

# Nutrition and health claims made on foods

2003/0165(COD) - 08/12/2005 - Council position

The common position on nutrition and health claims on foods was adopted unanimously by the Council. The Council's common position conforms to the objectives of the Commission proposal while introducing a certain number of modifications among which:

**Commercial brand names or trademarks:** a new provision introduced by the Council allows brand-names or trademarks to be used without undergoing an authorisation procedure, provided that they are accompanied by a related nutrition or health claim in the labelling, presentation or advertising, which complies with the provisions of this Regulation. In order to accommodate concerns regarding the application of the Regulation to existing trademarks and brand-names, a ten year transitional period has been introduced for brand-names or trademarks in use before the 1st of January 2005, after which they should comply with the Regulation.

**Nutrient profiles:** the Council maintained the concept of nutrient profiles as an important element to ensure the efficient application of the Regulation in relation to nutrition and health claims. The original proposal was considerably developed to focus more closely on the purpose and the scope of the nutrient profiles, and the procedure to be followed to elaborate them. Adequate safeguards were introduced to accommodate concerns regarding their scientific objectivity, the preservation of different dietary habits and national traditions, and the involvement of stakeholders in the process.

**Health claims:** the original Commission proposal envisaged the prohibition of several categories of health claims. The Council maintained the ban of some of these claims and, for others, stipulated that they could be used under certain conditions. The common position foresees that a list of certain health claims (which do not refer to disease reduction) will be adopted by the Commission within 3 years from the adoption of the Regulation, based on suggestions by the Member States. The scope of this Article has been widened and now includes claims referring to psychological and behavioural functions and slimming and weight control. Moreover, an authorisation procedure may be used for adding health claims to the list which are based on newly developed scientific data and/or include a request for the protection of proprietary data. As regards recommendations of or endorsements by national medical associations and health-related charities, a new Article is foreseen, according to which national legislation may continue to apply in compliance with the provisions of the Treaty until such time as Community rules are adopted.

**Scope of nutrition claims:** while the original proposal did not foresee the use of symbols/signposting as nutrition claims, the Council has examined this question in detail, being confronted with growing demands regarding the use of both positive and negative signposting on the nutritional status of a food (to be placed, for example, on supermarket shelves). As a result, the common position clarifies that the proposed Regulation only applies to beneficial claims, while claims referring to a nonbeneficial effect of the food will not be covered. In this respect, it is stated that Member States intending to introduce national schemes relating to non-beneficial claims should notify these schemes to the Commission and to Member States in accordance with Directive 98/34/EC. Furthermore, in order to take account of certain nutrition claims in pictorial, graphic or symbolic form used in several Member States, a transitional arrangement has been introduced in Article 27(4), which provides that national rules and criteria for the use of logos and symbols shall be authorised, if complying with the general principles of the Regulation.

**Alcoholic beverages:** the general prohibition in the use of claims in the case of alcoholic beverages, with the exception of claims that refer to a reduction in alcohol or in energy content, has been maintained. In addition, in the absence of specific Community rules on nutrition claims referring to the reduction or absence of alcohol or energy, it is clarified that national rules may apply in compliance with the Treaty. A

new recital excludes food supplements in liquid form containing more than 1.2% of alcohol from the scope of these restrictions, as the alcohol quantity provided by the consumption of such foodstuffs is negligible. The Council, supported by the Commission, made several modifications to the annex taking notably account of recent scientific advances, and inserted a new recital stating that claims such as “lactose free” or “gluten free” should be dealt with in Directive 89/398/EEC.

In its common position, the Council included 35 of the 75 amendments adopted by the European Parliament at first reading. In particular, it includes the amendments concerning the following issues:

**Scope and definitions:** the amendments states that non-commercial communications are not covered in the Regulation; the Regulation shall apply without prejudice to Directive 89/398/EEC on foods intended for particular nutritional uses and Directives adopted on the basis thereof, Directive 80/777/EEC on natural mineral waters, and Directive 98/83/EC on water intended for human consumption. Moreover, existing Community definitions are added, such as the definition of food supplements (Directive 2002/46/EC) and the definition of labelling (Directive 2000/13/EC), and the definition of “claim” is clarified.

**General principles:** amendments are introduced to clarify and complete the general principles for all claims; provide that claims shall not mask the overall nutritional status of a food; clarify the way the nutrient profiles will be set and used; state that the Authority should advise the Commission for the

setting of the nutrient profiles.

**Nutrition claims:** the common position states that the positive list of nutrition claims shall be revised in order to take account scientific and technological developments.

**Health claims:** the Council incorporates the amendment proposing to allow all the claims that were prohibited in the article 11 of the original proposal, provided they are scientifically substantiated. Reference to general, non-specific benefit for the overall good health or health related well being may be made if accompanied by a specific health claim complying with the Regulation. Only the claims which suggest that health could be affected by not consuming the food, the claims which make reference to recommendations of individual doctors or non-recognised health professionals and other associations, and the claims referring to the rate or amount of weight loss remain prohibited.

Other amendments partially accepted by the Council refer to the participation of organisations representing the food industry and consumers to establish the initial list of function claims as proposed in one amendment was supported by the Commission. Another amendment asks for consultation of stakeholders and comitology for the adoption of guidelines for the implementation of the article 11 of the original proposal. An amendment is partially maintained in the common position that states that the applicant may make comments to the Commission on the opinion of the Authority within 30 days of its publication.

**General and final provisions:** the common position clarifies that the Register should be updated and available to the public and that transitional measures are needed in order to ensure a smooth transition for the economic operators. Different transition periods for various provisions of the Regulation are also provided in the common position.

Lastly, it should be noted that the Council rejected the amendments concerning the following issues :

the need to preserve the competitiveness of the food industry; on information campaigns on nutrition to be developed; on the involvement of a consumer panel to evaluate the claims; on the comparative claims between foods belonging to different food categories; on the submission of a food packaging sample to the

Authority; on the substantial aid given to SMEs; on the Authority verification of the claims wording; on the time given to the Commission to examine the opinion of the Authority and on the time given to the Commission to release a report on the application of the Regulation.