



20 October 2014

Questions and Answers concerning the interaction between Regulation (EU) No 1379/2013 (CMO Regulation) and Regulation (EU) No 1169/2011 (FIC Regulation)

1. How does the requirement of "*date of minimum durability, where appropriate*" as stated in Article 35 (1) (e) of Regulation (EU) No 1379/2013 apply?

The requirement of Article 35(1)(e) of the CMO Regulation applies in line with the provisions (Articles 9(1)(f), 24, Annex X and Article 44) of the FIC Regulation on date marking.

In particular:

Pre-packed fishery and aquaculture products

Pre-packed fishery and aquaculture products need to indicate the date of "minimum durability-best before" unless such date is not appropriate. This would be the case of fishery and aquaculture products which, from a microbiological point of view, are highly perishable, and for which therefore the indication of "use by" date in accordance with Article 24 and Annex X of FIC Regulation is more appropriate.

Non-prepacked fishery and aquaculture products

For non-prepacked products or products packed on the sales premises at the consumer's request or prepacked for direct sale, the indication of either the "minimum durability - best before" date or the "use by" date would depend on whether the Member States adopted national measures requiring such indications in accordance with Article 44 of the FIC Regulation.¹

2. How does the provision "*information on the nutritional content of the product*" of Article 39(1)(h) of Regulation (EU) No 1379/2013 concerning the additional voluntary information apply in relation to Regulation (EU) No 1169/2011 which requires mandatory nutrition declaration as from 13 December 2016?

The requirement of Article 39(1)(h) of the CMO Regulation applies in line with the requirements (Articles 9, 30-35, 54, 55 and Annexes I, V and XIII-XV) of the FIC Regulation concerning the nutrition declaration. From 13 December 2016, the nutrition declaration is mandatory with the exceptions listed in Annex V of the FIC Regulation.

¹ The words 'where appropriate' in Article 35(1)(e) of CMO Regulation and the fact that Article 35(1)(e) is without prejudice to the application of FIC Regulation allow for such interpretation. It also seems to be supported by the intention of the co-legislators to open the possibility of a full alignment as regards this labelling requirement for non-prepacked fishery and aquaculture products with the requirements of FIC Regulation. This interpretation simplifies the situation and would be most in line with the intentions of the co-legislators.



Article 39 of the CMO Regulation should therefore be interpreted as an intermediate step aimed at encouraging the food business operators to provide additional nutrition information for fishery and aquaculture products on a voluntary basis (i) until such information becomes mandatory under the FIC Regulation; or (ii) for products listed in Annex V of the FIC Regulation which will continue to be excluded from such an obligation in the future.

3. Could clarity be given on the “defrosted” requirement?

- **In particular, with regard to the location of the indication – In accordance with Article 35(1) of Regulation (EU) No 1379/2013 the information where the product has been defrosted should be "indicated" on the labelling – In accordance with Annex VI, part A, point 2 of Regulation (EU) No 1169/2011 the designation "defrosted" must accompany the name of the food.**

The designation "defrosted" for fishery and aquaculture products shall be indicated as follows:

For prepacked fishery and aquaculture products, when these products have been defrosted, the name of the food must be accompanied by the designation "defrosted" following the rules of Annex VI of the FIC Regulation.

For non-prepacked fishery and aquaculture products, information whether the product has been defrosted may be provided for retail sale by means of commercial information such as billboards or posters. However, this indication does not need to accompany the name of the food given that Annex VI of the FIC Regulation does not cover non-prepacked foods, unless national rules provide otherwise.

- **Regulation (EU) No 1379/2013, Article 35(1), lists four derogations from the requirement to indicate where the product has been defrosted. Regulation (EU) No 1169/2011, Annex VI, part A, point (2) lists three derogations from the requirement to accompany the name of the food by the designation “defrosted”. Whilst the two derogations are identical with those included in the CMO Regulation, the third derogation provided in Annex VI, part A, point 2(c) of the FIC Regulation concerning the “foods for which defrosting has no negative impact on the safety or quality of the food” is not included in the derogations provided by the CMO Regulation. Does Annex VI, part A, point 2(c) of Regulation (EU) No 1169/2011 apply also in case of fishery and aquaculture products covered by Regulation (EU) No 1379/2013?**

No. Only the derogations provided by the CMO Regulation are applicable to fishery and aquaculture products falling under its scope.



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4. Article 35(1)(a) of Regulation (EU) No 1379/2013. There is no definition of “the commercial designation” in this Regulation. How does this term correlate with “the name of the food” under Article 9(1)(a) of Regulation (EU) No 1169/2011?

Article 37 (1) of the CMO Regulation states that Member States shall draw up and publish a list of the commercial designations accepted in their territory, together with their scientific names.

The list shall indicate:[...]

(b) the commercial designation:

(i) the name of the species in the official language or languages of the Member State concerned;

(ii) where applicable, any other name or names that are accepted or permitted locally or regionally.

It should be understood that the indication of "commercial designation" for fishery and aquaculture products falling under the scope of the CMO Regulation corresponds to the name of the food or is part of the name of the food, as provided by the FIC Regulation. The latter is the case where other information is needed to accompany the "commercial designation" so that the name of the food complies with the provisions of the FIC Regulation.