

1 September 2021

**CODEX COMMITTEE ON FOOD LABELLING
(Forty-sixth Session)
Virtual, 27 September – 1 October and 7 October 2021**

European Union Comments on

Agenda item 7:

**Proposed draft Guidelines on Internet sales / e-commerce
(CX/FL 21/46/7)**

*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.

I. Comments on specific points:

4.2.1 Review the requirements relating to minimum durability within the draft guidance (CX/FL 21/46/7, Appendix II Section 4 paragraph 3) and consider whether the requirements as given balance the needs of consumers and industry.

The EUMS do not support the inclusion of a mandatory minimum durability date. Similarly, the EUMS do not support the inclusion of the possibility to provide minimum durability date on a voluntary basis under section 4. Indeed FBOs can already provide voluntary information as stated under section 6 of this draft guidance (referring to section 7 of the GSLPF (CXS 1-1985). In addition, section 4 does not provide any requirement regarding the content of such date, which can be either a “guarantee period” or an “expected or average period”.

4.2.2 Review the proposed alternative wording of sections 4 & 5 (CX/FL 21/46/7, Appendix II, ‘Proposed alternative wording of section 4 & 5) and consider whether:

4.2.2.1 the proposed alternative wording is too significant of a departure from the current guidance.

4.2.2.2 the proposed alternative wording contains information which could be included to make the current guidance more effective.

Proposed alternative wording in section 4:

If the composition of the pre-packaged food offered for sale through e-commerce is subject to minor variations by the substitution of an ingredient which performs a similar function, the statement of ingredients on the digital product information sheet may list both ingredients in a way which makes it clear that alternative or substitute ingredients are being declared.]

A statement shall appear on the digital product information page to the effect that the customer should check the information on the physical label before consumption.

Proposed alternative wording in section 4 and 5:

4.1 Any information required to be provided on the label of a pre-packaged food or in associated labelling, shall be provided on the digital product information page of the pre-packaged food when offered for sale via e-commerce, except to the extent otherwise expressly provided in an individual Codex standard. This includes the following information:

- *Information indicated in section 4 and section 5 of the GSLPF (CXS 1-1985) except information required by 4.6 and 4.7.1*

- *Mandatory information required by any other relevant Codex text*

4.2 If the composition of the pre-packaged food offered for sale through e-commerce is subject to minor variations by the substitution of an ingredient which performs a similar function, the statement of ingredients on the digital product information sheet may list both ingredients in a way which makes it clear that alternative or substitute ingredients are being declared.

4.3 A statement shall appear on the digital product information page to the effect that the customer should check the information on the physical label before consumption.

The EUMS can agree with the proposed alternative wording, which aims at merging sections 4 and 5. However, comments on the content of these sections (as outline in below sections) should be taken into account. See comments on other parts.

4.2.3 Consider whether the issue of cross-border e-Commerce sales is outside the scope of the draft guidance and should be referred to the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS).

The EUMS agree that cross-border issues are outside the scope of this Guidance.

II. Comments on other parts of the draft guidelines on internet sales/e-commerce:

On section 1 ‘scope’:

The EUMS consider that the terms “e-commerce sale” and “product information e-page” defined in the guidance should be used when referring to these concepts in the section “scope”.

The EUMS consider that it is more appropriate to state in the section “scope” that the guidance does not apply to food information requirements at the point of delivery, than providing this information under section 3 ‘general principles’.

Section 3 ‘general principles’ should refer to the general principles applicable at the point of e-commerce rather than at the point of delivery. For these reasons, the EUMS would like to propose the following changes to section 1:

“This text applies to the provision of food information that shall be available at the point of e-commerce sale on the product information e-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. This text does not apply to It clarifies which food information that shall be provided available at the point of ecommerce 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))”.

On section 2 ‘definition of terms’:

No comment

On section 3 ‘General principles’:

The EUMS consider that for clarity purpose instead of cross-referring to section 3 of the GSLPF (CXS 1-1985), the content of that section should be repeated in this draft guidance.

As indicated in respect of section 1 ‘scope’, the EUMS consider that the section 3 ‘general principles’ should refer to the general principles applicable at the point of e-commerce and not at the point of delivery. The fact that the guidance does not apply to food information requirements at the point of delivery should be stated under section 1 ‘scope’.

For these reasons, the EUMS would like to propose the following changes to section 3:

“As indicated in section 3 of the GSLPF (CXS 1-1985).

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 to 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.

~~All food information requirements within the GSLPF and any other Codex texts shall be met at the point of delivery through the information provided on the product label, unless specified otherwise within this text.”~~

On section 4 ‘information requirements for pre-packed foods sold through e-commerce’:

The EUMS do not agree with the possibility of not providing accurate information on product information at the point of sale. The information provided at the point of sale shall be accurate and it shall not be possible to provide alternative information. The FBOs shall provide information that corresponds exactly to the information provided on the physical label (exact list of ingredients for example).

The EUMS consider that the exemption for small units (laid down in section 6 of the GSLPF (CXS 1-1985) 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. Therefore, section 4 should clearly provide that such exemption does not apply and that the information should be provided independently of the size of the food product.

The EUMS consider that it is sufficient to refer to “product information e-page”, which is defined in the guidance and that the guidance shall not to refer to “other primary consumer-

facing virtual depiction of pre-packaged foods presented for sale through e-commerce prior to the point of e-commerce sale”.

For these reasons, the EUMS propose the following changes to section 4:

~~“Information specified in sections 4 and 5 of the GSLPF (CXS 1-1985) shall, whenever possible, appear on the product information e-page or other primary consumer-facing virtual depiction of pre-packaged foods 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. In some circumstances it may not be possible to provide accurate information on the product information page at the point of sale regarding the above requirements. This includes cases where ingredients may alter slightly from those provided on the product information page owing to ongoing recipe adjustments. In such cases a warning should be given to consumers to check the label of products once they have been delivered to obtain accurate food information. Any pre packaged foods offered for sale to consumers are encouraged to have a minimum durability period, an indication of which should be displayed on the product information e page. It should be made clear whether this is a guaranteed period or an expected or average period.~~

The exemptions provided by section 6 of the GSLPF (CXS 1-1985) shall not apply.

Food offered for sale through e-commerce should declare the nutritional information prior to the point of e-commerce sale in alignment with section 3 of the Guidelines on Nutrition Labelling (CXG 2-1985), except to the extent otherwise expressly provided in the Guidelines of Nutrition Labelling.”

On section 5 ‘exemptions from food information requirements at the point of sale for pre-packaged foods sold through e-commerce’:

The EUMS agree on the proposal to merge the wording of sections 4 and 5, however the previous comments in relation to section 4 should be included to. In addition, the paragraph concerning nutritional information should be kept in section 4. In light of previous comments the EUMS would like to propose the following changes on the alternative wording of section 4 and 5:

“4.1 Any information required to be provided on the label of a pre-packaged food or in associated labelling, shall be provided on the digital product information page of the pre-packaged food when offered for sale via e-commerce, except to the extent otherwise expressly provided in an individual Codex standard.

This includes the following information:

- Information indicated in section 4 and section 5 of the GSLPF (CXS 1-1985) except information required by 4.6 and 4.7.1
- Mandatory information required by any other relevant Codex text

The exemptions provided by section 6 of the GSLPF (CXS 1-1985) shall not apply.

~~4.2 If the composition of the pre-packaged food offered for sale through e-commerce is subject to minor variations by the substitution of an ingredient which performs a similar function, the statement of ingredients on the digital product information sheet may list both ingredients in a way which makes it clear that alternative or substitute ingredients are being declared.~~

~~4.3 A statement shall appear on the digital product information page to the effect that the customer should check the information on the physical label before consumption”.~~

Food offered for sale through e-commerce should declare the nutritional information prior to the point of e-commerce sale in alignment with section 3 of the Guidelines on Nutrition Labelling (CXG 2-1985), except to the extent otherwise expressly provided in the Guidelines of Nutrition Labelling.”

On section 6 Option food information requirements at the point of e-commerce sale

No comments

On section 7 Presentation of mandatory information

The EUMS consider that it is important to ensure appropriate information regarding allergens.

The EUMS would like to propose the following changes to section 7:

“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) 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

7.2.1 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".

In light of the above comments, the EUMS consider that further discussion on the above mentioned points are needed before advancing to Step 5 for adoption by CAC44.