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From: Patti Rundall <[redacted]
Sent: 31 August 2014 22:03
To: Euro-Ombudsman
Subject: [EOWEB] consultation concerning the composition of European Commission expert groups
Attachments: Baby Milk Action to Ombudsman by 31 August 2014.pdf

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Language you would like to receive an answer in en - English

Part 2 - Data

Subject consultation concerning the composition of European Commission expert groups

Baby Milk Action Response to Ombudsman Consultation

Background

Content I am pleased to submit these comments on behalf of Baby Milk Action, an NGO with 34 years working within the global network, IBFAN. We work to protect child health and the rights of parents to independent information and support on infant and young child feeding. As essential part of our work has been to call for transparency and safeguards from commercial influence and strong consumer representation in all fora where children's food policy is decided. [i]

We were founders of the *Conflicts of Interest Coalition* (COIC) that was launched at the UN General Assembly in 2011. COIC represents the call from over 14O leading health and development NGOs for health policy setting to be safeguarded against commercial influence.

Of necessity we have paid close attention to EU rules of transparency and independence relating to the scientific advice provided to the European Commission on products marketing for infants and young children, which we believe have been weakened as a result because faulty procedures, compounded by the fact that since1989 and until 2007 the Commission had the power to draft and adopt legislation on baby foods with no legal requirement to routinely consult Parliament. On many occasions the Commission justified its decisions on the basis that this was on the 'advice' from the Scientific Committee for Food (SCF). SCF members, until 2000 were only required to make declarations of interest to the EU Commission - not to the public. Following our intervention in 1999, and that of Glenys Kinnock MEP Commissioner Liikanen agreed that the annual declarations would be made public. [ii] In April 2000 we had an informal meeting with the Commission to discuss transparency in the context of the proposed reorganisation of the Scientific Committees and the establishment of the European Food Authority (EFSA). [iii] Soon after, the service responsible for the legislation of foodstuffs, DG Enterprise, was transferred to DG SANCO.

Despite many improvements in the transparency of EFSA, in 2007 we made a complaint to the EU Ombudsman of continuing maladministration in relation to the DGSANCO's handling of the Directive 2006/141/EC and its misrepresentation of the proceedings of the expert meetings. We maintained that this contravened the EU's horizontal duty to ensure that: "*A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities"* and specifically itsobligations to implement the WHA Resolutions.

Since 2000 we have welcomed opportunities provided mainly by EFSA, to attend public meetings and suggest ways to strengthen its rules of procedure regarding transparency and the minimizing of commercial bias and are pleased that in several ways the situation has improved. However a chain is only as good as its weakest link and problems still remain, especially in relation to the political context in which it works.

1. Which specific Commission expert groups do you consider to lack a balanced representation of relevant areas of expertise and interest in their membership? What, according to you, is the root cause of the unbalanced composition of the Commission expert groups identified by you?

As mentioned above, our main experience is with the European Food Safety Authority in relation to the labelling and composition of products for infant and young child feeding However we do have some knowledge of the Scientific Committee on Consumer Safety (SCCS), the Scientific Committee on Health and Environmental Risks (SCHER) and the Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR).

Sadly, despite the improvements over the years, in all four committees, process flaws remain that have led to unacceptable conflicts of interest and unbalanced composition. This has undermined effectiveness and transparency, and has lead to biased decisions that favour of industry and pose risks to human health and the environment.

Root causes – global trade and the fascination with innovation

The EU's goal to become the world's most competitive trading block has meant that concerns about health and the environment too often take second place to the interests of trade. The close links between scientific assessment from the political process, alongside the funding and management of Scientific Committees, leads to **Institutional Conflicts of Interest** thathave an underlying and harmful impact on the EU policy setting process, resulting in weak or non-existent legislation and a failure to adequately control commercial activities. Given the substantial commercial interests at stake, the pressure to lower trade barriers and expand EU global markets, safeguards to protect the independence of the EU's Scientific Committee (SC) is critically important.

The fascination and drive for innovative products and technologies contributes to an imbalance in scientific committees. New technologies are undoubtedly necessary in many contexts. However they can also have unintended consequences. They can also lead to the assumption that problems (such as malnutrition – under and over nutrition) are best solved through the creation of marketable medical solutions and 'quick fixes.' In this context, preventive measures that protect the physiological norm – such as breastfeeding and

consumption unprocessed foods – are overlooked.

Of course the potential for bias is present in all research. However, it is reduced if research is commissioned and funded by a disinterested party rather than one active in the market. In our experience, the predominance of industry-funded research and inclusion of experts who have unacceptable links with industry, has affected the quality of research, the research base and consequently on the systematic reviews that inform health policy at national and global level.This has impacted on health professionals who are the main reference point for policy makers and through whom information is disseminated to the public. The funding of research is often not transparent, increasing the difficulty of assessing biases.[iv]

The European public - and the world at large - expect and need scientific bodies to be a credible source of independent advice that consistently puts the interests of public health above the political pressure to boost the EU economy. The word 'independence' makes no sense otherwise

2. The Commission's horizontal rules on expert groups allow for the Commission to appoint individual experts in their personal capacity. In your experience, does this possibility give rise to concern in terms of the balanced composition of expert groups and/or conflicts of interest?

I believe so. Everything will depend on whether the COI and transparency rules are stringent enough and rigorously applied, and whether all experts are screened to this standard.

3. Do you consider that the current level of transparency regarding the composition of Commission expert groups, in particular through the Register of Commission Expert Groups and Other Similar Entities, is sufficient? In particular, does the information made available by the Commission allow you to ascertain which interests are represented by the members of Commission expert groups? If not, where do you see room for improvement? Do you consider that the current level of transparency regarding the work of expert groups, in particular through the publication of agendas and minutes, is sufficient?

In our experience the rules on transparency, although much improved since the 1990s, are still not adequate to cope with the strategies regularly used by major transnational corporations to hide their actions. [v]

We know that Experts with unacceptable COI have been able to join Working Groups. We are pleased that that EFSA now randomly checks Declarations of Interest, however we are not sure whether sufficient funding is allocated to this task. In general we are aware of an overuse of the term 'trust'. This is unacceptable.

It is often argued that it is impossible to screen against all COI, and that because conflicted experts are often in the minority in a Working Groups they cannot bias decisions. We argue that this is not the case. In very specialised areas such as infant feeding, just one expert can have a disproportionate influence. A chain is as good as its weakest link.

It was evident that EFSA was nervous about the **Management Board** and said that legally they have no power to insist on Declarations of Interest MB Members - because they are appointed by the EU Commission or Council.

4. Where the Commission publishes calls for application for membership in expert groups, do you consider that these calls provide for selection criteria which sufficiently take into account the need for a balanced composition of expert groups? If not, where do you see room for improvement? In your view, could the Commission do more to raise awareness about these calls, with a view to encouraging applications? If so, what concrete steps could it take in this regard?

No. In addition to the need for adequate screening in relation to financial COI, it is very important that Expert groups have much greater representation from Civil Society and this should be funded adequately.

We are concerned about the focus on 'intellectual' COI. This mirrors an industry tactic that diverts attention away from financial COI which is much more serious. It could also rule out independent people simply because they are members of an NGO. The EFSA rules that disallow contributions to an opinion on your own work should not prohibit the participation of, for example, an independently funded expert in paediatrics, with a life's work on infant feeding. Having a strong view on the importance of breastfeeding or

the risks of formulas should not be considered an intellectual bias.

5. Do you have any experience in applying for membership in a Commission expert group? If so, did you face any problems in the application process? If not, are you aware of any such problems faced by civil society organisations? Based on your experience, do the costs inherent in participation/the lack of comprehensive reimbursement schemes discourage civil society organisations from applying for membership?

It is important that EU working groups involve truly independent CS representatives, and not just as one token voice. Adequate Reimbursement should of course be made.

I have not applied to join an expert Group. However I am sure that costs inherent in participation will too high for many public interest NGOs, who would otherwise provide useful contributions. As someone who has run a truly independent NGO that has remained free from commercial funding and influence for 34 years, I am keenly aware of the resource constraints – that are even more sharp in the present financial and political climate. The promotion of corporate sponsorship, Public Private Partnerships and Multi-Stakeholder Initiatives that follow the market profit-making logic exacerbates the challenges faced by NGOs. This works against EU Policy makers hearing independent views that will allow them to make wise policy decisions. As the IBFAN representative on the EU Commission's *Platform for Action on Diet and Physical Activity* for 7 years we have witnessed the risks of 'multi-stakeholder' initiatives.

6. Please give us your views on which measures could contribute to a more balanced composition of Commission expert groups.

Expert Groups should always contain people with understanding and outreach to the general public, consumer protection and human rights groups.

7. Do you have any other comments?

In view of the above concerns we recommend:

- a clear separation of scientific assessment from the political process.
- rules on conflicts of interest should not relate just to 'product specific' work. EU opinions have global and industry wide implications.
- Experts with any commercial /financial conflicts of Interest should be required to provide data – and consulted in open meetings. They not give 'opinions' or be involved in the formulation of opinions
- The focus should not be on 'intellectual' COI . This is a distraction that mirrors an industry tactic to divert attention away from much more serious financial COI.
- All data submitted to for evaluation of foods for infants and young children should be in the public domain
- No claim should be approved on the basis of cherry-picked, industry-funded, and possibly 'proprietary' dossiers.
- Assessment of claims must include safety as well as efficacy.
- Scientific groups should always assess the totality of research including independent systematic reviews and peer reviewed papers.
- Consultations should be open to the public and the term 'Trust' should be replaced by the word 'credible'
- Declarations of interest should include the proportion of income derived from commercial sources, to indicate the relevance and importance of the interest.
- Sufficient funds should be allocated to validate COI statements.
- DG Research should provide 100% funding for research in the public interest and not encourage the involvement of commercial partners, especially for research on infant and young child feeding.
- **The Precautionary Principle** should underpin all EU decisions that have an impact on human health and the environment.

[i] http://info.babymilkaction.org/ConflictsofInterest

[ii] *Scientists bow to call for more Transparency*, European Voice, March 2000

[iii] Notes of meeting between IBFAN and EU Commission staff about transparency and the Scientific Committees, 27 April 2000, Brussels

[iv] Research, Transparency and Conflicts of Interest, Page 25, Baby Milk Action Update 46

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