



COMMISSION OF THE EUROPEAN COMMUNITIES

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2003/0165 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a Regulation of the European
Parliament and of the Council on nutrition and health claims made on foods**

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1- BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2003) 424 final – 2003/0165 (COD):	17 July 2003
Date of the opinion of the European Economic and Social Committee:	26 February 2004
Date of the opinion of the European Parliament, first reading:	26 May 2005
Date of adoption of the common position:	8 December 2005.

2- OBJECTIVE OF THE COMMISSION PROPOSAL

This proposal covers nutrition and health claims used in the labelling, presentation and advertising of foods. Only nutrition and health claims that are in conformity with the provisions of this Regulation will be allowed on the labelling, presentation and advertising of foods placed on the market within the Community and delivered as such to the final consumer.

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;
- to ensure fair competition in the area of foods; and
- to promote and protect innovation in the area of foods.

This proposal was foreseen in the White Paper on Food Safety (COM(1999)719 final– Action n° 65). Its adoption will contribute to completing the regulatory framework covering the labelling of food for human consumption.

3- COMMENTS ON THE COMMON POSITION

3-1 SUMMARY OF THE POSITION OF THE COMMISSION

The Commission welcomes the common position adopted unanimously by the Council, as it maintains the general principles of the proposal of the Commission, especially regarding the requirement that foods meet a certain nutrient profile in order to make claims, and the requirement for certain health claim to go through an authorisation procedure. Numerous amendments proposed by the European Parliament are introduced by the Council in the final text that can be fully supported by the Commission.

3-2 Amendments made by the European Parliament at first reading accepted by the Commission and incorporated in the Common Position

Scope and definitions

Amendments 2 and 16 are partially taken into consideration into the new recital 4, which precises that non-commercial communications are not covered, and in article 1, paragraph 2, which states that the Regulation applies to claims “in commercial communications”.

Amendment 17 is partially taken into account and it is now stated in article 1 paragraph 4 that the Regulation shall apply without prejudice to Directive 89/398 on foods intended for particular nutritional uses and Directives adopted on the basis thereof, Directive 80/777/EEC on natural mineral waters, and Directive 98/83/EC on water intended for human consumption.

In line with amendments 20 and 21, existing Community definitions are added, such as the definition of food supplements (Directive 2002/46/EC) and the definition of labelling (Directive 2000/13/EC), and the definition of “claim” is clarified.

General principles

Amendments 26 and 27 are introduced to clarify and complete the general principles for all claims, and amendment 28 is also introduced with drafting changes.

The wording “nutrient and other substances” is adopted instead of “substance” to be in line with the definitions of article 2. It refers to the concerns of the accepted part of amendment 30, and the amendments 31, 32, and 33.

The first part of amendment 36 stating that claims shall not mask the overall nutritional status of a food is now integrated in the new recital 10. The reference to the food supplement Directive and its particular nutrition labelling requirement is also included in article 7.

The new recital 10 clarifies the way the nutrient profiles will be set and used. It takes into account parts of amendments 1 and 10, whereas amendment 4 is partially taken into account in recital 11, which now precises that the Authority should advise the Commission for the setting of the nutrient profiles.

Nutrition claims

Amendment 6 is included in recital 20, which states that the positive list of nutrition claims shall be revised “in order to take account scientific and technological developments”.

Health Claims

Amendments 41 and 91 concerning the title of the article are retained. Amendment 42 proposes to allow all the claims that were prohibited in the article 11 of the original proposal, provided they are scientifically substantiated. This is partially acceptable for the Commission and for the Council:

Reference to general, non-specific benefit for the overall good health or health-related well being may be made if accompanied by a specific health claim complying with the Regulation (new paragraph 3 of article 10)

Only the claims which suggest that health could be affected by not consuming the food, the claims which make reference to recommendations of individual doctors or non-recognised health professionals and other associations, and the claims referring to the rate or amount of weight loss remain prohibited. All the others health claims that were prohibited under the article 11 of the original proposal are now allowed, if scientifically substantiated.

To take account of this new situation, recital 23 and 24 were redrafted by the Council, in line with amendments 7 and 8.

Amendments 43 and 93 ask for consultation of stakeholders and comitology for the adoption of guidelines for the implementation of the article 11 of the original proposal. This is taken into account in the new paragraph 4 of article 10.

Amendment 44 proposes to delete the word “normal” before “functions”, in order to include in these function claims category normal and enhanced functions of the body. This is supported by the Commission and retained in the common position.

Recital 25 was redrafted to take account of part of amendment 9, and the words “long terms and non controversial science” are replaced by “generally accepted scientific data”.

The participation of organisations representing the food industry and consumers to establish the initial list of function claims as proposed in amendment 45 was supported by the Commission. This amendment is partially retained by the Council in article 13, paragraph 5, whereby applications for authorisation can be sent by the interested parties.

To take account of amendments 51 and 61, the language requirements are considerably simplified, as only the language of the dossier is now required.

The wording precision proposed by amendment 50, accepted by the Commission, is inserted in the common position. It adds in paragraph 3b of article 15, “the nutrient or other substance or” in front of “the food [...] in respect of which the claim is to be made”.

Amendment 62, accepted by the Commission, is partially maintained in the common position, as the applicant may make comments to the Commission on the opinion of the Authority within 30 days of its publication (article 16, paragraph 6)

General and final provisions

Amendment 12 is accepted by the Commission and inserted in the common position. It concerns recital 30 and clarifies that the Register should be updated and available to the public.

The Commission supported partially amendment 72, as transitional measures are needed and will ensure a smooth transition for the economic operators. The common position adopted by the Council provides different transition periods for various provisions of the Regulation. They are listed in the new article 27. For this reason recital 33 is also slightly amended, taking into account the first part of amendment 14, which was totally acceptable for the Commission, but only partially for the Council. Nevertheless, the numerous transition periods should allow the economic operators, including SMEs, to benefit from a smooth transition.

3-3 Amendments made by the European Parliament at first reading accepted by the Commission and not incorporated in the Common Position

In the context of overall compromise, and taking account of the high degree of alignment between those of amendments acceptable to the Commission and the common position, the Commission was prepared to accept a compromise which did not include several amendments that it had accepted at least in part. They are amendments 13 on the need to preserve the competitiveness of the food industry, 15 on information campaigns on nutrition to be developed, 37 on the involvement of a consumer panel to evaluate the claims, 38 on the comparative claims between foods belonging to different food categories, 52 on the submission of a food packaging sample to the Authority, 54 on the substantial aid given to SMEs, 59 on the Authority verification of the claims wording, 67 on the time given to the Commission to examine the opinion of the Authority and 71 on the time given to the Commission to release a report on the application of the Regulation .

3-4 New provisions introduced in the Common Position

The Council introduced new texts both in recital 4 and article 1 clarifying that Trademarks and brand names are covered by the Regulation and providing the applicable conditions.

The common position now excludes from the scope of the Regulation non-beneficial nutrition claims. They are claims, possibly including logos or other schemes, that may imply a negative effect to health due to the amounts of a nutrient present in the product. The new recital 5 clarifies that notification of these schemes are required in accordance with Directive 98/34/EC.

The Council amended article 4 to better detail the principles of the nutrient profiles and the process steps to set them. Furthermore, the Council extended the period to set the nutrient profiles from 18 months to 24 months.

On claims made on alcoholic beverages, in the absence of Community rules on nutrition claims referring to the reduction or absence of alcohol or energy, it is clarified that national rules may apply in compliance with the Treaty. New recital 12 excludes food supplements in liquid form containing more than 1.2% of alcohol from the scope of these restrictions, as the alcohol quantity provided by the consumption as such foodstuffs is negligible.

The Council, supported by the Commission, made several modifications to the annex taking notably account of recent scientific advances, and inserted a new recital 21 stating that claims such as “lactose free” or “gluten free” should be dealt with in Directive 89/398/EEC.

4- CONCLUSION

The common position includes numerous amendments of the European Parliament and introduces important clarifications and improvements to the original Commission text. The Commission can support the new text, although it does not include all the changes put forward by amendments of the European Parliament, which the Commission could accept as such, partially or with drafting changes.

5- DECLARATIONS

The Commission made a declaration which was attached to the minutes of the Council and is also attached in annex to this communication.

ANNEX: COMMISSION DECLARATION

Following the invitation of the Council the Commission agrees, in the context of amendments to the Annex, to examine possible clarifications of the claim "source of [name of vitamin/s] and or [name of mineral/s].