

Commissioner Vytenis Andriukaitis  
DG SANTE - DG Health and Food Safety  
Rue Breydel 4  
1049 Brussels  
Belgium



Thursday, April 30, 2015

Dear Commissioner Andriukaitis,

**Proposals pursuant to Regulation (EU) No 609/2013 on baby foods: denying child rights to health**

I am writing on behalf of the International Baby food Action Network (IBFAN), the global network that monitors the baby food industry and works for EU Policy coherence with World Health Assembly Resolutions on infant and young child feeding.

We met at the meeting of the High level Group and members of the *EU Platform on Diet Physical Activity and Health* on 18th February, and perhaps you remember that I asked you a question about the serious weaknesses in the new Commission Proposals for the marketing of baby foods and formulas.

We believe that these proposals will make it almost impossible for Member States to carry out their obligations under the *International Code of Marketing of Breastmilk Substitutes* and Resolutions and the *Convention on the Rights of the Child*. As you know these are embedded in many EU policy commitments, for example the *EU Action Plan of Childhood Obesity*, the *Second International Nutrition Conference Political Declaration and Framework for Action* etc. Breastfeeding is one of the EUs *CORE Health Indicators for Determinants of Health* and the *Human Rights and Fundamental Freedoms* are also enshrined in the *EU Charter of Fundamental Rights*.

I was very pleased that you responded positively to my question, and especially your highlighting of the 120 million Europeans at risk of poverty or social exclusion. If 100 million Europeans lack access to piped water in their homes and 66 million lack access to adequate sanitation, this issue is clearly an important health and food safety issue. Artificial feeding also adds to environmental burden: 800 litres of water are needed to make a 1 litre of milk and 4700 litres for 1 kilo of milk powder .

I was also pleased that your World Health Day statement said that “*Protecting the health of humans, animals and plants at every stage of the food production process is a key public health and economic priority*” and that the EU is “*leading the way to a better and sustainable future for all.*”

But how can this be true when the new proposals are so bad? They will not only waste public resources, mislead parents and threaten the success of all the above EU initiatives, but they will deny European children the right to health and set an appalling model for policy setting globally.

This is why we are urgently asking that you reflect on these concerns and adjust the text accordingly.

It may interest you to know that in 2001 we asked Robert Madelin to forward some questions to the Commission for Trade. I am pasting overleaf the answers to three of the questions that are especially relevant I think and after that I will summarise our main asks.

Yours sincerely

Patti Rundall, OBE, Policy Director, IBFAN Global Advocacy

cc:

Dr Margaret Chan, DG, WHO

Anthony Lake, Executive Director, UNICEF

José Graziano da Silva, DG FAO,

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Baby Milk Action, the UK member of the International Baby Food Action Network (IBFAN), stops misleading marketing by the baby feeding industry. We protect breastfeeding and babies fed on formula to prevent unnecessary death and suffering.

## Questions put to the European Commission for Trade in 2001.

**IBFAN Question:** *Trade agreements should not undermine implementation of the International Code of Marketing of Breast-milk Substitutes and subsequent relevant World Health Assembly Resolutions at national level*

**COMMISSION ANSWER:** *In principle yes: the Commission subscribes to the view that international agreements, particularly, but not exclusively those related to protection of the environment or human health, and international trade rules should be mutually supportive.*

**IBFAN Question:** *In matters of health WTO will defer to the decisions of the World Health Assembly, the world's highest health policy setting body (its Conventions, Resolutions etc )*

**COMMISSION ANSWER:** *International agreements/organisations should be mutually supportive, and their relationship clarified where necessary and useful*

**IBFAN Question:** *For the optimum health in infants in both Europe and Third Countries EU legislation should be brought in line with the International Code and subsequent relevant Resolutions.*

**COMMISSION ANSWER:** *To the extent that the EU and its Member States subscribe to them - to a large extent, these are issues of Member State competence.*

## Summary of the MINIMUM changes that must be made if the proposals are to meet the EU's Internationally agreed commitments and current health policies:

- 1. The Regulations must meet the minimum requirement of the International Code and subsequent relevant WHA Resolutions, taking full consideration of their global impact.** Policy coherence with the EU's International obligations and commitments is essential.
- 2. The Regulation must provide Member States with legal certainty that they can regulate marketing according to national health priorities, policies and international Human Rights commitments and obligations.** As mentioned above, all EU MS have ratified the *Convention on the Rights of the Child* so are bound to it by international law with clear obligations. Surely the Commission does not have the right to undermine a human right international law or misinterpret duty/obligation under it? And does the Commission have the right to determine whether a national measure is justified? I understood that such things are up to the courts, and if so surely the Commission should be pressuring Member States to consider the '*smooth functioning of the internal market*' above health considerations. For example, we understand that Malta was sent a letter from the Commission in 2014 when it adopted its law. This resulted in Malta's safeguards being lowered and a new law being issued.
- 3. The labelling and composition (specifically sugar level and age of use) of baby foods must be in line with WHO recommendations** The Commission has been asked to deal with high sugar levels in baby foods since 2006, when it joined forces with the US in opposition to Thailand's proposal at Codex Alimentarius. Surely a request to EFSA to examine this issue and excess sugar in Young Child Formula should be submitted without any delay.
- 4. There must be prior authorization by an independent expert body such as EFSA** of the safety and beneficial effect of ALL ingredients – including those voluntarily added – and of foods claiming to be *Foods for Special Medical Purposes*
- 5. The regulations must forbid cross-promotion of formulas for older babies and baby foods it infant formula.**
- 6. The marketing of Formulas fo Young Children must be strictly controlled in line with WHA recommendations and the EU position at Code us be in support of WHO recommendations.**
- 7 Exports must be in languages easily understood by consumers.**

### Notes:

1 <http://www.euro.who.int/en/health-topics/environment-and-health/water-and-sanitation>  
Economic Commission for Europe & World Health Organization Regional Office for Europe Meeting of the Parties to the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes Working Group on Water and Health Seventh meeting Geneva, 26 and 27 November 2014 [www.unece.org/fileadmin/DAM/env/documents/2014/WAT/11Nov\\_26-27\\_WGWH/item\\_5\\_informaldoc\\_WRD\\_meeting.pdf](http://www.unece.org/fileadmin/DAM/env/documents/2014/WAT/11Nov_26-27_WGWH/item_5_informaldoc_WRD_meeting.pdf) *Formula for Disaster*, Weighing the impact of Formula Feeding Vs Breastfeeding on Environment. <http://bpni.org/ibfan-newswire-2014/9>

2 World Health Day: Commissioner for Health and Food Safety Vytenis Andriukaitis joins forces with the World Health Organisation to highlight the importance of food safety. Brussels, 07 April 2015

3 Potential economic impacts from improving breastfeeding rates in the UK. Pokhrel S, et al. Arch Dis Child 2014;0:1–7. Doi:10.1136/archdischild-2014-306701 *Advertisements of follow-on formula and their perception by pregnant women and mothers in Italy*, Cattaneo A, et al. Arch Dis Child 2014;0:1–6. doi:10.1136/archdischild-2014-306996

4 Press Release: *EU and US block Thailand's proposal to reduce sugar in baby foods*, IBFAN 2006