

## Baby Milk Action IBFAN UK Chronology of EU Action related to the International Code of Marketing of Breastmilk Substitutes

- **May '81** The *International Code* (IC) is adopted at the World Health Assembly (WHA) with endorsement from **ALL EU countries**
- **Oct '81** EU Parliament (EP) votes to implement it
- **'82** EU Commission, under Commissioner Narjes, proposes that a weak code drawn up by the Association of Dietetic Foods industries (IDACE) should be used as a basis. During consultations with Member States (MS) the Commission – led by the Directorate in charge of Industry – claims that there is no proof that advertising undermines breastfeeding (BF) [ [link to minutes](#) ].
- **'83** EU Parliament calls for the IC again rejecting the IDACE Code.
- **'84** Wyeth (SMA) launches FUF in UK with a £1/2 m campaign. IBFAN and the Health Visitors mount a campaign against them, highlighting their risks and calling for the age range to be raised to 6 months. Prof Michael Crawford of London Zoo finds them closer to rhinoceros milk than human milk,
- **'85** Three EP Committees (ACP Lome, Economic and Social and Development) call for the IC.
- **'86** IBFAN mounts a campaign. EP votes in 33 strengthening amendments to IDACE Code. The new Commissioner, Lord Cockfield, accepts them.
- **'87** The companies, supported by James Akre of WHO, succeeded in getting a Follow-up Formula Standard (Codex STAN- 156-1987<sup>1</sup>) with weak compositional and marketing requirements. FUF use and global trade follows.<sup>2</sup>
- **'86-89** Bureaucratic limbo. The Council adopts/revives the Framework Directive for Foodstuffs for Particular Nutritional Uses (PARNUTS), conferring power to the Commission to finalise legislation in this area with no second reading from the EP. The Commission is challenged by IBFAN and MEPs for failing to include all the amendments proposed by the EP.
- **'89** UK Health Minister Edwina Curry bans free and low-cost supplies.
- **'91** Coordinated by IBFAN, 1,500 letters are sent to the Commission and Several meetings with Commission follow. WHO highlights 20 weaknesses in the Directive. Commission accepts that aim of Directive is to protect health.
- **May '91** Directive 91/321/EEC is adopted. Baby Milk Action/IBFAN succeeds in getting in the new clause permitting prohibition of IF advertising. The supplies provision is strengthened. The Netherlands votes against because of the Directive is not strong enough. The Danes vote against because of sugar. UK regrets lack of B&T and exports and weak FUF section.
- **'92** Export Directive (92/52/EEC) calls for appropriate language (s) Council Resolution calls for Code compliance in 'third countries'.
- **'94** Global consensus is achieved on the IC under the Clinton administration.
- **'96, '99** New Regulations are passed that strengthen controls on Pesticides but allow a disease risk reduction allergy claim. UK argues against this claim and requires formulas to carry a warning.
- **'99** 900 health and development NGOs petition against the Medical Food Directive. The EU Commission resigns over corruption charges and the Directive is slipped through unnoticed
- **2000** Glenys Kinnock MEP and Baby Milk Action succeed in getting members of the Scientific Committee for Food (SCF) to publicly declare interests. Prof Jean Rey resigns. SCF is closed down, the EU Scientific advisory system is reformed with the intention of being at arm length from the political process. EFSA is created.
- 2000 Responsibility for the baby food laws is moved from DG Industry, under the management of Mr Mathioudakis , to DG Sante (Health and Consumer Protection) Mr Mathioudakes moves to DG Sante..
- **2003** SMA Case – the European point – SMA loses its case that UK legislation '*fetters the free movement of goods*' and should be no stricter than the weakest of any other country.
- **2000** Lisbon Strategy/Agenda aims to make the EU "*the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion*", by 2010. The EU pursues neoliberal capitalism in its trade agreements with other countries, promoting the interests of big business at the expense of labour, society and the environment. Innovation is seen as the motor for economic growth.

<sup>1</sup> Codex Alimentarius Commission is the UN's standard setting body.

<sup>2</sup> FUFs are almost identical compositionally to IF in the EU, but there are no rules for GUMs. Parents take a big risk and waste money on these products. FUFs and GUMs are fuelling the rise in global formula sales - predicted to reach \$70 billion in 2019.

- **2001** Pascale Lamy, then Commissioner for Trade, answers IBFAN questions about whether trade agreements take precedence over the International Code of Marketing of Breast-milk Substitutes and subsequent relevant World Health Assembly Resolutions and health and human rights obligations
- at national level. Lamy says they should be 'mutually supportive'. [\[Link\]](#)
- **March 2005:** The UK Infant Formula and Follow-on Formula Regulations 1995 Statutory Instrument 1995 No. 77 2006 come into force. The advertising section is weakened by John Redwood, then Secretary of State for Wales.
- **December 2006:** COMMISSION DIRECTIVE 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae and amending Directive 1999/21/EC adopted with many weaknesses.
- **2006:** EU and the US block a proposal from Thailand to reduce sugar levels in the Codex global standard on baby foods.
- **2007** The UK's Government's Scientific Advisory Committee on Nutrition (SACN): '*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.*'<sup>3</sup>
- **2007** IBFAN joins the EU Platform on Diet Physical Activity and Health.
- **2007** Baby Milk Action files a complaint of maladministration with the Ombudsman against Mr Mathioudakis, Head of Unit in DG Sanco E4 for failing to take appropriate action to protect public health.
- **2011** A majority of MEPs vote against the DHA visual acuity claim. But this was not an *absolute* majority (59 MEPs were not present) so the claim is legal. FOF on sale in Europe and exported from it to Third countries could continue to carry the misleading health claim that DHA "*contributes to the normal visual development of infants up to 12 months of age*" alongside any other claims that are approved in future.
- **January 2013** A new round of discussions begins to repeal the Framework Directive of Foodstuffs for Particular Nutritional Uses (PARNUTS) and adopt Regulation 609/2013. IBFAN coordinates a campaign to strengthen the Commission proposals for Delegated Acts. Responses come from industry, NGOs, WHO, other Commission DGs and EU and WTO Member States and observers from India and Afghanistan, many calling for the proposals to be brought closer to the IC and WHA Resolutions. The Commission makes some welcome changes (exports to be in understandable language, three new preambular paragraphs are added and some labelling requirements strengthened) but the key problems remain. The Commission sends its revised proposals to Parliament. IBFAN and the BFLG lead a campaign to encourage MEPs to take power from the Commission to Parliament.
- **June 2013:** The MEPs vote in Regulation No 609/2013 that will come into force in July 2016.<sup>i</sup> Para No.44 of the Regulation states: "*This Regulation does not affect the obligation to respect fundamental rights and fundamental legal principles, including the freedom of expression, as enshrined in Article 11, in conjunction with Article 52, of the Charter of Fundamental Rights of the European Union, and in other relevant provisions.*"
- 609/2013 falls short of the International Code and Resolutions, failing to ban the promotion of formulas over 6 months . It also allows the Commission to set : (c) *the specific requirements on labelling, presentation and advertising of food referred to in Article 1(1), including the authorisation of nutrition and health claims in relation thereto; (d) the notification requirements for the placing on the market of food referred to in Article 1(1), in order to facilitate the efficient official monitoring of such food, and on the basis of which food business operators shall notify the competent authorities of Member States where that food is being marketed.*
- However 609/2013 closes some loopholes: it extends the ban on idealising images and text on labels to follow-on formulas; imposes stricter controls on foods claiming to be 'for special medical purposes' including formulas for pre-term babies; increases transparency and provides more democratic oversight, with European Parliamentarians having a say in whether new ingredients can be added. Article 5 of Regulation called for the **Precautionary Principle (PP)**<sup>ii</sup> – one of the fundamental principles of the European Union – that seeks to prevent risk in the face of scientific uncertainty. If effectively implemented the PP should prevent risky products (such as GM, Beef Hormones, untested

<sup>3</sup> [http://www.sacn.gov.uk/pdfs/position\\_statement\\_2007\\_09\\_24.pdf](http://www.sacn.gov.uk/pdfs/position_statement_2007_09_24.pdf)

ingredients) being placed on the market.<sup>iii</sup> However, Regulation 609/2013 leaves the task of checking whether ingredients are safe to Member States – not all have the capacity to do this properly. Once an ingredient appears on sale in one country it can then be marketed throughout the EU.

- **2013-15.** IBFAN continues to campaign to strengthen the Delegated Acts that arise from 609/2013.
- **2014:** EU Action Plan on Childhood Obesity, initiated under the Irish Presidency, was adopted at the Greek Presidential Conference in Athens on 26th February 2014. Priority actions appear in toolbox of measures for consideration<sup>2</sup> include making the healthy option the easier option (no food and drink sponsorship in schools) and restricting marketing and advertising to children (defined as 0-18)
- ? BFLG/IBFAN publish *Comment on Recommendations for Requirements for Food for Special Medical Purposes (FSMP) for infants*
- **2013** EFSA publish opinions on the essential composition of IF and FOF and Young Child Formula (YCF).<sup>4 5</sup> ‘Growing-up’ formula: No additional value to a balanced diet, says EFSA, 25th October 2013<sup>iv</sup>
- **2014** IBFAN publishes *Breaking the Rules, Stretching the Rules 2014* <sup>v</sup> BFLG publishes UK Monitoring Reports.<sup>vi</sup> UK Consumer Association and First Steps Nutrition publish reports showing the harmful composition and expense of formulas targeting children 12-36 months<sup>vii</sup> A survey by German consumer centres of products targeting babies from 12 months and sold as “Kindermilch” (“milk for children”) found them up to four times more expensive than normal milk, costing parents up to 245 euros more each year.<sup>viii</sup>
- **2015 The European Code Against Cancer is published. It focuses on 12 actions that individual citizens can take to help prevent cancer.** Recommendation 10 states: *Breastfeeding reduces the mother’s cancer risk. If you can, breastfeed your baby.*<sup>ix</sup>
- **Oct 2015:** The Greens, supported by IBFAN, launch a campaign to improve the Delegated Acts. The Greens register an objection to the three Delegated Acts proposed by the Commission that supplement Regulation (EU) No 609/2013 of the EP and Council as regards infant formula, follow-on formula, c(2015) 6478, food for special medical purposes.
- One of the Green objections goes forward to Plenary, calling for sugar in baby food to be reduced to meet WHO recommendations and baby foods to be labelled from 6 months.
- **Jan 2016:** European Parliament votes (393 votes in favour, 305 votes against) for big reductions in sugar in baby foods and prohibitions on labelling at too early an age. The Commission now has to bring the regulations into line with the sugar recommendations from the World Health Organisation (WHO) and the World Health Assembly’s requirement that baby foods are not marketed for use before 6 months of age (WHA).<sup>x</sup>
- **Feb 2016:** Two EU delegated regulations on Infant Formula, Follow on Formula and Foods for Special Medical Purposes are published to come into effect 2020 and 2021.<sup>xi</sup> Directive 2006/141/EC is repealed with effect from 22 February 2020.
- **March 2016:** The Commission report on Young Child Formula<sup>xii</sup> proposes no effective action, and leaves these products open to the market.<sup>xiii</sup>
- **March 2016:** The Romanian Parliament votes to introduce a new law that is significantly stronger than specified by EU Regulations, calling for a ban of promotion of formulas up to 2 years and controls on sponsorship of health workers and facilities.<sup>xiv</sup> The Romania case raises the question of what a country should do when the EU does not regulate a given area effectively and allows commercial practices that do not promote the high level of public health protection that the EU has a mandate to ensure in all its policies. Romania is persuaded to delay the introduction of the law until after consultation, including with industry.
- **2016:** Alison Thewliss (SNP), tabled a *Feeding Products for Babies and Children (Advertising and Promotion) Bill 2016-17* in the UK House of Commons, seeking extend advertising and promotion controls and set safer standards for ingredients and claims.<sup>xv</sup> The Bill fell because a General Election was called.
- **May 2016** WHO/UNICEF/IBFAN launch joint report *Breast-milk Substitutes: National Implementation of the International Code Status Report 2016*
- **May 2016:** WHA adopts Resolution 69/7 and *Guidance on ending the inappropriate marketing of foods for infants and young children* WHA 69/7 Add 1 clarifying that all formulas for babies 0-36 months function as breastmilk substitutes, fall under the scope of the International Code and should not be

<sup>4</sup> Scientific Opinion on the essential composition of infant and follow-on formulae 2014 [www.efsa.europa.eu/en/efsajournal/pub/3760.htm](http://www.efsa.europa.eu/en/efsajournal/pub/3760.htm)

<sup>5</sup> ‘Growing-up’ formula: No additional value to a balanced diet, says EFSA, 25th October 2013  
<http://www.efsa.europa.eu/en/press/news/131025>

promoted.<sup>xvi</sup> At the same Assembly WHO adopts the very problematic Framework for Engagement with Non State Actors (FENSA).

- **July 2016.** Improvement Notices for England, Northern Ireland and Wales introduced to enforce EU formula and baby food marketing rules – companies face criminal charges for non compliance.<sup>xvii</sup>
- **2017:** The UK votes to leave the EU. The prospect of a UK US trade deal is described as '*TTIP on steroids!*'<sup>xviii</sup>
- **2017** 200 NGOs and networks call for a UN Treaty on Business and Human Rights at an Open Ended Intergovernmental Working Group (OEIGWG) on transnational corporations and other business enterprises with respect to human rights.
- **2017** Green MEPs propose a Resolution on imports of food from Japan following the Fukushima disaster, mentioning the safety of baby foods is mentioned in Para J (not sure what happened!)
- **May 2017** EFSA published its final guidance on the assessment needed for food for babies under the age of 16 weeks, maintaining the requirement for an extended one generation reproductive toxicity study for substances added intentionally to infant formula. The baby food industry argues that wherever standards are set a 'history of safe use' is sufficient: "*We strongly feel a different risk assessment approach should be applied for additives that also have a function and a long history of use as a permitted nutritional substance in formulas for infants, including infants below 16 weeks of age.*" EFSA stresses the importance of human data and dismisses the history of safe use claim as inadequate: "*a presumption of safety based on traditional uses has been accepted under certain conditions eg for botanical preparations, but is not suitable for the risk assessment of food for infants*".
- **June 2017** EU Council publishes its conclusions on actions that can be taken to halt the rise in Childhood Overweight and Obesity. They stress the importance of exclusive and continued breastfeeding and the need for protection from harmful marketing and undue commercial influence.
- **March 2018:** As part of the general review of Directive 2006/125/EC, the Joint Research Centre studies processed cereal-based food and baby food on the market and existing national and international food based dietary guidelines and recommendations in the context of infant and young child feeding. JRC looks at the issue of sugar with the aim of reporting at the end of March 2018. (The JRC study will form the basis of Commission discussions with Member States.) EFSA, as risk assessor, is tasked to see if and how the consumption by infants and young children of processed cereal-based foods and baby foods with a given composition, as recommended by the JRC study is compatible with a balanced diet.
- **March 2018** Commission issues a Notice on the classification of Food for Special Medical Purposes (FSMP) (2017/C 401/01)<sup>xix</sup> The notice acknowledges that the 'misclassification' of FSMP may '*negatively affect the protection of consumers interest.*
- **October 2018** The JCR report is published. EFSA has still not published its opinion on the scientific opinion on the appropriate age for introduction of complementary feeding of infants – expected by the end of Sept 2018. Only after all the above will the Commission put forward a draft delegated act on processed cereal-based foods.

<sup>i</sup> <http://www.babymilkaction.org/archives/706>

<sup>ii</sup> **SUMMARY REPORT OF THE STANDING COMMITTEE ON THE FOOD CHAIN AND ANIMAL HEALTH HELD IN BRUSSELS ON 29 APRIL 2013** states: "...when a food business operator places a product with a new ingredient on the market, a dossier substantiating that the ingredient is safe and suitable for the intended purpose, must be available. **The Member State may request to evaluate that dossier if they wish to do so** and it is their right to consider that the ingredient does not meet the requirements of Articles 4 to 6 and to refuse the placing on the market of products with such ingredient."

<sup>iii</sup> **Article 5 Precautionary principle** In order to ensure a high level of health protection in relation to the persons for whom the food referred to in Article 1(1) of this Regulation is intended, the precautionary principle as set out in Article 7 of Regulation (EC) No 178/2002 shall apply

<sup>iv</sup> <http://www.efsa.europa.eu/en/press/news/131025>

<sup>v</sup> <http://www.babymilkaction.org/archives/358>

<sup>vi</sup> <http://www.babyfeedinglawgroup.org.uk/reports/bflreports>

<sup>vii</sup> [http://www.firststepsnutrition.org/pdfs/Statement%20on%20Growing-up%20milks\\_July\\_2014.pdf](http://www.firststepsnutrition.org/pdfs/Statement%20on%20Growing-up%20milks_July_2014.pdf)

<sup>viii</sup> .... recommended daily serving of powdered toddler milk can cost up to £235 per year, using ready-to-feed toddler milk increases this cost to up to £593, the annual cost of 300ml of cow's milk is £62..... Cow's milk contains 4.7g sugar per 100ml, compar A ed to 7.9g of sugar per 100ml of Hipp Organic Combiotic Growing up milk. And some daily servings contain twice as much sugar - three teaspoons a day for cow's milk compared to seven teaspoons a day for SMA Toddler milk. SMA Toddler milk also contains vanilla flavouring, which encourages children to prefer sweetened products. <http://www.which.co.uk/news/2013/08/should-parents-buy-toddler-milks-330947/>

<sup>viii</sup> <http://www.vzhh.de/ernaehrung/129727/kostenfalle-kindermilch.aspx>

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

<sup>ix</sup> <http://cancer-code-europe.iarc.fr/index.php/en/>

<sup>x</sup> <http://www.babymilkaction.org/archives/8274> <http://www.babymilkaction.org/archives/7899> Keith Taylor's Motions opposing the European Commissions proposals for Delegated Acts on Processed cereal-based food and baby food (RE\1078840EN.doc); Foods for Special Medical Purposes (RE\1078844EN.doc), Infant formula and follow-on formula (RE\1078859EN.doc

<sup>xi</sup> **Directive 2006/141/EC** In accordance with Article 20(4) of Regulation (EU) No 609/2013, Directive 2006/141/EC is repealed with effect from 22 February 2020. However, Directive 2006/141/EC shall continue to apply until 21 February 2021 to infant formula and follow-on formula manufactured from protein hydrolysates. References to Directive 2006/141/EC in other acts shall be construed as references to this Regulation in accordance with the scheme set out in the first paragraph. Article 14 Delegated Act in all languages: <http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=OJ:L:2016:025:TOC>

<sup>xii</sup> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on young child formulae {SWD(2016) 99 final} Brussels, 31.3.2016 COM(2016) 169 final [GUMsSWD 21699 Final](#)

<sup>xiii</sup> Nutraingredients: No new legislation needed on 'growing up milks' says long-awaited Commission Report 18th April 2016

<sup>xiv</sup> Nutraingredients 08-Nov-2016 Romania goes beyond EU minimum with infant formula restrictions

Censoring choice? SNE concerned about Romanian Plans <http://www.nutraingredients.com/Regulation-Policy/SNE-concerned-about-Romanian-infant-formula-censorship>

<sup>xv</sup> <https://services.parliament.uk/bills/2016-17/feedingproductsforbabiesandchildrenadvertisingandpromotion.html>

<sup>xvi</sup> <http://www.who.int/nutrition/topics/guidance-inappropriate-food-promotion-iyc/en/>

<sup>xvii</sup> <http://www.babymilkaction.org/archives/10328>

<sup>xviii</sup> <https://www.independent.co.uk/news/uk/politics/ttip-brexit-uk-steroids-disastrous-global-justice-now-war-on-want-a7099986.html>

<sup>xix</sup> <http://www.babymilkaction.org/archives/16644>