

Food Labelling: Presentation and Advertising of Foodstuffs: Nutrition Labelling: Provision of Food Information to Consumers

From 13 December 2014, any food intended to be supplied to consumers or mass caterers in the **European Union ("EU")** must be accompanied by food information in accordance with the new **EU Regulation 1169/2011 ("Food Labelling Regulation")**. The **Food Labelling Regulation covers food labelling, nutritional labelling and the food information that has to be provided to consumers by food business operators**. It is binding in its entirety and directly applicable in all Member States. The obligation to provide a **nutritional declaration** under the **Food labelling Regulation** does not come into effect until **13 December 2016**, writes Dr Rosanna Cooper.

Provisions on the name of the food and accompanying particulars in Annex VI will come into effect on **1 January 2014**.

The aim of the **Food labelling Regulation** is to improve the level of consumer information and protection in Europe. The European Commission is aiming for 'attainment of a high level of consumer protection by the measures...' set out in the **Food Labelling Regulation**. In this regard, the **Food Labelling Regulation** combines Directives 2000/13/EC on the **labelling, presentation and advertising of foodstuffs** and 90/496/EEC on **nutritional labelling** to achieve this goal:

In order to achieve a high level of health protection for consumers and to guarantee their right to information, it should be ensured that consumers are appropriately informed as regards the food they consume. Consumers' choices can be influenced by, inter alia, health, economic, environmental, social and ethical considerations.

At a Glance

The **Food Labelling Regulation** will overhaul food labelling in the **EU**, particularly in relation to:

- **Nutritional information** on **processed foods**;
- Labelling to show the **origin of fresh meat** from pigs, sheep, goats and poultry;
- **List of allergens in the ingredients** such as peanuts or milk. The **Food Labelling Regulation** contains a long list of recognised allergens;
- Increased legibility imposing a **minimum size of text**;
- Information on **allergens** covers non pre-packed foods including those sold in restaurants and cafés.

- **"Advertising"** means the presentation of foods, in particular their shape, appearance or packaging, the packaging materials used, the way in which they are arranged and the setting in which they are displayed.
- **"Food information"** means information concerning a food and made available to the final consumer by means of a label, other accompanying material, or any other means including modern technology tools or verbal communication.
- **"Mass caterer"** means any establishment (including a vehicle or a fixed or mobile stall), such as restaurants, canteens, schools, hospitals and catering enterprises in which, in the course of a business, food is prepared to be ready for consumption by the final consumer.
- **"Pre-packed 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; "pre-packed food" does not cover foods packed on the sales premises at the consumer's request or pre-packed for direct sale.
- **"Ingredient"** means any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form; residues shall not be considered as "ingredients".
- **"Place of provenance"** means any place where a food is indicated to come from, and that is not the "country of origin".
- **"Label"** means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to the packaging or container of food.
- **"Labelling"** means any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a food and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such food.
- **"Nutrient"** means protein, carbohydrate, fat, fibre, sodium, vitamins and minerals listed in point 1 of Part A of Annex XIII to this Regulation, and substances which belong to or are components of one of those categories.

Applicability of the Food Labelling Regulation

The **Food Labelling Regulation** is applicable to:

- **Food business operators** throughout the whole of the **food chain (Article 1)**;

This Regulation shall apply to food business operators at all stages of the food chain, where their activities concern the provision of food information to consumers. It shall apply to all foods intended for the final consumer, including foods delivered by mass caterers, and foods intended for supply to mass caterers.

This Regulation shall apply to catering services provided by transport undertakings when the departure takes place on the territories of the Member States to which the Treaties apply.

- **All foodstuffs** intended for consumption by the final consumer;
- Foodstuffs **served** by **mass caterers**;
- Foodstuffs **intended for delivery to mass caterers**; and
- Food **sold online** - all ways of supplying food to consumers, including selling food by means of distance communication. Although it is clear that any food supplied through distance selling should meet the same information requirements as food sold in shops, it is necessary to clarify that in such cases the relevant mandatory food information should also be available before the purchase is concluded.

Charity events and private functions fall outside the **Food Labelling Regulation**:

Operations such as the occasional handling and delivery of food, the serving of meals and the selling of food by private persons, for example at charity events, or at local community fairs and meetings, should not fall within the scope of this Regulation.

Basic Labelling Requirements

Under the **Food Labelling Regulation**:

- Information placed on foodstuffs or the labels of foodstuffs must be:
 - ✓ **Precise**
 - ✓ **Clear**; and
 - ✓ **Easy to understand** by consumers.
- The **labelling, presentation** and/or any **advertising of any foodstuff** **Must Not**:
 - × **Mislead consumers** regarding the **characteristics, properties** and/or the **effect** of foodstuffs;

Food information law should prohibit the use of information that would mislead the consumer in particular as to the characteristics of the food, food effects or properties, or attribute medicinal properties to foods. To be effective, that prohibition should also apply to the advertising and presentation of foods.

- × Make **any medical claims** by attributing to any food the property of **preventing, treating or curing a human disease**. The exceptions are:
 - ▶ **Natural mineral water**; and
 - ▶ **Foodstuffs for particular nutritional uses** such as:
 - Individuals with digestive processes or metabolism issues;

- Individuals suffering from a particular physiological condition; or
- Infants or young children.

Who is Responsible?

The following persons or entities are **responsible** for **any information relating to the placing of foodstuffs on the market in the EU**, in accordance with Article 8:

- The **food business operators** established in the EU (i.e. the persons or entities under whose names or business names the foodstuffs are marketed); or
- The **importers** (i.e. where the **food business operators are not** established in the EU).

The food business operator has to ensure compliance with the **Food Labelling Regulation**:

...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

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.

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.

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.

Under Article 1:

...This Regulation establishes the general principles, requirements and responsibilities governing food information, and in particular food labelling. It lays down the means to guarantee the right of consumers to information and procedures for the provision of food information, taking into account the need to provide sufficient flexibility to respond to future developments and new information requirements.

Labelling Requirements

There is a strict requirement on the **food business operators or importers** to ensure the **presence and accuracy of the information** in accordance with the **Food Labelling Regulation** and any relevant national laws:

- **Pre-packed foodstuffs** - the requisite information must appear on the **prepackaging** or on the **label**.
- **Foodstuffs not pre-packed** - the food information **must** be provided to the **food business operator** receiving the foodstuffs in order for the food information to be provided to the consumer, where applicable.
- **Mandatory information** - the **Food Labelling Regulation** lays down mandatory information about food information that must be provided to consumers by business food operators. All business food operators **must comply** with this requirement.

Where mandatory food information is required by food information law, it shall concern information that falls, in particular, into **one of the following categories**:

- (a) information on the **identity** and **composition, properties** or other **characteristics of the food**;
- (b) information on the **protection of consumers' health** and the **safe use of a food**. In particular, it shall concern information on:
 - (i) **compositional attributes** that may be **harmful to the health** of certain groups of consumers;
 - (ii) **durability, storage and safe use**;
 - (iii) the **health impact**, including the risks and consequences related to harmful and hazardous consumption of a food;
- (c) information on **nutritional characteristics** so as to enable consumers, including those with special dietary requirements, to make informed choices.

- The food information must be:
 - ▶ **Easy to understand**;
 - ▶ **Visible**;
 - ▶ **Clearly legible**;
 - ▶ Where appropriate, **indelible**; and
 - ▶ Comply with the **height restrictions** of the characters (there are certain exceptions for small sized packaging and containers).

- The **mandatory information** must include:

- ▶ **Name** - the name of the food;

The name of the food shall be its legal name. In the absence of such a name, the name of the food shall be its customary name, or, if there is no customary name or the customary name is not used, a descriptive name of the food shall be provided (Article 17).

Mandatory particulars accompanying the name of the food:

- ✓ The name of the food must 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.
- ✓ 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.

...

3. Foods treated with ionising radiation shall bear one of the following indications:

"irradiated" or "treated with ionising radiation", and other indications ...

4. In the case of foods in which a component or ingredient that consumers expect to be normally used or naturally present has been substituted with a different component or ingredient, the labelling shall bear – in addition to the list of ingredients – a clear indication of the component or the ingredient that has been used for the partial or whole substitution:

- (a) in close proximity to the name of the product; and
- (b) using a font size which has an x-height of at least 75 % of the x-height of the name of the product and which is not smaller than the minimum font size required in Article 13(2) of this Regulation.

5. In the case of meat products, meat preparations and fishery products containing added proteins as such, including hydrolysed proteins, of a different animal origin, the name of the food shall bear an indication of the presence of those proteins and of their origin.

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

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

...

in English: 'formed meat' and 'formed fish'...

It is worth noting that certain categories of food have to comply with specific designation under the **Food Labelling Regulation**.

▶ **List of ingredients;**

The list of ingredients shall be headed or preceded by a suitable heading which consists of or includes the word "ingredients". It shall include all the ingredients of the food, in descending order of weight, as recorded at the time of their use in the manufacture of the food.

2. Ingredients shall be designated by their specific name, where applicable, in accordance with the rules laid down in Article 17 and in Annex VI. See Article 18.

There are specific provisions relating to engineered nanomaterials.

The following are omitted under Article 19:

Omission from the list of ingredients

1. The following foods shall not be required to bear a list of ingredients:

(a) fresh fruit and vegetables, including potatoes, which have not been peeled, cut or similarly treated;

(b) carbonated water, the description of which indicates that it has been carbonated;

(c) fermentation vinegars derived exclusively from a single basic product, provided that no other ingredient has been added;

(d) cheese, butter, fermented milk and cream, to which no ingredient has been added other than lactic products, food enzymes and micro-organism cultures essential to manufacture, or in the case of cheese other than fresh cheese and processed cheese the salt needed for its manufacture;

(e) foods consisting of a single ingredient, where:

(i) the name of the food is identical to the ingredient name; or

(ii) the name of the food enables the nature of the ingredient to be clearly identified.

Under Article 20, certain food constituents such as enzymes, food additives and water are excluded:

Omission of constituents of food from the list of ingredients

Without prejudice to Article 21, the following constituents of a food shall not be required to be included in the list of ingredients:

- (a) the constituents of an ingredient which have been temporarily separated during the manufacturing process and later reintroduced but not in excess of their original proportions;
- (b) food additives and food enzymes:
 - (i) whose presence in a given food is solely due to the fact that they were contained in one or more ingredients of that food, in accordance with the carry-over principle referred to in points (a) and (b) of Article 18(1) of Regulation (EC) No 1333/2008, provided that they serve no technological function in the finished product; or
 - (ii) which are used as processing aids;
- (c) carriers and substances which are not food additives but are used in the same way and with the same purpose as carriers, and which are used in the quantities strictly necessary;
- (d) substances which are not food additives but are used in the same way and with the same purpose as processing aids and are still present in the finished product, even if in an altered form;
- (e) water:
 - (i) where the water is used during the manufacturing process solely for the reconstitution of an ingredient used in concentrated or dehydrated form; or
 - (ii) in the case of a liquid medium which is not normally consumed.

- ▶ Substances **causing allergies or intolerances** (e.g. nuts, milk, mustard, fish or grains containing gluten);
- ▶ **Quantity of certain ingredients** or categories of ingredients;
- ▶ **Net quantity** of the food;
- ▶ **Date of minimum durability** or the 'use by' date;

In the case of foods which, from a microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health, the date of minimum durability shall be replaced by the "use by" date. After the "use by" date a food shall be deemed to be unsafe in accordance with Article 14(2) to (5) of Regulation (EC) No 178/2002 (Article 24)

- ▶ Any **special storage conditions** and/or conditions of use;
- ▶ **Name or business name and address** of the **food business operator** or **importer**;
- ▶ **Country of origin** or **place of provenance** for certain types of meat, milk or where failure to indicate this might mislead the consumer;
- ▶ **Instructions for use** where it would be difficult to make appropriate use of the food in the absence of such instructions;
- ▶ For beverages containing more than 1.2% by volume of alcohol, the **actual alcoholic strength by volume**;
- ▶ **Nutritional declaration**

There are mandatory nutritional declarations that have to be made (see below).

The nutrition declaration for a food concerns information on the presence of energy and certain nutrients in foods. The mandatory provision of nutrition information on packaging should assist nutrition actions as part of public health policies which could involve the provision of scientific recommendations for nutrition education for the public and support informed food choices.

To avoid unnecessary burdens on food business operators, it is appropriate to exempt from the mandatory provision of a nutrition declaration certain categories of foods that are unprocessed or for which nutrition information is not a determining factor for consumers' purchasing decisions, or for which the packaging is too small to accommodate the mandatory labelling requirements, unless the obligation to provide such information is provided for under other Union rules.

- ▶ In a **language** easily understood by the consumer, and, if required, in several languages.

The name of the food, net quantity and the alcoholic strength by volume must be in the same field of vision.

According to the **Food Labelling Regulation**, consumers should be able to have choices that suit their dietary needs:

The prime consideration for requiring mandatory food information should be to enable consumers to identify and make appropriate use of a food and to make choices that suit their individual dietary needs. With this aim, food business operators should facilitate the accessibility of that information to the visually impaired.

Mandatory Nutrition Declarations

The mandatory nutrition declaration must include the following:

- Energy value; and

- The amounts of fat, saturates, carbohydrate, sugars, protein and salt.

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.

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

- Mono-unsaturates;
- Polyunsaturates;
- Polyols;
- Starch;
- Fibre;
- Any of the vitamins or minerals listed and present in significant amounts.

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

- The energy value; or
- The energy value together with the amounts of fat, saturates, sugars, and salt.

Exemption from Mandatory Declaration

The foods which are **exempted from the requirement of the mandatory nutrition declaration** include:

- **Unprocessed products** that comprise a single ingredient or category of ingredients;
- **Processed products** which the only processing they have been subjected to is maturing and that comprise a single ingredient or category of ingredients;
- **Waters** intended for human consumption, including those where the only added ingredients are carbon dioxide and/or flavourings;
- A **herb**, a **spice or mixtures** thereof;
- **Salt** and **salt substitutes**;
- **Table top sweeteners**;
- Products relating to **coffee extracts and chicory extracts**, whole or milled coffee beans and whole or milled decaffeinated coffee beans;
- **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;

- **Fermented vinegars and substitutes for vinegar**, including those where the only added ingredients are flavourings;
- **Flavourings**;
- **Food additives**;
- **Processing aids**;
- **Food enzymes**;
- **Gelatine**;
- **Jam setting compounds**;
- **Yeast**;
- **Chewing-gums**;
- Food in packaging or containers the largest surface of which has an area of less than 25 cm²;
- 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.

Special Provisions

In accordance with the **Food Labelling Regulation**, there are specific provisions for:

- **Glass bottles** intended for **re-use**;
- **Small-sized packaging**;
- **Nutritional labelling** of foodstuffs (Annex V);
- **Beverages** containing more than 1.2 % by volume of alcohol.

Additional Labelling Particulars

The following foods must contain one or more **additional labelling particulars**:

- Foods packaged in certain gases:
 - ▶ Foods whose durability has been extended by means of packaging gases.
- Foods containing sweeteners:
 - ▶ Foods containing both an added sugar or sugars and a sweetener or sweeteners:

- ▶ Foods containing aspartame/aspartame-acesulfame salt;
- ▶ Foods containing more than 10 % added polyols.
- Foods containing glycyrrhizinic acid or its ammonium salt:
 - ▶ Confectionery or beverages containing glycyrrhizinic acid or its ammonium salt due to the addition of the substance(s) as such or the liquorice plant *Glycyrrhiza glabra*, at concentration of 100 mg/kg or 10 mg/l or above;
 - ▶ Confectionery containing glycyrrhizinic acid or its ammonium salt due to the addition of the substance(s) as such or the liquorice plant *Glycyrrhiza glabra* at concentrations of 4 g/kg or above;
 - ▶ Beverages containing glycyrrhizinic acid or its ammonium salt due to the addition of the substance(s) as such or the liquorice plant *Glycyrrhiza glabra* at concentrations of 50 mg/l or above, or of 300 mg/l or above in the case of beverages containing more than 1.2 % by volume of alcohol.
- Beverages with high caffeine content or foods with added caffeine:
 - ▶ Beverages, with the exception of those based on coffee, tea or coffee or tea extract where the name of the food includes the term "coffee" or "tea", which are intended for consumption without modification and contain caffeine;
 - ▶ Foods other than beverages, where caffeine is added with a physiological purpose.
- Foods with added phytosterols, phytosterol esters, phytosterols or phytosterol esters:
 - ▶ Foods or food ingredients with added phytosterols, phytosterol esters, phytosterols or phytosterol esters - "with added plant sterols" or "with added plant stanols".
- Frozen meat, frozen meat preparations and frozen unprocessed fishery products.

Voluntary Food Information and Advertising of Food

Under the Food Labelling Regulation, any food information provided **voluntarily** must meet the following criteria:

- The information and **advertising of food** must **not mislead** consumers (Articles 7 and 36):
 1. Food information shall not be **misleading**, particularly:
 - (a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production;
 - (b) by attributing to the food effects or properties which it does not possess;

- (c) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients and/or nutrients;
 - (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.
2. Food information shall be accurate, clear and easy to understand for the consumer.
 3. Subject to derogations provided for by Union law applicable to natural mineral waters and foods for particular nutritional uses, food information shall not attribute to any food the property of preventing, treating or curing a human disease, nor refer to such properties.

- The information must **not be ambiguous or misleading**;
- The information must, where appropriate, be **based on relevant scientific data**.

It is important that information on the presence of food additives, processing aids and other substances or products with a scientifically proven allergenic or intolerance effect should be given to enable consumers, particularly those suffering from a food allergy or intolerance, to make informed choices which are safe for them.

- The information must not be displayed so that the **space available** for mandatory food information is substantially reduced (Article 37).

Transition Periods

The **Food Labelling Regulation** makes allowance for stocks placed on the market before the end of the transitional period:

In order to enable food business operators to adapt the labelling of their products to the new requirements introduced by this Regulation, it is important to provide for appropriate transitional periods for the application of this Regulation.

(56) Given the substantial changes in the requirements related to nutrition labelling introduced by this Regulation, in particular changes in relation to the content of the nutrition declaration, it is appropriate to authorise food business operators to anticipate the application of this Regulation.

Under Article 3:

3. When food information law establishes new requirements, a transitional period after the entry into force of the new requirements shall be granted, except in duly justified cases. During such transitional period, foods bearing labels not complying with the new requirements may be placed on the market, and stocks of such foods that have been placed on the market before the end of the transitional period may continue to be sold until exhausted.

Conclusion

The **Food Labelling Regulation** combines food labelling with information to be provided to consumers as well as nutrition particulars. The **Food Labelling Regulation** has more far-reaching effect than the existing regulations. Care must be taken in labelling your food to ensure compliance with the new **Food Labelling Regulation**.

© RT COOPERS, 2013. This Briefing Note does not provide a comprehensive or complete statement of the law relating to the issues discussed nor does it constitute legal advice. It is intended only to highlight general issues. Specialist legal advice should always be sought in relation to particular circumstances.

The author is Dr Rosanna Cooper of RT Coopers Solicitors. She is an expert in [regulatory law](#), in particular, [herbal medicines](#), [food law](#) and [food supplements](#). Dr Cooper is a chartered chemist and a fellow of the Royal Society of Chemistry. She may be contacted on +44 (0) 207 488 9947 or by email: enquiries@rtcooperssolicitors.com. For more information on the services provided by RT Coopers on food law visit http://www.rtcoopers.com/practice_foodsupplements.php and http://www.rtcoopers.com/practice_food.php. For an article on food supplements, visit <http://www.rtcoopers.com/userfiles/Foodsupplementsjul13.pdf>

Tags

Food Lawyers and Food Regulation, Food Solicitors, Law Firm, Health Claims, Food Labelling Lawyers, Regulatory Solicitors, Food Labels, Nutrition Labelling, Legal Advice for the Food and Drink Sector, Consumer Protection, Food and Beverage Law, Consumer Products, Food Labelling Law, Product Regulation, Consumer Law, Food Supplements, EU Regulation 1169/2011, Nutritional Information, EU Regulatory Law, Product Regulations, Food Law Legal Advice, Food Safety Law, Food Legislation Advice, Food Safety and Labelling