

Brussels, 19th May 2016

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Date of first freezing - Industry impact paper -

In summary:

- ✚ The meat industry's view is that the word "product" in the requirements of Regulation 1169/2011, Annex III point 6.1 refers to the final product as sold to the consumer and not to the "raw material". This is in line with the common use of this term in EU food law (*see annex I*).
- ✚ Referring to the "raw material" for frozen minced meat and meat preparations is a burdensome interpretation due to various complexities associated to it. The meat industry has assessed that it will increase the costs to manufacturers and consumers by 15-30%, and it will affect trade and increase waste.
- ✚ Consideration has been given to a proposed flexible approach by DG Santé of using the earliest date of freezing on a particular day of production but the assessment is that it is not practically feasible.
- ✚ The meat industry understands the need of information to consumers and recommends that a pragmatic approach is taken so that it can be implemented on a level playing field in all the Member States without fragmenting the internal market.
- ✚ A strict interpretation considering "product" refers to "raw material" would need an impact assessment similar to the issue of mandatory origin labelling for meat as an ingredient.
- ✚ In addition, a submission of this requirement is made into the REFIT programme to ensure that the requirement fit for purpose is requested.

Manufacturing implications

The current challenge is for meat manufacturers to address demands of:

- ✓ quality,
- ✓ fat content
- ✓ origin
- ✓ price.

The capacity to fulfill customer specifications depends on the type of raw material on the market which varies all the time depending on animals slaughtered and the demand on the fresh market. When the fresh meat demand is high, there are fewer raw materials available and more frozen raw materials are used. The meat market usually works on a 12-18 month cycle and advances in freezing technology allow flexibility in sourcing and manufacture of frozen minced meat and meat preparations. See Annex 2 attached for the benefits of frozen food.

The burdensome interpretation will mean that full utilisation of pallets may not be possible as customers will prefer not to have mixed date codes on pallets and it will restrict this material from being used in frozen minced meat and meat preparations. Some frozen raw material is produced in relatively small quantities and it would be obtained during production over a number of days; therefore, in order to preserve them they would need to be frozen. For example, in the case of lamb skirt (one of the main ingredients of doner kebabs) only small amounts are obtained from each animal meaning it can take a number of weeks to produce sufficient for a customer load. Not being able to utilise this material will negatively impact the sheep meat market at a time when it is facing many challenges.

Earliest date of freezing

The meat industry has considered the proposal for a flexible approach of using the earliest date of freezing on a particular day of production and it is not practically feasible:

- Frozen minced meat and complex meat preparations such as burgers, meatballs, grill-steaks etc. are made from meat from multiple sources of material which can contain different levels of visual lean and fat. To achieve the batches of raw material of the consistent quality required for processing, raw materials will have been selected from many different batches of raw material throughout the day. Accurately passing on the information of the earliest date of the material in the preparation which was frozen is not always possible, as adjustments, of fat for example, are made during the manufacturing process using various sources of raw material.
=> the earliest date is not known in advance but at the end of the production day.
- The **earliest date would be misleading** as most frozen minced meat and meat preparations are generally made with 30 to 60% frozen raw material and with 40 to 70 % fresh raw material. Within this, there may be 15 to 20 raw material dates per pallet and more than one pallet is used in production. The earliest date will be even more difficult to follow where different types and species of raw material with different origins are mixed.
- Since batches of raw material will comprise material that has different dates of freezing, in order to manage, track and ensure that the earliest date is applied to the label, a complete re-design of the current labelling systems will be required to capture the new information and this will involve **changes in recording and transferring information within the manufacturing environment**. It is estimated that manufacturers will need to invest approximately €600,000 to renew the date coding software for each site. In addition, there will be ongoing annual costs of around €600,000 associated with the additional resource requirements to manage the stock in the supply chain. This figure includes the need to

provide additional gaps in normal efficient production runs to separate different 'frozen on' batches for traceability purposes. The additional cost has been estimated at around 15-30 % per manufacturer (based on assessments from DE, ES, FR, IRL, SE and UK), an additional 2 to 3 employees would be needed to comply with the burdensome interpretation of the requirement.

Economic impact: costs, trade and waste

Currently, for frozen minced meat and meat preparations the date of production and the date of durability are already stated. These dates are meaningful in adequately informing the consumer of the product information when making a purchase and the introduction of a DOFF of the raw material will only **confuse consumers**. Evidence of this is shown by the [Eurobarometer 425](#) of September 2015 which reports that a significant part of consumers do not understand date marking. If the date of freezing is earlier than the date of production, this will be confusing and it will heighten consumers' concerns as they are always informed not to refreeze frozen products so their perception will be that they cannot freeze the food, leading to wastage.

Consumer confusion will lead **retailers to impose a reduction of age** of frozen raw material. This will completely destabilise the meat market and lead to increase in costs of frozen minced meat and meat preparations. Usually when demand and supply are out of balance, meat material may be frozen and used later from stock. The current meat market already has commercial volatility that can affect stock and result in fluctuations of availability and surplus during food crises and political unrest. An increased demand for frozen raw material of less than the normal 12 - 18 month supply cycle will result in shortages and it will push up production costs and increase prices for the consumer. For example, a site that produces 460 - 500 tonnes/week of frozen mince, sausage, burgers and dice on 5 to 6 high speed production lines, reducing frozen raw material from 24 to 12 months would increase raw material costs by 15%, which would add 5 million Euros to this business and reducing frozen raw material from 24 to 3 or 6 months would add 25% to 9 million Euros to the raw material price.

Small- to medium-size enterprises (SMEs) will be less competitive. They will be limited in the volume of material so they will face efficiency disadvantages by having to manually adjust date codes in order to comply with the burdensome interpretation. There will also be increased food waste as there will be a sizeable portion of 'older' meat (which has neither a food safety nor quality concern) that is not permitted for use by retailers and this will unnecessarily devalue the material.

If an **error** is made in labelling the earliest date of first freezing, there may be a need to carry out a **product recall**, even though there is no food safety risk which will result in significant costs and waste. Due to the non-specificity of using the earliest date of first freezing on labelling, if the date is used as a traceability parameter it is meaningless and it will increase the amount of material that would be subject to recall even if a narrower range was affected. This in turn will lead to unnecessary waste.

There is concern that with a rigid view of DOFF this will actually **increase food waste**. The meat industry is of the view that the burdensome interpretations would be in conflict with the European Commission's aim to reduce food waste. The new [Circular Economy \(CE\) package](#) helps European business and consumers make the transition to a stronger and more circular economy where resources are used in a more sustainable way. The EU approaches 'design out' waste and typically

involve innovation throughout the value chain, rather than relying solely on solutions at the end of life of a product. For example, they may include the lengthening of the products' useful life (durability). Products that last are about finding successful business models and strategies to create value for companies and consumers in a circular economy through longer lasting products. However, the burdensome interpretation will lead to a reduction in overall useable frozen shelf life, given an adverse reaction to consumer perceptions mentioned above, particularly in the retail consumer market place. Severe restrictions in the age of raw material used are likely and this will lead to increased product wastage.

Also, the benefits of **EU market support mechanisms could be jeopardised**. For example, the intervention system set up as a result of the increase in production of EU pork and a decline in exports due to the loss of the Russian market: pig meat prices were low and there are severe pressures on this sector and it is in current crisis. So in 2015, the EU farm ministers and the European Commission agreed a package of support measures including private storage aid for pork, whereby EU financial aid was provided while the pork was in frozen storage. Such a measure will increase the supply of frozen material exactly at the time when demand for this raw material is likely to be reduced. Also, for beef, the intervention system was used during the BSE crisis, where it was stored for more than one year and then sold by the EU Commission. Thus, the burdensome interpretation on DOFF will reduce the benefits of such initiatives.

Some overseas **import markets will be adversely affected** particularly Brazil and Thailand due to the shipping time which will make existing supply chains impossible to supply working quantities to the EU within the restricted timeframes anticipated. Imports from third countries transiting and veterinary clearances can take between 3-4months and most of this material comes in a frozen format. Given the current differences in interpretation, the labelling rules applied to imported frozen material will disadvantage European businesses if not enforced in the same way. The cost of material being exported to markets such as China will also be impacted by the burdensome interpretation.

The European Commission is committed to **reducing red tape** and in 2014, the High Level Group on Administrative Burdens (with expertise in better regulation and outlining best practice in implementing EU Regulation in the least burdensome way) published their final [report](#). It pointed out that the Commission had already taken into account a cost of EUR104million associated with the additional administrative burden of implementing the Food Information to Consumers. In May 2015, the Commission set up the [REFIT Platform](#) to conduct an ongoing dialogue with Member States and stakeholders on improving EU legislation to reduce regulatory burden and encourage growth.

The Commission's legal services interpretation on the date of first freezing requirement is an example of increased burden and costs. Given that **there are no scientific tests available to check the age of material**, the requirement can only be enforced with an inspection of information supplied with raw material. The industry's understanding is that the information needs to be made available on request whereas the Commission legal services' interpretation is likely to give onus to the manufacturer to keep this information to hand for compliance purposes, thus adding to the administrative burden. At a time when EU Member States are looking to become more efficient and reduce costs of enforcement, the burdensome interpretation will have a negative financial impact on the meat industry. Therefore, this is an area where the Commission can directly reduce the administrative burden and costs.

Conclusion

The Commission legal services' interpretation for the date of freezing to be applied for the raw material is contrary to the interest of European businesses. Burdensome labelling requirements would only serve to rigidify supply chains, disturb the internal market and disrupt international trade. It would negatively affect many businesses with a consequential negative impact on their ability to invest and the prospects for their employees and furthermore, it would have an inflationary impact on the cost of food to consumers and their ability to afford valuable protein.

Due to the additional administrative burden, the meat industry recommends that DG Santé re-examines the interpretation for frozen minced meat and frozen meat preparations, taking into account the negative impact on manufacturers, consumers, trade and growth to ensure that the interpretation of the requirement is pragmatic. Due to the negative impact expected, going on with a rigid interpretation would request a detailed one. Also, it would be worth to submit this requirement into the REFIT programme to ensure that the requirement fits for purpose.

ANNEXES

Annex 1 - Legal basis of the industry's interpretation

Legal perspective

In 2015, the Commission's legal services advised DG Santé that the date of first freezing should refer to the date of first freezing of the raw material for frozen meat and meat preparations that have been frozen more than once and not that of the final product. The meat industry's view is that this interpretation is burdensome and contrary to the actual wording of the FIC Regulation, Annex III point 6.1 which states:

For frozen meat, frozen meat preparations and frozen unprocessed fishery products, the labelling must include the following additional particulars: 'the date of freezing or the date of first freezing in cases where the **product** has been frozen more than once, in accordance with point (3) of Annex X'

The meat industry proposes that the date of first freezing requirement for frozen minced meat and meat preparations i.e. those that did not exist in that form before manufacture should label the date of freezing as the final product.

Within both Commission Regulation 16/2012 amending Annex II of Regulation 853/2004 and FIC, the requirements to indicate the date of initial freezing is for food business operators (FBOs) and consumers to be better able to judge the suitability of the food for human consumption and to estimate its durability (based on a risk assessment). The meat industry fully understands the need for both consumers and FBOs to have greater transparency and provision of information with respect to date of first freezing (DOFF) in unprocessed products of animal origin (POAO). The meat industry recognises that the intention is to provide EU consumers with additional information regarding the age of POAO.

Context

Whilst respecting the Commission legal services' interpretation of the requirement, the following legal opinion intends to present evidence for further exploring the context and use of the term 'product' and it attempts to identify the original intent of the use of this term within the FIC Regulation.

Although 'product' is not specifically defined within FIC, according to Article 2.1, the definitions encompassing 'product' found in the Hygiene Regulations 852/2004 and 853/2004 should be assumed. Take for example 2.1 (f) where *'meat products means processed products resulting from the processing of meat or from the further processing of such processed products. So that the cut surface shows that the product no longer has the characteristics of fresh meat.'*

This definition serves to indicate that a product is something that results from the processing of some other material or an ingredient; and as such should be seen as the output of a process rather than an 'input' which one would assume is an ingredient.

The understanding that a product is the output of a process or action rather than referring to the input, is supported by the definition of 'product' offered in the online Oxford English Dictionary, which is: an article or substance that is manufactured or refined for sale, referring to 'food product' as a direct example.

The term ingredient is defined within FIC Article 2.2 (f)

'ingredient' means any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form: residues shall not be considered as 'ingredients':

This serves to demonstrate that the concept of an ingredient is dealt with separately and specifically within FIC and therefore if the 'frozen on' date had intended to include frozen ingredients, this would have been expressly included; furthermore, we believe that although an ingredient can be a product in its own right, a product (as a resulting output) cannot not be considered as an ingredient.

Even where the use of 'product' in FIC might be interpreted to include ingredients used, it is sensible to look and give particular consideration to the specific context of the use of 'product' in Annex III of FIC:

FOODS FOR WHICH THE LABELLING MUST INCLUDE ONE OR MORE ADDITIONAL PARTICULARS

TYPE OR CATEGORY OF FOOD PARTICULARS

6. Frozen meat, frozen meat preparations and frozen unprocessed fishery products

6.1 Frozen meat, frozen meat preparations and frozen unprocessed fishery products	The date of freezing or the date of first freezing in cases where the product has been frozen more than once, in accordance with point (3) of Annex X.
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Where the first column refers to the category of food to which the provision applies, the second refers to the additional particular relevant to that specific category of food which must be applied to the label. In this context, it is applying a labelling condition for a food product to be marketed to and clearly intended for the consumer i.e. the food in the form in which it is presented to the consumer or mass caterer.

Furthermore, it can be argued that this provision cannot be applied to the meat used in a meat preparation or to the fish used in mixtures such as in a seafood cocktail mix, as the particular is specifically intended to apply to the category of food specified in column one. The meat or individual seafood element is an 'ingredient' in the category of food and not the actual category of food to which the particular must be applied; therefore, the particular cannot apply to ingredients.

If the intention was to apply the provision to the meat used as an ingredient in the meat preparation or the individual fish used as an ingredient in a seafood cocktail, then the expectation is that this would have been made clear with the use of the word 'ingredient'.

This is particularly true as there are examples within FIC of when a clear distinction is made between the labelling of a final product intended for marketing to the consumer and indications relating to the ingredient of a food. A good example can be found within Recital 29 and Articles 26.2 and 26.3 dealing with country of origin.

(29) The indication of the country of origin or of the place of provenance of a food should be provided whenever its absence is likely to mislead consumers as to the true country of origin or place of provenance of that product. In all cases, the indication of country of origin or place of provenance should be provided in a manner which does not deceive the consumer and on the basis of clearly defined criteria which ensure a level playing field for industry and improve consumers' understanding of the information related to the country of origin or place of provenance of a food. Such criteria should not apply to indications related to the name or address of the food business operator.

And Article 26:

2. Indication of the country of origin or place of provenance shall be mandatory:

(a) where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance;

(b) for meat falling within the Combined Nomenclature ('CN') codes listed in Annex XI. The application of this point shall be subject to the adoption of implementing acts referred to in paragraph 8.

3. Where the country of origin or the place of provenance of a food is given and where it is not the same as that of its primary ingredient:

(a) the country of origin or place of provenance of the primary ingredient in question shall also be given; or

(b) the country of origin or place of provenance of the primary ingredient shall be indicated as being different to that of the food.

The application of this paragraph shall be subject to the adoption of the implementing acts referred to in paragraph 8.

In conclusion, the Commission's interpretation does not accord with the intention when the Regulation was drafted. For the reasons set out in this paper and the legal opinion set out below, we believe that providing consumers with the date of first freezing was intended to show the 'accomplished lifetime' of the product as consumed, not of the raw materials.

The following is a legal opinion obtained from a firm of legal solicitors based in the UK after receiving instruction from the British Frozen Food Federation.



ROYTHORNES LIMITED

DATED 28 MAY 2015

BRITISH FROZEN FOOD FEDERATION

**LEGAL OPINION:
FIC REGULATION 1169/2011
THE DATE OF FIRST FREEZING**

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Background

1. The British Frozen Food Federation (the **BFFF**) is the UK's frozen food trade association, which represents over 320 members and captures the entire cold chain of producers, wholesalers, importers, exporters, brokers, retailers and related associate businesses, including both large corporates and SMEs.
2. Since 13 December 2014 the rules relating to the information provided on the package or attached label of pre-packaged¹ foods has changed and food business operators (**FBOs**) must now comply with the labelling requirements of Regulation (EU) No 1169/2011 on the provision of food information to consumers and mass caterers (the **FIC Regulation**) which applies directly to all UK FBOs.
3. We understand that the European Commission (the **EC**) has opined that, pursuant to the FIC Regulation², when including the date of first freezing, FBOs must refer to the date of first freezing of the fish as caught or the carcass of meat as slaughtered, in each case as an ingredient, rather than the date of first freezing of the food in the form in which is it packed for marketing to the consumer.
4. In essence, the EC have assumed that, in interpreting the word '**product**' within the FIC Regulation, Member States should consider that the word 'product' in the context of Annex III (6.1), can be applied equally to mean '**ingredient**' as well as the '**final form presented to the consumer**'.
5. We act as English legal advisers to the BFFF and have been instructed by the BFFF to provide an English Legal Opinion in relation to the above issue and, specifically, whether or not we agree with the EC's interpretation of the FIC Regulation in relation to the use and meaning of word '**product**' in the context of Annex III (6.1).
6. All references used in this Legal Opinion are references to the FIC Regulation unless expressed otherwise.

FIC Regulation Annex III, point 6.1

7. Annex III, point 6.1 of FIC Regulation states that:

"for frozen meat, frozen meat preparations and frozen unprocessed fishery products the labelling must include the following additional particulars: 'the date of freezing or the date of first freezing in cases where the product has been frozen more than once, in accordance with point (3) of Annex X."

Definition of the word 'Product'

8. The term 'product' is not a defined term within the FIC Regulation. However, from an English language perspective, the term 'product' is commonly associated with the following: manufactured goods / items for consumption by consumers / commodities produced for sale / goods produced by a company / items produced as a result of the multiplication of two or

¹ Pre-packed food is any single item for presentation as such to the final consumer or 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.

² Annex III 6.1

more quantities. By contrast, the English language meanings do not refer to elements / components / constituent parts.

9. Other provisions of the FIC Regulation make reference to the word 'product', but specifically in the context of the 'output' of processing rather than an 'input' - such as with an ingredient.

FIC Regulation definition of Ingredient

10. The term 'ingredient' is defined in the FIC Regulation as follows³:

'ingredient' means any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form: residues shall not be considered as 'ingredients'.

It follows, therefore, that a product (the output of processing) can be an ingredient (as an input) of another product. However, the reverse is not the case in that an ingredient (input) cannot be a product (output).

11. The term 'compound ingredient' is defined in the FIC Regulation as meaning '*an ingredient that is itself the product of more than one ingredient*'.
12. The FIC Regulation also defines 'primary ingredient' as being '*an ingredient or ingredients of a food that represent more than 50% of that food or which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required*'.

Interpretation of the FIC Regulation

13. Points 10, 11 and 12 above support the fact that the FIC Regulation has carefully considered the meaning and usage of the word 'ingredient'. Indeed, there is regular reference to the word and throughout the FIC Regulation, whenever there is reference to an element, component or constituent of food products, the Regulation specifically uses the word 'ingredient' (as defined). For example, the word 'ingredient' is used frequently in this context within the following sections:
- Article 18 (List of Ingredients)
 - Articles 19 and 20 (Omissions)
 - Article 21 (Labelling of Products causing Allergies or Intolerances)
 - Article 22 (Quantitative Indication of Ingredients)
 - Article 26 (Country of Origin)
 - Annex VII (Indication and Designation of Ingredients)
 - Annex VIII (Quantitative Indication of Ingredients)

³ Article 2.2(f)

By contrast, the word ‘product’ does not appear in this context and the words ‘ingredient’ and ‘product’ are not used inter-changeably within the Regulation.

14. There is specific reference to the word ‘product’ throughout Annex II (substances or products causing allergies or intolerances) but, in each case, where the word ‘product’ is used, it is used in the context of something manufactured or produced – ie ‘.....and products thereof.’
15. There is also reference to ‘*food ingredients*’ in paragraph 5.1 of Annex III (Foods or food ingredients with added phytosterols, phytosterol esters, phytostanols or phytostanol esters). However, by contrast, paragraph 6.1 (Frozen meat, frozen meat preparations and frozen unprocessed fishery products) makes no such mention of ‘ingredients’ within the food types or categories, or particulars.
16. Annex VI makes specific reference to frozen foods and states that the particulars of the specific treatment undergone by foods, such as refreezing, must be included⁴. However, the provision specifically states that the requirement to include the word ‘defrosted’ does not apply to ‘*ingredients present in the final product*’⁵. This means that, for example, if any ingredient has been frozen and defrosted before being incorporated into a final food item which is not sold in the frozen form, there would not be any mention of any freezing history – presumably due to the fact that it is considered that the treatment of particular ingredients within final products is not considered to be of relevance to consumers. It follows, therefore, that information concerning the date of first freezing of ingredients within frozen foods would be equally irrelevant in the eyes of consumers.
17. Annex VI also makes specific reference to constituent elements of meat and fishery products and states that:

“meat products, meat preparations and fishery products which may give the impression that they are made of a whole piece of meat or fish but actually consist of different pieces combined together by other ingredients including food additives and food enzymes or by other means.....”

In this provision, there is clear reference to the word ‘ingredients’ in the context of the elements forming the final product.

⁴ Annex VI, Part A (1)

⁵ Annex VI, Part A (2)(a)

18. It is also important to note the specific context of the use of the word 'product' in Annex III of FIC itself:

ANNEX III	
FOODS FOR WHICH THE LABELLING MUST INCLUDE ONE OR MORE ADDITIONAL PARTICULARS	
<u>TYPE OR CATEGORY OF FOOD</u>	<u>PARTICULARS</u>
6. Frozen meat, frozen meat preparations and frozen unprocessed fishery products	
6.1 Frozen meat, frozen meat preparations and frozen unprocessed fishery products	The date of freezing or the date of first freezing in cases where the product has been frozen more than once, in accordance with point (3) of Annex X.

19. The first column refers to a **type or category of food** to which the provision applies and the second column to the **specific particular to be applied to the label**. In this context it is applying a labelling condition for **product itself** – being the output of a process in the form intended to be provided to the consumer.
20. By way of example, when considering the food category of 'meat preparations', if the term **product** was intended to refer to the frozen ingredient in such item, it would be the date of freezing of the fresh meat from which the meat preparation was produced. However, since the reference in the first column is to 'meat preparations', the date that must be indicated on the label must be the date that the meat preparation was first frozen, as this is the category of food to which the condition is applied. If the intention was to apply the provision to the meat used as an ingredient in the meat preparation, then the expectation is that this would have been made clear.

Summary

21. Chapter IV contains the core provisions of the FIC Regulation requiring FBOs to include mandatory food information, including detailed provisions on mandatory particulars. Mandatory particulars include a list of *'all the ingredients of the food'*⁶. Clearly the intention of the EC is to ensure that all the constituent elements that make up the food are listed out separately for consumers' information. This flows from one of the key objectives of the new legislation – ie. *'to pursue a high level of protection of consumers' health and interests by providing a basis for final consumers to make informed choices and make safe use of food...'*⁷. It therefore

⁶ Article 9 and 18(1)

⁷ Article 3(1)

follows that the use of the word 'ingredient' is of great importance and its inclusion, usage and context has been carefully considered and documented. In addition the FIC Regulation obligates all FBOs to include a heading on the label that specifically includes the word 'ingredients'⁸.

22. The very fact that neither the words 'ingredient' nor 'primary ingredient' are used in Annex III implies that the FIC Regulation does not intend to refer, in this context, to the constituent parts or elements of frozen meat, frozen meat preparations and frozen unprocessed fishery products, . If the FIC Regulation had intended to highlight the date of first freezing of each element or, indeed, the primary element, instead of the wording as drafted:

Type of Category of Food

"Frozen meat, frozen meat preparations and frozen unprocessed fishery products"

Particulars

"...the date of first freezing where the product has been frozen more than once...",

the wording would have read:

Type of Category of Food

"Frozen meat, frozen meat preparations and frozen unprocessed fishery products (including their ingredients / the primary ingredient)"

Particulars

"the date of first freezing in cases where the product or any of the ingredients / the primary ingredient within the product have been frozen more than once".

23. The concept of including the date of first freezing of the first frozen constituent element of a product could actually be confusing to consumers due to the fact that certain elements may be frozen safely for a significant period of time without any deterioration to the quality or nutritional value of the foodstuff. Including the date of first freezing as the date that such constituent element was initially frozen would imply that the whole product was frozen on this date and would invariably give the wrong impression, thereby distorting the position in the eyes of the consumer. This would contradict the general principle of fair information practices – that all food information must be accurate, clear, easy to understand and not misleading – particularly as to the characteristics of the food⁹.
24. In addition, we do not consider that consumers would actually attach any significant value¹⁰ to the date of first freezing of the constituent parts and so there is no regulatory need to present this information to consumers. To do so would be inconsistent with the principles governing mandatory food information as set out in the FIC Regulations which states that the mandatory information should be such information as perceived by the consumers to be valuable and/or beneficial¹¹. The FIC Regulation has been implemented in order to prevent misleading practices and omissions of important relevant information in the eyes of the consumer. Interpreting the date of first freezing to mean the date of first freezing of the

⁸ Article 18(1)

⁹ Article 7

¹⁰ Article 4(2)

¹¹ Article 4

first frozen ingredient contained within the product could potentially confuse consumers unnecessarily.

25. We agree that food information law should prohibit the use of information that could mislead the consumer and it is our view that the consumer will interpret the 'date of first freezing' to be the 'date of first freezing of the product' – in line with the wording of the Regulation - and not the 'date of first freezing of the earliest frozen ingredient'. Therefore, adopting an approach of considering the product rather than any ingredients must inherently be in the interests of the consumer.
26. We note that the FIC Regulation recognises the need to observe the principles of proportionality and sustainability; the intention of food information law is to create a balanced, fair, workable and viable position for all stakeholders without creating unnecessary and irrelevant additional administrative burden or cost to FBOs (especially small and medium-sized enterprises) and enforcement authorities. Two of the key objectives are to consider, where appropriate, *'the need to protect the legitimate interests of producers and to promote the production of quality products'*¹² and ensure *'the smooth functioning of the internal market'*¹³.
27. Having reviewed the FIC Regulation (and accompanying guidance notes), we consider that any decision to extend the interpretation of the date of first freezing to include the first date of freezing of any ingredient contained within the product is contrary to the interests of consumers and European businesses. From a financial and trade perspective, it would have a negative impact on businesses' ability to invest and an inflationary impact on the cost of food to consumers. It is, therefore, our opinion that the EC should interpret the Regulation strictly as drafted, without reference to the concept of 'ingredients'. Any other approach will be introducing additional, unnecessary and, most importantly, confusing obligations beyond that which is required by law which could have a detrimental effect on the supply chain and consumers.

28 May 2015



Roythornes Limited

¹² Article 3(2)

¹³ Article 1.1

Annex 2 - The benefits of frozen foods

There are considerable benefits that frozen foods can offer to the consumer that the current interpretation by the Commission is detrimental to consumer perception of frozen foods, and will affect the realisation of these benefits by the consumer:

- Food purchased frozen by the consumer or used frozen by a processor has been commercially frozen very quickly and can be held at very low temperatures for long periods of time without any negative impact on the quality, nutrition and wholesomeness of the food.
- Freezing is nature's own way of preserving foods, so the use of preservatives, sugar and salt is not required to maintain the safety or quality of frozen food.
- Research has shown that freezing locks nutrients into the food and, in consequence, they can be more nutritious than the 'fresh' or chilled counterpart.
- Frozen foods have a long shelf life, as consumers can use the amount that they need for a particular meal occasion and return any surplus to the freezer for use in the future. This means that it is much easier for them to control portion sizes and reduces food waste.
- Commercially frozen products are usually better value than fresh or chilled products. While fresh products are subject to fluctuations in supply, commercially frozen foods can offer more consistent price points. Furthermore, due to the greater efficiencies and reduced wastage offered by the frozen food supply chain, frozen food can prove better value than its fresh equivalent. For example, frozen Atlantic cod has been shown to be 30% lower in price than its fresh equivalent due to the considerable costs associated with having to fly fresh cod from Greenland.
- Freezing allows the best value and availability of ingredients to processors. Freezing allows parts of the fish or animal to be stored and used at the most fresh; allows for season variations in availability and promotes efficient carcass utilisation and valuation by minimising waste.
- Research has shown that, due to the lower volume of waste and transport methods used in the frozen food supply chain, the carbon footprint of frozen food overall is lower than that for chilled food. For example, 3kg CO² is produced for every 1kg Fresh Atlantic cod produced, twice the CO² that is produced in the production of frozen Atlantic cod.

The **European Livestock And Meat Trades Union (UECBV)**, founded in 1952, is the mouthpiece of national federations representing livestock markets, livestock traders (cattle, horses, sheep, pigs), meat traders (beef, horsemeat, sheep meat, pig meat), and meat industry (slaughterhouses, cutting plants and meat preparation plants).

Brought together within the UECBV are:

- ✚ an international association i.e. the **European Association of Livestock Markets (AEMB)**;
- ✚ a **Young European Meat Committee (YEMCo)**;
- ✚ the **European Natural Sausage Casings Association (ENSCA)**
- ✚ the **Organisation of European Ship suppliers (OCEAN)**
- ✚ fifty-five national or regional federations in twenty-four of the twenty-eight Member States of the European Union and also Morocco, Norway, Russia, Serbia, Switzerland, and Turkey.

In total, some 20,000 firms of all sizes and 230,000 jobs are represented within the UECBV through its national member federations.

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