

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 159 final

Brussels, 8 April 1981

Proposal for a

COUNCIL DIRECTIVE

on the approximation of the laws of the Member States relating to
claims made in the labelling, presentation and advertising of food-
stuffs for sale to the ultimate consumer

(submitted to the Council by the Commission)

COM(81) 159 final

EXPLANATORY MEMORANDUM

1. The purpose of this proposal, which complies with Article 2(2) of Council Directive 79/112/EEC (1) of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer, is to:

(1) define what is meant by 'claim' (Article 1);

(2) establish a non-exhaustive list of the claims to be prohibited (Article 2);

(3) establish a non-exhaustive list of the claims, the use of which must be restricted (Article 3);

(4) lay down the procedure for the updating of these lists (Articles 4 and 5).

2. In drawing up the proposal, the Commission took account of the opinions of the national experts and the Advisory Committee on Foodstuffs on which trade interests and the consumers are represented.

3. The proposal was drawn up on the basis of Article 2(2) of Directive 79/112/EEC which stipulates that the Council, in accordance with the procedure laid down in Article 100 of the Treaty, shall draw up a non-exhaustive list of claims, the use of which must, in all circumstances, be prohibited or restricted. The European Parliament and the Economic and Social Committee must therefore be consulted.

(1) OJ L 33 of 8.2.1979, p. 1 .

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE APPROXIMATION
OF THE LAWS OF THE MEMBER STATES
RELATING TO CLAIMS MADE IN THE LABELLING,
PRESENTATION AND ADVERTISING OF FOODSTUFFS FOR SALE
TO THE ULTIMATE CONSUMER

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
in particular Article 100 thereof,

Having regard to Council Directive 79/112/EEC on the approximation of the
laws of the Member States relating to the labelling, presentation and
advertising of foodstuffs for sale to the ultimate consumer⁽¹⁾, and in parti-
cular Article 2(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas, pursuant to Article 2(2) of Directive 79/112/EEC, the Council
must adopt a non-exhaustive list of the claims, the use of which must in
all circumstances be prohibited or restricted;

Whereas the meaning of "claims" should be defined for the purposes of the
said Directive;

Whereas certain claims must be prohibited in order that the consumer
should not be misled;

Whereas, for the same purpose, certain claims may be permitted only under
certain conditions;

Whereas, pursuant to Article 2(2) of Directive 79/112/EEC, those claims
which must be prohibited or restricted in all circumstances may only be
specified by the Community legislature; whereas, on the other hand,

(1) OJ L 33, 8.2.79, p. 1

Since the list of these claims is non-exhaustive within the meaning of the said paragraph, the judicial authorities remain free to determine whether or not claims other than those covered by this Directive are in conformity with Article 2 (1) of the said Directive;

Whereas, however, until the Community legislature has made provision for claims solely applicable to specific foodstuffs and not to foodstuffs in general, it should be possible to adopt national provisions to their regard;

Whereas a procedure should be laid down for updating the lists given in this Directive;

Whereas, in all cases where the Council empowers the Commission to implement rules laid down in respect of foodstuffs, provision should be made for a procedure instituting close co-operation between the Member States and the Commission within the Standing Committee for Foodstuffs, set up by Council Decision 69/414/EEC⁽¹⁾;

Whereas this Directive does not affect the obligations arising from Directive 79/112/EEC, and in particular from Article 7 thereof,

HAS ADOPTED THIS DIRECTIVE :

Article 1

1. The purpose of this Directive is to establish a non-exhaustive list of claims the use of which pursuant to Article 2 (2) of Directive 71/112/EEC must in all circumstances be prohibited or restricted.
2. "Claim" shall mean any statement intended to promote the sale of a foodstuff, transmitted by any medium, including generic advertising, relating to the characteristics, effects or properties referred to in Article 2 (1)(a) of Directive 79/112/EEC.

(1) OJ No L 291, 19.11.1969, p. 9

Article 2

The following shall be prohibited:

- (1) claims relating to measurable and objective characteristics which cannot be substantiated;
- (2) claims suggesting that adequate quantities of nutritive substances cannot be obtained from a balanced diet of everyday foodstuffs;
- (3) claims that a particular everyday foodstuff contains adequate quantities of all essential nutritive substances, unless authorized by the rules in force;
- (4) claims concerning:
 - recommendations by the medical, paramedical or pharmaceutical professions, or authorities or competent bodies in the nutritional or public-health fields,
 - testimonials or statements concerning the connection between nutrition and health,unless authorized by the rules in force;
- (5) claims with reference to:
 - a member of the medical, paramedical or pharmaceutical professions,
 - a medical instrument,
 - a human body or organ, even if presented in a stylized form, intended to illustrate a physiological function,except when they serve to support claims under point 4 which are authorized by the rules in force;
- (6) claims that might:
 - arouse or exploit feelings of fear or anxiety,
 - reflect discredit upon other foodstuffs, whether similar or not;
- (7) claims suggesting that a foodstuff has acquired nutritive value from substances added for purely technical and/or organoleptic reasons.

Article 3

The following claims shall be permissible only if the stated conditions are met:

- (1) claims suggesting that a product is superior or exclusive and relating to measurable and objective characteristics, provided that particulars are given as to how or to what extent the product is superior or exclusive
or
provided that they comply with the rules in force;
- (2) claims relating to the absence or low content of a given ingredient, provided that they are followed by details, printed in letters of the same size, of other ingredients performing the same function, if such ingredients have been used;
- (3) claims relating to the absence or low content of a specific pesticide residue, provided that they are followed by details, printed in letters of the same size, of any other pesticide which may be present;
- (4) claims that a product is "natural",
provided that they refer to products:
 - (a) occurring naturally and in their original state or refrigerated;
 - (b) obtained, by a purely mechanical process, from products within the meaning of (a) and where appropriate refrigerated,which contain no additives and chemical substances other than those found in nature,
or
provided that they are traditionally used culinary expressions
or
provided that they comply with the rules in force;

- (5) claims that a product is "biological" or "organic",
provided that they refer to cultivation processes which do not
involve recourse to synthetic products and which avoid environmental
pollution,
and
provided that it is warranted that the foodstuff has the essential
characteristics of products obtained by such processes;
- (6) claims that the product is "new",
(a) provided that no more than eighteen months have passed since
it was first offered for sale to the ultimate consumer;
(b) provided that the characteristic of the product described as
"new" is clearly indicated, for example in the name under which
the product is sold;
- (7) claims pertaining to the nutritive value of the product,
provided that the label lists the nutritive ingredients in accordance
with the rules in force;
- (8) claims relating to honours or awards
provided that the foodstuff marketed has characteristics identical
to those for which the honours or awards were given;
- (9) claims relating to a product or preparation which has religious or
ritual significance, provided that the foodstuff complies with the
requirements laid down by the religious or ritual authorities
concerned.

Article 4

Community provisions applying to certain specific foodstuffs, but
not to foodstuffs in general, may designate other claims the use of
which must be prohibited or restricted.

In the absence of such provisions, the Member States may adopt
provisions designating such claims in accordance with the procedure
laid down in Article 16 of Directive 79/112/EEC.

Article 5

Any amendments to be made to Articles 2 and 3 shall be adopted in accordance with the procedure laid down in Article 17 of Directive 79/112/EEC.

Article 6

Member States shall take the measures necessary to comply with this Directive by 1 January 1984 at the latest and shall forthwith inform the Commission thereof.

Article 7

This Directive is addressed to the Member States.