European Federation of Allergy and Airways Diseases Patients Associations

EFA Briefing Update **January 2012**

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Briefing on the Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers

Purpose

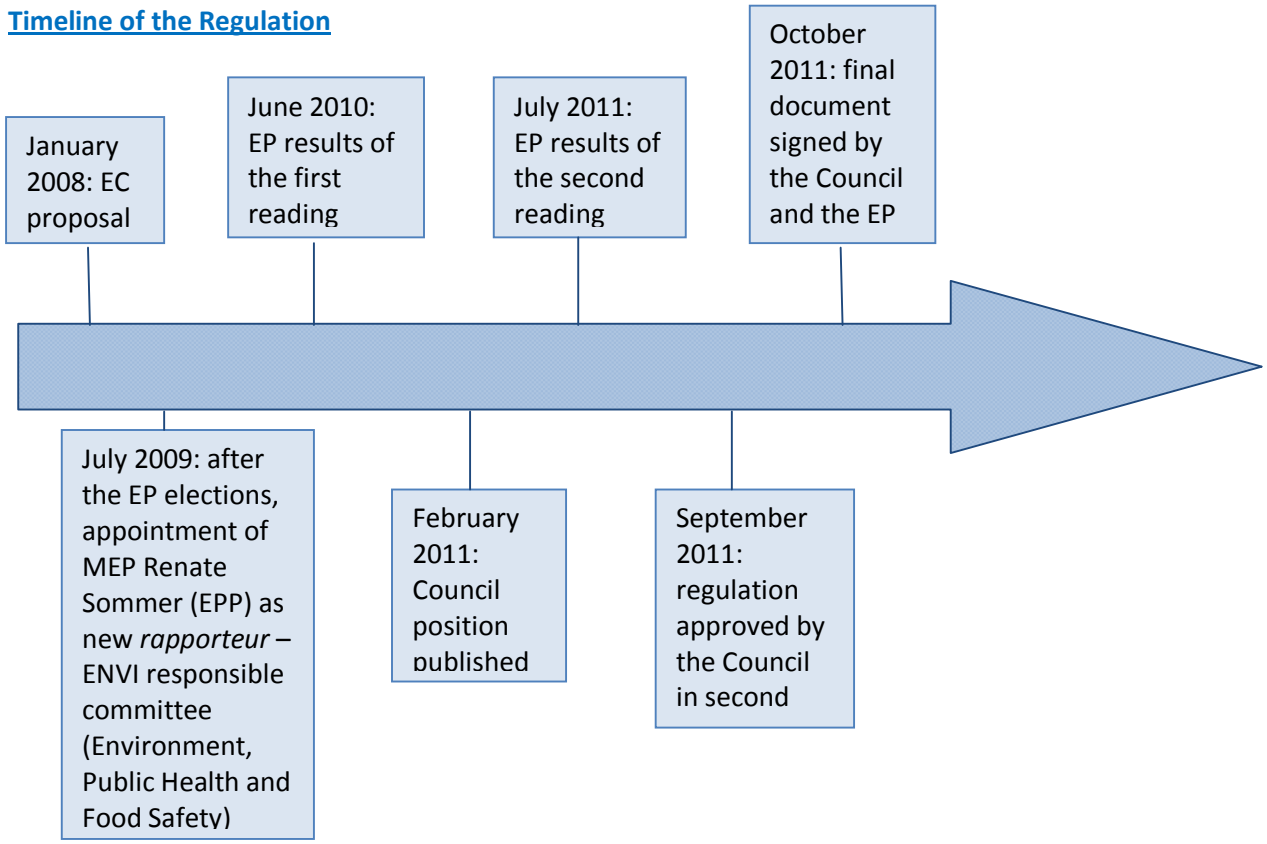
The purpose of this briefing is twofold. On the one hand, it aims at informing about the results of the vote on the Regulation on the provision of food information to consumers. On the other hand, it prepares the ground for future actions to follow up on such results.

Background

In January 2008, the European Commission (EC) made a proposal for a Regulation on the provision of food information to consumers, with the objective of modernising, clarifying and simplifying the legislation in force on food information, and in particular on food labelling. After almost three years of co-decision procedure, the European Parliament (EP) and the Council of the European Union adopted the final text of the Regulation last October.

EFA is particularly interested in the document because clear and understandable food information help consumers make better-informed choices and safe use of food, which is important for people with food allergy or intolerance or with special dietary requirements because some wrong choices may make them ill or even be threatening for their lives. During 2010 before the first reading, EFA and members advocated for better legibility, responsibility of all food business operators on correct information, allergen labelling of unpacked, food sold loose and in catering and restaurants, regulating precautionary "may contain" and labelling allergen changes/additions in products.

Timeline of the Regulation



Legal basis

Article 114 of the Treaty on the Functioning of the European Union (TFEU): harmonisation of EU legislations for the completion of the EU internal market.

⇨ Member States (MSs) are obliged to adopt the mandatory food information requirements established by the Regulation. They can go further and provide voluntary food information, unless it is detrimental to the clarity of the mandatory one.

→ Given the fact that article 169 of the TFEU is mentioned, it is clear that the legislative text is intended to take into consideration the attainment of a high level of protection of consumers' health and interests.

→ The Commission is empowered by the Regulation to adopt delegated (article 290 of the TFEU) and implementing acts (article 291 of the TFEU).

General content

Article 4: Mandatory food information is the information on:

- the identity, composition, property and other characteristics of the food;
- the protection of consumers' health and the safe use of the food;
- the nutritional characteristics of the food.

Such information should not be misleading and should be accurate, clear and easy to understand. It shall appear in a language easily understood by the consumers of the MS where the food is marketed. For pre-packed food, mandatory food information shall appear directly on the package or on the label attached. In the case of food sold by means of "distance communication", internet or similar, relevant mandatory information should be available before the purchase is concluded.

Article 9: Among the mandatory particulars that should be provided are for example the date of minimum durability or the "use by" date, the special storage conditions and other conditions of use, the country of origin or of the place of provenience, and the nutrition declaration. To facilitate the comparison of products in different package sizes, this nutrition declaration should refer to 100 g or 100 ml amounts and, when appropriate, to a per portion basis or per consumption unit.

EFA specific matters of interest

The text deals with a certain number of questions that are of interest to EFA.

A. Allergens

1. In addition to the above-mentioned details, the indication of the ingredients or processing aids listed in Annex II or derived from them shall be mandatory. This Annex enumerates substances or products causing allergies or intolerances.

2. The complete list of ingredients should be indicated as well. Article 16 foresees **an exception for packaging or containers whose surface is inferior to 10 cm²**. In such cases, this list shall be provided through other means or made available at the request of the consumer.

⇨ The regulation intends to protect people with allergy, but does not quite succeed. Indeed, in case of small packages or containers – inferior to 10 cm² – **only allergens listed in Annex II should be clearly listed**. However, people may have allergies or intolerances caused by other ingredients than those mentioned in Annex II.

3. The name of the substance or product causing allergies or intolerances shall be simply mentioned within the ingredients list. However, in order to distinguish it from the other ingredients, **it should be emphasised through a typeset**. In the absence of the list of ingredients

(in particular situations, see above), a label on the package should mention the wording "**it contains**" followed by the name of such substances or products (article 22).

⇨ People with allergies or intolerances may benefit from this provision as common allergens, and therefore also changes in products regarding allergens, become more visible. The amendment proposed by the ENVI committee at the EP, and then rejected, asked for the insertion of the wording "it contains" followed by the name of the substances listed in Annex II irrespective of the presence of a list of ingredients. Majority of the members of EFA food allergy working group supported this (big help for majority and those with severe) and minority rejected (misleading & dangerous), both for good reasons.

4. Member States may provide more, better, stricter, etc. food information on a voluntary basis, providing that this does not mislead the consumer, it is not ambiguous or confusing and is based on scientific data.

⇨ This provision may be considered as a positive step. For the first time, in fact, there is something on precautionary labeling, even if not obligatory. It represents a chance for common European guidance on this matter.

B. Responsibility of food business operators at each step of the distribution chain

Article 8: Food business operators, "the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control"[1], shall ensure the presence and accuracy of the food information. They are responsible for any changes they make to food information accompanying a food. In the case of non pre-packed food[2], they should transmit the food information to the food business operator receiving the food and commercialising it in order to make him/her delivering the right information to the consumers, when required.

→ The text clearly states that each person working at every stage of the production, delivery, manufacture, sale and service of food should be able to check the ingredients used and make this information available to the final consumers. This provision ensures a high level of protection of people with allergies, as a detailed information may let them choose safely what they can eat without endangering their lives.

[1] Article 2.1(a) refers to article 3.3 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PDF.

[2] Article 2.1(e) merely defines pre-packed food as: "any single item for presentation as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; 'pre-packed food' does not cover foods packed on the sales premises at the consumer's request or pre-packed for direct sale".

C. Legibility of the mandatory information

Article 13 establishes that the mandatory information shall be easily visible and, where appropriate, indelible; it shall not be hidden, obscured, detracted from or interrupted by any other written or pictorial matter. Such information shall be printed in such a way as to ensure clear legibility, in character using a font size equal to or greater than 1,2 mm. In case of small packaging or containers (surface area less than 80 cm^2), the minimum font size is reduced to 0,9 mm.

→ The minimum requirement of 1,2 mm font size is not legible enough for consumers. As recital 26 of the Regulation states, "a comprehensive approach should be developed in order to take into account all aspects related to legibility, including font, colour and contrast". Indeed, studies have shown that easy legibility is an important element in maximising the possibility for labelled information to influence its audience and that illegible product information is one of the main causes of consumers' dissatisfaction with food labels, including and especially those with food allergy. Furthermore, allowing 0,9 mm font size for packaging whose surface is inferior to 80 cm^2 – a huge dimension – causes a massive problem of legibility.

D. Mandatory information for non pre-packed food

The Regulation (article 44) establishes that information on allergens (Annex II) for non pre-packed food (food offered for sale to the final consumer or the mass caterer without pre-packing or food packed on the sales premises at the request of the consumer or pre-packed for direct sale) is mandatory. Member States should communicate to the Commission the national measures setting rules on how the information on allergens should be made available and its form of expression and presentation.

→ The Regulation represents a crucial step forward because the legislation previously in force requested mandatory allergen labelling merely for pre-packed food, while it did not say anything on non pre-packed food. As recital 24 of the Regulation says, in such cases, "information on potential allergens is considered very important. Evidence suggests that most food allergy incidents can be traced back to non pre-packed food. Therefore information on potential allergens should always be provided to the consumer".

However, more can be done to improve the current legislation because the text does not say how this information should be provided and leave Member States free to adopt national rules on the question. A written label would have been the most reliable mean of ensuring the provision of detailed information and clear recommendations. Sharing best practices amongst Member States national rules and drawing non-binding EU-wide guideline on the subject could be a way to draw the attention on the importance of the issue.

E. Delegated and implementing acts of the Commission

1. The Commission, in order to take into consideration the latest scientific developments, to ensure better information to consumers and to avoid risks for their health, may modify through delegated acts the list of the substances listed in Annex II (article 21).

2. The Commission may adopt delegated acts in respect of, *inter alia*, the availability of certain mandatory particulars by means other than on the package or on the label (recital 58 and article 12.3).

→ The definition "certain mandatory particulars" is uncertain and it may refer to the allergens listed in Annex II. The presence of these allergens should be always mentioned in the label or the package of the products to ensure a high level of protection of people suffering from allergies.

3. The Commission should adopt implementing acts on the application of the requirements that need to be respected in case of food information provided on a voluntary basis, for example when it concerns the possible and unintentional presence of substances or products causing allergies or intolerances (article 36).

4. Implementing acts may be adopted by the Commission in relation to, *inter alia*, the modalities of expression of one or more particulars by means of pictograms or symbols instead of words or numbers (recital 59 and article 9.3).

→ Allergens need to be properly mentioned always with their names and it is unclear whether this concerns also allergens.

F. Precautionary labelling

"When used in the production of foods and still present therein, certain ingredients or other substances or products (such as processing aids) can cause allergies or intolerances in some people, and some of those allergies or intolerances constitute a danger to the health of those concerned. It is important that information on the presence of food additives, processing aids and other substances or products with a scientifically proven allergenic or intolerance effect should be given to enable consumers, particularly those suffering from a food allergy or intolerance, to make informed choices which are safe for them" (recital 24).

→ The recital is not legally binding. However, the fact that for the first time the precautionary labelling has been mentioned is a crucial political milestone to recognise the importance of the subject. Together with the provision on voluntary information, it represents a chance for common European guidance on this matter.

G. Change of recipe in the label

The Regulation does not say anything concerning labelling allergen changes/additions in products.

→ If there is a change in a recipe that contains allergens, this should be clearly mentioned in the package or label. Even though the allergens are always labelled, the consumers may feel safe due to the previous consumption of the product and not check properly the list of ingredients.

However, the fact that allergens should be emphasised through a typeset to distinguish them from the other ingredients will help the consumers to easier detect the presence of substances listed in Annex II.