1. **Exchange of views on a notification (Directive 2000/13/EC) by Germany of a Second Order amending the Order on fruit juice and other regulations under food law (2010/089/D).**

On 5 February 2010, the German authorities notified under Article 19 of Directive 2000/13/EC the draft Order providing for *inter alia* mandatory health warnings on energy drinks.

The German delegation presented the notified measure. They explained that the draft Order contains the rules for energy drinks. In particular, Section 6(4) provides for the mandatory health warnings on energy drinks “stipulating that the consumption of considerable quantities of these products, especially during heavy sporting activities, and the simultaneous consumption of alcoholic beverages should be avoided”. The German delegation also explained that such measure is necessary for reasons of precautionary consumer protection in terms of health and for providing consumers with comprehensive information regarding the use of energy drinks.

The Commission clarified the procedural aspects. In particular, it was explained that mandatory health warnings on energy drinks containing caffeine are currently assessed by the Commission under the procedure of Directive 98/34/EC, since Directive 2002/67/EC harmonises the labelling requirements for beverages with high caffeine content, while for mandatory health warnings on energy drinks containing taurine, inositol and glucuronolactone, the procedure of Directive 2000/13/EC is applicable. As regards the substance, the Commission referred to the recent Opinion of the European Food Safety Authority (EFSA) according to which there is no conclusive scientific evidence of a proven link between a negative effect on health and the consumption of considerable quantities of energy drinks containing taurine and glucuronolactone in combination with alcohol intake and/or intensive physical activity.
Some delegations indicated that, while they could support the principle of health warnings on the labelling of energy drinks, they would prefer that this issue is considered at the EU level in order to adopt a harmonised approach.

Finally, one delegation raised the issue of the warnings on the labelling of all categories of foodstuffs with high caffeine content. The Commission recalled that the labelling of caffeine is harmonised by Directive 2002/67/EC. The Commission took note and pointed out that all non-harmonised national provisions governing the labelling and the presentation of foods should be justified on one of the grounds listed in Article 18 of Directive 2000/13/EC. The Commission also drew the attention of the delegations to the ongoing revision of Directive 2000/13/EC in the context of the Proposal for a Regulation of the European Parliament and the Council on the provision of food information to consumers (COM (2008) final 40) that could offer a forum for the discussion on health warnings labelling in general.

Pursuant to the procedure of Article 19 of Directive 2000/13/EC, the Commission will express an opinion regarding this notification by 6 May 2010, taking this exchange of views into consideration.

2. **Exchange of views on a draft Commission Regulation refusing to authorise a health claim made on food, other than those referring to the reduction of disease risk and to children's development and health (Art. 13(5) of Commission Regulation (EC) No 1924/2006 of 20/12/2006) (Right of scrutiny of the European Parliament under the regulatory procedure with scrutiny).**

The draft Commission Regulation, refusing to authorise the use of one health claim provided for in Article 13(5) of Regulation (EC) No 1924/2006, was submitted to the Standing Committee in accordance with Article 18(5) of that Regulation. The application was based on newly developed scientific evidence and requesting the protection of proprietary data, as provided for in Article 13(5) of that Regulation.

The draft Regulation will be subject to further discussions and put to the vote of the Committee in a future meeting.


The draft Commission Regulation, refusing to authorise the use of two health claims provided for in Article 14(1)(b) of Regulation (EC) No 1924/2006, was submitted to the Standing Committee in accordance with Article 17(1) of that Regulation.

As the two health claims to be refused referred to brand names, the Commission recalled that vigilance from the national competent authorities is needed when enforcing the regulations authorising and/or rejecting health claims, in particular with regard to rejected "product specific" health claims when the food could still benefit from authorised generic claims.
The draft Regulation will be subject to further discussions and put to the vote of the Committee in a future meeting.

3a. Announcement of a Commission Decision authorising physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of feed and food business operators in Cyprus.

The Commission informed the Standing Committee of the imminent adoption of the Decision authorising the competent authorities of two of the Cypriot Designated Points of Entry (i.e. Larnaca Airport and Limassol Port) to carry out the physical checks as required by Regulation (EC) No 669/2009 at approved feed and food business premises. The Commission explained that the Decision was taken following a request from Cyprus referring to the specific geographical situation of the above mentioned DPEs as foreseen by Article 9 (1) of the Regulation, in addition to the small size of the island. Sufficient assurances had been equally provided as to the fulfilment of the conditions listed in the same provision.

In response to a question raised by a delegation as regards issuance of guidelines on the Regulation as a whole, the Commission clarified that a guidance document is being currently drafted with a view to presenting it to Member States in due time.


The Commission presented the draft Directive which aims at correcting an error in the Spanish language version of Council Directive 2001/112/EC, as amended by Commission Directive 2009/106/EC. Namely, following the adoption of the latter Directive it was discovered that in the Spanish language version Annex V contains an error where the Brix value for mandarin is set at 1,2 instead of the correct value of 11,2, as it was in other language versions.

The Committee delivered a favourable opinion by unanimity.


The draft Commission Regulation firstly presented to the Standing Committee 26 January 2010 aims at adopting a decision in accordance with Article 18(5) of Regulation (EC) No 1924/2006, refusing to authorise the use of one health claim provided for in Article 13(5) of that Regulation. The application was based on newly developed scientific evidence and requesting the protection of proprietary data, as provided for in Article 13(5) of that Regulation.
The Committee delivered a favourable opinion by qualified majority (in favour: 338 votes; abstention: 7 votes).


The draft Commission Regulation, firstly presented to the Standing Committee on 26 January 2010, aims at adopting a decision, in accordance with Article 17(1) of Regulation No (EC) 1924/2006, authorising two health claims referring to children's development and health, and refusing the use of three health claims provided for in Article 14(1)(a) and (b) of that Regulation.

As the two health claims to be authorised concerned iodine and iron, a discussion took place on the related issue of setting maximum amounts for vitamins and minerals added to foodstuffs. In that respect, one delegation suggested to address the issue of over dosage in the draft guidance document for authorised health claims. The Commission indicated that discussions will start again on the setting of maximum amounts in the second half of this year, and that the suggestion was noted and will be further examined when the guidance document will be discussed.

The Committee delivered a favourable opinion by unanimity.


The draft Commission Regulation was submitted to the Standing Committee, in accordance with Article 13(3) of Regulation (EC) No 1924/2006, authorising the use of the health claims favourably assessed by EFSA in its first series of opinions received by the Commission and Member States on 1st October 2009.

The Commission recalled the rationale for the progressive adoption of the Union list of permitted health claims referred to in Article 13(3), namely that the unexpected high number of submitted claims had extended significantly the time needed for EFSA to assess these claims and that it had necessitated publication of EFSA advice in series. Therefore, in order to protect the consumers against misleading claims and to provide clarity in the market, it is considered more appropriate to adopt a Union list of permitted health claims which have been evaluated by EFSA rather than waiting for the reception of all the opinions from EFSA. The Commission does not consider as a tenable alternative staying passive for years as regulators while claims not in
conformity with the Regulation continue to be used and therefore misleading consumers.

While a majority of the Member States expressed their support to the Commission's approach, two Member States expressed their concerns on such approach and its implications for the market and enforcement authorities.

The Commission sought the view of the Member States on aspects related to the wording of the claims favourably assessed by EFSA and for which the proposed wording could be difficult to understand for the average consumer. While sharing this concern, the Commission recalled the difficulty to objectively set the threshold for consumer understanding. To this end, the Commission noted that linguistic differences may impact the perception of the claims, that health claims are to be permitted with a degree of flexibility in relation to the wording and that the final judgment on the consumer understanding is to be made by the enforcement bodies in the Member States taking into account the context in which the health claims are being used.

On the basis of such considerations, the Commission expressed its intentions to use the wording suggested by EFSA in its opinions and only to refine it, if it can be demonstrated necessary to meet the requirements of the Regulation and if agreement among Member States on alternative wordings could be reached. While expressing concerns in relation to the wording for a number of claims, Member States expressed their support to this approach.

For a number of claims favourably assessed, EFSA has commented in the opinions that for the nutrients subject of the assessment there is no evidence of inadequate intakes in the European population. Based on this some Member States questioned the relevance for the consumers of such claims. The Commission maintained that the Regulation does not provide for the possibility to reject the use of claims on such grounds nor to reflect such consideration in the authorisation of the claims in terms of imposing additional labelling requirements.

The draft Regulation will be subject to further discussions and put to the vote of the Committee in a future meeting.


As Ferric Sodium EDTA was not on the market before the entrance into force of the Novel Food Regulation (Regulation (EC) No 258/97), authorisation under the Regulation is required before it may be placed on the market. This novel food is a source of iron and may only be used without prejudice to Regulation (EC) No 953/2009, Regulation (EC) No 1925/2006 and Directive 46/2002/EC.
There was discussion concerning the conditions of use of Ferric Sodium EDTA. However, additional measures to ensure that by placing on the market Ferric Sodium EDTA the Acceptable Daily Intake (ADI) of EDTA or iron will not be exceeded by the consumers have to be taken under the relevant legislation.

Editorial amendments to the draft Decision were agreed, in order to emphasise that the draft Decision was without prejudice to Regulation (EC) No 953/2009, Regulation (EC) No 1925/2006 and Directive 46/2002/EC.

The Committee delivered a favourable opinion by qualified majority (yes: 267 votes; no: 37 votes; abstention: 41 votes).