Response from Baby Milk Action to the follow-up questions from the European Commission's Working Group meeting on health claims held 20th June 2016

July 26th 2016

General comments

Baby Milk Action, as the UK member of the International Baby Food Action Network and the Secretariat of the Baby Feeding Law Group (a coalition of 21 health professional and mother support groups), appreciates the opportunity to comment on this consultation, especially its open-ended questions. We hope that this consultation will provide Member States with an opportunity to address an urgent problem and ensure that the weaknesses in existing EU Regulations are not compounded and exploited by commercial interests.

Poor diet is now the biggest underlying cause of ill health and disease globally - bigger than tobacco, alcohol and lack of physical activity. Ensuring that the marketing of processed packaged foods does no harm is a major challenge for all governments. Early life feeding and behaviour is a particular concern that has prompted priority calls for the protection, promotion and support of breastfeeding and an immediate end to the marketing of unhealthy foods to all children.

At the same time law-making processes are subject to intense lobbying and legal challenges from industry interests and diplomatic interventions from trading partners. In this context, and bearing in mind the EU's claim *"to recognise the importance of promoting high quality public health principles, standards and legislation in its relations with non EU countries and international organisations in the field of public health,"*[1,2] EU Regulation could and should play a positive role in global health. EU regulations should support – not undermine - the establishment of a health protective framework in its Member States and carry this through to international and regional bodies, such as the Codex Alimentarius Commission and World Health Assembly.

The claims issue has been a key factor in our advocacy for policy coherence between EU regulations and World Health Assembly recommendations. [3] The position of Baby Milk Action, IBFAN and the BFLG, expressed in all our comments over the years, is that we oppose all promotional claims on foods for infants and young children, whether for mandatory or optional ingredients.

The risks of Promotional claims: In the EU context, there is evidence that health and nutrition claims are particularly widely used in the baby food category. A recent study examined the use of health claims on packaged foods across 5 European countries [4] and found that foods marketed for infants and young children

[1] *EU in the World* http://ec.europa.eu/health/eu_world/policy/index_en.htm
[2] Public Health (17-09-2015) Commission *and WHO Europe scale up cooperation* http://ec.europa.eu/dgs/health_foodsafety/dyna/enews/enews.cfm? al_id=1620
[2] Public Health (17-09-2015) Commission *and WHO Europe scale up cooperation* http://ec.europa.eu/dgs/health_foodsafety/dyna/enews/enews.cfm? al_id=1620
[3] WHA Resolution 63.23 (2010) called on Member States*: to end inappropriate promotion of food for infants and young children and to ensure that 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;* The International Code and Resolutions are designed to ensure that all parents receive objective and truly independent information Their purpose has never been to pressure women against their will. When properly implemented they protect both breastfed and artificially fed babies. They are minimum requirements for ALL countries and are embedded in many EU and global policies, including the Codex Code of Ethics[3], the EU Action Plan of Childhood Obesity and the Political Declaration and Framework for Action of 2nd International Conference on Nutrition. Breastfeeding is one of the EUs CORE Health Indicators for Determinants of Health.
[4] HiekeS, Kuljanic N, Pravst I et al (2016) Prevalence of nutrition and health-related claims on pre-packaged foods: A five-country study in Europe. *Nutrients*, 8, 137-153

had the highest number of health claims. Such marketing unfairly targets parents who are anxious to do the best for their children. Promotional claims are used to baffle carers and health workers, trigger fears that normal foods lack essential micronutrients, build 'trust' in processed foods, extend the bottle-feeding period and, in the global context, turn the humanitarian response to malnutrition into a *"Business"* that mainly benefits large corporations.

The reputation of EU products should rely on their quality, safety and the EU's application of the Precautionary Principle (explicitly called for in Art 5 of Regulation 609/2013) – not on promotional claims for ingredients, especially ingredients that have not undergone rigorous independent scrutiny.[5] Innovation is important, but not at the expense of child health. Infants and young children should not be used in what constitutes a mass uncontrolled trial. The removal of all claims from this category of foods would be a major step forward in the protection of child health globally.

Aside from the Human Rights and other international obligations that all EU Member States have,[6] the safeguards in existing EU legislation, including **Regulation (EC) No 1924/2006, Regulation (EU) No 1169/2011 and EU Regulation 609/2013** justify the banning of promotional claims for this category of foods.

Environmental Impact: When considering the need to ban promotional claims, Member States must also consider the environmental impact of EU policies and its exports. A new IBFAN study from selected countries of the Asia Pacific Region examines the environmental impact of the formula milk industry. It reveals a stark difference in Greenhouse Gases between a country such as India (that has strong legislation on formula marketing) and China where the marketing rules are not applied.[7] The earlier IBFAN report, *Formula for Disaster*, estimated that 800 litres of water are needed to make a 1 litre of milk and 4700 litres for 1 kilo of milk powder. Strong legislation that ensures that parents are not misled by promotional claims and that only products that are needed or wanted are marketed should be an essential part of addressing climate change and water conservation measures.

Poverty and social exclusion: Other factors that need to be considered too. While many more people now have better access to drinking water, sanitation and health care, the world is still an unequal place: 2.5 billion - more than one third of the world's population - still have totally inadequate sanitation.[8] Artificial feeding of an infant instead of breastfeeding in such settings can literally mean the difference between life and death. In the European context too, 120 million Europeans are at risk of poverty or social exclusion. 100 million Europeans lack access to piped water in their homes and 66-million lack access to adequate sanitation.[9] 12 million more women than men are living in poverty in the EU. Babies are particularly susceptible to water born diseases. The reduction of Inequalities and inequities are challenges that policy makers struggle with. Since breastfeeding constitutes one of the single most effective ways to reduce inequalities, its protection should form an integral part of national strategies.

[5] The Precautionary Principle is one of the fundamental principles of the European Union that aims to prevent harm before a hazard has come into existence. It distinguishes the EU from countries such as the USA where risky technologies, hormone-laced milk and GM ingredients are allowed. *Scientific and Factual. A review of breastmilk substitute advertising to healthcare professionals* http://firststepsnutrition.org

[6] All EU MS have also ratified the *Convention on the Rights of the Child* (CRC). Article 24 of CRC calls on governments to provide parents with information on nutrition and breastfeeding and the CRC General Comments Nos. 15 and 16 explain what this means.

[7] *Carbon Footprint due to Milk Formula A Study from selected countries of the Asia-Pacific region.* IBFAN BPNI http://www.bpni.org/report/Carbon-Footprints-Due-to-Milk-Formula.pdf

[8] *Progress on Drinking Water and Sanitation 2014 Update.* WHO UNICEF

[9] Poverty and social exclusion http://ec.europa.eu/social/main.jsp?catId=751

EU Legislation justifying a ban on promotional claims.

REGULATION (EU) No 1169/2011 of 25 October 2011 on the provision of food information to consumers*: "Food information shall not be misleading, particularly…. (c) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients.*"
Regulation (EC) No 1924/2006 on Health Claims

Para (9) states that '*foods promoted with claims may be perceived by consumers as having a nutritional, physiological or other health advantage over similar or other products to which such nutrients and other substances are not added. This may encourage consumers to make choices which directly influence their total intake of individual nutrients or other substances in a way which would run counter to scientific advice.'*

Para(10*) The application of nutrient profiles as a criterion would aim to avoid a situation where nutrition or health claims mask the overall nutritional status of a food product, which could mislead consumers when trying to make healthy choices in the context of a balanced diet.*

Para 15 or 16*: Where a claim is specifically aimed at a particular group of consumers, such as children, it is desirable that the impact of the claim be assessed from the perspective of the average member of that group. The average consumer test is not a statistical test. National courts and authorities will have to exercise their own faculty of judgment, having regard to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case.*

Para 17 *A nutrition or health claim should not be made if it is inconsistent with generally accepted nutrition and health principles or if it encourages or condones excessive consumption of any food or disparages good dietary practice.*

Para (18*) Given the positive image conferred on foods bearing nutrition and health claims and the potential impact these foods may have on dietary habits and overall nutrient intakes the consumer should be able to evaluate their global nutritional quality, therefore nutrition labelling should be complementary and should be extensive on all foods bearing health claims.*

Para 29 *In some cases, scientific risk assessment alone cannot provide all the information on which a risk management decision should be based. Other legitimate factors relevant to the matter under consideration should therefore be taken into account*

Para 34*: Since the objective of this Regulation, namely to ensure the effective functioning of the internal market as regards nutrition and health claims whilst providing a high level of consumer protection, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.*

Para (18) states '*Given the positive image conferred on foods bearing nutrition and health claims and the potential impact these foods may have on dietary habits and overall nutrient intakes the consumer should be able to evaluate their global nutritional quality, therefore nutrition labelling should be complementary and should be extensive on all foods bearing health claims'*

Answers to the follow-up questions of the Commission's Working Group meeting on health claims (20 June 2016)

Q1. What are your views on the use of health claims on foods for infants and young children? Should health claims not be authorised for such foods at all? Please bear in mind that any rejection decisions need to be justified. If you are supporting such rejection provide a justification that would be compatible with the rules of Regulation (EC) No 1924/2006.

Baby Milk Action, IBFAN and BFLG strongly oppose the use of heath claims on foods for infants and young children. Suggesting a health benefit through a claim on what might be a nutritionally inferior product contradicts the principles of EU regulation, for example the aim of Para (17), of EC regulation 1924/2006, to prevent claims that may '*encourage or condone excessive consumption of a food or disparage good dietary practice'. (See Box on previous page for other relevant Paragraphs.)*

As mentioned on Page 1, In the EU context, parents of young children – who are anxious about nutrition - are unfairly targeted by health and nutrition claims that idealise and mask nutritional inadequacies of the product as a whole. [10] Parents are constantly told that commercial foods are fortified with this or that micronutrient and that these ingredients are 'hard to get'. It would be better for parents to know that the ingredients the claims boast about have simply been *'restored*'– after having been destroyed during high heat processing and storage. Promotional claims suggest that the processed commercial product provides something additional and is superior.[11]

Further concerns about the poor contribution of commercial baby foods to children's nutrition are contained in the submission by First Steps Nutrition Trust (FSNT). FSNT, WHO[12] and many others have highlighted the predominance of sweet baby foods and the impact they may have on infant and young child diet.

Para (10) of **Regulation (EC) No 1924/2006** suggests that *'the application of nutrient profiles as a criterion would aim to avoid a situation where nutrition or health claims mask the overall nutritional status of a food product which could mislead consumes when trying to make health choices in the context of a balanced diet.'*

There is an urgent need to establish nutritional profiles available for products in this category.

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[10] Hieke, Kuljanic N, Pravst I et al (2016) Prevalence of nutrition and health-related claims on pre-packaged foods: A five-country study in Europe. *Nutrients*, 8, 137-153

[11] Promotional claims contravene the intent of Resolution (WHA 55.25) May 2002 that endorsed the Global Strategy on Infant and Young Child Feeding: "*Recognizing that infant and young---child mortality can be reduced through improved nutritional status of women of reproductive age, especially during pregnancy, and by exclusive breastfeeding for the first six months of life, and with nutritionally adequate and safe complementary feeding through introduction of safe and adequate amounts of indigenous foodstuffs and local foods while breastfeeding continues up to the age of two years or beyond"*

[12] Response from Dr João Breda, Programme Manager Nutrition, Physical Activity and Obesity, WHO Regional Office for Europe to Keith Taylor, MEP regarding proposed EU Delegated Acts. 12th January 2015 including the following reference

Cairns, G, K Angus, G Hastings & M Caraher (2013) 'Systematic Reviews of the Evidence on the Nature, Extent and Effects of Food Marketing to Children. A Retrospective Summary', Appetite 62: 209---215

Cattaneo, A, P Pani, C Carletti, M Guidetti, V Mutti, C Guidetti, A Knowles, et al. (2015) 'Advertisements of Follow---on Formula and Their Perception by Pregnant Women and Mothers in Italy', Archives of Disease in Childhood 100(4): 323---328

Cogswell ME, Gunn JP, Yuan K, Park S, Merritt R. Sodium and sugar in complementary infant and toddler foods sold in the United States. Pediatrics. 2015 Mar; 135(3): 416---23.

Elliott CD, Conlon MJ. Packaged baby and toddler foods: questions of sugar and sodium. Pediatric obesity. 2015 Apr;10(2):149---55.

Elliott CD. Sweet and salty: nutritional content and analysis of baby and toddler foods. Journal of public health (Oxford, England). 2011 Mar;33(1):63---70.

Garcia AL, Raza S, Parrett A, Wright CM. Nutritional content of infant commercial weaning foods in the UK. Archives of disease in childhood. 2013 Oct;98(10):793---7.

Mennella JA. Ontogeny of taste preferences: basic biology and implications for health. The American journal of clinical nutrition. 2014 Mar;99(3):704S---11S

Pearce J, Langley---Evans SC. The types of food introduced during complementary feeding and risk of childhood obesity: a systematic review. International journal of obesity (2005). 2013

Q2. What are your views concerning the possibility of not authorising at all health claims on nutrients whose presence is required by legislation (i.e. minimum amount)? Please explain your rationale.

We strongly support this approach and have submitted comments to this effect many times. [13] There is no justification for promotional claims on foods for infants and young children, especially for mandatory ingredients that are in all products of that category. The fact that the text of a proposed claim is deemed accurate by EFSA is not relevant. Mandatory ingredients by their very nature must have an important function. Member States have an important role as risk managers to ensure that such claims are not permitted as specified in **Regulation (EC) No 1924/2006:**

Para 16: "Where a claim is specifically aimed at a particular group of consumers, such as children, it is desirable that the impact of the claim be assessed from the perspective of the average member of that group. The average consumer test is not a statistical test. National courts and authorities will have to exercise their own faculty of judgment, having regard to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case."

The 2006 Health Claims Regulations do not say anything explicitly about 'mandatory ingredients.' However Art.2.2.1 clearly defines a claim as a message that implies that a food has *'particular characteristics'* :
'claim' means any message or representation, which is not mandatory under Community or national legislation, including pictorial, graphic or symbolic representation, in any form, which states, suggests or implies that a food ***has particular characteristics****.*

The only rationale for a claim for a mandatory ingredient is self-evidently to "compete against" breastfeeding and family foods – bio-diverse, minimally processed foods, prepared and fed safely. Such foods can never hope to compete because they are never packaged and marketed with claims, yet they are invariably healthier, safer, cheaper and less environmentally harmful.

Breastmilk substitutes provide no health advantage over breastfeeding. Breastfeeding is an ideal window of opportunity for the prevention of obesity and a host of other health problems. Breastfeeding mothers are more likely to return to pre-pregnancy bodyweight and exclusive breastfeeding for 6 months and the introduction of complementary foods at about 6 months is associated with lower rates of obesity. Breastfeeding helps in the development of taste receptors and appetite control. Promotional claims suggest that the processed commercial product provides something additional and is superior.[14]

[13] BFLG /IBFAN comments on proposed Commission Regulation authorizing certain health claims made on foods and referring to children's development and health July 2015 - SANTE/1089/2-15
http://www.babymilkaction.org/wp-content/uploads/2014/10/BFLG-IBFAN-Health-Claim-Comments.23.7.15.pdf

[14] Promotional claims contravene the intent of Resolution (WHA 55.25) May 2002 that endorsed the Global Strategy on Infant and Young Child Feeding: "*Recognizing that infant and young---child mortality can be reduced through improved nutritional status of women of reproductive age, especially during pregnancy, and by exclusive breastfeeding for the first six months of life, and with nutritionally adequate and safe complementary feeding through introduction of safe and adequate amounts of indigenous foodstuffs and local foods while breastfeeding continues up to the age of two years or beyond"*

Q3. Alternatively what do you think of the possibility of authorising the claims on such substances with a wording that clarifies that "all [category of foods] contain X. X contributes to Y"? Evidently conditions of use for the claim would refer back to the compositional requirements laid down in the respective pieces of legislation.

This wording is totally inadequate. Allowing claims for mandatory ingredients is harmful. If permitted the door will be left wide open to an unlimited number of claims that are likely not only to mislead parents (see previous comments) but also to obscure the mandatory warnings, important notices and instructions that carers need to see.

Q4. Should health claims be authorised on nutrients whose presence is not required by legislation, how would you then set conditions of use?

Absolutely not! The fact that the Delegated Acts allow the addition of *'other ingredients, as the case may be'* to formulas is risky and unethical and something we have opposed for many years. Member States should ensure that such ingredients are kept to an absolute minimum, and the Precautionary Principle should be used to ensure that all ingredients undergo independent scrutiny.

The UK's Government's Scientific Advisory Committee on Nutrition (SACN) agrees: *'we find the case for labelling infant formula or follow on formula with health or nutrition claims entirely unsupportable. If an ingredient is unequivocally beneficial as demonstrated by independent review of scientific data it would be unethical to withhold it for commercial reasons. Rather it should be made a required ingredient of infant formula in order to reduce existing risks associated with artificial feeding. To do otherwise is not in the best interests of children, and fails to recognise the crucial distinction between these products and other foods."* [15]

Allowing health claims for optional ingredients may have the intended purpose of stimulating innovation, but it could also motivate companies to add potentially unnecessary and harmful ingredients for marketing purposes. This is an example of where the Precautionary Principle must be used.

EFSA found no scientific evidence, or insufficient evidence, to support the inclusion of many of the ingredients commonly used in formulas and promoted as having a health benefit. EFSA went further to warn that the unnecessary addition of nutrients can be a burden to a young child's metabolism: (our emphasis)

"*From a nutritional point of view, the minimum contents of nutrients in infant and follow-on formula proposed by the Panel cover the nutritional needs of virtually all healthy infants born at term and there is no need to exceed these amounts in formulae, as nutrients which are not used or stored have to be excreted and this may put a burden on the infant's metabolism.*[16]

Article 3(3) of the Delegated Act (C (2015) 6478 leaves the task of checking that companies use safe and suitable ingredients to MS: Suitability must be *'demonstrated by the food business operator through a systematic review of the available data related to the expected benefits and to safety considerations as well*

[15] http://www.sacn.gov.uk/pdfs/position_statement_2007_09_24.pdf
[16] *Scientific Opinion on the essential composition of infant and follow-on formulae, EFSA, EFSA Journal 2014;12(7):3760*

as, where necessary, appropriate studies, performed following generally accepted expert guidance on the design and conduct of such studies'.

This is risky. The term 'Generally accepted' is not an adequate safeguard. Any decision regarding the safety or composition of ingredients used for this category of foods should be based on evidence that meets WHO's stricter definition of scientific substantiation: ***"Relevant convincing / generally accepted scientific evidence or the comparable level of evidence under the GRADE classification."***

Also, not all MS will have the capacity to do thorough analysis of each and every product, yet once an ingredient appears on sale in one country it can then be marketed throughout the EU, This is an instance where a community-wide safeguards may be safer – given that all these products will carry the EU logo. Difficulty may arise when MS who do have the capacity to check such things thoroughly have concerns about the decisions made by EFSA. If the public and MS are to have confidence in EFSA its conflict of interest safeguards must be rigorous and well applied.

During the consultation on the Delegated Acts we advocated that the Draft Delegated Act (C (2015) 6478 should specify that:

a) all ingredients are pre-authorised following rigorous independent scrutiny, (with particular care over new technologies, such as nanotechnologies;
b) systematic reviews of all available evidence is carried out *independently* of the manufacturers and distributers of the products in question;
c) evidence is reviewed on a regular basis to ensure infants are not exposed to levels of nutrients that might put a burden on their metabolism, (a concern already raised by EFSA);
d) there is regular post market surveillance indicating the frequency of such reviews;
e) food ingredients not listed as essential are kept to the bare minimum;

Conclusion: To allow any promotional claims on optional, potentially risky ingredients compounds the problems inherent in the Delegated Act.

Q5. What are your views on the use of health claims on non-regulated products for infants and young children (i.e. food supplements, young child formulae)? Should health claims not be authorised for such foods at all? Please bear in mind that rejection decisions need to be justified. If you are supporting such rejection please provide a justification that would be compatible with the rules of regulation (EC) No 1924/2006.

The European Food Safety Agency (EFSA) state in their report in October 2013[17]: "*No unique role of young-child formulae with respect to the provision of critical nutrients in the diet of infants and young children living in Europe can be identified, so that they cannot be considered as a necessity to satisfy the nutritional requirements of young children*"

[17] European Food Safety Authority (2013) Scientific Opinion on nutrient requirements and dietary intakes of infants and young children in the European Union. The *EFSA Journal* 11(10):3408 [103 pp.]. DOI: 10.2903/j.efsa.2013.3408 Accessed from: http://www.efsa.europa.eu/en/efsajournal/pub/3408

Young Child Formulas (YCF)

While infant formulas are necessary products for when babies cannot be breastfed, there is no case to be made for YCF (or follow-up Formula). There is near unanimous agreement that YCF are unnecessary products that are marketed aggressively, exploiting parents' concerns solely to make money. WHO and Member States now recognize that YCF are undoubtedly fuelling the childhood obesity epidemic. The EU should do nothing to facilitate the misleading marketing of these products, which permitting health claims would undoubtedly do. Young Child Formula (IYC) should not carry any promotional claims (and should also forbid cross branding with infant formula).

Promotional claims and cross branding with infant formulas – key factors in the marketing of YCF - exploit parental concerns about child nutrition and deceptively imply a closeness to breastfeeding – so undermining breastfeeding both before and after 6 months.

Paragraph (17) of EC 1924/2006 states that *'A nutrition or health claim should not be made if it is inconsistent with generally accepted nutrition and health principles or if it encourages or condones excessive consumption of any food or disparages good dietary practice.' See response to Q1*

The 2016 World Health Assembly adopted Resolution 69/9[18] on infant and young child feeding and accompanying Guidance went some way to tackling the marketing of baby foods and Young Child Formulas, and the Resolution called for more work to be done on micronutrient supplements. [19] Among other things, the WHO Guidance clearly calls for milks marketed for babies 6-36months to be treated as breastmilk substitutes and not promoted.

YCF account for 50% of absolute growth in a market that is set to rise by 55% from US$45 billion to US$70 billion by 2019.[20] This is despite recommendations that children from 12 months onwards should have the majority of their nutrients from a diverse local diet, alongside continued breastfeeding or the consumption of whole (full-fat) animal milk..

In 2016 the German Federal Institute for Risk Assessment (BfR) clearly stated that fortified milks for children over 1 year are superfluous in a balanced diet for young children, offer no nutritional advantage, and there may be potential risk from an 'uncontrolled increase' in the intake of some nutrients (BfR, 2016). This statement also points out that manufacturers' of fortified milks for toddlers frequently refer to high consumption levels on the product packaging that could lead to high intakes of both macro and micronutrients. This is in contravention of regulation EC 1924/2006 where paragraph (10) states that *'…. (should) aim to avoid nutrition or health claims that mask the overall nutritional status of a food product'* [21]

As said before, bad diet is now acknowledged to be the biggest cause of death and disability, and if Member States are serious in their intent to tackle the problem of childhood obesity they must ensure that this new marketing is curtailed. WHO is ready to help.

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[18] http://apps.who.int/gb/ebwha/pdf_files/WHA69/A69_ACONF7Rev1-en.pdf.

[19] Maternal, infant and young child nutrition, Ending inappropriate promotion of foods for infants and young children, Guidance on ending the inappropriate promotion of foods for infants and young children. (A69/7 Add1)
WHO/UNICEF/IBFAN Marketing of Breastmilk Substitutes: National Implementation of the International Code Status Report 2016.

[20] Young Child Formulas invariably share branding with formulas for newborns and are packaged to look just like them. This 'brand stretching' is a well-known tactic used by Tobacco companies to get round legislation. ICDC Focus 2016 Growing-up milks: aggressive promotion
http://www.babymilkaction.org/wp-content/uploads/2016/05/GUMs-V2-2016.pdf
Statement on sugars in fortified milks marketed for children over 1 year. First Steps Nutrition Trust.

[21] Bundesinstitut fur Risikobewertung (BfR) (2016) *Toddler milk drinks are not better than cows' milk*. Statement available at:
http://www.bfr.bund.de/en/press_information/2011/29/toddler_milk_drinks_are_not_better_than_cow_milk-126749.html

'**Growing Up' vs 'Growing Out' milks.**[22] We consider the use of the words 'growing-up' milk to be a de facto health claim. Paragraph (3) in EC regulation 1924/2006 if a claim is made in the name this should be accompanied by a related nutrition or health claim that complies with the regulation.

Sugar: The Scientific Advisory Committee on Nutrition in the UK has recommended that average population intakes of 'free sugars' should not exceed 5% of energy for age groups from 2 years upwards (SACN, 2015). High sugar intakes are discouraged in the diets of all toddlers who require nutrient dense diets in which added sugars are kept to a minimum. [23] (NHS Choices, 2016).

WHO has issued guidelines recommending a reduction in intake of free sugars throughout the life course. In both adults and children, WHO recommends that intake of free sugars should not exceed 10% of total energy intake (strong recommendation). WHO also suggests that a further reduction of the intake of free sugars to below 5% of total energy intake would have additional health benefits.[24]

WHO outlined its concerns about the composition and marketing of foods for infants and young children in answer to a query from Keith Taylor MEP. *"Commercial foods for infants and young children may also be marketed inappropriately in a way has (i) direct effects on the nutritional status of infants and young children aged 6---23 months, and (ii) indirect spillover effects on infants under the age of 6 months:"* [25]

Repeated exposure to sweet, flavoured drinks in early years could contribute to the development of oral health problems and a preference for sweetened foods in later life. The health risks associated with regular consumption of fortified sweetened milk products by young children could therefore be significant.

YCF can undermine good nutrition in young children and that their marketing and composition should be regulated, ensuring that they are no sweeter than plain animal milk or unsweetened milk alternative and unflavoured.

Supplements: IBFAN is concerned about the promotion of food supplements, their expense, need and tendency to undermine confidence real food. This is especially important in the context of the developing world where humanitarian responses to malnutrition are now being turned into a *"Business."* Given the reach of products exported from the EU and the EU's influence on global policies, it is important that claims on such products are not authorsied. Decisions about the appropriate use of micronutrients and supplements should be the responsibility of public health authorities, not left to the marketplace.

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[22] Gabrielle Palmer, the author of the Politics of Breastfeeding,

[23] Garcia, A. L., Raza, S., Parrett, A., & Wright, C. M. (2013). Nutritional content of infant commercial weaning foods in the UK. Archives of Disease in Childhood, **98**, 793–797.
Garcia, A. L., McLean K, & Wright, C. M. (2015). Types of fruits and vegetables used in commercial infant foods and their contribution to sugar content. *Maternal and Child Nutrition.* Online: DOI: 10.1111/mcn.12208

[24] http://www.who.int/mediacentre/factsheets/fs394/en/.

[25] **Response from Dr João Breda, Programme Manager Nutrition, Physical Activity and Obesity, WHO Regional Office for Europe to Keith Taylor, MEP regarding proposed EU Delegated Acts. 12th January 2015 including the following reference**
Cairns, G, K Angus, G Hastings & M Caraher (2013) 'Systematic Reviews of the Evidence on the Nature, Extent and Effects of Food Marketing to Children. A Retrospective Summary', Appetite 62: 209---215
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Mennella JA. Ontogeny of taste preferences: basic biology and implications for health. The American journal of clinical nutrition. 2014 Mar;99(3):704S---11S
Pearce J, Langley---Evans SC. The types of food introduced during complementary feeding and risk of childhood obesity: a systematic review. International journal of obesity (2005). 2013

Q6. Should you consider that such health claims should be authorised how would you then set conditions of use?.

Health claims on foods and drinks for infants and young children are totally inappropriate and are likely to mislead so we are reluctant to specify conditions. However, if a promotional claim is to be permitted t it should appear at the back of the package, next to the nutrition panel and in plain text of a specific size, no larger than warnings or other required text.
Regulation EC 1924/2006 Para (17) that *'a nutrition or health claim should not be made if it is inconsistent with generally accepted nutrition and health principles or if it encourages or condones excessive consumption of any food or disparages good dietary practice.'*

Q7. Do you have specific comments you want to make on nutrition claims for foods for infants and young children (6m to 3y)?

As mentioned above we do not think promotional claims should be made for this category of foods. Promotional claims can discourage appropriate complementary feeding and suggest that commercial products are superior to home prepared, bio-diverse foods. (See answers to Q2.)

We are pleased that the European Parliament voted to reject draft EU rules on baby food, which would have allowed baby foods to contain high levels of sugar and products to be labeled for use from 4 months of age. It is unclear how this decision will be taken forward and whether free sugars will be replaced by intense sugars that will retain the sweet flavour. We are not aware of any convincing evidence that such a change has any health benefit. Parents need to be warned and encouraged to establish good lifetime dietary habits that will contribute to young child development. Promotional claims on processed foods do not help.

Pouches: The FSNT response highlights the risks of foods sold in pouches. The FSNT study (in press) found that on average, the foods aimed at infants aged 9, 10 and 12 months + had very low energy density at 0.69kcal -0.74kcal/g. The low energy density of commercial baby foods in pouches is primarily due to the water content of the products. In order to be squeezed through the opening of a pouch the food has to be smooth, hence water is often a main ingredient in these foods. Foods packaged in jars also have relatively high water content. Infants and young children are discouraged from sucking foods from pouches, yet manufacturers often show pictures of infants and young children doing this. This can damage oral health, dissociates the child from the food type and goes against complementary feeding guidance. We also encourage the development of chewing and texture in infant foods, and soft foods marketed for older infants contradict this guidance. Allowing health claims on baby foods which are typically sweet and smooth for younger infants and excessively smooth for older infants and young children does meet our general public health guidance for this age group contravenes the regulation principle (17) *' a nutrition or health claim should not be made if it is inconsistent with generally accepted nutrition and health principles or if it encourages or condones excessive consumption of any food or disparages good dietary practice.'*

FSNT also highlights that many of the foods marketed for older infants and young children as snack foods make nutrient or health claims, but may contain high amounts of sugar. For example, Heinz Biscotti make a nutrient claim '*Made with baby grade ingredients and with added Thiamin (vitamin B1)'* but this product also has 25% if its energy from sugar.

A study from the US showed how common front of pack nutrition related claims on children's cereals mislead consumers, with consumers inferring from the claims that the products presented were more nutritious than other products, even when they had lower overall nutritional quality. [26]

Q8. Delegated Regulation (EU) 2016/128 on foods for special medical purposes (FSMPs) shall enter into application in 2019/2020 and ban all nutrition and health claims on FSMPs. Do you agree that, taking this into account, no health claims should be authorised on FSMPs for infants and young children in the meantime to ensure consistency?

We strongly agree that there should be no promotional claims for FSMPs. Sick infants deserve even more protection than healthy infants. There is no rationale for allowing promotional claims for these products. In coming to its conclusion on banning claims on FSMPs the Commission noted the way that these products are misleadingly promoted. [27]

In the study by Hieke et al (2016) looking at health claims on foods in Europe [28], foods for special medical purposes was the group of foods with the highest proportion of nutrition, health and symbolic claims (78%, 71% and 24% respectively). The highest number of claims for a single product was also found on baby foods.

[26] Harris JL, Thompson JM, Schwartz MB, Brownell KD (2011). Nutrition related claims on children's' cereals: what do they mean to parents and do they influence willingness to buy? *Public Health Nutrition*, **14**, 2207-2212

[27] The claims will also contravene the intent of Resolution (WHA 55.25) May 2002 that endorsed the Global Strategy on Infant and Young Child Feeding: "*Recognizing that infant and young---child mortality can be reduced through improved nutritional status of women of reproductive age, especially during pregnancy, and by exclusive breastfeeding for the first six months of life, and with nutritionally adequate and safe complementary feeding through introduction of safe and adequate amounts of indigenous foodstuffs and local foods while breastfeeding continues up to the age of two years or beyond*

[28] HiekeS, Kuljanic N, Pravst I et al (2016) Prevalence of nutrition and health-related claims on pre-packaged foods: A five-country study in Europe. *Nutrients*, 8, 137-153.