

Scientific Advisory Committee on Nutrition

Paper for information: Nutrition and Health Claims Proposal

Agenda item: 11

Please see attached paper for information.

Regulation Proposal on Nutrition and Health Claims made on Foods COM(2003) 424 Final 2003/0165 (COD) was discussed at the last SACN meeting at which members were requested to forward any further comments to the Secretariat. The attached paper (General 13) represents the final SACN response to this proposal that was sent to the FSA Food Labelling Standards Division in October 2003.

Scientific Advisory Committee on Nutrition

SCIENTIFIC ADVISORY COMMITTEE ON NUTRITION RESPONSE TO REGULATION PROPOSAL ON NUTRITION AND HEALTH CLAIMS MADE ON FOODS COM(2003) 424 FINAL :2003/0165 (COD)

- In summary the proposal aims to: regulate nutrition and health claims; set out a list of positive nutrition claims; and define the procedure for updating the list of claims. There is currently no such list.
- There are two processes outlined in the proposal for:
 - 1) Well-established health claims. The EC has asked members to propose a temporary list of well-established claims that comply with regulations and check these with the European Food Safety Authority.
 - 2) New health claims. Manufacturers will make applications for new health claims according to the procedures outlined in the proposal. Article 13 deals with 'reduction in disease risk claims', which are not currently allowed but would be under the new proposal. Article 4 sets the framework for restrictions on nutrition and health claims.
- SACN members discussed the proposal at their meeting on 22 October 2003 (sacn/03/24) and the following concerns were raised:
 - Members agreed that the legislation is extremely important, allowing health claims on foods for the first time. These claims not only relate food to disease, but also allow claims on growth, development and physiological function. Industry is likely to exploit this opportunity. Therefore the substantiation process is fundamental. Members were concerned that Article 6 does not contain any information on the nature of this scientific substantiation, other than the data should be 'generally accepted'. Claims relating to chronic disease prevention, rather than markers of risk, will be particularly difficult to substantiate. The scientific data qualifying claims requires a process that is rigorous and consistent. An agreed substantiation process needs to be in place before the new legislation comes into force. The substantiation process needs to be looked at carefully. This will also have an impact on the nature of nutrition research that is undertaken required to provide the necessary substantiation. It is disappointing to see no reference to PASSCLAIM or the JHCI as potential methods to help clarify the nature of scientific substantiation at either national or EU level.
 - There was concern expressed that major current claims will be included on the list despite having not been through any scientific substantiation process – all claims should undergo the same substantiation process.

- The Directive should provide the framework with Member States establishing national regulatory measures. Regulations may include sanctions/penalty as the statutory instrument. Clarification is required on the nature of the penalties for unapproved health claims. How enforceable will they be? Will regulations have “more teeth”?
- There is concern about the position of PARNUTS foods generally, most of all about infant formulas and follow-on formulas. PARNUTS foods will not be excluded, despite their composition being regulated by separate legislation (unless a claim is already allowed by that legislation). Putting a health claim on an infant formula seems intrinsically wrong (what would be the comparator - a "standard" formula or breastmilk?). Cereal based weaning foods, foods for special medical purposes and sports foods could be heavily targeted for health claims that may be misleading or inappropriate.
- Will the Directive cover advertising such as broadcast advertising?
- Will the presence of a health claim trigger full nutrition labelling, as is the case currently in the UK, as a result of this Directive? If so this regulation must be developed in conjunction with the nutrition labelling regulations to provide consistency in the communication of nutrition information to consumers.
- How much work has been put into the proposed legislation? How much data is available on nutrition behaviour and health? The introduction of health claims and the removal of nutrition claims from products that do not meet selected nutrition profiles e.g. cheese, may compound consumer misunderstanding and confusion over labelling and the contribution that different foods make to an individual’s diet.
- The paragraphs 13-15 in the proposal regarding the concept of the “nutrition profile” are a move in the right direction. The Committee had concerns that too much focus will be placed on particular qualities of individual food items and messages on the diet as a whole could be lost. This will be a complex issue made more difficult as is not possible to predict the impact on consumer behaviour.
- Some nutritionally desirable foods may be beneficial for one nutrient but not necessarily ‘balanced’ per se - particular qualities of individual foods may be beneficial for some sections of population but not for others (e.g. what is the impact of genotype? What work has been done on this?). It assumes the “average” consumer and over simplifies nutrition and may cause poor choices for some consumers.
- Why are claims relating to psychological functions (e.g caffeine free) and satiety not allowed if they can be scientifically substantiated?

Summary

- The Committee recognises the huge forward move that the proposed regulations represent however there are concerns. If these regulations fulfil objectives for both industry and consumers these concerns need to be met. The concerns fall into 4 broad areas:
 - The interpretation of these claims by the consumer has not been fully assessed and therefore the impact of these claims on consumer choice and health cannot be predicted. Misinterpretation by consumers may benefit industry and not benefit consumer health.
 - The lack of clear definition of what is meant by nutrition versus health claims and the scientific justification of applying dietary guidelines to individual foods.
 - There is a lack of appreciation of the variability of individual consumers, these claims will lead to the perception of benefits which may not be true for certain consumer groups.
 - A lack of a clear agreed substantiation process for these claims is of great concern. Without this there is more scope for individual companies to use these regulations for company gain without protecting consumers. The legislation could be used to take advantage of consumers.