



*EUROPEAN FOOD LAW ASSOCIATION (EFLA)  
FEDERALIMENTARE & ASSOLOMBARDA*

## **WORKSHOP**

# **"Food products and information to the consumers"**

**Milano, June 6 2011 from 10 a.m. to 1 p.m.  
Assolombarda - Meeting Room Falck (Sala Falck)**

Draft program:

- |                    |  |
|--------------------|--|
| <b>9:30</b>        | <b>Attendance registration</b>   |
| <b>10.00</b>       | <b>Welcome</b><br>Alessandro Artom, EFLA Vice President  |
| <b>10.10</b>       | <b>Presentation of Milan World Expo 2015 on human feeding</b><br>Silvio Ferrari, President Food section of Assolombarda and WG Coordinator<br>"Nutrition" Special Project EXPO 2015 - Confindustria, |
| <b>10:30</b>       | <b>"New requirements and answers of Food Industry"</b><br>Daniele Rossi, General Director of Federalimentare – Italian Federation of Food Industries   |
| <b>10.50</b>       | <b>"Which communication to consumers?"</b><br>Mario Abis, Professor of IULM University Milan – Science of Communication Faculty  |
| <b>11.10</b>       | <b>"EU Regulation on the provision of food information to consumers"</b><br>Ferdinando Albisinni, EFLA Council   |
| <b>11.30</b>       | <b>"Nutrition and Health Claims"</b><br>Dietrich Gorny, EFLA Vice President  |
| <b>11.50</b>       | <b>"Antitrust Case Law on misleading advertising"</b><br>Luciano Di Via, Law firm Bonelli Erede Pappalardo   |
| <b>12.10</b>       | <b>"Risk Communication"</b><br>Vicente Rodriguez Fuentes, EFLA Council   |
| <b>12.30-13.00</b> | <b>Discussion and Conclusion</b>   |
| <b>13.00</b>       | <b>Buffet Lunch</b>  |
| <b>13.30-15.00</b> | <b>EFLA Council Meeting</b>  |

**In cooperation with AIDA – IFLA Italian Food Law Association**

## WELCOME

Ladies and Gentlemen, dear colleagues,

welcome to our Workshop on “**Food Products and Information to the Consumers**”. It is a great pleasure to receive you all here today and I thank you for your kind participation and your interest in EFLA’s activity.

A special thanks to **Assolombarda** and its food sector responsible **Mr Bottelli**, for giving us the honour to make use of this beautiful conference room and for their kind cooperation and a special thanks to **Federalimentare**, the Italian Federation of Food Industry and its General Director Mr Daniele Rossi for having promoted and followed the organization of the event. Thanks also to Leggi d’Italia Professionale editor for the conference materials and a special thanks to Alice, Elisa and Giovanna of my law firm for their strong support to this Workshop.

I also would like to thank **AIDA – IFLA Italian Food Law Association** for having supported EFLA in this Workshop, in order to offer the opportunity to the participants, legal scholars and practitioners of different European Member States, to discuss relevant topics of common interest and to share opinions and proposals with food producers operating in all of the production stages, processing and distribution of food.

Now, let me briefly introduce you the **European Food Law Association**, the main character of this meeting. EFLA is an international non-profit making organization, whose essential goal is studying and promoting Food Law. In this regard, Food Law is becoming more and more a complex system, in which are involved on different levels national, regional, European and International sources, as well as soft law instruments, which are assuming more and more increasing importance. In particular,

European Food Law has been thought as a separate uniform sector with Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

EFLA's task is also to contribute to the Food law's development and international harmonization with a special attention to its specificity, its interdisciplinary nature and, above all, its main function, the protection of the consumers. EFLA activities include workshop, congresses, seminars and information meetings, which represent the means to attain the goals of the Association: to contribute to the development and to a better knowledge of Food Law.

**EFLA** has chosen Milan for the today's Workshop on "Food Products and Information to the Consumers", because Expo 2015 in Milan will be mainly devoted to the area of Food and Alimentation in all its aspects, and that Regione Lombardia has a well known reputation in the food industry.

In this regard, the Workshop will be open by the speech of **Dr Silvio Ferrari**, President of the Assolombarda's Food section and WG Coordinator "Nutrition" Special Project EXPO 2015, that I would like to thank. He will present the **Milan World Expo 2015 on human feeding**, an extraordinary universal event that will be focused on the concept that everyone on the planet should have access to food that is healthy, safe and sufficient.

**"New requirements and answers of Food Industry"** will be the subject exposed by **Daniele Rossi**, General Director of Federalimentare - Italian Federation of Food Industries -. In this regard, the Italian Food Industry is ready to satisfy national and international consumers' requests and needs, by presenting safe products of great quality reflecting Italy's tradition on food and beverages. The Food and Drink

Industry is committed to providing consumers with science-based, clear and non-judgemental information from which they can make informed food choices enabling them to evaluate a product's place in a balanced way.

It will follow **Professor Mario Abis** from the IULM University of Milan who will talk about **communication to the consumers**. An analysis of different kinds of communication means, which have the task to inform the consumers correctly on the topics and matters linked with food, mainly using the web and new forms of direct communication.

The fourth speech will concern “**EU Regulation on the provision of food information to consumers**”. **Professor Ferdinando Albisinni**, member of both EFLA and AIDA Council, will focus on the proposal of the EU Commission of January 2008 for a new regulation of the European Parliament and of the Council, regarding the information to the consumers of food products. The proposal aims to ensure food safety, protect human health and secure the functioning of the internal market for food. In order to do this, it aims to streamline the authorization procedure, develop a more adjusted safety assessment system for traditional food from third countries, which is considered as novel food under the current Regulation, and clarify the definition of novel food, including new technologies with an impact on food.

**Dietrich Gorny**, EFLA Vice-President, will speak us about “**Nutrition and Health Claims**”, focusing on the Regulation No. 1924/2006, which deals with all nutrition and health claims made in commercial communications on foods (labeling, presentation and advertising) that are delivered to the final consumer. This subject represents a very important part of EU Food law, because a huge number of foods labelled and advertised in the EU bear nutrition and health claims. The claim needs the prior authorization of the national competent Authority and the EFSA – European Food Safety Authority's binding opinion, when it is referred to reduction of risk

factor or to children development. In this perspective, EFSA shall verify that the proposed wording of the health claim is substantiated by scientific data and give advice on whether the proposed wording of the health claim is understandable and meaningful to the average consumer.

An interesting subject is the one that will be exposed by **Luciano Di Via**, Partner of Law Firm Bonelli Errede Pappalardo: “**Antitrust Case Law on misleading advertising**”. The Italian Antitrust Authority has always played an important role in fighting misleading advertising. In the particular field of food products, this role has to be stronger than it is in the other advertising fields checked by the Authority, because consumers’ protection is involved.

The last speech we are going to hear is about “**Risk Communication**”. **Vicente Rodriguez Fuentes**, member of EFLA Council, will explain Regulation 178/2002, which has provided the basis for the assurance of a high level of protection of human health and consumers’ interest in relation to food. In this regard, a special attention will be dedicated to the balance between the protection of public health by providing information to the public concerning a potential health risk, and the protection of the reputation of companies and products.

At the end of the speeches it will follow a brief discussion on the themes of the Workshop, during which all of you will be able to ask questions to the speakers and discuss with them.

Thank you again for your participation, I yield the floor to the esteemed Dr Silvio Ferrari and I hope to see you all in Sevilla on September 2012 in occasion of our EFLA Biannual Conference.

Alessandro Artom

Milan June 6, 2011

**JOINT WORKSHOP**  
**Food Products and Information to the Consumers**

**Milan, June 6, 2011**

***Presentation of Milan World Expo 2015 on human feeding***

***Silvio Ferrari, President Food section of Assolombarda and WG Coordinator***  
***"Nutrition" Special Project EXPO 2015 Confindustria***

**ABSTRACT**

The Expo is a non-commercial Universal Exposition. The first Expo was held in London in 1851 and was such a success that other nations were encouraged to organize similar events like the Paris Expo in 1889 for which the Eiffel Tower was designed and built. Each Expo has a universal theme. More than displaying major technological novelties the Expo's role is oriented towards interpreting the collective challenges to which mankind is asked to respond. The international organization which regulates the frequency, quality and progress of the event is the Bureau International des Expositions (BIE) set up under an international convention which was signed in Paris in 1928. Currently some 157 nations are BIE members.

On 1<sup>st</sup> December 2008, fulfilling the commitments taken by Italy to the BIE in presenting Milan's candidature as the host city of the 2015 Universal Exposition, Expo 2015 S.p.A. was set up.

Milan is a city of art, world fashion and design capital with a major global influence in commerce, industry, music, sport, literature, art and media, but also the largest urban area in Italy with a population of 4 million (1,310,000 for the proper city), and an international and cosmopolitan city: 13.9% of Milan's population is foreign born. Lombardy is also the largest agricultural area in Italy and the second largest in Europe after The Netherlands.

The Milan Expo will start on 1<sup>st</sup> May 2015 and end on 31<sup>st</sup> October and consist of six months of performances, encounters, conventions and other events on a site which will be entirely dedicated to this extraordinary event.

The Expo Milano 2015 will be considered the most important event from now to 2015 with about 20 millions expected visitors (around 30% foreigners) and 130 participant Countries. There will be global investments at the city and regional level (11.8 billion Euros). The Exhibition Site area will be 1.1 million square meters and there will be 70.000 new jobs, 7.000 events, 36.000 volunteers

The Expo Milano 2015 "Feeding the Planet, Energy for Life" will provide visibility for tradition, creativity and innovation in the field of nutrition, inspired by themes which have already been developed in earlier editions of the Expo and adapting them in the light of new global scenarios at the heart of which there is the right for the entire planet to have access to healthy, safe and sufficient food.

Food is the vital energy of our planet and is necessary for sustainable development based on correct and constant nourishment of the body, on the respect for fundamental practices of life for each human being, and on health.

World population is increasing and new developing Countries (where the agricultural system are more fragile) are increasing their request of meat. In the same world each year CVD causes over 2.0 million deaths in the European Union, nearly half of all deaths (42%); over 48 million adults (7.8% of the population) aged 20 to 79 years in Europe live with diabetes; in Italy 9% of adults are obese, 27% of boys and 25% of girls between 5 and 17 are overweight or obese.

People all over the world are recognising that diet is important to their health: consumers are looking for foods to counter poor health caused by busy lifestyles, insufficient exercise and fast food. As a consequence, in wealthy and developed countries, functional foods are meeting specific health needs such as bone health and cardiovascular diseases.

Heart health, weight management, bone and joint health, digestive health, energy management and glycemic control include top consumer concerns because they can be improved through a nutritious diet and functional foods and beverages.

For all these reasons Expo Milano 2015 "Feeding the Planet, Energy for Life" will represent a unique opportunity for the Italian food and drink Industry promotion and enhancement of excellence in all business, industrial and scientific located on our territory in the food sector. In order to seize this important opportunity, Confindustria established a Special Project coordinated by Diana Bracco structured in seven working groups: Nutrition, International Promotion, Cultural Tourism, Attractiveness and Receptiveness, Expo Generation New Professions, Mobility and Networks and Innovation and Eco – Sustainable Development.

The mission of the group on Nutrition is to promote Italian excellence, including at the regional level, in terms of quality and food safety, innovation in industry and research in the agri-food and biodiversity. The territory is one of the keywords, and its excellence.

The quality of the Italian cuisine is well known and appreciated all over the world. Italian food is loved because it is healthy; it is authentic, because Italians' passion for the quality and taste of food, their regional cuisine and produce, the country's biodiversity and the health of its people and animals are all part of the Italian culture of well-living. The Italian food and drink Industry (the nation's second largest) includes no fewer than 32,300 family firms and medium-sized companies, half a million workers, and an annual turnover of €124bn. This ingredient of Italian excellence stems from centuries spent honing farmers' skills, refining production methods and improving agriculture management methods.

In order to get ready to Expo 2015, the group on Nutrition of the Special Project of Confindustria on Expo 2015 organized a roadmap of focused events towards 2015: "Italian Food Industry and Functional Food: Tradition presents well-being" (Milan, 11th June 2009), "Christmas event on traditional food" (Rome, 15th December 2009), "EXPO 2015 - Feeding the Planet. Nutrition, Well-Being, Biodiversity & Sustainability" within Cibus 2010 and "the culture of knowledge and know-how to increase the value of excellences at territorial/district level" (Parma and Piacenza, 12<sup>th</sup> May 2010), "Internet and Innovation within the food chain" (Milan, 22<sup>nd</sup> March 2011).

The roadmap of the group on Nutrition will foresee other important steps, such as the event with FAO within the FAO World Food Week 2011 on October 2011 in Rome and a new conference within Cibus 2012.

## JOINT WORKSHOP

Food Products and Information to the Consumers  
Milan, June 6, 2011

### ABSTRACT

*Daniele Rossi, Director General of  
FEDERALIMENTARE – Italian Federation of  
Food & Drink Industries*

#### ***“New requirements and answers of Food Industry”***

The Food and Drink Industry is the largest manufacturing sector in Europe with an annual turnover of €56 billion, some 4.2 million employees and 310,000 companies (over 99% of which are SMEs), and represents the second Manufacturing Industry of our Country with a turnover of 124 billion euro (of which 21 in export) and 32,300 companies - of which 6,500 with more than 9 employees and 2,600 with more than 19 employees - with over 410,000 employees. Industry buys and processes 70% of the national agricultural raw materials and is generally recognized as the ambassador of Made in Italy in the world, considering that almost 80% of the Italian agro-food export is represented by high quality industry brands.

The Food and Drink Industry is committed to providing consumers with science-based, clear and non-judgemental information from which they can make informed food choices enabling them to evaluate a product's place in a balanced diet. At this regard it is important to focus on the proposal of revising existing EU labelling rules, which follows in the spirit of better regulation and focuses on simplifying existing legislative measures and cutting administrative red tape; on the provision of mandatory nutrition information on the 'big 8 nutrients' per 100g/ml on the back-of-pack in accordance with current labelling rules, allowing for full comparability between products; on a Regulation which foresees full harmonisation at the EU level, while providing flexibility for manufacturers to include additional, voluntary information as appropriate; on a pragmatic approach on the origin labelling provisions, without adding further legal requirements; on the legibility issue dependant on a number of inter-related factors that extend beyond font size.

Other priorities issues for the Food and Drink Industry are Innovation and Research. The preferences of consumers for quality, convenience, diversity and health, and their justifiable expectations of safety, ethics and sustainable food production serve to highlight the opportunities for innovation. A coherent research strategy for the future must be developed based upon the shared vision of the diverse stakeholders and the Technology Platform “Food for Life” plays a role of paramount importance both at European (European Technology Platform “Food for Life”) and at



national level (National Technology Platform “Italian Food for Life”). A key issue is the important role that diet plays in determining population health outcomes, both adverse and beneficial. The challenges that remain to delineate the relationships between diet and health particularly as they affect susceptibility to the major illnesses associated with ageing are very great. In addition, there is mounting evidence of a relationship between early nutrition and later outcomes in terms of susceptibility to disease. The incidence of obesity and obesity-related disorders is a worldwide problem and shows no sign of abating. Another important issue is represented by the Joint Programming Initiative “A Healthy Diet for a Healthy Life”): a structured strategic process whereby Member States agree a common Vision and a Strategic Research Agenda to address the major societal challenges of: ensuring the healthy choice is the easy choice for consumers, developing high-quality, healthy, safe and sustainable food products and preventing diet-related, chronic diseases and increasing the quality of life - delivering a healthier diet.

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# **Which communication to consumers?**

**Mario Abis**

**Adjunct Professor of Psychosocial Researches on Consumers and  
Public Opinion, IULM University – Milan**

**with the collaboration of**

**Luciana Castelli PhD, IULM University - Milan**

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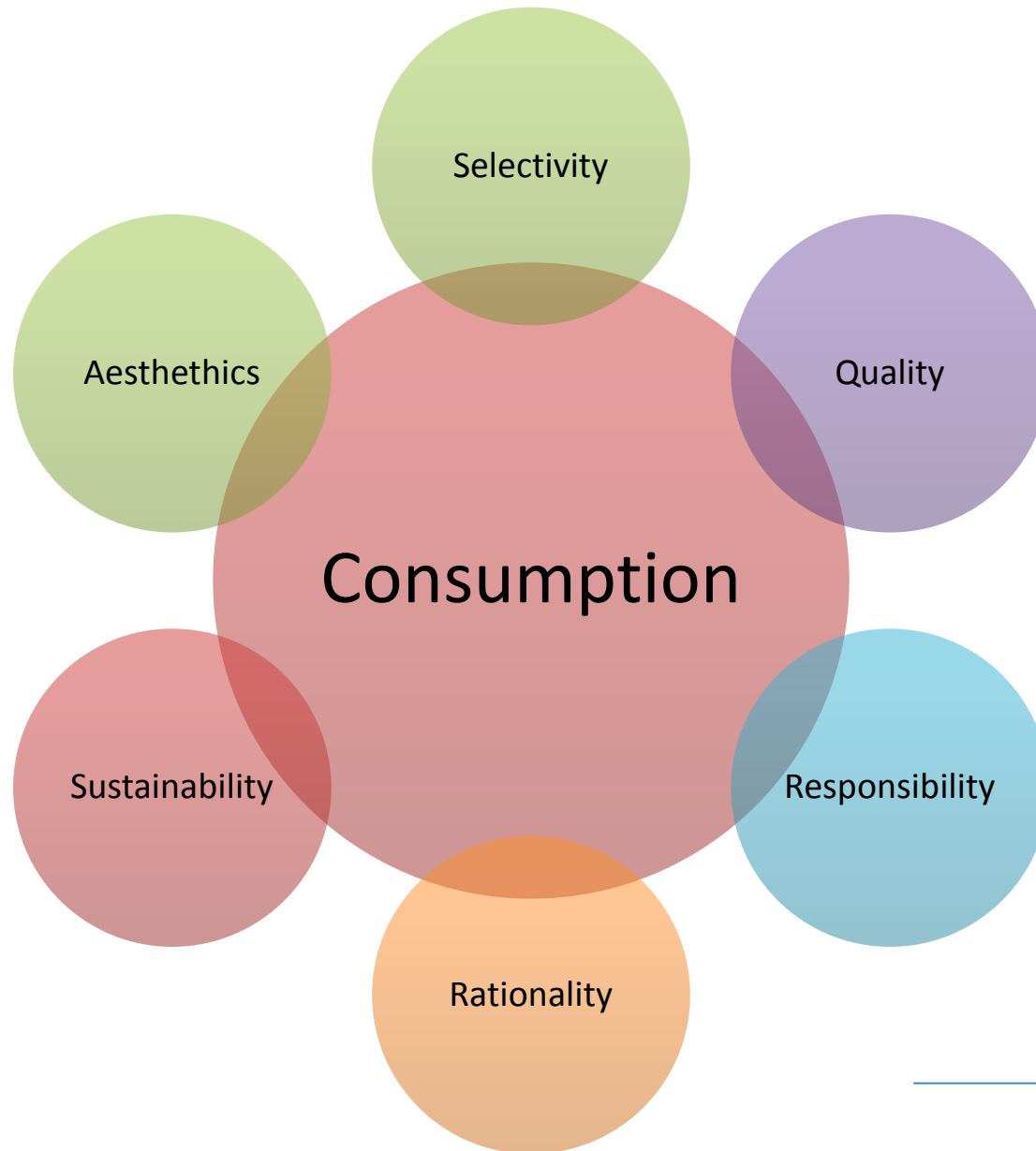
# Agenda

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- **New dimensions of consumption**
  - ➔ Consumer decision making and communication
  
- **Causes and consequences**
  - ➔ Crisis and consumer choices
  - ➔ The sustainability fever
  
- **How shall we communicate?**
  - ➔ Advertising and CSR
  - ➔ The role of Brand

# New dimensions of consumption

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- Consumers change their expectancies, their attitudes and their behaviour toward products.



- Consumers' decision making processes take longer than before.
- Traditional advertising is no longer effective in persuading consumers.
- Communication to consumers needs to be adapted to the new structure of consumption

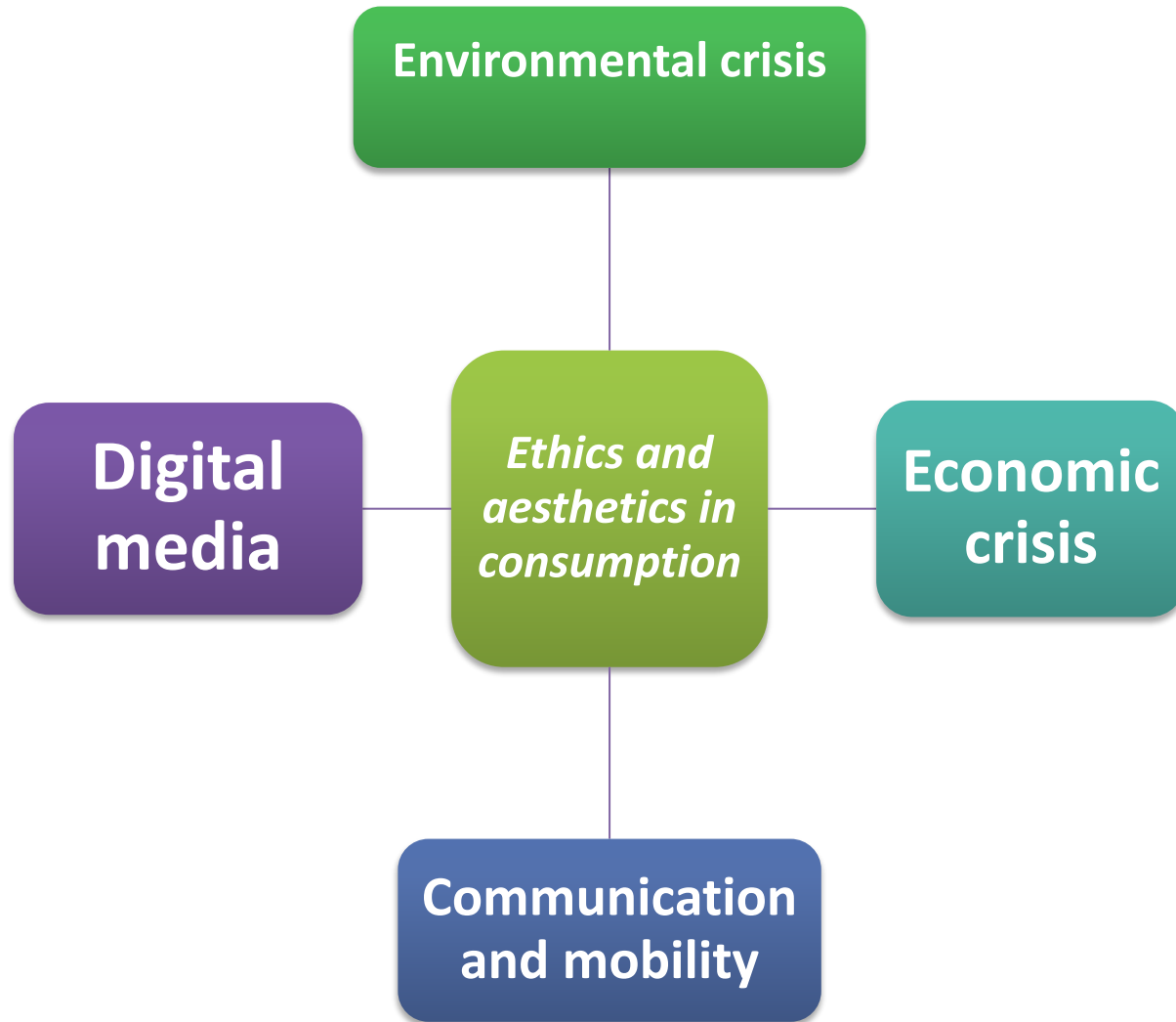
# Consumer decision making and communication

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- **Time-extension of consumer decision making process:**
  - ➔ individuals are more rational than compulsive
  - ➔ choice is more a reasoning than an impulse
  
- **Consumers need to be supported than persuaded:**
  - ➔ traditional advertising is no longer effective for consumers
  - ➔ new forms of communication might “accompany” consumers during their choices
  
- **Digital media confirmed their importance for individuals:**
  - ➔ Commercial relationship becomes more interactive
  - ➔ Communication must provide useful information to consumers
  - ➔ Co-creation of content: consumers co-create their own communication

# Causes and consequences

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# Crisis and consumer choices

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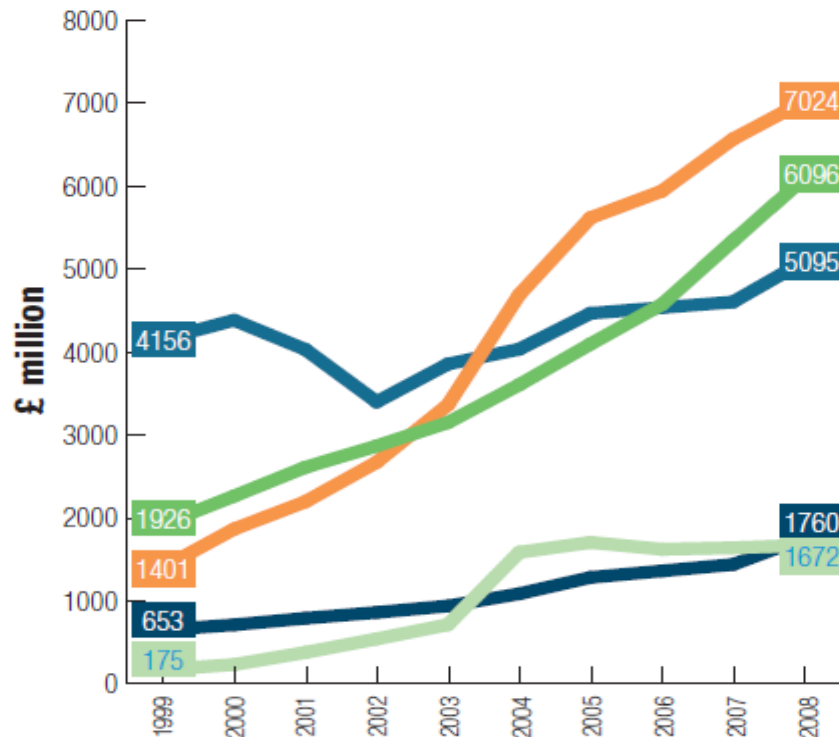
- **Same products, but less in quantity:**  
Voluntary simplification, less products for less waste (smaller packs, simpler products)
- **Same products, but lower in prices:**  
Outlet, commercial promotions
- **Less products but worthy and value oriented:**  
Fair trade, organic food, Km 0





# The sustainability fever

## Ethical consumerism in the UK, 1999-2008



- People are more concerned about the sustainability issue than in the recent past.
- Environmental crisis, epidemic diseases, lack of natural resources, nuclear crisis, pollution influenced the actual perception of consumers.
- Sustainability becomes a crucial driver for consumer choices.

# How shall we communicate?

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- **Communication to consumers** should be:

**Transparent**

**Informative**

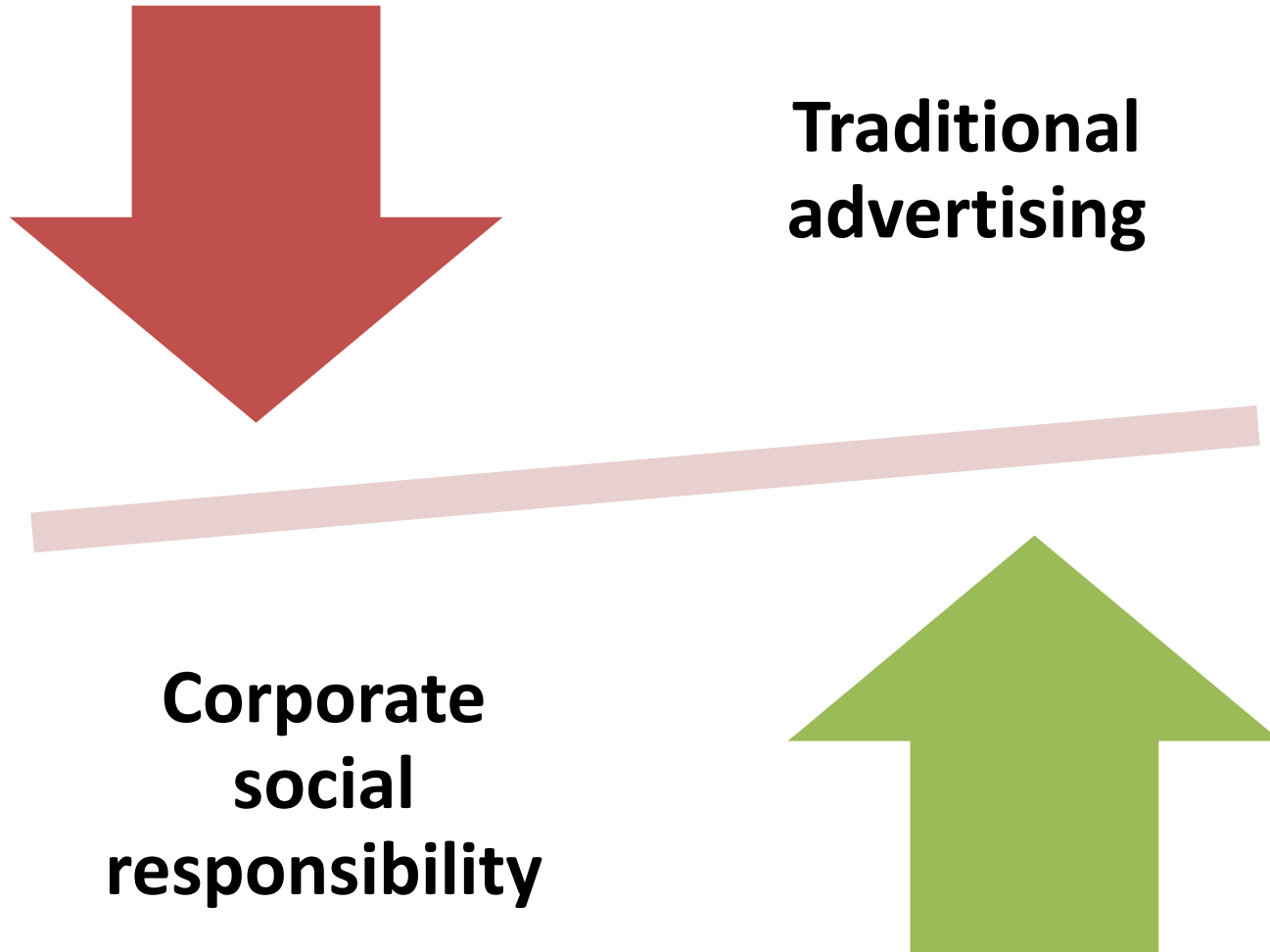
**Near and warm**

**True and sincere**

**Plausible**

# Advertising and CSR

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# The role of Brand: from product to relationship

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■ The change is:

- ➔ From **corporate and product image** to **corporate identity and values**
- ➔ **Consumers need to trust in communication**, also through the symbolism of the Brand
- ➔ Brand represents the **mean for the relationship between corporate and consumers**



*abstract*

Ferdinando Albisinni

**THE PROPOSAL OF NEW EU REGULATION  
ON THE PROVISION OF FOOD INFORMATION TO CONSUMERS**

On 1 February 2008 the European Commission transmitted to the European Parliament and to the Council the proposal of a new Regulation on the provision of food information to consumers.

The proposal has been subject to detailed and somehow controversial scrutiny, both at National and at European level, and now - after more than 3 years – is near to its final approval.

As specified by the Commission in the recent Communication of 22 February 2011:

*“The proposal consolidates and updates two important areas of labelling legislation, the general food and nutrition labelling covered by Directives 2000/13/EC and 90/496/EEC respectively.*

*The proposal recasts also six other Directives concerning the labelling of certain categories of foods. The objectives of this proposal are:*

- to simplify the food labelling legislation by creating a single instrument for principles and requirements for horizontal labelling requirements regarding general and nutrition labelling;*
- to include specific provisions on the responsibilities along the food chain with respect to the presence and accuracy of food information;*
- to establish measurable criteria for certain aspect of legibility of food labelling;*
- to clarify the rules that apply with respect to country of origin or place of provenance labelling;*
- to introduce mandatory nutrition labelling in the principal field of vision for the majority of processed foods;*
- to establish a system of governance for certain aspects of voluntary food labelling through endorsement by Member States.”*

The proposed regulation is extremely significant, with reference both to institutions, competences and procedure, and to the merits of discipline.

The report will briefly consider both those aspects.

The decision to shift from directives to regulation is a clear evidence of the process from harmonisation to unification of European rules, and locates the new proposed regulation within the process towards *European Codes*, which

characterizes large part of present European legislation.

This process, which dates back to the end of the past century and to the first years of this century, has received increased strength after the ratification and the entrance in force, of the Lisbon Treaty, with the generalised adoption of the ordinary legislative procedure.

On the other side, the *unification* and *codification* of European law implies, by its nature, in an EU with 27 MS, a *multilevel legislation*, which sets up principles, goals, methods, institutions, and then integrates them through the contributing and co-operative work of:

- the Commission, with the increased use of delegation of power, under artt. 49-52 of the proposal and under art. 290 of the Treaty on the Functioning of European Union;
- Member States, under artt. 37- 43 of the proposal;
- International bodies, like Codex Alimentarius, Unesco, and OIV.

The result is a complex legal model:

- which requires original approaches to producers and law scholars, with reference to new sets of remedies, in addition to new sets of rules and of rights;
- where *systemic nature* of food legislation is ruling at the cross-road between natural sciences and technologies, and new questions coming from consumers and producers;
- where legal rules share a plural nature, not necessarily *static*, but rather oriented as a *mobile stipulation*, resulting from different contributions coming from European, International and National Actors, public and private;
- where *certainty*, *stability* and *predictability* (absolutely necessary to producers, consumers, administrators and scholars) share their role with *flexibility* and *responsiveness* to new products, new needs, new communication.

Within this perspective, the report will analyze some of the more significant provisions introduced by the proposed regulation, taking into account judicial decisions of the Court of Justice, the rules introduced by the 2008 Regulation on the "Modernised Customs Code" and the recent proposal of new Single CMO Regulation (EU Commission 21 December 2010).

## **Nutrition and Health Claims**

### **Introduction**

Since the publication of the first labelling directive in 1979 the EU followed the project of limiting the use of certain claims for food. The final result is the Regulation(EC) Nr. 1924/2006 on nutrition and health claims. The regulation states as objectives

- insurance of a high level of protection for consumers by adequate not misleading labelling of products
- harmonization of national provisions to avoid unequal conditions of competition which could impede the free movement of goods.

The focus is on avoiding misleading labelling. As an anticipated conclusion one can say that there is a presumption that what is not in the list mentioned in the regulation is misleading.

The regulation applies to nutrition and health claims made in commercial communications in the labelling, presentation and advertising of food to be delivered as such to the final consumer. It applies also to food intended for supply to restaurants, hospitals, schools, canteens and similar *maß* caterers.

### **Definitions**

As defined in the regulation a claim means any not legally mandatory message or representation including pictorial, graphic or symbolic representation in any form which states, suggests or implies that a food has particular characteristics.

Any claim which states or implies that a food has particular beneficial nutritional properties due to the energy value it provides or does not provide or due to the nutrients or other substances it contains or does not contain is a nutrition claim.

A (function) health claim is defined as any claim which states or implies that a relationship exists between a food category, a food or one of its constituents and health. If the claim goes so far as to state that there is a significant reduction of a risk factor in the development of a human disease than it is a reduction of disease risk factor claim. A specific function health claim is a claim which refers to the well-being or development of children.

## **General Conditions of Use**

At first, products must comply with nutrition profiles which do not yet exist however. In general, the use of claims shall not

- be false, ambiguous or misleading
- give rise to doubt about the safety and or adequacy of other foods
- encourage or condone excess consumption of a food
- suggest that a balanced and varied diet cannot provide appropriate nutrients  
(Unilever Pro Activ: 2g sterols equates to the content of 8kg oranges o 42 kg tomatoes o 5 kg broccoli o 12 kg carrots pp. – Autorità garante della concorrenza )

The use shall only be permitted if

- the claimed beneficial effect is established by general accepted scientific evidence
- the substance is contained in a sufficient quantity to have the claimed effect
- the substance is in a form that it can be used by the body
- the average consumer can be expected to understand the claimed beneficial effect.

## **Specific Conditions of Use**

- Nutrition claims can only be used if they are listed in the Annex the Regulation (positive list – quod non est in listas non est in mundo)
- Function, risk reduction health claims and claims referring to the well-being of children are prohibited unless they are authorized claims and are included in the lists of authorized claims – Art. 13,14
- Health claims relative to beverages containing more than 1,2% alcohol are not allowed at all, nutrition claims referring to low or reduced level of alc. Are permitted, however.
- Comparative nutrition claims can only be made between products of the same category which are not allowed to bear a claim

## **Conditions for General References**

Such references to non-specific benefits of food for overall good health or health related well-being must be accompanied by a specific enlisted health claim.

## **Authorization of Art. 13 claims**



A scientific assessment by the authority, i.e. EFSA, is required whether the claim is based on generally accepted scientific evidence. The commission shall then take a decision of including the claim in the list as provided in Art. 13.

### **Reduction of risk factor and children development claims – Art. 14**

Primarily human (intervention) studies – published and non-published – including peer reviewed studies with regards to the health claim are required as well as any other scientific studies and available scientific data with relevance to the claim to substantiate the claim. A proposal for the wording of the claim and its condition for use are necessary, too.

### **Role and Importance of EFSA – European Food Safety Authority**

EFSA – established pursuant to Reg. 178/2002 is the risk assessor of the EU. Its task is to produce scientific opinions to support the taking of effective risk management decisions by the competent bodies, the Commission, for example.

### **Case Law: Questions referred to the CoJ in preliminary proceedings**

**Case C- 544/ 10** regarding claims made for wine – „bekömmlich“ (digestible), „sante Säure“ (soft acidity) – German federal Administrative Court (Bundesverwaltungsgericht)

Questions:

- 1.: Does the reference to health require a beneficial effect aimed at a sustained improvement of physical condition or is a temporary effect sufficient)?
- 2.: Is it compatible with Arts. 15 and 16 of the Charta of Fundamental Rights for producer/marketer of wine to be prohibited from making a claim even if it is correct?

**Case C- 51/11** regarding the claims „the beneficial and salubrious cordial from the Alps“ with a focus on „salubrious“ – German Federal Court (Bundesgerichtshof), which regards „beneficial“ as health claim.

Questions

- 1.: Does the concept of „health“ also cover general well-being?
- 2.: Is a claim intended to cover health related well-being where it refers to one of the functions mentioned in Art. 13 and Art. 14?

Dietrich Gorny

Rechtsanwalt

EFLA Workshop Milano 2011

Vice President of EFLA

- 3.: Is it consistent with principle of proportionality to prohibit a statement that beverage containing more than 1,2% alc. does not adversely affect the body or its functions?

## **Workshop**

# **“Food products and information to consumers”**

**EFLA/Federalimentare/Assolombarda  
Milan, 6 June 2011**

**Avv. Luciano Di Via**

## **The Italian regulation of commercial practices concerning nutritional and health claims**

- Italian Consumer Code and Misleading Advertising Law, both applied by the ICA;
- Italian Advertising Self-Regulation Code applied by the Giurì;
- Law on food labelling applied by the Ministry of Health, the Financial Police, Local Health Authorities.

## **The Italian regulation of commercial practices concerning nutritional and health claims**

The ICA executes its powers in two different ways:

- application of Regulation (CE) No. 1924/2006 («Claims Regulation») as a way to identify an unfair commercial practice under the Consumer Code
- advocacy to the European Commission

## **Application of the Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code**

- Check if the health claim is approved by the Commission or if it is provisionally accepted (contained in the general list drawn up by the Commission and transmitted to EFSA);
- Check if the claim respects the general limitations and principles of the Claims Regulation;
- Check the advertisement under the general criteria provided by Consumer Code and Misleading advertising Italian law.

## **Application of the Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code**

**5 relevant proceedings closed with sanctions :**

- PS 917 Benessere Attivo (MILA) - **€ 100.000**
- PS 195 Alixir (Barilla) - **€ 200.000**
- PS 20 Danacol (Danone) - **€ 250.000**
- PS 649 ProActiv (Unilever) - **€ 100.000**
- PS 5595 Pastariso (RisoScotti) - **€ 120.000**

## Application of Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code

The main ICA proceedings where the Claims Regulation was used as an instrument to identify an unfair commercial practice:

➤ **PS 20 *Danacol***, closed with Decision No. 19816, of 29 April 2009, imposing a sanction of **€ 250.000** on Danone

➤ **PS 5595 *Pastariso***, closed with Decision No. 19816, of 29 April 2009 imposing a sanction of **€ 120.000** on Risoscotti



## Application of the Claims Regulation by the ICA as a way to identify unfair commercial practice under the Consumer Code

### PS 20 *Danacol*

ICA underlined :

- (i) in the Danone advertisements, the problem of cholesterol had been presented in very simplistic terms: “*Eaten too much at Christmas? Take Danacol!*”;
- (ii) the lack of any indication to enable consumers to understand in what situations Danacol may be taken; what kind of people can benefit from it and to what extent; its limited and complementary role with diet and a change in lifestyle;
- (iii) the lack of any reference to limitations that are legally mandatory on the packaging (e.g., max 3 g per day);
- (iv) the incomplete reference to tests and studies mentioned in advertisements. Moreover, the ICA underlined the unfair endorsement of a medical association in the message of the advertisement in order to increase credibility that also generates confusion as to the “pharmacological” nature of the product (Art. 12 of the Claims Regulation).

## **Application of the Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code**

### **PS 5595 *Pastariso***

The ICA deemed unfair the use, in commercialising the product “Pastariso Scotti Attiva” of the claim “beta-glucans that helps to REDUCE CHOLESTEROL”;

The ICA underlined that the claim was unfair because a portion of Pastariso possesses 0.75 g of beta-glucans instead of 3 g required to obtain the restraining/reducing effect on cholesterol (see Art. 5 lett d) Reg. 1924/06.

In addition the ICA found that the information related to the product at issue was written with characters smaller than the principal claim, and with a different placement.

## **Application of Claims Regulation by the ICA as a way to identify an unfair commercial practice under the Consumer Code**

In both cases, the ICA stigmatised:

- lack of information about nutritional components and conditions;
- misleading use of endorsement of medical associations.

The administrative Judge of First Instance (“TAR”) intervened on the ICA decisions reducing the fines

# Advocacy to the European Commission

## Letter to UE Commission and to EFSA

Invitation to plan specific guidelines on the use of health and nutritional claims (uniform application of Community rules). Specification of general clauses of the Regulation No. 1924/06 (Art. 3 lett. a): the use of nutritional and health claims must not be false, ambiguous or misleading).

Specific problem highlighted: Use of a claim to emphasise the effectiveness of the product in unsuitable terms as regards the nature and effects that can be reasonably expected (emphasis on health problems; relevant omissions concerning appropriate diet and a healthy lifestyle).

## Conclusion

ICA pays great attention in the enforcement of unfair commercial practices regarding health and nutritional claims on labels and in advertising.

Progressive extension of the ICA's parameters of evaluation, considering that ICA officials indicated the possibility in future to base the analysis also on the Law No. 4/2011 (Italian legislation on the origin of food products) and, in particular, on Artt. 4 and 5, concerning the labelling and the advertising of food

# RISK COMMUNICATION

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# RISK COMMUNICATION

- 1) Defining risk communication
- -Legal definition; administrative mechanism
- -Legal definition; impact on the market

# RISK COMMUNICATION

- 2) The balance of rights
  - -Protection of public health and the right of consumers to be informed on food risks
  - -Protection of the reputation of companies and products.
  - - Proportionality and precaution



# RISK COMMUNICATION

- 3) The problem: impact on the market
- -Potentially greater impact than a sanction.
- -However, no regulation of due procedure.

# RISK COMMUNICATION

- 4) Procedure
  - -Legal premises for risk communication
  - -Competent authorities and binding decisions
  - -Regulation 16/2011
  - -Implementing risk communication; a matter of national law

# RISK COMMUNICATION

- 5) Remedies
  - -Challenging risk communication
  - -Reversing its effect
  - -Some examples of case law

# RISK COMMUNICATION

- 6) Conclusions
- Due to the lack of a proper legal procedure control can only be made on legal premises.
- Effective legal challenge of these premises should allow reversing both the communication and its effects.