

DECO, Portuguese Consumer Association

General considerations

Point 9. – We disagree with any prohibition of claims for a nutrient or substance if “the general profile of the product is unacceptable” for the following reasons:

1. As has already been mentioned, it is very difficult — if not impossible — to define a “reasonable nutritional profile” for a product.
2. As has already been stated, such a definition would be open to differing interpretations depending on whether it refers to the product *per se* on its own or as part of a given overall diet.
3. Consumers are paying more attention to the information appearing on foodstuffs, in particular the nutritional claims, as they are taking more of an interest in their health and diet.

However, while we do not support an outright ban on such claims for the reasons given above, the suggestion that a product has a “reasonable nutritional profile” may mislead consumers by drawing their attention away from high levels of other nutrients or substances (e.g. sugar or salt) in the product. We therefore feel that such claims should be authorised subject to meeting certain conditions to mitigate any potential risks (so in the example given in the document, the claim “low fat” should be followed by an indication of the high sugar/salt content such that consumers cannot fail to notice it).

Point 10. – In view of consumers’ legitimate expectations and of the fact that excessive information can lead to misinformation, we feel that claims should be permitted subject to verification of the justification for such claims — specifically the presence in the product in question of a minimum quantity of the nutrient or substance for which the claim is made.

Point 11. – We feel that claims should refer to the foodstuff as consumed following preparation in accordance with the instructions on the label, since this

is the information required by consumers and which responds to their concerns about health and diet.

Nutrition claims

Point 17. – It is true that there is an increasing number of claims for substances with physiological rather than nutritional effects: we therefore agree with your suggestion that the definition of nutrition claims should be reviewed to take this into account.

Point 23. – As we see it, particular attention should be paid to comparative claims: while they might provide more and clearer information for consumers, allowing them to make a more informed choice based on supposedly objective information, they could on the other hand generate more confusion, misleading consumers and rendering claims less credible. To avoid this, it is essential to identify a 'reference' product for the comparison: this may be a similar product of the same brand, or the product itself (e.g. a cream cheese with a lower fat content than the average for cream cheeses). However this may also generate problems: who defines the average content? And is there any point in allowing comparative claims if there is no product of the same brand that can provide a reference?

It should also be noted that Article 16 of Portugal's Code of Advertising Standards states that if the (comparative) claim is an advertisement (here we refer to the definition of nutrition claims contained in Directive 90/46/EEC, point 16 of the document in question) which explicitly or implicitly identifies the goods offered by a competitor, this advertisement is subject to the regulations covering comparative advertising.

Furthermore we should stress that such claims can only be authorised if there is scientific support for the affirmations made in the comparison.

Points 24 and 25 – As we see it, the solution to the problem of the failure of consumers to understand the difference between dietary cholesterol and blood

cholesterol is not to prohibit claims relating to dietary cholesterol but to educate consumers, particularly by means of campaigns.

Nonetheless, while there is still this misunderstanding, such claims could be permitted subject to the provision of certain information which makes the distinction clear.

Point 27. – We see no reason why functional claims should be restricted to certain “functional” foods: they should apply to all foods since, as the document says, all foods have a function.

Point 28. – We feel that such claims should only be permitted when the product to which they refer has a low fat content in absolute terms. To this end, specific values could be set for each type of product, and claims would no longer be permissible once these values were exceeded. This would both reduce the risk of misleading consumers and ensure that they are given information where this is justified.

Point 29 – We agree with your conclusion.

Point 30 – We feel that the suggested wording for the claims in question, in particular “a low (...) food” or “a high (...) food” does not allow consumers to distinguish those products in which levels of a given nutrient are naturally low, and could even lead consumers to believe, erroneously, that the claim refers only to a specific product (e.g. X brand cheese) and not the product *per se* (cheese).

We therefore propose that the name of the product *per se* be added to the proposed wording (e.g. “cheese is a low (...) food”).

Criteria for the use of functional claims

Point 48. – In accordance with our comments on Point 27 above, we feel that functional claims should not be restricted to specific groups of foods: the rules governing such claims should be applicable to all foods, not only to those

termed “functional food groups” — as suggested by some parties — or to products for special diets, as is done in Sweden.

However it is important to ensure the correctness of these claims and their uniform regulation throughout the Community.

To ensure the correctness of functional claims, we propose that they should be subject to pre-marketing approval in each Member State in order to reduce the risk of misleading consumers.

As regards the uniform regulation of functional claims, we feel that this could be achieved, as mentioned, by compiling a list of claims for each nutrient or substance, with their specific wording, the list to be drafted and updated by the Commission in conjunction with the Member States. This will also ensure that consumers throughout the Community receive the same information about the “physiological role” or “beneficial effects” of a specific nutrient on normal bodily functions.