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## The proposed Regulation on health & nutrition claims: Myths & Misunderstandings

Following the European Commission's adoption of a proposed [Regulation on health and nutrition claims on 16 July 2003](#), a number of myths and misunderstandings about this Regulation have flourished in the press. Many of these concerns can be clarified right off since they refer to products that are not in fact covered by the Regulation. Other issues have been subject to misinterpretation and there is therefore a need to set the record straight.

### What is in the proposed Regulation?

The proposal covers nutrition claims (eg "rich in vitamin C" or "low in fat") and health claims (i.e. claims of a positive relationship between a specific food and improved health). It sets rules for making such claims and also allows health claims (including "reduction of disease risk" claims) that were previously prohibited. In the interest of consumer protection, it also includes certain restrictions. The Regulation will protect consumers, improve the free movement of goods, increase the legal security of operators and prevent abusive claims, thus ensuring fair competition. The proposal will result in a more liberal environment for claims in labelling and advertising. Disease-related messages, which were until now totally prohibited by EU legislation, will now be allowed if they can be scientifically substantiated and authorised at EU level.

It should be noted that the affected claims are **voluntarily** put on products by producers as a marketing tool. If positive claims cannot be established, the Regulation will certainly not oblige anyone to make negative claims. The proposed EU Regulation should result in an *adaptation* of nutrition and health claims in labelling and advertising in the EU rather than an overall reduction of such claims.

Before finalising the proposal, there was extensive consultation with stakeholders including consumers and industry. Consumer organisations have welcomed the proposed Regulation as an important step towards better informing consumers and preventing much of the misleading advertising found in the market today. On the industry side, many have also welcomed the proposal, since it will regulate a marketplace that until now was made difficult by very diverse national rules and it will prevent unfair competition from unscrupulous manufacturers. The rules for making a *nutrition* claim will be the same for all economic operators and only those *health* claims that are scientifically based and meaningful to the consumer will be allowed. Reports about outrage in the European Parliament are similarly unfounded – in fact the European Parliament has repeatedly asked the Commission to make a proposal to regulate claims.

### Slogans for non-food products will be banned – WRONG

Concerns have been expressed, primarily in the press, that popular advertising slogans for everything from cosmetics, medicine and pet food will be banned.

None of these slogans will be affected since the proposed Regulation only covers food products. Many of the misunderstandings can therefore be clarified right off since they concern products that are not in fact covered by the proposed Regulation.

For example, the following slogans will not be affected by the Regulation:

- “Gillette, the best a man can get”
- “The power of two hearts”
- “Cats would buy Whiskas”
- “If they’re too strong, you’re too weak”

### **My favourite advertising slogans on tasty treats will be banned – WRONG**

Other concerns have been expressed regarding popular advertising slogans for food products, drinks and sweets (such as “Haribo makes children happy” or “Red Bull gives you wings”). Many of these concerns can also be dismissed since they refer to advertising slogans that do not make health or nutrition claims and therefore will still be allowed.

Some examples: the following will not be affected since they are *neither nutrition nor health claims*:

- “Haribo makes children happy”
- “Red Bull gives you wings”
- “Quality is the best recipe”
- “Melitta makes coffee really enjoyable”
- “The tenderest invention since chocolate was invented”
- “As valuable as a small steak”

Other reports in the press have stated that the Regulation will “ban food advertising” or that some foods will be forbidden. Neither of these myths is true. The Regulation does not ban food advertising, it will merely **regulate** labelling and advertising that makes *health* and *nutrition* claims – in order to avoid misleading consumers on the important matter of their health. The Regulation does **not ban any food**. It proposes to limit the communication of nutritional or health benefits of certain food with an undesirable nutritional profile (eg foods high in fat or sugar). Such foods can be consumed in moderation as part of a healthy diet, but if they are advertised with health and nutrition claims many consumers that are currently eating them in moderation might consume them in greater quantities. The proposal does not call them “bad food” but merely prevents them from being marketed as “good food” with positive messages about health and nutritional benefits.

### **Some health and nutrition claims *will* be banned – CORRECT**

It follows from the proposal’s new approach to health claims that any information about foods and their nutritional or health benefits used in labelling, marketing and advertising which is not clear, accurate and meaningful and cannot be substantiated will not be permitted. Furthermore, vague claims referring to general wellbeing (eg “*helps your body to resist stress*”, “*preserves youth*”) or claims making reference to psychological and behavioural functions (eg “*improves your memory*” or “*reduces stress and adds optimism*”) will not be allowed. Slimming or weight control claims will not be allowed (eg “*halves/reduces your calories intake*”).

Reference to and endorsement by doctors or health professionals will not be permitted as they might suggest that *not* eating the specified food might lead to health problems. Health claims on *alcoholic beverages above 1.2 %* will also not be allowed since alcohol is known to entail other health and social problems. Only claims referring to a reduction in alcohol or energy content will be allowed.

### **The Regulation will create complicated procedures to make “low fat” or “low calorie” claims – WRONG**

The proposed Regulation will establish conditions whereby products can claim to be low in fat or calories. This simple measure will prevent much of the misleading advertising that is present on the market today. Some press reports have said that the Regulation will require difficult and protracted laboratory tests in order to make low fat / low calorie claims – this is simply not true. The requirements to make such claims will be very straightforward – for example, to claim that something is low fat it must simply be less than 3g/100g or 1.5g/100ml. It will also be forbidden to make claims such as “90% fat free” since this means that the fat content (10%) is in fact rather high and so the claim is misleading in that it makes the consumer believe it is a low fat product. Again, there is nothing complicated, protracted or expensive about evaluating this situation.

### **It won't be permitted to say that “fruit is healthy” – WRONG**

Claims such as “fruit is healthy” will not be banned, but rather the Regulation will ask that the nutritional and/or health benefits should be explained in order to show the benefits of this type of product. It is more informative for the consumer to learn why fruit is healthy than to simply read a generic claim stating it as fact.

### **The substantiation of claims will suffocate the industry – WRONG**

Scientific substantiation is the basis for ensuring truthful and meaningful information to consumers regarding the nutritional and health benefits of the food they buy. Some press reports have criticised the requirement for the substantiation of claims, claiming that this will stifle innovation and impede product development. They omit the fact that already today food industry researches intensively a food product on which a health claim is made. Specifically, complaints have been made about the authorisation process for health claims such as disease-risk reduction messages. In fact, such messages are currently totally prohibited by EU legislation. The purpose of the proposed Regulation is therefore to relax this prohibition and allow those health claims that can be substantiated. The substantiation required in the proposed Regulation is similar to the regime which has been in force in the US for years – where claims in labelling and food advertising are doing very well.

### **The claims proposal will establish a new agency – WRONG**

The proposal will not establish a new agency but it does give an important role to the European Food Safety Authority (EFSA) which will carry out the scientific evaluation of health claims. Of course it will be up to food business operators to propose the wording of the claim or claims that they want to make, thereby maintaining flexibility for manufacturers.

### **Why are “vague claims” not permitted?**

There is a risk of confusion between some specific function claims and generic wellbeing claims. This distinction should be made clearly and unambiguously. Numerous products – ranging from yoghurts to chocolate, from drinks to fromage frais – currently claim that they can “purify your organism”, “preserve youth”, “slow down the ageing process”, etc. All these claims are vague, meaningless and not verifiable. Subtle language use and play on words can be an important part of advertising in general, but on the important subject of health it is important to be vigilant and avoid making claims that do not inform consumers properly. What consumers should find on foods are claims that explain the specific health benefits of a food or food component. So if the yoghurt really purifies the organism, the consumer should be told why and how this is done.

### **We already have legislation on misleading advertising – is the claims proposal necessary?**

The existing legislation on misleading advertising requires adequate and effective means in all Member States to control misleading advertising. These means include legal provisions under which persons or organisations may take legal actions against such advertising and/or bring it before a competent administrative authority, which will either decide on the complaint or initiate legal proceedings. This legislation enables the general public or competitors to take action against advertising deemed misleading and covers all products and services. The proposed Regulation on claims aims to **prevent** misleading labelling and advertising regarding nutritional and health properties of foods, before it is used and then possibly contested.