



Issues relating to distance selling in the context of Regulation (EU) N° 1169/2011 on the provision of food information to consumers

1 Distance selling

1.1 Article 14 of the FIC Regulation states that when prepacked food is sold through distance selling, all the mandatory food information has to be available to customers before the purchase is concluded. What should be understood by “before the purchase is concluded”?

In the case of prepacked food offered for sale by means of distance selling, all the mandatory food information must be provided before the consumer decides to go ahead with the purchase.

1.2 How can a business comply with the FIC Regulation when it sells prepacked food on line for which certain particulars are variable from product to product?

Consumers should be given the necessary information to be allowed to make informed choices. Companies should aim at providing the same level of information on food sold on-line and on labels. However some of the mandatory particulars may be variable from product to product (*e.g.* country of origin, where required).

In a spirit of a pragmatic approach, a general indication should be given on the website that would accordingly inform the consumer of the different possibilities (*e.g.* the country of origin for a product may be United Kingdom, Ireland or Belgium). However, the specific detail (*i.e.* the precise country of origin of the purchased product) must always be given directly on the package or on a label attached thereto at the moment of delivery.

1.3 A company sells a prepacked food product priced per weight through the website; each product will be individually priced. However, it is not possible to provide the weight and price for each product on the website. For example, can the company list a chicken by a range of weights, give the price per kilo on the website and provide the specific weight on the label on delivery?

Yes. When the product weight cannot be calculated in advance, the different range weights must be communicated to the consumer before the latter decides to go ahead with the purchase. For example, in the case of a chicken, retailers should at least give consumers a range of options, *e.g.* small (0.9-1.19Kg), medium (1.20 – 1.75kg) and large (1.80 - 2.10Kg). In any event, the specific weight must always been given directly on the package of the purchased food or on a label attached thereto at the moment of delivery.



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1.4 The composition of products can change, due to recipe improvements and reformulation. Different shops will have different stock levels of the old and the new recipe; at what point, do food business operators need to update the information on their website with the new recipe?

Food business operators need to decide, based on levels of stocks of old and new recipe, at what point they need to change the details on their website. If the recipe change involves the introduction of a substance causing an allergy or intolerance, it is essential to change the information to the new recipe immediately, when it is put on sale.

Consumers should always be vigilant of any recipe changes and should check the information on the package or on the product label upon delivery.

1.5 Certain food business operators use catalogues to promote prepacked food products and/or accept orders be placed by phone. How can they ensure compliance with the information requirements provided in the FIC Regulation?

All mandatory food information, with the exception of the date of durability or the 'use by' date, must appear on the catalogue that supports the distance selling or be provided through other appropriate means clearly identified by the food business operator, *e.g.* provision of an internet link/address, which would provide all necessary information for each specific product, without any supplementary costs for the consumer. This mandatory information must be provided before the purchase is concluded (*i.e.* before the consumer decides to go ahead with the purchase).

1.6 What kind of information must 'takeaway' businesses provide to the final consumer where food is ordered over the telephone or the internet?

On the assumption that the food is provided non prepacked or packed on the sales premises at the consumer's request or prepacked for direct sale, the mandatory allergen information should be provided in accordance with Article 44 of the FIC Regulation and with any national measures in place in the country of marketing.

1.7 Some frozen products orders may well have been taken before the product had been frozen. Is the date of freezing considered as a marking date for labelling purposes?

The date of first freezing, with respect to frozen meat, frozen meat preparations and frozen unprocessed fishery products is dealt in Annex X to the FIC Regulation and can be considered as a marking date alongside the date of minimum durability and the 'use-by' date. Such marking dates do not need to be available before the purchase is concluded (*i.e.* before the consumer decides to go ahead with the purchase). However, they should be available directly on the package of the purchased foods or on a label attached thereto at the moment of delivery.



1.8 A business runs an internet site hosting a commercial web page that allows small caterer businesses to sell their foods via the internet. What responsibilities does the owner of the website have in ensuring the correct information is present on the individual pages of the small businesses?

Given Article 8(3) of the FIC Regulation, the owner of the website must ensure that the catering businesses are aware that the FIC Regulation applies to the caterers and in particular:

- as far as prepacked foods are concerned:
 - that all mandatory food information, except the marking dates, must be available before the purchase is concluded (*i.e.* before the consumer decides to go ahead with the purchase) and must appear on the material supporting the distance selling or be provided through other appropriate means clearly identified by the food business operator, without any supplementary costs for the consumer;
 - that all mandatory particulars are available at the moment of delivery.
- as far as non-prepacked foods are concerned:
 - at the very least, they need to provide the consumers with allergen/intolerance information before a purchase is concluded (*i.e.* before the consumer decides to go ahead with the purchase);
 - there may be additional mandatory information required by national authorities.

If the owner of the website is not just hosting those catering businesses but the consumers pay the owner of the website and the caterer delivers the food to the consumer for which an agreed amount is paid to the caterer by the owner of the website, then the owner must ensure that the caterer complies with the FIC Regulation and national rules.

1.9 Where prepacked food intended for the final consumer but marketed at a stage prior to the sale to the final consumer is offered for sale by means of distance communication, are all the mandatory particulars foreseen in Article 8(7) of the FIC Regulation (which may be delivered on the commercial documents) required to be available before the purchase is concluded?

Article 14 of the FIC Regulation on distance selling is intended to cover the offer of foods for sale to the final consumer and it does not cover business to business transactions.

1.10 What are the information requirements applicable to foods offered for sale by means of automatic vending machines or automated commercial practices?

As indicated in Article 14(3) of the FIC Regulation, foods offered for sale by means of automatic vending machines or automated commercial premises are not subject to the requirements of distance selling, as laid down in Article 14(1)(a). Therefore, mandatory food information is not required to be provided to the consumers before the purchase is concluded. This principle applies both to prepacked and non prepacked foods. However, given the particularities of this



means of supplying food to consumers and the nature of non prepacked foods, Member States may provide, through national measures under Article 44 of the FIC Regulation, a specific means through which information on allergens or any other mandatory information is to be made available. This means could tantamount to the provision of mandatory information to the consumer before the purchase is concluded (e.g. allergen information in the form of a sign-posting next to the vending machine).

1.11 In the case of prepacked foods offered for sale by means of distance communication, what are the requirements for providing information in written form on the presence of allergens before the purchase is concluded?

In accordance with Article 14(1)(a) of the FIC Regulation, in the case of prepacked foods offered for sale by means of distance communication, the responsible food business operator is required to make available all mandatory food information, except for the date of minimum durability or the 'use by' date **before the purchase is concluded**.

Mandatory food information to be available before the purchase is concluded includes, amongst others, the information concerning the presence of allergens listed in Annex II to the FIC Regulation.

Allergen information provided in written form must comply with Article 21(1) of the FIC Regulation. In that respect, the latter provision requires such information:

- To be clearly indicated in the list of ingredients in accordance with Article 18(1) of the same Regulation with a clear reference to the name of the substance or product as listed in Annex II thereto; and,
- Allergen information must be emphasized through a typeset that clearly distinguishes it from the rest of the list of ingredients, for example by means of the font, style or background colour.

Article 13 of the FIC Regulation sets out general rules concerning the presentation of mandatory particulars. Where it considers that there are limitations on the manner of presenting mandatory particulars, it does explicitly provide so. For example, Article 13(2) specifically indicates that the minimum font size applies only when the mandatory particulars listed in Article 9(1) appear on the package or on a label attached thereto. This is not the case when prepacked foods are provided by means of distance selling. Therefore, the information on the presence of allergens in the case of prepacked foods offered for sale by means of distance selling must be provided **before the purchase is concluded** in accordance with **Article 21 of the FIC Regulation when provided in written form** (e.g. on the material supporting the distance selling).