

Marianne Thyssen
Employment, Social Affairs, Skills and Labour Mobility
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium



4th May 2015

Urgent request to strengthen the Commission Proposals pursuant to Regulation (EU) No 609/2013 on baby formulas and foods

Dear Commissioner Thyssen

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 believe that the above proposals drawn up by DG SANTE will make it almost impossible for Member States to carry out their obligations under the *International Code of Marketing of Breastmilk Substitutes*, subsequent relevant WHA Resolutions and the *Convention on the Rights of the Child*. These obligations 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*, and the *EU Charter of Fundamental Rights*.

We note that part of your responsibility is the struggle against inequality and poverty. With this in mind we hope that you can step in to ensure that the proposals do not exacerbate the problems faced by the 120 million Europeans who are at risk of poverty or social exclusion, the 100 million Europeans who lack access to piped water in their homes and the 66 million who lack access to adequate sanitation. Artificial feeding also adds to the environmental burden. Given that 800 litres of water are needed to make a 1 litre of milk and 4700 litres for 1 kilo of milk powder (1) the protection of breastfeeding could be considered an essential part of a package of measures to preserve water.

The proposals as they are present a serious health and food safety risk that will waste public resources and mislead parents. (2) They will also deny parents from access to truly objective and unbiased information and support that is free from commercial influence. This is essential for all women - those who decide to breastfeed and those who decide to bottle feed.

It cannot be right that the '*smooth functioning of the internal market*' is placed way above health considerations. We are asking that this is redressed and that Member States are given the legal certainty that they can carry out their human rights and UN obligations without fear of censure.

The regulations will also set an appalling bad model for policy setting globally and in most importantly countries where breastfeeding is quite literally a lifeline. In the light of the above we are urgently asking that you request that the changes suggested overleaf are made to the text.

With many thanks

Yours sincerely

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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? Such things should surely be up to the courts and the Commission should not be pressuring Member States to consider the '*smooth functioning of the internal market*' above health considerations. For example, after Malta was sent a letter from the Commission its 2014 law was replaced with one far less protective.
- 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. (3) 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 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 *Formula for Disaster*, Weighing he impact of Formula Feeding Vs Breastfeeding on Environment. <http://bpni.org/ibfan-newswire-2014/9>

2 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

<http://www.euro.who.int/en/health-topics/environment-and-health/water-and-sanitation>

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