



EUROPEAN COMMISSION
HEALTH & CONSUMER PROTECTION DIRECTORATE-GENERAL

Director-General

SANCO

30. 10. 2007

Brussels,
SANCO E4/AVS/ko (2007) D/540691

Dear Mr Harwood,

Dear John

Thank you for your letter dated August 8, 2007 concerning the scope for Member States to act in areas where EU legislation applies.

We share your views that Commission Directive 2006/141/EC on infant formulae and follow-on formulae was intended to be a harmonised legislative measure and that these products may be marketed within the Community if they comply with this Directive (see e.g. Article 10 of Directive 89/398/EEC).

The Directive has fixed rules for infant formulae and follow-on formulae regarding the essential composition, requirements concerning the pesticides residues, labelling, presentation and advertising. In particular, Article 13 establishes the specific labelling, presentation and advertising requirements, prohibitions and restrictions applicable to those products.

As infant formulae and follow-on formulae are different products addressed to distinct age cohorts of infants it was agreed during the negotiations with the Member States to fix different provisions regarding composition, labelling and advertising taking into account scientific data and the proportionality of the measures regarding the specificity of the products. The margin of discretion available to Member States is entirely determined by the Directive itself and must be inferred from its wording, purpose and structure.

For very strictly specified cases, the Directive provides possibility of national measures: advertising of infant formula (Article 14) and purity criteria (Article 8). However, such national measures would need to be proportionate and justified if their introduction would involve impacts on free movement of goods. This implies that where the Directive did not expressly permit it, Member States are not allowed to adopt national provisions.

Mr John Harwood
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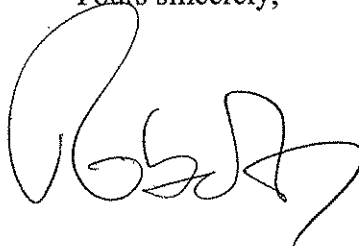
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In other words, the introduction by a Member State of any supplementary particulars would be in conflict with the provisions of the Directive, as they would exceed the level of restriction in the trade of the concerned product that was considered as proportionate and adequate with a view to reaching the objective of that legislation.

Finally, although the Commission's view on this issue could be helpful to the Food Standards Agency, I remind you that it is ultimately the Court of Justice that can provide an authentic interpretation of Directive 2006/141/EC.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'R. Madelin', written in a cursive style.

Robert Madelin