

## EU Food Claims Regulation - A Healthy Plate for Consumers?

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*This text is 100% fat free. Reading it will make you more clever and hopefully lead to a happier life. Although the reader may object to this opinion, at least the author is at liberty to make the claim. Not so for food products, at least if the Commission has its way with a far-reaching proposal on claims for foodstuffs on which the European legislators now have to decide.*

In July 2003 the Commission presented draft legislation on nutrition and health claims made on foods. The main objectives of this proposal were legio. The Commission in its own words set out to achieve not only a higher level of consumer protection but simultaneously to improve the free movement of goods within the internal market, and to ensure fair competition and promote innovation in the area of foods. Not bad in a day's work. But is this a coherent and sensible way to improve the diet for European consumers?

The Commission proposal essentially covers nutrition and health claims used in the labeling, presentation and advertising of foods. Only claims that are in conformity with the provisions of this regulation will be allowed for foods placed on the market and allowed to reach European consumers.

No question that producers shouldn't be allowed to mislead the consumer by deliberately projecting false statements about the content or effects of their food product. Trouble is, the Commission now effectively shifts the burden of proof onto producers, prohibiting claims in every area where no definite scientific refute of the sales argument can be obtained.

European producers have long-since objected that when the claim on a particular food is scientifically correct, it should be legal to put it forward. A frequent consumer-group objection to this common-sense argument is that a biscuit bar with vitamin-added contents only becomes healthy in relative terms, but not enough to claim substantial improvement in real terms. And should thus be barred from fooling consumers.

Even a child knows, that a regular intake of too much sugar, salt and fat can be bad for your health. That's why the Commission wants to exclude such products from claiming health or nutritional benefits. But does it make sense to make this choice on behalf of the consumer?

The proposed legislation quotes a UK Consumer Group-sponsored survey from 2000 breathlessly revealing that when asked, "*most people could not tell which was the healthiest option between a "low fat" product, a "reduced fat" product and a "90% fat-free" product*". Trouble is, this is deemed sufficient grounds for prohibiting the use of such claims in general. And this logic appears to be the

thin red line throughout the proposed legislation. Best illustrated perhaps, by quoting directly from the prelude remarks to the directive:

“Many claims already found on the market make reference to general, non-specific benefits (which) “has a positive effect on your well-being”, “helps keep your body feeling good”, “preserves youth” etc; all currently found on foods sold within the Community. Not only are these claims vague and often meaningless, but also they are not verifiable. Therefore, they should not be allowed.” (COM(2003) 424)

The Commission’s concern for lack of resistance amongst average consumers to such unsavory sales arguments is moving. Admittedly, some rogue-ish producers are certainly out to seduce us by asserting some positive effect on the well-being of whoever chooses to purchase their product. But so are fortune-tellers, aroma-therapists and travel agents. Should travel services not be allowed to claim benefits to going on holiday, if there is a 30% chance of rain at the destination in question?

Trouble is, the arbitrary levels and technical standards imposed on the product claims are hardly more verifiable than the quoted advertisements. Along the lines of the proposed regulation, a claim that a food is a natural source of vitamins or minerals “*may only be made where the product contains at least 15% of the recommended daily allowance (...) per 100 g or 100 ml.*”

Alleged abuses of food claims are also to be found among products providing ‘intellectual vitamins’ or claiming to provide ‘better results in your exams’. But how many students really think vitamins are a substitute to putting in the hours over their books? After all, if they are prone to such arguments without further presentation of evidence, the average student wouldn’t be faring to well in her studies anyhow.

The proposal also includes a ban on any claims on products with a certain level of alcohol. Beverages containing more than 1.2% by volume of alcohol shall not bear health claims or nutritional claims, other than those, which refer to a reduction in the alcohol or energy content. So much for the ‘aqua vitae’ distilled and highly praised by ancient monks...

The average consumer, a term more and more frequently employed in both legislation and verdicts from the European Court of Justice, is surely not omniscient. But perhaps not as ignorant, either, as certain members state governments and commission officials would have her be.

The proposal’s logic is consistent, but also consistently flawed. When the Commission rightly concludes that “*there are a good many factors, other than dietary ones, that can influence psychological and behavioral functions*”, this should perhaps have given the draftsmen in question cause for a rethink of the proposed ban all together.

It is, in effect, the same old sad song. Consumers should be protected against advertisement, by definition seen as misleading or projecting an unhealthy lifestyle. By consequence consumers should be cushioned against their own natural choice. Regulators thus seek to restrict the scope of such choice by

severely restricting terms such as “low on fat”, “high energy” or “light” for food and beverages.

The drift of the Commission proposal illustrates the inherent fallacy in benevolent consumer regulation. Shifting the burden of proof on producers will not lead to happier or wiser consumers. Most actual consumers would beg to differ. The vast majority of them easily distinguish between healthy and unhealthy products, and plan their diets accordingly. There are of course limits to consumer rationality, but most food store customers do manage to buy more regular food than high-caloric candy bars without government-applied labels telling them to do so for their own good.

Do European consumers always choose the healthiest food-and-drink option? Hardly, if the number of fast food outlets and pubs in the vicinity of the European institutions in Brussels are a valid indicator. But are they aware of the consequences of their choice? Very likely so, judging by the tormented looks of Eurocrat joggers in the surrounding parks the morning after.

Fact is, the proposed legislation on food claims may be just too much of an unhealthy plate for European consumers in and outside the Brussels ‘peripherique’ in spite of the Commissions insistent claims to the opposite. The European Parliament and Council will have to make that call in the very near future.

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