

CODEX COMMITTEE ON FOOD LABELLING
46th Session

Virtual, 27 September - 1 October and 7 October 2021

European Union Comments

Agenda Item 6:

PROPOSED DRAFT GUIDELINES ON FRONT-OF-PACK NUTRITION LABELLING

(Comments at Step 3 - CL 2021/19/OCS-FL)

Mixed Competence
European Union Vote

The European Union and its Member States (EUMS) would like to thank Costa Rica and New Zealand for the preparation of the document ‘CX/FL 21/46/6 – Proposed draft Guidelines on front-of-pack nutrition labelling’.

In the Circular Letter ‘CL 2021/19/OCS-FL’ of June 2021 regarding ‘Request for comments on the proposed draft Guidelines for Front of Pack Nutrition Labelling’, it is explained that CCFL45 discussed the proposed draft Guidelines and agreed to continue its work on FOPNL guidance through an electronic working group (EWG) chaired by Costa Rica and co-chaired by New Zealand. The report of this EWG, to be considered when providing comments on the proposed draft Guidelines, is presented in CX/FL 21/46/6. Report CX/FL 21/46/6 explains that in view of the postponement of CCFL46 to September 2021 due to the COVID19 pandemic, and taking advantage of the additional time available, the EWG extended its work, so that in total the EWG has undertaken three rounds of consultation and the views of the broader Codex membership have been sought via circular letter (CL 2020/54/OCS-FL).

Codex members and observers are now invited to:

- a) provide general and specific comments on the proposed draft Guidelines (Appendix II of CX/FL 21/46/6),
- b) consider if the Guidelines are ready to advance to Step 5/8 or 5; and
- c) consider whether the Guidelines will be part of section 5 "*supplementary nutrition information*", an annex to the Guidelines on Nutrition Labelling (CXG 2-1985), or a stand-alone document.

Replies from the European Union and its Member States:

1. Recommendation a) of CX/FL 21/46/6: provide general and specific comments on the proposed draft Guidelines (Appendix II of CX/FL 21/46/6)

1.A. General comments on the proposed draft Guidelines

The EUMS generally support the draft Guidelines on front-of-pack nutrition labelling (FOPNL). However, the EUMS would like to provide the specific comments outlined in 1.C. below, in addition to its replies to the specific questions for the Committee provided in 1.B. below.

1.B. Specific questions for the Committee outlined in CX/FL 21/46/6

Question 1:

Do you confirm the Committee majority preference to delete Section 5 and to incorporate relevant aspects from Section 5 to Section 4?

With reference to previous EUMS replies, the EUMS confirm their preference to delete Section 5 and to incorporate any relevant aspects within Section 4.

Question 2:

Do you agree that the proposed text for principle 4.3.1. manages the potential for conflict of interest in the development of a FOPNL system?

PRINCIPLES

4.3.1. FOPNL should be government led but developed in collaboration with all interested parties including private sector, consumers, academia, public health associations among others.

The EUMS consider that government leadership would help to ensure any potential conflicts of interest.

However, as highlighted in previous EUMS comments, in the EU, Regulation (EU) 1169/2011 on the provision of food information to consumers allows Member States to recommend, or food business operators to use, front-of-pack nutrition labelling, provided that criteria set out in the legislation are met. One of these criteria comprises the requirement that the system's development should be the result of consultation with a wide range of stakeholder groups. Therefore, the EU suggests reformulating the principle that FOPNL should *preferably* be government-led and should - in all cases (including industry/stakeholder-led) - be developed in consultation / collaboration with all interested parties.

The EUMS suggest modifying section 4.3.1. as follows:

FOPNL should preferably be government led ~~and~~ but should in all cases be developed in consultation / collaboration with all interested parties including government, private sector, consumers, academia, public health associations among others.

Question 3:

Do you agree with the change in focus for principle 4.3.2. to focus on facilitating consumer use of FOPNL?

PRINCIPLES

4.3.2. [FOPNL should be implemented in a way that facilitates consumer use of the FOPNL]

The EUMS understand that the redrafting of the previous proposed wording ('FOPNL should be implemented in a way that [maximizes/ encourages] food manufacturers' use of the FOPNL on food labels') aims to focus on the goal of facilitating consumer use of the FOPNL scheme, which would in turn require high uptake by industry to meet this goal.

The EUMS consider that the proposed text should be clarified, as it might currently not be clear for the reader what exactly is understood by 'implemented in a way that facilitates consumer use'; for example, whether it is referring to facilitating consumer comprehension of a scheme, or, whether it refers to generalizing the use of the scheme on foods.

Question 4:

Considering the proposed changes to the principles, do you agree with deleting the principle groupings?

The EUMS agree with deleting the principle headings/groupings. However, the EUMS would suggest to keep a number for each of the principles with a view to ease future reference to each specific principle.

Question 5:

Which of the following options do you prefer for the placement of the Guidelines on FOPNL:

- part of section 5 of the *Guidelines on Nutrition Labelling* (CXG 2-1985)
- as an Annex to section 5 of the *Guidelines on Nutrition Labelling* (CXG 2-1985)
- a stand-alone document

The EUMS suggest including the Guidelines on FOPNL, once finalized, as an Annex to Section 5 of the existing Guidelines on Nutrition Labelling (CAC/GL 2-1985).

1.C. Other comments on the proposed draft Guidelines (Appendix II of CX/FL 21/46/6)

EUMS comment on section 2.2:

2. SCOPE

2.2 Alcoholic beverages and foods for special dietary uses covered by the following Codex standards are excluded:

[Guidelines on Formulated Complementary Foods for Older Infants and Young Children (CXG 8-1991)]

Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants (CXS 72-1981)

[Standard for Canned Baby Foods (CXS 73-1981)]

[Standard for Processed Cereal-Based Foods for Infants and Young Children (CXS 74-1981)]

Standard for Follow-up formula (CXS 156-1987)

Standard for Labelling of and Claims for Foods for Special Medical Purposes (CXS 180-1991)

Standard for Formula Foods for Use in Weight Control Diets (CXS 181-1991)

Standard for Formula Foods for Use in Very Low Energy Diets for Weight Reduction (CXS 203-1995)

The EUMS agree that countries may wish to exclude specific types of foods from using FOPNL. However, the EUMS are of the opinion that the guidelines should not recommend exclusions since a potential list of exclusions will, amongst others, depend on existing specific legislation in place. For example, specific rules apply already at Codex level to foods for special dietary uses and many countries have specific legislation in place for these foods. The EUMS are of the opinion that the guidelines on FOPNL should not repeat what is already defined at Codex level and should leave it to the governments to decide about the foods/drinks that may be excluded from using FOPNL.

The EUMS suggest to modify section 2.2. as follows:

2.2. Certain foods may be excluded ^[footnote] from using FOPNL.

^[footnote] Exclusions are foods that are not allowed to use FOPNL

EUMS comment on section 2.3:

2 SCOPE

2.3 Additionally, certain prepackaged foods may be exempted³ from FOPNL. These may include foods exempted from bearing a nutrient declaration on the basis of nutritional or dietary insignificance or small packaging as described in the *Guidelines on Nutrition Labelling (CXG 2-1985)*.

³ Exemptions are where the food is not intended to have FOPNL but is still permitted to display FOPNL

The EUMS consider the current wording of section 2.3. confusing and not clear.

First, as allowed in the Codex Guidelines on Nutrition Labelling, in the EU and in many other countries the two mentioned examples, namely foods with nutritional/dietary insignificance or small packaging, are exempted from the mandatory nutrition declaration and can thus not, in line with section 2.1. of the draft guidelines, use FOPNL (FOPNL is intended '*to be used on pre-packaged foods that include a nutrient declaration*'), except if the nutrition declaration is provided on a voluntary basis. The wording '*These may include foods exempted from bearing a nutrient declaration*' is therefore confusing and not clear, as such foods are by definition excluded from the scope of FOPNL in case they are exempted from the mandatory nutrient declaration.

Instead, the EUMS suggest clarifying the case of foods exempted from the mandatory nutrient declaration in footnote 2, making it clear that foods exempted from the mandatory nutrient declaration can however use FOPNL if the nutrient declaration is provided on a voluntary basis:

2.1 These guidelines apply to front-of-pack nutrition labelling (FOPNL) to be used on pre-packaged foods¹ that include a nutrient declaration² subject to the section 5 of *Guidelines on Nutrition Labelling (CXG 2-1985)*.

Footnote 2: As defined in the *Guidelines on Nutrition Labelling (CXG 2-1985)*. [Guidelines CXG 2-1985 allow for the exemption of some foods from the mandatory nutrient declaration; such foods exempted from bearing a nutrient declaration, can therefore not use FOPNL, except if the nutrient declaration is provided on a voluntary basis.](#)

Secondly, the EUMS consider the reference to 'exempted' and the explanation of 'exemptions' in footnote 3 confusing and not clear. The word 'exemption' refers generally to an exemption from a mandatory requirement, while in the explanation of footnote 3, 'exemption' seems to refer to a permission to display FOPNL.

The EUMS therefore suggest to delete section 2.3:

~~2.3 Additionally, certain prepackaged foods may be exempted³ from FOPNL. These may include foods exempted from bearing a nutrient declaration on the basis of nutritional or dietary insignificance or small packaging as described in the *Guidelines on Nutrition Labelling (CXG 2-1985)*.~~

~~³ Exemptions are where the food is not intended to have FOPNL but is still permitted to display FOPNL~~

EUMS comment on sections 3.1 and 3.2:

3 DEFINITION

3.1. *Front-of-pack nutrition labelling (FOPNL)* is a form of supplementary nutrition information that presents simplified, nutrition information on the front-of-pack⁴ of pre-packaged foods⁵. It can include symbols/graphics, text or a combination thereof that provide information on the overall nutritional value of the food and/or on nutrients included in the FOPNL at a national level.

3.2. This definition excludes nutrition and health claims.⁶

⁴ *Front-of-pack* means the total area of the surface (or surfaces) that is displayed or visible to the consumer under customary conditions of sale or use.

⁵ As defined in the *General Standard for the Labelling of Prepackaged Foods* (CXS 1-1985).

⁶ As defined in the *Guidelines for Use of Nutrition and Health Claims* (CXG 23 – 1997).

The EUMS consider the wording '*nutrients included in the FOPNL*' not clear and suggest rephrasing into '*displayed on*'. The EUMS also suggest to delete '*at a national level*' as this might not be applicable to all FOPNL cases.

The EUMS consider it necessary to specify that *text-based* nutrition claims should be excluded from the definition as in the EU, some FOPNL schemes such as the Keyhole logo or the Nutri-Score logo (when a green colour is highlighted) are considered as nutrition claims.

The EUMS suggest the following modifications to sections 3.1 and 3.2.:

3 DEFINITION

3.1. *Front-of-pack nutrition labelling (FOPNL)* is a form of supplementary nutrition information that presents simplified, nutrition information on the front-of-pack⁴ of pre-packaged foods⁵. It can include symbols/graphics, text or a combination thereof that provide information on the overall nutritional value of the food and/or on nutrients ~~included in~~ displayed on the FOPNL ~~at a national level~~.

3.2. This definition excludes text-based nutrition and health claims⁶.

EUMS comment on some principles under section 4:

4 PRINCIPLES

FOPNL should be calculated and applied to the food in a manner consistent with the corresponding nutrient declaration for that food where applicable.

The previous wording of this principle included reference to the food '*as sold / as consumed*'. In document CX/FL 21/46/6, it is explained that this reference has been deleted to shorten the text, and that '*where applicable*' has been added to recognize that in some cases supplementary nutrition information can be provided in the absence of a nutrient declaration.

First, the EUMS consider that without further explanations provided, it might not be clear for the reader what exactly '*in a manner consistent with the corresponding nutrient declaration*' is referring to, and suggest reformulating the principle to clarify its meaning.

Secondly, regarding '*where applicable*' and the explanation provided in document CX/FL 21/46/6, the EUMS refer to section 2.1. of the draft guidelines stating that "These guidelines apply to front-of-pack nutrition labelling (FOPNL) to be used on pre-packaged foods that include a nutrient declaration subject to the section 5 of *Guidelines on Nutrition Labelling* (CXG 2-1985)." **As section 5 describes already the possible exception ("except for target populations who have a high illiteracy rate and/or comparatively little knowledge of nutrition"), the EUMS consider that '*where applicable*' should be deleted as it might suggest that also in some other cases supplementary nutrition information can be provided in the absence of a nutrient declaration, which would not be consistent with section 2.1.**

4 PRINCIPLES

FOPNL should present information in a way that is easy to understand and use by consumers in the country or region of implementation. The format of the FOPNL should be supported by scientifically valid consumer research.

The EUMS suggest redrafting the principle by including that FOPNL should not mislead the consumer:

FOPNL should present information in a way that is easy to understand and use by consumers in the country or region of implementation and should not mislead the consumer. The format of the FOPNL should be supported by scientifically valid consumer research.

4 PRINCIPLES

FOPNL should be clearly visible on the package at the point of purchase under normal conditions.

To avoid any confusion, the EUMS suggest adding “on the front of the package”:

FOPNL should be clearly visible on the front of the package at the point of purchase under normal conditions.

4 PRINCIPLES

FOPNL should allow consumers to make comparisons between foods.

Considering that the back-of-pack nutrition declaration allows consumers already to make comparisons between foods, the EUMS suggest clarifying that FOPNL aims to *help* consumers to make comparisons between foods, by redrafting the principle as follows:

FOPNL should help ~~allow~~ consumers to make comparisons between foods.

PRINCIPLES

FOPNL should be government led but developed in collaboration with all interested parties including private sector, consumers, academia, public health associations among others.

[See also comment provided under Question 2 above]

The EUMS consider that government leadership would help to ensure any potential conflicts of interest.

However, as highlighted in previous EUMS comments, in the EU, Regulation (EU) 1169/2011 on the provision of food information to consumers allows Member States to recommend, or food business operators to use, front-of-pack nutrition labelling, provided that criteria set out in the legislation are met. One of these criteria comprises the requirement that the system's development should be the result of consultation with a wide range of stakeholder groups. Therefore, the EU suggests reformulating the principle that FOPNL should *preferably* be government-led and should - in all cases (including industry/stakeholder-led) - be developed in consultation / collaboration with all interested parties.

The EUMS suggest modifying section 4.3.1. as follows:

FOPNL should preferably be government led and ~~but~~ should in all cases be developed in consultation / collaboration with all interested parties including government, private sector, consumers, academia, public health associations among others.

PRINCIPLES

[FOPNL should be implemented in a way that facilitates consumer use of the FOPNL]

[See also comment provided under Question 3 above]

The EUMS understand that the redrafting of the previous proposed wording ('FOPNL should be implemented in a way that [maximizes / encourages] food manufacturers' use of the FOPNL on food labels') aims to focus on the goal of facilitating consumer use of the FOPNL scheme, which would in turn require high uptake by industry to meet this goal.

The EUMS consider that the proposed text should be reformulated and clarified, as it might currently not be clear for the reader what exactly is understood by '*implemented in a way that facilitates consumer use*'; for example, whether it is referring to facilitating consumer comprehension of a scheme, or, whether it refers to generalizing the use of the scheme on foods.

PRINCIPLES

(New principle) FOPNL should be objective and non-discriminatory

With reference to EUMS comments of April 2020 (Extraordinary consultation on Section 5), a new principle is proposed stating that '*FOPNL should be objective and non-discriminatory*'.

2. **Recommendation b) of CX/FL 21/46/6: consider if the Guidelines are ready to advance to Step 5/8 or 5**

The EUMS consider that some further discussions and redrafting is necessary before being able to advance to Step 5/8 or 5.

3. **Recommendation c) of CX/FL 21/46/6: consider whether the Guidelines will be part of section 5 "supplementary nutrition information", an annex to the Guidelines on Nutrition Labelling (CXG 2-1985), or a stand-alone document**

See reply under Question 5 above: The EUMS suggest including the Guidelines on FOPNL, once finalized, as an Annex to Section 5 of the existing Guidelines on Nutrition Labelling (CAC/GL 2-1985).