

## **BEUC Comments**

### ***Discussion Paper on Nutrition and Functional Claims***

BEUC, the European Consumer Organisation, representing 32 independent consumer organisations<sup>1</sup> from 22 European countries, welcomes the opportunity to comment on the Commission discussion paper on nutrition and functional claims.

A recent Commission study of consumer perception of labelling<sup>2</sup> highlighted that consumers in 14 of the 15 member states are not satisfied with current labelling legislation. 25% of the interviewed consumers mentioned that they have difficulty in finding and understanding information on labels. The way products are currently labelled does not facilitate product comparison, especially if products are intended for various markets and bear multilingual labels.

It is difficult to distinguish between real information and publicity. BEUC is concerned that current labelling provisions are not meeting consumer interests, as the nature of food production becomes increasingly complex and the need for information grows.

Member states differ in their approach to regulation and acceptance of nutrition, functional, health-related, disease-risk reduction and medicinal claims. There is a lack of consistency, which:

- confuses consumers;
- could lead to an inadequate level of consumer and public health protection;
- restricts free movement of foodstuffs between member states.

We therefore appreciate the Commission's intention to harmonise legislation on the use of nutritional and functional claims as announced in the Commission's White Paper on Food Safety, paragraph 101, action no. 65.

We regret however that the Commission has not decided at this stage to also consider the harmonisation of European legislation with regard to health-related claims, already in use in several member states. Health related claims bear great potential to mislead and confuse consumers. National Codes of Practice have been accepted to different degrees by national Governments, but their interpretation and scope is very varied. Research of the Dutch Voedingscentrum (Centre of Nutrition)<sup>3</sup> has demonstrated that since 1998, the year of the publication of the Dutch code of practice, the number of health claims has duplicated. Few companies decide to pass through the required

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<sup>1</sup> You will find in annex one individual information about the member organisations

<sup>2</sup> Intergroup on foodlaw of the European Parliament of June 2000

<sup>3</sup> Wieteke van Zadelhoff, Voeding nu, June 2001, no.6, page 23-25

evaluation procedure, while research has also demonstrated that some of the claims are very close to medical claims or so-called "going around the system" claims, Nevertheless these claims are unmistakably in view of their message in relation to health.

BEUC strongly supports that claims may not imply prevention, curing and/or treatment of disease properties.

## **Specific comments on the Discussion Paper on nutritional and functional claims**

### General considerations

- Paragraph 6

The purpose of a label is to provide information to enable consumers to make an informed choice about the food they buy. The label must inform but not mislead. We agree that labelling provisions should never have the potential to misinform or even mislead the consumer and thus provoke unjustifiable choices.

- Paragraph 7 and 9

Labelling information can not replace sound education with regard to nutrition and diet. Foodstuffs form an integral part of an individual's diet. Usually it is the general diet and not the specific foodstuff that is healthy or unhealthy. We believe it is important to state on the label that claims made about individual foodstuffs do not imply that the foodstuff can substitute a varied, healthy diet.

Foodstuffs that might contribute to enhancing the risk for a disease should not bear claims that attract consumers to buy these particular products instead of "healthier" alternatives. Claims should never encourage dietary habits harmful to health.

- Paragraph 8

Communication and presentation of information and claims is of crucial importance. Research conducted by our member organisations has shown that although most consumers said that they would not be misled by claims, the longer/complex claims did confuse them. We are concerned that there is a fine line between confusing and misleading.

Research by the Institute of Grocery Distribution (IGD)<sup>4</sup> has shown that the current legally prescribed format for the presentation of nutritional information is not consumer friendly. There was low understanding amongst those surveyed of the terminology used; for example, many did not connect the word 'sodium' with a message about salt.

Rules on the use of claims should apply to package labelling, advertisements, and product information sheets, recipe brochures and other brochures used in marketing. Rules should equally apply to the spoken and textual content of video, film, television commercials and web sites dedicated to a particular foodstuff.

Logos could be used to provide an instant indication of certain product characteristics. However, the use of logos only makes sense if the rules for their use are generally

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<sup>4</sup> Information provided by our member NCC, National Consumer Council, UK.

accepted and well perceived by consumers. It would not be acceptable should various national logos be established to express particular product characteristics, while a harmonised European logo exists, which is not the case yet. For instance at the moment national organic labels exist, even though a harmonised European logo also exists. This is very confusing for consumers and should be avoided.

- Paragraph 10

A prerequisite for honest labelling information is the bioavailability of the nutrient in the food matrix. If for instance only 50% of the declared content is bio-available it is not correct to declare this to be 100%. The declared nutrient must be present in a quantity to justify the presence of the claim during the product's entire shelf life.

With regard to added -non -stable -nutrients we believe that it is important to carefully consider the relation between shelf life and critical nutrient. The addition of extra amounts of nutrients to guarantee their presence during shelf life should never be at the expense of safety.

- Paragraph 11

If a food needs further preparation before final use the claim should refer to the product ready for final use. Voluntary information with regard to the food as it is sold may be given, providing this does not bear the potential to confuse consumers.

- Paragraph 13 and 14

BEUC agrees that a common understanding of the definition of a claim is necessary. We believe that the Codex Alimentarius definition is a good approach. BEUC would however recommend a wider definition to include more technical details with regard to the perception of claims. We suggest the following: "A claim means any message, reference or representation, whatever the means or form of transmission (including trademarks), stating, implying or suggesting that a foodstuff has special characteristics, properties or effects linked to its nature, composition, nutritional value, method of production and processing, or any other quality."

- Paragraph 15

Consumers do not really differentiate between types of claims. Most consumers already perceive claims such as "low" or "reduced" as health related. Consumers are definitively not able to understand differences between nutrient function; enhanced function or -as used by industry- risk reduction claims.

For legal reasons a harmonised definition of what is considered a "functional" claim may be necessary.

- Paragraph 16 and 17

We agree that the definition of a nutrition claim as provided in Council Directive 90/496/EEC could be the basis for further consideration. Claims with regard to the physiological function of ingredients should be included within the scope of the technical provisions of the above mentioned Directive. We strongly support the drawing-up of a positive list of substances that have physiological functions in given food matrixes.

- Paragraph 18 - 21, 23

BEUC favours the harmonisation of rules on claims such as low, rich, light, reduced, increased, etc. We believe the Codex Alimentarius definition could be a suitable tool. Other more suitable European models could be considered as long as the rules are harmonised in view of multilingual labels or identical products sold in various member states. If claims are based on comparisons between products, the reference product must be mentioned on the relevant label.

- Paragraph 22

If the term 'diet' is to be used it should relate to comparative claims for energy. The former is practise in English speaking countries. German speaking countries use the term diet exclusively for dietetic products, alternatively the term is used very broadly, not fixed to anything special. Given multilingual labels, this differentiation could have the potential to confuse consumers and may therefore not be appropriate. It could also be replaced by more suitable wording, or exclusively reserved for dietetic products and used in conjunction with the description of the particular dietetic use.

- Paragraph 24-25

We strongly agree that there are gaps in consumer knowledge with regard to cholesterol. More and better consumer education is required to explain the difference between dietary cholesterol and blood cholesterol in relation to health. Claims relating to dietary cholesterol that are not put into this context can mislead consumers.

- Paragraph 26

Nutrition claims should not run counter to existing legislation preserved for PARNUTS. As indicated earlier UK research has demonstrated that consumers do not generally equate sodium with salt.<sup>5</sup> Consumers may be better served were labels to include the level of sodium chloride (= kitchen salt) as part of the total sodium figure/ salt content.

### Criteria for making nutrition claims

- Paragraph 27

We agree that should rules on claims be established, they should apply to all foods, with the exemption of PARNUTS for which appropriate legislation already exists.

Claims should always be seen within the context of the food matrix. Claims have the potential to attract consumers to buy a particular product. Attractive claims should therefore be preserved for products that are suitable for the nutrient because of its matrix

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<sup>5</sup> Research in UK provided the following results: The IGD Consumer information steering group considered voluntary salt/sodium labelling in 2000. Use of the term salt was agreed to be preferred to sodium and in a labelling convention it was agreed that salt = 2.5 times the sodium content. In recognition of the fact that the use of the word 'salt' might be confusing on products that contain sodium salts but not significant amounts of sodium chloride, it was agreed that products with less than 0.1g sodium chloride per 100g (added as an ingredient or via compound ingredients, flavourings and seasonings) did not need to declare a 'salt' value (sodiumx2.5). In which case the words 'trace salt' was proposed.

or for products that would not encourage dietary habits harmful to health. Claims should never imply that a food has a healthier image than is actually the case.

Nutritional information should become mandatory and preferably be made-up of energy, protein, fat– including saturates, carbohydrates- including sugars, fibres, sodium (i.e. sodium chloride = kitchen salt) content.

- Paragraph 28

Claims such as 'x% fat-free' or 'only x% fat' can be perceived as misleading. We believe complete nutritional information is sufficient to enable consumers to make informed choices. Information such as 80% fat-free could be perceived, as guaranteeing a product is actually a low fat product. We strongly recommend banning these claims, as in fact they are misleading

- Paragraph 29 - 30

Claims such as "without added" or "no added" or " low in" attract consumers to buy these products. We agree that these are comparative claims and should only be used if the reference product is mentioned on the label. If all products within a particular category are produced without added sugar, these claims should not be allowed, as they would be misleading.

- Paragraph 31

The rule that in order to qualify for a nutrition claim a product must contain at least 15% of the recommended daily allowance (RDA) is well-established. We agree that some consumers would find more information on the content of vitamins and minerals useful. We believe that this information could be provided by means other than labelling, such as information at the point of sale, on the shelves, or Internet. This information should always be given as a percentage of the RDA. It should never be implied that a product has a remarkable content of vitamins or minerals if it contains less than 15 % RDA. All nutritional data should be sufficiently exact and preferably justified by test results. Nutritional information should be given in a concise way, easily readable, comprehensible, and facilitating comparison between products.

The lists of vitamins and minerals on which nutritional claims are based are covered by Directive 90/496/EEC. The new draft legislation on food supplements introduces additional information with regard to certain pro-vitamins, minerals, trace elements or other active ingredients. Should the lists be extended, this would need to be reflected in the revision of the nutrition-labelling Directive and apply to ordinary food as well, providing recommended daily allowances be established.

Reference to recommended daily allowance is important information that helps consumers to make informed choices. The recommended daily allowance is usually established for adults. For safety reasons, we would find it important that RDA would also be drawn-up for vulnerable groups.

- Paragraph 32-36

We agree that for comparative nutrient claims harmonised rules and conditions for the use of the terms: "increased, reduced, more or less" should be established. As already explained earlier in this document - if these type of claims are used the reference products must be mentioned. BEUC believes that it is necessary to establish

harmonised rules at European level for these terms, not just for fair treatment of consumers across Europe, but also to keep multilingual labels meaningful. The Codex Alimentarius rules might be a suitable starting point for assessing this issue.

### Functional claims

Consumers are becoming more aware of the benefits of a healthy diet, wishing to choose healthier diets for themselves and their families. The food and pharmaceutical industries have matched - if not helped to stimulate - this growth in awareness, with an increasing number of products such as food supplements, fortified foods and more recently functional foods aimed at satisfying this desire. Such products have led to a proliferation of associated nutrition, functional and health claims used for marketing. To date there has been a lack of effective, harmonised regulatory control on the development of this market. Consumer organisations are concerned that consumers are in danger of becoming increasingly confused or misled and - as a result - may choose products that do not contribute to balanced eating habits.

- Paragraph 37 - 39

A clear definition of what is meant by a functional claim needs to be established. The Codex Alimentarius Guidelines described in the Commission Discussion Paper form a reasonable basis for defining nutrient function claims. Such claims are currently considered health claims by Codex Alimentarius. In this respect it would appear that the Commission paper does cover at least one recognised form of health claim, making the decision to exclude other health claims appear even more arbitrary.

We believe that it is necessary to strictly regulate the use of any health-related claim at European level. National codes of practise, mostly industry driven, even if sometimes recognised by governments, can not replace legislation. Voluntary Codes of Conduct are a weak alternative to a regulatory system. Voluntary codes are difficult to enforce with regard to imported products and do not include effective sanctions on excessive/unjustified claims. BEUC and our members prefer strong and strict laws to replace the national codes of practise.

### Criteria for the use of functional claims

- Paragraph 40 - 45

BEUC agrees that a number of conditions need to be fulfilled for the use of these claims. Claims must be made within the context of the total diet. As individual's diets vary enormously it is essential that when considering these types of claims sufficient knowledge is available to define the place of a specific foodstuff in the overall diet. Special consideration should be given to vulnerable groups. In view of the content of functional ingredients we refer to the points made in paragraphs 31-36.

Claims must not state or imply that a varied and adequate diet cannot provide sufficient quantities of nutrients. Claims should not be permitted where other nutrients, undesirable

in excess, are present. Finally, claims should not encourage dietary habits harmful to health.

Functional health related claims should be consistent with national dietary and nutritional recommendations and must be based on scientific facts generally accepted in the countries in question. The functional health related claim should emphasise the complete picture of a nutritionally adequate diet. Any benefit accredited to the particular health related claim must be derived wholly from the food or component for which the claim is made. Any reference on the need of other food intake is inappropriate and should be forbidden.

- Paragraph 46 - 47

We agree that the acceptance of a functional claim must be based on generally accepted scientific evidence that is kept under regular review. We support the Council of Europe conditions on the substantiation of claims. We find it particularly important that the claim must be relevant to the product and we would like to add that this needs to be seen in the context of the overall diet. This means that appropriate daily intake data must be available.

For certain substances it might be necessary to establish upper safe limits a claim may be based on.

We believe that for defined target groups risk evaluation with respect to the role and expected intake of the specific foodstuff must take place. This may even be more important for products without a defined target group.

Functional health related claims with regard to ingredients or components must be based on serious evidence of the likelihood of benefit in the target population either from reducing or increasing the intake of a particular substance.

Functional health related claims should never be made against the background of scientific uncertainty. The scientific quality of the relevant data must be guaranteed by a review-process carried out by internationally well-reputed scientists. All supporting evidence, we believe, must also be made available for review by an independent expert authority. The use of functional health-related claims should be reviewed after a defined period.

- Paragraph 48

Consumer organisations are generally in favour of a pre-market approval system. We believe this system could be the basis for proper monitoring of the beneficial, but also the possible adverse effects associated with the use of claims and consequently possible influences on eating habits.

We find this of particular importance with regard to newly discovered functional ingredients, which industry is only now able to quantify, or which are not naturally or not in large quantities present in ordinary food. Monitoring is important to stop incorrect use of approved claims in the market place.

Generic claims with respect to overall diets, such as eat more fruit or similar would not require pre-market approval since this information is well known to the general public. Generic claims can be functional health-related claims based on well-established, generally accepted knowledge from evidence in the scientific literature or recommendations from national or international public health bodies such as the

Committee on the Medicinal Aspects of Food and Nutrition Policy (COMA) or the Scientific Committee for Foods (SCF).

There are well-established relations between diet and health and the elements causing this relation.

- Paragraph 50

We support the Swedish two-step system, as we believe it would provide plausible information to consumers if the information is honest, true and correct.



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