



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B. Quality, Research & Innovation, Outreach
The Director

Brussels,
PP/nb(2020)1768528

Dear [REDACTED]

Thank you for your e-mail of 23 January 2020 (Int. Ref. ARES(2020)429990) asking for a clarification with respect to a previous reply (Int.Ref. ARES(2018)4086625) we sent you on 20 July 2018, in particular with respect to the possibility for Member States to authorise enriched growing milk at national level.

Please note that I cannot revise my previous statement since, Article 27(1)(f) of Commission Regulation (EC) No 889/2008¹ and point 2.2.2, Part IV of Annex II to Regulation (EU) 2018/848², on processed food production rules provide for the following:

“In the processing of food, the following products and substances may be used: (f) minerals (trace elements included), vitamins, amino acids and micronutrients provided that:

*(i) Their use in food **for normal consumption is ‘directly legally required’, in the meaning of being directly required by provisions of Union law or provisions of national law compatible with Union law**, with the consequence that the food cannot be placed at all on the market as food for normal consumption if those minerals, vitamins, amino-acids or micronutrients are not added; or*

(ii) as regards food placed on the market as having particular characteristics or effects in relation to health or nutrition or in relation to needs of specific groups of consumers:

¹ Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ L 250, 18.9.2008, p. 1)

² Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018 p.1)

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- in products referred to in points (a) and (b) of Article 1(1) of Regulation (EU) No 609/2013 of the European Parliament and of the Council their use is authorised by that Regulation and acts adopted on the basis of Article 11(1) of that Regulation for the products concerned, or
- in products regulated by Commission Directive 2006/125/EC, their use is authorised by that Directive.”

Moreover, Article 4(3) of Regulation (EU) No 609/2013³ provides for: “Member States may not restrict or forbid the placing on the market of food which complies with this Regulation, for reasons related to its composition, manufacture, presentation or labelling”.

However, with respect to your question on operators placing on the market milk for children from 10 months to 3 years, covering in such way infants and young children, I refer to Article 2 of the above-mentioned Regulation (EU) No 609/2013 which defines “infants” as well as “young children” for the purpose of that Regulation. In that Article “young children” are defined as children aged between 1 and 3 years. Therefore, milk for young children cannot be placed on the market as suitable for infants aged 10 to 12 months. For the above reasons, the product would not be in compliance with EU requirements and Member States are responsible for the enforcement of this rule.

I confirm that with respect to the OFIS notification INEU-341/2019, the Commission is currently examining the issue with concerned competent authorities.

Your last question concerns “cerevisane” and I can confirm this substance has been included in Annex II to Regulation (EC) No 889/2008 by Regulation (EU) 2019/2164⁴.

The present opinion is provided on the basis of the facts as set out in your e-mail of 23 January 2020 and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Yours sincerely,



³ Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p.35)

⁴ Commission Implementing Regulation (EU) 2019/2164 of 17 December 2019 amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ L 328, 18.12.2019, p.61)