Proposals look similar to what we have in the U.S.; differences reflect a greater degree of skepticism toward health claims in Europe.

Progress on health claims in Europe

By David Joy, Contributing Editor

For more than 10 years, the European Union has been struggling with the manner in which nutrition and health claims on food should be regulated. It’s not surprising that this is a difficult subject upon which to reach a consensus. A proposal under consideration includes some features the food industry rightly opposes.

As in the U.S., the Europeans make a distinction between “nutrient content claims” (e.g., low fat, high fiber) and “health claims” (e.g., calcium may reduce the risk of osteoporosis). The EU’s proposed regulation tackles both.

The regulation of nutrient content claims is relatively uncomplicated. The EU’s proposed regulation would establish criteria for specific claims. For example, a food claimed to be high in fiber would need to contain at least 6g of fiber per 100g. Nutrient content claims would be prohibited unless they are made in accordance with the defined criteria. Thus, a claim such as “excellent source of chromium picolinate” would be prohibited if criteria for that particular claim are not established.

Health claims would be divided into two categories: those that describe a generally accepted role of a nutrient or other substance, and those that claim a reduction of disease risk. The first group would include claims such as those regarding the association between calcium and strong bones. In consultation with the EU member states, the European Commission would adopt a list of claims that fall into this category and are authorized. There would be a procedure for adding new claims to the list.

Health claims regarding a reduction of disease risk (e.g., diets rich in fiber may reduce the risk of cancer) would be authorized only upon application to the European Food Safety Authority (EFSA). This is similar to the petition process established for health claims under our Nutrition Labeling and Education Act (NLEA).

So far, this general structure looks familiar because it does not differ significantly from the overall framework in place in the U.S. However, some important differences exist between the European proposal and the U.S. system.

For example, as originally proposed, the European regulation would have prohibited both health claims and nutrient content claims on “bad” foods. In other words, if a food contains too much fat, sugar, or sodium, it would not be eligible for a truthful claim regarding its vitamin content or antioxidant content. This is reminiscent of our “disqualifying levels” of certain nutrients and our “jelly bean rule,” both of which operate to restrict the use of authorized health claims on certain foods. This provision in the proposed EU regulation has been controversial and is opposed by at least one influential committee of the European Parliament. A possible compromise would be to establish some flexibility in this area so that exceptions can be made on a case-by-case basis.

Other differences between the EU proposal and U.S. regulation of health claims include:

- The EU would establish certain categories of claims that are flatly forbidden including claims relating to “psychological and behavioral functions” and weight loss.
- Health claims authorized through the petition procedure would be available only to the applicant; they would not be approved for use by the entire food industry.
- The EU regulation would apply to claims made on food labels as well as claims made in advertising.
- In deciding whether to authorize a requested health claim, the European Commission would consider the scientific opinion of EFSA and would also be entitled to consider “other legitimate factors.” In this context and in others, this language seems to give the commission free rein to deny a request from the food industry that is supported by convincing scientific evidence.

In terms of general philosophy, these differences between the EU proposal and the U.S. system are not surprising. They tend to reflect what is possibly a greater degree of skepticism toward health claims in Europe and a feeling that consumers need to be protected against potential harm associated with health claims, even truthful ones.

Someone advocating a more relaxed approach would argue that consumers receive nutrition and health messages from a variety of sources. So it is unrealistic to expect consumers to rely exclusively on food labels and advertisements for dietary advice. Plus, the possibility of harm associated with truthful and non-misleading claims on food labels and in advertising is actually minimal or nonexistent.

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