Health Claims meet Bureaucracy

The new European Regulation on Nutrition and Health Claims – as Adopted on 16 May 2006 by the European Parliament

*Moritz Hagenmeyer**

What's new pussycat? All quiet on the western front! But fresh legislation is approaching. The more I see you, the more I want you? Definitely not: The European Health Claims Regulation will make life increasingly complicated for food manufacturers wishing to advertise the health related benefits of their products. The author outlines the regulation as adopted by the European Parliament and points out the pitfalls, some more obvious than others. He concludes that food marketing will not change very much in substance, but that industry, scientists, authorities and lawyers will nonetheless have to cope with considerably more work, because bureaucracy is what it's all about.

I. Introduction and current law

1. Introduction

Were those who wrote the European Commission's amazing press release on 16 May 2006[1] aware of current European food law? The text praised the proposed regulation on health and nutrition claims to such an extent that one might have believed that lawlessness and chaos reigns in food advertising. Of course this isn't the case and the current state of affairs prevails, because the new regulation has yet to be passed by the Council of Ministers. It is expected to be published in the Official Journal of the European Union by September at the earliest and should enter into force six months thereafter, so there is sufficient time to consider what rules are presently applicable and how they are meant to change in the near future. A glance shall be thrown now and then at that press release and the pertaining memorandum published by the Commissionon the same day.[2]

2. Current law

Presently food advertising is essentially governed by Art. 2 of Directive 2000/13/EC on the labelling, presentation and advertising of foodstuffs.[3] Accordingly "The labelling (- as well as the presentation and advertising of a foodstuff -) and the methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:
  (i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;
  (ii) by attributing to the foodstuff effects or properties which it does not possess;
  (iii) by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics;
(b) ... attribute to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties."

In effect this legislation not only bans any deceptive advertising, including the attribution of unfounded properties, but also any illness-related

* Dr. Moritz Hagenmeyer is a Partner of the renowned German food law firm KROHN Rechtsanwälte in Hamburg, Germany.

1 IP/06/625, "Commissioner Kyprianou welcomes European Parliament vote on Health and Nutrition Claims", published on the Commission's website: http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/625&format=HTML&aged=0&language=EN

2 MEMO/06/200, "Questions and answers on health and nutrition claims", published on the Commission's website: http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/200&format=HTML&aged=0&language=EN&guiLanguage=en

3 OJ 2000, L 109, p. 29.

advertising all over Europe. The provisions of the Food Labelling Directive have long been implemented into the laws of Member States. It has to be born in mind that the 2000 version of this legislative instrument is effectively a revision of the earlier Directive 79/112/EEC. Thus we are speaking about roughly 25 years of current law. The Commission's press release claims the new regulation "will ensure consumers will be able to rely on the truth and accuracy of information on food labels." Were they not able to before? False, exaggerated, unsubstantiated and inaccurate information on food labels was – and still is – clearly unlawful anywhere in the European Union. Hence it cannot be said with justification that the new regulation materially changes the law in this respect. The same applies to the Commission's assumption that the regulation "will create a level playing field for food manufacturers wishing to use health and nutritional claims." All food operators were and are already subject to the same advertising rules, or bans to be more precise, and there is no convincing reason to maintain inequality in that respect either. This is particularly true with respect to any kind of illness-related advertising which is currently outlawed regardless of its accuracy and truthfulness.

II. The Regulation

The adopted version of the regulation comprises altogether 35 recitals which, however, have no binding legal force. The core of the new law consists of five chapters of different length covering 28 articles. The rear is made up of an annex called "nutrition claims and conditions applying to them" which is joined to the regulation via its Art. 8.

1. Subject matter, scope and definitions

The first chapter of the regulation merely contains two articles, namely Art. 1 "Subject matter and Scope" and Art. 2 "Definitions". Striking features of the former provision are its wide scope on the one hand and the items which are excluded on the other. Art. 1 para. 2 of the regulation sets out a scope of application not only to claims made on labels and packaging, but also to claims made in food advertising; this in principle also includes unpacked products. Art. 1 para. 4 of the regulation effectively excludes foodstuffs for particular nutritional uses governed by the relevant national implementations of Directive 89/398/EC and "natural mineral waters" which would otherwise clearly fall short of the essential requirements for nutritional claims because of their notoriously low mineral content.

Regarding definitions the latter provision refers to Regulation (EC) No. 178/2002 as well as Directives 2002/46/EC, 90/496/EEC and 2000/13/EC with respect to "food", "food business operator", "placing on the market", "final consumer", "food supplement", "nutrition labelling" and "labelling". This is particularly important with respect to the very last item, which – as set out above – comprises advertising. In addition to this Art. 2 para. 2 of the regulation very broadly defines "claim", "nutrient", "other substance", "nutrition claim", "health claim" and "reduction of disease risk claim". Accordingly claims cover any messages or representations including pictorial, graphic or symbolic representation, in any form whatsoever suggesting or implying particular food characteristics; statutorily prescribed food labelling, however, does not amount to a claim.

The three different types of claims are categorised in Art. 2 para. 2 of the regulation as follows:
- nutrition claims suggest "that a food has particular beneficial nutritional properties",
- health claims suggest "that a relationship exists between a food ... and health" and
- reduction of disease-risk claim suggests "that the consumption of a food... significantly reduces a risk factor in the development of a human disease".

Two noteworthy consequences follow from these definitions: reduction of disease-risk claims must be perceived as a special sub-category of the health claims. And insignificant risk reductions will have to be categorised as mere health claims.

2. General principles

a. Principles

The general principles laid down in Art. 3-7 of the regulation are meant to apply to all three types of claims. Pursuant to Art. 3 of the regulation five essential criteria must always be met. First of all no claim may be "false, ambiguous or misleading". This apparently does not change current law. But it raises the interesting question whether there can be

ambiguous claims which are not misleading (i.e. upon application of the criteria developed by the European Court of Justice in this respect[4]). Perhaps this is a more theoretical issue. Nevertheless one wonders why the legislators had to include this item. Secondly no discrimination is allowed regarding "the safety and ... nutritional adequacy of other foods." This should in all circumstances already be covered by the rules on comparative advertising as set out in Directive 84/450/EEC. The third general principle makes it unlawful to "encourage or condone excess consumption of food." It is difficult to picture such advertising, because it must literally advocate an excess. Well known claims like "take two" or "you can eat two" will probably not be outlawed by this rule under normal circumstances. The fourth general principle forbids any implication that "a balanced and varied diet cannot provide appropriate quantities of nutrients in general." This criterion is derived from the equivalent provision in Art. 6 of the Food Supplements Directive 2002/46/EC and patently is still nothing but a standard example of unlawful misleading advertising. Finally nutrition and health claims must not "refer to changes in bodily functions which could give rise to or exploit fear in the consumer." It is hard to imagine any such fear which would not relate to an illness and must thus be in breach of present food law already. Hence the general principles for all claims do not merit any praise for their novelty. On the contrary: They clearly do not materially change current law.

b. Nutrient profiles

Art. 4 of the regulation, however, does indeed lead to a concept so far completely unknown to food law: under the slightly misleading caption "conditions for the use of nutrition and health claims" it introduces the "nutrient profiles". They shall be established by the Commission during the course of the two years following the entry into force of the regulation and "shall be based on scientific knowledge about diet and nutrition, and their relation to health", allegedly after consultation with the relevant stakeholders. According to Art. 4 para. 1 of the regulation the particular focus of the nutrient profiles is on "fat, saturated fatty acids, trans-fatty acids, sugars and salt" i.e. everything that is deemed bad by nutritionists for human health if consumed excessively. The idea of the nutrient profiles, namely that they shall serve as conditions for the use of nutrition or health claims, is that such claims on a particular food shall only be lawful if its composition is sanctioned by the profile.

The underlying reason is the fear of the legislator that for instance a food with a high content of vitamin C is marketed with the claim "rich in vitamin C" although it also contains lots of fat, salt and sugar and consequentially the overall health and nutritional benefits of its consumption are comparatively low. Higher amounts of "bad" ingredients will thus make claims automatically unlawful in general. This ban of true information is intended to prevent consumers from being misled. Likewise Art. 4 para. 3 of the regulation bans all claims for beverages containing more than 1.2 % alcohol – particularly welcomed by the Commission, because of "the link between alcohol and other health and social problems" – except claims referring to a reduction in the alcohol or energy contents. Alcohol thus amounts to a nutrient profile on its own. A last minute change in the wording of Art. 4 para. 2 of the regulation allows claims by way of exception for foodstuffs merely deviating from a nutrient profile with respect to one singular nutrient. In such cases the claim must be accompanied by the prominent statement: "High content of [the name of the nutrient exceeding the nutrient profile]."

c. General conditions

Art. 5 of the regulation establishes a number of further general conditions, most of which would have gone without saying. These are among others that "generally accepted scientific data" must show the beneficial nutritional or physiological effect claimed, that the nutrient for which the claim is made is actually "contained in the product" (or is not present or reduced, as applicable), that the nutrient "is available to be used by the body" and that the product "provides a significant quantity of the nutrient." Clearly all these criteria are currently covered by the ban on misleading advertising: claims on substances not present in a foodstuff, not available to be used by the body or present in insignificant quantities are patently suitable to deceive and would thus not have required special treatment in this way.

4 Cf. e.g. Judgment of the Court 1998 I-4681 and 1995 I-3617.

What is new here is the somewhat misconceived idea of Art. 5 para. 2 of the regulation which only allows claims "if the average consumer can be expected to understand the beneficial effect as expressed in the claim." It is extremely doubtful whether food manufacturers actually advertise their products with claims average consumers cannot understand and, if so, whether this may help them to increase turnovers. However, it is also worrying that the legislators take this stance, because of course no one is obliged to buy a product following a claim he or she does not understand. The new advertising ban appears even more bizarre if one knows what type of claim the legislators had in mind; an example can be found hidden in the annex of the regulation: "claims expressed as 'X% fat-free' shall be prohibited." Clearly such a prohibition is patronising to the extreme. Claims unsuitable to deceive should have remained lawful even if they might be unintelligible!

d. Scientific substantiation

Art. 6 of the regulation demands substantiation of claims "by generally accepted scientific data" and obliges food business operators to "justify the use of the claim." It remains unclear what type of justification is meant by this particular stipulation. Presumably it merely obliges food manufacturers to be able to supply scientific evidence of some kind in support of their claim if so requested by the relevant food supervisory authorities. It should not, however, be construed to demand an on-pack justification; neither should it compel the advertiser to explain why he makes a claim. Needless to say that the concept of scientific substantiation is already entrenched in the advertising ban on misleading labelling because the attribution of properties a foodstuff does not have is currently forbidden.

3. Nutrition claims

The rather short third chapter of the regulation addresses nutrition claims. Pursuant to Art. 8 of the regulation such claims are permitted if they are listed in the annex and are in conformity with the "strict" (as the Commission calls them) conditions particularly set out therein. In practice this will probably be the part of the new law which will cause the least problems in its application, although experience shows that disputes can arise about the accuracy of nutrition related indications, too. The annex lists a schedule of 24 nutrition claims like "low-fat", "high fibre" or "reduced nutrient" and establishes thresholds to be met in order to use them individually. E.g. a claim that a food is "fat-free" may be made where the product contains no more than 0.5 g of fat per 100 g or 100 ml.[5] The relevant conditions relate to energy, fat, sugar and salt as well as fibre, protein, vitamins, minerals and other substances; additionally there are criteria for the use of the word "light" and the term "natural". Since the thresholds used as conditions for the legality of nutrition claims are derived from long established Codex Alimentarius standards there are no true surprises hidden in the annex of the regulation in this respect. It should only be emphasised at this point that nutrition claims must be deemed to be truthful and not misleading in principle, if the relevant products conform with the criteria of the regulation's annex. Otherwise the whole concept of nutrition claims would not work. As a consequence the presence of 0.1 g fat per 100 g in a product claimed to be "fat-free" pursuant to Art. 8 of the regulation in conjunction with the annex does not make this claim unlawful pursuant to Art. 3 of the regulation for that matter.

Still, Art. 9 of the regulation restricts comparative nutrition claims to "foods of the same category." Furthermore comparisons shall relate to the same quantity of food. This will make it more difficult in practice to state that a particular product has e.g. a higher vitamin content than its competitors' products.

4. Health claims

The eight articles of the fourth chapter of the regulation contain the specific authorisation requirements for health claims in general and the particular health claim sub-category of reduction of dis-

5 Cf. the two contrasting decisions by the German Appeal courts in Düsseldorf and Hamburg on the lawfulness of the claim "ohne Fett" for a sweet containing 0.4g fat per 100g (held to be lawful and not misleading by OLG Düsseldorf, ZLR 2005, 513 with a convincingly concurring case note by C. Oelrichs) and for a whey drink with 0.04g fat per 100ml (held to be misleading and therefore unlawful by OLG Hamburg, ZLR 2006, 162, with a convincingly critical case note by C. Oelrichs).

ease-risk claims. It will immediately become clear how bureaucratic the whole design of the individual provisions is.

a. Conditions and restrictions

All health claims, including reduction of disease-risk claims must conform to the specific conditions set out in Art. 10 of the new regulation. Whilst Art. 10 para. 1 prohibits health claims not complying with the general requirements, in chapter 2, Art. 10 para. 2 makes their use conditional on additional compulsory labelling. The two necessary items are "a statement indicating the importance of a varied and balanced diet and a healthy lifestyle", again a labelling element taken from Art. 6 of the Food Supplements Directive 2002/46/EC, and "the quantity of the food and pattern of consumption required to obtain the claimed beneficial effect." The rather funny sounding "pattern" presumably means the suggested frequency of consumption, e.g. "imbibe once a day" or "guzzle every other hour." Furthermore Art. 10 para. 2 of the regulation demands the labelling of "a statement addressed to persons who should avoid using the food" where appropriate and "an appropriate warning for products that are likely to present a health risk if consumed to excess." In these instances disputes may arise about the issue whether such statements or warnings are appropriate and which likelihood will be demanded in case of potential health risks of excessive consumption. At the end of the day a truly excessive intake of any kind of food will always be detrimental to a person's health. Since one can hardly imagine such warnings are meant to be labelled on all foodstuffs with health claims, the provision has to be construed in such a way as to cover only cases where there is an obvious likelihood of excessive over-consumption.

Any kind of "reference to general, non-specific benefits of the nutrient or food for overall good health or health related wellbeing" appears to have been suspicious to the legislators. Hence such reference is only allowed pursuant to Art. 10 para. 3 of the regulation if it is "accompanied by a specific health claim" authorised by the Commission. Classic examples like "an apple a day keeps the doctor away" (or perhaps "a glass of beer a day might keep the doctor away"[6]) will thus have to be boosted by an authorised health claim. Of course all this is only possible if the relevant products are in line with the yet to be established nutrient profiles.

A further restriction on the use of certain health claims is contained in Art. 12 of the regulation. This effectively outlaws claims which

- "suggest that health could be affected by not consuming the food",
- "make reference to the rate or amount of weight loss" or
- "make reference to recommendations of individual doctors or health professionals."

An exemption in case of the third variety of banned claims is now made for recommendations by national medical associations and health related charities as set out in Art. 11 of the regulation.

b. Standard health claims

Pursuant to Art. 13 para. 3 of the regulation the Commission has to adopt "a Community list of permitted claims", i.e. health claims which are not referring to the reduction of a disease-risk. This shall be done within three years of the entry into force of the regulation. The Community list shall be designed upon the basis of proposals submitted to the Commission by the Member States within one year of that date. Similarly to the list of nutritional claims in the annex of the regulation the Community list shall include "all necessary conditions for the use of" the relevant claims. However, the mere fact that the food meets these conditions does not make a respective claim lawful as such. Pursuant to Art. 13 para. 1 of the regulation it must also be "based on generally accepted scientific data" and "well understood by the average consumer." It is apparently hoped that once the Community list is published on the Community register (which Art. 19 of the regulation envisages) science-based and understandable claims may be made relying on individual entries on that list. The Commission quotes "calcium is good for your bones" as an example of a standard health claim to be included on the Community list. Another possible example might be the benefit of the consumption of certain quantities of dietary fibres to intestinal health. Art. 13 para. 4 and 5 of the regulation allow for changes to the list and additions of claims to the list; in both cases application procedures are compulsory.

6 Cf. A. Tierney-Jones, The big book of beer – Everything you need to know about the world's greatest drink, p. 146.

Food manufacturers wishing to make general health claims in the future should liaise with the competent authorities in their Member States soon. Only if their claims reach the lists submitted to the Commission by the Member States can they finally end up on the initial Community list. Since Art. 13 para. 2 and 3 of the regulation establish the above mentioned deadlines there appears to be a chance of at least some claims and their relevant conditions making it onto the Community list by the year 2010. Any claims not in the first tranche will have to be channelled through the authorities individually and will most probably be under greater scrutiny for that reason alone. However, newly developed scientific data will perhaps lead to a continuous trickle of applications in the long run. It remains to be seen whether the Commission can authorise additional claims faster or slower than the two years it may take for the initial Community list.

c. Reduction of disease risk claims

Certainly the authorisation procedures for reduction of disease-risk claims are the highlight of this piece of legislation, particularly so for their bureaucratic implications. Pursuant to Art. 14 para. 1 of the regulation such claims may be made if "authorized in accordance with the procedure laid down in Arts. 15-18." Examples given for this type of claim by the Commission are "X lowers cholesterol" and "calcium helps reduce the risk of osteoporosis." The authorised reduction of disease-risk claims shall also be entered on the Community list mentioned earlier on. In addition to the authorisation on a case-by-case basis Art. 14 para. 2 of the regulation demands further labelling, namely "a statement indicating that the disease to which the claim is referring has multiple risk factors and that altering one of these risk factors may or may not have a beneficial effect." This kind of "scare" goes even beyond the American concept of stating that claims have not been assessed by the FDA. It is hard to picture compulsory additional labelling having any noteworthy effect on the consumption of particular products, or on the reduction of disease-risks, for that matter.

aa. Application

The reason why the authorisation process must be classified as bureaucratic can easily be seen from the four relevant provisions. Art. 15 para. 2 of the regulation demands that the applicant wishing to make a disease-risk reduction claim has to file a comprehensive and detailed application with the national competent authority of a Member State. This does not necessarily have to be the Member State where the applicant is domiciled. The national authority is not only obliged to acknowledge receipt of the application "in writing within 14 days of its receipt" but also to pass it on to the European Food Safety Authority, which in turn shall forward it to the other Member States and the Commission. Furthermore the Authority has the duty to "make the summary of the application ... available to the public." Why the legislators felt it necessary to expressly oblige the applicant to file his name and address remains a mystery – it is inconceivable that many people filed applications in the past without these details and were thus unable to receive decisions (or did this in fact drive public servants to insanity?). Further essential items to be included with the application pursuant to Art. 15 para. 3 of the regulation are of course the nutrient, substance or food on which the claim shall be made, "a proposal for the wording of the health claim" – which is not restricted to any particular language! – and scientific material (preferably dossiers) in support of the claim, not to mention the vital "summary of the application". Moreover, "appropriate technical guidance and tools to assist ... in the preparation and the presentation of the application" shall be made available by the Commission pursuant to Art. 15 para. 5 of the regulation, but nobody knows when or whether to look forward to such a publication.

bb. EFSA opinion

Within "a time limit of 5 months from the date of receipt of a valid application" – note the word "valid" in this prerequisite – the European Food Safety Authority shall deliver an opinion on the application pursuant to Art. 16 para. 1 of the regulation. Needless to say it may at any time seek supplementary information pursuant to Art. 16 para. 2 of the regulation; such requests of course allow for extension of the five months time limit. Art. 16 para. 3 of the regulation obliges the authority to "verify that the proposed wording of the health claim is substantiated by scientific data" and "consider whether the wording of the health claim complies with the criteria laid down in the regulation." Once this onerous task has been performed the

Authority has to put forward its opinion which, according to Art. 16 para. 4 of the regulation, must include among other things "the recommended wording of the proposed health claim, including, as the case may be, the specific conditions of use." Additional statements or warnings which in the Authority's view should accompany the health claim on the label may also be put forward in the opinion. In order to avoid misunderstandings it should be emphasised here that the Authority can in fact change the wording of the claim as proposed by the applicant which may result in an authorisation essentially deviating from the application. Once the Authority has formed its opinion it is obliged not only to send it to the Commission, the member states and the applicant pursuant to Art. 16 para. 5 of the regulation, but also to publish it pursuant to Art. 16 para. 6 of the regulation.

cc. Commission decision

Within three months after receiving the Authority's opinion of the authority, the Commission has to draft its decision and inform the applicant thereof pursuant to Art. 17 para. 1 and 4 of the regulation; details also have to be published in the Official Journal of the European Union. Of course the opinion will be the most important factor for the Commission to come to its decision. However, the applicant or members of the public may also comment on the Authority's opinion pursuant to Art. 16 para. 6 of the regulation, and the Commission may take into account "any relevant provisions of Community law and other legitimate factors relevant to the matter under consideration" pursuant to Art. 17 para. 1 of the regulation. This is an open door to politics, religion, political correctness and other unforeseeable influences. As a consequence of the publication of a favourable decision health claims may not only be used by the applicant himself, but in principle "by any food business operator"; this is made clear in Art. 17 para. 5 of the regulation.

dd. Modification, suspension and revocation

However, neither the applicant nor other food business operators are truly home and dry yet. That is because Art. 18 of the regulation allows modifications, suspensions and revocations of authorisations. Such measures cannot only be initiated by the applicant or user of a claim pursuant to Art. 18 para. 1 of the regulation, but also on the initiative of any Member State or the Commission itself pursuant to Art. 18 para. 2 of the regulation. "If appropriate, the authorization shall be modified, suspended or revoked." Consequentially on-pack claims should be used sparingly or packaging material should not be produced too long in advance in order to avoid potentially detrimental consequences of changes in the state of an authorised disease-risk reduction claim.

5. General and final provisions

The fifth and final chapter of the regulation among other things deals with the Community register, data protection, transitional matters and the entry into force. Whilst the regulation shall enter into force 20 days after publication in the Official Journal of the European Union, it shall only apply from the first day of six months following that date pursuant to Art. 28 of the regulation. The transitional matters laid down in Art. 27 of the regulation allow the use of claims lawfully made prior to the entry into force date for a further 30 months, the use of trade marks or brand names for a further 15 years. Nutrition claims allowed in individual Member States before 1 January 2006 will be allowed to run for a further three years and currently lawful health claims for further 6-12 months depending on certain criteria. Scientific data filed with the application of a disease-risk reduction claim may be kept secret for a period of seven years in certain circumstances as set out in Art. 20 of the regulation. Details of the Community register are regulated in Art. 19 of the regulation.

IV. Conclusion and outlook

1. Conclusion

The brief overview of the new health claims regulation demonstrates two striking features: in practice the handling of standard nutrition claims will probably become slightly easier, because one can look up their essential requirements in the annex of the regulation. If a foodstuff meets the conditions laid down there, the claim can be made in principle. A caveat must be made in this respect, however, with a view to the imminent nutrient profiles, details of which are not yet known. Health claims on the

other hand will become more regulated, and most certainly disease-risk reduction claims will remain a rare sight. For present purposes one has to wait which individual standard health claims will make it on the Community list and whether it will be possible for many products to fulfil the conditions for their use. The next years will probably see a lot of disputes about the relevant issues in this respect. Food manufacturers wishing to make special disease-risk reduction claims should have a big budget and presumably great patience, too. Apart from the scientific research and collection of data in advance of the application it will at least take roughly a year for individual applications to be processed by the relevant national and European authorities. Authorisations may be delayed in case the European Food Safety Authority finds flaws in the scientific substantiation and the Commission may take into account other – unknown – factors than the Authority's opinion when making its decision. The reliability and scope of scientific research data protection may also turn out to be an additional obstacle from the perspective of prospective applicants.

2. Outlook

The Commission believes the new regulation has "many benefits to offer to the food industry." It maintains that this piece of legislation is creating "a clear regulatory environment" for the industry which - can you believe it? - "will allow greater legal security." Time will tell. The potential success of the regulation largely depends on its application by the European Food Safety Authority and the Commission in practice. Since the application process is a bureaucratic element by nature which was not there prior to the regulation, food manufacturers wishing to make claims will face naturally additional complications. Of course they can confine themselves to advertising outside the scope of the regulation, e.g. by way of using composition- or ingredient-related claims like "all natural". Or they can continue to sell their food without health claims.

Nevertheless the Commission may be right with its guess that the new rules "serve to support innovation, as manufacturers would be encouraged to develop food and drink products for which health and nutrition claims can genuinely be made." Although one can certainly view this a rather questionable way of promoting the development of new foodstuffs, it is probably true: if food manufacturers decide to use nutrition and health claims, their products may have to be adapted and additional data will have to be gathered. This may even lead to the production of politically correct food. Scientists will then obviously have to be employed to carry out the necessary research work. Tax payers must pay the authorities (in addition to the legislators) in any event, and consumers relying on the claims may wish to spend more money on foodstuffs potentially beneficial to their health. Whether they will prefer such products to what they are used to and enjoy is a completely different question. Should anyone complain? EffL readers should not, nor should European food lawyers, because this topic will continue to provide us all with lots to read and additional work for years to come. Who can we thank for this "important piece of legislation" (as labelled in the Commission's press release)?