



FOODS WITH HEALTH-RELATED CLAIMS – ARE THEY REALLY HEALTHIER?

Health-related claims – a pan-German market survey
A collective initiative by the German consumer associations
December 2014 Report | Brief summary

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Photos/photo credits: Verbraucherzentrale Hamburg , Fotolia | © momius

Design: DHKD | Visual communication

Gefördert durch:



Bundesministerium für
Ernährung, Landwirtschaft
und Verbraucherschutz

aufgrund eines Beschlusses
des Deutschen Bundestages

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1 STATE OF THE MARKET, SITUATION AND AIM

In the EU member states, foods are increasingly being promoted using nutritional and health-related claims. The market volume in Germany in 2001 was 1.5% and has now risen to just under 5%.¹ This trend leads us to suppose that it will also be a growth market in the future. When purchasing these foods, consumers are promised health-related added value.

Many consumers buy food products that have a "special benefit" for their health. If they have the choice, they prefer food products with claims over products without such claims. This applies to both conventionally and organically produced foods, as shown by two studies by the University of Kassel with a total of 420 consumers.²

This especially applies to consumers who, according to their own subjective assessment, believe that their diet is not sufficiently healthy or varied. They assume that these food products will compensate for this and improve their overall dietary situation, and are ready to pay higher prices for these kinds of food products.

For a long time, consumers have not been able to check the advertised, allegedly positive health effects. There are also various different national regulations that apply to health-related statements in the EU member states. Regulation (EC) No 1924/2006³ (Health Claims Regulation, HCR) has led to changes. It has the primary aim of protecting consumers from being misled by health-related statements on foods

and in advertising. Basically it applies a "prohibition principle" with authorisation right that prohibits health-related claims unless they are authorised. This regulation stipulates that statements must be scientifically substantiated, true and understandable to the average consumer. According to this, wording that differs from the permitted statements is fundamentally authorised, but may not change the statement.

The European Food Safety Authority (EFSA) was tasked with the scientific appraisal of the health claims. In total, 4,637 statements were presented to the EFSA by the member states, of which around 2,700 were validated. In May 2012, the EU Commission published an initial list of 222 health-related statements in Regulation (EU) No 432/2012⁴, mainly on vitamins, minerals and trace elements. Since December 2012, claims already reviewed and not permitted may no longer be used. The number of permitted claims is now over 250, including the claims permitted under Section 14 (1) a and b. These permitted claims are published in the EU Register on nutrition and health claims⁵ which can be viewed on the website of the EU Directorate-General for Health and Consumers. The rejected claims together with the reason for rejection are also published in the EU Register. Validation for around 2,000 claims mainly concerning health claims on botanicals or microorganisms is still awaited. This final validation is still outstanding, as a fundamental discussion arose between the member states as to whether botanicals, in the same way as traditional pharmaceuticals, should only have to satisfy simplified scientific criteria or whether they should be treated in the same way as all other substances. These non-reviewed botanical claims are currently not prohibited. In this case, Section 11 of the German Food and Feed Act applies under national law to protect consumers from being misled and deceived.

¹ Brandenburger, Sonja; Birringer, Marc: Milliardenumsätze mit „Health Claims“. (Billions in sales with health claims) Ernährungs Umschau, Issue 8 2014, pp. 442-446.

² Aschemann, Jessica; Maroscheck, Nicole: Wirkung von Claims auf die Kaufentscheidung bei konventionell und ökologisch erzeugten Lebensmitteln. (The effect of claims on purchasing decisions for conventionally and organically produced foods.) Ernährung im Fokus 8-11, 2008, pp. 406-411.

³ European Parliament and Council: Corrigendum to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods. Brussels: Official Journal of the European Union, 2006

⁴ EU Commission: Regulation (EU) No 432/2012 on establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health. Brussels: Official Journal of the European Union, 2012

⁵ EU Commission: EU Register of nutrition and health claims made on foods. Can be accessed at: http://ec.europa.eu/nuhclaims/?event=search&status_ref_id=4 (Version: 10 December 2014).

6 | State of the market, situation and purpose

The 2014 market study by all 16 consumer associations of the German states aims to document and evaluate the health-related advertising on food labels. In doing so, the use of claims on selected products was checked in accordance with the implementation of the HCR.

The market survey predominantly focused on dealing with the following questions:

- Are foods with prohibited claims still on the market?
- Is there a modified wording on the label that leads to an unauthorised strengthening of the claim?
- Does the lack of a nutrient profile result in permitted claims upgrading foods that are nutritionally problematic?
- How should we assess claims on children's products that are intended to encourage parents to buy them?
- What nutritional information and details of nutrients and amounts are missing on the label if they are advertised with health claims?
- Are the added and specially provided nutrients really suitable for improving the dietary situation?
- Do permitted claims act as a cover for rejected claims?

The results of the market survey have been used to inform consumers and help to articulate relevant consumer policy requirements.

2 LEGAL FRAMEWORK

The following legal regulations apply to the labelling of foods using nutrition and health-related claims:

- **Regulation (EC) No 1924/2006 on nutrition and health claims made on foods (HCR)**⁶

Aim of the Regulation: to create an EU-wide standard legal framework, to protect consumers from being misled by unjustifiable health claims and to enable them to take their own decisions on selecting foods. It is intended to create an equal competitive environment for producers and thus enable a freer movement of goods. Health-related claims must be provable through objective scientific criteria and the foods must also conform to a predefined nutrient profile. However, recommendations for nutrient profiles do not yet exist.

In addition to the regulated nutrition-related statements in Annex I, the HCR defines the following claims:

- Health claims on "general functions" (Article 13 HCR), e.g. the role of nutrients for growth or physiological functions of the body. Example: *"Calcium is needed for the maintenance of normal bones."*
- Claims on the reduction of disease risk (Risk Reduction Claims, Section 14 (1) a, HCR). Example: *"Plant sterols can lower blood cholesterol levels."*
- Statements on the development and health of children (Section 14 (1) b, HCR). Example: *"Calcium and Vitamin D are needed for normal growth and development of bone in children."*

Reference to general, non-specific benefits of the

nutrient or food for overall good health or health-related well-being may only be made if accompanied by a specific health claim included in the lists provided for in Section 13 or 14 HCR (Art. 10(3) HCR).

- **Regulation (EU) No 432/2012 on establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health**⁷

Aim of the Regulation: to publish authorised health claims. There are currently 229 health claims. This list has been supplemented by further regulations (e.g. Regulation (EU) No 440/2011 and No 536/2013). It also regulates more precisely that health claims are truthful, clear, reliable and may not be misleading to consumers. Slight deviations in the wording are tolerated. However, strengthening or modifying the claim in a way that misleads the consumer is not permitted. Thus the working group of food chemistry experts from the federal states and the Federal Office of Consumer Protection and Food Safety (ALS) explained in its statement no 2012/39 that, for example, "... wording such as *"to promote"* or *"to strengthen"* can no longer be viewed as having the same meaning as the permitted health claim *"contributes to the normal function of..."*, because this permitted claim only refers to maintaining the function and not to improving a function ...".⁸

- **German Food Labelling Regulation (NKV)**⁹

Aim of the Regulation: If a nutrient is specifically offered, nutritional labelling must be performed in order to make the actual quantity transparent. The information for vitamins and minerals must also be stated as percentages of the recommended daily dose.

- **German Food Information Regulation (LMIV)**¹⁰

⁶ European Parliament and Council: Corrigendum to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods. Brussels: Official Journal of the European Union, 2006

⁷ EU Commission: Regulation (EU) No 432/2012 on establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health. Brussels: Official Journal of the European Union, 2012

8 | Legal framework

Aim of the Regulation: Contains the standards for obligatory food labelling from 13 December 2016 and the voluntary or already mandatory, based on specific information, food labelling from 13 December 2014.

- **German Diet Regulation (Diät-VO)¹¹**

Aim of the Regulation: Annex 15 regulates nutrient and health claims for infant formula and the preconditions that justify such a claim. Annex 16 regulates the reference values for the labelling of foods that are specifically for nursing babies and infants.

⁸ Working group of food chemistry experts from the federal states and the Federal Office of Consumer Protection and Food Safety (ALS): Statement no 2012/39: Wording with the same meaning for permitted claims. Can be accessed at: http://www.bvl.bund.de/SharedDocs/Downloads/01_Lebensmittel/ALS_ALTS/ALS_Stellungnahmen_100_Sitzung_2012.pdf?__blob=publicationFile&v=2 (as of 10 December 2014).

⁹ Federal Ministry of Justice and Consumer Protection: Regulation on nutritional-claim information for foods and the nutritional labelling of foodstuffs (Section 1 of the Regulation on restructuring of the provisions for the nutritional labelling of foodstuffs) (Regulation on the nutritional labelling of foodstuffs (Nährwert-Kennzeichnungsverordnung - NKV). Can be accessed at: <http://www.gesetze-im-internet.de/nkv/BJNR352610994.html> (as of 10. October 2014).

¹⁰ European Parliament and Council: REGULATION (EU) No 1169/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004. Strasbourg: Official Journal of the European Union: 2011.

¹¹ Federal Ministry of Justice and Consumer Protection: German Dietary Food Regulation (Diätverordnung). Can be accessed at: http://www.gesetze-im-internet.de/di_tv/BJNR004150963.html (as of 10 October 2014).



3 APPROACH

After a pre-test by the working group at the start of 2014, the German-wide market survey by the consumer associations was carried out at the end of March and in April 2014. The non-representative study included products using health claims from supermarkets, discount stores, health-food shops and wholefood shops. A total of 46 products using health claims were reviewed, which took into account the following product groups:

- Oils & fats (6)
- Drinks (11)
- Cereal products (8)
- Infant products (10)
- Milk products (4)
- Nutritional supplements (7)

The survey questionnaire is included in the annex (see page 28).

4 RESULTS

The results of the market survey are summarised in the following seven topic areas.

4.1 Not authorised but nevertheless on the label

20 out of 46 products, i.e. over 40% of the inspected foods, display claims that are not permitted under the provisions of the EU Commission. The advertised claims are either not included at all in the positive lists or have been enhanced by additions that give the statement a different meaning. The children's food product group came out particularly badly. In the case of 70% (seven out of ten products), health-related statements were found that, in the consumer associations' view, are not permitted in this manner and can mislead. On the other hand, products in the oil & fats and milk products categories came out best with none and one breach, respectively.

Figure 1 shows the distribution of products with claims that are not permitted by the individual product groups.

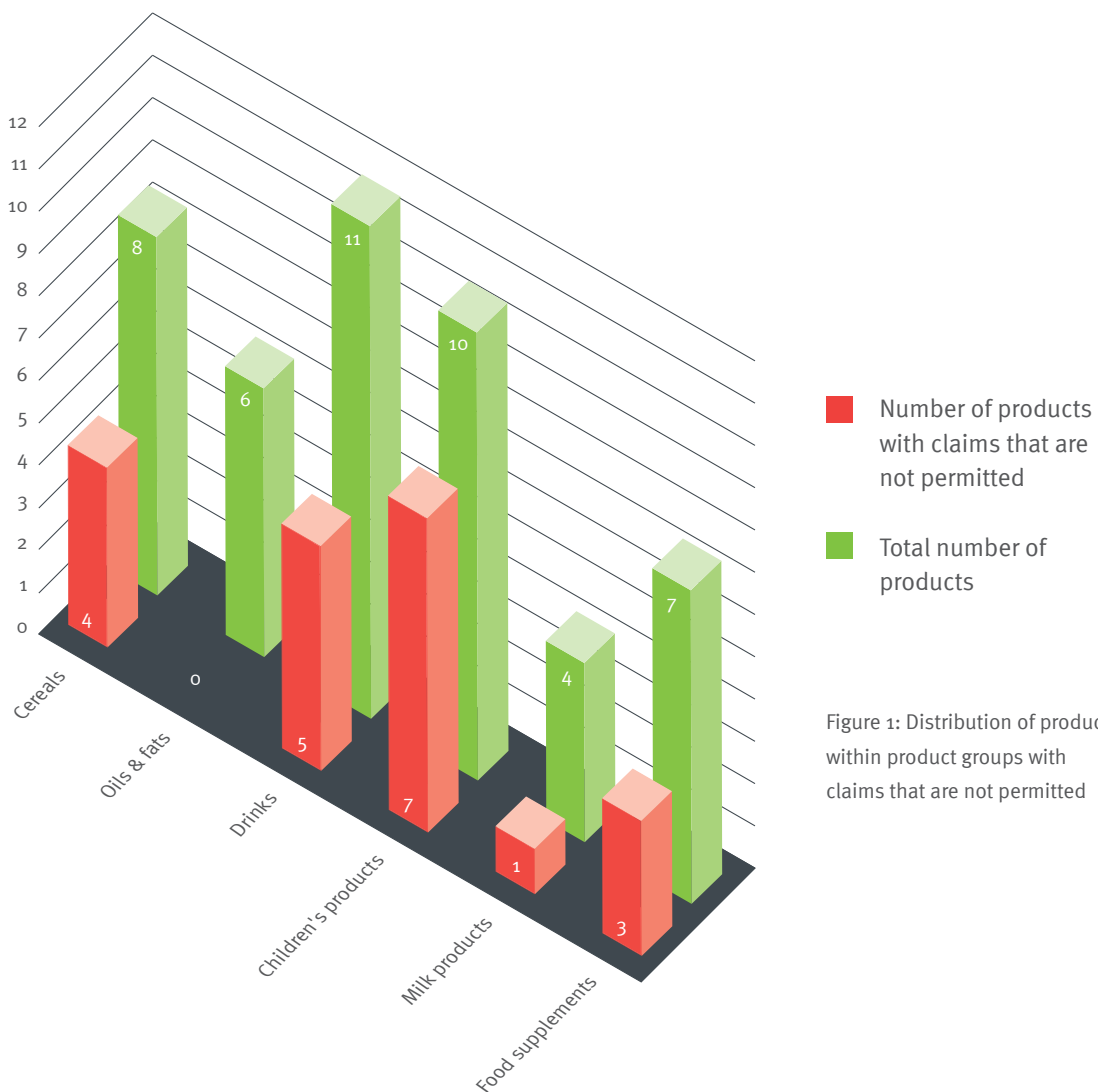


Figure 1: Distribution of products within product groups with claims that are not permitted

Some examples of products that advertise on the product packaging using health-related statements that are not permitted are shown in the following table.


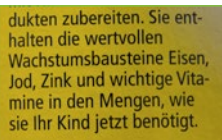


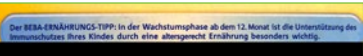

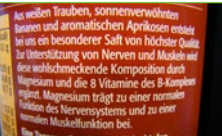


Four product examples of claims that are not permitted		
Product (manufacturer) / product photo	Claim that is not permitted (Summary) / photo of claim	Assessment from the point of view of consumer associations
<p>"Kinder Beeren Müsli" (Children's Muesli with Berries) (Hipp)</p> 	<p>"[...] contain the valuable building blocks for growth: iron, iodine and zinc"</p> 	<p>Explanation - not permitted: Although 18 health claims are permitted for zinc, e.g. for normal cognitive function, there is neither a special claim for children (available for iron and iodine) nor a general claim for growth.</p>
<p>Beba Children's Milk (Nestlé)</p> 	<p>Visual representation: <i>Bifidus B(L) + "Healthy growth"</i> and <i>"Supports protection of the immune system"</i></p>  	<p>Explanation not permitted: Health-related claims on probiotic micronutrients such as bifidus B(L) are not permitted by the EFSA. However, a visual connection is made between the bifidus B(L) cultures and the claim, "healthy growth". When read quickly, the nutritional tip "Supports immune system protection" could be taken as a product-related claim if you were to relate this to the Beba formula. However, no claim of this nature can be found in any of the EU Commission's positive lists.</p>
<p>Vitesse for nerves and muscles (Rabenhorst)</p> 	<p>"To support nerves and muscles (...) supplemented by magnesium and the 8 B-complex vitamins"</p> 	<p>Explanation not permitted: Claim not permitted for all of the 8 B-complex vitamins.</p>
<p>Viva Vital strawberry yoghurt (Netto Marken-Discount)</p> 	<p>"Digestion yoghurt"</p> 	<p>Explanation not permitted: The claim is not on the product, but on the supermarket cool cabinet shelf.</p>

Table 1: Four product examples of claims that are not permitted

4.2 Modified wording – creating further deception

In the case of 22 out of 46 products, i.e. just under half of the inspected foods, according to the assessment of the consumer associations there was a non-tolerable strengthening of the statements permitted by the EU. The aforementioned EU Regulation No 432/2012 does not just contain the nutrients for authorised claims in its annex, but also the wording that should be used to make the claim on the label. In all product groups,

with the exception of milk products, it was found that consumers would be misled by an enhancement of the health-related statements that was not permitted. The following figure shows a comparison between the individual food groups.

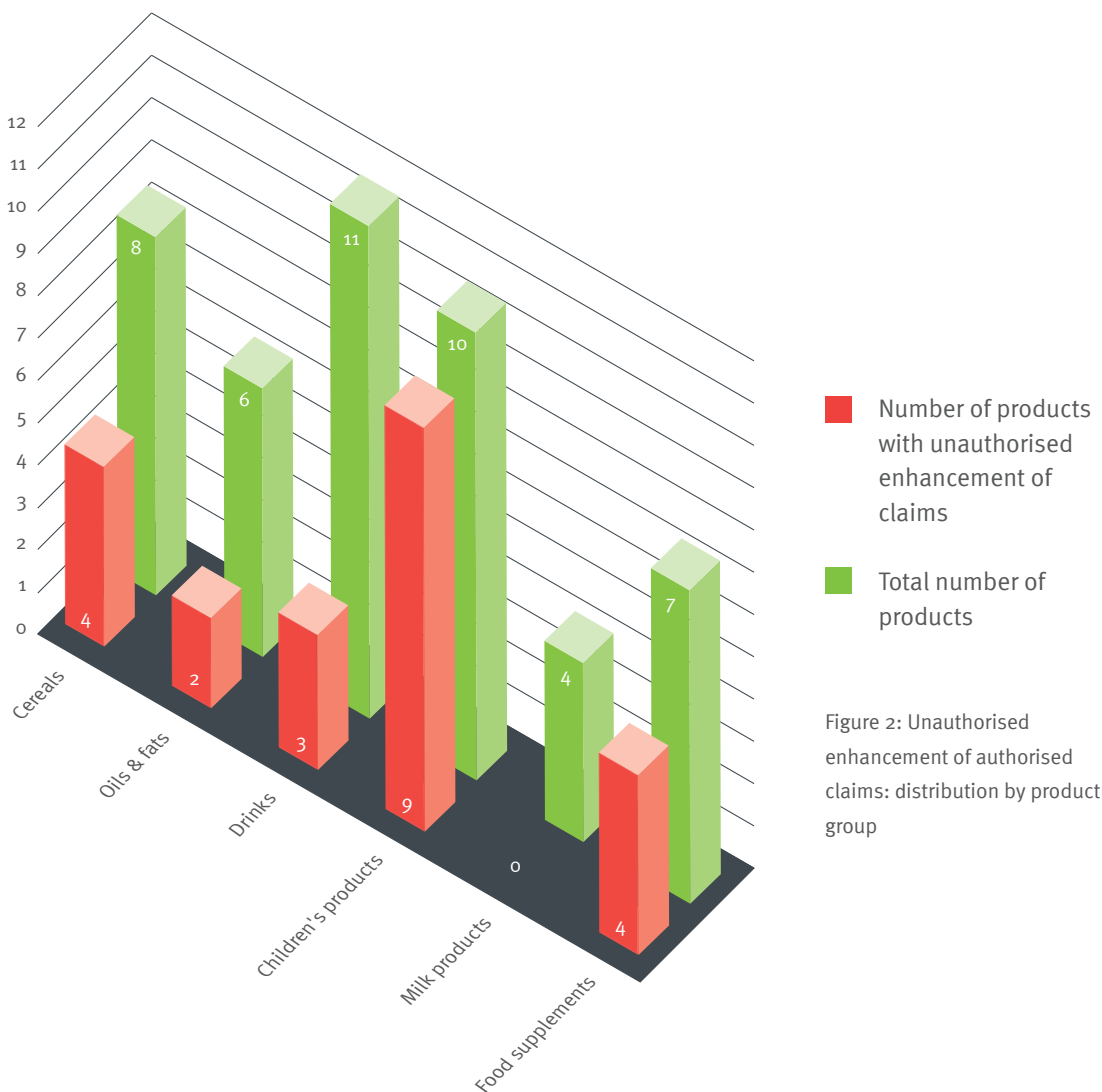


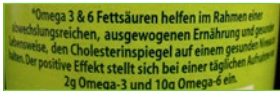

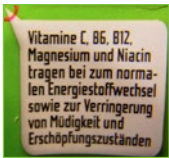




Figure 2: Unauthorised enhancement of authorised claims: distribution by product group

Five product examples of an enhancement of the authorised claim which is not permitted		
Product (manufacturer)	Promotional statement on the label	Discrepancy between permitted wording and unauthorised modification by the food industry
<p>Becel cuisine omega 3 vegetable oil (Unilever)</p> 	<p>"For a healthy cardiovascular system"</p> <p>"Omega 3 & 6 fatty acids help [...] to keep blood cholesterol at a healthy level"</p>  	<p>"EPA and DHA contribute to the normal function of the heart"</p> <p>"Replacing saturated fatty acids with monounsaturated and/or polyunsaturated fatty acids in the diet contributes to the maintenance of normal blood cholesterol levels"</p> <p>Explanation: Instead of referring to normal function, the provider is advertising using a health-related claim.</p>
<p>DieMaus Vitaldrink (LIMUH GmbH)</p> 	<p>"Vitamin C, B6, B12, magnesium and niacin contribute to normal energy-yielding metabolism and to the reduction of tiredness and exhaustion"</p> 	<p>"Vitamin C, B6, B12, magnesium and niacin: "contribute to normal energy-yielding metabolism"</p> <p>"[...] contribute to the reduction of tiredness and fatigue"</p> <p>Explanation: Instead of referring to the reduction of tiredness, the provider also promotes the reduction of exhaustion.</p>
<p>Knusper banana chocolate muesli, 1-3 years (Nestlé)</p> 	<p>"Vitamin C and zinc make a significant contribution to building up the body's defences and their functional capability."</p> 	<p>"Vitamin C contributes to maintain the normal function of the immune system during and after intensive physical exercise." "Zinc contributes to the normal function of the immune system"</p> <p>Explanation: Instead of referring to the normal function of the immune system, the provider advertises the building up of the body's defences.</p>

<p>Bebivita Bärchenteller "Colourful vegetable rice with peas and turkey meatballs" (Bebivita or Hipp)</p> 	<p>"[...] with iodine important for mental development [...]"</p> 	<p>"Iodine contributes to normal cognitive function"</p> <p>Explanation: Instead of referring to normal function, the provider is advertising using mental development.</p>
<p>Zappelex with Omega 3 fatty acids (Emcur)</p> 	<p>"Docosahexaenoic acid plays an important role in creating links in the brain. Brain functions like learning and thought processes are supported in a gentle and natural way."</p> 	<p>"Docosahexaenoic acid (DHA) contributes to maintenance of normal brain function"</p> <p>Explanation: Instead of referring to normal brain function, the provider is advertising using the creation of links in the brain and the support of learning and thought processes.</p>

Table 2: Five product examples of a non-permitted enhancement of the authorised claim

4.3 Permitted claims – but still problematic

The HCVO stipulates that advertising using health-related claims may only be placed on foods that comply with the specific nutritional and physiological requirements (nutrient profile). This prevents foods that are unsuitable from a nutritional and physiological perspective through being enriched with "positive nutrients" being promoted as allegedly good for health.

In the market check, almost one in three products – ten products out of 33 foods investigated – did not comply with the consumer associations' standards. A high sugar content was found in the case of nine products, and a higher fat content in the case of one product. The oils & fats and nutritional supplements product groups investigated are not included in this observation, because, in the consumer associations' view, nutritional


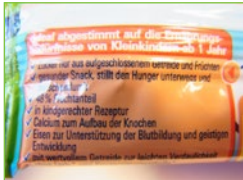
profiles do not make any sense for products of this kind. Nutritional profiles should have already been specified years ago, but, to date, no specific recommendation has been implemented. Although no nutritional profile has been published, it is the aim of this market check to review how the nutritional and physiological composition of the foods investigated on which health-related claims are declared can be classified.

The Food Standard Agency's (FSA) concept of traffic-light classification acts as the basis for the consumer associations to assess nutritional value in this market check. Values for high (red), medium (yellow) and low content (green) of fat, saturated fatty acids, sugar and salt are defined. The following table lists the areas for the high content (red):


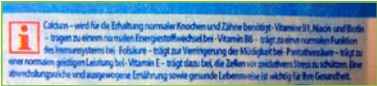




FSA's traffic light label as the basis for assessing nutritional value		
Nutrient	High content (red) foods	High content (red) drinks
Fat	> 17.5 g / 100 g	> 8.75 g / 100 g
Saturated fats	> 5.0 g / 100 g	> 2.5 g / 100 g
Sugar	> 22.5 g / 100 g	> 11.25 g / 100 g
Salt	> 1.5 g / 100 g	> 0.75 g / 100 g

Table 3: FSA's traffic light label as the basis for assessing nutritional value¹²

If a nutrient exceeds the "red limit", according to the assessment of the consumer associations, these foods should not be advertised with health-related claims.

Five product examples that exceed the limits of the FSA's nutrient profile, despite health claim		
Product (manufacturer) / product photo	Claim on label (summary)/ photo of claim + photo of nutrient table	Assessment from the point of view of the consumer associations
Kleine Entdecker wheat granola apple and grape (Nestlé) 	<p><i>"Calcium to build bones"</i></p> <p><i>"Iron to support blood formation and mental development"</i></p> 	<p>Limit of the nutritional profile for sugar (22.5 g / 100 g) is exceeded, as the sugar content is 37 g.</p> <p>Explanation: Claim should be prohibited on this product, as promoting this sugar-rich product using a health-claim is classified as wrong.</p>

¹² Guide to creating a front of pack (FoP) nutrition label for pre-packed products sold through retail outlets; eds.incl.. Department of Health, Food Standards Agency; p. 14; June 2013

<p>FerdiFuchs mini sausages (Stockmeyer)</p> 	<p>Limit of the nutritional profile for fat (17.5 g / 100 g) is exceeded, as the fat content is 24g.</p> <p>Explanation: Claim should be prohibited on this product, as promoting this fat-rich product using a health-claim is classified as wrong.</p> 	<p>Limit of the nutritional profile for fat (17.5 g / 100 g) is exceeded, as the fat content is 24g.</p> <p>Explanation: Claim should be prohibited on this product, as promoting this fat-rich product using a health-claim is classified as wrong.</p>
<p>Rabenhorst Vitesse for nerves and muscles (Rabenhorst)</p> 	<p><i>"For nerves and muscles"</i> <i>"To support nerves and muscles (...) supplemented by magnesium and the 8 B-complex vitamins. Magnesium contributes to normal functioning of the nervous system and to normal muscle function."</i> <i>"Mainly the nutrient magnesium and those of the "B complex" are essential for metabolism and the functioning of nerves and muscles."</i></p> 	<p>Limit of the nutritional profile for sugar (11.25 g/100 g) is exceeded, as the sugar content is 14.7g.</p> <p>Explanation: Claim should be prohibited on this product, as promoting this sugar-rich product using a health-claim is classified as wrong.</p>
<p>Choco Nuit drink (Peter Hollmann)</p> 	<p><i>"Chocolate drink for healthy sleep"</i> <i>"Its special sleep recipe supports the healthy function of the nervous system, puts you in the right mood for sleep and helps you to relax."</i> <i>"Vitamin B1, B3, B6 and magnesium contribute to the healthy functioning of the nervous system and, so, to relaxation." "Milk and cocoa are natural, proven domestic remedies to get you in the right mood for a refreshing night's sleep"</i></p> 	<p>Limit of the nutritional profile for sugar (11.25 g/100 ml) is exceeded, as the sugar content in the drink powder is 72 g/100 g and in the made-up drink 14.9 g/100 ml.</p> <p>Explanation: Claim should be prohibited on this product, as promoting this sugar-rich product using a health-claim is classified as wrong.</p>




<p>Knusper banana chocolate muesli 1-3 years (Nestlé)</p> 	<p><i>"Vitamin C and the essential trace element zinc make a significant contribution to building up the body's defences and keeping them functioning"</i></p> <p><i>"[...] Calcium for strong bones"</i></p> <p><i>"rich in Vitamin B1 – important for the function of the nervous system"</i></p>  	<p>Limit of the nutritional profile (22.5 g/100 g) is exceeded, as the sugar content is 24 g.</p> <p>Explanation: Claim should be prohibited on this product, as promoting this sugar-rich product using a health-claim is classified as wrong.</p>
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Table 4: Five product examples that exceed the limits of the FSA's nutrient profile, despite health claim

4.4 Problem case claims on children's products: aimed at a young target group

The children's food category came out the worst in our test compared to the other product groups. Nine out of twelve products examined, i.e. 75%, were promoted using non-permitted claims.

Children and their parents are an important target group for manufacturers when it comes to health-related claims on labels. Parents want to "do something good" for their children. Manufacturers know this and offer many products targeted in this way. The results of twelve children's food products including two from the cereals category are summarised here. Of these, twelve were clearly children's foods or convenience products for children (e.g. fish fingers), because they were either addressed to children of a specific age-group or because their advertising was clearly aimed at children. The EU Commission has permitted eleven special children's claims under Article 14(1) b of the Health

Claims Regulation. This involves "claims about the development and the health of children" for nutrients such as omega-3 fatty acids (DHA) and essential fatty acids as well as on Vitamin D, calcium, phosphorus, iron, iodine and proteins. However, these options are seldom used by the manufacturers of the products in the market check. Instead, the majority of manufacturers generally use the claims under Article 13 (1).







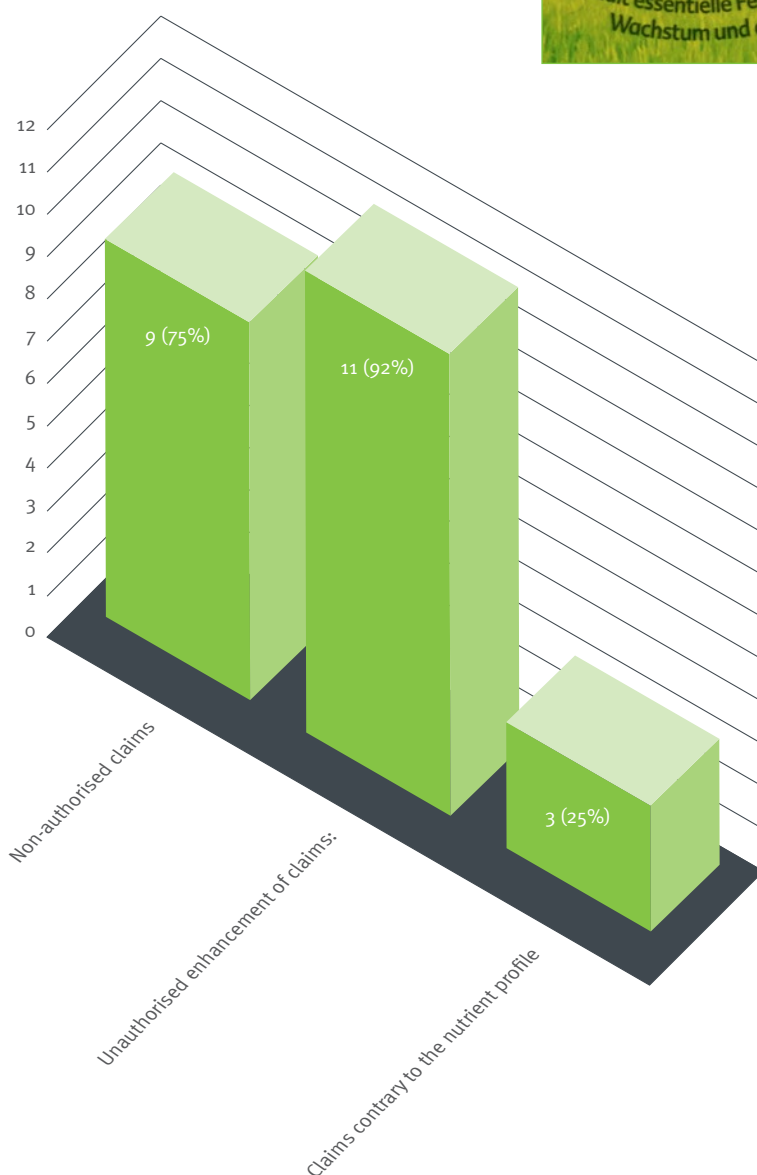
Three product examples for non-permitted claims		
Product (manufacturer)	Non-permitted claims (summary)	Assessment from the point of view of the consumer associations
<p>Bebivita Bärchenteller "Colourful vegetable rice with peas and turkey meatballs" (Bebivita, a Hipp brand)</p> 	<p>"[...] with omega 3 important for brain and nerve cells"</p> 	<p>Explanation: Health-related claims on nerve cells are not permitted for omega-3</p>
<p>Alete MilchMinis chocolate pudding, from 8 months, strawberry (Nestlé)</p> 	<p>"Calcium, magnesium, zinc for strong bones and healthy growth"</p> 	<p>Explanation: Due to the nutrient list in connection with strong bones and growth, it suggests that zinc also promotes this health improvement. This claim has not been authorised</p>
<p>Combiotik children's milk from 2 years + (Hipp)</p> 	<p>"[...] for healthy growth" (placed over the following claims in the shape of a rainbow):</p> <ul style="list-style-type: none"> ✓ Probiotic ✓ With lots of Vitamin D ✓ Vitamins A, C and D for the immune system" 	<p>Explanation: Misleading due to the way it is presented on the label: There is no permitted claim for probiotic organisms (probiotics). There are also no "growth claims" permitted for the other nutrients.</p>

Table 5: Three product examples for non-permitted claims

On 92% of the products in the children's food category, the wording also deviates so far that the consumer associations see this as a non-permitted strengthening (for examples, see Table 2).

Another offence is that three of the twelve products, i.e. 25%, have a high sugar or fat content, so that, in the view of the consumer associations, they should not be permitted to make any health-related claims (for examples see Table 4).

In addition, the use of a correctly worded child-related claim on Unilever's "Rama" margarine is inappropriate, as this is not a child-specific product. The following statement can be found on the front of the product: *"contains essential fatty acids that are important for children's healthy growth and development."*



Children's foods (total 12) come out particularly badly

Figure 3: Overview of the claims used for children's foods

4.5 Labelling deficiencies: not on the label

The HCVO requires additional mandatory elements when using health-related claims, so that consumers can better understand and classify the advertising. In Section 10, the following mandatory elements for labelling are listed:

- a statement indicating the importance of a varied and balanced diet and a healthy lifestyle
- information on the quantity of the food and pattern of consumption required to obtain the claimed beneficial effect
- where appropriate, a statement addressed to persons who should avoid using the food, and
- an appropriate warning for products that are likely to present a health risk if consumed to excess.

Labelling faults were found in 13 out of 46 products, i.e. just under 30 per cent of the sample. The cereals and children's foods product groups were particularly conspicuous due to many labelling faults – 12 of the 18 inspected foods in these two product groups were deficient, i.e. 2/3 of the products. The foods in the product groups oils & fats and milk products came out well in comparison, as no labelling faults were found in them.

4.5.1 Advertising instead of information

The most frequent cause of the faulty labelling (ten products) was the lack of a statement indicating the importance of a varied and balanced diet, which is obligatory on the label when health-related claims are made. Similarly, this mandatory notification was also used improperly by some providers, where mandatory notifications were used as advertising on the labels or included in promotional claims. So, for example, the manufacturer of a juice used the advertising slogan "*Rapp's plus antioxidants contributes to a varied and balanced diet and a healthy lifestyle*". The same also applies for the nutrient table on Knusper Müsli banana and chocolate from Nestlé, on which the mandatory information on the nutrient profile for muesli was enhanced by the claim "+ infant milk" from Alete instead of for muesli plus normal cow's milk. This suggests that Nestlé "infant milk" is supposedly more valuable to health than cow's milk.

4.5.2 Nutrients: contents too low or information on quantity missing

Health-related claims may only be made if significant amounts of nutrients are also present in the foods they promote. Formerly, the values were stipulated in the Food Labelling Regulation. Since 13 December 2014, the values in Annex XIII of the LMIV apply: For example, in the case of drinks, 7.5% of the daily reference amount per 100 ml is stated as a significant amount or 15% in a portion if the packaging consists of a single portion. The reference amount per day is also stipulated in Annex XIII of the LMIV.

The market check also showed that three drinks' manufacturers were working a fiddle in terms of the portions stated. Providers sometimes use the whole bottle as one portion in order to be able to use a promotional claim.

Calcium 20 mg/2% /
Magnesium 7,5 mg/2%*/**
*% der empfohlenen Tagesdosis (RDA).
** diese Menge hilft bei Verzehr von 0,75 L den Mineralienhaushalt eines Freizeitsportlers auszugleichen.
100 ml entsprechen im Mittel 0,4 BE.

hohes C Naturelle Sport – das gesunde und leckere Sportgetränk mit Magnesium und Calcium gleicht bei sportlichen Aktivitäten den Mineralienhaushalt wieder aus und unterstützt die Muskelfunktion.



Example: The drink "hohes C naturelle Sport" by Eckes Granini contains only 2% of the reference amount of the daily requirement for magnesium or calcium per 100 ml (for comparison: normal cow's milk contains 15% calcium per 100 ml) and is therefore significantly below the required 7.5% per 100 ml. However, this amount would

be required to allow the health-related claim "*Calcium balances minerals during sporting activities and supports muscle function*" to be made. As the LMIV permits the less stringent option of 15% per portion, the manufacturer simply defines the volume of the bottle (750 ml) as a portion and not 250 ml as is usual. With the aid of these trick calculations, very low amounts of calcium and magnesium are sufficient to be able to print the stated health-related claim on the label.

Information on the amount of the advertised nutrients is missing either wholly or in part. One example of this is the Kinder Beeren-Müsli from Hipp, as no nutrient information is given on iodine, iron and zinc, although they are specifically used in the advertising. The nutritional supplement "pumpkin plus cranberry" is advertised using the presence of Vitamin C. However, this is not verifiable for consumers as there is no information about Vitamin C in the nutritional profile. This information is, however, required in order to check whether the nutrients are contained in a significant amount in the particular product as described.

4.6 Added nutrients: mainly superfluous and not required for health

In the case of the majority of products, vitamins, minerals or polyunsaturated fatty acids were advertised using health-related claims. These claims rarely related to fibre or proteins. In the case of 56% of the foods (22 out of 39 products), the nutrients did not come from the natural ingredients in the foods but were added artificially. Food supplements were not included in this aspect. In the case of foods with claims on vitamins and minerals, the rate was as high as around 90%. That means that these foods naturally contained only small

amounts of the promoted nutrients. Only in the case of products with health claims on polyunsaturated fatty acids were these present as natural ingredients, e.g. in the form of plant fats, oils or in fish ingredients.

In the case of vitamins, foods were mainly enriched with vitamin C and vitamins of the B-complex. Added minerals were mainly calcium and magnesium. Iodine, iron and zinc were used less frequently.

Number of vitamin and mineral additives in relation to the average requirement			
Green: sufficient provision present, red: provision not optimal, green/red: inconsistent			
Vitamins about which a health claim was made*	Number of mentions	Minerals about which a health claim was made	Number of mentions
Vitamin C	9	Calcium	9
Vitamin B1	6	Magnesium	8
Vitamin B3 (Niacin)	5	Iodine	5
Vitamin B12	5	Iron	4
Vitamin B6	4	Zinc	4
Folic acid	4		

Table 6: Number of vitamin and mineral additives in relation to the average requirement¹³

* Only the vitamins that are promoted in more than 3 products are listed.

¹³ National Consumption Study II Results report, Part 2: The German survey on nutrition for young people and adults, published by: Max Rubner-Institut, Federal Research Institute of Nutrition and Food 2008; pp.: 107-143; accessible at: http://www.was-esse-ich.de/uploads/media/NVSII_Abschlussbericht_Teil_2.pdf (Version: 16 December 2014)

The National Consumption Study II (NVS II)¹⁴ indicated that vitamin provision is generally very good in Germany. The only exception was folic acid. It was particularly clear in the case of vitamin C, the extent to which the focus was on the product image and not really the health benefit for consumers. This is the vitamin that is most frequently used and promoted. According to the results of the NVS II, almost all consumer groups are well provided with this vitamin. For men and women of all age groups, the average vitamin C intake was even significantly above the recommended amount.

Even in the case of B vitamins, the supply was generally fully sufficient. The industry must accept a certain amount of criticism as it does not focus its enhancements on the nourishment situation of the population, but clearly on marketing-related image considerations.

Only folic acid has a certain entitlement to be added, as it is only provided in sub-optimal amounts. However, folic acid supplements in foods play a subordinate role according to our study: Only 12% of the vitamin claims related to folic acid.

The picture is even more mixed for the minerals most frequently used in foods: The most numerous registered claims were for calcium, and provision, according to NVS II, is significantly below the recommended amount for younger and older women. While for iodine and, in some cases, for iron the provision is not optimal, the provision of magnesium and zinc should be mainly viewed as sufficient.

The addition of vitamins and minerals is generally not costly. The image benefits associated with this for

manufacturers are, however, very great, because these additions make it possible to make health-related claims. An example of this: The estimated raw materials costs for Vitamin C are well below EUR 0.1 cents for 100 mg (reference amount per day)!¹⁵ Thus it is easy to advertise foods with a health image without incurring a great deal of cost. Vitamins and minerals from natural ingredients such as fruit and vegetables are always more expensive.

¹⁴ National Consumption Study II Results report, Part 2: The German survey on nutrition for young people and adults, published by: Max Rubner-Institut, Federal Research Institute of Nutrition and Food 2008; pp.: 107-143; accessible at: http://www.was-esse-ich.de/uploads/media/NVSII_Abschlussbericht_Teil_2.pdf (Version: 16 December 2014)

¹⁵ Price example Amazon.de: Golden Peanut Ascorbinsäure Vitamin CE 300 1kg. Price: €10.90 Accessible at: <http://www.amazon.de/Golden-Peanut-Ascorbins%C3%A4ure-Vitamin-25kg/dp/B0088ZC1U6> (Version: 16 December 2014)

4.7 Special case nutritional supplements: permitted claims as a cover for rejected claims

As the large majority of the health claims made were rejected by the EFSA, the earlier option for the providers to use these for advertising has been withdrawn. In order to be able to continue to advertise high-selling products

using health-related claims, they are adding nutrients to their products for which health claims are permitted.

However, the old nutrients that can no longer be advertised and for which claims have been rejected are still in the products because they have a high level of recognition, e.g. cranberry extract for cystitis. They are still used for advertising purposes, without

Three product examples of nutritional supplements: permitted claims as a cover for rejected claims				
Product (manufacturer)	Health-related statement on product	Permitted for	Refused for	Source for rejection
Doppelherz aktiv eye capsules (Queisser Phar.) 	<i>"contributes to maintaining normal vision in daytime and at night"</i> 	Vitamin A and zinc, both are contained in the product	Lutein and zeaxanthin	Rejected by the EFSA (2010;8(2):1492) (http://www.efsa.europa.eu/en/scdocs/doc/1492.pdf)
Gelenk-Aktiv (Salus) 	<i>"for healthy cartilage"</i> 	Vitamin C	Green lipped mussel powder	Rejected by the EFSA (2011;9(6):2247): http://www.efsa.europa.eu/en/scdocs/doc/2247.pdf
Pumpkin plus cranberry (Abtei) 	<i>"Supports healthy bladder function and the pelvic floor"</i> 	Is ascribed to the added pumpkin, permission by EFSA has not yet been granted	Cranberry	Rejected by the EFSA (2011;9(6):2244): http://www.efsa.europa.eu/en/scdocs/doc/2244.pdf

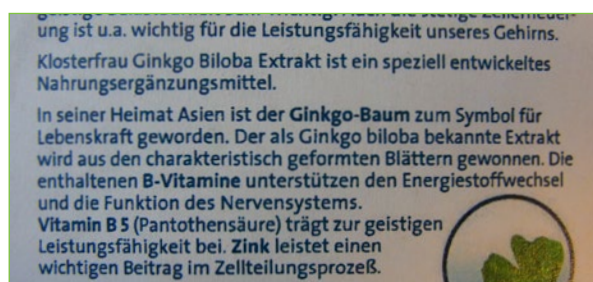
Table 7: Three product examples of nutritional supplements: Permitted claims as a cover for rejected claims

being able to state their specific benefits. However, they are mainly used in the context of the permitted claims for other nutrients. For 85% (six out of seven nutritional supplements examined), permitted claims were used as a cover for rejected claims. There is the danger that consumers, who have trusted for years in the claims that are not scientifically founded, will be misled.

In addition, in the case of nutritional supplements, there is another problem of the Health Claims Regulation, which has not been completely implemented. The review of the health claims relating to botanicals has been overdue for many years. So, it is possible to continue to advertise, primarily, nutritional supplements using unproven claims.

Example: Ginkgo

The nutritional supplement ginkgo extract (Klosterfrau) is advertised with the words *"to support mental performance"* and *"to support memory and concentration under heavy mental stress"*.



However, there is not yet any scientific proof of the

effectiveness of ginkgo in nutritional supplements. In 2009, for example, the US medical journal reported that taking ginkgo extract does not stop cognitive degeneration in old age. This result was based on a randomised placebo-controlled study by the US National Center for Complementary and Alternative Medicine, in which 3,069 people aged between 72 and 96 were included.¹⁶

However, B vitamins have been added to the nutritional supplement, e.g. vitamin B5, which can contribute to "normal mental performance" (permitted claim), but a cursory glance by a consumer could relate the health-related claim on "memory + concentration" to the effects of the ginkgo leaf extract. Whether advertising using the claims actually constitutes a breach of the law can only be clarified through a court judgement. In a similar case, the Düsseldorf District Court gave a judgement on 28 August 2014, ref. 14c O 138/13, to a case and did not view it as a breach of applicable law in the health-related advertising for a different nutritional supplement with ginkgo active ingredients. In the view of the consumer associations, this is not a judgement within the meaning of consumer protection.

¹⁶ Snitz, Beth; O'Meara, Ellen et al.: "Ginkgo biloba for preventing cognitive decline in older adults; Journal of the American Medical Association; 2009-Vol 302, No. 24; pp.2663-2670

5 EVALUATION OF THE RESULTS

The following results provide an answer to the research questions posed in Section one.

1. High rate of breaches against the Health Claims Regulation: Although the statutory framework is defined clearly and equivocally, 40% (20 out of 46 products) of the foods inspected had claims that breach the EU Regulation. In the case of children's foods it was as high as 75% (nine out of twelve products).
2. Non-permitted enhancement of the health-related claim: In the case of half of the inspected foods (22 out of 46 products) there was a non-tolerable strengthening of the permitted claims. In the view of the consumer associations, an identical wording that corresponds to the text in the Regulation would be the only way to inform consumers truthfully. The food industry's marketing departments must be prevented from exaggerating and creating their own wording, otherwise it can generate different expectations among consumers and it cannot be ruled out that they will be misled.
3. Nutritional profile is urgently required: Almost one in three products (10 out of 33 products) that were inspected regarding their nutritional profile contained too much sugar or fat for health-related claims, in the consumer associations' view, to be declared on the label. Therefore it is clearly these products in particular that should not be conveying a particularly healthy image.
4. Exaggerated health-related claims on children's foods: 75% of the separately considered children's foods came out badly, because health claims are frequently exaggerated or false (on nine out of twelve products).
5. Faulty labelling of information on nutrients and amounts: In the case of almost one in three products (13 out of 46 products) the nutrient details were not labelled or not sufficiently present to justify a claim.
6. Superfluous added vitamins: In the case of over half (22 out of 39 products), nutrients had been artificially added. In the case of foods with claims on vitamins and minerals, the rate was as high as around 90%. Added vitamins are mainly superfluous, as consumers are generally well provided with vitamins. Folic acid is one exception. Only 12% of the claims on vitamins relate to folic acid, which cannot be regarded as superfluous for all target groups.
7. Permitted claims act as a cover for rejected claims: Food supplements are often advertised using health-related claims on substances (botanicals), the effect of which has not yet been scientifically proven or has been rejected. In addition, some providers take a cunning route and add specific ingredients to their products for which there is an authorised claim. Thus they can give their products a healthy image anyway: Permitted claims are frequently used as a cover for rejected claims.

6 CONCLUSION

Although the proliferation of scientifically unproven claims has been halted by the EU Regulation (Health Claim Regulation), there are still no regulations existing for many key areas.

To protect consumers from being misled and deceived by health-related claims on food labels, the following measures are indicated:

- The food industry is up in arms against the definition of nutritional profiles because, without appropriate regulation, they can enhance the healthiness of products with high sugar or fat content through the use of claims. These profiles have been waited for since 2009. They must be implemented urgently and, especially, promptly, as, without this key element of the Regulation, the HCVO is missing its target and will continue to contribute towards consumers being deceived.
- The monitoring of foods should direct its attention particularly to non-permitted health-related claims and their wording and punish breaches appropriately.
- The still overdue health-related evaluation of botanicals must be made without delay in order to avoid consumers being misled and deceived with these active ingredients.
- Manufacturers must rectify faulty labelling through incorrect or missing information on nutrients and their amounts, as health-related claims cannot be monitored in these cases.
- Maximum values for enrichment with micro-nutrients are required in order to protect consumers from an uncontrolled smorgasbord of nutrients and individual cases of overdosing, as it is asking too much of consumers to work this out for themselves.
- Superfluous additions of vitamins and minerals do not improve the nutritional situation and should be stopped if they do not have any health benefits.

verbraucherzentrale