



fighting heart disease
and stroke
european heart network

Response to the European Commission's study to support the evaluation of Regulation (EC) No 1924/2006 on nutrition and health claims made on food (the NHC Regulation)

16 February 2017

Introduction

Below you will find the answers that the European Heart Network has provided to a number of the questions in the online questionnaire. Several questions consist of a list of questions; where this is the case we have, in most cases, provided our answers to them with numbers (e.g. Q1) corresponding to the order in which they appear.

Answers and comments

Do any of the existing schemes/initiatives having nutritional objectives, whether national regulatory or private, impact the placing on the market of products bearing claims, on the basis of the level of nutrients (in particular: salt, sugar, fat) that such products contain?

Yes

No ✓

Do not know / not applicable

EHN comments

We are not aware of the existing schemes having an impact on the placing on the market of products bearing claims on the basis of the level of nutrients. We are unclear as to why products bearing claims would be affected by existing schemes whilst products not bearing claims would not.

The use of national or private schemes is optional/voluntary; for example a food business operator can choose not to use a national voluntary scheme, like the colour-coded front of pack simplified nutrition labelling, or a health logo, like the Finnish Heart Symbol. Either way, food business operators can place their products bearing claims on the market if the claims comply with the EU regulation.

Given the current situation, as described in the previous section, are there any problems stemming from the non-setting of nutrient profiles at EU level?

Yes ✓

No

Do not know

If yes, why? Please provide further details, and reasons for, any identified problems

EHN comments

A result of not setting nutrient profiles is that nutrition and health claims can be put on any food and non-alcoholic product and, indeed, can be found on approximately 30% of packaged products sold in the EU.¹

The reason why health and nutrition claims are so prevalent is that they are effective means of marketing products to consumers.

Health and nutrition claims may help consumers identify healthier products if they are used responsibly.^{2,3,4}

However they also have considerable potential to mislead.⁵ For example, consumers may attribute excessive health benefits to consuming a food with a claim – ‘magic bullet’ effect.^{6,7} They may incorrectly perceive a product with a claim more positively than a similar product without a claim (positivity bias). Finally they may incorrectly ascribe to a product positive attributes unrelated to the claim – ‘health halo’ effect.⁸

For all these reasons the presence of claims may lead consumers to overestimate the “healthfulness” of products bearing claims – and consequently to overconsume them.

Overconsumption of foods that do not have healthy nutrient profiles is a problem in the EU because it faces major challenges from diet-related chronic diseases and obesity. For example heart disease and stroke (and other cardiovascular conditions) account for 40% of all deaths. Dietary risks contribute significantly to cardiovascular diseases. Cardiovascular diseases cost the EU economy €210 billion a year – of which about 50% is related to productivity loss (from premature death and people living with the diseases) and the opportunity cost of informal care <http://www.ehnheart.org/cvd-statistics.html>

Considering that health and nutrition claims are effective means of marketing products to consumers, the setting of nutrient profiles in the context of the claims regulation would be a

¹ Hieke, S.; Kuljanic, N.; Pravst, I.; Miklavec, K.; Kaur, A.; Brown, K.A.; Egan, B.M.; Pfeifer, K.; Gracia, A.; Rayner, M. Prevalence of Nutrition and Health-Related Claims on Pre-Packaged Foods: A Five-Country Study in Europe. *Nutrients* 2016, 8, 137

² Thorndike A, Sonnenberg L, Riis J, Barraclough S, Levy DE. A 2-phase labeling and choice architecture intervention to improve healthy food and beverage choices. *Am J Public Health* 2012; 102: 527–533

³ ; Hawley K, Roberto C, Bragg M, Liu P, Schwartz M, Brownell K. The science on front of- package food labels. *Public Health Nutr* 2013; 16: 430–439

⁴ Hawkes C (2004) Nutrition labels and health claims. World Health Organization. URL: <http://apps.who.int/iris/bitstream/10665/42964/1/9241591714.pdf>

⁵ Mariotti F, Kalonji E, Huneau JF, Margaritis I. Potential pitfalls of health claims from a public health nutrition perspective. *Nutr Rev* 2010; 68: 624–638

⁶ Roe, B., Levy, A., & Derby, B. (1999). The Impact of Health Claims on Consumer Search and Product Evaluation Outcomes: Results from FDA Experimental Data. *Journal of Public Policy & Marketing*, 18(1), 89-105

⁷ Williams P. Consumer understanding and use of health claims for foods. *Nutr Rev*. 2005 Jul;63(7):256-64

⁸ Chandon, P., Wansink, B (2007). The Biasing Health Halos of Fast-Food Restaurant Health Claims: Lower Calorie Estimates and Higher Side-Dish Consumption Intentions. *Journal of Consumer Research*, 34(3), 301-314. doi:10.1086/51949

major boost for the implementation of the EU reformulation agenda, which is part of the EU policy drive to address major diet-related chronic diseases and obesity. This is because some manufacturers would need to reduce levels of fat/salt/sugar in order to be able to put a claim on their products.

Moreover, the non-setting of nutrient profiles in the context of the claims regulation could potentially weaken the impact of the national and private schemes, which do help drive the reformulation agenda as these are underpinned by nutrient profiles. Food manufactures may prefer to use a claim, where there is no obligation to respect a nutrient profile, rather than using national/private schemes where there is an obligation to respect their nutritional criteria.

In your experience, to what extent will the entry into force of the obligation for food business operators to provide the nutrition declaration (defined in chapter IV, section 3 of FIC Regulation), as fully applied from 13 December 2016, fulfil the objectives listed below in the absence of EU nutrient profiles?

EHN response

- Q1: not at all
- Q2: partially
- Q3: not at all
- Q4: not at all
- Q5: do not know
- Q6: not at all
- Q7: do not know
- Q8: do not know

EHN explanations:

With regard to this question, we are generally unclear of their relevance. Below, please find some more specific comments.

Q1: FIC provisions regarding mandatory nutrition declarations are not intended to provide information to consumers about nutrition and health claims.

Q2: Mandatory nutrition declarations provide basic information to consumers about the level of nutrients per 100g/ml. The declarations are difficult to read and to interpret, as they give no indication of whether the levels of the nutrients are low, medium or high. So they play a role, though relatively limited, in facilitating consumers' healthier food choices.

Q 3: FIC Regulation does not have as an objective to limit the use of claims on foods high in fat, sugar and salt; its objective is to regulate the provision of nutrition, and some other types of information. Moreover, a not-so-visible mandatory nutrition declaration placed on the back of the pack is no match for a highly visible claim made on the front of the pack.

Q4: FIC Regulation does not have as an objective to enable the free circulation of foods bearing nutrition and health claims. Such foods circulated freely prior to the FIC and would have continued to circulate freely without the FIC.

Q5: FIC Regulation does not have as an objective to ensure fair competition of food business operators in the absence of EU nutrient profiles.

Q6: FIC Regulation does not have as an objective to ensure legal certainty for food business operators on the use of claims.

Q7: FIC does not have as an objective to stimulate food reformulation. Additional forms of expression and presentation on the front of pack including interpretive elements, e.g. colour-coding, may stimulate food reformulation; but use of such front of pack labelling is voluntary.

To what extent do you consider that the national regulatory schemes/initiatives currently in place, as identified in section 1, are fulfilling the objectives listed below in terms of foods bearing claims?

EHN response

- Q1: not at all
- Q2: partially
- Q3: not at all
- Q4: not applicable
- Q5: not applicable
- Q6: not applicable
- Q7: partially
- Q8: do not know

EHN explanations:

Q1: These schemes only apply to the products on which they are placed; they are not designed to ensure accurate and reliable information to consumers regarding health and nutrition claims in general. We find the question somewhat confusing.

Q2: Such schemes can help facilitate consumers' healthier food choices. However they co-exist with health and nutrition claims and this may weaken their impact since consumers may not be aware that health and nutrition claims are not underpinned by nutritional criteria, in contrast with the national regulatory schemes/initiatives.

Q3: These schemes cannot limit the use of claims on foods that are high in fat, sugar and salt. Rather, they have to compete with claims, which can continue to be made on food products that are high in fat, sugar and salt as long as nutrient profiles are not established in the context of the health and nutrition claims regulation.

Q7: As they are underpinned by nutrient profiles, these schemes may stimulate food reformulation. However, as there is no obligation to use them, food business operators may choose not to and simply use a claim in accordance with the health and nutrition claims regulation where, as yet, the foods bearing claims need not respect nutrient profiles.

We consider questions 4-6 "not applicable"; and we do not know the answer to question 8.

To what extent do you consider that the private schemes/initiatives as identified in section 1, are fulfilling the objectives listed below in the absence of EU nutrient profiles?

EHN response

- Q1: not at all
- Q2: partially
- Q3: not at all
- Q4: not applicable
- Q5: not applicable
- Q6: not applicable
- Q7: partially
- Q8: do not know

EHN explanations:

Q1: These schemes only apply to the products on which they are placed; they are not designed to ensure accurate and reliable information to consumers regarding health and nutrition claims in general. We find the question somewhat confusing.

Q2: Such schemes can help facilitate consumers' healthier food choices. However they co-exist with health and nutrition claims and this may weaken their impact since consumers may not be aware that health and nutrition claims are not underpinned by nutritional criteria, in contrast with the national regulatory schemes/initiatives.

Q3: These schemes cannot limit the use of claims on foods that are high in fat, sugar and salt. Rather, they have to compete with such claims, which can continue to be made on food products that are high in fat, sugar or salt as long as nutrient profiles are not established in the context of the health and nutrition claims regulation.

Q7: As they are underpinned by nutrient profiles, these schemes can stimulate food reformulation. However, as there is no obligation to use them, food business operators may choose not to and simply use a claim in accordance with the health and nutrition claims regulation where, as yet, the foods bearing claims need not respect nutrient profiles.

We consider questions 4-6 "not applicable"; and we do not know the answer to question 8.

Are there any disadvantages/shortcomings of relying on schemes/initiatives having nutritional objectives rather than EU-level nutrient profiles?

Please consider all relevant schemes/initiatives, whether national regulatory or private, as identified in the mapping of the current situation.

EHN response

- For consumers Yes
- For the industry Do not know

EHN explanations:

As long as nutrition and health claims can be made on all food/non-alcoholic drinks products without respecting a nutrient profile, consumers will be misguided as to the “healthfulness” of claim-bearing products.

National/private schemes cannot repair this problem. Indeed, the situation could lead to confusion among consumers; particularly since they may not know that health and nutrition claims are not underpinned by nutritional.

To what extent can other initiatives taken at EU or international level address any problems associated with the non-setting of EU-nutrient profiles?

Please, take into account the problems you identified already in previous questions.

EHN response

Platform on Diet, Physical Activity and Health (e.g. Pledge) Not at all

WHO nutrient profiles in relation to advertising to children Not at all

Others Do not know

EHN explanations:

There have been no commitments made by Platform members whereby they (food business operators) promise not to put health or nutrition claims on foods that are high in fat, salt or sugar (for example using the WHO nutrient profiles, established in relation to advertising to children). Nor are there any commitments not to advertise products to children that do not respect the WHO nutrient profiles.

72. Given the current situation, does the setting of nutrient profiles at EU level, as envisaged by Article 4(1) of Regulation (EU) No 1924/2006, continue to be:

EHN response

Relevant Yes

Necessary Yes

Feasible Yes

EHN explanations:

Relevant

The setting of nutrient profiles at EU level remains as relevant as ever. Nothing has happened post the adoption of the Article 4(1) of Regulation (EU) No 1924/2006 to alter the premises of their relevance. There is no evidence that health and nutrition claims are now less likely to be placed on foods that are high in fat, sugar or salt, than they were in 2006. Currently about 30% of foods bearing a health claim and 39% of foods bearing a nutrition claims are still high in fat, sugar or salt (Kaur, A., Scarborough, P., Hieke, S., Kusar, A., Pravst, I., Raats, M., & Rayner, M. (2016). *The nutritional quality of foods carrying health-related claims in Germany, The Netherlands, Spain, Slovenia and the United Kingdom. European Journal of Clinical Nutrition, 70(12), 1388–1395. <http://doi.org/10.1038/ejcn.2016.114>*). The adoption of the FIC Regulation mandating nutrition declarations in no way invalidates the condition for claim-bearing products to respect a certain nutrient profile. It has always been mandatory to put a nutrition declaration on claim-bearing products.

Necessary

The setting of nutrient profiles at EU level remains as necessary as ever; EU continues to face a heavy societal burden of diet-related chronic diseases, including cardiovascular diseases (see our response to question 62), and overweight/obesity. No single food and nutrition policy measure can achieve substantial reductions of the chronic disease burden; a package of policy interventions is needed. Part of the package is ensuring that foods and non-alcoholic beverages which make health and nutrition claims meet nutrient profiles.

The stronger push for reformulation, which is expressed by the EU reformulation agenda following the Netherland's EU Presidency and the Council Conclusions on food product improvement, adopted in June 2016, makes it even more necessary to set EU nutrient profiles. The June 2016 Council Conclusions should be read in conjunction with the Council Conclusions on nutrition and physical activity, adopted in June 2014, which specifically called on the European Commission to “establish nutrient profiles as foreseen by Article 4.1 of 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.”

Feasible

Setting of nutrient profiles at EU level is perfectly feasible; other bodies, for example the EU Pledge and WHO Regional office for Europe, have been able to develop pan-European nutrient profiles.

What would be the potential impacts of setting nutrient profiles at EU level, compared to the continuation of the current situation, on each of the following aspects?

EHN response

- Q1: considerable improvement
- Q2: do not know
- Q3: considerable improvement
- Q4: considerable improvement
- Q5: considerable improvement
- Q6: considerable improvement
- Q7: considerable improvement
- Q8: neutral

- Q9: considerable improvement
Q10: do not know
Q11: considerable improvement
Q12: improvement
Q13: considerable improvement
→ Because it could give renewed stimulus to the EU reformulation agenda.

EHN explanations:

As stipulated in recital 11 of Regulation (EU) No 1924/2006, the application of nutrient profiles aims to avoid a situation where nutrition or health claims mask the overall nutritional status of a food product, which could mislead consumers when trying to make healthy choices in the context of a balanced diet. The nutrient profiles are designed to govern the use of claims on products, i.e. to avoid that they are used on foods that are high in fat, sugar or salt.

The presence of claims may lead consumers to overestimate the overall “healthfulness” of products bearing claims; setting the nutrient profiles will ensure that food bearing claims are, at the very least, at the healthier end of the scale. This should lead to higher consumer trust in the EU food regulatory framework.

When food business operators invest in reformulation, they should be able to rely on a regulatory framework that makes it clear what are the nutritional composition criteria for making claims. Since claims are a marketing tool, we suggest that it is only fair that such criteria are relatively strict. It should be noted that putting a claim on a food product remains a choice – food business operators are under no obligation to put claims on their products.

Finally, an alternative to not having nutrient profiles set at EU level is that Member States could potentially decide to set them at a national level in order to make their own schemes more effective and/or to support re-formulation efforts (see also our response to questions 67 and 68, sub-questions 2 and 7). We believe that Member States would be justified in doing so because the EU has failed to implement nutrient profiles in accordance with Article 4 of (EU) No 1924/2006. In a worst case scenario, this could lead to 28 different national nutrient profile models; this would certainly affect the smooth functioning of the internal market.

Should the existing provision for setting nutrient profiles at EU level be withdrawn from Regulation (EC) 1924/2006?

EHN response

No

Please provide any further reasons/comments for your answer.

EHN comments:

Reasons for our answer to this question set out amply in our answers to the preceding questions in this survey questionnaire as well as to the question below.

What would be the consequences of withdrawing the provision for setting nutrient profiles at EU level from Regulation (EC) 1924/2006?

Q1: No

Q2: No

Q3: Do not know

Q4: Yes

Q5: Yes

Q6: Yes - It could remove an incentive for the food industry to engage more actively with the EU reformulation agenda

Please provide further explanation, and reasons why, any of the above consequences would be expected to occur.

EHN comments:

Withdrawal of the provision for setting nutrient profiles can in no way improve clarity of the EU regulatory framework. Nor is there any reason to believe that withdrawal would improve coherence with national nutritional policy objectives, guidelines or rules in this field. On the contrary, as we have explained above in our answer to question 62, considering that health and nutrition claims are effective means of marketing products to consumers, the setting of nutrient profiles, in the context of the claims regulation, could be a major boost for the implementation of the EU reformulation agenda, which is part of the EU policy drive to address major diet-related chronic diseases and obesity. This is because some manufacturers would need to reduce levels of fat/salt/sugar in order to put a claim on their products. Moreover, the non-setting of nutrient profiles, in the context of the claims regulation, could potentially weaken the impact of national and private schemes, which do help drive the reformulation agenda as these are underpinned by nutrient profiles.