

# **Baby Milk Action Response to a Commission Proposal for a Regulation on Nutrition and Health Claims (COM(2003) 424 final 2003/0165 (COD))**

**October 2003**

## **Introduction**

Baby Milk Action, and its partners in the International Baby Food Action Network, (IBFAN) welcomes the opportunity to comment on the above proposal having long called the regulation of health and nutrition claims. Baby Milk Action also supports the adoption of a coherent and comprehensive nutrition policy for the EU, whose main purpose would be to promote public health. This should include population dietary goals for foods and nutrients such as those agreed by the European Commission funded Eurodiet Project<sup>1</sup>. This would create a framework out of which a Regulation on nutrition and health claims could more effectively be developed.<sup>2</sup>.

While the proposals in question are a step forward, we are disappointed that they do not go further and that certain recommendations, for example the proposal relating to claims on foods for children, seems to have been dropped. Given the critical importance of early nutrition on the whole life cycle, we strongly recommend that steps are taken to address this.

**Baby Milk Action considers that health and nutrition claims should not be permitted on any foods for infants and young children ( the view of CCFL May 2001) and would extend this to foods for adults also, especially pregnant women and mothers of infants and young children.**

**We are also opposed ‘enhanced function claims’ which refer to effects of diet on physiological and psychological functions and disease risk reduction claims.**

We base our concerns on our long experience in examining the impact of such claims on the nutrition of infants, young children, pregnant women and mothers of young children. The infant feeding issue illustrates how commercial claims can distort healthy eating practices. (see attached paper submitted to Codex)

The nutritional well being of populations, and especially of infants and young children, is too important to be influenced by commercial interests. Nutrition education and recommendations

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<sup>1</sup> Eurodiet (2001) Eurodiet core report. Nutrition and diet for healthy lifestyles in Europe : Science and policy implications. Public Health Nutrition 4(2A) 265-73.

should be the responsibility of health departments, which are best placed to identify links between nutrition information and health and recommend them to the population.

The FSA report of the Stakeholder Meeting on 9<sup>th</sup> September sums up the food industry rationale for the need for health claims which seems to be that if industry is not allowed to make claims on products there will be no incentive to manufacture 'healthier' products – ie foods with reduced levels of fat, sugar salt.

Although not all manufacturers will subscribe to this view, this admission – if true is critically important and demonstrates the complete folly in allowing the food industry to influence public health policy. The sector will only produce products which maximise profits: It is inevitable that such products will be processed, packaged foods . The very foods that should be kept to a minimum.

### **Scientific assessment and Global Impact**

The European Union, as a major trading block, has an enormous influence on bodies such as Codex, national health policies and on global health generally. These factors should be acknowledged and taken into account in all the deliberations on this regulation.

By adopting a regulation which requires such extensive scrutiny of each and every claim and then promoting such a policy (as it will) in the global context, the EU could do a great deal of harm. Not only are the foods being promoted not sustainable, but the procedures being recommended are simply not feasible for many countries. At the Codex meeting in Rome in June 2003 several countries expressed concern at the impossible financial burden the checking of health claims would have on them.

For this reason we reiterate once more that if health or nutrition claims are to be permitted at all they should be generic and restricted to a very limited list . This list would *stem from* national or international health policies which have been developed on the basis of evidence which has been rigorously reviewed and which has stood the test of time. The benefits of eating fresh fruit and vegetables, for example are undisputed (except by certain sections of the food industry).

*Claims for a product or ingredient should never be made on the basis of research initiated and funded by a party with a vested interest in selling that product or ingredient.*

The procedures relating to transparency in the scientific bodies of EFSA and FSA are much improved. However, they are not by any means perfect and still leave room for considerable unwelcome influence from the food industry.

## **1. Article 1 - Subject matter and scope**

### Recommendation:

Change article 1.1 to: ‘This Regulation is intended to harmonise the provisions laid down by law, regulation or administrative action in Member States which relate to nutrition and health claims in order to ensure the effective functioning of the internal market whilst providing a high level of public health and consumer protection.’

### Rationale:

Baby Milk Action believes that the paramount principle in EU policy on nutrition and health claims should be the protection and promotion of public health.

## **3. Article 3 - General principles for all claims**

### Recommendations:

(i) Add new sub-paragraph to second paragraph: ‘(The use of health and nutrition shall not:)  
e) undermine the protection or promotion of public health’

(i) Add new sub-paragraph to second paragraph: ‘(The use of health and nutrition shall not:)  
f) be permitted on any foods for infants or children or pregnant or nursing mothers.

## **4. Article 4 - Restriction on the use of nutrition and health claims**

We support the inclusion of the recommendations of Article 4 and the concept of nutrition profiles, especially as they relate to vulnerable groups such as children and pregnant and nursing mothers for whom we consider no health or nutrition claims should be permitted.

In the FSA report on the stakeholder meeting, Baby Milk Action’s position is noted but not accurately represented. We take the view that the critical issue is not whether a health claim is true or not and whether it misleads – but whether it promotes less healthy consumption patterns. Health claims are always promotional and are for the most part carried on processed, packed foods. It follows that they will encourage the consumption of these foods over fresh unprocessed foods.

Recommendation:

Insert the word ‘independent ‘ throughout the regulations wherever science is mentioned.

*“The nutrient profiles should be based on ‘independent’ scientific knowledge...*

Insert the word ‘health bodies’ to read:

*.‘In setting the nutritional profiles, the Commission shall seek the advice of the Authority and carry out consultations with interested parties, in particular food business operators and consumer groups’*

**5. Article 6 - Scientific substantiation for claims**

Recommendation:

Replace Paragraph 1 ‘Nutrition and health claims shall be based on and substantiated by generally accepted scientific data.’ with:

‘Nutrition and health claims shall be based on a systematic review of all the available scientific evidence relating to the validity of the claim. However no claims should be permitted unless they are in line with national health policies and supported by independent scientific evidence.

**7. Article 11 - Implied Health Claims**

Recommendation:

**We strongly support the retention of Article 11 and would suggest that this is further strengthened.**

**Charity and Medical endorsements**

We reiterate our objections to charity and medical endorsements on foods. The fact that bodies are receiving revenue from such endorsements is regrettable and in our view does constitute a conflict of interest. It is vital that policy makers take a lead in this area, taking account of the long term impact of nutrition throughout the lifecycle. If guidance was given to charities and others who enjoy the confidence of the public in nutrition matters, steps could be taken now to move away from food endorsements and move to other means of funding.

## 9. Article 13

Baby Milk Action strongly opposed the concept of disease risk reduction claims. We specifically refer to the use of ‘hypoallergenic claims’ on breastmilk substitutes which have proved to be very misleading.

Similarly worrying are claims about ‘probiotics.

### **Regulatory Impact Assessment**

Baby Milk Action recognises that governments must acknowledge the impact on manufacturers of any changes in policy. We believe that more weight should be given to the impact on health of marketing practices which encourage the consumption of packaged processed foods over breastfeeding, and fresh, locally sourced foods. If adequate protective measures are not taken to limit the harm caused by promotion, families and health care systems throughout the EU – and globally – will suffer. The financial impact of this should be calculated and acknowledged.

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<sup>3</sup> Council Directive 89/398/EEC of 3 May 1989, published in the Official Journal L 186 of 30 June