

# The Brief

October 2006

## NEWS FLASH

### A European Regulation establishes new rules governing food nutrition claims

**As part of the campaign against obesity and in the interests of consumer protection, new Community nutrition and health claim requirements are set to establish strict rules for food industry undertakings.**

A regulation was recently adopted on its second reading by the Council of the European Union on 12 October 2006<sup>1</sup> with a view to harmonising the legislation of Member States and providing consumers with more detailed and closely monitored information about the foods that they consume. Nutrition and health claims about everyday foodstuffs will now have to satisfy much stricter criteria than before.

#### **What is meant by "nutrition and health claims"**

The Community regulation defines a claim as any message or representation, regardless of form, which suggests that a food has particular characteristics or beneficial nutritional properties or which implies that a relationship exists between a food or one of its constituents and health.

The following are examples of nutrition or health claims:

"sugar free",  
"high fibre",  
"low fat".

<sup>1</sup> Regulation of the European Parliament and of the Council on nutrition and health claims made on foods, 2003/0165 (COD)



**Gide Loyrette Nouel**

**Algiers**  
Tel. +213 (0)21 23 94 94  
gln.algiers@glde.com

**Beijing**  
Tel. +86 10 65 97 45 11  
gln.beijing@glde.com

**Belgrade**  
Tel. +381 11 30 24 900  
gln.belgrade@glde.com

**Brussels**  
Tel. +32 2 231 11 40  
gln.brussels@glde.com

**Bucharest**  
Tel. +40 21 223 03 10  
gln.bucharest@glde.com

**Budapest**  
Tel. +36 1 411 74 00  
gln.budapest@glde.com

**Casablanca**  
Tel. +212 (0)22 27 46 28  
gln.casablanca@glde.com

**Hanoi**  
Tel. +84 4 825 19 58  
gln.hanoi@glde.com

**Ho Chi Minh**  
Tel. +84 8 823 85 99  
gln.hochiminh@glde.com

**Hong Kong**  
Tel. +852 2536 9110  
gln.hongkong@glde.com

**Istanbul**  
Tel. +90 212 325 35 81  
gln.istanbul@glde.com

**Kyiv**  
Tel. +38 044 206 0980  
gln.kyiv@glde.com

**London**  
Tel. +44 (0)20 7826 9700  
gln.london@glde.com

**Moscow**  
Tel. +7 495 258 31 00  
gln.moscow@glde.com

**New York**  
Tel. +1 212 403 6700  
gln.newyork@glde.com

**Paris**  
Tel. +33 (0)1 40 75 60 00  
info@glde.com

**Prague**  
Tel. +420 222 871 111  
gln.prague@glde.com

**Riyadh**  
Tel. +966 1 476 60 39  
gln.riyadh@glde.com

**Shanghai**  
Tel. +86 21 53 06 88 99  
gln.shanghai@glde.com

**Tunis**  
Tel. +216 71 891 993  
gln.tunis@glde.com

**Warsaw**  
Tel. +48 22 344 00 00  
gln.warsaw@glde.com

### **Nutrition and health claims must comply with a "nutrient profile" and be based on scientific knowledge or evidence**

Given the positive image that nutrition and health claims confer on food, the European Commission has taken the view that consumers should be given the means to make a real assessment of their global nutritional quality.

Nutrition and health claims should also comply with a "nutrient profile" defined at Community level for each category of foodstuffs depending on the amount of salt, sugars and fat that they contain.

If a product contains an amount of a nutrient in excess of the accepted threshold, the claim may not be made unless there is an explicit stipulation to this effect (e.g. "*increased ..... content*").

In defining nutrition profiles, for instance, the Commission may have to decide whether a nutrition claim of "fat free" for a children's lollypops, which nevertheless contain huge amounts of sugar, will be prohibited, or allowed if the product expressly specifies this very high sugar content.

### **Health claims are even more strictly regulated and even prohibited**

Health claims are those that describe or refer to the role of a nutrient or other substance in growth, development and physiological functions of the body, psychological and behavioural functions or make reference to slimming, weight control or the reduction of available energy from a diet.

These claims are subject to even stricter regulation. Member States are required to supply the Commission with lists of claims and the conditions for their use.

Reduction of disease risk claims and child health and development claims require authorisation and inclusion in a Community register.

Some health claims are even prohibited: those implying that not eating a food could be harmful to health; those referring to the rate or amount of weight loss or to the advice of a doctor or other health professional.

Accordingly, on the issue of health claim authorisations, the Commission may be compelled to prohibit the use of certain trade marks (e.g. meal substitutes) if their wording or graphics refer to the rate or amount of weight loss.

### **We should expect implementation difficulties**

The following are areas in which difficulties might be anticipated:

- the complexity of adopting nutrition profiles. The Commission must complete the process within 2 years of the effective date of the regulation. These nutrient profiles must be based on "*scientific knowledge about diet, and nutrition, and their relationship to health*";
- the subtle distinction between claim categories: nutrition vs. health, authorised health claims vs. prohibited health claims;
- the procedures for the registration or authorisation of claims, which suppose active participation by national health agencies;
- the application and applicability of the regulation to imports.

**The agriculture and food sector in France is governed by increasingly restrictive laws**

With effect from 1 February 2007, France has decided to make it compulsory to feature health messages such as:

"to protect your health, eat at least five fruits or vegetables a day";

"to protect your health, take regular physical exercise";

in all forms of food advertising (television, radio, press and billboard).

---

*For further details, please contact:*

**Gide Loyrette Nouel Brussels**  
**Katia Merten-Lentz, avocate**  
**E-mail : [lentz@gide.com](mailto:lentz@gide.com)**