

MINISTRY OF HEALTH AND
SOLIDARITY

MINISTRY OF AGRICULTURE AND
FISHING

DEPARTMENT OF HEALTH

DEPARTMENT OF NUTRITION

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Memo relating to the health information that must accompany advertising or promotional messages for certain foods and drinks

Article L 2133-1 of the French Public Health Code (*Code de la Santé Public*), arising from Act no. 2004-806 of 9 August 2004 on public health policy, provides that advertising messages for drinks with added sugar, salt or artificial sweeteners and manufactured foods shall contain information concerning health. If said health message is not affixed, the advertiser or promoter will be liable to a financial contribution based on the advertising expenses and payable in accordance with the same terms and conditions as value added tax. The revenue from said tax will be paid to the National Institute for Prevention and Education in Health Matters (*INPES*) in order to conduct nutritional educational campaigns.

Decree no. dated (published in France's official journal [*Journal Officiel* or *JO*]) and Decree dated (published in the *JO*) set forth the terms and conditions for implementing the Act, *inter alia*, by determining the content of the health information.

This is a nutritional educational initiative, which aims to raise the awareness of the general public and, in particular, children, and to publicise the key guidelines for nutrition. It contributes to the fight against the pathologies associated with poor nutrition and to preventing obesity.

I. THE ADVERTISING MEDIA THAT FALL WITHIN THE FIELD OF APPLICATION

- Article L 2133-1 makes reference to advertising messages and promotion intended for the public, by means of leaflets and periodicals published by the producers or distributors of the food products in question. **The advertising and promotional messages referred to relate to all messages that are designed to inform the public (informing the consumer) of the existence and qualities of the food products referred to with a view to increasing sales.** It would appear from discussions in Parliament that the legislation is only aimed at advertising messages in the strict sense, that is to say, those whose primary aim is advertising and which are circulated through channels that are used mainly for advertising or promotional purposes. **It does not refer to information that relates to the sale of products or information that is disseminated during events such as local or traditional celebrations and fairs.**

By way of an example, it does not apply to a poster at the place of sale aimed at the product buyers (unless the poster is visible outside the place of sale) whereas it does apply to a poster that is circulated on an outdoor network or on a vehicle. Similarly, the legislation does not apply to oral messages delivered at the point of sale, on packaging for the products and the leaflets attached to them, the media relating to the terms and conditions of sale and consumption (sets, batches, coupons, purchase orders, information about prices, methods of use, leaflets, menus recipes etc.) and the equipment used for selling products (furniture, counters, dispensers, shelf tags, shop windows, caddies, gadgets etc.).

Neither does it apply to sponsorship initiatives: in accordance with to Decree no. 92-280 of 27 March 1992, the purpose of such initiatives is not to stimulate the sale of a particular

product but to promote a name, brand, image, activities or projects. Also excluded are specialist on-line publications or services that are not intended for the public at large or consumers and to which only professionals have access. Manufacturers' or distributors' publications and corporate sites that do not contain advertising or promote products are also excluded.

- The legislation applies to **major advertising channels**, that is to say, the media (television, radio, the internet, posters, the written press, mobile phones and the cinema) as advertising media that offer advertising space for sale and non-standard advertising channels when they are aimed at wide audiences such as leaflets published by distributors and producers: for example, supermarket leaflets, leaflets dropped through letter boxes, leaflets that are available in all places open to the public such as doctors' waiting rooms or shopping malls, "recipe guide" leaflets when they refer to commercial ends for the food products included in the scope of the legislation.

So far as concerns advertising on television and radio, the legislation only applies to messages that are both transmitted and broadcast on French territory, pursuant to the provisions transposed into French law under the "Television without frontiers" Directive.

II. THE DISSEMINATION OF HEALTH INFORMATION

1) alternating the dissemination of health information in a non-organised manner

The purpose of the Decree is to ensure that each piece of information relating to health is disseminated as even-handedly as possible. It establishes a principle of alternating health information in advertising messages between a regular and random appearance.

In practical terms, the health information must rotate within each identical set of advertising units: the same cinema commercial, the same poster, the same television commercial, the same magazine number, the same banner ad on the internet, etc. Moreover, the appearance of types of health information must not be organised (in broadcasting schedules for example or between locations or television channels etc.) but they must be regular.

However, for obvious reasons of feasibility, advertising in a magazine number will only relate to a single type of health information. Similarly, there is no requirement that the dissemination of health information in the cinema should be equally allocated in the same cinema. In this case, the advertiser will arrange for alternation between the various magazine insertions or cinemas. In both cases and only these two, this feasibility requirement may result in exceeding the 10% tolerance provided by the Decree for the regular dissemination of health information over an equal quantity of advertising or promotional messages.

In other cases, this 10% tolerance enables account to be taken of the fact that some advertising or promotional media are unsuitable for disseminating a strictly identical number of types of health information (for example: posters, the press, the internet and leaflets).

2) Dissemination of health information in brochures and leaflets

The Decree provides that in the case of advertising or promotional documents produced by a single distributor or producer, the health information may take the form of a nutritional educational text presented once in the document. This situation refers solely to documents whose content is published directly by the producer or distributor without giving rise to the purchase of advertising space or assignment to an advertiser for a commercial consideration.

3) Dissemination of health information using online public advertising services

On these services, health information appears at the same time as the advertising message and it must be available when examining the advertising message. Health information which appears without any specific action on the part of the user is deemed to be a simultaneous appearance.

Where a technical impediment is expressly notified to our department, only the obligation for accessibility of the health information will be required (for example, by the appearance of an interstitial page), pending other technical solutions.

III THE FOOD PRODUCTS IN QUESTION

The advertising in question is that which relates to all food products with the exception of certain drinks and non-manufactured foods.

1) Drinks

The law provides that advertising that relates to drinks with no added sugar, salt or artificial sweetener is not subject to the obligation to affix health information. This rule applies to products that are usually consumed in the form of a drink. In particular, adverts for tea, coffee, herbal teas and chicory does not have to show the message if the product does not contain any added salt, sugar or artificial sweetener. Accordingly, the legislation does not apply to fruit juice or milk with no added sugar, salt or artificial sweetener, even if they have been pasteurised.

In the case of advertising on an alcoholic drink, the specific public health message required by legislation relating to alcohol (Article L 3323-4 of the French Public Health Code) shall be valid as a health message under this measure.

2) “Manufactured food products”

There is no legal definition of manufactured food products. The products to which the law applies are all food industry products, in particular, those that are prepared with additives or that have been processed. Products offered to the consumer in their raw state are excluded (including fresh fruits and vegetables, spices and flavours).

Some special cases of excluded products: fresh meat or fish that has just been cut or minced, raw products that are only packaged (such as a box of eggs, oranges in a net and honey, within the meaning of the regulation), deep or fast frozen or canned with nothing else added other than water.

3) Products intended for nursing infants and young children (children under three years of age)

The Decree provides for types of health information that are specific to foodstuffs for children under three years of age.

Commission Directive 91/321/EEC of 14 May 1991 on infant formulae and follow-on formulae and Directive 96/5/EC on processed cereal-based foods and baby foods for infants and young children contain provisions relating, *inter alia*, to labelling, presentation and advertising products that are presented as being specially suitable for children under three years of age.

Said legislation was transposed into French law, *inter alia*, by the provisions of the Decree of 1 July 1976, as amended, relating to foods intended for nursing infants and young children and by Articles L 121-50 to L 121-53 of the French Consumer Code.

Under said provisions, preparations for nursing infants can only be advertised in the written press intended for the health professions. Accordingly, the provision laid down by article L 2133-1 cannot be applied for these products. By contrast, the order does apply to the follow-on formulae referred to in Article 13 of the Decree of 1 July 1976 and the Decree provides for types of health information that are compatible with the nutritional information issued under the Directive.

So far as concerns foods that fall within the scope of Directive 96/5/EC (referred to in Article 20 of the Decree of 1 July 1976), advertising is not prohibited but the mandatory statements must appear on the labelling for said products. The Decree provides for specific health information that is consistent with the nutritional information issued under the Directive.

III. TELEVISION ADVERTISING AIMED AT CHILDREN

In an exchange of letters with the Ministry of Health, television channels undertook to include the health message orally and visually in advertising jingles in advertising slots that contain the advertising referred to by the measure and that are broadcast at times when young children are listening. In that context, all children, even those who cannot read, will hear the health messages and will be able to understand them.

IV. SPECIAL CASES

In the event of problems of interpretation, requests for further explanations must be sent to the Ministry of Health and Solidarity, Department of Health (Room EA3).