BEUC COMMENTS ON THE DRAFT POSITIVE LIST OF HEALTH CLAIMS

Contact: Ruth Veale – food@beuc.eu
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BEUC, the European Consumers' Organisation
80 rue d'Arlon, 1040 Bruxelles - +32 2 743 15 90 - www.beuc.eu
EC register for interest representatives: identification number 9505781573-45

Summary

BEUC, the European consumers' organization, welcomes the fact that the European positive list for health claims is under discussion. Now that the scientific assessment is finished, it is over to the European Commission to propose a positive list which reflects the aim of the health claims Regulation which is to ensure that consumers are not misled by unsubstantiated, exaggerated or untruthful claims about foodstuffs by ensuring that manufacturers make genuine health claims.

In this context, BEUC wishes to take this opportunity to highlight the issues of main concern for European consumers within the draft Commission document: relevance, wording and understanding of claims, conditions of use, restrictions of use in addition to concerns about some of the 'maintenance' claims.

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BEUC, the European consumers' organization, welcomes the fact that the European positive list for health claims is under discussion. We have and continue to support the strict approach taken by EFSA when evaluating the dossiers submitted to them. It is vital that the process of scientific assessment of claims is rigorous and to the highest possible standards and that only those claims which have been scientifically proven receive a positive opinion. Now that the scientific assessment is finished (with the exception of botanicals and some other claims which have been given a 'second chance'), it is over to the European Commission to propose a positive list which reflects the aim of the health claims Regulation which is to ensure that consumers are not misled by unsubstantiated, exaggerated or untruthful claims about foodstuffs by ensuring that manufacturers make genuine health claims.

With this in mind, BEUC wishes to take this opportunity to highlight the issues of main concern within the draft Commission document which should be kept in mind during future discussions within the working group and the vote on the positive list currently scheduled for early December.

1. Relevance of claims

Many of the claims within the draft document are for nutrients for which very few European consumers suffer a deficiency. While EFSA examined the science behind the proposed claims, they were not mandated to look at the relevance of such claims. Hence, we have been left in a situation whereby many of the claims are for vitamins and minerals for which there are no deficiencies in the EU population which could lead to impaired functions. If such claims were to be maintained it would lead to meaningless fortification of foods which would have no added benefit for a majority of consumers.

The evidence demonstrates that consumers tend to over-estimate food products on which claims are made and they tend to attribute inappropriate health benefits to products that carry a claim. Consumers also have a tendency to over-estimate the nutritional properties of foods for which a claim is made. The use of such claims would mislead consumers into thinking that the consumption of vitamins and minerals will have an added benefit even though this will not be the case. (In our view, for those minority consumers who may suffer from a deficiency in one or more vitamins or minerals, such deficiencies should be diagnosed by a medical professional who is in a position to advise on the best sources of these nutrients in foods – they should not rely on claims on food packaging to help them tackle their deficiency).

Our overall concern is that the use of claims relating to the nutrients above will lead consumers to believe that the consumption of such nutrients will result in concrete benefits for them whereas, in reality, this will not be the case. When discussing the list, we ask you to consider carefully the following statement used by EFSA in many of its opinions 'The evidence provided does not establish that inadequate intake of ….. (nutrient) leading to impaired function of the above health relationships occurs in the general EU populations' when deciding on how to proceed with such claims.

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In addition to the issues highlighted above, we are alarmed by the proposal to permit claims promoting the beneficial effects of sodium and fat. Given that public health advice is to reduce consumption of these nutrients, we believe that such claims are unnecessary and have the potential to be misleading and confusing when looked at in a wider public health context. These claims appear to contradict the work undertaken by the HLG to reduce consumption of these nutrients in the EU.

Finally, we question the usefulness and effectiveness of using disclaimers/statements to communicate that, for most consumers, there is no added benefit from consuming these nutrients. Such statements could have the effect of further confusing consumers with the conflicting messages they put across.

2. Wording of claims and consumer understanding

Looking at the current draft document, the majority of proposed claims are very difficult to understand. This is due to the fact that the terminology used is either very scientific and complex (eg energy yielding metabolism, neurotransmission, cell division and differentiation) or very broad (eg brain function, psychological function..).

The Health Claims Regulation clearly states that claims used must be understood by the average consumer. This is currently not the case within the draft document. We recognize the challenge presented to develop wording for claims which reflects the scientific advice from EFSA while also ensuring consumer understanding of these claims. However, it is our view that adopting such claims condones the use of complex, incomprehensible claims. We therefore believe that if such claims cannot be made understandable (while reflecting the science) then they should not appear in the positive list.

We are also concerned about the flexibility which will be afforded to food business operators when using those claims in the various MS. Food producers wanting to use such claims will need to explain them and make them understandable for consumers. We question how Member States will be able to enforce this and prevent any abuses.

3. Conditions of use

If clear, concrete conditions of use cannot be determined for a substance which is the subject of a claim, then such a claim should not be permitted. (For Beuc it will be important to see the Commissions proposals for conditions of use for the gluten free and low gluten claims).

4. Restrictions of use / Maximum levels

Within the current Commission document very few are mentioned. We believe that for claims relating to creatine, caffeine, chromium etc. restrictions of use/ maximum levels/upper safe levels should be clearly communicated. This would be in line with EFSA's current work to examine upper safe levels for EPA, DHA and DPA.

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5. Maintenance claims

Under the Health Claims Regulation, the use of nutrition and health claims should not be false or misleading. For certain maintenance claims (blood cholesterol, blood pressure and blood sugar), EFSA's commented that, in fact, a slight reduction in levels was observed. While there may not be any negative implications when it comes to a decrease in blood cholesterol, reductions in blood pressure could potentially have harmful effects for certain groups of the population who may already have low blood pressure but may not be aware of this fact. We would therefore advocate that such claims should not appear in the final positive list given the fact that they are, in fact, misleading and have the potential to cause adverse effects to consumers.

6. Botanicals

Currently the assessment of claims relating to botanical substances is on hold. As the Regulation does not distinguish claims made on botanicals from other claims, it is our view that the same assessment process should be applied to these substances whereby EFSA examines the science behind the claims and bases its opinion on this science.

If botanicals were to be assessed differently to other substances, it could be equated with giving them preferential treatment. We do not believe that this would be a desirable move as it would be akin to opening a can of worms as, all of those dossiers which have, to date, received a negative opinion from EFSA will begin to exert pressure to have their dossiers reassessed.

Also, we wish to highlight the fact that traditional use does not equate to efficacy of claims and the use of such claims has the potential to mislead consumers.

7. Nutrient Profiles

The development of nutrient profiles is central to the health claims Regulation as the profiles which are established will ultimately be used to define which foods are permitted to bear a health claim. Without these profiles, the claims which are in the positive list can appear on any foods. It is essential that robust, scientific profiles are established before the end of the transition period following the adoption of the positive list in order to prevent consumers from being misled about the qualities of a food through the use of claims.

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