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European Commission
DG Health and Consumer Protection (DG SANCO)
B-1049 BRUXELLES

Wednesday, October 31st 2007

Dear Basil and Demetris,



Meeting to discuss the legal status and implementation of Commission Directive 2006/141/EC on Infant Formulae and Follow-on Formulae Note for the File

Thank you very much for sending your account of our meeting last week. I was pleased that in some areas our views were accurately represented and that you reiterated that the Commission believes the Directive to be merely a 'harmonised area' and that the ultimate judgement lies with the Court of Justice. However, in several other areas I believe there are some serious inaccuracies which I must bring to your attention:

- 1 **The note says that I felt that the above EU legislation obstructs the implementation of the International Code.** In fact I have never said this. I believe that:
 - there is scope within the Directive to implement the International Code and WHA resolutions in full,
 - this is required in Article 1 and Paragraph 27
 - there is no specific recommendation regarding follow-on milk advertising (apart from an oblique reference in Article 13)
 - it is the Commission's interpretation of the Directive which is obstructing Member States action.
- 2 **On the question of advertising.** The note says that *"Some MS asked during the negotiation before the adoption of the Directive for the introduction of the possibility of restrictions by MS for follow-on formula but the vast majority did not agree (Directive received a favourable opinion in the Standing Committee with one Member abstaining) This demonstrated that there was very broad consensus within the EU not to have any restrictions for these products."*

I have discussed this with Bente Koch, who, although retired now, attended at least seven of the expert meetings on behalf of the Danish Veterinary and Food Administration. I am aware that the Commission considers the proceedings of these meetings to be confidential and does not produce full minutes of each meeting. However, in view of the importance of this particular point, Bente has given me permission to say the following in order to set the record straight: In her opinion most MS did not comment on the issue of advertising and few had strong opinions; in many countries this type of promotion is not yet presenting a problem; several MS supported the UK and asked for this particular issue to be left to MS to decide at national level. Bente Koch also believes that if the Chair had accepted the UK's evidence that follow-on milk advertising was undermining breastfeeding and if MS had been given the opportunity to vote on this point, very few would have had a problem with the request which came not only from the UK but also Finland.¹ Indeed she considers that the majority would have been happy to let MS decide this at national level. I believe this particular example shows the danger of allowing such a crucial area of policy making to be so strongly influenced by the opinion of a small number of people and highlights the need for greater transparency and accountability of Expert Committee meetings – a point I address on the following page.

Page 1 of 2

- 3 **On the question of new ingredients.** The notes refer to a safeguard clause in the Framework Directive (89/398/EC) which requires consultation with the Scientific Committee for Food. The notes should say that I pointed out that the Directive was not in line with Directive 89/398/EC because SCF advice was not followed and the Directive fails to include the important safeguard this body recommended.²
- 4 **Transparency and Accountability** I also made the point that since Directive 2006/141/EC is not merely a ‘technical’ issue and clearly has a great impact on public health policies, the Commission may have gone beyond its remit.³ The notes should say that my complaint about the lack of transparency was based on the lack of *full* minutes - we accept that there is a summary note at the end of the process. It should also refer to the other comments I made about the lack of objectivity in the chairing and the lack of transparency and accountability of the procedure. These comments have been submitted in writing,⁴ including that:
- Observers should be permitted to attend the Expert Meetings and Working Group meetings and give the opportunity to participate in discussion (as is the case in Codex Alimentarius and World Health Assembly meetings);
 - Parliamentarians should be consulted regarding any significant changes to legislation relating to products covered by the PARNUTS Directive;
 - a Regulatory Impact analysis should be made which take into account the health, social and environmental costs of the proposed changes.

I would be very interested to receive your comments on the above and to know whether the notes could be amended to include these points.

Yours sincerely



Patti Rundall , Policy Director

cc

Robert Madelin, Director General, European Commission, DG Sanco

Paolo Testori-Coggi, European Commission, DG SANCO

Ariane Vander Stappen, European Commission, DG Sanco

Marcus Stahlhofer & Dr Constanza Vallenias, WHO, Child and Adolescent Health and Development

Dr Francesco Branca, Regional Adviser for Nutrition & Food Security, WHO Reg. Office for Europe

Rt Hon Dawn Primarolo, UK Minister for Public Health.

Dame Deirdre Hutton, Chair, Food Standards Agency

John Harwood, CEO, Food Standards Agency

David Bull, Executive Director, UNICEF UK, Dragan Nastic, UNICEF UK

Ann Scott, Gundula Maria Kjær, Danish Veterinary and Food Administration

Catherine Stihler MEP, Richard Howitt, MEP, Glenys Kinnock, MEP

- 1 *Finnish Opinion On Issues Related To The Recast Directive Of Infant Formulae And Follow-On Formulae* (Recast version Sanco D4/HL/mm/D440180 Rev. 3 July 2005) Sari Kankaanpää, Senior Adviser, Ministry of Trade and Industry
- 2 The Report of the Scientific Committee on Food on the Revision of Essential Requirements of Infant Formulae and Follow-on Formulae states: “*the scientific evidence to support modifications of infant formulae and follow-on formula beyond the established standards is overseen and evaluated by an independent scientific body prior to the introduction of such products to the market*”
- 3 Directive (89/398/EC) states that “Whereas the drawing-up of specific Directives implementing the basic principles of Community rules and amendments thereto are implementing measures of a technical nature, whereas their adoption should be entrusted to the Commission in order to simplify and expedite the procedure.”
- 4 IBFAN Comments Parnuts framework Directive (Directive 89/398/EEC) Commission Directive on processed cereal-based foods and baby foods (2006/125/EC) June 2007