

Overview of Changes to Food Labelling Introduced under the New Food Information Regulation

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Introduction

The current rules on food labelling were first introduced in 1979 and while they were amended and consolidated over the years, market conditions, eating habits and consumer expectations have changed considerably since their publication. Work on a major revision of the rules began in the European Union (EU) some time ago and culminated in the publication in the EU Official Journal on 22nd November, 2011 of Regulation No (EU) 1169/2011¹ on the provision of food information to consumers.

This new Regulation which replaces the current rules, sets out the requirements for the provision of food information to the consumer as well as setting out the requirements with regard to the provision of nutrition information on foodstuffs. The Regulation came into effect on 13th December, 2011. It will apply from 13th December, 2014, with the exception of point (l) of Article 9(1) (mandatory nutrition declaration), which will apply from 13th December, 2016, and Part B of Annex VI (specific requirements regarding the designation of minced meat), which will apply from 1st January, 2014.

This new Regulation maintains the original objectives and the core components of the current labelling legislation, but does introduce some new requirements in order to ensure easier compliance and greater clarity for stakeholders, as well as modernising the legislation to take account of new developments in the field of food information. The purpose of this document is to highlight the new elements of the Regulation. It should be noted however, that many of those elements require implementing rules to be published by the EU or may require guidance from the EU Commission. This document will be updated to take account of any such publication or guidance from the Commission.

Food Information – Definition

The current legislation sets out the requirements for the labelling, advertising and presentation of foodstuffs. This new legislation refers to food information rather than food labelling. It states that food information means:

“information concerning a food and made available to the final consumer by means of a label, other accompanying material, or any other means including modern technology tools or verbal communication”

¹ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004

Scope of Regulation (EU) No 1169/2011

The Regulation applies to food business operators at all stages of the food chain where their activities concern the provision of food information to consumers.

Fair Information Practices

The core objective of the current rules that food information must not be misleading is maintained in the new Regulation. The new legislation expands on the ways in which food information could be considered misleading and includes, by suggesting:

- That the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients
- By means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient, while in reality, a component naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient

Responsibilities

Regulation (EU) No 1169/2011 sets out to clarify the responsibility of food business operators with respect to food information in accordance with the responsibility regarding the consumer under the general food law (Regulation (EC) No 178/2002).

According to the new Regulation, the food business operator responsible for food information is the operator under whose name or business name the food is marketed or, if that operator is not established in the EU, the importer into the EU market. The food business operator responsible for the food information must ensure the presence and accuracy of the food information in accordance with the applicable food information law and requirements of relevant national provisions.

Food business operators who do not affect food information must not supply food which they know or presume, on the basis of the information in their possession as professionals, to be non-compliant with the applicable food information law and requirements of relevant national provisions.

Food business operators within the businesses under their control must:

- Not modify the information accompanying a food if such modification would mislead the final consumer or otherwise reduce the level of consumer protection and the possibilities for the final consumer to make informed choices. Food business operators are responsible for any changes they make to food information accompanying a food
- Ensure compliance with the requirements of food information law and relevant national provisions which are relevant to their activities and must verify that such requirements are met
- Ensure that information relating to non pre-packed food intended for the final consumer or for supply to mass caterers is transmitted to the food business operator receiving the food in order to enable, when required, the provision of mandatory food information to the final consumer

The mandatory particulars required under Articles 9 and 10 of Regulation (EU) No 1169/2011 can appear on the commercial documents referring to the foods where it can be guaranteed that such documents either accompany the food to which they refer or were sent before or at the same time as delivery, where pre-packed food is intended for:

- (a) The final consumer but marketed at a stage prior to sale to the final consumer and where sale to a mass caterer is not involved at that stage
- (b) Supply to mass caterers for preparation, processing, splitting or cutting up

Similar to the current rules, when availing of this derogation for business to business sales, the legislation requires that certain listed mandatory information must also appear on the external packaging in which the pre-packed foods are presented for marketing.

Food business operators that supply to other food business operators food not intended for the final consumer or to mass caterers, must ensure that those other food business operators are provided with sufficient information to enable them, where appropriate, to meet their obligations under this Regulation.

Presentation of Mandatory Particulars

Mandatory food information must be marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible. It must not in any way be hidden, obscured, detracted from or interrupted by any other written or pictorial matter or any other intervening material. Voluntary food information must not be displayed to the detriment of the space available for mandatory food information.

When appearing on the package or on the label attached thereto, the mandatory particulars listed in Article 9(1) of the Regulation must be printed on the package or on the label in such a way as to ensure clear legibility, in characters using a font size where the x-height is equal to or greater than 1.2mm.

In the case of packaging or containers, the largest surface of which has an area of less than 80cm², the x-height of the font size must be equal to or greater than 0.9mm.

Mandatory Food Information

The list of mandatory information which should be provided for all foods which exists in the current rules, is maintained in the new Regulation (Article 9), e.g. product name, list of ingredients, net weight, date of minimum durability etc. However, certain particulars in this list have been extended and others which are currently provided on a voluntary basis will be mandatory under the new rules, e.g. nutrition labelling, origin labelling for certain meats.

Additional mandatory indications for specific types or categories of foods are set out in Annex III to the Regulation. The majority of these listed requirements already exist in current legislation, e.g. statements regarding the presence of sweeteners, foods containing glycyrrhetic acid, foods packaged in certain gases etc. However, some of the current mandatory statements have been amended and these include:

- Foods containing aspartame/aspartame-acesulfame salt authorised pursuant to Regulation (EC) No 1333/2008 must indicate:
 - 'contains aspartame (a source of phenylalanine)' on the label in cases where aspartame/aspartame-acesulfame salt is designated in the list of ingredients only by reference to the E number
 - 'contains a source of phenylalanine' on the label in cases where aspartame/aspartame-acesulfame salt is designated in the list of ingredients by its specific name
- Beverages with high caffeine content

Beverages, with the exception of those based on coffee, tea or coffee or tea extract where the name of the food includes the term 'coffee' or 'tea', which are intended for consumption without modification and contain caffeine, from whatever source, in a proportion in excess of 150mg/l, or, are in concentrated or dried form and after reconstitution contain caffeine, from whatever source, in a proportion in excess of 150mg/l, must indicate:

'High caffeine content. Not recommended for children or pregnant or breastfeeding women' in the same field of vision as the name of the beverage, followed by a reference in brackets to the caffeine content expressed in mg per 100ml. The statement must be marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible. It must not in any way be hidden, obscured, detracted from or interrupted by any other written or pictorial matter or any other intervening material

The requirement to indicate the caffeine content is now extended to foods other than beverages, where caffeine is added with a physiological purpose. Such products must carry the following indication:

'Contains caffeine. Not recommended for children or pregnant women' in the same field of vision as the name of the food, followed by a reference in brackets to the caffeine content expressed in mg per 100g/ml. In the case of food supplements, the caffeine content shall be expressed per portion as recommended for daily consumption on the labelling. The statement must be marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible. It must not in any way be hidden, obscured, detracted from or interrupted by any other written or pictorial matter or any other intervening material

Same Field of Vision

Under the new Regulation, the name of the product, the net quantity of food and the actual alcoholic strength by volume for beverages containing more than 1.2% by volume of alcohol must appear in the same field of vision. The requirement to include date of minimum durability in the same field of vision which is a requirement under the current rules, has been removed. Field of vision is defined in the Regulation as meaning “all the surfaces of a package that can be read from a single viewing point”.

Product Name

Additional requirements regarding the product name are introduced in this Regulation. Specific provisions are set out in Annex VI of the Regulation and where relevant, these indications must accompany the product name. They include requirements regarding: foods that have been frozen before sale and which are sold defrosted, meat products and meat preparations which have the appearance of a cut/joint of meat to which water is added, where the water is more than 5% of the weight of the finished product, meat products, meat preparations and fishery products which give the impression they are made from a whole cut of meat but consist of different pieces combined, foods for which substitute ingredients are used. For the full list, please see Appendix II.

Refined Oils and Fats

VEGETABLE ORIGIN

The Regulation allows for the grouping together of refined oils and fats of vegetable origin in the list of ingredients under the designation 'vegetable oils' or 'vegetable fats' as appropriate, which must be followed immediately by a list of indications of specific vegetable origin. It may be followed by the phrase 'in varying proportions'. If grouped together, vegetable oils or vegetable fats must be included in the list of ingredients in accordance with Article 18(1), i.e. descending order of weight, on the basis of the total weight of the vegetable oils or vegetable fat present. The expression 'fully hydrogenated' or 'partly hydrogenated', as appropriate, must accompany the indication of hydrogenated oil or fat.

ANIMAL ORIGIN

The indication 'oil' or 'fat' of animal origin must appear with either the adjective 'animal', or the indication of specific animal origin. The expression 'fully hydrogenated' or 'partly hydrogenated', as appropriate, must accompany the indication of hydrogenated oil or fat.

Allergens

Currently, all pre-packaged food products must indicate on the label the presence in their product of specific ingredients which the EU has identified as causing allergic reactions in certain people or to which individuals can be intolerant to. This list of substances remains the same as that in the current rules (see Annex II of Regulation (EU) No 1169/2001 for the list). However, under the new rules, they must now be indicated in the list of ingredients and the name of the substance must be emphasised through a typeset that clearly distinguishes it from the rest of the list of ingredients, e.g. by means of the font, style or background colour.

For pre-packaged foods which are exempt from the requirement to provide a list of ingredients, e.g. alcohol, the indication on the label must comprise of the word 'contains' followed by the name of the substance or product as listed in Annex II to the Regulation.

Under the new rules, the requirement to highlight the use of any of these substances in the production of a foodstuff has been extended to foods sold loose such as food in restaurants, take-aways, canteens and deli counters etc. Rules on the means by which this information must be made available to the consumer for foods sold loose, must be introduced by each Member State.

Date of Minimum Durability

The date of minimum durability of a food means “the date until which the food retains its specific properties when properly stored”.

In the case of foods which from a microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health, the date of minimum durability must be replaced by the ‘use-by’ date. Under this new Regulation, once the ‘use-by’ date has passed, a food is deemed to be unsafe in accordance with Article 14(2) to (5) of Regulation (EC) No 178/2002.

The Regulation requires an indication of the date of freezing or the date of first freezing for frozen meat, frozen meat preparations and frozen unprocessed fishery products.

- These meats/fishery products must indicate the date of freezing or the date of first freezing in cases where the product has been frozen more than once. This indication must be as follows:
 - (a) It must be preceded by the words ‘Frozen on ...’;
 - (b) The words referred to in point (a) must be accompanied by:
 - The date itself, or,
 - A reference to where the date is given on the labelling
 - (c) The date must consist of the day, the month and the year, in that order and in un-coded form

A list of products which are exempt from the requirement to indicate date of minimum durability are listed in Annex X to the Regulation. The only difference between the current list and the new list is that individual pre-packaged portions of ice-creams and soft drinks, fruit juices, fruit nectars and alcoholic beverages in individual containers of more than five litres, intended for supply to mass caterers are no longer exempt, i.e. from 13th December, 2014, these products will be required to indicate a date of minimum durability.

Nutrition Declaration

Currently, the provision of nutrition information is voluntary unless a nutrition related claim is made when the declaration then becomes mandatory. From 13th December, 2016, nutrition information will be mandatory for most pre-packaged foodstuffs. For food businesses who provide nutrition information on a voluntary basis between 13th December, 2014 and 13th December, 2016, the declaration must comply with the new Regulation.

There are a number of foodstuffs which are exempt from the mandatory requirement to provide nutrition information and these are listed in Annex V (Appendix 1 in this document) to the Regulation and include unprocessed products that comprise a single ingredient or category of ingredients, herbs, spices, salt, chewing gums, foods in packaging or containers the largest surface of which has an area of less than 25cm². Also included in the exemption is food, including handcrafted food directly supplied by the manufacturer of small quantities of products to the final consumer or to local retail establishments directly supplying the final consumer.

To facilitate the comparison of products in different package sizes, the requirement that the mandatory nutrition declaration should refer to 100g or 100ml amounts has been retained. Portion-based declarations are allowed in addition to this where food is pre-packed and individual portions or consumption units are identified.

The format of the nutrition table has changed in the new Regulation, in so far as the mandatory declaration will now be as follows:

- (a) Energy value; and
- (b) The amounts of fat, saturates, carbohydrate, sugars, protein and salt

Please note that the declaration for 'carbohydrate' has moved position and is now listed after 'fat' and 'saturates' declarations. The current requirement to indicate 'sodium' in the declaration has been replaced by a 'salt' declaration (the figure indicated must be based on the sodium content of the food).

The content of the mandatory nutrition declaration above may be supplemented with an indication of the amounts of one or more of the following:

- (a) Monounsaturates
- (b) Polyunsaturates
- (c) Polyols
- (d) Starch
- (e) Fibre
- (f) Any of the vitamins or minerals listed in point 1 of Part A of Annex XIII to the Regulation, and present in significant amounts as defined in point 2 of Part A of Annex XIII to the Regulation

Front of Pack Nutrition Labelling

All components of the mandatory nutrition declaration should be in the same field of vision on the foodstuff packaging. In addition, on a voluntary basis, listed elements of the nutrition information may be repeated in the principal field of vision, in order to help consumers to easily see the essential nutrition information when purchasing foods.

Where the labelling of a pre-packed food provides the mandatory nutrition declaration, the following information may be repeated:

- (a) Energy value or
- (b) Energy value together with the amounts of fat, saturates, sugars, and salt

In the case of beverages containing more than 1.2% by volume of alcohol, the content of the declaration may be limited to the energy value only.

Country of Origin

Country of origin labelling is currently mandatory for certain products such as beef, fish, honey, olive oil and fresh fruit and vegetables. In other cases, it currently only becomes mandatory when its absence might mislead consumers as to the true origin of the product.

Under the new rules, the mandatory indication of country of origin or place of provenance is extended to the meat of pigs, sheep, goats and poultry. Following an impact assessment on the introduction of such rules, the EU Commission is required to introduce legislation setting out how origin will be determined and how this information must be indicated. The European Commission must introduce these rules by 13th December, 2013.

In addition, the new Regulation requires the EU Commission to set out rules where the country of origin or the place of provenance of a food is given and where it is not the same as that of its primary ingredient (defined as representing more than 50% of the food). These rules will require that the country of origin or place of provenance of the primary ingredient must:

- (a) Also be given; or
- (b) Be indicated as being different to that of the food

Legislation setting out the rules on how this will be implemented must be produced by the EU Commission by 13th December, 2013. In addition, by this date they are also required to submit a report to the European Parliament and the Council regarding the mandatory indication of the country of origin or place or provenance for meat used as an ingredient.

In addition, by 13th December, 2014, the European Commission must also carry out a feasibility study and submit it to the European Parliament and the Council on the possibility of extending country of origin labelling to other categories of food, such as other meats not listed in paragraph 2 above, milk, milk used as an ingredient in dairy products, unprocessed foods, single ingredient foods and ingredients that represent more than 50% of a food.

Distance Selling

In order to ensure the provision of food information, it is necessary to consider all ways of supplying food to consumers and this new Regulation includes references to food which is sold by means of distance communication, i.e. internet sales. Any food supplied through distance selling must meet the same information requirements as food sold in shops. This Regulation clarifies that in such cases, the relevant mandatory food information must also be available before the purchase is concluded, with the exception of a date of minimum durability/'use-by' date, and the information must appear on the material supporting the distance selling or be provided through other appropriate means clearly identified by the food business operator. When other appropriate means are used, the mandatory food information must be provided without the food business operator charging consumers supplementary costs. All mandatory particulars must be available at the moment of delivery.

For non pre-packed foods offered for sale by means of distance communication, the information that must be provided to the consumer will be set out in national legislation.

Date of Application

The new rules came into effect on 13th December, 2011 and will apply from 13th December, 2014, with the exception of point (l) of Article 9(1) (mandatory nutrition declaration), which will apply from 13th December, 2016, and Part B of Annex VI (specific requirements regarding the designation of minced meat), which applies from 1st January, 2014. The Regulation has the following transitional measures:

PLACED ON THE MARKET OR LABELLED PRIOR TO 13TH DECEMBER, 2014

- Foods placed on the market or labelled prior to 13th December, 2014 which are compliant with the existing rules (Directive 2000/13/EC) but which do not comply with the requirements of the new Regulation may be marketed until the stocks of the foods are exhausted

NUTRITION LABELLING

- Foods placed on the market or labelled prior to 13th December, 2016 in compliance with Directive 90/496/EEC (current nutrition labelling rules) but which do not comply with the requirement to provide the mandatory nutrition declaration, may be marketed until the stocks of the foods are exhausted

MINCED MEAT

Foods placed on the market or labelled prior to 1st January, 2014 which do not comply with the requirements laid down in Part B of Annex VI to the Regulation on the specific requirements regarding the designation of minced meat may be marketed until the stocks of the foods are exhausted.

Appendix I

ANNEX V TO REGULATION (EU) NO 1169/2011

Foods which are Exempted from the Requirement of the Mandatory Nutrition Declaration

1. Unprocessed products that comprise a single ingredient or category of ingredients
2. Processed products which the only processing they have been subjected to is maturing and that comprise a single ingredient or category of ingredients
3. Waters intended for human consumption, including those where the only added ingredients are carbon dioxide and/or flavourings
4. A herb, a spice or mixtures thereof
5. Salt and salt substitutes
6. Table top sweeteners
7. Products covered by Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts, whole or milled coffee beans and whole or milled decaffeinated coffee beans
8. Herbal and fruit infusions, tea, decaffeinated tea, instant or soluble tea or tea extract, decaffeinated instant or soluble tea or tea extract, which do not contain other added ingredients than flavourings which do not modify the nutritional value of the tea
9. Fermented vinegars and substitutes for vinegar, including those where the only added ingredients are flavourings
10. Flavourings
11. Food additives
12. Processing aids
13. Food enzymes
14. Gelatine
15. Jam setting compounds
16. Yeast
17. Chewing-gums
18. Food in packaging or containers, the largest surface of which has an area of less than 25cm²
19. Food, including handcrafted food, directly supplied by the manufacturer of small quantities of products to the final consumer or to local retail establishments directly supplying the final consumer

Appendix II

ANNEX VI TO REGULATION (EC) NO 1169/2011

Part A — Mandatory Particulars Accompanying the Name of the Food

1. The name of the food shall include or be accompanied by particulars as to the physical condition of the food or the specific treatment which it has undergone (for example, powdered, refrozen, freeze-dried, quick-frozen, concentrated, smoked) in all cases where omission of such information could mislead the purchaser.
2. In the case of foods that have been frozen before sale and which are sold defrosted, the name of the food shall be accompanied by the designation 'defrosted'.

This requirement shall not apply to the following:

- (a) Ingredients present in the final product
- (b) Foods for which freezing is a technologically necessary step of the production process
- (c) Foods for which the defrosting has no negative impact on the safety or quality of the food

This point shall apply without prejudice to point 1.

3. Foods treated with ionising radiation shall bear one of the following indications:
'irradiated' or 'treated with ionising radiation', and other indications as stated in Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation
4. In the case of foods in which a component or ingredient that consumers expect to be normally used or naturally present has been substituted with a different component or ingredient, the labelling shall bear — in addition to the list of ingredients — a clear indication of the component or the ingredient that has been used for the partial or whole substitution:
 - (a) In close proximity to the name of the product; and
 - (b) Using a font size which has an x-height of at least 75% of the x-height of the name of the product and which is not smaller than the minimum font size required in Article 13(2) of this Regulation
5. In the case of meat products, meat preparations and fishery products containing added proteins as such, including hydrolysed proteins, of a different animal origin, the name of the food shall bear an indication of the presence of those proteins and of their origin.
6. In the case of meat products and meat preparations which have the appearance of a cut, joint, slice, portion or carcase of meat, the name of the food shall include an indication of the presence of added water if the added water makes up more than 5% of the weight of the finished product. The same rules shall apply in the case of fishery products and prepared fishery products which have the appearance of a cut, joint, slice, portion, fillet or of a whole fishery product.

7. Meat products, meat preparations and fishery products which may give the impression that they are made of a whole piece of meat or fish, but actually consist of different pieces combined together by other ingredients, including food additives and food enzymes or by other means, shall bear the following indication:

In English 'formed meat' and 'formed fish'

In Irish: 'píosaí feola ceangailte' and 'píosaí éisc ceangailte'

Part B — Specific Requirements Concerning the Designation of 'Minced Meat'

1. Composition criteria checked on the basis of a daily average:

	Fat content	Collagen/meat protein ratio ⁽¹⁾
Lean minced meat	≤ 7%	≤ 12%
Minced pure beef	≤ 20%	≤ 15%
Minced meat containing pigmeat	≤ 30%	≤ 18%
Minced meat of other species	≤ 25%	≤ 15%

⁽¹⁾ The collagen/meat protein ratio is expressed as the percentage of collagen in meat protein. The collagen content means the hydroxyproline content multiplied by a factor of 8.

2. In addition to the requirements laid down in Chapter IV of Section V of Annex III to Regulation (EC) No 853/2004², the following expressions shall appear on the labelling:
- 'percentage of fat content under ...'
 - 'collagen/meat protein ratio under ...'
3. The Member States may allow the placing on their national market of minced meat which does not comply with the criteria laid down in point 1 of this Part under a national mark that cannot be confused with the marks provided for in Article 5(1) of Regulation (EC) No 853/2004.

Part C — Specific Requirements Concerning the Designation of Sausage Casings

If a sausage casing is not edible, this must be indicated.

² Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin



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