

9 February 2021

European Union Comments
on
Codex Circular Letter CL 2020/58-FL:
Request for comments on guidance for internet sales / e-commerce

Mixed Competence

European Union Vote

In response to the request for comments, the European Union and its Member States (EUMS) would like to make the following comments on each of the questions raised.

Question 1 - Members are invited to review the inclusion of an optional reasonable minimum durability date marking (Appendix 2 Section 4). Do you agree with the inclusion of a minimum period of durability for pre-packaged food?

The EUMS do not support the inclusion of a reasonable minimum durability date marking, even optional. Even though, a definition would clarify its meaning, consumers, who would be faced with and not used to this new concept, would have difficulty understanding it. They can be confused, thinking that this corresponds to the minimum durability date that they usually see on food products.

Question 2 - If included, should the minimum period of durability be optional or mandatory for FBOs?

Not applicable, see answer to question 1.

Question 3 - Should the text contain a prescribed period of minimum durability and if so, what should this be? For example, one respondent proposed that the minimum durability period be '30% or 45 days, whichever is less, before expiry at the time of delivery to the consumer' do you agree with this proposal?

Not applicable, see answer to question 1.

Question 4 - Do you foresee any potential issues which may prevent FBOs from implementing a reasonable period of minimum durability as outlined in Appendix 2, Section 4? If 'yes' please provide a reason for your answer.

Not applicable, see answer to question 1.

Question 5 - Exemptions referenced in section 6 of the GSLPF (CXS 1-1985) regarding small units will be permitted in an e-commerce environment to maintain consistency for

businesses and consumers. Do you agree that this exemption should stand in an e-commerce environment? If ‘no’ please provide an explanation.

In the context of this question, the EUMS would like to highlight that:

Regarding the scope of the guidance: the new draft “*clarifies which food information shall be provided at the point of e-commerce sale and at the point of delivery*”. However, the guidance only refers to the information to be provided at the point of e-commerce sale. The EUMS understand that there are no specific requirements in the draft text regarding the information at the point of delivery as it corresponds to general standard for the labelling of pre-packaged foods (GSLPF (CXS 1-1985)). The EUMS consider therefore that this should be explained in the scope of the draft text (see proposal below).

For these reasons, the EUMS support the inclusions of definitions of “At the Point of e-commerce sale” and - “At the Point of Delivery” (on the principle, see amendments below regarding the definition of ‘At the Point of e-commerce sale’).

Regarding the labelling of small units: the EUMS consider that the exemption for small units only applies to information at the point of delivery given the limited space. The information at the point of e-commerce sale allows for full information as it is not affected by the size of the unit.

Consequently, the EUMS do not support the exemption for small units at the point of e-commerce.

Proposed amendments:

Section 1. Scope:

This text applies to the provision of food information that shall be available at the point of e-commerce sale ~~on the product information page, or its equivalent, of any consumer facing transactional digital platform, and certain aspects relating to the presentation thereof,~~ in respect of prepackaged foods to be offered via e-commerce either to the consumer or for catering purposes. This text does not apply to ~~It clarifies which~~ food information that shall be provided available at the point of e-commerce sale and at the point of delivery, as such information is laid down in general standard for the labelling of prepackaged foods (GSLPF (CXS 1-1985)).

Furthermore, we would like to stress that the scope text may need to be further defined when a final decision is taken on the three options presented in question 7.

Section 2 Definitions:

“At the Point of e-commerce sale” – At the moment ~~when~~ where consumers decide to make the purchasing order ~~without~~ **prior** making any payment.

“At the Point of Delivery” – At the moment ~~when~~ where consumers receive the food products goods and services

Question 6 - Members are invited to review the definition of ‘E-Commerce FBO’ as outlined in Appendix 2 section 8.1 and ‘Intermediary Data Company’ as outlined in section 8.2 and 8.3. Do you agree with these definitions? If ‘no’ please provide a reason for your answer.

Taking into account the broader scope of e-commerce sales that also cover other commodities, the EUMS propose that the Committee first explores whether there is an existing general definition on e-commerce which could also apply in the case of foods (e.g. WTO definition of e-commerce) and if so, refer to it. In light of this, the EUMS do not support the proposed definition of e-commerce.

The EUMS do not support the inclusion of a non-exhaustive list of e-commerce FBO (section 8.1), neither of a definition of ‘Intermediary Data Companies’ (section 8.2); taking into account that issues of accountability and responsibility of E-commerce food businesses are outside the scope of this work. The EUMS consider that any clarifications concerning the role of e-commerce FBO and of ‘Intermediary Data Companies’ should be developed in the context of the work on the issues of accountability and responsibility of online food business in general in line with the general digital services and markets rules. The EUMS are preparing legislations on digital services and digital markets.

Question 7 - Members are invited to review the options analysis (Appendix III). Do you agree with the proposal of option 3, amending & including supplementary text to the GSLPF? If ‘no’ please provide your preferred alternative and justify your answer.

The EUMS agree with Option 3 amending & including supplementary text to in the GSLPF, provided that it captures and addresses all the different issues related to e-commerce sales addressed in the scope of this work.

Question 8 - Members are invited to provide comments on how can “loose foods” be included in the scope of these proposed draft guidance and how could labelling of these be addressed through these guidelines.

The EUMS are supporting the inclusion of “loose foods” in the scope of the proposed draft guidance.

The EUMS consider that information on potential allergens should always be provided to the consumer and therefore the guidance should provide that material supporting the e-commerce of “loose foods” covers ingredients and processing aids causing allergies or intolerances. Other non- safety related information should not be mandatory, but only voluntary, as could be the case for nutrition information.

Q. 9 - Do you have any additional general comments about the proposed new text?

1. Concerning section 1 scope:

In addition to the comments on question 5 regarding the scope, the EUMS consider, as mentioned in previous comments, that the text should capture/reflect all the main elements addressed in the new text. Therefore, the scope should be amended as section 7 covers the Presentation of Mandatory Information.

Proposed wording:

This text applies to the provision of food information that shall be available at the point of e-commerce sale on the product information page, or its equivalent, of any consumer facing transactional digital platform, and certain aspects relating to the presentation thereof, in respect of prepackaged foods to be offered via e-commerce either to the consumer or for catering purposes. This text clarifies which food information shall be provided and certain aspects relating to the presentation and language of the mandatory food information thereof. This text does not apply to ~~It clarifies which~~ food information that shall be provided at the point of e-commerce sale and at the point of delivery, as such information is laid down in general standard for the labelling of prepackaged foods (GSLPF (CXS 1-1985)).

Furthermore, we would like to note that the scope text might need to be further defined when the definite decision is taken on the three options (see question 7).

2. Concerning section 2. Definition of terms

See comments on definition of e-commerce under question 6.

-“Labelling” – Labelling in the case of ecommerce may refer to food information included on or associated with the product information page or ~~other primary consumer facing~~ the virtual depiction of the product.

3. Concerning Section 3. General Principles

The EUMS would like to propose the following wording:

“3.1 Food information concerning prepackaged foods shall not be described or presented in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect.[1]

[1] Examples of descriptions or presentations to which these General Principles refer are given in the Codex General Guidelines on Claims.

3.2 Food information concerning prepackaged foods shall not be described or presented by words, pictorial or other devices which refer to or are suggestive either directly or indirectly, of any other product with which such food might be confused, or in such a manner as to lead the purchaser or consumer to suppose that the food is connected with such other product.”

4. Concerning section 4 Information requirements for pre-packaged foods sold through e-commerce

Section 4 refers to the information to be provided either on “the Product Information Page” or “through other primary consumer-facing virtual depiction of pre-packaged foods presented for sale through e-commerce prior to the point of e-commerce sale”.

The EUMS understand that the “*other primary consumer-facing virtual depiction of pre-packaged foods presented for sale through e-commerce*”, is in fact the ‘Virtual depiction of the product’ as also mentioned in section 4 and in section 7; and propose therefore to refer to such concept to avoid any confusion (see below drafting proposal).

4. Information requirements at the point of e-commerce sale for pre-packaged foods sold through e-commerce

Information specified in section 4 of the GSLPF (CXS 1-1985) (except sub-sections 4.6 and 4.7.1) shall appear on the Product Information Page and/or other primary consumer facing on the virtual depiction of prepackaged foods, as the case may be, presented for sale through e-commerce ~~prior to the point of e-commerce sale~~, except to the extent otherwise expressly provided in an individual Codex standard and as noted in Section 5 (“Exemptions from Food Information requirements”) of this guidance.

~~Any pre-packaged foods delivered to consumers by an e-commerce Food Business Operator (FBO) are encouraged to have a minimum durability period, an indication of which should be displayed alongside the virtual depiction of the food. It should be made clear whether this is a guaranteed period or an expected or average period. In the case of caterers or restaurants receiving orders through electronic means, only fresh pre-packaged food items shall be delivered.~~

The sellers/brand owners/manufacturers dealing in fresh produce will provide an indicative image of the same produce to the e-commerce FBOs for the purpose of displaying this on their platform to enable consumers to recognize the product.

Food marketed online should declare the nutritional information prior ~~to~~ at the point of e-commerce sale in alignment with section 3 of the Guidelines on Nutrition Labelling (CXG 2-1985).

5. Concerning Section 5 Exemptions from Food Information requirements for pre-packaged foods sold through ecommerce

The EUMS consider that in light of the way section 4 is drafted, section 5 is not necessary.

In case section 5 is kept, the EUMS consider that in light of answers to questions 1 and 5, section 5 should be amended as follows:

Section 5 Exemptions from Food Information requirements for pre-packaged foods at the point of e-commerce sale ~~sold through e-commerce~~

The following information is exempt from the information requirements for pre-packaged foods when products are presented for sale through e-commerce:

5.1 Date marking As indicated in section 4.7.1 of the GSLPF (CXS 1-1985). ~~However, an indication of a minimum durability applicable from the point of delivery is encouraged to be displayed.~~

5.2 Lot identification As indicated in section 4.6 of the GSLPF (CXS 1-1985).

6. Concerning section 7 on Presentation of Mandatory Information

The EUMS would like to propose the following changes :

“Section 7 on Presentation of Mandatory Food Information

7.1 General

The following provisions shall apply in conjunction with Section 8 of the GSLPF (CXS 1-1985)

7.1.1 Statements required to appear in respect of the pre-packaged foods to be offered via e-commerce to the consumer or for catering purposes, on the virtual depiction of the product and/or in the product information page, as the case may be, by virtue of this text or any other Codex texts shall be clear, prominent and readily legible to the consumer under normal settings and conditions of use of such platforms.

7.1.2 The name and net contents of the food shall appear in a prominent position on the virtual depiction of the product and/or in the product information page as the case may be and in the same field of vision as ~~the virtual depiction of the product~~.

7.1.3 Food information on foods and ingredients which are known to cause hypersensitivity (allergen information) as provided in Section 4.2.1.4 of the GSLPF (CXS 1-1985) ~~Allergen information~~ must be emphasized through a typeset that clearly distinguishes it from the rest of the list of ingredients, for example by means of the font, style or background colour.

7.2 Language The language of mandatory food information at the point of e-commerce sale on the virtual depiction of the product and/or in the product information page, as the case may be, shall be acceptable to the consumer for whom it is intended”.