

**EUROPEAN COMMISSION REQUEST TO THE
EUROPEAN FOOD SAFETY AUTHORITY
FOR SCIENTIFIC OPINIONS ON**

Date marking and related food information in view of the application by food business operators of Regulation (EU) No 1169/2011 on food information to consumers as an integrated part of their food safety management system (FSMS)

Background

Food waste prevention is a priority set out in the EU Action Plan for the Circular Economy adopted by the European Commission in December 2015¹. As part of that Action Plan, the Commission has been called upon to examine ways to improve the use of date marking by actors in the food chain and its understanding by consumers. ‘Date marking’ is used as an umbrella term to refer both to the ‘best before’ and ‘use by’ dates. It is a prerequisite that initiatives aiming to reduce food waste should never compromise food safety.

A Commission study published in February 2018² estimated that up to 10% of the 88 million tonnes of food waste generated annually in the EU is linked to date marking. With the support of the sub-group on date marking and food waste prevention³ of the EU Platform on Food Losses and Food Waste⁴, an immediate priority is the development of EU guidance based on the existing EU requirements in order to ensure more consistent date marking and related food information practices. The study also concluded that the date marking is particularly relevant for food waste prevention for the categories dairy products, fruit juices, chilled meat and fish.

It is important that food business operators follow a risk-based approach when deciding on the type of date marking (i.e. ‘use by’ date versus ‘best before’ date), setting of shelf-life and the related food information that should be provided on the labelling in order to ensure food safety. Such risk-based approach should be an integrated part of the FSMS that all food business operators are obliged to develop and implement under the current EU food safety legislation, taking into consideration previous scientific opinions of the European Food Safety Authority (EFSA) and Commission guidance.

Especially, clarity is needed on the differentiation between foods that at the end of shelf-life might constitute ‘an immediate danger to human health’/become ‘injurious to health’ due to growth of pathogenic microorganisms, and foods that at the end of shelf-life might become ‘unfit for human consumption’ due to growth of spoilage non-pathogenic microorganisms⁵.

¹ http://ec.europa.eu/environment/circular-economy/index_en.htm

² <https://publications.europa.eu/en/publication-detail/-/publication/e7be006f-0d55-11e8-966a-01aa75ed71a1/language-en>

³ https://ec.europa.eu/food/safety/food_waste/eu_actions/date_marking_en

⁴ https://ec.europa.eu/food/safety/food_waste/eu_actions/eu-platform_en

⁵ Article 24(1) of Regulation (EU) No 1169/2011 and Article 14(2) to (5) of Regulation (EC) No 178/2002

Therefore, in order to support food business operators and national authorities in implementing correct and consistent practices, there is a need for the scientific advice of EFSA.

Terms of Reference

In accordance with Article 29 of Regulation (EC) No 178/2002, the European Commission asks EFSA for scientific opinions providing guidance on date marking and related food information in view of the application by food business operators of Regulation (EU) No 1169/2011 on food information to consumers as an integrated part of their food safety management system (FSMS).

The opinions should develop a risk-based approach to be followed by food business operators when deciding on the type of date marking (i.e. 'use by' date versus 'best before' date), setting of shelf-life and the related food information that should be provided on the labelling in order to ensure food safety.

In particular, EFSA is requested to provide scientific advice on:

- 1) The factors that, from a microbiological point of view, make certain foods highly perishable and therefore likely after a short period to constitute an immediate danger to human health, and on how those factors should be considered by food business operators when deciding whether a 'use by' date is required and setting the shelf-life and the required storage conditions, particularly on:**
 - a) The relevant microbiological hazards that should be taken into account by food business operators in determining whether a food, from a microbiological point of view, is likely to constitute an immediate danger to human health;
 - b) The types of foods where it is more likely to find those pathogenic microorganisms;
 - c) The intrinsic/extrinsic factors that might influence the growth of those pathogenic microorganisms and consequently have an impact on: 1) the decision whether a 'use by' is required, 2) the shelf-life (the period up until when a food is not likely to constitute an immediate danger to human health), either linked to the composition of a food (e.g. pH, a_w , presence of food additives) or to the production process and/or the way a food is marketed (e.g. production processes like pasteurisation, type of packaging), and 3) the storage conditions throughout the food chain and the intended use of the food;
 - d) How the factors identified above influence the decision whether a 'use by' date is required, the setting of shelf-life and the required storage conditions.

- 2) The factors that, from a microbiological point of view and limited to foods intended to be stored at controlled temperatures, make certain foods become unfit for human consumption, but still without constituting an immediate danger to human health, and on how those factors should be considered by food business operators when deciding whether a 'best before' date is appropriate and setting the shelf-life and the required storage conditions, particularly on:**

- a) The intrinsic/extrinsic factors that might influence the growth of spoilage non-pathogenic microorganisms and consequently have an impact on: 1) the shelf-life (the period up until when a food is not likely to become unfit for human consumption); either linked to the composition of a food (e.g. pH, a_w , presence of food additives) or linked to the production process and/or the way a food is marketed (e.g. production processes like pasteurisation, type of packaging), and 2) the storage conditions throughout the food chain and the intended use of the food);
- b) How the factors identified above influence the setting of shelf-life and the required storage conditions;
- c) The indicative time limits to be applied at EU level to facilitate marketing or donation of foods past the 'best before' date, provided that before the end of that period those foods shall not become unfit for human consumption. Certain Member States have developed national guidance on this⁶.


EFSA is also requested to provide guidance to be considered by food business operators when deciding on the food information to be provided to consumers regarding:

3) Storage conditions and/or time limit for consumption after opening the package in order to avoid increase of food safety risks, particularly on:

- The characteristics of a food and the intrinsic/extrinsic factors which might change once the package is opened, and specifically on which of those factors that should be taken into consideration when providing such information;
- The factors to be considered in deciding whether it is appropriate, and consequently mandatory, to indicate the storage conditions and/or time limit for consumption after opening the package according to Article 25(2) of Regulation (EU) No 1169/2011.

4) Defrosting of frozen foods including good practices, storage conditions and/or time limit for consumption in order to avoid increase of food safety risks, particularly on:

- Advice to be given to consumers regarding good practices, storage conditions and/or time limit for consumption to protect consumers from possible health risks.

⁶ Italy - Guide to good practice for charitable organisations, Caritas Italiana, Fondazione Banco Alimentare Onlus, March 2016  (p. 29)
Belgium - Circular on the provisions applied to food banks and charity organisations (FR; NL), Belgian food safety agency (Agence fédérale pour la Sécurité de la Chaine Alimentaire), 2017