

To: Interested Parties

Date: 4th November 2008

Reference: NIP 734

PUBLIC WRITTEN CONSULTATION

Consultation on the setting of nutrient profiles under European Regulation (EC) No 1924/2006 on nutrition and health claims made on foods

Dear Sir/Madam

Executive Summary

1. This letter seeks your views and comments on the European Commission's working documents on the setting of nutrient profiles under Regulation (EC) No 1924/2006 on nutrition and health claims made on foods, and the associated draft Impact Assessment for the UK. The European Commission are also in the process of drafting a legal Regulation based on the proposals in this working document, in preparation for a vote by Member States in December or January.
2. The documents are:
 - European Commission working document on the setting of nutrient profiles, dated 22 October
 - Limited food basket to test options – **This is a tool developed by EFSA to allow stakeholders to test how products, including those in the EU food basket, perform against various nutrient profile options**
 - Draft Impact Assessment
3. **Responses are required by 28th November 2008. However, we would appreciate responses in advance of the Commission Working Group**



meeting on 21 November to inform our negotiating position in this meeting.

When responding, please state whether you are responding as a private individual or on behalf of an organisation/company (with a brief summary of the people it represents).

Please note that we have tried to avoid printing and sending this consultation package in hard copy; instead we have followed good sustainable practice by including links in this letter to the documentation that comprises this consultation (see 'List of Annexes and consultation documents' section below). Follow the links to our website to download the consultation package. (The consultation package will appear on the website within the next couple of days). If you do not have internet access, or encounter any other problems, please contact Mairead Davidson at the above address for hard copies. The website address is: <http://www.food.gov.uk/consultations/consultni/>

Please send all comments and views to:

Mairead Davidson

Local Authority Unit

Food Standards Agency NI

10a-10c Clarendon Road, Belfast, BT1 3BG

Tel: 028 9041 7763, Fax: 028 9041 7728

Or by email to: mairead.davidson@foodstandards.gsi.gov.uk

Detail of Consultation

4. Regulation 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods was published in its corrected form on 18 January 2007 (OJ No. L12, 18.1.2007, p.3) and applied from 1 July 2007. This is the first piece of specific legislation to deal with nutrition and health claims and aims to provide a higher level of consumer protection as well as harmonise legislation across the EU to facilitate intra-Community trade. EU regulations are directly applicable in Member States, and a copy of this Regulation can be found at the following website address:

http://eurlex.europa.eu/LexUriServ/site/en/oj/2007/l_012/l_01220070118en00030018.pdf

This has been amended by Regulation (EC) 107/2008:

5. The Regulation controls nutrition and health claims by means of positive lists of authorised claims that can be made on food together with the criteria a product must meet to use them. It also requires the European Commission to establish nutrient profiles, as part of the criteria that foods must meet to make claims. The establishment of nutrient profiles aims to prevent claims masking the true nature of foods, and so misleading consumers when trying to make healthy dietary choices.

6. In order to help avoid consumers being misled in this way, nutrient profiles are to be established to categorise foods on the basis of their nutrient composition. On 22 October the European Commission issued a working document on the setting of nutrient profiles based on saturated fat, salt and sugar.

7. Regulation 1924/2006 required the European Food Safety Authority (EFSA) to advise on the establishment of nutrient profiles, taking into account:

- the quantities of certain nutrients, such as fat, salt and sugar, and other substances in the food;
- the role, importance and contribution of the food in the diet;
- the overall composition of the food including any nutrients that have been scientifically recognised as having an effect on health.

8. EFSA published its opinion on 31 January 2008. This is available on their website at:

http://www.efsa.europa.eu/EFSA/efsa_locale1178620753812_1178689506673.htm

9. The aim of the nutrient profiles is to protect consumers from being misled where foods high in saturated fats, sugars and salt may be made to seem healthier choices when accompanied by a nutrition or health claim. For example, a food with the claim “low in fat” may appear to be a healthy choice, but it could also be high in salt and a less healthy choice for people with high blood pressure. Under Regulation 1924/2006, if a product fails the profile on one nutrient then no health claim can be made and a nutrition claim can only be made if the statement “high [name of the nutrient that fails the profile] content” is also made. If the product fails on two or

more nutrients then no claim can be made. The only exception to this is a “reduced” claim, where the nutrient about which the claim is made does not count toward calculating the effect of the nutrient profile. For example, to make a “reduced saturated fat” claim the product does not need to comply with the threshold set for saturated fat. However, if the product is also high in salt then the statement “high salt content” would need to be made.

10. Once nutrient profiles have been established, and following a two-year transition period to allow food business operators time to adjust to the new requirements, foods that are high in saturated fat, sugar or salt will face restrictions on making claims.

European Commission working document

11. Following publication of EFSA’s opinion, the European Commission produced a draft working paper (dated 2 June 2008) and the draft food database/test basket, which have been used as a basis for discussions at Commission working group meetings. The Agency circulated these documents to stakeholders and has provided regular e-mail updates on the progression of these discussions. A revised version of this working paper and the draft food database/test basket with the thresholds values inserted will be available in the next couple of days at: <http://www.food.gov.uk/consultations/consultni/>

12. You can comment on any aspect of the working paper, but we have included some structured questions below to focus your thoughts on the main areas for consideration.

EXEMPTIONS FROM THE PROFILES

(a) Total exemptions from any profiles

WDQ1 Are the categories that have been suggested for total exemption from the nutrient profiles appropriate?

WDQ2 Are there too many or too few categories that are considered for a total exemption? *Please give full reasoning and evidence.*

(b) Exemptions within categories/subcategories – application of adapted profiles

WDQ3 Are the number and type of categories/subcategories that have been suggested here appropriate?

WDQ4 Are there any other categories/subcategories that should be considered under an adapted profile? *Please give full reasoning and evidence if suggesting further categories/subcategories.*

WDQ5 Are you content with the proposed method for defining categories and subcategories and how products will fall within these? *If commenting on the minimum content for inclusion, please give data on product composition to illustrate any issues you wish to raise.*

WDQ6 How easy do you find it to categorise products using the proposed system?

WDQ7 Some Member States have raised concerns over how to categorise particular products e.g. whether fromage frais (“fresh cheese”) is a cheese or a dairy dessert. Are you aware of other products that could be allocated to more than one of the proposed categories?

STRUCTURE OF THE PROFILES

WDQ8 The generic profile (other foods) will apply to foods not falling within specific categories, where adapted profiles will apply; are you content with this proposed category-based approach?

CHOICE OF NUTRIENTS

WDQ9 Is the choice of nutrients included in the profiles appropriate?

WDQ10 Do you have any comments on the inclusion of additional nutrients, either for all categories or specific categories/subcategories? *Please give full reasoning and evidence if suggesting that nutrients should be removed or further nutrients should be included.*

REFERENCE QUANTITY

WDQ11 There is a growing consensus among Member States that all profiles should be based on a per 100g basis (of food ready for consumption in accordance with manufacturer’s instructions). *Please give full reasoning and evidence if suggesting an alternative basis, including whether this should be across the board or only applied to specific categories or subcategories.*

THRESHOLDS

WDQ12 The European Commission has developed a testing tool which has been included as part of this consultation package. This can be used to see how variations in the thresholds for the main profile and adapted profiles would affect the claims that can be made on foods in the test basket and manufacturers' products.

WDQ13 We would welcome comments on the proposed thresholds for the main profile and adapted profiles. *Please be as specific as you can about what foods would be affected by changing the thresholds – information on the number of foods only is not sufficiently detailed to be of use in negotiations.*

WDQ14 Are there alternative thresholds you would like to suggest for particular categories? *Please give full reasoning and evidence for any suggested changes.*

Queries

13. Enquiries relating to the contents of this letter can be addressed to the contact given in paragraph 3.

Publication of personal data and confidentiality of responses

14. In accordance with the FSA principle of openness our Information Centre at Aviation House will hold a copy of the completed consultation. Responses will be open to public access upon request. The FSA will also publish a summary of responses, which may include personal data, such as your full name and contact address details. If you do **not** want this information to be released, please complete and return the Publication of Personal Data Form (Annex B). Return of this form does not mean that we will treat your response to the consultation as confidential, just your personal data.

15. In accordance with the provisions of Freedom of Information Act 2000/Environmental Information Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with the FSA. However, we will take into account your views when making this decision.

16. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

17. A list of interested parties to whom this letter is being sent appears in Annex C. Please feel free to pass this document to any other parties with an interest in the subject matter, or send us their full contact details and we will arrange for a copy to be sent to them direct.

18. A copy of this consultation letter/package is available on our website at <http://www.food.gov.uk/consultations/consultni> where a summary of the responses received will be published in due course

19. This consultation has been prepared in accordance with the Cabinet Office's Code of Practice on Consultation, available at: <http://www.cabinet-office.gov.uk/regulation/consultation/code.asp> The Consultation Criteria are in Annex D.

20. For details about the consultation process (**not** about the content of the consultation) please contact: Food Standards Agency Consultation Co-ordinator, Room 115B Aviation House, 125 Kingsway, London, WC2B 6NH. Tel: 0207 276 8630.

21. Criterion 1 of the Cabinet Office Code of Practice states that a written consultation must be held for a minimum of 12 weeks for at least once during the development of the policy. This consultation is not being held for a full 12 weeks because the European Commission's timetable for establishment of nutrient profiles does not allow for the full consultation period. Regulation (EC) No 1924/2006 requires nutrient profiles to be established by 31 January 2009. The European Commission has indicated that there will be a substantial discussion on the attached working document on nutrient profiles in the Working Group meeting on 21 November. It has also indicated that it will take a proposal for a legal instrument to

the Standing Committee meeting scheduled for 10 December, where it is possible there may be a vote. Consultation responses are required to inform the UK's voting position, and our negotiating position in the Commission Working Group meeting on 21 November so we would appreciate early responses in advance of this date.

Draft Impact Assessment

22. Criterion 6 of the Cabinet Office Code of Practice states that a consultation must follow better regulation best practice, including carrying out an Impact Assessment (IA). The Agency carried out and consulted on a Regulatory Impact Assessment for Regulation (EC) No 1924/2006 when negotiating and implementing the Regulation, which is available on our website at:

<http://www.food.gov.uk/consultations/consultni/2007/claims2007ni>

23. At the time of writing the original impact assessment we did not have a clear idea of the form and nature of the EU nutrient profiles and so costs and benefits were calculated at a more general level and included estimates within those for the Regulation as a whole. The Commission working document now provides that level of detail to enable stakeholders to see how products might perform in comparison to the options available and make an analysis of the direct effect of not being able to continue to make nutrition or health claims, or not being able to make them in the future without product reformulation.

24. The draft IA for the setting of nutrient profiles can be found at Appendix III. We welcome comments on any aspect of the IA, but have included some specific questions within the text to focus your thoughts on the main areas. When you reply, please include evidence to substantiate your comments.

A draft Impact Assessment (IA) has not been prepared in Northern Ireland, however the findings in the English IA (Appendix III) is believed to be representative of the situation here. Should you be aware of any specific Northern Ireland differences please include these in your response to the consultation to help inform our decision making process.

Comments on the consultation process itself

25. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to assist us to improve the quality of future consultations, please feel free to share your thoughts with us by using the **Consultation Feedback Questionnaire** in Annex A.

26. If you would like to be included on future Food Standards Agency consultations on other topics, please advise us of those subject areas that you might be specifically interested in by using the Feedback Questionnaire.

27. If any of the mailing information used to send you this letter has changed, please advise us direct using the Feedback Questionnaire.

Thank you on behalf of the Food Standards Agency NI for participating in this public consultation.

Yours faithfully

Mairead Davidson
Local Authority Unit

Consultation documents :

Appendix I: European Commission working document on the setting of nutrient profiles

Appendix II: Limited food basket to test options

Appendix III: Draft Impact Assessment on the setting of nutrient profiles under Regulation (EC) 1924/2006 on nutrition and health claims

Enclosed

Annex A: Consultation Feedback Questionnaire

Annex B: Publication of Personal Data Form

Annex C: List of interested parties

Annex D: Cabinet Office Consultation Criteria