

17 January 2013

Interested Parties

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Dear Colleagues,

**Update from the European Commission's Working Group meeting on nutrition and health claims, 11 January 2013**

**Exchange of views on a draft Annex to a Regulation authorising Article 13 health claims on hold**

The Commission introduced a new version of this annex which had been amended after standing committee in December and which was now put forward for further discussion. The claims on caffeine have been removed; in light of member states' (MS') previous comments, the Commission is planning to ask the European Food Safety Authority (EFSA) to look at safety and in the mean time caffeine claims will remain on hold. The conditions of use (COU) for the claims about the omega-3 fatty acids docosahexaenoic acid (DHA) and eicosapentaenoic acid (EPA) include new text that would apply if the claim were used on food supplements or fortified foods; it would require information to the consumer not to exceed a supplemental daily intake of 5g EPA and DHA combined.

**Exchange of views on recent European Food Safety Authority (EFSA) opinions on individual health claim applications (Article 13(5))**

*Q-2012-00384 Eff<sub>EXT</sub><sup>TM</sup> (pure krill oil) and maintenance of normal joint mobility;*

*Q-2012-00385 Krill oil and maintenance of joint comfort;*

*Q-2012-00387 grape seed extract and maintenance of normal venous blood flow;*

*Q-2012-00388 grape seed extract helps to decrease swollen legs;*

*Q-2012-00570 cynamine<sup>®</sup> (keratin powder extracted from sheep's wool) and maintenance of normal joint mobility;*

*Q-2012-00572 OXY 280 (kidney bean, olive + rosemary extract powder) and reduction of body weight;*

*Q-2012-00574 grape seed extract helps to drain the body in case of water accumulation;*

*Q-2012-00590 guarana + green tea extracts and reduction of body weight;*

*Q-2102-00593 combination of lycopene, vitamin E, lutein and selenium helps to prepare and activate tanning.*

All of these opinions are negative and there were no comments on them from MS.

**Exchange of views on a working document on elements to take into account when establishing rules for derogation in accordance with Article 1(4) of Regulation 1924/2006 on nutrition and health claims made on foods**

The Commission introduced the discussion on this new working document by saying that it is not accepting applications for generic descriptors (GDs) at present because no rules have been agreed; however, it is keen to agree rules as soon as possible.

A large part of the discussion was concerned with trying to clarify how to understand what a generic descriptor is. MS were reminded that the aim of the nutrition and health claims Regulation (NHCR) is to prevent consumers being misled about claimed health benefits. According to the Article 1(3) of the NHCR, GDs could imply an effect on health so it's important that consumers understand that they won't get any health benefit that may be implied by a GD. However, the purpose is not to allow the use of misleading claims. It will therefore be very important for applicants to provide evidence of how consumers currently perceive potential generic descriptors and that they do not expect a health benefit from consuming the product. The Commission pointed to recital 16 of the NHCR, emphasising that a MS would have to determine the understanding of the average consumer in its country.

Since a generic descriptor may not have been traditionally used in all MS, and could be understood differently in different places, there were questions about whether derogations would apply in all MS or only in those in which a GD had been used. It seems likely that, since the NHCR is harmonising legislation and aims to facilitate the internal market, derogations for generic descriptors must apply in all MS. However, as a consequence it will be necessary to ensure that, in MS where there's no traditional use, consumers are not misled; one way to achieve this might be by requiring a GD to be used in its original language.

Where a GD is used widely, food business operators (FBOs) may need to co-operate to make an application and MS may need to co-operate too; the procedure used for further assessment of health claims could be a useful model. On this point, the Commission said that the NHCR requires an application to come from an FBO but that trade associations could be involved as the person authorised to communicate with the Commission on behalf of an applicant.

It was confirmed that 'generic descriptor' covers terms that could be perceived as nutrition claims as well as those that could be seen as health claims. As to what constitutes a 'class' of products it was proposed that it could be the same as a food 'category' referred to in Article 9 of the NHCR.

**The working document is attached and we would be grateful for your comments by Monday 28 January (vivien.lund@dh.gsi.gov.uk).**

**Implied health claims**

There was a discussion about whether a picture or graphic symbol used in food labelling (e.g. a picture of an eye on a food supplement containing lutein) would be an Article 10(3) health claim and so would need to be accompanied by an authorised, specific health claim from the list of Article 13 or 14 health claims. There was general agreement that this was the correct interpretation. There

was a reminder that such pictures or symbols must not engender fear in consumers (Article 3(e) of 1924/2006).

There was also a brief discussion of the terms ‘immunonutrients’, ‘immunovitamins’ and ‘immunominerals’ such as used in the phrase “Immunonutrients (A, C, iron, and zinc) are important minerals and vitamins which contribute to the correct function of the immune system”. One view was that such terms are confusing because they are not proper words and are not associated with authorised health claims. Another was that these made-up terms imply non-specific health claims which could be used if accompanied by relevant authorised claims.

### **Claims on foods for lower birth weight and pre-term infants in good health**

There was a question about what legislation covers nutrition and health claims used on foods for lower birth weight and pre-term infants which are not considered to be foods for special medical purposes (FSMPs). In summary, the answer is that: the NHCR applies to foods for particular nutritional uses (parenteral foods) except where there are specific rules in parenteral legislation; for FSMPs for infants, the compositional requirements of the infant formula directive apply (unless they’re contrary to the intended use), but the labelling requirements, and restrictions on use of nutrition and health claims, do not; such products are subject to the rules in the NHCR and health claims on foods for infants and young children would have to be Article 14(1)(b) claims.

### **Next working group meeting**

The next meeting is provisionally set for 18 February.

Yours faithfully,

Dr Vivien Lund

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