



Communauté européenne des coopératives de consommateurs
European community of consumer cooperatives

Euro Coop comments on the discussion paper on nutrition and functional claims

Euro Coop is the European Community of Consumer Co-operatives, whose members are the national organisations of consumer co-operatives in 11 of the 15 Member States of the EU and in 4 Central and Eastern European countries. Created in 1957, Euro Coop today represents over 3,200 local or regional co-operatives, membership of which amounts to over 19 million consumers in the EU and 2 million in the associated countries of Central and Eastern Europe. Euro Coop's major objectives have been to promote, defend and represent consumer interests at European level.

It is on the basis of this expertise that Euro Coop has prepared the following comments on the recent discussion paper of the Directorate General Health and Consumer Protection on nutritional and functional claims.

Euro Coop, the European Community of Consumer Co-operatives welcomes the opening of discussions by the Commission on the regulation of claims.

Directive 79/112/EEC relating to the labelling, presentation and advertising of foodstuffs and Directive 84/450/EEC relating to misleading advertising state that claims must be truthful and not misleading and that they may not imply prevention, curing and/or treatment of disease properties. At the moment, valuable labelling information can often be difficult to find among the many claims on food labels. Claims must be strictly controlled to protect consumers from misleading labels. It is also essential to ensure that claims would not lead consumers to unbalanced dietary choices.

Euro Coop is concerned about the restrictive scope of the discussion paper, which does not cover health claims. We have always called for a horizontal Directive on claims and underline once again that such a Directive is crucial to ensure consumer safety. We regret that, given the lack of current European legislation, the Commission has decided to tackle the issue of health claims at a later stage. Euro Coop is also deeply disappointed that the discussion paper only summarises the existing debate on nutritional and functional claims, without really putting forward options for the future EU legislation.

Euro Coop urges the Commission to promptly address the gaps existing in the EU legislation regarding nutritional, functional and health claims. This is critical to ensure a higher level of consumer safety. We offer the following comments as a contribution to the development of the Commission's legislative proposals on claims.

- **Euro Coop urges the Commission to tackle the issue of health claims**

Euro Coop is very concerned that the discussion paper excludes health/disease reduction claims. Whilst we recognise that this is the most difficult and controversial area, it is also a key one to tackle. Therefore, we ask the Commission to provide us with further detail about the statement "health claims as such, and in particular "disease reduction claims" (...) will be subject of a separate consultation at a later stage"¹.

Euro Coop believes that ordinary foods should not be portrayed as having curative or preventative effects on medical conditions, but that there can be a role for "health" claims as opposed to "medical" claims. However, we consider that it is essential for consumer protection to set clear restrictions on their use. Euro Coop requests the Commission to consider the following general requirements:

- Claims must be consistent with dietary and nutrition recommendations and must emphasise the complete picture of a nutritionally adequate diet;
- Claims should not be made on a product naturally considered unbalanced in composition;

¹ Discussion paper on nutrition and functional claims, page 2.

- Claims should not be based on an excess of the product;
- Claims should not directly discredit other foodstuffs;
- Factually correct claims for a particular attribute should not discredit similar products not making such a claim. We are concerned that products not making particular claims may be considered less safe;
- Claims must not implied that these products are self medication products ;
- Health related claims should be accompanied by warning for vulnerable groups where necessary
- Any claim included on a label or made in advertising or presentation should be justified on the label by a clear and concise explanation of the property to which it refers, unless its meaning is clear from the context in which it is used or unless it is governed by specific Community provisions;
- Claims must be substantiated on-pack by the manufacturer. Clear and concise explanation will provide consumers with the information with which to judge the justification of any such claims;
- Claims should be limited to products which meet a specified minimum quantitative criterion for the particular active component;
- Claims should be carefully monitored and revised after a defined period of time.

Euro Coop considers that claims must be scientifically based

- Health claims must be based on well-accepted science-based studies, which proves the claimed effects;
- Studies must consider the long term effect on humans, with risk assessment for every target groups;
- Studies' results must be made available to the general public, and must be subject to regular control and review by independent experts.

Relation with nutrition labelling

Euro Coop believes that any health related claim should not be misleading. They must be accompanied by a full nutritional information with references to the recommended daily amount where appropriate.

To avoid misleading labelling and to ensure consumers' right to make informed choices, there is a need to harmonise the definitions of "high", "low", "source of" claims and of comparative claims referring to certain nutrients or dietary facts.

Decision-making process in dealing with misleading claims

Euro Coop believes that stakeholders, including consumers should be consulted during the decision-making process in dealing with misleading claims. Provisions should be made to consult social and economic groups.

We also want to stress that, to protect consumer from false use of approved claims, the continued use of these type claims by other companies should be carefully monitored. This could be a task for the European Food Authority.

• **Euro Coop's comments on definitions of "claim", "nutrition claim" and "functional claim"**

1. "Claims"

We are happy with the broad, general definition of "claim" provided by the Codex Alimentarius.

2. "Nutritional claims"

Euro Coop believes the European definition of "nutrient content" claim is appropriate in the context of nutrition labelling. However, it is questionable whether this definition/category is sufficiently broad. As the discussion discussion paper indicates, it already covers elements which, strictly speaking, are not nutrients, e.g. fibre, and there is a move to extending this approach to claims for other components which, generally speaking, have a physiological effect rather than a nutritive effect.

In identifying the types of claim we have referred to these as "quantitative claims" because the essential characteristic of these claims is that they claim, directly or indirectly, that the food contains a certain amount or proportion of the named component. However, this term does not sufficiently distinguish this

type of claim from quantitative ingredient labelling. We therefore propose that consideration is given to describing these as “**quantitative active ingredient claims**”.

Accordingly, the definition of nutrient claim in Council Directive 90/496/EEC will need amending to embrace this wider scope. We would suggest that an extra element be added to the definition along the same lines as those for energy and nutrients as follows:

- and/or due to the physiologically active components it*
- *contains,*
 - *contains in reduced or increased proportions, or*
 - *does not contain.*

The final sentence would similarly have to be amended.

e.g. "A reference to qualities or quantities of a nutrient *or physiologically active component* does not constitute a *quantitative active ingredient claim* insofar as it is required by legislation."

This final sentence remains essential, particularly with regard to the implications of QUID.

3. “Functional claims”

A definition is also needed to describe so-called *functional* claims. Euro Coop suggests this type of claim should be restricted to non-quantitative claims/statements which link an active component of the food having either a nutritive or physiological effect with the nutritive, metabolic or physiological effect that component has on bodily function. It should not extend to disease-related statements which should form a distinctly separate type of claim to which we would denote by the description *health claim* or *disease reduction claim*. We accept the term *functional claim* as being reasonably appropriate. We have some concerns about using the description *functional* because of the widely accepted description of foods with both physiological effects and disease reducing effects. Appropriate alternative descriptions might be *beneficial claims*, *body-building claims* or *beneficial, well-being claims*.

It would also be necessary to define the 2 types of functional claims we propose; *generic* and *novel*. We see these essentially as being divided into those for which robust scientific proof is well accepted, i.e. *generic functional claims* and those for which the scientific justification is less well established, i.e. *novel functional claims*.

• Specific comments on Criteria for Making Nutrition and Functional Claims

Whilst it may be possible to define certain parameters to apply to all claims; *factually correct, open, honest and comprehensible*, such criteria will, inevitably be of a general nature and more detailed criteria will be necessary for each type of claim.

1. Nutrition claims

Euro Coop is concerned that the discussion paper does not propose general criteria for nutrition claims. Points 27 to 36 of the document are more a description of the existing types of nutritional claim than a set of recommendations for specific criteria. We would like the Commission to provide us with more detail on the criteria that it intends to propose.

Euro Coop is also surprised that the discussion paper refers to “functional food” in the part on “nutritional claims”. We ask the Commission to provide us with further explanation on point 27. We stress that there is no need for defining “functional food” as a special category. Rather, the different kinds of claims must be defined, together with demands for documentation and other benefits.

It is generally helpful to divide nutrition claims into three types; absolute claims such as low, high, etc., comparative claims such as reduced, increased, etc. and quantitative statements of fact such as contains x% more, contains x% less or without added.

Euro Coop agrees with the requirement of a 25% reduction/increase in the named component compared with a reference product. We believe the reference standard should preferably be a product under the same brand name. Where no such average value/reference product can be established this type of claim should be prohibited. We also believe it inappropriate to base comparative claims on compositional/industry standards that are no longer represented in the market place. An obvious example, although dealt with under product specific regulation, is the fat spread market. Although the regulations provide for a product, described as margarine, to contain 80% or more fat, no such products are marketed, the average maximum fat level being around 70%. We therefore contend it is

inappropriate to describe a 60% fat product as *reduced fat* (75% of 80%), rather the product described as reduced fat should have a maximum 53% fat (75% of 70%).

Wording

We believe the permissible terms for such claims should be specified in law. This would prevent proliferation of different terminology aiding consumer understanding. It would prevent the introduction of potentially misleading terms.

We would favour specifying from the following list of descriptions as appropriate to the active ingredient concerned; *high, low, no increased, reduced, source of, rich in, very low*, (if defined and where low and regular variants exist), *contain x% more/less, contains no added, and naturally low*.

We do not favour alternatives to those expressions such as *excellent source of, without, weak, poor* as we believe consumers may be misled into believing these imply something different. By sticking to standard terminology, consumers will better understand claims and be more likely to use them appropriately.

Euro Coop recognises that light could be applied to both *low* and *reduced*. This could equally be explained in the product description. We do not think it would be helpful to allow both these options to exist side by side since it gives a variable quality to what is otherwise a specific quantitative statement.

x% (fat) free should not be used as a claim. We feel that consumers are misled by such claims. As regards the claim "*X-free*", we suggest this should apply only when the product genuinely contains none of the declared component. However, we think consumers will feel misled if the term "*X-free*", which implies a product contains none of the named component, is used when in reality a small percentage is legally permissible for technical reasons.

2. Functional claims

Euro Coop is surprised to see that the proposed criteria for functional claims are usually those proposed for health claims.

Euro Coop wishes to propose the following elements for further debate on the criteria for functional claims:

- There should be a positive list of acceptable *generic functional claims*. We consider that such claims should relate to well established physiological or metabolic effects for which a Recommended Daily Average has been established. Appropriate scientific substantiation must be available in the public domain;
- It is essential that the positive list of claims is regularly reviewed and updated. This must be an ongoing process to recognise scientific developments and acknowledge new and useful claims being made.
- *Novel Functional Claims* would have to be subject to a product by product evaluation and awarded to individual products on the basis of the robustness of the scientific justification;
- Novel Functional claims would attract pre-market approval.

Contact: Aude L'hirondel, Food Officer
EURO COOP
Tel: +32.2.285.00.70
Fax: +32.2.231.07.57
E-mail: alhirondel@eurocoop.org

Brussels, 19/07/2001