

Brussels, XXX
[...] (2023) XXX draft

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

amending Annex X to Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers as regards the indication of the date of minimum durability

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The draft Commission Delegated Regulation will contribute to empowering consumers to make informed choices and reducing food waste, and ultimately to delivering on the wider objectives of food sustainability and food security.

The Circular Economy Action Plan, adopted in December 2015¹, identified food waste prevention as a priority area for EU-level action and the Commission committed to "*examine ways to improve the use of date marking by actors in the food chain and its understanding by consumers, in particular 'best before' labelling*". The need to prevent and reduce food waste, while ensuring the safety of the food and feed chain, is a subject of growing societal, economic, environmental and political interest in the European Union and worldwide. The possible impact of date marking on food waste and the need for action at EU level have been raised in recent years by the Council², the European Parliament³ and the European Court of Auditors⁴.

Further, reducing food loss and waste is a key action strand in the European Commission's Farm to Fork Strategy for a fair, healthy and environmentally friendly food system, adopted in May 2020⁵. Recognising that the misunderstanding on and misuse of date marking (i.e. the 'use by' and 'best before' dates) leads to food waste, the Communication announces the revision of the EU rules on date marking taking account of consumer research.

Such revision is in line with the objectives of the European Green Deal⁶ to reconcile our food system with the needs of the planet and to respond positively to Europeans' aspirations for healthy, equitable and environmentally-friendly food.

The 'best before' date relates to food quality, meaning that after that date a food can still be safely consumed, however, it may not always be at its best quality. The 'use by' date relates to food safety, meaning that after the 'use by' date a food shall be deemed to be unsafe and should not be consumed. A number of factors drive the ways in which consumers currently react to the 'best before' and the 'use by' dates, depending on how they are displayed and phrased. Consumers do not always understand the meaning of the 'best before' date and confuse it with 'use by' date, or do not pay attention to the dates in general. Hence, food that is still fit for consumption past its 'best before' date may be prematurely discarded. There is evidence that uncertainty and confusion linked to date marking results in consumers

¹ http://ec.europa.eu/environment/circular-economy/index_en.htm

² AGRIFISH, 19 May 2014 - Note from the Netherlands and Sweden requesting that, amongst other actions to prevent food waste, the Commission consider the exemption of more products from the obligation to provide a 'best before' date (i.e. extension of Annex X of Regulation (EU) No 1169/2011 on the provision of food information to consumers); Council conclusions on Food losses and food waste, adopted on 28 June 2016 (19.3 "Promote more consistent understanding and usage of date marking, such as dates on eggs and other products, amongst consumers, food business operators, in particular food manufacturers and retailers, and control authorities, in order to prevent food losses and waste. Should any proposals for changes to be made to EU rules on food information to consumers, the Council calls on the Commission to take into account the Council's position that these proposals should make a contribution to food waste prevention and not undermine either food safety or consumer information").

³ EU Parliament - "Resource efficiency: Reducing food waste, improving food safety". 2017.

⁴ European Court of Auditors - Special Report n°34 — Combating Food Waste: an opportunity for the EU to improve the resource-efficiency of the food supply chain. 2016

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0381>

⁶ COM/2019/640 final

discarding food that is still fit for consumption, with consequences for consumer household budgets from the cost of food bought but not consumed, and the negative environmental and climate impacts associated with food that is produced but not eaten, as well as the climate, environmental and economic impacts of food waste disposal.

This amendment will provide a basis for consumers to make better informed choices, as the enhanced consumer understanding of the ‘best before’ date would influence the decision-making of consumers as to whether to consume/use or discard a food. As a result, this amendment would contribute to the objective of reducing food waste and deliver on the objectives of food sustainability and food security.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

This delegated act builds on a number of studies looking at consumer’s understanding and at alternative ways of expressing the ‘best before’ and ‘use by’ dates in order to better meet consumers’ information needs and minimise food waste.

A Flash Eurobarometer survey on food waste and date marking⁷, carried out in September 2015, sought to understand citizens’ perceptions, attitudes and practices related to food waste, and more specifically, to investigate the role of the ‘best before’ and ‘use by’ dates found on food labelling in relation to household food waste. Citizens were questioned on their understanding and use of the ‘best before’ and ‘use by’ dates found on food labelling, and on the extent this information affects their consumption habits. Even though the majority of consumers pay attention to the ‘use by’ and ‘best before’ dates when shopping for food, less than half understand their meaning. Nearly a quarter of respondents incorrectly believed that food should not be eaten past the ‘best before’ date.

To investigate further the practical implications of the date marking rules for food waste, the Commission commissioned a “Market study on date marking and other information provided on food labels and food waste prevention”, which was published on 7 February 2018⁸. This study confirmed that up to 10% of the 88 million tons of food waste generated annually in the EU are linked to date marking. Findings of this study, resulting from stakeholder and national authorities consultations (interviews) and a market survey, further concluded that avoidable food waste linked to date marking is likely to be reduced where, amongst other recommendations, consumers have a good understanding of the ‘best before’ and the ‘use by’ date. There is evidence that most consumers do not fully understand the distinction between the labels ‘use by’ – as an indicator of safety - and ‘best before’ – as an indicator of quality, and that this can contribute to edible food being discarded.

From March 2021 to July 2022, the Commission conducted additional consumer behavioural research. The latter aimed to identify alternative ways to express the ‘best before’ and ‘use by’ dates on food, to enable consumers to better understand and use these dates, to avoid unnecessary food waste, and in particular discarding of foods which are past the ‘best before’ date. During the first phase of the consumer research, Member States and stakeholders were interviewed, in view of collecting data to better understand how current date marking rules and their implementation affect consumers’ decisions to consume or discard foods. During the ensuing phase of the research feedback was received from consumers on different alternatives

⁷ Flash Eurobarometer 425 on food waste and date marking. October 2015

⁸ “Market study on date marking and other information provided on food labels and food waste prevention”, published on 7 February 2018. The final report is available at: <https://op.europa.eu/en/publication-detail/-/publication/e7be006f-0d55-11e8-966a-01aa75ed71a1/language->

to express the ‘best before’ and the ‘use by’ dates in a more self-explanatory manner. In that context, EU national food labelling experts and the members of the EU Platform on Food Losses and Food Waste provided feedback on the different options⁹. During the testing phase of the research, 25,600 participants from all EU countries provided feedback on their understanding, perceptions and intentional behaviour with regard to the different date marking alternatives. Then, a different group of 6,400 consumers participated in an online¹⁰ experiment, where each alternative was tested in terms of actual behaviour in preventing food waste. Amongst the key findings of this research, there is a considerable lack of understanding of the ‘best before’ and ‘use by’ dates. Only 49.5% of surveyed participants were found to interpret correctly the labels and understanding difficulties are much greater for the ‘best before’ than for the ‘use by’ current labels.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers¹¹ (hereinafter 'the Food Information Regulation') establishes the general principles, requirements and responsibilities governing food information to consumers, and in particular food labelling. The Regulation sets a high level of protection of consumers' health and interests by providing a basis for consumers to make informed choices and safe use of food, with particular regard to health, economic, environmental, social and ethical considerations.

The Food Information Regulation requires in its Article 9(1)(f) that a minimum durability ('best before') date or a 'use by' date is always indicated on prepacked foods. These two types of dates are framed in Article 2(2)(r) and Article 24(1) of the Food Information Regulation as follows:

- the date of minimum durability ('best before' date), which is suitable for most foods, and means the date until which the food retains its specific properties when properly stored. It relates to food quality. After that date a food can still be safely consumed, however, it may not always be at its best quality.
- the 'use by' date, which is the date required for foods which, from a microbiological point of view, are highly perishable and are therefore likely after a short period to constitute an immediate danger to human health. It relates to food safety (health). After the 'use by' date a food shall be deemed to be unsafe and should not be consumed.

The provisions of the Food Information Regulation require the indication of the date of minimum durability of a food ('best before' date), with the exception of foods covered by Article 24(1) thereof, on which the 'use by' date must be indicated. In addition, foods listed in Annex X(1)(d), in particular whole fresh fruit and vegetables, wines and other beverages containing 10% or more alcohol by volume, certain bakery products, vinegar, cooking salt, solid sugar, certain confectionery products and chewing gums are exempted from the obligation to bear a 'best before' date.

The Food Information Regulation requires, in its Article 24(2), that the appropriate date is expressed in accordance with Annex X, which establishes the rules for indicating the date of minimum durability, 'use by' date and date of freezing on a food label. Currently, the

⁹ https://food.ec.europa.eu/system/files/2022-02/fw_eu_actions_dm_20211130_report_1.pdf

¹⁰ Online setting due to the pandemic restrictions.

¹¹ OJ L 304, 22.11.2011, p. 18.

expressions used for the date of minimum durability and the 'use by' date are 'best before' and 'use by' respectively.

Article 46 of the Food Information to Consumers Regulation empowers the Commission, by means of a delegated act, to amend its Annexes, in order to take into account consumers' need for information. This draft Commission Delegated Regulation, by amending Annex X and extending the wording of the 'best before' date aims at clarifying that food may still be fit for consumption past its 'best before' date, thus avoiding confusion with the 'use by' date and minimising food waste. This draft Commission Delegated Regulation takes into account consumers' need for information, based on extensive evidence gathering activities, including consumer research and stakeholder consultations.

A transitional period of three years is proposed, considering that the life cycle of a label is on average three years.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers¹², and in particular Article 46 thereof,

Whereas:

- (1) Article 46 of Regulation (EU) 1169/2011 empowers the Commission, by means of a delegated act, to amend the Annexes to Regulation (EU) No 1169/2011, in order to take into account technical progress, scientific developments, consumers' health, or consumers' need for information.
- (2) Annex X to Regulation (EU) No 1169/2011 establishes the rules for indicating the date of minimum durability, 'use by' date and date of freezing on a food label. Currently, the expression used for the date of minimum durability is 'best before'.
- (3) As outlined in the Communication of the Commission 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system'¹³ misunderstanding and misuse of the date marking leads to food waste.
- (4) Consumers often misunderstand and misuse the expressions used for the date of minimum durability. To provide clarity to consumers on the meaning of this date, its expression, as set out in Annex X to Regulation (EU) 1169/2011, should be more clearly communicated.
- (5) The proposed wording is based on the findings of consumer research, which aimed at identifying new ways of expressing the date of minimum durability¹⁴.
- (6) Determining the most appropriate wording to convey the concepts of the date of minimum durability in all the official languages of the EU is needed taking into account all linguistic and cultural particularities. This will also ensure that the expression is clearer and better understood by consumers.
- (7) Taking into account the above, it is appropriate to amend and clarify the expression used for the date of minimum durability. Therefore, the requirements for this date set out in Regulation (EU) 1169/2011 should be updated, and the Annex X should be adapted accordingly.

¹² OJ L 304, 22.11.2011, p. 18.

¹³ COM/2020/381 final

¹⁴ OP reference to be added

- (8) In accordance with paragraph 3 of Article 3 of Regulation (EU) No 1169/2011 a transitional period after the entry into force of the new requirements should be granted for foods bearing labels not complying with the new requirements. This transitional period should allow to continue selling stocks of such foods that have been placed on the market before the end of the transitional period until exhausted,

HAS ADOPTED THIS REGULATION:

Article 1

Annex X to Regulation (EU) 1169/2011 is amended in accordance with the Annex to this Regulation.

Article 2

Stocks of foods bearing labels not complying with the requirements of this Regulation that have been placed on the market before the entry into application of this Regulation may continue to be sold until exhausted.

Article 3

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [\[3 years after the date of entry into force\]](#).

This Regulation shall be binding in its entirety and directly applicable in all Member States in accordance with the Treaties.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Annex X to Regulation (EU) 1169/2011 is amended as follows:

Under Point 1 of Annex X of Regulation (EU) No 1169/2011, indent a, is replaced by the following:

- (a) The date shall be preceded by the words:
- ‘Best before ...’ when the date includes an indication of the day,
 - ‘Best before end ...’ in other cases,

And followed by the words ‘often good after’

(a bis) The date of minimum durability shall be indicated as follows:

In Bulgarian	Най-добър до В повечето случаи годен и след това
In Croatian	Najbolje upotrijebiti do Nakon toga često dobre kvalitete
In Czech	Minimální trvanlivost do Po tomto datu je obvykle ještě vyhovující
In Danish	Bedst før Ofte god efter
In Dutch	Ten minste houdbaar tot Vaak goed na
In English	Best before often good after
In Estonian	Parim enne Sageli hea ka pärast
In Finnish	Parasta ennen Yleensä laadukasta myös sen jälkeen
In French	À consommer de préférence avant le souvent bon après
In Gaelic	Is fearr roimh an é Is minic go mbíonn sé maith ina dhiaidh sin
In German	Mindestens haltbar bis Oft länger gut
In Greek	Ανάλωση κατά προτίμηση πριν από και συχνά μετά την εν λόγω ημερομηνία
In Hungarian	Minőségét megőrzi Jellemzően ezt követően is jó
In Italian	Da consumarsi preferibilmente entro il Spesso buono oltre
In Latvian	Ieteicams līdz Drīkst uzturā lietot pēc
In Lithuanian	Geriausias iki Dažnai vis dar tinkamas naudoti po
In Maltese	L-aħjar użu qabel Normalment ikun tajjeb anki wara
In Polish	Najlepiej spożyć przed Często dobre dłużej

In Portuguese	Consumir antes de Muitas vezes bom após esta data
In Romanian	A se consuma, de preferință, înainte de Adesea, se poate consuma și după data menționată
In Slovak	Minimálna trvanlivosť do Často je vyhovujúci aj po tomto dátume
In Slovenian	Uporabno najmanj do ... Pogosto uporabno po navedenem roku
In Spanish	Consumir preferentemente antes del ... Frecuentemente apto para su consumo incluso después
In Swedish	Bäst före ... Ofta bra efter

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