

Commissioner John Dalli
Commissioner for Health and Consumer Policy
European Commission
1049 Brussels

Franklinstraat 106-108
1000 Brussels
Belgium
T + 32 2 735 83 96
F + 32 2 735 84 66
E info@pa-europe.com

Copy to:
José Manuel Barroso
President of the European Commission

Herman Van Rompuy
President of the European Council

Brussels, 16th February 2010

EU Regulation on Nutrition and Health Claims

Health Claims – Getting the Balance Right!

Dear Commissioner Dalli,

We are writing to you on a matter that is of great concern to us and to many stakeholders in Europe. Over the last months individuals and organisations from different societal groups, industry, consumers, patients, innovation centres, academics and scientists have urged for a full reflection of the current implementation of the EU health claims legislation. Some, in their despair at the lack of transparency and regulatory clarity, have proposed legal action; others have withdrawn claims voluntarily or under pressure from the market. Incorrect (and often misleading) media reporting has led to increased consumer confusion and in the absence of clarity many investment and innovation decisions have been put on hold.

The current situation is flawed with a lack of consumer understanding, regulatory certainty and proportionality. Furthermore, it has created an unlevel playing field. It is strongly believed that through an open and constructive effort this legislation can be improved to the benefit of all – a ‘win-win’ situation. The overarching principles of the legislation are broadly supported and it is seen as necessary to ensure a better functioning of the internal market, promote innovation and above all optimise the protection of the consumer.

Health claims on food not only allow consumers to make better and informed choices but also provide a clear economic incentive to the entire food industry to innovate healthier choices. It is therefore critical that a correct balance is found in the implementation of any legislation which both protects the consumer and innovation. Clearly, this is not perceived to be the case at present.

You will be aware that the European Food Safety Authority (EFSA) recently published its first batch of scientific Opinions with regard to Article 13.1 health claims on foods. Based on EFSA's advice the European Commission and the Member States will shortly decide if these health claims will be permitted or not. Given that a number of claims have received an inconclusive evaluation by EFSA whilst EFSA at the same time recognised that there is credible scientific evidence supporting a cause and effect relationship for these claims (hence, 'grey zone' claims), it is of crucial importance to ensure that the Commission and the Member States now duly consider the added value of innovation in relation to consumer health, well-being and quality of life, before any final decisions are made. Also, any reflection exercise should be concluded before EFSA will publish its opinions on the subsequent batches as it is likely that these batches will include more 'grey zone' claims.

Of course consumers, scientists and industries agree to at all times ensure the availability of safe foods without misleading claims. But they also agree that the costly process of scientific and industrial innovation should not unnecessarily be hampered by an approach that throws away the 'baby with the bathwater'. This leads to the requirement to have a consensus based and harmonious approach to promote health innovation in the food production sector in Europe. The stakeholders concerned respectfully request that the European Commission and the Member States to urgently consider the following:

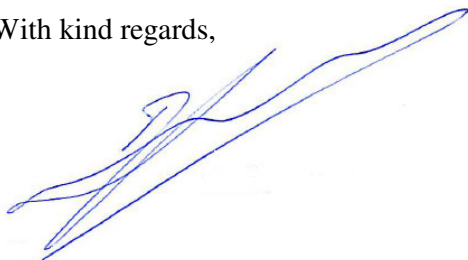
- a. **Acknowledge that consumer interest and innovation can and should go hand in hand**; this is a fundamental principle and objective of the legislation and the combination of the two will ultimately lead to an environment in which consumers have choice among healthy products that contribute to healthier diets;
- b. Whilst acknowledging that EFSA's scientific evaluations have been properly conducted in accordance with their interpretation of the Terms of Reference, **the societal effects of each claim should be taken into account** – this is particularly relevant for those claims that are backed by evidence (not only scientific) but which was not regarded as conclusive;
- c. Therefore, the Commission and Member States should **apply flexibility in their decision-making as risk managers to reflect the scientific evidence available in view of pursuing incentives for innovation and product development** – hence, an approach should be developed where also emerging evidence is taken into account. This would function as an incentive for food industries to develop their products targeted to consumer demands for the highest efficacy products in terms of health, well-being and quality of life whilst not stopping innovative processes;
- d. **Assess on case by case basis the potential societal effects of removing claims** (and ultimately products) **from the market** (e.g. in terms of consumer behaviour, loss of innovation, employment, health) **with stakeholders** including industries and consumers prior to decisions and their publication.

In this regard, **in order to have a feasible timeframe for the necessary discussions and to minimise market distortions, we reiterate our request (as was earlier supported by the Commission services and a number of Member States) that there should only be one omnibus publication of authorised claims when the procedure is complete. For those claims falling in the ‘grey zone’, stakeholders should be given the opportunity to comment and to propose possible solutions/management options which take into consideration the ‘insufficiencies’ indicated in the EFSA opinions in an appropriate timeframe.** Within this framework, the potential consumer benefits of innovative products which are supported by credible evidence but not (yet) regarded by EFSA as conclusive should be reflected upon.

We sincerely hope we can all benefit from the expected harmonisation of the market due to this regulation and the aim to remove barriers to trade across all Member States is most welcome – as is the aim of promoting healthier consumer choices. Certainly, consumers want high quality and healthier products, accurately labelled and above all safe. However, these objectives, which are shared by the vast majority of food industry, need to be carefully balanced with those of the internal market and the promotion of innovation.

Thank you very much indeed for your serious consideration of this issue. Given the little time left, your earliest reaction would kindly be appreciated.

With kind regards,



Mark Eyskens
Chairman PA Europe
Former Prime Minister of Belgium



The European Association of Craft, Small and Medium-Sized Enterprises (UEAPME) supports this initiative. UEAPME is the employer’s organisation representing the interests of European crafts, trades and SMEs at EU level. UEAPME is a recognised European Social Partner and acts on behalf of crafts and SMEs in the European Social Dialogue and in discussions with the EU institutions. It is a non-profit seeking and non-partisan organisation. As the European SME umbrella organisation, UEAPME incorporates 83 member organisations consisting of national cross-sectorial SME federations, European branch federations and other associate members, which support the SME family. Across the whole of Europe, UEAPME represents over 12 million enterprises with nearly 55 million employees.

The following associations have also indicated their support for this initiative:



EHPM is the European Federation of Associations of Health Products Manufacturers (EHPM), which represents the interests of specialist health products manufacturers, in particular food supplements, in Europe. The EHPM is the only European organisation bringing together 25 associations from 21 European countries. It represents more than 2 500 health products manufacturers across the EU, of which 80 % are SMEs.

Cefic Food and Feed Cluster - Cefic is the Brussels-based organisation representing the European chemical industry. Cefic is representing 29 000 companies that produce 30% of the world chemicals and employ about 1.3 million people. Cefic is also representing 22 national chemical federations and 6 associated federations across Europe and also about 100 Sector Groups addressing issues relative to more than 120 product families.

The following food and food ingredient companies have also indicated their support for this initiative:

BENEO Group
Büllinger Buttereie A.G.
Campbell's Soup Company
Cargill
Cognis
CSK Food Enrichment
Danisco
DSM
Institut Rosell/Lallemand
Lipid Nutrition
Kemin Health
Nutrilab/Damhert Group
Pharmaforte Kft.
Vivian Corporation

The following individuals and organisations have also indicated their support for this initiative:

David Miskin, Director of F2i, Food Innovation Institute (F2i)
Professor R.A. Rastall, Head of Department of Food and Nutritional Sciences, The University of Reading
Professor Glenn Gibson, The University of Reading
Professor Ian Rowland, The University of Reading
Finn Holm, FFNet Co-ordinator, Food Group Denmark
EGAN - The European Genetic Alliances' Network