

Generic descriptors and denomination in Regulation (EC) No 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods

Rules for derogation from article 1 paragraph 3 of the Regulation

1. Legal context

In article 1 paragraph 3 of the Regulation stipulates:

"A trade mark, brand name or fancy name appearing in the labelling, presentation or advertising of a food which may be construed as a nutrition or health claim may be used without undergoing the authorisation procedures provided for in this Regulation, provided that it is accompanied by a related nutrition or health claim in that labelling, presentation or advertising which complies with the provisions of this Regulation."

Article 1 paragraph 4 provides for derogation to this provision in certain circumstances:

"For generic descriptors (denominations) which have traditionally been used to indicate a particularity of a class of foods or beverages which could imply an effect on human health, a derogation from paragraph 3 may be adopted in accordance with the procedure laid down in Article 25(2), on application by the food business operators concerned. The application shall be sent to the national competent authority of a Member State which will forward it to the Commission without delay."

Article 1 paragraph 4 asks also the Commission to adopt rules to apply for this derogation:

"The Commission shall adopt and make public the rules for food business operators according to which such applications shall be made; so as to ensure that the application is dealt with transparently and within a reasonable time."

2. Rules for food business operators according to which such applications shall be made

2.1 Presentation of the dossier

An application for derogation to be adopted by Comitology as referred to in article 1 paragraph 4 of the Regulation shall contain the following information

- (a) The denomination, or generic descriptor subject to the application
- (b) The justification of its traditional use
- (c) The description of the products marketed under the denomination or generic descriptors

- (d) Any additional information

2.2 Content of the dossier

- (a) One application has to be made for each generic descriptor or denomination. No generic list will be considered for the derogation. The derogation applies to any products bearing the generic descriptor or denomination. A single application is therefore necessary when a global sector is concerned.
- (b) Bibliographical or any verifiable evidence of the marketing of foods bearing the generic descriptor or denomination in question throughout a period of at least 30 years preceding the date of the application, including at least 15 years within the Community.
- (c) An indicative list of products bearing the generic descriptor or denomination in question, including a short product description and nutritional composition.
- (d) Any additional information related to the understanding of the consumer of the descriptor subject to the application, or to the market situation of the products bearing the descriptor.

2.3 Procedure

The application should be sent to the national competent authority of a Member State which will forward it to the Commission without delay. The Commission will propose a draft decision on the possible derogation, and decision will be taken by the Standing Committee of the Food Chain and Animal Health following the comitology procedure.

3. Scope of generic descriptors or denomination subject to applications for derogation

The Derogation was introduced in the Regulation to have the possibility to exempt products such as "digestive" or "cough drops" from the scope of the Regulation. Such Derogation can be of national or even of regional interest, but are taken at the community by comitology procedure. The denomination can imply an effect on health, but is not perceived as a health claim by the consumer, especially because of its traditional use. Other products can be concerned, such as products bearing the label "aperitif" or "digestive". They are often alcoholic beverages, which are not allowed to bear claims under the Regulation.

The scope is limited to the generic descriptors or denomination and does not include the nutrition or health claims made on the products using the generic descriptors or denomination.