

**Opinion of the European Economic and Social Committee on the 'proposal for a Regulation of the European Parliament and of the Council on nutrition and health claims made on foods'**

(COM(2003) 424 final – 2003/0165 (COD))

(2004/C 110/05)

On 29 July 2003, the Council decided to consult the European Economic and Social Committee, under Articles 95 and 251 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 5 February 2004. The rapporteur was Mrs Davison.

At its 406<sup>th</sup> plenary session of 25-26 February 2004 (meeting of 26 February), the European Economic and Social Committee adopted the following opinion unanimously.

## 1. Introduction

1.1 The EESC welcomes in principle the Commission's Regulation with its emphasis on nutrition and health. It comes at a time when the WHO (Europe Region) has pointed out that up to 20 %-30 % of adults are overweight and that poor diet and lack of physical activity are also linked with cardiovascular disease. Governments too are increasingly recognising that there is a connection between the foods people eat and the health and well-being they enjoy, as well as the consequences of ill-health to national economies.

1.2 The proposal for a Regulation on nutrition and health claims made on food also comes at a time when diet, dieting and health awareness are receiving prominent news coverage, with consumers needing accurate, substantiated information more than ever before to enable them to make informed choices and decisions. For the EESC, consumer information and protection are of the highest importance.

1.3 In the light of this background, the Commission has proposed in the first instance, as a supplement to Directive 2000/13/EEC (relating to the labelling, presentation and advertising of foodstuffs), this Regulation setting out criteria for producers who wish voluntarily to make claims. In doing so, its intention is to both create a level playing field in an area where interpretation varies and to provide for non-biased information to consumers, thereby overcoming some of the lack of clarity in this regard caused by the present Advertising Directive.

## 2. Summary of the proposal

2.1 Directive 2000/13/EC generally prohibits the use of information that would mislead the purchaser or attribute medicinal properties to food. The new regulation would

provide more specific guidance concerning nutrition and health claims. This has been proven necessary because of a growing number of such claims, some of which are dubious due to a lack of clear scientific evidence to support these claims. Moreover, consumers are often confused by current labelling<sup>(1)</sup>.

2.2 The main objectives of this proposal are the following:

- to achieve a high level of consumer protection by providing further voluntary information, beyond the mandatory information foreseen by EU legislation;
- to improve the free movement of goods within the internal market;
- to increase legal security for economic operators; and
- to ensure fair competition in the area of foods;
- to promote and protect innovation in the area of foods.

2.3 Article 3 of the proposed Regulation provides that the use of nutrition and health claims shall not:

- a) be false or misleading;
- b) give rise to doubt about the safety and/or the nutritional adequacy of other foods;
- c) state or imply that a balanced and varied diet cannot provide appropriate quantities of nutrients in general;
- d) refer to changes in bodily functions in improper or alarming terms either textually or through pictorial, graphic or symbolic representations.

2.4 Article 4 provides for a minimum nutritional profile which foods must have in order to carry nutrition or health claims — for example alcoholic drinks may not carry health claims or nutritional claims except in cases where there is reduced alcohol or energy content.

<sup>(1)</sup> See the Survey by the Consumers Association (UK) April 2000.

2.5 Nutrition and health claims can only be made if science can show a beneficial nutritional or physiological effect, as established by generally accepted scientific data updated in line with technological advances and where the impact is significant and the claim is understandable by the consumer.

2.6 Health claims have to be accompanied by further information, for example when referring to diet and lifestyle.

2.7 Claims about psychological or behavioural functions will not be permitted, nor on slimming or weight control nor referring to health professionals or charities and it must not be suggested that health could be affected by not consuming the food. Reduction of disease risk claims must be authorised through the European Food Safety Authority (EFSA) as long as it is also made clear that diseases have multiple risk factors.

2.8 The Annex lists nutrition claims and conditions applying to them.

### 3. General comments

3.1 The EESC welcomes the proposal for a European regulatory framework both in the interest of consumer protection and of harmonisation in the internal market. It recognises the need to address the issue of different national rules operating at the moment through self-regulatory national codes of practice. The new Regulation will provide the necessary legislative instrument so that the direct effect of desired outcomes is guaranteed evenly across all Member States.

3.2 It is possible, however, that imported products may breach the Regulation in terms of both claims and labelling by appearing only in non-European languages. There is concern too over products obtained through the internet from non-EU sources.

3.3 The EESC stresses the need for legislation to be proportionate, predictable, properly enforced — and above all practical, and expresses concern that some of the provisions relating to the substantiation of claims may be unnecessarily complex and even cumbersome. Workable procedures with clear timetables that avoid unnecessary delays in the approval process are needed. The EESC also questions whether the operative burden on the EFSA will be excessive.

3.4 The EESC points out that legislation must go hand in hand with life-long consumer education which includes the acceptance of personal responsibility. At a time when obesity in particular is rapidly increasing even in young children, the importance of achieving a balanced diet must be emphasised — yet without taking away enjoyment of good food and drink.

It must also go hand in hand with exercise. The EESC recognises the challenge in reaching consumers with this essential message of balance, moderation and avoidance of excess.

3.5 Nevertheless, it accepts the need for responsibility to be taken — and coordinated wherever possible — by all interested stakeholders: producers, distributors and retailers, enforcement bodies such as trading standards, government departments, relevant professional, social and consumer organisations. The support of the mass media, is essential in providing 'popular' communication.

3.6 The EESC also stresses the need to encourage individual Member States to develop consumer education programmes in schools, integrated into existing subjects such as Language, Home Economics or Citizenship and starting with the youngest children. Other groups such as older people, disabled groups and ethnic minorities, also need particular help provided through the support of local social organisations. Examples of existing best practice could be collected and collated at a European level.

3.6.1 The EESC encourages the Commission to promote campaigns on health and nutrition through its public health programme.

3.7 The EESC would emphasise the value of an overall well-balanced and moderated diet rather than too much designation of foods as 'good' or 'bad'. The Commission must be more specific in its proposals in Article 4 on nutritional profiling so that producers know exactly where they stand.

### 4. Specific comments

4.1 Article 1, Para 2. The EESC endorses the inclusion of claims relating to mass catering in hospitals, restaurants and schools in view of the large number of consumers involved, many of them vulnerable. But it questions the practicality of the proposal both in its implementation and enforcement.

4.1.1 Para 4. The EESC points to the special importance of foods for the particular nutritional needs of vulnerable categories of consumers.

4.2 Article 2, Definitions, para 1. The EESC questions whether brand names may be developed to express particular nutritional or medical characteristics in order to avoid justifying implicit claims.

4.2.1 Para 2. Sodium is included among the nutrients listed. References, to both salt and sodium are confusing and must be clarified.

4.2.2 Para 3. The definition supplied is vague and difficult to pin down. In order to put this right, it should specify that is referring to any substance that has a nutritional or physiological effect, including probiotic factors and enzymes contained in many foods such as yoghurt, honey, etc.'

4.2.3 Para 8. The EESC notes that the Commission takes its definition of 'average consumer' from that developed by the European Court of Justice. It remains concerned that there will be many semi-literate/semi-numerate consumers with limited education and knowledge about food who are not capable of understanding either the implications of certain claims, especially those including percentages, or their supportive labelling.

4.3 Article 4. Para 1. The EESC appreciates the fact that this Article on nutritional profiling did not feature in the original draft of the proposal. Though it is endorsed by the WHO and Member States, the food industry regards it as impractical and unnecessarily restrictive, believing that consumers should themselves bear responsibility for their own choices of overall diet. Nevertheless, the EESC accepts that consumers are so highly influenced by claims for the particular and substantiated benefits of foods, which are, for example, low in fat, sugar or salt that they may ignore the possibility that such foods may also be high in certain other undesirable nutrients. (e.g. ice cream dessert which is bought because it is 98 % fat-free and yet contains enormous amounts of sugar unrecognised by consumers.). The Commission's proposal indicates that the emphasis on one substantiated 'virtue' of a product, omitting its other 'vices', may be true and accurate but nevertheless misleading to consumers.

4.3.1 The EESC therefore urges the Commission to be much clearer in its proposals for nutritional profiling, and as an interim compromise to place limits on the bearing of health claims on food products with ingredients where there is a pattern of over consumption and an undesirable impact on health.

4.3.2 The EESC recognises that there will be grey areas with some products being borderline (such as fruit juices and full-cream milk) which will require special appraisal by the EFSA.

4.4 Article 6 Para 3. The role of 'competent authorities', also referred to in Article 24, should be amplified, and their relationship with the EFSA defined.

4.5 Chapter 3. The EESC endorses the need for comparisons to be made, but points out that the print size in which an actual comparison is made should be legible. (e.g. the label '30 % less fat' and in minute letters 'compared with the stand-

ard brand'). Moreover, the proposal should make it clear that producers do not need to list things which are not there (e.g. 'This product does not contain Vitamin A or C.')

4.6 Chapter 4, Article 10. The EESC welcomes the specific conditions that health claims must meet on the grounds that greater care is needed with products where there is the possibility of a higher degree of emotion involved in choice and greater ignorance of scientific terms. It urges the Commission to ensure that claims relate to the actual product promoted, and not to another product used with it — e.g. some breakfast cereals claim to contribute towards maintaining 'healthy bones', whereas it is the milk used which provides the calcium content.

4.7 Article 11, Para 1 d). The EESC recognises the role of certain professional organisations and charities in promoting a healthier diet as a means of preventing specific diseases. Their contribution in providing specialist advice is welcomed. Nevertheless, their possible dependence on financial support or sponsorship should be monitored as they may provide endorsements for foods which are simply promotional deals not based on any set standards or open to other competing brands. Moreover, clear criteria must be developed concerning the acceptability of sponsorship.

4.8 The EESC asks the question whether some claims for general health or well-being (for example 'no colourings') and some slimming claims could be acceptable if they comply with the conditions set down.

4.9 Article 14, Para 1.c). Here and elsewhere there are references to availability of documentation to the public. The EESC approves such publicity but hopes that efforts will be made to reach the public at large (see also Article 15 point 6, and Article 17 point 2).

4.9.1 Para 2. The EESC questions whether procedures for compliance laid down by the Commission are unnecessarily complex. Prior approval arrangements could be modified and more reliance placed on EFSA's Register. It also asks whether the functioning of the EFSA will be slowed down by these new procedures. The wording of paragraph 2 needs to be clarified and the EESC proposes that only the claims need to be translated into the EU's official languages and industry needs flexibility in translation for marketing purposes. Likewise in Article 15 it asks whether timescales are reasonable or too time-consuming, with unnecessary delays in the approval process as paragraphs 1 and 2 leave the control of timing in the hands of EFSA.

4.10 ANNEX, The EESC welcomes in principle the inclusion of the Annex which attempts to clarify definitions and provide a practical guide for producers to follow. It recognises the need in a global society for this Annex to take full account of the recommendations of the Codex Alimentarius and of the World Health Organisation (WHO). It also asks the Commission to initiate an immediate and detailed expert refinement of each clause (e.g. on the use of 'natural') before the Regulation is adopted and therefore finally closed. It disputes the interpretation of 'light/lite' on the grounds that consumers are more likely to understand it as meaning 'low' rather than 'reduced', as the Commission proposes.

## 5. Conclusion

5.1 The EESC regards the present proposal as an important step forward both in consumer protection and in the harmoni-

sation of rules in the internal market. It looks forward progress on nutritional labelling, while recognising that this is not the only solution to the problem of communicating with consumers.

5.2 It supports the general aims of the present proposal, but suggests the need for simplification of procedures and a careful scrutiny of timescales. Moreover, the EESC here recommends certain compromises, which may be needed to balance the requirements of consumers for more substantiated information and the needs of industry to operate in a market free from excessive constraints. It stresses the important contribution of consumer education and the role that all stakeholders have to play in providing it.

Brussels, 26 February 2004.

*The President*  
*of the European Economic and Social*  
*Committee*  
Roger BRIESCH

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