HiPP	HiPP	11/11	26/26	0/0	No	No
Nestlé	Cerelac	0/0	2/2	0/0	No	No



# Annex VI Performance on commercial CF product label Code requirements

The full assessment is presented in the following [excel file](#).

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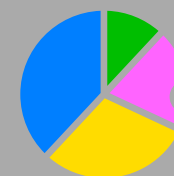
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