

Questions and Answers on the application of the Regulation (EU) No 1169/2011 on the provision of food information to consumers - Part II

1. Introduction

On 25 October 2011, the European Parliament and the Council adopted Regulation (EU) No 1169/2011 on the provision of food information to consumers (hereinafter, the " Regulation"). The Regulation became applicable on 13 December 2014, with the exception of the provisions concerning the nutrition declaration which applies from 13 December 2016.

The present document contains additional questions and answers to the "Questions and Answers on the application of the Regulation (EU) No 1169/2011 on the provision of food information to consumers" document which was published on 31 January 2013. It consists of two sections:

- General labelling
- Nutrition labelling

The Commission's Health and Food Safety Directorate-General (DG SANTE) has discussed each section of the present document in the context of a Working Group with experts from Member States.

This document aims at assisting all players in the food chain as well as the competent national authorities to better understand and apply in a harmonised way the Regulation.

While this document reflects the Commission's understanding of the relevant Union legislation, enforcement of the relevant rules remains the responsibility of Member States. This document has no formal legal status and in the event of a dispute, ultimate responsibility for the interpretation of the law lies with the Court of Justice of the European Union.

2. General Labelling

2.1. Does cider have to be labelled with a date of minimum durability "best before"? (Article 24, Annex X, point 1(d))

No, cider obtained by fermentation does not need to bear a date of minimum durability as it belongs to the category "*wines, liqueur wines, sparkling wines, aromatised wines, and similar products obtained from fruits other than grapes, and beverages falling within CN code 2206 00 obtained from grapes or grape musts*" which is exempted from this obligation.

However, a product obtained by the mixing of alcohol with fruit juice would not be considered as 'similar products obtained from fruit other than grapes' under the above mentioned category and therefore an indication of a date of minimum durability "*best before*" would be required."

2.2. Are there any restrictions for the use of claims/statements as regards presence or absence of certain ingredients and/or nutrients since it is stated that food information shall not be misleading by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics? (Article 7(1)(c))

The provision in Article 7(1)(c) of Regulation (EU) No 1169/2011 does not *a priori* prevent the use of either nutrition claims covered by Regulation (EC) No 1924/2006 or statements related to ingredients, suggesting that a food possesses special characteristics when in fact all similar foods possess such characteristics. In particular, such claims/statements could be used if the wording suggests that this characteristic is also shared by other similar products. The assessment of the potentially misleading character of such claims/statements should be made on a case by case basis by the competent authorities.

2.3. "Food information shall not be misleading by suggesting, by means of the appearance, the description or pictorial representations, the presence of a certain ingredient or food, when, in reality, a component being naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient"? What are the examples of situations falling within the scope of this provision and how in those cases products should be correctly labelled? (Article 7(1)(d), Article 13(2), Annex VI, Part A, point 4).

The application of Article 7(1)(d) would be triggered where average consumer expects that a particular food is normally produced with certain ingredients or certain ingredients are naturally present in the food.

The following examples can be given:

- a food in which an ingredient normally used in that food has been substituted with a different component or a different ingredient, e.g. a pizza for which the presence of cheese is expected while cheese has been substituted with another product, named otherwise, made from raw materials used for the purpose of replacing, in whole or in part, any milk constituent;

- a food in which a component naturally present in that food has been substituted with a different component or a different ingredient, e. g. product that looks like cheese where the fat of milk origin has been replaced by fat of vegetable origin.

As regards the labelling in the case of foods where a substitution ingredient(s) is used in a product, the name of the product should be followed in close proximity by the name of the substitution ingredient(s), printed on the package or on the label in such a way so as to ensure clear legibility and using a font size which has an x-height of a least 75% of the x-height of the name of the product and which is not smaller than 1,2 mm.

It is up to the food business operator to find an appropriate name for this substitution food in accordance with the rules concerning the name of the food. In case that this substitution food is sold as such, further information should be provided to the consumers on its appropriate use.

In addition, the provisions of the product-specific legislation in place, where appropriate, shall also be respected. For example it is forbidden to use the name "imitation cheese" because the name "cheese" is reserved exclusively for milk products (Regulation (EU) No 1308/2013, Annex VII, Part 3).

2.4. Can the indication "quick frozen on [DATE]" be used to indicate the date of freezing on frozen foods? (Annex III, point 6 and Annex X, point 3)

No, the indication "quick frozen on ..." cannot be used since Annex X clearly stipulates that the term to be used is "Frozen on...".

2.5. How is the font size to be defined for capital letters and numbers? (Annex IV)

The size of capital letters and numbers should be equivalent to the letter "A" which begins the word "Appendix", where the x-height is equal to or greater than 1,2 mm. In case where the whole text on the label is written only in capital letters, the size of capital letters should also be equivalent to the letter "A".

2.6. Does the mandatory font size, as laid down in Article 13(2) also apply to the additional mandatory particulars required for specific types or categories of foods such as those listed in Annex III?

No. The minimum font size as laid down in Article 13(2) applies only for mandatory particulars listed in Article 9(1).

However, when the additional mandatory particulars listed in Annex III are displayed in a way that form part of the name of the food, then the mandatory font size requirement, as laid down in Article 13(2) applies.

2.7. Does the mandatory font size, as laid down in Article 13(2) also apply to the mandatory particulars accompanying the name of the food such as those listed in Annex VI, Part A (e. g. "defrosted", "smoked", "irradiated" etc.)?

Yes since these mandatory particulars are associated with the name of the food for which the minimum font size provision as laid down in Article 13(2) applies.

Concerning Annex VI, part A, point 4, the Regulation requires a font size which has an x-height of at least 75% of the x-height of the name of the product which in any case will not be smaller than the minimum font size required in Article 13(2), (see point 2.3 above).

3. Nutrition declaration

3.1. Can a graphical representation be used to illustrate the numerical value of the nutrition declaration? (Articles 9(2) and 35)

Graphical representations, such as columns, bars or pie charts can be used in addition to the numbers in order to illustrate the quantities or percentages of nutrients and/or energy. However, such representations cannot substitute the information given in numbers and must fulfil the requirements of Article 35.

3.2. For food supplements, what terminology in relation to reference values shall be used for the declaration of vitamins and minerals? (Article 29, Annex XIII)

The rules on the nutrition declaration of the Regulation do not apply to food supplements.

Article 8(3) of Directive 2002/46/EC on food supplements stipulates that information on vitamins and minerals shall also be expressed as a percentage of the reference values mentioned in the Annex to Directive 90/496/EEC, which was replaced by the Regulation from 13 December 2014.

Directive 90/496/EEC requested the use of a percentage relating it to recommended daily allowances (RDAs), which are replaced in Annex XIII, Part A of the Regulation by “nutrient reference values (NRVs)”. While the term “Nutrient Reference Value” (NRV) can be used provided that its acronym is accompanied by its full name on the label, it is advised for reasons of consistency to use the same terminology for food supplements as for other foods and to refer to Reference Intakes.

3.3. Do food supplements bearing a nutrition or a health claim have to provide a nutrition declaration in accordance with the Regulation? (Articles 29 and 49)

No. The rules requiring a nutrition declaration do not apply to food supplements. However, food supplements have to provide nutrition information in accordance with Article 8 of Directive 2002/46/EC on the approximation of the laws of the Member States relating to food supplements. When a nutrition or a health claim is made, the amount of the nutrient or substance shall also be stated per daily dose in accordance with Article 7 of Regulation (EC) No 1924/2006 on nutrition and health claims made on foods.

3.4. When the amount of fibre (or any other nutrient referred to in Article 30(2)) is declared on a non-prepacked food, what are the other nutritional elements that need to be declared? (Article 30(1), (2) (5) and Article 49)

If a food business operator is interested in declaring the amount of fibre of a product, or the amount of any other nutrient referred to in Article 30(2) then the full nutrition declaration must be given. This comprises:

- the energy value; and
- the amounts of fat, saturates, carbohydrate, sugars, protein and salt.

When the amount of any nutrient referred to in Article 30(2) is qualified by a nutrition claim, the amount of that nutrient shall also be stated in the nutrition declaration.

- Iodised salt no

FIC Regulation provides an exemption from the requirement of the mandatory nutrition declaration for salt and salt substitutes.

However, following Article 7(3) of Regulation (EC) No 1925/2006 on the voluntary addition of vitamins and minerals and of certain other substances to foods, the nutrition declaration of products to which vitamins and minerals have been added shall be compulsory. Mandatory addition of iodine to salt is not covered by Regulation (EC) No 1925/2006 and specific labelling provisions regarding the amount of iodine added are covered by national legislation.

- Honey yes

Honey is considered as an unprocessed food and made of constituents and not ingredients, as clarified by recital 3 of Directive 2014/63/EU amending Council Directive 2001/110/EC relating to honey. Honey can therefore benefit from the exemption from the requirement provided for unprocessed foods that comprise a single ingredient or category of ingredients.

- Herb and spice products containing flavourings and/or acidity regulators yes

Herbs, spices or mixtures thereof are exempted from the requirement of the mandatory nutrition declaration, as they are consumed in small quantities and have no significant nutritional impact on the diet. Similarly, such products containing flavourings and/or acidity regulators benefit from this exemption, provided the flavourings and/or acidity regulators do not have a significant nutritional impact.

3.7. Is it possible to label the fibre content using a percentage of a reference intake, even if there is no harmonised reference intake laid down in the Regulation for fibre? (Article 30(2) and Article 35(1)(e))

No. The only nutrients for which the amount can be expressed as a percentage of a reference intake are the ones for which reference intakes are set out in Annex XIII, even when additional forms of expression and presentation of the nutrition declaration are used.

3.8. Is it possible to repeat the nutrition declaration once in the form of a simple declaration of energy value and another time in the form of energy value together with the amounts of fat, saturates, sugars and salt? (Article 30(3) and Article 34(3))

The nutrition declaration can be repeated as the energy value alone or as the energy value together with the amounts of fat, saturates, sugars and salt. It is also possible to repeat this information more than once.

However, these voluntary additions of the nutrition declaration have to comply with the provisions on minimum font size.

3.9. Is the labelling of the content of a single nutrient allowed on the front of pack, like X% fat? (Article 30(3))

The voluntary repetition of the nutrition declaration does not allow the labelling of a single nutrient content, as the information to be provided would be either the energy value alone or the energy value together with the amounts of fat, saturates, sugars and salt.

However, the label can include the declaration of a single nutrient content when this declaration is required by law, such as the fat content of certain drinking milks referred to in Annex VII, part IV, paragraph III, subparagraph 1 of Regulation (EU) No 1308/2013 establishing a common organisation of agricultural products.

It would also be possible to label indications such as 'low fat' or 'fat<3%', provided they comply with the conditions of use of that claim and the other relevant provisions of Regulation (EC) No 1924/2006 on nutrition and health claims made on foods and provided that Article 7(1)(c) of the Regulation (EU) No 1169/2011 is also respected.