

Proposed Directive repeats text shown to be ineffective

The European Commission is attempting to rush in a new EU Directive regulating infant formula and follow-on formula by 20 July 2015. The Baby Feeding Law Group and health advocates across Europe are calling for changes to text that replicates the failings of the current Directive.

Unnecessarily complicated

The marketing regulations are unnecessarily complicated as they treat infant formula and follow-on formula differently. The present and proposed Directives allow follow-on formula, which is marketed for use from 6 months of age, to be promoted. This product was introduced to circumvent restrictions on marketing prior to 6 months. WHO describes it as an unnecessary product. Infant formula can be used for the first year, followed by normal milk.

The feeding table on UK infant formula such as Danone's Aptamil covers 0 to 12 months.

Milupa Aptamil First best infant milk from birth onwards
Feeding guide 0-12 months

Enforcement authorities have long complained that the double standard complicates their work. The *International Code of Marketing of Breastmilk Substitutes*, internationally agreed minimum standards that should apply in Europe, bans the promotion of all breastmilk substitutes. Keep it simple and prohibit the promotion of follow-on formula. If some Member States object, the Directive could allow a national opt out of the ban on follow-on formula promotion.

Cross promotion is the norm

The Commission has attempted to stop permitted follow-on formula advertising being used to promote infant formula by stating in the existing and proposed regulations:

The labelling, presentation and advertising of infant formula and follow-on formula shall be designed in such a way that it enables consumers to make a clear distinction between such products so as to avoid any risk of confusion between infant formula and follow-on formula.

Though the intent may be clear, Danone and Nestlé's current ranges show the text is too

ambiguous to work. Follow-on formula, so-called growing-up milks and milks for special medical purposes share the same branding as the infant formula so as to be cross promotional.



The UK Government has tried to address this in *Guidance Notes* on interpreting the regulations. These say, for example, that the terms 'infant milk' and 'follow-on milk' should be at least as large as the brand name. This is ignored. The numbering used is confusing: sometimes 2 is 'hungry baby' infant formula, sometimes it is follow-on formula.



The *Guidance Notes* say advertising must not focus on the brand, referring to follow-on formula only in text or a packshot. Yet the above television advertisement for number 3 formula does exactly this, promoting the Aptamil brand name and linking it to breastmilk. The relevant authorities did nothing, saying they cannot enforce the *Guidance Notes*, only the regulations.

A solution could be to say that infant formula cannot have the same branding, logos or styling as follow-on formula or other milks or baby foods. They must be unique to the infant formula. The regulations should make it clear that this applies to company names when these are used as formula brand names. This would stop Danone claiming Aptamil and Cow & Gate are company names or Nestlé that SMA is a company name.

Label constraints not working

Follow-on formula labels (but not advertising) will have the same constraints as infant formula.

The labelling, presentation and advertising of infant formula, and the labelling of follow-on formula shall not include pictures of infants, or other pictures or text which may idealise the use of such formulae. Without prejudice to the first subparagraph, graphic representations for easy identification of infant formula and follow-on formula and for illustrating methods of preparation shall be permitted.

Yet the infant formula label constraints did not work. Idealising images are routine, such as toy rabbits, logos with arms and breastfeeding mothers. Here from France, Italy, UK and Portugal.



The UK *Guidance Notes* explain that idealising images include 'baby or child related subjects and anthropomorphic characters, pictures and logos...', 'Pictures or text which implies health, happiness or well being is associated with infant formula' and 'graphics that represent nursing mothers and pregnant women'.

Again, the enforcement authorities say they cannot act as they are limited to the text of the Directive. Clearly this needs to be expanded to define 'idealising' more specifically or to give legal force to definitions put in place by Member States. A simpler solution could be to state that only text can be used on labels and all images and logos are prohibited, other than those required for preparation instructions.

Point-of-sale promotion is widespread

Proposed text to stop point-of-sale promotion follows the text of the existing Directive, stating there should be 'no point-of-sale advertising ... to induce sales of infant formula'.



Promotion is commonplace, but companies argue it is for the follow-on milk alongside the infant formula.

The UK *Guidance Notes* have tried to address this by saying infant formula and follow-on formula should be placed in different sections of retail outlets. It makes logical sense to include this in the proposed Directive if follow-on formula promotion is not simply banned. The Directive already states, 'Given the different role of infant formula and follow-on formula in the diet of infants, it is appropriate to lay down provisions requiring that a clear distinction be made between different formula products so as to avoid any risk of confusion.'

Targeting parents

Various articles in the existing and proposed Directives aim to ensure that pregnant women and parents are not targeted with gifts or misleading information, but have not worked in practice.



The Aptamil bear is an inducement to join a parenting club - but the company argues it relates to the follow-on formula. Emails sent to

members of clubs are often highly promotional. For example, promoting a formula starter kit to pregnant women close to their due date.

All direct and indirect marketing to pregnant women, mothers and members of their families by manufacturers and distributors of breastmilk substitutes should be prohibited. It should be clearly stated that pregnant women and parents of young children should not be targeted by baby feeding companies under any pretext.

