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BRIEFING PAPER

NUTRITION AND HEALTH CLAIMS REGULATION

KEY CONCERNS

The EC Nutrition and Health Claims Regulation (1924/2006) represents the single greatest limitation on free speech in the area of communication around food ever to be encountered in Europe. While its main objective of ensuring consumers are not misled about the nutritional content or benefits of foods and food ingredients is laudable, the Regulation, once fully implemented, will throw consumers into a void where the absence of claims will make it much harder for them to differentiate between healthy and unhealthy, or less healthy, foods. This reality contrasts with the intended purpose of the Regulation, as supported originally by the European Parliament.

Major limitations of the Regulation in its present form include:

- Manufacturers of a very large number of healthy, beneficial, natural foods and food ingredients will be disallowed from making generic health claims because claims for these have not been pre-authorised by the European Commission based on opinions of the European Food Safety Authority (EFSA)
- The Regulation has a very broad scope, and affects product claims in all media, including the written and spoken word, websites, pictorial representations and video
- Scientific criteria being used by EFSA to establish scientific proof of a health benefit used as the basis of authorising health claims are scientifically contentious and inappropriate. This approach has led to a rejection of the majority (ca. 80%) of general function (Article 13.1) claims for foods and ingredients. In the majority of these cases there has been at least plausible evidence of benefit
- The EFSA rejection rate for botanicals, including all claims relating to antioxidant properties, exceeds 95%, yet plant foods and ingredients are among the most beneficial food constituents known
- Emerging science claims (Article 13.5) are very onerous and in most cases human studies are not available to meet the data threshold required by EFSA
- Product specific, disease risk reduction claims (Article 14) are only accessible to the largest corporations with funding capacity for multiple clinical trials (i.e. the authorisation process acts as a 'passport system for big business')
- Non-specific claims will be disallowed and, in conjunction with the ban on so many specific health claims, it will make it difficult for the consumer to discern between healthy foods and unhealthy or junk foods

SOLUTIONS FOR NATURAL HEALTH

- Use 'transitional measures' until Community Register of approved Article 13.1 (general function) claims is published and enforced
- Scientific substantiation methods used by EFSA must be made more amenable and relevant, and must be validated by subject matter experts in relevant nutritional fields
- EFSA opinions should be independently evaluated by subject matter experts
- Major restructuring of NHCR is required to prevent infringement of freedom of speech and consumer confusion
- A graded evidence approach should be used to allow claims to be made where plausible evidence exists. This should provide the consumer with the strength of evidence (e.g. A = conclusive, B = good, C = limited, D = conflicting) for a given claim