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European Union comments on
CL 2019/82-FL: REQUEST FOR INFORMATION ON INNOVATION
AND TECHNOLOGY IN FOOD LABELLING

Mixed competence.
European Union Vote.

In response to the request for comments on innovation and technology in food labelling of the Codex Circular Letter CL 2019/82-FL, the European Union and its Member States (EUMS) would like to make comments on each of the questions raised.

- a) **Considering the CCFL work on internet sales (REP19/FL Appendix III), what gaps remain for CCFL to address respecting the use of technology in the sale of foods or in conveying information about foods to the consumer or other buyers?**

In this context account should be taken of the differences between the concept of internet sale and the sale of food by the use of technology. The nature of internet sale concerns ‘*virtual food*’ while the work on the use of technology concerns ‘*virtual information*’ provided with respect to the food, which is put for purchase. For this reason, the EUMS consider that the elements linked to e-commerce shall be kept separately under the relevant work.

In relation to the CCFL work on internet sales the latest discussion paper recommended to clarify what GSLPF definition of ‘label’ and ‘labelling’ mean for labelling food sold online. If such considerations would lead to the modification of the definitions, it would be recommended to capture in this context aspects relevant for the definition in relation to the use of technology while providing food information. The views of the EUMS in this respect are further explained under point b) of this paper.

- b) **Do the current CCFL definitions for “label” and ”labelling” sufficiently capture information that is not accompanying the food, such as mandatory or voluntary labelling information provided virtually using technology? If not, what is the best approach to address this gap, e.g. a new definition or revisions to the existing definitions?**

In accordance with CODEX STAN 1 – 1985 definitions, (1) “Label” means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food and (2) “Labelling” includes any written, printed or graphic matter that is present on the label, accompanies the food, or is displayed near the food, including that for the purpose of promoting its sale or disposal. In the European Union the legal framework of Regulation (EU) No 1169/2011 on food information to consumers covers food information to consumers and not only food labelling. Article 2(2)(a) of the Regulation lays down a broad definition in this respect,

notably 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*”.

Taking into account the abovementioned, while the European framework legislation has introduced a framework, which covers food information provided by the use of technology, the EUMS consider that the definitions laid down for “label” and “labelling” in the CCFL do not capture information that is provided virtually using technology. The EUMS are of the opinion that the notion of “food information to consumers”, similar to the approach of Regulation (EU) No 1169/2011 on food information to consumers, could be introduced in the CODEX STAN 1 – 1985 in order to allow that some information can be provided by the use of innovative technologies under certain conditions. From the EUMS point of view, it would be confusing to change the CCFL definition of labelling as to include the use of technology/other means, as the term ‘labelling’ clearly refers to label, which is linked to the material and not to the virtual food and is provided on label or on accompanied material. Against this background, it should be considered, as a second stage, whether the definition of labelling has to be reviewed or not.

c) Within your country / region, have you identified mandatory labelling information that can be provided through technology? Have you identified criteria for the use of technology in food labelling? If so, please elaborate.

In the EU according to Article 12(2) of Regulation (EU) No 1169/2011 in case of prepacked food, mandatory food information shall appear directly on the package or on a label attached thereto. Further to this Article 12(3) of the Regulation lays down that ‘*In order to ensure that consumers benefit from other means of provision of mandatory food information better adapted for certain mandatory particulars, and provided that the same level of information as by means of the package or the label is ensured, the Commission, taking into account evidence of uniform consumer understanding and of the wide use of these means by consumers, may establish, by means of delegated acts in accordance with Article 51, criteria subject to which certain mandatory particulars may be expressed by means other than on the package or on the label.*’ In addition to this, the European Commission may adopt implementing acts on the modalities of application of the criteria referred to Article 12(3) in order to express certain mandatory particulars by means other than on the package or on the label.

The EU has not started yet with the abovementioned work, i.e. it has not yet identified criteria for the expression of certain mandatory particulars by means other than on the package or on the label, i.e. use of technology in food labelling.

d) What mandatory food labelling information is appropriate to be provided using technology, and under what circumstances?

i. Should CCFL outline specific types of labelling and circumstances when the use of technology may be appropriate, or outline broad criteria for its use?

As a first step, broad criteria establishing the appropriate use of technology could be developed. In this context, specific circumstances and in particular, the following aspects should be considered:

- information that is necessary at the point of purchase;
- information that is necessary at consumption;
- considerations regarding sector specificities.

As a second step it could be considered which mandatory food labelling information could be provided by the use of technology and subject to which conditions. This could be done on the basis of point 4 of the CODEX STAN 1 – 1985, which lists the information which shall appear on the label of prepacked food. In this context, it will have to be ensured that the same level of information is provided by the use of technology, as by means of the package or the label and that there is evidence of uniform consumer understanding.

ii. Where should such provisions be placed, e.g. in the General Standard for the Labelling of Prepackaged Foods, the Guidance on the Labelling of Non-Retail Containers, or elsewhere?

At first stage, such provisions would be best placed in the General Standard for the labelling of prepacked foods (CODEX STAN 1 – 1985). If later it is considered that, there is a need to add the aspects relevant to information provided by the use of technology to the Guidance on the Labelling of Non-Retail Containers, or elsewhere (in light of the consideration carried out under point g)), the relevant amendments could be introduced.

e) How should CCFL ensure that food labelling information conveyed using technology complies with general principles, including that it is not presented in a manner that is false or misleading?

- In general, CCFL should follow the same approach to ensure that food labelling information conveyed using technology complies with the general principles, as it is the case for food labelling information conveyed on the label of prepacked food.
- Furthermore, it shall be the responsibility of the food business operators to ensure that food labelling information conveyed using technology comply with the same general principles.
- In case the food business operator makes use of the possibility to provide food information by the use of technology, she/he has to be in a position to demonstrate that the food labelling information complies with the general principles.

f) What should CCFL consider with respect to accessibility, format, and presentation of information provided using technology?

- Regarding accessibility it should be considered, which mandatory food information is necessary at the point of sale. This kind of information shall be always accessible for the consumer at the point of sale, even if it is possible to provide this by the use of other means than on the package or on the label. Consideration shall also be given to the question, whether the nature of the food information would require that the information is also available and accessible at consumption. In general, it can be assumed that the consumer would like to have access to most of the food information that he considers important at the time of purchase also when consuming the food.
- Regarding the format and the presentation of the food information provided by the use of technology, it is key to ensure consistency as much as possible with the requirements of the CCFL Standard format and presentation used on the package/label. This would ensure that uniform consumer understanding is not jeopardised by the use of different means to provide food information.

g) Which other Codex texts should be reviewed for possible amendments that would facilitate the use of technology in food labelling?

The EUMS consider that it is first needed to develop criteria and modalities for the food information labelling provided by the use of technology and depending on the outcome of that work other Codex text developed by the CCFL, such as the Guidelines on Claims (CAC/GL 1 – 1979), the Guidelines on Nutrition Labelling (CXG 2 – 1985), and the Guidelines for the Use of Nutrition and Health Claims (CXG 23 – 1997) should be analysed to identify other possible amendments that would facilitate use of technology for labelling.

Miscellaneous

The EUMS note that most of the questions in the CL are devoted to mandatory information. The EUMS are of the opinion that the envisaged work should also consider optional information.