

DG/092/12E

Mrs Paola TESTORI COGGI
Director General
DG Health & Consumers
European Commission
Rue Breydel 4
1040 BRUSSELS

Brussels, 20 November 2012

RE: Joint FoodDrinkEurope-EuroCommerce letter on food information to consumers guidance

Dear Mrs Testori Coggi,

Following the adoption of Regulation (EU) 1169/2011 on the provision of food information to consumers in October last year, European food business operators have taken the initiative to prepare for a smooth implementation of the new legal requirements.

In order to create a uniform EU-wide understanding of the Regulation's requirements by food business operators, FoodDrinkEurope has developed Guidance on Food Information to Consumers. We are pleased to inform you that this comprehensive document has now been fully endorsed and supported by EuroCommerce. You will find a copy of the Joint Guidance of FoodDrinkEurope and EuroCommerce attached.

As previously indicated to the European Commission, food business operators – manufacturers and retailers alike – are currently preparing for their label and management system changes in order to duly comply with the new requirements by their date of application (12 December 2014). Practically, this means that companies need to make clear-cut decisions now on how to apply certain elements of the Regulation for their products.

At the same time, we note that there are still many open questions of interpretation/application, some of which are currently discussed at EU level between the Member States and the European Commission. Whilst we welcome DG SANCO's initiative to develop a Q&A document which will be published on the Commission's website, we feel that it does not sufficiently address the clarity that operators need at this very moment.

In order to get the necessary timely answers (at least before the end of this year), we would kindly ask the Commission to scrutinize the attached Joint Guidance – agreed between manufacturers and retailers that are to implement the Regulation – along with the Member States as soon as possible. Your feedback on this document will provide more certainty to food business operators and ensure a harmonised and consistent application of the Regulation's requirements in all 27 EU Member States.

Thank you in advance for your rapid actions in this respect, which we believe are in the interest of both consumers and food business operators.

Sincerely yours,



Mella Frewen
Director General, FoodDrinkEurope



Christian Verschuere
Director General, EuroCommerce

Cc: Eric Pondelet, Director, DG SANCO; Basil Mathioudakis, Head of Unit, DG SANCO;
Alexandra Nikolakopoulou, Deputy Head of Unit, DG SANCO

Joint Guidance on the Provision of Food Information to Consumers

(Regulation (EU) 1169/2011)

November 2012

Introduction

Background of the Regulation

Regulation (EU) 1169/2011 on the provision of food information to consumers (hereafter also: “the Regulation”) was adopted by the European Parliament and the Council on 25 October 2011 and was published in the Official Journal of the EU on 22 November 2011. It entered into force on 12 December 2011.

Following an evaluation of the legislation on food labelling by the European Commission’s Directorate-General for Consumer and Health, the European Commission issued in 2008 a proposal which would combine 2 major Directives (Directive 2000/13/EC¹ and Directive 90/496/EEC²) into one Framework Regulation (Regulation 1169/2011).

The Regulation establishes a legal framework in the European Union with regard to information related to foodstuffs provided to consumers by food business operators at all stages of the food chain. Its aim is to “*serve the interests of the internal market by simplifying the law, ensuring legal certainty and reducing administrative burden, and benefit citizens by requiring clear, comprehensible and legible labelling of foods*”.³ The Regulation includes general principles, responsibilities as well as requirements governing food information.

The provisions apply to **all foods intended for the final consumer, including foods delivered by mass caterers, and foods intended for supply to mass caterers**. Areas that are covered by the Regulation are amongst others nutrition information, origin labelling, legibility and allergens labelling.

In order for food business operators to adjust their labels, a transition period has been foreseen. The Regulation’s provisions will generally have to be complied with as of 13 December 2014. Food business operators that have not applied any nutrition labelling before this date will have to comply with the nutrition labelling rules in accordance with Regulation 1169/2011 by 13 December 2016.

As a consequence, the following EU legislation will be repealed as of 13 December 2014:

- *Directive 87/250/EEC (on alcoholic strength in the labelling of alcoholic beverages)*
- *Directive 90/496/EEC (on nutrition labelling),*
- *Directive 1999/10/EC (on food labelling),*
- *Directive 2000/13/EC (on food labelling),*
- *Directive 2002/67/EC (on foodstuffs containing quinine and caffeine) and 2008/5/EC (on food labelling) and*
- *Regulation (EC) n. 608/2004 concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytosterols and/or phytosterol esters*

¹ Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs

² Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs

³ Recital 9 of Regulation 1169/2011

Furthermore, two other EU Regulations will be amended by Regulation 1169/2011 on 13 December 2014:

- *Regulation (EC) No. 1924/2006 (on nutrition and health claims made on foods)*
- *Regulation (EC) No. 1925/2006 (on the addition of essential nutrients to foods)*

The Regulation applies without prejudice to labelling requirements provided for in specific Union provisions applicable to particular foods (e.g. the Sugars Directive 2001/111/EC).

The Guidance

This Guidance document is intended for interested stakeholders, such as food business operators (including small and medium-sized enterprises as well as large food business operators) and EU policy-makers.

It includes guidance on the following topics:

- **Chapter I: Nutrition Labelling**
- **Chapter II: Origin Labelling**
- **Chapter III: Legibility**
- **Chapter IV: Allergen Labelling**
- **Chapter V: Other Horizontal Issues**
- **Annexes**
 - **Transition Period**
 - **Responsibilities**

Each Chapter includes a “*Table of contents*”, a “*Summary*” (except for Chapter V) and goes through the (relevant) legal text of the Regulation “*Article-by-Article*”.

IMPORTANT

Please note that the guidance given in this document cannot be regarded as official interpretation of the legislation, this being the exclusive reserve of the judicial powers, i.e. the national courts and the Court of Justice of the European Communities.

Chapter I: Nutrition Labelling

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List of Terminology

For the purposes of this guidance document, the following definitions/synonyms have been used:

Field of vision	<p>All the surfaces of a package that can be read from a single viewing point</p> <p><i>The same “field of vision” may be any side and more than one side of the pack, including but not limited to the back-of-pack, but could also be front-of-pack or the another side of the pack.</i></p>
Principal field of vision	<p>The field of vision of a package which is most likely to be seen at first glance by the consumer at the time of purchase and that enables the consumer to immediately identify a product in terms of its character or nature and, if applicable, its brand name. If a package has several identical principal fields of vision, the principal field of vision is the one chosen by the food business operator.</p> <p><i>The “principal field of vision” may for instance refer to the front-of-pack.</i></p>
Nutrition declaration	Nutrition labelling
Nutrient(s)	Protein, carbohydrate, fat, fibre, sodium, vitamins and minerals listed in point 1 of Part A of Annex XIII of Regulation 1169/2011, and substances which belong to or are components of one of those categories;
Portion	The amount of a given food or drink reasonably expected to be consumed by an individual in a single consumption occasion.
(Daily) Reference Intakes (or Guideline Daily Amounts (GDA))	Typical nutrient intake levels that most people are guided to consume daily for a healthy diet.
Nutrient Reference Values (NRV) (or Recommended Daily Allowance (RDA))	Recommendations for the average daily amount of a nutrient that population groups should consume over a period of time (i.e. the level of (nutrient) intake that is enough for virtually all healthy people in a group). They are typically based on the estimation of individual requirements in the population.

SUMMARY

Nutrition Information in the Principal Field of Vision

Content

- In the principal field of vision of the label, nutrition information **may** be provided for either:
 - a) The energy value (alone), or
 - b) The energy value and fat, saturates, sugars and salt (all)

It is not possible to provide in the principal field of vision nutrition information for nutrients other than those mentioned in the above two options.

Expression

- Where energy value alone is declared (option a):
 - The absolute number **must** be expressed per 100g or per 100ml.
 - In addition to per 100g or per 100ml, the energy value **may** also be expressed per portion. There is no derogation allowing for the energy value to be expressed per portion only.
 - In addition to per 100g or per 100ml, the energy value **may** also be expressed as % GDA per portion.
- If nutrition information is given as option b:
 - The amounts of fat, saturates, sugars and salt **may** be expressed per 100g or per 100ml or **may** be given per portion only. If the information of the 4 nutrients is provided per portion only, the energy value **must** be presented in absolute numbers both per portion **and** per 100g or per 100ml.
 - In addition, the amounts of fat, saturates, sugars and salt **may** be expressed as % GDA per portion only. If the information of the 4 nutrients is provided as % GDA per portion only, the energy value **must** be presented in absolute numbers both per portion **and** per 100g or per 100ml.

Presentation

- Nutrition information which is repeated in the principal field of vision **must** be presented in line with the minimum font size requirements set out in the Regulation.
- Where GDAs are provided, the following statement **must** be placed in close proximity to the GDAs: "Reference intake of an average adult (8 400 kJ/2 000 kcal)". When GDAs are provided both in the principal field of vision and elsewhere on the pack, it would suffice to place an asterisk in close proximity to the %GDA in the principal field of vision, referring to the statement in proximity to the nutrition table.

Nutrition Information in any Field of Vision

Content

- For prepacked foods, food business operators **must** have a nutrition declaration on their label, indicating the energy value and the amounts of fat, saturates, carbohydrate, sugars, protein and salt. If the salt is exclusively due to the presence of naturally occurring sodium, then a specific statement **may** be provided indicating this in close proximity to the nutrition declaration.
- The following nutrients **may** be added to the nutrition table in the non-principal field of vision on a voluntary basis: mono-unsaturates, polyunsaturates, polyols, starch, fibre, and/or certain vitamins or minerals.
 - Only vitamins or minerals which are listed below, and present in significant amounts as defined in Annex XIII, **may** be added in the nutrition table:

<ul style="list-style-type: none">• Vitamin A (µg)• Vitamin D (µg)• Vitamin E (mg)• Vitamin K (µg)• Vitamin C (mg)• Thiamin (mg)• Riboflavin (mg)• Niacin (mg)• Vitamin B6 (mg)	<ul style="list-style-type: none">• Folic acid (µg)• Vitamin B12 (µg)• Biotin (µg)• Pantothenic acid (mg)• Potassium (mg)• Chloride (mg)• Calcium (mg)• Phosphorus (mg)• Magnesium (mg)	<ul style="list-style-type: none">• Iron (mg)• Zinc (mg)• Copper (mg)• Manganese (mg)• Fluoride (mg)• Selenium(µg)• Chromium (µg)• Molybdenum (µg)• Iodine (µg)
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- For non-prepacked foods, the nutrition declaration **may** be limited to the energy value only or energy, fat, saturates, sugars and salt. For alcoholic beverages, the nutrition declaration **may** be limited to the energy value only. Food business operators are free to implement the full mandatory nutrition declaration.
- Certain foods are exempted from the requirement to bear a mandatory nutrition declaration. These are listed in the Regulation under Annex V. In addition, certain foods mentioned in specific EU Directives (e.g. PARNUTS, natural mineral waters) have specific rules and do not have to comply with the nutrition labelling requirements in Regulation 1169/2011.

Expression

- *Expression per 100 g or per 100 ml*
 - The energy value and all nutrients that are declared **must** be expressed in absolute amounts per 100g/100ml and **must** use the measurement units that are listed in Annex XV. The energy value **must** be provided in kilojoules (kJ) and in kilocalories (kcal).
- *Expression on a per portion basis*
 - In addition to the mandatory expression per 100g/100ml, the energy value and all nutrients that are declared **may** be expressed *per portion or consumption unit* (voluntary).
 - There are however several general conditions when food business operators wish to use per portion expression:
 - a. The portion/consumption unit **must** be easily recognisable by the consumer;
 - b. The portion or unit used **must** be quantified on the label;
 - c. The number of portions/units contained in the package **must** be stated.

Nutrition Information in any Field of Vision (Cont'd)

- *Reference intakes (%GDAs, %NRVs)*
 - The energy value and all mandatory nutrients **may** be expressed as % (*GDA*) *reference intakes* in the nutrition table, in addition to or instead of the form of expression per 100g/100ml (voluntary).
 - Vitamins and minerals which are declared **must** be expressed as % (*NRV*) *reference intakes* per 100g or per 100ml (mandatory).
- Information of the product as sold, where appropriate, **may** relate to the food after preparation, under the condition that:
 - Sufficiently detailed preparation instructions are given;
 - The information relates to the food as prepared for consumption.

Presentation

- The mandatory nutrients and the voluntary nutrients **must** be included in the “same field of vision”.
- The energy value and the other nutrients that are declared **must** be presented in a clear tabular format and should follow the order of presentation as provided for in Annex XV. Where space does not permit, the declaration can appear in linear format.
- Where GDAs are provided per 100g/ml, the following statement **must** be placed in close proximity to the GDAs: “Reference intake of an average adult (8 400 kJ/2 000 kcal)”

Article-by-Article

Section 3 of the Regulation covers all major provisions related to nutrition declaration. The section includes Articles 29 until Article 35, which is subdivided into the following elements of the nutrition declaration:

- **Article 29: relationship with other legislation**
- **Article 30: content**
- **Article 31: calculation**
- **Article 32: expression (per 100g/100ml)**
- **Article 33: expression (per portion)**
- **Article 34: presentation**
- **Article 35: additional forms of expression and/or presentation**

Content (Art. 30), calculation (Art. 31), expression (Art. 32, 33) and presentation (Art. 34) are the fundamental principles of nutrition labelling:

- a) Content: these provisions deal with the content of the nutrition declaration, i.e. which nutrients must/may be declared.
- b) Calculation: these provisions deal with the way of calculating the nutrients that must/may be expressed.
- c) Expression: these provisions deal with the way in which the nutrients must/may be expressed (per 100g/ml, per portion, as percentage reference intake).
- d) Presentation: these provisions deal with the way in which the nutrients must/may be presented (same field of vision, principal field of vision, in a certain font size, etc.).

On top, Article 35 provides for a process that would possibly allow additional forms of *expression* (conf. Art. 32, 33) and/or additional forms of *presentation* (conf. Art. 34).

In addition, there are other relevant provisions in the Regulation that are (directly or indirectly) related to nutrition labelling:

- **Article 2.2(k) and 2.2(l)**: definitions of “field of vision” and “principal field of vision”
- **Article 2.2(s)**: definition of nutrients
- **Article 13.2 and 13.3**: minimum font size requirements
- **Article 15**: language requirements
- **Article 16.2**: exemption from nutrition declaration in case of packages smaller than 10cm²
- **Article 16.4**: exemption from nutrition declaration for alcoholic beverages
- **Article 36.3(c) and Article 43**: voluntary food information and (national or EU) rules regarding reference intakes for specific population groups
- **Article 54.1, 54.2 and 54.3**: transitional measures
- **Annex I**: specific definitions (e.g. on nutrients)
- **Art. 16.3 and Annex V**: list of foods that are exempted from the mandatory nutrition declaration
- **Annex XIII**: reference intakes
- **Annex XIV**: conversion factors
- **Annex XV**: expression and presentation of nutrition declaration

Articles 30 to 35 are covered in detail in the next pages. The other related articles are referred to, where appropriate, relating to the corresponding Articles 30 to 35.

As the articles are strongly interrelated, with various cross-references throughout the text, it is important to consider all articles in this section in their totality rather than on a stand-alone basis.

Art. 29 – Relationship with other legislation

29.1: Foods that are not subject of the Regulation’s nutrition labelling requirements

This Section shall not apply to foods falling within the scope of the following legislation:

(a) Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements;

(b) Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters.

The nutrition labelling rules of this Regulation do not apply to:

- Food supplements
- Natural mineral waters.

29.2: Foods with special (vertical) nutrition labelling rules

This Section shall apply without prejudice to Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses and specific Directives as referred to in Article 4(1) of that Directive.

Foodstuffs intended for particular nutritional uses (PARNUTS) have vertical rules regarding nutrition labelling which have to be considered.

Annex V: Foods that are exempted from mandatory nutrition declaration

In addition to Article 29, Annex V of the Regulation lists the foods which are exempted from the *mandatory* nutrition declaration. These are:

- 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 (1), 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 25 cm²;**
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.**

If a food business operator decides to apply nutrition labelling on a voluntary basis for the above foods, it will have to comply with the requirements set out in Section 3 of the Regulation (Articles 29-35).

The exemption does not apply when a nutrition and/or health claim in accordance with Regulation (EC) 1924/2006 is made (see: Art. 49 of the Regulation). The same applies for products to which vitamins and minerals have been added in accordance with Regulation (EC) 1925/2006 (see: Art. 50 of the Regulation). In those cases, nutrition labelling is mandatory.

Art. 30 – Content

This Article is structured as follows:

- 30.1: *Mandatory nutrients*
- 30.2: *Voluntary nutrients*
- 30.3: *Nutrients that may be repeated*
- 30.4: *Nutrient declaration in case of alcoholic beverages*
- 30.5: *Nutrient declaration in case of non-prepacked foods*
- 30.6: *EC implementing measures – addition/removal of particulars*
- 30.7: *EC implementing measures – TFA report*

Article 30 provides the content of the nutrition declaration; in other words: which nutrients **must** be declared, which voluntary nutrients **may** be declared, and which of the mandatory nutrients **may** be repeated elsewhere. This is covered by Article 30.1 to 30.3.

Articles 30.4 and 30.5 provide special provisions for alcoholic beverages and non-prepacked foods.

Article 30.6 covers the implementing measures that **may** be undertaken by the European Commission, whereas para 30.7 covers the implementing measures which the European Commission **must** take.

30.1: Mandatory nutrients

***The mandatory nutrition declaration shall include the following:
(a) energy value; and
(b) the amounts of fat, saturates, carbohydrate, sugars, protein and salt.***

Food business operators **must** have a nutrition declaration on their label, indicating the energy value and the amounts of the nutrients mentioned above.

Whereas the mandatory nutrition declaration as such is fixed, additionally, Article 49.2 states that *“the amount(s) of the substance(s) to which a nutrition or health claim relates that does not appear in the nutrition labelling shall be stated in the same field of vision as the nutrition labelling and be expressed in accordance with Articles 31, 32 and 33...[...] The units of measurement used to express the amount of the substance shall be appropriate for the individual substances concerned”*.

It is therefore also mandatory to declare the substance on which a claim is made and which does not already appear in the nutrition labelling as defined in Art 30.1 and 30.2. Examples of such cases could be omega-3 fatty acids and beta-glucans. In that case, the amount of the substance(s) in question **must** be stated in the ‘same field of vision’ as the nutrition labelling. It is FoodDrinkEurope and EuroCommerce’s understanding that this is not necessarily limited to the nutrition declaration/table.

Where appropriate, a statement indicating that the salt content is exclusively due to the presence of naturally occurring sodium may appear in close proximity to the nutrition declaration.

Under the new rules, it is no longer possible to indicate sodium; rather, salt **must** be declared in the mandatory nutrition declaration. However, if the salt content is exclusively due to the presence of naturally occurring sodium, food business operators **may** add a statement to clarify this. The word “may” indicates that this statement is voluntary. The positioning of this statement **must** be close to the nutrition declaration.

Furthermore, mandatory food information (including the mandatory nutrition declaration) needs to comply with the language requirements set out in Article 15 of the Regulation:

- *It shall appear in a language easily understood by consumers of the Member States where a food is marketed;*
- *Member States may stipulate which information needs to be provided in one or more official EU languages;*

30.2: Voluntary nutrients

The content of the mandatory nutrition declaration referred to in paragraph 1 may be supplemented with an indication of the amounts of one or more of the following:

(a) mono-unsaturates;

(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, and present in significant amounts as defined in point 2 of Part A of Annex XIII.

The above nutrients **may** be added on a voluntary basis to the nutrition declaration. Please note that the list is exhaustive, i.e. it is not possible to declare voluntary nutrients other than those that are indicated in this para.

As an exception to this rule, Article 49.2 states that *“the amount(s) of the substance(s) to which a nutrition or health claim relates that does not appear in the nutrition labelling shall be stated in the same field of vision as the nutrition labelling and be expressed in accordance with Articles 31, 32 and 33...[...]. The units of measurement used to express the amount of the substance shall be appropriate for the individual substances concerned”*.

When food business operators decide to voluntarily put (an) authorised claim(s) on the label, the substance on which a nutrition or health claim is made **must** be declared, even if it does not already appear in the (mandatory and/or voluntary) nutrition labelling as per Art 30.1 and 30.2. Examples of the latter could be omega-3 fatty acids and beta-glucans. The amount of the substance(s) in question **must** be stated in the ‘same field of vision’ as the nutrition labelling. FoodDrinkEurope and EuroCommerce understand that this is not necessarily limited to the nutrition declaration/table.

30.3: Nutrients that may be repeated

Where the labelling of a prepacked food provides the mandatory nutrition declaration referred to in paragraph 1, the following information may be repeated thereon:

(a) the energy value; or

(b) the energy value together with the amounts of fat, saturates, sugars, and salt.

This applies to prepacked foods that have a mandatory nutrition declaration obligation in accordance with 30.1.

On a voluntary basis, food business operators **may** decide to repeat mandatory nutrient(s) from the mandatory nutrition declaration elsewhere. The nutrients that may be repeated are bound and **must** be one of the following options:

Option 1:

- Energy;

Option 2:

- Energy + fat + saturates + sugars + salt

The specific expression and presentation requirements when repeating these nutrient(s) are covered by Art. 32, 33 (expression) and Art. 34 (presentation).

30.4: Nutrient declaration in case of alcoholic beverages

By way of derogation from Article 36(1), where the labelling of the products referred to in Article 16(4) provides a nutrition declaration, the content of the declaration may be limited to the energy value only.

For alcoholic beverages, the nutrition declaration **may** be limited to energy only. Food business operators are free to implement the full mandatory nutrition declaration under 30.1.

30.5: Nutrient declaration in case of non-prepacked foods

Without prejudice to Article 44 and by way of derogation from Article 36(1), where the labelling of the products referred to in Article 44(1) provides a nutrition declaration, the content of that declaration may be limited only to:

(a) the energy value; or

(b) the energy value together with the amounts of fat, saturates, sugars, and salt.

For non-prepacked foods, the nutrition declaration **may** be limited to energy only *or* energy + fat + saturates + sugars + salt.

Food business operators are free to implement the full mandatory nutrition declaration under 30.1.

30.6: EC implementing measures – addition/removal of particulars

In order to take account of the relevance of particulars referred to in paragraphs 2 to 5 of this Article for the information of consumers, the Commission may, by means of delegated acts, in accordance with Article 51, amend the lists in paragraphs 2 to 5 of this Article, by adding or removing particulars.

The European Commission **may** add or remove nutrients in the paragraphs 2-5. The European Commission has no possibility according to this paragraph to amend the list of mandatory nutrients (para 1) by means of implementing measures.

30.7: EC implementing measures – Trans fats report

By 13 December 2014, the Commission, taking into account scientific evidence and experience acquired in Member States, shall submit a report on the presence of trans fats in foods and in the overall diet of the Union population. The aim of the report shall be to assess the impact of appropriate means that could enable consumers to make healthier food and overall dietary choices or that could promote the provision of healthier food options to consumers, including, among others, the provision of information on trans fats to consumers or restrictions on their use. The Commission shall accompany this report with a legislative proposal, if appropriate.

The European Commission **must** come up with a report on trans fats within 3 years after the entry into force (i.e. by 13 December 2014).

Depending on the outcome of the report, the European Commission **may** accompany the report with a legislative proposal, which could range as far as proposing the (mandatory) labelling of trans fats or restrictions on their use.

Art. 31 – Calculation

Article 31 covers the way the energy value and/or nutrients should be calculated. The article is structured as follows:

- 31.1: *Energy conversion factors*
- 31.2: *Possible EC implementing measures on conversion factors for vitamins and minerals*
- 31.3: *State of the food*
- 31.4: *Declared values*

31.1: Energy conversion factors

The energy value shall be calculated using the conversion factors listed in Annex XIV.

The energy value is to be calculated using the following conversion factors as a basis:

— carbohydrate (except polyols),	17 kJ/g — 4 kcal/g
— polyols,	10 kJ/g — 2,4 kcal/g
— protein,	17 kJ/g — 4 kcal/g
— fat,	37 kJ/g — 9 kcal/g
— salatrims,	25 kJ/g — 6 kcal/g
— alcohol (ethanol),	29 kJ/g — 7 kcal/g
— organic acid,	13 kJ/g — 3 kcal/g
— fibre,	8 kJ/g — 2 kcal/g
— erythritol,	0 kJ/g — 0 kcal/g

31.2: Possible EC implementing measures on conversion factors for vitamins and minerals

The Commission may adopt, by means of delegated acts, in accordance with Article 51, conversion factors for the vitamins and minerals referred to in point 1 of Part A of Annex XIII, in order to calculate more precisely the content of such vitamins and minerals in foods. Those conversion factors shall be added to Annex XIV.

The European Commission **may** adopt conversion factors for the following vitamins and minerals:

<ul style="list-style-type: none"> • Vitamin A (µg) • Vitamin D (µg) • Vitamin E (mg) • Vitamin K (µg) • Vitamin C (mg) • Thiamin (mg) • Riboflavin (mg) • Niacin (mg) • Vitamin B6 (mg) 	<ul style="list-style-type: none"> • Folic acid (µg) • Vitamin B12 (µg) • Biotin (µg) • Pantothenic acid (mg) • Potassium (mg) • Chloride (mg) • Calcium (mg) • Phosphorus (mg) • Magnesium (mg) 	<ul style="list-style-type: none"> • Iron (mg) • Zinc (mg) • Copper (mg) • Manganese (mg) • Fluoride (mg) • Selenium (µg) • Chromium (µg) • Molybdenum (µg) • Iodine (µg)
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31.3: State of the food

The energy value and the amounts of nutrients referred to in Article 30(1) to (5) shall be those of the food as sold.

Where appropriate, the information may relate to the food after preparation, provided that sufficiently detailed preparation instructions are given and the information relates to the food as prepared for consumption.

The energy value and the amount of nutrients **must** be those of the food as sold. This applies to the mandatory nutrients (Art. 30.1), the voluntary nutrients (Art. 30.2), the nutrients that may be repeated (Art. 30.3), nutrient declaration in case of alcoholic beverages (Art. 30.4) and nutrient declaration in case of non-prepacked foods (Art. 30.5).

Where appropriate, the information **may**, in addition and/or instead, relate to the food after preparation, under the condition that:

- a. sufficiently detailed preparation instructions are given
- b. the information relates to the food as prepared for consumption

Examples of foodstuffs that would fall under the latter could be:

- *Foodstuffs in powdered form or dehydrated form, such as soups*
- *Mixes, such as cake mixes or bread mixes*
- *Teas and herbal infusions*

31.4: Declared values

The declared values shall, according to the individual case, be average values based on:

- (a) the manufacturer's analysis of the food;***
- (b) a calculation from the known or actual average values of the ingredients used; or***
- (c) a calculation from generally established and accepted data.***

The Commission may adopt implementing acts setting out detailed rules for the uniform implementation of this paragraph with regard to the precision of the declared values such as the differences between the declared values and those established in the course of official checks. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Declared values **must** be average values based on:

- the manufacturer's analysis of the food;
- a calculation from the known or actual average values of the ingredients used;
- a calculation from generally established and accepted data.

A combination of the above methods is also tolerated.

The European Commission **may** adopt detailed rules for the precision of the declared values (e.g. tolerances, rounding rules).

Art. 32 – Expression per 100g or per 100ml

Article 32 and 33 cover the expression of the nutrients; in other words: in which cases must/may the nutrients in Article 30 (content) be expressed per 100g/ml and in which cases per portion (or both). Art. 32 covers the rules on the expression per 100g/ml, whereas Art. 33 covers the rules on the expression per portion.

Article 32 is structured as follows:

- *32.1: measurement units to be used for all nutrients*

- 32.2: mandatory expression per 100g/100ml for all nutrients
- 32.3: mandatory expression per 100g/100ml and NRVs per 100g/100ml for vitamins and minerals
- 32.4: voluntary expression of GDAs per 100g/100ml
- 32.5: GDA statement of the reference intake

32.1: Measurement units to be used for the energy value and all nutrients

The energy value and the amount of nutrients referred to in Article 30(1) to (5) shall be expressed using the measurement units listed in Annex XV.

The energy value and all nutrients that are declared **must** use the measurement units that are listed in Annex XV.

The energy value in absolute numbers per 100g or per 100ml **must** be provided in kilojoules (kJ) and in kilocalories (kcal) in the nutrition table.

32.2: Mandatory expression per 100g/100ml for all nutrients

The energy value and the amount of nutrients referred to in Article 30(1) to (5) shall be expressed per 100 g or per 100 ml.

The energy value and all nutrients that are declared **must** be expressed per 100g/100ml in the nutrition table (or in linear format where space is restricted).

The energy value and the amount of fat, saturates, sugars and salt, expressed per 100g/100ml, **may** be repeated in the principal field of vision.

32.3: Mandatory expression per 100g/100ml and NRVs per 100g/100ml for vitamins and minerals

When provided, the declaration on vitamins and minerals shall, in addition to the form of expression referred to in paragraph 2, be expressed as a percentage of the reference intakes set out in point 1 of Part A of Annex XIII in relation to per 100 g or per 100 ml.

In addition to the mandatory declaration per 100g/100ml (Art. 32.2), vitamins and minerals **must** be expressed as a percentage of the reference intakes (NRVs) per 100g/100ml.

Hypothetical (non-exhaustive) example:

	<i>Per 100g</i>	<i>% Reference Intake (NRV) per 100g</i>
Vitamin B12	... µg	%
Vitamin C	... mg	%

32.4: Voluntary expression of (GDA) reference intakes per 100g/100ml

In addition to the form of expression referred to in paragraph 2 of this Article, the energy value and the amounts of nutrients referred to in Article 30(1), (3), (4) and (5) may be expressed, as appropriate, as a percentage of the reference intakes set out in Part B of Annex XIII in relation to per 100 g or per 100 ml.

This paragraph provides the basis for the expression as % (GDA) reference intakes for the energy value and the mandatory nutrients (30.1), nutrients that may be repeated (30.3), nutrients in case of alcoholic beverages (30.4), and nutrients in case of non-prepacked foods (30.5).

The expression as % (GDA) reference intakes is not possible for the voluntary nutrients.

This Article should be read in conjunction with Art. 33.1(c), which provides for the possibility to express the % GDAs per portion. In line with current practice, the % reference intake for vitamins and minerals (NRV) can be provided in the same column as the % (GDA) reference intakes. However, it should be clarified that the reference intakes are referring to NRVs or any similar term, per 100g/100ml.

Hypothetical (non-exhaustive) example:

	<i>Per 100g (/per 100ml)</i>	<i>Per Portion (/Per Unit)</i>	<i>% Reference Intake (GDA) per portion (/Per unit)</i>
Energy	kJ/kcal	kJ/kcal	%
Fat	g	g	%
<i>Of which:</i>			
• Saturates			%
Carbohydrate	g	g	%
<i>Of which:</i>			
• Sugars	g	g	%
Fibre	g	g	
Protein	g	g	%
Salt	g	g	%
	<i>Per 100g (/per 100ml) and % NRVs</i>	<i>Per Portion (/Per Unit) and % NRVs</i>	<i>% Reference Intake (NRV) per 100g</i>
Vitamin B12	... µg ...%	... µg ...%	%
Vitamin C	... mg ...%	... mg ...%	%

32.5:

GDA statement of the reference intake

Where information is provided pursuant to paragraph 4, the following additional statement shall be indicated in close proximity to it: "Reference intake of an average adult (8400 kJ/2000 kcal)".

When GDAs are provided per 100 g/ml in accordance with Art. 32.4, the food business operator **must** add the above exact statement. The position of the statement depends on where the GDA information has been provided. It is deemed that, in the case that GDAs are provided for both in the principal field of vision and in the nutrition table, it is sufficient to place the above statement close to the nutrition table, with only a reference to it in the principal field of vision by means of an asterisk. Where GDAs are only declared in the principal field of vision, it would follow that the above statement would need to be provided in the principal field of vision.

Art. 33 – Expression per portion or per consumption unit

Whereas Art. 32 covers the rules on the expression *per 100g/ml*, Art. 33 covers the rules on the expression *per portion*.

Article 33 is structured as follows:

- 33.1: *Possible cases of per portion expression*
- 33.2: *GDAs per portion alone for the nutrients that may be repeated*
- 33.3: *GDAs per portion alone for the nutrients for non-prepacked foods*
- 33.4: *Expression of the portion/unit used*
- 33.5: *EC implementing measures on the expression per portion or per consumption unit for specific categories of foods*

33.1: Possible cases of per portion expression

In the following cases, the energy value and the amounts of nutrients referred to in Article 30(1) to (5) may be expressed per portion and/or per consumption unit, easily recognisable by the consumer, provided that the portion or the unit used is quantified on the label and that the number of portions or units contained in the package is stated:

(a) in addition to the form of expression per 100 g or per 100 ml referred to in Article 32(2);

(b) in addition to the form of expression per 100 g or per 100 ml referred to in Article 32(3) regarding the amounts of vitamins and minerals;

(c) in addition to or instead of the form of expression per 100 g or per 100 ml referred to in Article 32(4).

This paragraph provides the cases in which nutrients may be expressed per portion or per consumption unit in addition to (or instead of) the expression per 100g/100ml. The word “may” indicates that the decision to declare per portion is voluntary.

There are however several general conditions when food business operators wish to use per portion expression:

- a. The portion/consumption unit is easily recognisable by the consumer (e.g. 1 slice, ½ of this pack, each bar, ...);
- b. The portion or unit used is quantified on the label;
- c. The number of portions/units contained in the package is stated.

Example:

500 ml = 2  of 250 ml

There are 3 cases where portions **may** be used, if desired so:

- In addition to the mandatory expression per 100g/100ml *for all nutrients* (30.1-30.5)
- In addition to the mandatory expression per 100g/100ml and NRVs per 100g/100ml *for vitamins and minerals*
- In addition to or instead of the voluntary expression of (GDA) reference intakes per 100g/100ml

Contrary to Art. 32.1, no reference is made to the measurement units listed in Annex XV. Hence, according to Art. 33.1(c), GDAs **may** be expressed per portion or consumption unit alone. However, there are specific rules for GDAs per portion for nutrients that may be repeated, see Art. 33.2.

33.2: GDAs and absolute amount per portion alone for the nutrients that may be repeated

By way of derogation from Article 32(2), in the cases referred to in point (b) of Article 30(3) the amount of nutrients and/or the percentage of the reference intakes set out in Part B of Annex XIII may be expressed on the basis of per portion or per consumption unit alone.

When the amounts of nutrients are expressed on the basis of per portion or per consumption unit alone in accordance with the first subparagraph, the energy value shall be expressed per 100 g or per 100 ml and on the basis of per portion or per consumption unit.

When food business operators decide to *repeat* energy, fat, saturates, sugars and salt (point (b) of Article 30.3) in the principal field of vision and wish to express this as % (GDA) reference intakes, the amounts of fat, saturates, sugars and salt **may** be expressed as % GDAs per portion or per consumption unit alone. However, in that case, the energy in absolute amounts **must** be provided per 100g/ml *and* per portion.

Whatever the mode of expression of the nutrients (in % GDA or in absolute amounts, per 100g/ml or per portion), energy in absolute amount **must** always be provided per 100g/ml (see Art 32.2). In the case the nutrients are repeated in absolute amount per portion or per consumption unit alone, the energy in absolute amount **must** be provided per 100g/ml **and** per portion (Art 33.2). In addition, according to Art. 33.1 c, energy may also be expressed as % GDAs per portion or per consumption unit **alone**.

Repetition of the energy value only:

ENERGY VALUE

- **In absolute amount¹:**
 - Kcal and kJ [per 100g or 100ml]²
 - Kcal [per portion]
- **In % (GDA) reference intake:**
 - [Per portion] and/or [per 100g or 100ml]³

Repetition of the energy value and fat, saturates, sugars and salt:

ENERGY VALUE

- **In absolute amount¹:**
 - Kcal and kJ [per 100g or 100ml]²
 - Kcal [per portion]²
- **In % (GDA) reference intake:**
 - [Per portion] and/or [per 100g or 100ml]³

FAT

- **In absolute amount¹:**
 - g [per 100g or 100ml] and/or [per portion]
- **In % (GDA) reference intake:**
 - [Per portion] and/or [per 100g or 100ml]

SATURATES

- **In absolute amount¹:**
 - g [per 100g or 100ml] and/or [per portion]
- **In % (GDA) reference intake:**
 - [Per portion] and/or [per 100g or 100ml]

SUGARS

- **In absolute amount¹:**
 - g [per 100g or 100ml] and/or [per portion]
- **In % (GDA) reference intake:**
 - [Per portion] and/or [per 100g or 100ml]

SALT

- **In absolute amount¹:**
 - g [per 100g or 100ml] and/or [per portion]
- **In % (GDA) reference intake:**

- [Per portion] and/or [per 100g or 100ml]

¹ In any case, the nutrients **must** be expressed in absolute amount [per portion] or [per 100g or 100ml] (Art. 32.1), % GDAs cannot be declared alone.

² In any case, the energy value **must** be provided in absolute amount [per 100g or 100 ml]. The indication per portion is also mandatory when the nutrients are expressed per portion alone (Art 33.2)

³ The energy value **may** be expressed as % GDA [per portion or per consumption unit] alone, as indicated in Art 33.1.

33.3: GDAs per portion alone for the nutrients for non-prepacked foods

By way of derogation from Article 32(2), in the cases referred to in Article 30(5) the energy value and the amount of nutrients and/or the percentage of the reference intakes set out in Part B of Annex XIII may be expressed on the basis of per portion or per consumption unit alone.

For non-prepacked foods, all nutrients that may be declared **may** be expressed per portion or consumption unit alone.

33.4: Expression of the portion/unit used

The portion or unit used shall be indicated in close proximity to the nutrition declaration.

Food business operators **must** indicate the portion or unit used (e.g. 1 bowl = 200g) close to the nutrition declaration.

33.5: EC implementing measures on the expression per portion or per consumption unit for specific categories of foods

In order to ensure the uniform implementation of the expression of the nutrition declaration per portion or per unit of consumption and to provide for a uniform basis of comparison for the consumer, the Commission shall, taking into account actual consumption behaviour of consumers as well as dietary recommendations, adopt, by means of implementing acts, rules on the expression per portion or per consumption unit for specific categories of foods. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

The European Commission **must** set rules on the expression per portion or per consumption unit for *specific categories of foods*.

Art. 34 – Presentation

This Article is structured as follows:

- 34.1: *Place of the mandatory and voluntary nutrients*
- 34.2: *Presentation of the mandatory and voluntary nutrients*
- 34.3: *Place and presentation of the nutrients that may be repeated*
- 34.4: *Presentation of the nutrients for alcoholic beverages and for non-prepacked foods*
- 34.5: *Presentation of nutrients with a negligible amount*
- 34.6: *Possible EC implementing measures regarding presentation of the nutrients*

34.1: Place of the mandatory and voluntary nutrients

The particulars referred to in Article 30(1) and (2) shall be included in the same field of vision. They shall be presented together in a clear format and, where appropriate, in the order of presentation provided for in Annex XV.

The mandatory nutrients (Art. 30.1) and the voluntary nutrients (Art. 30.2) **must** be included in the same field of vision. A definition of “field of vision” is provided in the definitions (Art. 2.2k):

“field of vision” means all the surfaces of a package that can be read from a single viewing point;

The same “field of vision” may be any side and more than one side of the pack, including but not limited to the back-of-pack, but could also be the front-of-pack or another side of the pack.

The nutrients **must** be presented in a *clear format* (see 34.2) and should *follow the order of presentation* as provided for in Annex XV.

34.2: Presentation of the mandatory and voluntary nutrients

The particulars referred to in Article 30(1) and (2) shall be presented, if space permits, in tabular format with the numbers aligned. Where space does not permit, the declaration shall appear in linear format.

The mandatory nutrients (Art. 30.1) and the voluntary nutrients (Art. 30.2) **must** be presented in a table format, with the numbers aligned.

Where space does not permit, the nutrition declaration can be presented in a linear format.

34.3: Place and presentation of the nutrients that may be repeated

The particulars referred to in Article 30(3) shall be presented:

- (a) in the principal field of vision; and*
- (b) using a font size in accordance with Article 13(2).*

The particulars referred to in Article 30(3) may be presented in a format different from that specified in paragraph 2 of this Article.

The nutrients that are repeated (Art. 30.3) **must** be:

- a. *in the principal field of vision:* a definition of “principal field of vision” is provided in the definitions (Art. 2.2l):

"principal field of vision" means the field of vision of a package which is most likely to be seen at first glance by the consumer at the time of purchase and that enables the consumer to immediately identify a product in terms of its character or nature and, if applicable, its brand name. If a package has several identical principal fields of vision, the principal field of vision is the one chosen by the food business operator;

- b. *using a font size in accordance with Art. 13.2:* see Chapter “Legibility”.

The format of the nutrients that are repeated **may** be different; hence, not necessarily in tabular form or in linear format (but for instance by means of a GDA icon).

34.4: Presentation of the nutrients for alcoholic beverages and for non-prepacked foods

The particulars referred to in Article 30(4) and (5) may be presented in a format different from that specified in paragraph 2 of this Article.

The format for the nutrients for *alcoholic beverages* (Art. 30.4) and for *non-prepacked foods* (Art. 30.5) **may** be different; hence, not necessarily in tabular form or in linear format.

34.5: Presentation of nutrients with a negligible amount

In cases where the energy value or the amount of nutrient(s) in a product is negligible, the information on those elements may be replaced by a statement such as "Contains negligible amounts of ..." and shall be indicated in close proximity to the nutrition declaration when present.

In order to ensure the uniform implementation of this paragraph, the Commission may adopt implementing acts regarding the energy value and amounts of nutrients referred

to in Article 30(1) to (5) which can be regarded as negligible. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

If the energy value or the amount(s) of the nutrients is/are negligible (i.e. close to zero), rather than indicating the information on those elements, a statement **may** be provided such as “contains negligible amounts of ...”. The latter is only an example of possible wording (other non-exhaustive examples are: “traces”, “<x”, “zero”, etc.). However, the positioning of the statement should be close to the nutrition declaration, when present.

Where the amounts of all mandatory nutrients would be negligible and assuming there are no further obligations to declare other nutrients, e.g. due to the use of nutrition and health claims, the nutrition declaration can be replaced in its entirety by a statement such as the one described in this Article.

The European Commission **may** adopt implementing acts on this.

34.6: Possible EC implementing measures regarding presentation of the nutrients

In order to ensure a uniform application of the manner of presenting the nutrition declaration under the formats referred to in paragraphs 1 to 4 of this Article, the Commission may adopt implementing acts in this regard. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

The Commission **may** adopt implementing acts on EU-wide rules on how to present the nutrition declaration, which could impact mandatory as well as voluntary presentation of information.

Art. 35 – Additional forms of expression and presentation

This Article is structured as follows:

- 35.1: Requirements for additional forms of expression/presentation
- 35.2: Member States recommendation of additional forms of expression/presentation
- 35.3: Member States monitoring of additional forms of expression/presentation
- 35.4: Exchange of information
- 35.5: EC implementing measure – report on additional forms of expression/presentation
- 35.6: EC implementing measure – detailed rules on the implementation of the Article

35.1: Requirements for additional forms of expression/presentation

In addition to the forms of expression referred to in Article 32(2) and (4) and Article 33 and to the presentation referred to in Article 34(2), the energy value and the amount of nutrients referred to in Article 30(1) to (5) may be given by other forms of expression and/or presented using graphical forms or symbols in addition to words or numbers provided that the following requirements are met:

(a) they are based on sound and scientifically valid consumer research and do not mislead the consumer as referred to in Article 7;

(b) their development is the result of consultation with a wide range of stakeholder groups;

(c) they aim to facilitate consumer understanding of the contribution or importance of the food to the energy and nutrient content of a diet;

(d) they are supported by scientifically valid evidence of understanding of such forms of expression or presentation by the average consumer;

(e) in the case of other forms of expression, they are based either on the harmonised reference intakes set out in Annex XIII, or in their absence, on generally accepted scientific advice on intakes for energy or nutrients;

(f) they are objective and non-discriminatory; and

(g) their application does not create obstacles to the free movement of goods.

All nutrients that are declared on a mandatory or voluntary basis (30.1-30.5) **may**, additionally, be:

- expressed differently than per 100g/100ml (Art. 32.2), GDAs (Art. 32.4) or per portion (Art. 33); and/or
- provided in a different form of presentation than the tabular format with numbers aligned (Art. 34.2).

This **may** be done by using graphical forms or symbols *in addition to* words or numbers, under the condition that the above requirements (a) to (g) are met.

35.2: Member States recommendation of additional forms of expression/presentation

Member States may recommend to food business operators the use of one or more additional forms of expression or presentation of the nutrition declaration that they consider as best fulfilling the requirements laid down in points (a) to (g) of paragraph 1. Member States shall provide the Commission with the details of such additional forms of expression and presentation.

A Member State **may** recommend the use of one or more additional forms of expression or presentation of the nutrition declaration to food business operators, including retailers and food manufacturers.

If Member States do so, they **must** inform the Commission of the details of such additional forms of expression and presentation.

35.3: Member States monitoring of additional forms of expression/presentation

Member States shall ensure an appropriate monitoring of additional forms of expression or presentation of the nutrition declaration that are present on the market in their territory.

To facilitate the monitoring of the use of such additional forms of expression or presentation, Member States may require food business operators placing on the market in their territory foods bearing such information to notify the competent authority of the use of an additional form of expression or presentation and to provide them with the relevant justifications regarding the fulfillment of the requirements laid down in points (a) to (g) of paragraph 1. In such cases, information on the discontinuation of the use of such additional forms of expression or presentation may also be required.

Member States **must** monitor the various additional nutrition labelling schemes that are present on the market.

Member States **may** demand food business operators that have a scheme in place to notify their authorities and give justifications regarding the requirements set out in 35.1.

Furthermore, when food business operators decide to stop with a scheme, they **may** have to notify this to their authorities.

35.4: Exchange of information

The Commission shall facilitate and organise the exchange of information between Member States, itself and stakeholders on matters relating to the use of any additional forms of expression or presentation of the nutrition declaration.

The Commission **must** set up an exchange of information between Member States, the Commission and stakeholders (including EuroCommerce and FoodDrinkEurope) on matters relating to the use of any additional forms of expression or presentation of the nutrition declaration.

35.5: EC implementing measure – report on additional forms of expression/presentation

By 13 December 2017, in the light of the experience gained, the Commission shall submit a report to the European Parliament and the Council on the use of additional forms of expression and presentation, on their effect on the internal market and on the advisability of further harmonisation of those forms of expression and presentation. For this purpose, Member States shall provide the Commission with relevant information concerning the use of such additional forms of expression or presentation on the market in their territory. The Commission may accompany this report with proposals to modify the relevant Union provisions.

The European Commission **must** submit by 13 December 2017 a report on:

- the use of additional forms of expression/presentation
- their effect on the internal market
- the advisability of further harmonization of those forms of expression/presentation

On this basis, the Commission **may** propose new (additional) EU legislation on this topic. This report will be presented to both the European Parliament and the Council.

35.6: EC implementing measure – detailed rules on the implementation of the Article

In order to ensure the uniform application of this Article, the Commission shall adopt implementing acts setting out detailed rules concerning the implementation of paragraphs 1, 3 and 4 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

This paragraph states that the European Commission **must** set out detailed rules concerning the implementation of this Article on:

- the requirements (para 1)
- Member State monitoring (para 3)
- Exchange of information (para 4)

Mandatory and voluntary nutrition information in the nutrition table

Mandatory

Voluntary

Nutrition information			
	Per 100g (/Per 100ml)	Per Portion(/ Per Unit)	% reference intake (GDA)*
Energy	kJ/kcal	kJ/kcal	%
Fat	g	G	%
Of which:			
• Saturates	g	G	%
• mono-unsaturates	g ¹	G	
• polyunsaturates	g ¹	G	
Carbohydrate	g	G	%
Of which:			
• Sugars	g	G	%
• Polyols	g ¹	G	
• Starch	g ¹	G	
Fibre	g ¹	G	
Protein	g	G	%
Salt	g	G	%

* Reference intake of an average adult (8400kJ/2000Kcal)

	Per 100g (/per 100ml)	Per Portion (/per unit)	% reference intake (NRV)
Vitamins and minerals	Units mentioned in Annex XIII and % NRVs	Units mentioned in Annex XIII and % NRVs	% NRV per 100g (and/or per portion)

¹ The information for the voluntary nutrient(s) per 100g is only mandatory when the food business operator decides to declare the voluntary nutrient(s).

Guideline Daily Amounts (GDAs)

Background

- Guideline Daily Amounts (GDAs) have been rolled out by FoodDrinkEurope members since 2005 as part of the voluntary FoodDrinkEurope commitment to the EU Platform for Action on Diet, Physical Activity and Health, which is led by the European Commission.
- The implementation of GDAs by food business operators, large and small alike, has increased rapidly over the past years.
- For the first time in history, % GDAs (percentage daily reference intakes) have explicitly been recognised in EU legislation, i.e. the Regulation on the provision of food information to consumers.

Definition

- % Reference intakes (% GDAs) are typical nutrient intake levels that most people are guided to consume daily for a healthy diet. Because people vary in many ways, such as size and activity levels, GDAs are not targets for individuals, but provide a benchmark against which the contribution from specific nutrients per serving of a food product can be assessed.
- % GDAs together with nutrition information provide a guideline to help people understand approximately how much energy, and how much fat, saturated fat, sugars and salt can be consumed daily as part of a healthy diet.
- GDAs can be voluntarily applied by interested food business operators, in accordance with the provisions which are stipulated in the Regulation (see further on).
- GDAs are normally calculated on a per portion basis.

How to calculate GDAs?

The GDA values shown on a food or drink label should be those for an average "adult". The daily reference intakes are indicated in Annex XIII Part B of the Regulation:

Energy or nutrient	Reference intake
Energy	8,400 kJ / 2,000 kcal
Total fat	70 g
Saturates	20 g
Carbohydrate	260 g ⁴
Sugars	90 g
Protein	50 g
Salt	6 g

⁴ Please note that this figure differs from the original FoodDrinkEurope GDA values. The above daily reference intake values have to be legally complied with as of the moment of application of the provisions related to nutrition labelling in Regulation 1169/2011.

Principal field of vision declaration of GDAs

Labels on food and drink products should display, on the front panel of product labels, a simple, non-discriminatory graphic representation (icon) that provides the consumer with at-a-glance information.

Content

In the *principal field of vision*, % GDAs **may** be provided for either⁵:

- a) The energy value (1)
- b) The energy value and fat, saturates, sugars and salt (5)

It is not possible to declare the GDAs for nutrients not mentioned in the above two options in the *principal field of vision*.

Expression

- When GDAs are provided, the energy value in the *principal field of vision* **must** always be declared *per 100g/100ml*. Declaration per portion is only mandatory when the nutrients are expressed per portion alone. If, in addition to the energy value, also the other nutrients (fat, saturates, sugars, and salt) are provided, the other nutrients **may** be declared as *GDAs per portion alone*.⁶
- Furthermore, the Regulation requires that the absolute energy value must be expressed in both kilojoules (kJ) and kilocalories (kcal), whereas the other nutrients must be expressed in grams (g).⁷ Discussions are ongoing as to whether this is not required for the per portion expression in the principal field of vision (Art. 33.1 does not refer to the measurement units listed in Annex XV) in order to avoid unnecessary duplication and confusion for the consumer.
- Front-of-pack information of GDAs per portion should ideally be accompanied by the nutrition table including information on nutrient content "per portion" back of pack or elsewhere.

Presentation

- When using % (GDA) reference intakes, FoodDrinkEurope recommends the use of the FoodDrinkEurope GDA Style Guide.
- The order as indicated above (see content) **must** be respected when declaring GDAs.
- GDAs in the *principal field of vision* **must** comply with the legibility requirements of the Regulation⁷.
- The Regulation also requires that the following statement **must** be placed in close proximity to the GDAs when these are expressed per 100 g/ml: “Reference intake of an average adult (8 400 kJ/2 000 kcal)”⁸ It is the understanding that, in the case that GDAs are provided for both in the *principal field of vision and in the nutrition table*, it is sufficient to place the above statement in close proximity to the nutrition table, with only a reference to it in the *principal field of vision* by means of an asterisk. Where GDAs

⁵ Article 30.3 of the Regulation

⁶ Article 33.2

⁷ Article 34.3

⁸ Article 32.5

are only declared in the *principal field of vision*, it would follow that the above statement would need to be provided in the *principal field of vision*.

Declaration of GDAs in the nutrition table

Content

In the *nutrition table*, % GDAs **may** be provided for:

- The energy value, fat, saturates, carbohydrate, sugars, protein and salt⁹

If declared, it is necessary to declare the full list of % (GDA) reference intakes *in the nutrition table*. Moreover, it is not possible to declare the % GDAs for substances not mentioned in the above list *in the nutrition table*.

Expression

- When providing % GDAs in the nutrition table, these **may** be expressed per portion only.¹⁰

Presentation

- % GDAs provided *in the nutrition table* **must** be presented in a tabular form with the numbers aligned. Where space does not permit, declaration can be made in linear format.¹¹
- % GDAs provided in the *nutrition table* **must** comply with the legibility requirements of the Regulation.¹²
- The Regulation also requires that the following statement **must** be placed in close proximity to the GDAs when these are expressed per 100g/ml: Reference intake of an average adult (8 400 kJ/2 000 kcal)¹³ It is the understanding that, in the case that GDAs are provided for both *in the principal field of vision and in the nutrition table*, it is sufficient to place the above statement in close proximity to the *nutrition table*, with a reference to it in the *principal field of vision* by means of an asterisk. Where GDAs are only declared in the *principal field of vision*, it would follow that the above statement would need to be provided in the *principal field of vision*.

GDAs for specific population groups

- The European Commission is obliged to establish rules on the voluntary provision of information on reference intakes for specific population groups in addition to GDAs.¹⁴
- Pending the adoption of EU provisions on this, Member States **may** adopt national measures.¹⁵

⁹ Article 32.4

¹⁰ Article 33.1(c)

¹¹ Article 34.2

¹² Article 13

¹³ Article 32.5

¹⁴ Article 36.3(c)

¹⁵ Article 43

Mock-up example of GDA nutrition labelling ¹⁶

Energy value only

Per portion (25g):



Per 100 g:
2343 kJ / 560 kcal

Level 1: Flexibility provided for alternative, equivalent expressions (e.g. 'Each portion (Xg/ml) contains', 'Per portion', 'Per Xg/ml', 'Per bar/bag/glass', '[Symbol] Xg/ml' etc.)

Level 2: Flexibility provided for 'kcal' above/right to/below the value, or for a combination of term 'Energy' + value + 'kcal'

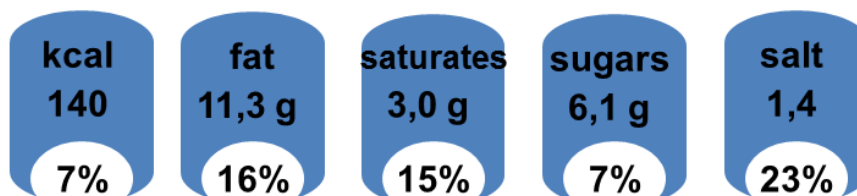
Level 3: Flexibility provided for placement of 'GDA*' right below or within the icon, for suppression of 'GDA' (with asterisk only next to %) or for 'of an adult's GDA*'.
* Asterisk as reference to explanatory statement on FOP (if no GDAs on BOP) or BOP

Level 4: Flexibility provided for alternative expression '100 g/ml' alone (without 'Per')

The values per portion and per 100g/ml should be displayed in the same font size (≥ 1.2 mm).
Details of graphics (font, sizes, colours, shapes) are of explanatory, non-binding character only.

Energy value and the amounts of fat, saturates, sugars and salt

Per portion (25g):



of an adult's Guideline Daily Amount*

Per 100g: 2343 kJ / 560 kcal

Flexibility provided for levels 1-4 as per the GDA icon for energy, with the exception of level 3, where only flexibility is provided to place the term "Guideline Daily Amount*" / "GDA" or "of an adult's Guideline Daily Amount*" / "of an adult's GDA*" underneath the set of 5 icons

The values per portion and per 100g/ml should be displayed in the same font size (≥ 1.2 mm).
Details of graphics (font, sizes, colours, shapes) are of explanatory, non-binding character only.



¹⁶ Please note that discussions on certain elements are ongoing between Member States and the European Commission.

Chapter II: Origin Labelling

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SUMMARY

- The country of origin or place of provenance **must** be provided in the following instances:
 1. Where this is mandated by specific (vertical) EU legislation (e.g. beef, olive oil, honey, etc.);
 2. For swine meat, sheep meat, goat meat (fresh, chilled or frozen) as classified in Annex VI;
 3. Where failure to indicate the country of origin or place of provenance might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance.
- An impact assessment will be undertaken and an implementing act will be developed for the indication of primary ingredient(s) where the food business operator provides the country of origin or place of provenance, and this differs from the origin/provenance of the food's primary ingredient. In such a case, the food business operator **must** provide:

Either:

 - The origin/provenance of the primary ingredient (in addition to the origin/provenance of the food)

Or:

 - An indication that the origin/provenance of the primary ingredient is different than the origin/provenance of the food
- Impact assessment reports will be undertaken to assess whether a mandatory indication of the origin/place of provenance is necessary for the following categories of food/ingredients:
 1. types of meat other than beef, swine meat, sheep meat and goat meat as indicated in Annex VI;
 2. milk;
 3. milk used as an ingredient in dairy products;
 4. unprocessed foods;
 5. single ingredient products;
 6. ingredients that represent more than 50 % of a food;
 7. meat used as an ingredient.
- Member States **may** impose national rules on mandatory origin/provenance labelling only where there is a proven link between certain qualities of the food and the origin/provenance.

Article-by-Article

The Regulation provides provisions related to the indication of the country of origin or place of provenance of food or drinks in the following Articles:

- **Article 2: definitions**
- **Article 9(i): mandatory particulars**
- **Article 26: origin/provenance labelling**
- **Article 39: national measures**
- **Annex XI: types of meat for which the indication of country of origin or place of provenance is mandatory**

Please note that the majority of provisions regarding origin/place of provenance labelling will be subject to implementing measures that are to be developed by the European Commission, setting out the specific modalities for those provisions.

Article 2: Definitions

Article 2 provides the definitions which are used in the Regulation. Some of the definitions are important for the indication of country of origin or place of provenance:

- *Article 2.2(g): place of provenance*
- *Article 2.2(o): customary name*
- *Article 2.2(p): descriptive name*
- *Article 2.2(q): primary ingredient*
- *Article 2.3: country of origin*

Art. 2.2(g): Place of provenance

"place of provenance" means any place where a food is indicated to come from, and that is not the "country of origin" as determined in accordance with Articles 23 to 26 of Regulation (EEC) No 2913/92; the name, business name or address of the food business operator on the label shall not constitute an indication of the country of origin or place of provenance of food within the meaning of this Regulation;

According to Article 2.3, the definition of **country of origin** is the one that is expressed in the Customs Code Regulation (2913/92/EEC). This entails, in broad lines, the country of last, substantial, economically justified processing. For specific details on the 'origin' definition, please refer to Article 23 to 26 of the Customs Code Regulation.

On the other hand, the **place of provenance** is any other place than the country of last substantial transformation where a food is indicated to come from. This could for example be the place of farming, place of cultivation, fishing area, a town/region/group of countries where the food is indicated to come from, etc.

The provisions in the Regulation refer to country of origin or place of provenance, providing flexibility for food business operators as to which indication to use.

The name, business name or address of the food business operator is not an indication of the country of origin or place of provenance, and is therefore not subject to the rules on origin in this Regulation.

FoodDrinkEurope and EuroCommerce understand that customary names, generic names, brand names and geographical names not related to the place where a food is coming from are not covered under the definitions of “place of provenance” and/or “country of origin”.

Art. 2.2(o): Customary name

"customary name" means a name which is accepted as the name of the food by consumers in the Member State in which that food is sold, without that name needing further explanation;

Examples of customary names are (non-exhaustive):

- Gaufre de Liège
- Brussels sprouts
- French fries
- Hamburger
- Frankfurter sausage
- Yorkshire pudding
- Irish coffee
- Paella

Art. 2.2(p): Descriptive name

"descriptive name" means a name providing a description of the food, and if necessary of its use, which is sufficiently clear to enable consumers to know its true nature and distinguish it from other products with which it might be confused;

Examples of descriptive names are (non-exhaustive):

- Cookie with Brazil nuts

Art. 2.2(q): Primary ingredient

"primary ingredient" means an ingredient or ingredients of a food that represent more than 50 % of that food or which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required;

On the basis of the current understanding, examples of primary ingredients in relation to the food are (non-exhaustive):

- Water, vegetables, meat balls in soup
- Rice, sea food, vegetables, meat in paella

- Tomatoes in tomato sauce

Given the complexity, FoodDrinkEurope and EuroCommerce call for a pragmatic approach in the interpretation of this definition.

In many cases, the sourcing of the primary ingredient(s) can be multiple (blends) and frequently changes due to factors such as seasonal availability/variation, quality, pricing and sustainability.

For the meaning of the part of the definition “*usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required*”, information can be found in Commission Guidelines on QUID, point 6, which have been agreed at EU level¹⁷.

Art. 2.3: Country of origin

For the purposes of this Regulation the country of origin of a food shall refer to the origin of a food as determined in accordance with Articles 23 to 26 of Regulation (EEC) No 2913/92.

See “place of provenance” (Art. 2.2(g)).

Article 9(i): Mandatory particulars

In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:

[...]

(i) the country of origin or place of provenance where provided for in Article 26;

Art. 9 stipulates which information should be indicated on a mandatory basis. Art. 9(i) refers to the cases where the country of origin or place of provenance has to be provided on a mandatory basis, which is determined in Art. 26.

Article 26: Country of origin or place of provenance

Article 26 is the main Article dealing with the indication of country of origin or place of provenance. The Article is structured as follows:

- 26.1: other EU legislation related to origin/place of provenance labelling
- 26.2: mandatory origin/place of provenance labelling
- 26.3: primary ingredient labelling
- 26.4: evaluation report on the mandatory indication of origin/place of provenance for certain meats

¹⁷ http://ec.europa.eu/food/food/labellingnutrition/resources/fl02_en.pdf

- 26.5: impact assessment reports on the mandatory indication of origin/place of provenance for various foods
- 26.6: impact assessment reports on the mandatory indication of origin/place of provenance for meat used as an ingredient
- 26.7: specifications for the impact assessments referred to in Art. 26.5 and 26.6
- 26.8: specifications for the application of Art. 26.2(b) and Art. 26.3
- 26.9: specifications for the reports and impact assessments related to meat

Art. 26.1: Other EU legislation related to origin/place of provenance labelling

1. This Article shall apply without prejudice to labelling requirements provided for in specific Union provisions, in particular Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialties guaranteed and Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

Labelling requirements related to the origin of foodstuffs already exist in other EU legislation. For instance, origin labelling is mandatory for honey, olive oil, beef, etc. The provisions in these specific Union provisions will continue to apply, regardless of Article 26.

Art. 26.2: Mandatory origin/place of provenance labelling

2. Indication of the country of origin or place of provenance shall be mandatory:

(a) where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance;

(b) for meat falling within the Combined Nomenclature ("CN") codes listed in Annex XI. The application of this point shall be subject to the adoption of implementing acts referred to in paragraph 8.

This paragraph stipulates in which cases country of origin or place of provenance labelling is mandatory (in addition to the mandatory labelling requirements in other specific EU legislation, see Art. 26.1).

The mandatory origin/provenance labelling under point (a) follows existing EU rules on origin. However, it clarifies that if the information given would imply that the food has a different country of origin or place of provenance, then it is necessary to indicate the origin/place of provenance of the food.

The mandatory origin/place of provenance labelling under point (b) refers to specific types of meat as indicated in the Annex XI of the Regulation, namely:

- *Meat of swine, fresh, chilled or frozen*
- *Meat of sheep or goats, fresh, chilled or frozen*

- *Meat of the poultry of heading 0105, fresh, chilled or frozen*

By 13 December 2013, the European Commission **must** provide, following an impact assessment, rules which will facilitate how point (b) has to be applied (see Art. 26.8).

Art. 26.3: Primary ingredient labelling

3. 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:

(a) the country of origin or place of provenance of the primary ingredient in question shall also be given; or

(b) the country of origin or place of provenance of the primary ingredient shall be indicated as being different to that of the food.

The application of this paragraph shall be subject to the adoption of the implementing acts referred to in paragraph 8.

By 13 December 2013, the European Commission **must** undertake an impact assessment and will establish rules which will facilitate how this paragraph has to be applied (see Art. 26.8). On the basis of this, the provisions will apply as of December 2014.

This paragraph puts an obligation on food business operators in the cases where the country of origin or place of provenance is given and where it is not the same as the origin or place of provenance of the primary ingredient. This paragraph also applies to voluntary origin/place of provenance labelling.

For the cases falling under this paragraph, the food business operator **must** choose between two options:

Either:

give the country of origin or place of provenance of the primary ingredient in addition to the country of origin or place of provenance of the food.

Or:

indicate that the country of origin or place of provenance of the primary ingredient is different to the country of origin or place of provenance of the food.

Art. 26.4: Evaluation report on the mandatory indication of origin/place of provenance for certain meats

Within five years from the date of application of point (b) of paragraph 2, the Commission shall submit a report to the European Parliament and the Council to evaluate the mandatory indication of the country of origin or place of provenance for products referred to in that point.

The European Commission will make an evaluation of the mandatory labelling of country of origin or place of provenance for certain types of meat as specified. This evaluation report **must** be submitted to the European Parliament and Council by 13 December 2016.

Art. 26.5: impact assessment reports on the mandatory indication of origin/place of provenance for various foods

By 13 December 2014, the Commission shall submit reports to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for the following foods:

- (a) types of meat other than beef and those referred to in point (b) of paragraph 2;*
- (b) milk;*
- (c) milk used as an ingredient in dairy products;*
- (d) unprocessed foods;*
- (e) single ingredient products;*
- (f) ingredients that represent more than 50 % of a food.*

The European Commission will carry out impact assessments on the mandatory country of origin or place of provenance for the foods/ingredients indicated above. These impact assessment reports **must** be submitted to the European Parliament and the Council by 13 December 2014.

Art. 26.6: Impact assessment reports on the mandatory indication of origin/place of provenance for meat used as an ingredient

By 13 December 2013, the Commission shall submit a report to the European Parliament and the Council regarding the mandatory indication of the country of origin or place of provenance for meat used as an ingredient.

The European Commission will carry out impact assessments on the mandatory country of origin or place of provenance for meat used as an ingredient. These impact assessment reports **must** be submitted to the European Parliament and the Council by December 2013.

Art. 26.7: Specifications for the impact assessments referred to in Art. 26.5 and 26.6

The reports referred to in paragraphs 5 and 6 shall take into account the need for the consumer to be informed, the feasibility of providing the mandatory indication of the country of origin or place of provenance and an analysis of the costs and benefits of the introduction of such measures, including the legal impact on the internal market and the impact on international trade.

The Commission may accompany those reports with proposals to modify the relevant Union provisions.

This paragraph provides the specificities of the impact assessments in Art. 26.5 and Art. 26.6. The impact assessments **must** take into account:

- The consumer need;
- The feasibility;
- The cost-benefit analysis and the legal impact on the internal market and the impact on international trade.

Those impact assessments may amongst others shed light on the modalities by which the provisions on origin labelling must be interpreted.

On the basis of the outcome of the impact assessments, the European Commission **may** decide to provide for proposals to modify the legislative text(s) in order to accommodate possible mandatory origin/place of provenance labelling.

Art. 26.8: Specifications for the application of Art. 26.2(b) and Art. 26.3

By 13 December 2013, following impact assessments, the Commission shall adopt implementing acts concerning the application of point (b) of paragraph 2 of this Article and the application of paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

See Art. 26.2 and Art. 26.3.

Art. 26.9: Specifications for the reports and impact assessments related to meat

In the case of foods referred to in point (b) of paragraph 2, in point (a) of paragraph 5 and in paragraph 6, the reports and the impact assessments under this Article shall consider, inter alia, the options for the modalities of expressing the country of origin or place of provenance of those foods, in particular with respect to each of the following determining points in the life of the animal:

- (a) place of birth;*
- (b) place of rearing;*
- (c) place of slaughter.*

This paragraph specifically applies to:

- Meat that has to bear a mandatory indication of the country of origin or place of provenance as indicated in Art. 26.2b;
- Types of meat other than beef and those referred to in Article 26.2b;
- Meat used as an ingredient.

The reports and impact assessment **must** consider the options of expressing the country of origin or place of provenance according to each of the stages in the life of the animal (birth, rearing and slaughter).

Article 39: National measures

Article 39 covers the national measures on additional mandatory particulars.

Art. 39.1: Justification grounds for national measures

In addition to the mandatory particulars referred to in Article 9(1) and in Article 10, Member States may, in accordance with the procedure laid down in Article 45, adopt measures requiring additional mandatory particulars for specific types or categories of foods, justified on grounds of at least one of the following:

- (a) the protection of public health;*
- (b) the protection of consumers;*
- (c) the prevention of fraud;*
- (d) the protection of industrial and commercial property rights, indications of provenance, registered designations of origin and the prevention of unfair competition.*

This paragraph allows Member States to adopt national rules on additional mandatory particulars for specific types or categories of food, based on at least one of the above grounds.

Art. 39.2: Specificities for national measures on country of origin or place of provenance

By means of paragraph 1, Member States may introduce measures concerning the mandatory indication of the country of origin or place of provenance of foods only where there is a proven link between certain qualities of the food and its origin or provenance. When notifying such measures to the Commission, Member States shall provide evidence that the majority of consumers attach significant value to the provision of that information.

This paragraph builds further on paragraph 1 and specifies that national rules on the mandatory indication of the country of origin or place of provenance are only allowed when there is a demonstrated link between certain qualities of the food and its origin or provenance. Member States do not only have to notify such national measures to the Commission, they also have to proof that the majority of consumers attach 'significant value' to that information.

Annex XI: Types of meat for which the indication of the country of origin or place of provenance is mandatory

Annex VI is referred to in Article 26 and provides the types of meat for which the indication of the country of origin or place of provenance is mandatory:

TYPES OF MEAT FOR WHICH THE INDICATION OF THE COUNTRY OF ORIGIN OR PLACE OF PROVENANCE IS MANDATORY

- 0203 Meat of swine, fresh, chilled or frozen**
- 0204 Meat of sheep or goats, fresh, chilled or frozen**
- Ex 0207 Meat of the poultry of heading 0105, fresh, chilled or frozen**

This list does not cover other types of meat which are already subject to mandatory indication of the country of origin or place of provenance under other EU legislation (see Art. 26.1).

Chapter III: Legibility

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SUMMARY

- Mandatory food information **must** be:
 - easily visible, clearly legible and indelible (where appropriate)
 - displayed in a minimum font size of 1.2mm
- For small packs/containers with the largest surface below 80 cm², the font size **must** be at least 0.9mm.
- Member States **may** adopt national measures on the presentation of non-prepacked foods.
- The European Commission **must** establish rules for legibility.
- The name of the food, the net quantity and, where applicable, the actual alcoholic strength by volume **must** be provided together in the same “field of vision”. The European Commission **may** extend this requirement to other mandatory particulars. Exemptions are:
 - *Glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar;*
 - *Packaging or containers with a largest surface of less than 10 cm².*
- The following cases **may** bear fewer mandatory labelling:
 - *Glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar;*
 - *Packaging or containers with a largest surface of less than 10 cm²;*
 - *Alcoholic beverages (above 1.2% alcohol);*
 - *Several foods which are exempted from mandatory nutrition labelling (Annex V).*

Article-by-Article

The following articles are relevant for legibility:

- **Article 2.2(m): Definition of “legibility”**
- **Article 13: Presentation of mandatory particulars**
- **Article 16: Omission of certain mandatory particulars**
- **Annex IV: Definition of X-height**

Article 2.2(m): Definition of “legibility”

‘legibility’ means the physical appearance of information, by means of which the information is visually accessible to the general population and which is determined by various elements, inter alia, font size, letter spacing, spacing between lines, stroke width, type colour, typeface, width- height ratio of the letters, the surface of the material and significant contrast between the print and the background;

The above definition of “legibility” considers legibility not to be solely confined to the font size, but also to include other elements such as spacing, type colour, typeface, and contrast.

Article 13: Presentation of mandatory particulars

This article is the main article dealing with legibility. It is structured as follows:

- **13.1: General principles of presenting mandatory food information**
- **13.2: Minimum font size for the mandatory particulars**
- **13.3: Minimum font size for the mandatory particulars for small packs**
- **13.4: European Commission implementing measures on legibility**
- **13.5: Positioning of certain mandatory particulars**
- **13.6: Exemptions to the positioning of certain mandatory particulars**

13.1: General principles of presenting mandatory food information

Without prejudice to the national measures adopted under Article 44(2), mandatory food information shall be marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible. It shall not in any way be hidden, obscured, detracted from or interrupted by any other written or pictorial matter or any other intervening material.

Mandatory food information **must** be provided in a conspicuous place in such a way to be:

- Easily visible
- Clearly legible
- Indelible (where appropriate)

These ‘principles’ are in line with previous EU labelling legislation (Directive 2000/13/EC), which will be repealed in December 2014.

Furthermore, mandatory food information **must not** be:

- Hidden
- Obscured
- Detracted from/interrupted by any other written or pictorial elements or any other intervening material.

The above underlined text has been added to the text originating from the previous EU labelling legislation (Directive 2000/13/EC). This has to be approached on a case-by-case basis, where it should be guaranteed that the mandatory food information is legible and easily accessible for the consumer. Examples of how it should not be done are backgrounds with noisy pictures or stickers covering the mandatory declaration.

According to Art. 44.2 of the Regulation, Member States **may** adopt national measures concerning the means through which the mandatory information related to *non-prepacked food* is to be made available and, where appropriate, their form of expression and presentation. Such national measures would in that case precede over the general 'principles' in this article.

Another relevant point to make is that this article deals with legibility for *mandatory* food information. Article 37 of the Regulation indicates that when *voluntary* food information is provided, it should not be displayed to the detriment of the space available for mandatory food information.

13.2: Minimum font size for the mandatory particulars

Without prejudice to specific Union provisions applicable to particular foods, when appearing on the package or on the label attached thereto, the mandatory particulars listed in Article 9(1) shall 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, as defined in Annex IV, is equal to or greater than 1,2 mm.

For the *mandatory* food information listed in Art. 9(1) and Art. 10 to be provided on the package or on the label attached to the package:

- Clear legibility **must** be ensured (see definition of "legibility")
- A *minimum* font size of 1.2 mm **must** be applied (see "Annex IV")

The mandatory particulars listed in Article 9(1) are¹⁸:

- a) the name of the food;*
- b) the list of ingredients;*
- c) any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;*
- d) the quantity of certain ingredients or categories of ingredients;*
- e) the net quantity of the food;*

¹⁸ Please note that there are exemptions for non-prepacked foods (Article 44) and some prepacked foods (Article 16, Annex V) as regards the mandatory particulars.

- f) *the date of minimum durability or the ‘use by’ date;*
- g) *any special storage conditions and/or conditions of use;*
- h) *the name or business name and address of the food business operator referred to in Article 8(1);*
- i) *the country of origin or place of provenance where provided for in Article 26;*
- j) *instructions for use where it would be difficult to make appropriate use of the food in the absence of such instructions;*
- k) *with respect to beverages containing more than 1,2 % by volume of alcohol, the actual alcoholic strength by volume;*
- l) *a nutrition declaration.*

In addition, Article 10 refers to additional mandatory particulars for specific categories of food, which are covered under Annex III of the Regulation.

Furthermore, with regard to the net quantity of the food (point e), Council Directive 76/211 on the making up by weight or by volume of certain prepackaged products provides in Annex I, point 3.1 specific rules for the font sizes of the nominal quantity (i.e. for the numerical value):

- | | |
|-------------------------------|---------------------|
| - <i>not exceeding 50g/ml</i> | <i>2mm minimum*</i> |
| - <i>50g/ml - 200g/ml</i> | <i>3mm minimum*</i> |
| - <i>200g/ml - 1kg/l</i> | <i>4mm minimum*</i> |
| - <i>exceeding 1kg/l</i> | <i>6mm minimum*</i> |

** Figures referring to numerical height, not x-height.*

The minimum font size specified in Regulation 1169/2011 does *not* apply to mandatory elements in other EU legislation (e.g. lot codes) or ‘voluntary’ food information, such as nutrition and health claims.

13.3: Minimum font size for the mandatory particulars for small packs

In case of packaging or containers the largest surface of which has an area of less than 80 cm², the x-height of the font size referred to in paragraph 2 shall be equal to or greater than 0,9 mm.

For small packs/containers with the largest surface below 80 cm², the font size referred to in Art. 13.2 **must** be at least 0.9mm.

The “largest surface” has been used in the previous EU labelling Directive 2000/13/EC. FoodDrinkEurope and EuroCommerce understand that the “largest surface” means the single largest surface that can be seen from a single point of view and that can be printed on from a technical perspective. Generally, it is the largest surface bounded/limited by edges. For surfaces without such, e.g. in the case of cylindrical or conical packages, the curvature has to be taken into consideration when calculating the available area. For instance, the largest surface of a can corresponds to approximately 1/3rd of the round surface of the can. Furthermore, as there are many different shapes of packs other than boxes and cylindrical/conical packages, these specificities should be taken into account on a case-by-case basis. The food business operator should ensure that the mandatory food information that is provided is clearly legible and easily accessible for the consumer.

13.4: European Commission implementing measures on legibility

For the purpose of achieving the objectives of this Regulation, the Commission shall, by means of delegated acts in accordance with Article 51, establish rules for legibility.

For the same purpose as referred to in the first subparagraph, the Commission may, by means of delegated acts in accordance with Article 51, extend the requirements under paragraph 5 of this Article to additional mandatory particulars for specific types or categories of foods.

The European Commission **must** establish rules for legibility.

In addition, the European Commission **may** extend the mandatory particulars that must appear in the same field of vision (see Art. 13.5).

13.5: Positioning of certain mandatory particulars

The particulars listed in points (a); (e) and (k); of Article 9(1) shall appear in the same field of vision

The following mandatory particulars **must** be provided together in the same “field of vision”:

- The name of the food;
- The net quantity of the food;
- With respect to beverages containing more than 1,2 % by volume of alcohol, the actual alcoholic strength by volume;

A definition of “field of vision” is provided in Article 2.2(k):

‘field of vision’ means all the surfaces of a package that can be read from a single viewing point;

The same “field of vision” may be any side and more than one side of the pack, including but not limited to the back-of-pack, front-of-pack or another side of the pack.

13.6: Exemptions to the positioning of certain mandatory particulars

Paragraph 5 of this Article shall not apply in the cases specified in Article 16(1) and (2).

The following cases are exempted from the requirement to position certain mandatory particulars in the same field of vision:

- *Glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar;*

- *Packaging or containers with a largest surface of less than 10 cm².*

The above two cases have specific rules set out in Article 16.1 and 16.2, respectively.

Article 16: Omission of certain mandatory particulars

This article specifies certain specific rules or exemptions from certain mandatory labelling. It is structured as follows:

- **16.1: Specific rules for glass bottles**
- **16.2: Specific rules for small packs with the largest surface of less than 10 cm²**
- **16.3: Exemptions from mandatory nutrition declaration**
- **16.4: Specific rules for alcoholic beverages**

16.1: Specific rules for glass bottles

In the case of glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar only the particulars listed in points (a), (c), (e), (f) and (l) of Article 9(1) shall be mandatory.

Glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar, **may** bear fewer particulars. The following particulars **must** be provided:

- *the name of the food;*
- *any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;*
- *the net quantity of the food;*
- *the date of minimum durability or the 'use by' date; and*
- *a nutrition declaration.*

16.2: Specific rules for small packs with the largest surface of less than 10 cm²

In the case of packaging or containers the largest surface of which has an area of less than 10 cm² only the particulars listed in points (a), (c), (e) and (f) of Article 9(1) shall be mandatory on the package or on the label. The particulars referred to in point (b) of Article 9(1) shall be provided through other means or shall be made available at the request of the consumer.

Small packs/containers with the largest surface of less than 10 cm² can bear fewer particulars. The following particulars **must** be provided:

- *the name of the food;*
- *any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;*
- *the net quantity of the food;*
- *the date of minimum durability or the 'use by' date.*

For these small packs/containers, the list of ingredients **must** be provided through other means (e.g. leaflets, website) or must be made available when consumers ask for it (e.g. hotline).

16.3: Exemptions from mandatory nutrition declaration

Without prejudice to other Union provisions requiring a mandatory nutrition declaration, the declaration referred to in point (l) of Article 9(1) shall not be mandatory for the foods listed in Annex V.

The foods listed in Annex V are exempted from mandatory nutrition declaration.

In the case that other EU legislation prescribes mandatory nutrition declaration (e.g. for specific foods), this takes precedence. For example, foodstuffs intended for particular nutritional uses (PARNUTS) have specific rules regarding nutrition labelling which have to be considered.

16.4: Specific rules for alcoholic beverages

Without prejudice to other Union provisions requiring a list of ingredients or a mandatory nutrition declaration, the particulars referred to in points (b) and (l) of Article 9(1) shall not be mandatory for beverages containing more than 1,2 % by volume of alcohol.

By 13 December 2014, the Commission shall produce a report concerning the application of Article 18 and Article 30(1) to the products referred to in this paragraph, and addressing whether alcoholic beverages should in future be covered, in particular, by the requirement to provide the information on the energy value, and the reasons justifying possible exemptions, taking into account the need to ensure coherence with other relevant Union policies. In this context, the Commission shall consider the need to propose a definition of 'alcopops'.

The Commission shall accompany that report by a legislative proposal, if appropriate, determining the rules for a list of ingredients or a mandatory nutrition declaration for those products.

Beverages containing more than 1.2% alcohol can bear fewer particulars as they are exempted from bearing a list of ingredients and a nutrition declaration. On a voluntary basis, food business operators **may** include a list of ingredients and/or nutrition declaration for these beverages.

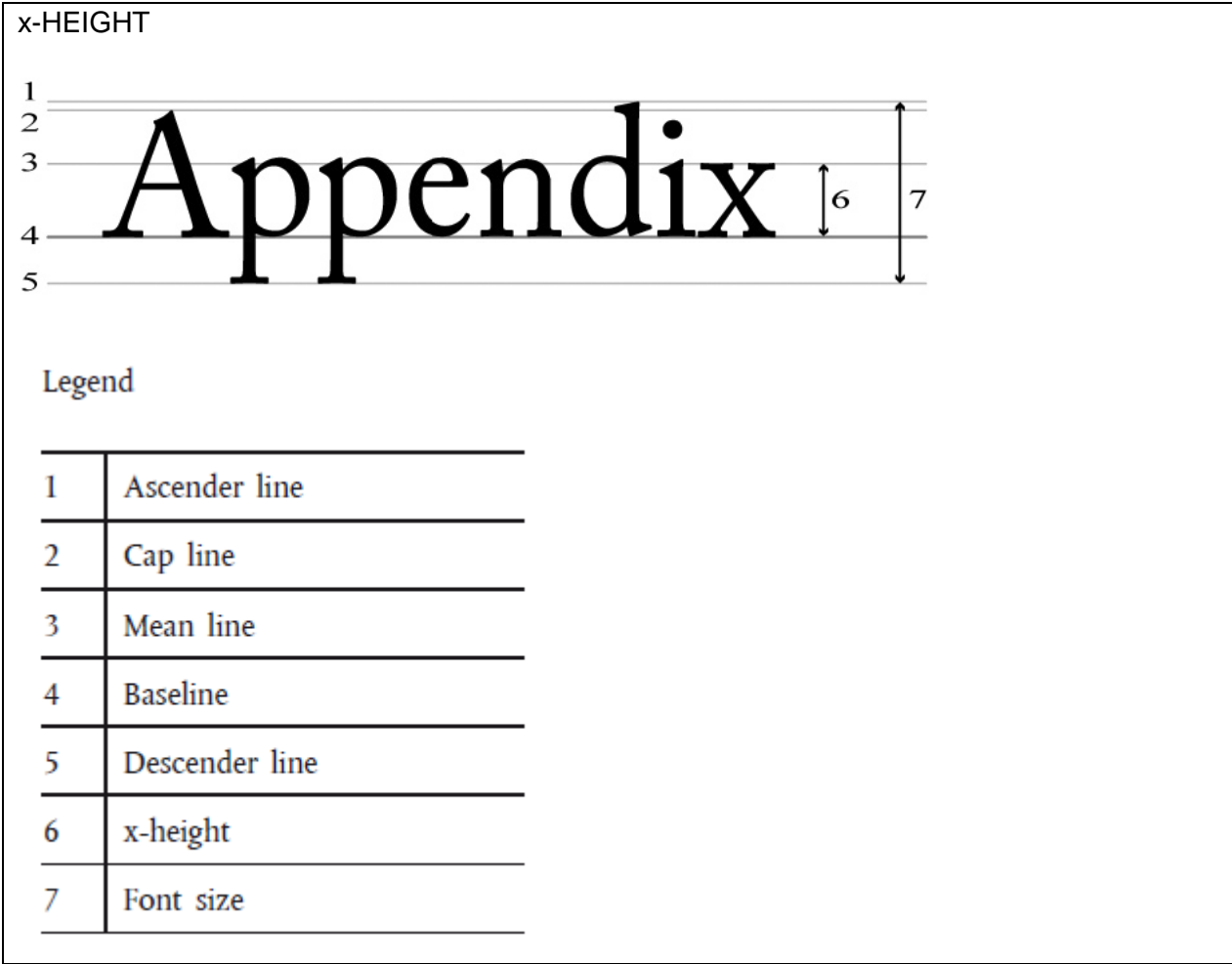
The European Commission **must** produce a report concerning the list of ingredients (Article 18) and mandatory nutrition declaration (Article 30.1) for alcoholic beverages (over 1.2% alcohol).

This report centers around the provision of information on the energy value for alcoholic beverages, including possible exemptions. Furthermore, the Commission **must** consider the need to propose a definition for 'alcopops'.

The Commission **must** accompany the report with a legislative proposal (if appropriate) determining the rules for alcoholic beverages regarding:

- a list of ingredients;
- a mandatory nutrition declaration.

Annex IV: Definition of the X-height



The X-height is provided in line 6. In general, this should be minimally 1.2 mm (see above articles).

Chapter IV: Allergen Labelling

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SUMMARY

- Substances or products causing allergies **must** be indicated, also for non-prepacked foods;
- Each ingredient or processing aid originating from a substance or product causing allergies or intolerances **must** be:
 - Indicated in the list of ingredients with reference to the name of the substance or product as listed in Annex II;
 - Emphasized through a typeset that distinguishes it from the rest of the list of ingredients;
- If no list of ingredients is provided, the substance or product causing allergies or intolerances **must** be indicated by means of “contains + [substance(s)/product(s)]”
- When the name of the food clearly refers to the substance or product causing allergies or intolerances, it is not necessary to label the concerned substance or product.
- The European Commission **must** systematically re-examine and, where necessary, update the list of substances or products causing allergies or intolerances.
- The European Commission **must** establish implementing measures on the additional voluntary “may contain” labelling.

Article-by-Article

The following articles are relevant for allergen labelling¹⁹:

- **Article 9.1(c): Mandatory particulars**
- **Article 21: Labelling of certain substances or products causing allergies or intolerances**
- **Article 36.3(a): Additional voluntary allergen labelling (“may contain”)**
- **Article 44.1(a) and 44.2: Allergen labelling of non prepacked foods**
- **Annex II: List of substances or products causing allergies or intolerances**

Article 9.1(c): Mandatory particulars

In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:

[...]

(c) any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;

[...]

Food business operators **must** label any ingredient or processing aid:

- listed in Annex II; or
- derived from a substance or product listed in Annex II

The list of Annex II is provided below. Labelling of these ingredients, processing aids, substances or products causing allergies or intolerances is obligatory when they are used in the manufacture or preparation of a food and are still present in the finished product, even if in an altered form.

Further rules on how to label are specified in Article 21.

Article 21: Labelling of certain substances or products causing allergies or intolerances

Article 21 is the main article covering allergen labelling.

It is structured as follows:

- **21.1: Presentation of the labelling of certain substances or products causing allergies or intolerances**
- **21.2: Systematic re-examination and possible update of the list of substances or products causing allergies or intolerances**

¹⁹ For ease of reference, allergen labelling in this document refers to the labelling of substances or products causing allergies or intolerances.

21.1: Presentation of the labelling of certain substances or products causing allergies or intolerances

Without prejudice to the rules adopted under Article 44(2), the particulars referred to in point (c) of Article 9(1) shall meet the following requirements:

Food business operators **must** indicate the substances or products causing allergies or intolerances in the way specified in the following sub-paragraphs.

Where specific national measures have been introduced by individual Member States on non-prepacked foods with regard to the form of expression and presentation of the allergens that have to be provided on a mandatory basis (Art. 44.2), these take precedence over the requirements of Article 21.

(a) they shall be indicated in the list of ingredients in accordance with the rules laid down in Article 18(1), with a clear reference to the name of the substance or product as listed in Annex II; and

The ingredients that according to the Annex II of the Regulation are substances or products causing allergies or intolerances, **must** be indicated in the list of ingredients “*with a clear reference to the name of the substance or product as listed in Annex II*”. Hence, there are no changes in this respect compared to the current allergen labelling situation in Directive 2000/13/EC.

(b) the name of the substance or product as listed in Annex II shall be emphasised 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.

The name **must** be emphasized through a typeset different from that of the rest of the list of ingredients, for example by means of the font, style or background colour.

Emphasis may be achieved by indicating the ingredients concerned in **bold** in the list of ingredients. However, food business operators may use other ways of emphasis, amongst others for reasons of technical feasibility, be it those mentioned in the provision (font, style, background colour) or others.

In the absence of a list of ingredients, the indication of the particulars referred to in point (c) of Article 9(1) shall comprise the word ‘contains’ followed by the name of the substance or product as listed in Annex II.

When no list of ingredients is given (e.g. for glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar), the word “contains” followed by the name of the substance or product causing allergies or intolerances **must** be indicated.

Where several ingredients or processing aids of a food originate from a single substance or product listed in Annex II, the labelling shall make it clear for each ingredient or processing aid concerned.

Where the food contains several ingredients or processing aids that originate from one substance or product causing allergies or intolerances, the operator **must** either repeat the reference to the substance or product as many times as it is present or choose any other presentation which makes clear that different ingredients or processing aids originate from one single allergen.

The indication of the particulars referred to in point (c) of Article 9(1) shall not be required in cases where the name of the food clearly refers to the substance or product concerned.

In those cases where the name of the food clearly refers to the substance or product causing allergies or intolerances, it is not required to label the concerned substances or products.

Examples:

- Strawberry-flavored soy drink, where soy lecithin is used in the flavour;
- Wheat flour;
- All dairy products, e.g. cheese, yoghurt, cream, butter, as it is clear that they are derived from milk (see Annex XII and XIII of Reg. 1234/2007 for further explanation on the definition and designation of dairy products);
- Tuna paté;

Furthermore, in those cases where the name of the ingredient clearly refers to the substance or product causing allergies or intolerances, it is also not required to label the concerned substances or products. The name of the food is the legal name of the food as determined in Article 9.1(a) and Article 17. For example, when the name of the food contains words such as yoghurt, cream, butter, cheese etc., it is clear for the consumer that these products contain milk.

21.2: Systematic re-examination and possible update of the list of substances or products causing allergies or intolerances

In order to ensure better information for consumers and to take account of the most recent scientific progress and technical knowledge, the Commission shall systematically re-examine and, where necessary, update the list in Annex II by means of delegated acts, in accordance with Article 51.

The European Commission **must** systematically re-examine and, where necessary, update the list of substances or products causing allergies or intolerances.

Here, it needs to take into account:

- the objective of ensuring better information for consumers; and
- the most recent scientific progress and technical knowledge, supported by an EFSA Opinion.

Where, in the case of the emergence of a risk to consumers' health, imperative grounds of urgency so require, the procedure provided for in Article 52 shall apply to delegated acts adopted pursuant to this Article.

If there is an urgent need due to emergence of a risk to consumers' health, the urgency procedure **must** be applied. This means that the European Commission is able to adopt a delegated act in relation to Article 21 without delay, as long as no objection is expressed by the European Parliament or the Council.

Article 36.3(a): Additional voluntary allergen labelling (“may contain” – information on the possible and unintentional presence of substances or products causing allergies or intolerances)

Article 36 covers the applicable requirements for voluntary food information and the implementing measures that the European Commission needs to take on the application of the requirements.

First, Article 36.2 covers the general requirements that voluntary food information **must** meet:

Food information provided on a voluntary basis shall meet the following requirements:

- (a) it shall not mislead the consumer, as referred to in Article 7;***
- (b) it shall not be ambiguous or confusing for the consumer; and***
- (c) it shall, where appropriate, be based on the relevant scientific data.***

Then, Article 36.3 covers the implementing measures that the European Commission **must** adopt in order to facilitate the application of these requirements:

The Commission shall adopt implementing acts on the application of the requirements referred to in paragraph 2 of this Article to the following voluntary food information:

- (a) information on the possible and unintentional presence in food of substances or products causing allergies or intolerances;***

[...]

According to Article 36.3(a), the European Commission **must** adopt implementing measures detailing the application of the requirements related to voluntary information on “may contain”

labelling (i.e. the possible and unintentional presence in food of substances or products causing allergies or intolerances). FoodDrinkEurope and EuroCommerce support the development of European guidance related to “may contain” labelling.

Article 44.1(a) and 44.2: allergen labelling of non prepacked foods

Article 44 covers national measures for non-prepacked foods.

1. Where foods are offered for sale to the final consumer or to mass caterers without prepackaging, or where foods are packed on the sales premises at the consumer’s request or prepacked for direct sale:

(a) the provision of the particulars specified in point (c) of Article 9(1) is mandatory;

(b) the provision of other particulars referred to in Articles 9 and 10 is not mandatory unless Member States adopt national measures requiring the provision of some or all of those particulars or elements of those particulars.

Of particular relevance for allergen labelling is Article 44.1(a), which specifies that information concerning allergens **must** be available for non-prepacked foods.

2. Member States may adopt national measures concerning the means through which the particulars or elements of those particulars specified in paragraph 1 are to be made available and, where appropriate, their form of expression and presentation.

Paragraph 2 of Art. 44 indicates that Member States **may** adopt national rules concerning the means of communicating the particulars such as the allergen declaration (e.g. leaflet, website, etc.) and their form of expression and presentation.

Annex II: List of substances or products causing allergies or intolerances

Annex II provides the following list of substances or products causing allergies or intolerances:

1. Cereals containing gluten, namely: wheat, rye, barley, oats, spelt, kamut or their hybridised strains, and products thereof, except:

(a) wheat based glucose syrups including dextrose ¹;

(b) wheat based maltodextrins ¹;

(c) glucose syrups based on barley;

(d) cereals used for making alcoholic distillates including ethyl alcohol of agricultural origin;

2. Crustaceans and products thereof;

3. Eggs and products thereof;

4. Fish and products thereof, except:

(a) fish gelatine used as carrier for vitamin or carotenoid preparations;

(b) fish gelatine or Isinglass used as fining agent in beer and wine;

5. Peanuts and products thereof;

6. Soybeans and products thereof, except:

(a) fully refined soybean oil and fat ¹;

(b) natural mixed tocopherols (E306), natural D-alpha tocopherol, natural D-alpha tocopherol acetate, and natural D-alpha tocopherol succinate from soybean sources;

(c) vegetable oils derived phytosterols and phytosterol esters from soybean sources;

(d) plant stanol ester produced from vegetable oil sterols from soybean sources;

7. Milk and products thereof (including lactose), except:

(a) when used for making alcoholic distillates including ethyl alcohol of agricultural origin;

(b) lactitol;

8. Nuts, namely: almonds (*Amygdalus communis* L.), hazelnuts (*Corylus avellana*), walnuts (*Juglans regia*), cashews (*Anacardium occidentale*), pecan nuts (*Carya illinoensis* (Wangenh.) K. Koch), Brazil nuts (*Bertholletia excelsa*), pistachio nuts (*Pistacia vera*), macadamia or Queensland nuts (*Macadamia ternifolia*), and products thereof, except for nuts used for making alcoholic distillates including ethyl alcohol of agricultural origin;

9. Celery and products thereof;

10. Mustard and products thereof;

11. Sesame seeds and products thereof;

12. Sulphur dioxide and sulphites at concentrations of more than 10 mg/kg or 10 mg/litre in terms of the total SO₂ which are to be calculated for products as proposed ready for consumption or as reconstituted according to the instructions of the manufacturers;

13. Lupin and products thereof;

14. Molluscs and products thereof.

¹ **And the products thereof, in so far as the process that they have undergone is not likely to increase the level of allergenicity assessed by the Authority for the relevant product from which they originated.**

Chapter V: Other Horizontal Issues

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Article-by-Article

Net quantity

Article 9.1(e): Mandatory particulars

In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:

[...]

(e) the net quantity of the food;

[...]

Food business operators **must** provide the net quantity of the food. The way of expressing the net quantity and other related particulars are further specified in Article 23 and Annex IX.

The net quantity declared by the food producer should be the one at the moment of packing. This takes account of the fact that after packing and until the food is sold to the consumer; the net quantity could slightly change due to e.g. dehydration.

Article 11 Weights and measures

Article 9 shall be without prejudice to more specific Union provisions regarding weights and measures.

Article 9 shall be without prejudice to more specific Union provisions regarding weights and measures.

Article 23: Expression of the net quantity

1. The net quantity of a food shall be expressed using litres, centilitres, millilitres, kilograms or grams, as appropriate:

(a) in units of volume in the case of liquid products;

(b) in units of mass in the case of other products.

Food business operators **must** express the net quantity of a food using the appropriate measurement units:

- For liquid products: litres, centiliters or millilitres
- For other products (include solid foods): kilograms or grams

2. In order to ensure a better understanding by the consumer of the food information on the labelling, the Commission may establish for certain specified foods, by means of delegated acts, in accordance with Article 51, a manner for the expression of the net quantity other than the one laid down in paragraph 1 of this Article.

The Commission **may** establish rules on how to express the net quantity in a different manner than in units of volume (for liquid products) or mass (for other products), for certain specified foods.

3. Technical rules for applying paragraph 1, including specific cases where the indication of the net quantity shall not be required, are laid down in Annex IX.

Annex IX stipulates the detailed (technical) rules of how to apply paragraph 1 and provides the exemptions for the indication of the net quantity.

Article 42: Expression of the net quantity (national measures)

In the absence of Union provisions referred to in Article 23(2) concerning the expression of net quantity for specified foods in a different manner to that provided for in Article 23(1), Member States may maintain national measures adopted before 12 December 2011.

By 13 December 2014, Member States shall inform the Commission about such measures. The Commission shall bring them to the attention of the other Member States.

Member States that have adopted national measures with regard to the expression of the net quantity for specified foods in a manner that is different than in units of volume (for liquid products) or mass (for other products) before 12 December 2011 **may** continue to apply these national rules until the European Commission has adopted such rules at European level (see Art. 23.2).

Member States **must** inform the Commission of this, with a deadline of 13 December 2014.

Annex IX: Net quantity declaration

1. The net quantity declaration shall not be mandatory in the case of foods:

(a) which are subject to considerable losses in their volume or mass and which are sold by number or weighed in the presence of the purchaser;

(b) the net quantity of which is less than 5 g or 5 ml; however, this provision shall not apply to spices and herbs; or

(c) normally sold by number, provided that the number of items can clearly be seen and easily counted from the outside or, if not, is indicated on the labelling.

Certain foods are exempted from the obligation to indicate the net quantity.

Typical (non-exhaustive) examples are:

- **Foods subject to considerable losses in their volume or mass and which are sold in number or weighed in the presence of the purchaser:**
 - Dried fermented sausage
 - Eggs which are sold by units (dozens, scores, half a dozen, ...) or weight, but indicating the minimum weight, which is weighed at the moment of packaging, less a margin of tolerance for loss of humidity in the marketing process (*this case is ruled by Commission Regulation (EC) n° 589/2008*)
- **Net quantity no more than 5g/ml:**
 - Small sachets of sugar, sweeteners, salt, tomato ketchup and other sauces, mustard etc.²⁰ (*this provision does not apply to spices and herbs*)
- **Normally sold by number:**
 - Prepacked bakery wares (e.g. cakes, bread, tarts, pies etc) or confectionary (e.g. small chocolate figurines) where the number of items is indicated on the packaging or can clearly be seen and easily counted from the outside;
 - Cereal biscuit breakfast foods
 - Sweetening tablets
 - Vanilla pods
 - Where appropriate, fruits and vegetables;
 - Eggs;
 - Oysters, snails.

2. Where the indication of a certain type of quantity (such as the nominal quantity, minimum quantity, or average quantity) is required by Union provisions or, where there are none, by national provisions, this quantity shall be regarded as the net quantity for the purposes of this Regulation.

Where food business operators **must** indicate a certain type of quantity of the food by any EU legislation, or where there is none, by national legislation, this quantity is to be regarded as the “net quantity” and will have to comply with the provisions related to net quantity in this Regulation.

²⁰ In the case of sugars covered by the Directive 2001/111/EC relating to certain sugars intended for human consumption, which is applicable through article 1(4) of Reg. 1169/2011, the net weight need not be indicated on the labelling of pre-packaged products weighing less than 20 g.

3. Where a prepacked item consists of two or more individual prepacked items containing the same quantity of the same product, the net quantity shall be indicated by mentioning the net quantity contained in each individual package and the total number of such packages. The indication of those particulars shall not, however, be mandatory where the total number of individual packages can be clearly seen and easily counted from the outside and where at least one indication of the net quantity contained in each individual package can be clearly seen from the outside.

When a prepacked item is comprised of several individually recognizable units, which are regarded as units of sale, containing the same quantity of the same product, food business operators **must** indicate:

- the net quantity of each individual prepacked item; and
- the total number of prepacked item.

Example: a box/pack with 6 bags of cookies. Cookies packed by 2. Bags are not intended for individual sale. Indications: 35g for a bag. 6 portions.

This dual indication is not necessary where the total number of individual prepacked items can be clearly seen and counted from the outside and at least one net quantity figure of an individual prepacked item can be seen from the outside.

Where products are sold by number, i.e. exempt from net quantity declaration (Annex IX.1), the total number of individual items along with the total number of individual packages **must** be provided.

An "individual prepacked item" refers to a packed and labelled product and does not include unlabelled individual packages for protection or food handling. For example, fish fillets, wrapped one-by-one or several pieces in the same unit (to prevent dehydration of the product or prevent sticking the pieces or to facilitate its handling), small bakery ware (to increase conservation due to less dehydration) or individually wrapped small sweets such as candies/lollies and small chocolates such as pralines (to ensure food handling and hygiene protection) are not considered to be a prepacked item.

4. Where a prepacked item consists of two or more individual packages which are not regarded as units of sale, the net quantity shall be given by indicating the total net quantity and the total number of individual packages.

Where a prepacked item consists of several individual packages which are *not regarded as units of sale*, the total net quantity and the total number of individual packages **must** be provided.

"Individual packages" also refers to packed and labelled products in case they are not intended as units of sale since they are included in a multipack that is the "prepacked item" presented as sales unit at the point of sale.

Example: a pack/box of yoghurts with 4 yoghurt pots which cannot be sold individually.

Where it is not possible to specify an exact number of the individual units because there is no piece count control (only a weight control), it is possible to use the term “approximately” (e.g. “appr. 20 [units]”) or similar wording/abbreviations. Furthermore, individually wrapped small sweets and small chocolates sold in bags or boxes are not considered as pre-packed items.

5. Where a solid food is presented in a liquid medium, the drained net weight of the food shall also be indicated. Where the food has been glazed, the declared net weight of the food shall be exclusive of the glaze.

For the purposes of this point, ‘liquid medium’ shall mean the following products, possibly in mixtures and also where frozen or quick-frozen, provided that the liquid is merely an adjunct to the essential elements of that preparation and is thus not a decisive factor for the purchase: water, aqueous solutions of salts, brine, aqueous solutions of food acids, vinegar, aqueous solutions of sugars, aqueous solutions of other sweetening substances, fruit or vegetable juices in the case of fruit or vegetables.

In the case where a solid food is presented in a liquid medium, the drained net weight **must** be indicated in addition to the net weight/quantity. Examples are tuna-fish in brine, gherkin in vinegar, etc.

Where a frozen food or quick-frozen food (as defined in Council Directive 89/108) has been glazed, the net weight should not include the glaze itself. The consequence is that for the glazed products only one weight (net weight without the glaze) is required. The definition of glaze can be found in the Recommended International Code of Practice for the Processing and Handling of Quick Frozen Foods (CAC/RCP 8_1976): the glaze is a protective layer of ice formed on the surface of a frozen or quick frozen product by spraying it with, or dipping it into water. As a consequence of the definition of the glaze, water constitutive of the glaze should not be considered as a constituent of the food and as a consequence, it does not appear in the ingredients list.

Date of Freezing

Council Directive 89/108 on the approximation of the laws of the Member States relating to quick-frozen foodstuffs for human consumption lays down the definition of “quick freezing process” and “quick-frozen food”, translated in the different European languages.

Article 1 of Directive 89/108

1. This Directive shall apply to quick-frozen foods intended for human consumption, hereinafter referred to as 'quick-frozen foodstuffs'.

2. For the purposes of this Directive 'quick-frozen foodstuffs' means foodstuffs

- which have undergone a suitable freezing process known as 'quick-freezing' whereby the zone of maximum crystallization is crossed as rapidly as possible, depending on the type of product, and the resulting temperature of the product (after thermal stabilization) is continuously maintained at a level of -18 °C or lower at all points, and

- which are marketed in such a way as to indicate that they possess this characteristic.

The date of freezing also applies to products complying with the above mentioned Directive and labelled as “quick-frozen products”.

Annex III.6: Foods for which the labelling must include one or more additional particulars

6. Frozen meat, frozen meat preparations and frozen unprocessed fishery products

6.1. Frozen meat, frozen meat preparations and frozen unprocessed fishery products.

The date of freezing or the date of first freezing in cases where the product has been frozen more than once, in accordance with point (3) of Annex X.

Food business operators **must** indicate the date of freezing or the date of first freezing (depending on whether the product has been frozen more than once) for:

- Frozen meat, as defined in Annex I Part 1 point 1.1 of Regulation 853/2004;
- Frozen meat preparations, as defined in Annex I Part 1 point 1.15 of Regulation 853/2004;
- Frozen unprocessed fishery products, as defined in Annex I part 3 point 3.1 of Regulation 853/2004 in combination with the definition of unprocessed products laid down in Article 2.1n) of Regulation 852/2004. This means that, for example, a fish finger (fillets cut to shape which has been battered or breaded) does not fall under the requirements laid down in Annex III point 6.1.

This requirement does not apply when the aforementioned items are used as ingredients in the manufacture of other food products.

In case of frozen (quick-frozen) products consisting of a mix of frozen (quick-frozen) meat and/or frozen (quick-frozen) meat preparation and/or frozen (quick-frozen) unprocessed fishery products, the date of freezing means the oldest date of freezing of these different frozen (quick-frozen) ingredients.

Example: a 500g plastic bag of uncooked shrimps made with several different lots of uncooked shrimps.

The way of expressing the date of (first) freezing is indicated in point 3 of Annex X.

Annex X.3: Date of freezing

3. The date of freezing or the date of first freezing as referred to in point 6 of Annex III shall be indicated as follows:

(a) it shall be preceded by the words ‘Frozen on ...’;

(b) the words referred to in point (a) shall be accompanied by:
— *the date itself, or,*
— *a reference to where the date is given on the labelling,*

(c) the date shall consist of the day, the month and the year, in that order and in uncoded form.

The date of (first) freezing **must** be indicated as follows:

Either:

- Frozen on [DATE], e.g. “Frozen on 30/01/2010” or “Frozen on 30/01/10” (*in that order DD/MM/YY*);

Or:

- Frozen on [reference to where the date is given on the label], e.g. “Frozen on: see bottom”

The date of (first) freezing **must** be indicated in a predetermined order (i.e. day/month/year) and in uncoded form.

It is assumed that the date of first freezing refers to the prepacked product intended for sale to the consumer or to mass caterers, to which the other mandatory particulars apply. For example, for a pack of fish fillets, the date of freezing is the date when the pack of fish fillets has been frozen.

Refrozen, Defrosted

Annex VI, 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.

Food business operators **must** ensure that the name of the food includes or accompanies information on the physical condition of the food or the specific treatment it has undergone, in all cases where omission of this information may mislead the consumer.

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.

Foods that have been frozen or quick-frozen before sale and which are sold defrosted **must** carry the name of the food together with the designation “defrosted” (e.g. “defrosted salmon”).

This provision provides the exemptions from the requirement the designation “defrosted” to accompany the name of the food.

Some non-exhaustive examples of such cases are:

- **Ingredients present in the final product:**
 - *Frozen strawberries used to make in a yogurt with strawberry*
 - *Frozen salmon for a fresh pizza*
 - *Frozen fish to produce ‘surimi’*
 - *Herbs used in a sauce*
- **Foods for which freezing is a technologically necessary step of the product process:**
 - *Some fishery products frozen for food safety reasons in accordance with Annex III Section VIII Chapter III section D. “Requirements concerning parasites” of Regulation 853/2004*
 - *Certain type of cakes, cheeses or meat products before cutting them into slices*
- **Foods for which the defrosting has no negative impact on the safety or quality of the food:**
 - *Butter (see recital 28 of the Regulation)*
 - Bakery products

It is the food business operator’s responsibility to be able to justify to the competent authorities that the safety and quality of the defrosted food are not affected by the defrosting process until the minimum durability date which is a “use by” date. The “use by” date of the defrosted food is determined under the responsibility of the food business operator.

Whilst a food may be exempted from the requirement to add the designation “defrosted”, the provisions set out under paragraph 1 of Annex VI, Part A still apply.

Prepacked foods

Article 2.2(e): Definition of prepacked food

'prepacked food' means any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; 'prepacked food' does not cover foods packed on the sales premises at the consumer's request or prepacked for direct sale;

It is understood that 'any single item for presentation as such to the final consumer' does include "multipacks", presented as the **sales unit** at the point of sales / retail outlet to the shopper. The term 'single item' is less unclear in French ("l'unité de vente") or Dutch "verkoopseenheid".

Consequently, the mandatory particulars **must** be provided on the 'multipack', not on the individual packages inside. For example, individually wrapped small sweets (e.g. candies or small lollies) and small chocolates (e.g. pralines) are not considered pre-packed. Furthermore, in the case of portion-cups (e.g. jams, honey, mustard) which are presented as part of a meal to the guests of mass caterers, the multipack sold to the mass caterer has to be duly labelled; the individual portion-cup is not considered to be the sales unit and therefore is not obliged to bear the mandatory particulars.

"Individual prepacked item" refers to a packed and labelled product and does not include unlabelled individual packages for protection or food handling. For example, fish fillets, wrapped one-by-one or several pieces in the same unit (to prevent dehydration of the product or prevent sticking the pieces or to facilitate its handling), muffins, croissants and other small bakery ware (to increase conservation due to less dehydration) or individually wrapped small sweets such as candies/lollies and small chocolates such as pralines (to ensure food handling and hygiene protection) are not considered to constitute a prepacked item.

Fair information practices – substitution of a component or ingredient

Article 7.1(d): Substitution of a component or ingredient

1. Food information shall not be misleading, particularly:

[...]

(d) by suggesting, 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.

Food information that is provided **must** not be misleading.

This paragraph should be read together with Annex VI, Part A.4. These two provisions only apply under the following conditions:

- A component of a food **must** be naturally present in a food. This natural presence should be applicable to all foods in the relevant product group, not only for a specific subgroup (e.g. a product that is produced according to a traditional production process). The relevant product group should be determined on a case by case basis. EU or national legislation, and , where appropriate, codes of practices (European or national) should be taken into account.

Or:

- The component **must** normally / typically be used in the product. This requires evidence that it is market standard to use the specific compound in the product.

In addition, there should be a consumer expectation that the component in question is present in the food, clearly stated in annex VI, indicated by the word “suggesting” in Art. 7.1d and an indication that consumers are misled if the component is not present. Such a consumer expectation should be supported by evidence from consumer research but also by the market history of the product or product category.

It is understood that food information is not misleading if the information is replying to consumers’ request to understand product characteristics such as for example taste: it should be possible to inform consumers about a certain taste of a food without implying that a component is naturally present in a food.

It should be demonstrated that there is a sufficiently long history of use of the component in the food to create a consumer expectation. Vice versa, if there is a sufficiently long history of the use of a substituted ingredient in a product or product category, it cannot be claimed that consumers expect the ingredient to be naturally present in the food. In no event, it would be sufficient if consumers only expressed the wish that the component is in the product or wrongly assume it is present while this is not supported by market reality.

The difference between the QUID concept and a substitution is that under QUID there is no implication of a substitution of a particular product, but only presence, which is clarified in the list of ingredients.

A (non-exhaustive) example of what would be *out of the scope* of this provision would be:

- *The use of up to 5% vegetable fat other than cocoa butter in chocolate (as per Directive 2000/36/EC)*

Some (non-exhaustive) example of what would be *within the scope* of this provision would be:

- *An imitation product produced from vegetable fats that has the appearance of a cheese, hence implying that it is a cheese, whereas it is not, cannot be called cheese, according to EU Regulation 1234/2007, Annex XII on the protection of dairy terms for marketing purposes, and has to indicate the substituted ingredient / component on the package.*

- “Mince” for a product that looks like beef mince but is made from a vegetarian substitute.

Annex VI, Part A.4: Substitution of a component or ingredient

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.**

Where a component or ingredient has been substituted that consumers expect to be normally used or naturally present, food business operators **must** indicate (in addition to the list of ingredients) the ingredient or component that has been used for the partial or whole substitution.

This must be provided in close proximity to the name of the product and using a font size which is at least 75% of the x-height of the name of the product and not smaller than the minimum font size of 1.2 mm.

Distance Selling

Article 14: Distance selling

1. Without prejudice to the information requirements laid down in Article 9, in the case of prepacked foods offered for sale by means of distance communication:

(a) mandatory food information, except the particulars provided in point (f) of Article 9(1), shall be available before the purchase is concluded and shall 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 shall be provided without the food business operator charging consumers supplementary costs;

(b) all mandatory particulars shall be available at the moment of delivery.

Where prepacked foods are offered for sale via distance communication (e.g. delivery via websites), the following mandatory food information, with the exception of the date of minimum durability or the ‘use by’ date, **must** be made available before the purchase is concluded:

- a) *the name of the food;*

- b) *the list of ingredients;*
- c) *any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;*
- d) *the quantity of certain ingredients or categories of ingredients;*
- e) *the net quantity of the food;*
- f) *any special storage conditions and/or conditions of use;*
- g) *the name or business name and address of the food business operator referred to in Article 8(1);*
- h) *the country of origin or place of provenance where provided for in Article 26;*
- i) *instructions for use where it would be difficult to make appropriate use of the food in the absence of such instructions;*
- j) *with respect to beverages containing more than 1,2 % by volume of alcohol, the actual alcoholic strength by volume;*
- k) *a nutrition declaration.*

The above-mentioned mandatory information **must** appear on material supporting the distance selling (e.g. leaflets, catalogues) or be provided through other appropriate means (e.g. website).

It is not compulsory to provide the lot number nor the date of minimum durability before the purchase is concluded, although all products are legally required to carry a lot number for traceability purposes.

At the moment of delivery, all mandatory particulars **must** be available. This is not only the list as indicated in Article 9.1 (with the exception of the date of minimum durability or the 'use by' date), but also mandatory particulars stipulated by other relevant EU legislation, such as Regulation (EC) 1924/2006 on nutrition and health claims made on foods.

2. In the case of non-prepacked foods offered for sale by means of distance communication, the particulars required under Article 44 shall be made available in accordance with paragraph 1 of this Article.

Where non-prepacked foods are offered for sale via distance communication (e.g. delivery via websites), the following mandatory information **must** be made available before the purchase is concluded:

- a) *any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;*
- b) *information which is required by national measures that have been adopted by individual Member States concerning particulars mentioned in Article 9 and 10;*

3. Point (a) of paragraph 1 shall not apply to foods offered for sale by means of automatic vending machines or automated commercial premises.

Automatic vending machines or automated commercial premises are exempted from the obligation to provide the mandatory food information before the purchase is concluded.

However, for prepacked food, all mandatory particulars **must** be available at the moment of delivery.

Added Water

Annex VI, Part A.6: Added Water

6. In the case of meat products and meat preparations which have the appearance of a cut, joint, slice, portion or carcass 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, filet or of a whole fishery product.

It is understood that this would be restricted to those meat preparations or products which have 'the appearance of a cut, joint, slice, portion or carcass of meat' and therefore it will not apply to other meat preparations or products with a different appearance.

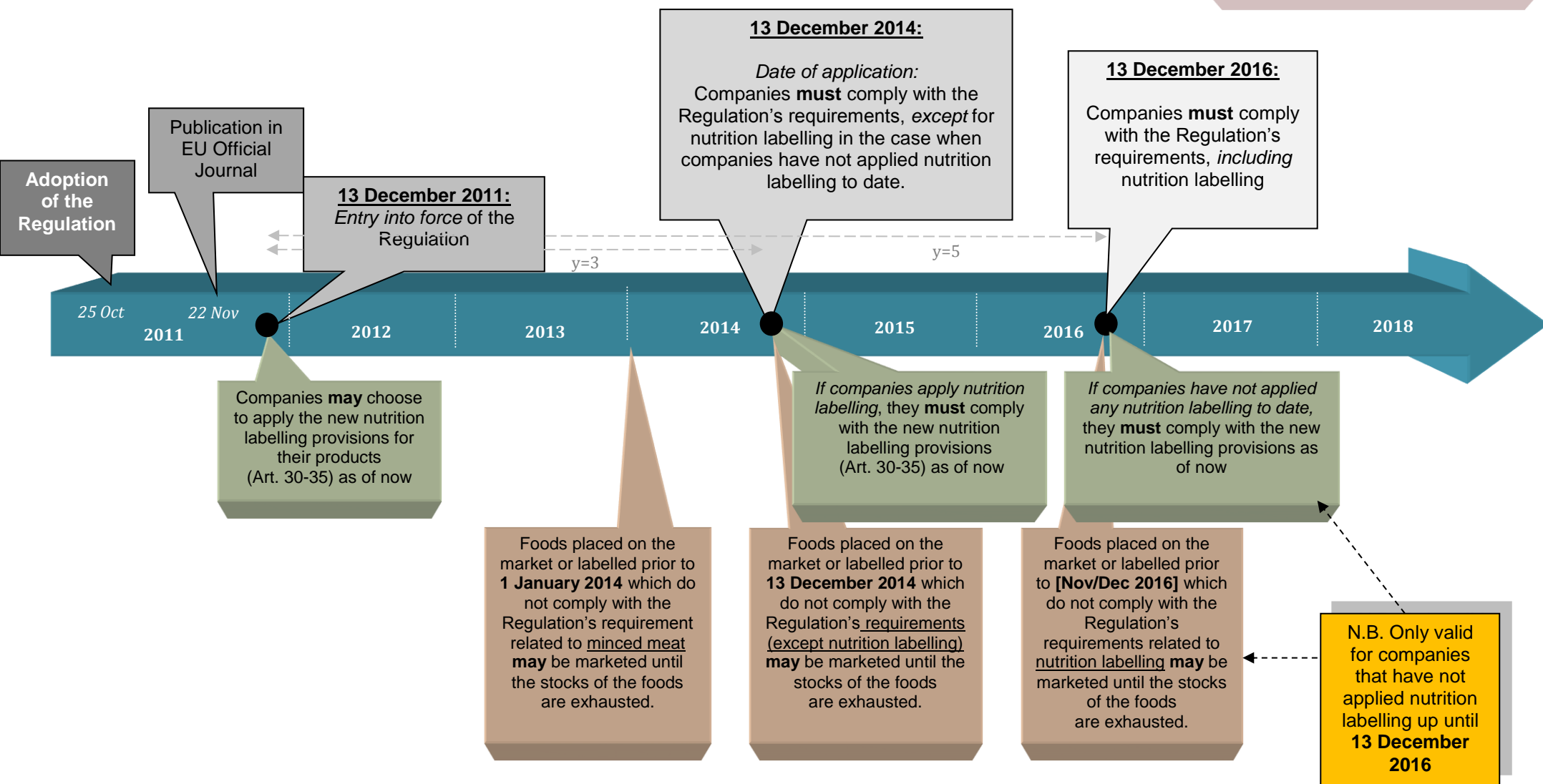
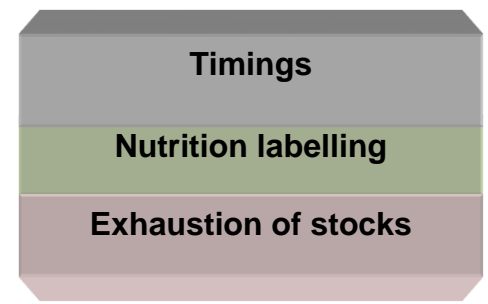
Quantitative indication of ingredients (QUID)

In 1997, general guidelines for implementing the principle of Quantitative Ingredients Declaration (QUID) were introduced by the European Commission. Labels are to indicate the quantity of certain ingredients expressed as a percentage of the final product. The Guidelines have been revised in December 1998 and can be found here:

http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/comm_legisl_en.htm

Annexes

Annex I – Transition Period (Timeline)



ANNEX II – Responsibilities

Article 8: Responsibilities

1. The food business operator responsible for the food information shall be the operator under whose name or business name the food is marketed or, if that operator is not established in the Union, the importer into the Union market

2. The food business operator responsible for the food information shall ensure the presence and accuracy of the food information in accordance with the applicable food information law and requirements of relevant national provisions.

3. Food business operators which do not affect food information shall 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.

4. Food business operators, within the businesses under their control, shall 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.

5. Without prejudice to paragraphs 2 to 4, food business operators, within the businesses under their control, shall ensure compliance with the requirements of food information law and relevant national provisions which are relevant to their activities and shall verify that such requirements are met.

6. Food business operators, within the businesses under their control, shall ensure that information relating to non-prepacked food intended for the final consumer or for supply to mass caterers shall be 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.

7. In the following cases, food business operators, within the businesses under their control, shall ensure that the mandatory particulars required under Articles 9 and 10 shall appear on the prepackaging or on a label attached thereto, or 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:

a) where prepacked food is intended for 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) where prepacked food is intended for supply to mass caterers for preparation, processing, splitting or cutting up.

Notwithstanding the first subparagraph, food business operators shall ensure that the particulars referred to in points (a), (f), (g) and (h) of Article 9(1) also appear on the external packaging in which the prepacked foods are presented for marketing.

8. Food business operators that supply to other food business operators food not intended for the final consumer or to mass caterers shall ensure that those other food business operators are provided with sufficient information to enable them, where appropriate, to meet their obligations under paragraph 2.

The overall effect of Article 8 of Regulation 1169/2001 is to establish a clear differentiation of the responsibilities concerning the provision of food information to consumers which are owed by each food business operator in the supply chain. In this way, Article 8 constitutes an implementation of Article 17 of Regulation 178/2008 in the specific area of food information. At the heart of Article 17 of Regulation 178/2002 is the notion that operators need only satisfy the “requirements of food law which are relevant to their activities”²¹.

Article 8 also fills the legal lacuna on this issue under existing EU law. This lacuna became particularly apparent in 2006 as a result of the *Lidl Italia* judgment of the Court of Justice of the EU. In that case, the Court noted the absence of any rule in Directive 2000/13 which designated particular responsibilities of or allocated liability to any supply chain operator for breaches of food labelling law²².

Article 8(1) defines the person “under whose name or business name the food is marketed or, if the operator is not established in the Union, the importer into the Union market” as the person who, in accordance with Article 8(2), is the person obliged to ensure both the presence and accuracy of the food information as required by EU and national law. This definition of the food business operator responsible for ensuring the presence and accuracy of food information covers both producers of branded products, manufacturers supplying distributors in the case of private label products, distributors in relation to their own brand products and those food business operators who import food products from outside the EU²³. In the case of private label products, the allocation of responsibility may be subject to contractual arrangements between the retailer and manufacturer.

All other food business operators (i.e. “food business operators which do not affect food information”) in the supply chain have a lesser responsibility vis-à-vis food information. Article 8(3) provides that the responsibilities of these operators only extend to a duty to refrain from supplying products where they have been made aware that such products are non-compliant with food information requirements contained in EU and national law. This does not create an obligation on these food businesses to initiate compliance checks that go beyond the established quality control practices. Where any food business operator acts to modify food information, he becomes responsible for ensuring the presence and accuracy of that particular modification, which must not mislead the final consumer or “otherwise reduce the level of consumer protection and the possibilities for the final consumer to make informed choices” (Article 8(4))²⁴.

²¹ Article 17(1)

²² *Lidl Italia* C-315/05

²³ So therefore Producer X, who, for example, produces a national brand of Juicy X Juice, is the one responsible for ensuring the presence and accuracy of food information on his products. Where retailer Y has own brand Y Juice products he is responsible for the presence and accuracy of food information. Where retailer Y imports Brazilian Juice from Brazil, he is responsible for the presence and accuracy of food information.

²⁴ Where Retailer Y places a sticker on the Juicy X Juice in relation to origin he is responsible for the presence and accuracy of this food information, however Retailer Y is not responsible for any of the other food information which he has not affected by any change or modification. In the case where a retailer produces advertising or other

Article 8(5) reinforces this clear differentiation of responsibility and the respective roles of operators in the supply chain. This generally worded provision is intended to act as a 'safety net' against any potential legal gaps. However, the Commission has clearly interpreted this provision as meaning that²⁵:

"Member States may not, through national law, require that a food business operator who is not involved in the labelling of food information be obliged to check for the presence or accuracy of food information"

The remaining provisions of Article 8 deal with the B2B supply chain arrangements for the provision of food information of non-prepacked and prepacked foods.

In relation to non-prepackaged foods, food business operators supplying to other food business operators must transmit the mandatory food information required by Regulation 1169/2011 (Article 8(6)). This is in order to enable the provision of allergen information to the final consumer or mass caterer, as per Article 44(1)(a) or, where Member States require, additional mandatory information²⁶.

In relation to prepacked food, the external packaging in which prepacked foods are presented for marketing must always contain:

- i) the name of the food;
- ii) the date of minimum durability/use by date
- iii) any special storage conditions and/or conditions of use
- iv) name or business name and address of the food business operator (Article 8(7))

In addition, Article 8(7) provides that in relation to prepacked foods, all food information required by Article 9 and Article 10 must also be passed along the B2B supply chain with bulk quantities of prepacked foods. This food information must be contained on the prepackings itself or attached labels, or through the provision of commercial documents along the chain referring to the foods when these commercial documents accompany the food or were sent prior to or simultaneously to delivery.

Article 8(8) deals with the specific scenario of B2B supply of foods not intended for the final consumer. In this case, sufficient information must nonetheless be provided to the recipient food business operator which would enable the fulfilment of obligations due under Article 8(2).

promotional material which includes food information about a product (whether this is the name of the food, a pictorial representation and so on) or on its website/webpage (for example for online groceries) where the information would have been provided by the manufacturer, the retailer bears the responsibility for ensuring that any modification made to the food information does not mislead the consumer.

²⁵ EN-00385/2012 – Answer given by Mr Dalli on behalf of the Commission in response to a written question posed by Mrs Mairead McGuinness MEP

²⁶ Article 44(1)(b)

