

# **Draft FoodDrinkEurope**

## **Guidance on Food Information to Consumers:**

### **Chapter on ‘Allergens Labelling’**

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## IN SHORT...

- Substances or products causing allergies must be indicated, also for non-prepacked foods (unless national legislation is in place dictating otherwise);
- Each ingredient or processing aid originating from a substance or product causing allergies or intolerances must be:
  - Indicated in the list of ingredients according to the exact name listed in Annex II;
  - Emphasized through a typeset that distinguishes it from the rest of the list of ingredients;
- If no list of ingredients is provided, the substance or product causing allergies or intolerances must be indicated by means of “contains + [substance(s)/product(s)]”
- When the name of the food clearly refers to the substance or product causing allergies or intolerances, it is not necessary to label the concerned substance or product.
- The European Commission must systematically re-examine and, where necessary, update the list of substances or products causing allergies or intolerances.
- The European Commission must establish implementing measures on the additional voluntary “may contain” labelling.

# Article-by-Article

The following articles are relevant for allergens labelling<sup>1</sup>:

- **Article 9.1(c): Mandatory particulars**
- **Article 21: Labelling of certain substances or products causing allergies or intolerances**
- **Article 36.3(a): Additional voluntary allergens labelling (“may contain”)**
- **Annex II: List of substances or products causing allergies or intolerances**

## Article 9.1(c): Mandatory particulars

In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:

[...]

(c) any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;

[...]

Food business operators must label any ingredient or processing aid:

- listed in Annex II; or
- derived from a substance or product listed in Annex II

The list of Annex II is provided below. Labelling of these ingredients, processing aids, substances or products causing allergies or intolerances is obligatory when they are used in the manufacture or preparation of a food and are still present in the finished product, even if in an altered form.

Further rules on how to label are specified in Article 21.

## Article 21: Labelling of certain substances or products causing allergies or intolerances

Article 21 is the main article covering allergens labelling.

It is structured as follows:

- **21.1: Presentation of the labelling of certain substances or products causing allergies or intolerances**

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<sup>1</sup> For ease of reference, allergens labelling in this document refers to the labelling of substances or products causing allergies or intolerances.

- **21.2: Systematic re-examination and possible update of the list of substances or products causing allergies or intolerances**

### **21.1: Presentation of the labelling of certain substances or products causing allergies or intolerances**

Without prejudice to the rules adopted under Article 44(2), the particulars referred to in point (c) of Article 9(1) shall meet the following requirements:

Food business operators must indicate the substances or products causing allergies or intolerances in the way specified in the following sub-paragraphs. Where national measures have been introduced by individual Member States on non-prepacked foods (Art. 44.2), these precede over the requirements of Article 21.

(a) they shall be indicated in the list of ingredients in accordance with the rules laid down in Article 18(1), with a clear reference to the name of the substance or product as listed in Annex II; and

The substances or products causing allergies or intolerances must be indicated in the list of ingredients (normally on the back-of-pack), with a clear reference to its name as listed in Annex II. Please note that it is not possible to mention any other name than indicated in Annex II.

(b) the name of the substance or product as listed in Annex II shall be emphasised 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.

The name must be emphasized through a typeset different than that from the rest of the list of ingredients, for example by means of the font, style or background colour.

#### QUESTION FOR MEMBERS:

1. Please indicate your preference of emphasizing the name of the substance or product:

##### Option 1: Italic

Ingredients: *Wheat* flour, *Milk* chocolate (sugar, cocoa mass, *milk* powder, emulsifier: soya lecithin), Sugar, Palm oil, *Eggs*, Raising agent : (...), Flavouring (contains *wheat*), *cream* powder.

##### Option 1: Bold

Ingredients: **Wheat** flour, **Milk** chocolate (sugar, cocoa mass, **milk** powder, emulsifier: **soya** lecithin), Sugar, Palm oil, **Eggs**, Raising agent : (...), Flavouring (contains **wheat**), **cream** powder.

FoodDrinkEurope recommends the use of

In the absence of a list of ingredients, the indication of the particulars referred to in point (c) of Article 9(1) shall comprise the word 'contains' followed by the name of the substance or product as listed in Annex II.

When no list of ingredients is given (e.g. for glass bottles intended for reuse which are indelibly marked and which therefore bear no label, ring or collar), the word "contains" followed by the name of the substance or product causing allergies or intolerances must be indicated.

Example: "contains milk".

Where several ingredients or processing aids of a food originate from a single substance or product listed in Annex II, the labelling shall make it clear for each ingredient or processing aid concerned.

In case the food contains several ingredients or processing aids that originate from one substance or product causing allergies or intolerances, *each* ingredient or processing aid must be labelled.

#### QUESTION FOR MEMBERS:

2. Also taking into account question 1, would you consider the use of asterisks or 'footnotes' for the labelling of each ingredient or processing aid? E.g.:

Ingredients: **Wheat** flour<sup>1</sup>, **Milk** chocolate<sup>2</sup> (sugar, cocoa mass, **milk** powder<sup>2</sup>, emulsifier: **soya** lecithin), Sugar, Palm oil, **Eggs**, Raising agent : (...), Flavouring<sup>1</sup>, **cream** powder.

<sup>1</sup> contains gluten <sup>2</sup> contains milk

The indication of the particulars referred to in point (c) of Article 9(1) shall not be required in cases where the name of the food clearly refers to the substance or product concerned.

In those cases where the name of the food clearly refers to the substance or product causing allergies or intolerances, it is not obliged to label the concerned substances or products.

**QUESTION FOR MEMBERS:**

3. Please provide an example of the latter.

**Example:**

**21.2: Systematic re-examination and possible update of the list of substances or products causing allergies or intolerances**

In order to ensure better information for consumers and to take account of the most recent scientific progress and technical knowledge, the Commission shall systematically re-examine and, where necessary, update the list in Annex II by means of delegated acts, in accordance with Article 51.

The European Commission must systematically re-examine and, where necessary, update the list of substances or products causing allergies or intolerances.

Here, it needs to take into account:

- the objective of ensuring better information for consumers; and
- the most recent scientific progress and technical knowledge.

Where, in the case of the emergence of a risk to consumers' health, imperative grounds of urgency so require, the procedure provided for in Article 52 shall apply to delegated acts adopted pursuant to this Article.

If there is an urgent need due to emergence of a risk to consumers' health, the urgency procedure must be applied. This means that the European Commission can adopt a delegated act in relation to Article 21 without delay, as long as no objection is expressed by the European Parliament or the Council.

**Article 36.3(a): Additional voluntary allergens labelling (“may contain”)**

Article 36 covers the applicable requirements for voluntary food information and the implementing measures that the European Commission needs to take on the application of the requirements.

First, Article 36.2 covers the general requirements that voluntary food information must meet:

Food information provided on a voluntary basis shall meet the following requirements:

(a) it shall not mislead the consumer, as referred to in Article 7;

- (b) it shall not be ambiguous or confusing for the consumer; and  
(c) it shall, where appropriate, be based on the relevant scientific data.

Then, Article 36.3 covers the implementing measures that the European Commission must adopt in order to facilitate the application of these requirements:

The Commission shall adopt implementing acts on the application of the requirements referred to in paragraph 2 of this Article to the following voluntary food information:

- (a) information on the possible and unintentional presence in food of substances or products causing allergies or intolerances;

[...]

According to Article 36.3(a), the European Commission must adopt implementing measures detailing the application of the requirements related to voluntary information on “may contain” labelling (i.e. the possible and unintentional presence in food of substances or products causing allergies or intolerances).

## Annex II: List of substances or products causing allergies or intolerances

Annex II provides the following list of substances or products causing allergies or intolerances:

### **1. Cereals containing gluten, namely: wheat, rye, barley, oats, spelt, kamut or their hybridised strains, and products thereof, except:**

- (a) wheat based glucose syrups including dextrose <sup>1</sup>;  
(b) wheat based maltodextrins <sup>1</sup>;  
(c) glucose syrups based on barley;  
(d) cereals used for making alcoholic distillates including ethyl alcohol of agricultural origin;

### **2. Crustaceans and products thereof;**

### **3. Eggs and products thereof;**

### **4. Fish and products thereof, except:**

- (a) fish gelatine used as carrier for vitamin or carotenoid preparations;  
(b) fish gelatine or Isinglass used as fining agent in beer and wine;

### **5. Peanuts and products thereof;**

### **6. Soybeans and products thereof, except:**

- (a) fully refined soybean oil and fat <sup>1</sup>;  
(b) natural mixed tocopherols (E306), natural D-alpha tocopherol, natural D-alpha tocopherol acetate, and natural D-alpha tocopherol succinate from soybean sources;  
(c) vegetable oils derived phytosterols and phytosterol esters from soybean sources;  
(d) plant stanol ester produced from vegetable oil sterols from soybean sources;

**7. Milk and products thereof (including lactose), except:**

- (a) whey used for making alcoholic distillates including ethyl alcohol of agricultural origin;
- (b) lactitol;

**8. Nuts, namely: almonds (*Amygdalus communis* L.), hazelnuts (*Corylus avellana*), walnuts (*Juglans regia*), cashews (*Anacardium occidentale*), pecan nuts (*Carya illinoensis* (Wangenh.) K. Koch), Brazil nuts (*Bertholletia excelsa*), pistachio nuts (*Pistacia vera*), macadamia or Queensland nuts (*Macadamia ternifolia*), and products thereof, except for nuts used for making alcoholic distillates including ethyl alcohol of agricultural origin;**

**9. Celery and products thereof;**

**10. Mustard and products thereof;**

**11. Sesame seeds and products thereof;**

**12. Sulphur dioxide and sulphites at concentrations of more than 10 mg/kg or 10 mg/litre in terms of the total SO<sub>2</sub> which are to be calculated for products as proposed ready for consumption or as reconstituted according to the instructions of the manufacturers;**

**13. Lupin and products thereof;**

**14. Molluscs and products thereof.**

<sup>1</sup> And the products thereof, in so far as the process that they have undergone is not likely to increase the level of allergenicity assessed by the Authority for the relevant product from which they originated.