

## **INTERPRETATIVE NOTES**

**of the provisions of the Food Information Regulation (EU) No 1169/2011  
compiled by the  
Federal Association of the German Fish Processing Industry and Fish Wholesalers**

**Status: 22. July 2015**

### **Preamble**

The provisions of the EU-Food Information Regulation (FIR) impose new requirements for food business operators, which must be implemented starting from 13. December 2014 regarding food labelling and food information to consumers (implementation of the obligatory nutrition labelling for foodstuffs at the latest 13. December 2016).

Though legislative texts should contain a coherent wording, the interpretation of some provisions can be quite different.

The members of the Scientific-Technical Committee (WITEA) of the Federal Association of the German Fish Processing Industry and Fish Wholesalers (BVFfi) have prepared these interpretative notes and discussed these in a meeting with BVFfi-members on 24. April 2014. The interpretative notes will help the BVFfi-members with the practical implementation of the provisions of Regulation (EU) No 1169/2011.

The following interpretative notes will be updated whenever necessary.

Due to some unanswered questions regarding some provisions of the FIR, we assume no liability for the following interpretations.

Hamburg, 12. December 2014

**FEDERAL ASSOCIATION OF THE GERMAN  
FISH PROCESSING INDUSTRY AND FISH WHOLESALERS**

**Index**

## Preamble

1 Introduction .....	4
2 Questions and answers of the European Commission .....	5
3 Mandatory food information (Article 9).....	5
4 Name of the food (Article 17 and Annex VI) .....	6
4.1 Name of the food (Article 17).....	6
4.1.1 Regulation text .....	6
4.1.2 Interpretation .....	6
4.2 Annex VI Part A (Interpretation of points 1, 2, 5, 6 and 7).....	7
4.2.1 Particulars regarding the physical condition of the food (point 1) .....	7
4.2.1.1 Regulation text .....	7
4.2.1.2 Interpretation .....	7
4.2.2 Defrosted (point 2).....	7
4.2.2.1 Regulation text .....	7
4.2.2.2 Interpretation .....	7
4.2.3 Added proteins (point 5) .....	7
4.2.3.1 Regulation text .....	7
4.2.3.2 Interpretation .....	8
4.2.4 Added water (point 6) .....	8
4.2.4.1 Regulation text .....	8
4.2.4.2 Interpretation .....	8
4.2.5 “Formed fish” (point 7).....	8
4.2.5.1 Regulation text .....	8
4.2.5.2 Interpretation .....	8
5 List of ingredients (Articles 18 to 22 and Annex VII) .....	9
5.1 List of ingredients (Articles 18 to 22).....	9
5.2. Annex VII, Parts A and B.....	9
5.2.1 Added water and volatile ingredients (Annex VII Part A point 1).....	9
5.2.1.1 Regulation text .....	9
5.2.1.2 Interpretation .....	9
5.2.2 Ingredient category “Fish” (Annex VII Part B point 5).....	9
5.2.2.1 Regulation text .....	9
5.2.2.2 Interpretation .....	10
5.3 Omissions from the list of ingredients (Article 20 point e]) .....	10
5.3.1 Regulation text .....	10
5.3.2 Interpretation .....	10
6 Allergens (Article 9, Article 21 and Annex II) .....	10
6.1 Regulation text Article 9.....	10
6.2 Regulation text Article 21 paragraph 1.....	10
6.3 Annex II.....	11
6.4 Interpretation .....	11
7 Quantitative indication of ingredients (Article 22 and Annex VIII).....	12
7.1 Regulation text Article 22.....	12
7.2 Annex VIII .....	12
7.3 Interpretation .....	12

---

8 Net quantity (Article 23 and Annex IX point 5) .....	12
8.1 Regulation text Article 23.....	12
8.2 Regulation text Annex IX point 5 .....	13
8.3 Interpretation .....	13
8.4 Method to determine the net weight respectively the drained net weight for frozen, glazed fishery products.....	15
9 Minimum durability date, “use by” date and date of freezing (Article 10, Article 24 and Annex X) .....	15
9.1 Regulation text Article 10 point 1 .....	15
9.2 Regulation text Article 24.....	15
9.3 Regulation text Annex III point 6.1 .....	15
9.4 Annex X .....	15
9.5. Interpretation .....	16
10 Responsibilities (Article 8) .....	16
10.1 Regulation text .....	16
10.2 Interpretation .....	17
11 Country of origin .....	17
12 Nutrition declaration .....	18
13 Voluntary food information (Articles 36 and 37) .....	18

## 1 Introduction

The interpretative notes of the Federal Association of the German Fish Processing Industry and Fish Wholesalers (BVF) are to be used as additional information for the interpretation of the Food Information Regulation (FIR).

According to Article 1 paragraph 3 of the FIR, this Regulation shall apply to food business operators at all stages of the food chain, where their activities concern the provision of food information to consumers. It shall apply to all prepacked foods intended for the final consumer, including foods delivered by mass caterers, and foods intended for supply to mass caterers.

The Regulation applies for the placing on the market of all prepacked and non-prepacked foods. Most provisions apply for the labelling of food.

Regarding the labelling of bulk goods the labelling provisions in respect to certain food additives must be respected. At present these labelling requirements are regulated in paragraph 9 of the national Additive Authorization Registration Regulation (ZZuV). The further validity of these provisions depends on the approach of the Federal Republic of Germany, which should get these provisions notified at the European Commission. From 13<sup>th</sup> December 2014, some of the consumer information presently regulated in the ZZuV will be replaced by the provisions based on Annex III of the Food Information Regulation (e.g. “with sweetener[s]” or “packaged in a protective atmosphere”). In addition, the general prohibition of misleading the consumer according to Article 7 of the FIR and the provisions of particulars accompanying the name of the food upon selling bulk goods are to be respected.

Furthermore the changed legislation regarding the use of aspartame must be pointed out. In the future, the indication “contains aspartame (a source of phenylalanine)” shall appear on the label in cases where aspartame/aspartame-acesulfame salt is designated in the list of ingredients only by reference to the E number. Foods containing a sweetener or sweeteners must be labelled as follows: Until now the indication with the words “contains sugar and sweeteners” or their plurals will be replaced by the indication “with sugar(s) and sweetener(s)” regulated in the FIR.

These interpretative notes are a collection of statements of the fish processing and fish wholesale branches, serving the purpose and the goal to provide an as far as possible Europe-wide coherent view of the applicable information- and labelling provisions.

The following interpretative notes help to provide a concerted basic knowledge when it comes to assessment of the conformity of the labelling of fish and seafood with the provisions of the FIR for the partners of the value chain “fish and seafood” involved and this knowledge is also known by the competent authorities controlling the food value chain.

Upon new findings these interpretative notes will be adjusted and updated. The interpretative notes are not legally binding. It cannot be eliminated that the competent authorities of the foodstuff control and the legal authorities may have a different opinion regarding the following interpretation notes.

The text of Regulation (EU) No 1169/2011 can be found under:

<http://eur-lex.europa.eu/legal-content/DE/TXT/?qid=1397128489175&uri=CELEX:32011R1169>

Unless otherwise specified, the term “fishery products” includes all products from capture fisheries and aquaculture.

## 2 Questions and answers of the European Commission

On 31. January 2013 the European Commission issued a first catalogue with questions and answers regarding the implementation of Regulation (EU) No 1169/2011 on the provision of food information to consumers.

The catalogue with questions and answers can be found under:

[http://ec.europa.eu/food/safety/labelling\\_nutrition/labelling\\_legislation/index\\_en.htm](http://ec.europa.eu/food/safety/labelling_nutrition/labelling_legislation/index_en.htm)

If the questions and answers in these EU-catalogues should concern topics regarding fishery products, these will be included in the following interpretative notes, if they are relevant.

## 3 Mandatory food information (Article 9)

Article 9 paragraph 1 of the Regulation contains the list of the mandatory particulars. In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter (IV), indication of the following particulars shall be mandatory:

- a) the name of the food;
- b) the list of ingredients;
- 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;
- d) the quantity of certain ingredients or categories of ingredients;
- e) the net quantity of the food;
- f) the date of minimum durability or the 'use by' date;
- g) any special storage conditions and/or conditions of use;
- h) the name or business name and address of the food business operator referred to in Article 8 paragraph 1 (new: If the food processor has its seat outside the EU, the EU importer has to be labelled as the responsible business operator.);
- i) the country of origin or place of provenance where provided for in Article 26;
- j) instructions for use where it would be difficult to make appropriate use of the food in the absence of such instructions;
- k) with respect to beverages containing more than 1,2 % by volume of alcohol, the actual alcoholic strength by volume;
- l) a nutrition declaration.

#### 4 Name of the food (Article 17 and Annex VI)

Article 17 in connection with Annex VI contains detailed provisions for the mandatory particulars regarding the name (previously customary name) of the food. The provisions in Annex VI are indicated as supplements to the name of the food.

##### 4.1 Name of the food (Article 17)

###### 4.1.1 Regulation text

- (1) The name of the food shall be its **legal name**. In the absence of such a name, the name of the food shall be its **customary name**, or, if there is no customary name or the customary name is not used, a descriptive name of the food shall be provided.
- (2) The use in the Member State of marketing of the name of the food under which the product is legally manufactured and marketed in the Member State of production shall be allowed. However, where the application of the other provisions of this Regulation, in particular those set out in Article 9, would not enable consumers in the Member State of marketing to know the true nature of the food and to distinguish it from foods with which they could confuse it, the name of the food shall be accompanied by other descriptive information which shall appear in proximity to the name of the food.
- (3) In exceptional cases, the name of the food in the Member State of production shall not be used in the Member State of marketing when the food which it designates in the Member State of production is so different, as regards its composition or manufacture, from the food known under that name in the Member State of marketing that paragraph 2 is not sufficient to ensure, in the Member State of marketing, correct information for consumers.
- (4) The name of the food shall not be replaced with a name protected as intellectual property, brand name or fancy name.”

###### 4.1.2 Interpretation

The names specified in Article 37 of Regulation (EU) No 1379/2013 (commercial designations) are legally binding product names for fishery products placed on the market.

The scope of Regulation (EU) No 1379/2013 is limited mainly to unprocessed and smoked fishery products. The labelling of processed fishery products does not fall under the scope of this Regulation.

In order to avoid a “2-class-product-society” it is recommended to proceed according to the provisions of Regulation (EU) No 1379/2013 regarding the labelling of processed fishery products as well.

The “names” spelled in italic letters within the Guidelines for Fish, Crustaceans and Molluscs of the German Food Book are no legal names. But because these names in the Guidelines **are generally accepted**, it is recommended to use these names, if they do not conflict with the “commercial designations” of Regulation (EU) No 1379/2013.

## 4.2 Annex VI Part A (Interpretation of points 1, 2, 5, 6 and 7)

### 4.2.1 Particulars regarding the physical condition of the food (point 1)

#### 4.2.1.1 Regulation text

“1. The name of the food shall include or be accompanied by particulars as to the physical condition of the food or the specific treatment which it has undergone (for example, powdered, refrozen, freeze-dried, quick-frozen, concentrated, smoked) in all cases where omission of such information could mislead the purchaser.”

#### 4.2.1.2 Interpretation

Regarding the labelling “refrozen” in connection with the name of the fishery product, the answer in the EU-Commission’s Q & A catalogue dated February 2014 is: “Some frozen foods, such as whole fish, need a defrosting step before they can be divided in selling units and packed, i.e. fish filets. Such food will be considered as refrozen only when the organoleptic properties are affected”.

This information leads to the fact that the information “refrozen” must be shown in the name of the fishery product only in the case, where the freezing process has led to organoleptic changes!

### 4.2.2 Defrosted (point 2)

#### 4.2.2.1 Regulation text

“2. In the case of foods that have been frozen before sale and which are sold defrosted, the name of the food shall be accompanied by the designation ‘defrosted’.

This requirement shall not apply to the following:

- a) ingredients present in the final product;
- b) foods for which freezing is a technologically necessary step of the production process;
- c) foods for which the defrosting has no negative impact on the safety or quality of the food. This point shall apply without prejudice to point 1.”

#### 4.2.2.2 Interpretation

For fishery products within the scope of Regulation (EU) No 1379/2013, the provisions of Article 35 paragraph 1 point d partly apply. In view of defrosted products, the definition and the scope of exemptions for fishery products is laid down in Article 35 Paragraph 1 of Regulation (EU) No 1379/2013, whereas the labelling specifics are laid down in Annex VI Part A no. 2 FIR. This means that the word “defrosted” has to be added to the name of the product including fishery products. (This combination of product name and hints on defrosting are not foreseen in Regulation No 1379/2013.)

### 4.2.3 Added proteins (point 5)

#### 4.2.3.1 Regulation text

“5. In the case of meat products, meat preparations and fishery products containing added proteins as such, including hydrolysed proteins, of a different animal origin, the name of the food shall bear an indication of the presence of those proteins and of their origin. “

#### 4.2.3.2 Interpretation

If fishery products contain added proteins of animal origin “as such”, which originate from different animals, the protein of another animal origin, which was added to the raw material “as such”, must be labelled in the name of the fishery product.

Example:

“Cod filet with bovine albumin”

“Cod filet with added fish proteins of other fish species”

“Cod filet with added proteins of crustaceans”

#### 4.2.4 Added water (point 6)

It is important, that the Regulation specifies the addition of water in two points. In one point regarding the question of the necessary supplement of the name of the food (see point 4.2.4.1) and in another point regarding the question of listing it in the list of ingredients (see point 5.2.1).

##### 4.2.4.1 Regulation text

“6. In the case of meat products and meat preparations which have the appearance of a cut, joint, slice, portion or carcase of meat, the name of the food shall include an indication of the presence of added water if the added water makes up more than 5 % of the weight of the finished product. The same rules shall apply in the case of fishery products and prepared fishery products which have the appearance of a cut, joint, slice, portion, filet or of a whole fishery product.”

##### 4.2.4.2 Interpretation

The legislative authority clearly distinguishes between the addition of added water (external water) and the use of water for glazing purposes. The legislative authority leaves a freedom of choice for the responsible manufacturer regarding the manner of indicating the name of the food.

Example:

“Anglerfish filet with water” respectively “Anglerfish filet with added water”

“Pangasius filet with drinking water” respectively “Pangasius filet with added drinking water”

#### 4.2.5 “Formed fish” (point 7)

##### 4.2.5.1 Regulation text

“7. 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, shall bear the following indication:

‘formed fish’”

##### 4.2.5.2 Interpretation

Until 12. December 2014 the labelling of fishery products made of formed fish is based on the “Guidelines for Fish, Crustaceans and Molluscs and products thereof” of the German Food Book.

From 13<sup>th</sup> December 2014 the EU-legislator regulates mandatory provisions for the wording in each Member State language, so the labelling specifications of the Guidelines in the German Food Book regarding this point will be invalid.

After entering into force, only fishery products, **which may give the impression**, “that they are made of a whole piece of fish”, must bear the claim that they are made from formed fish pieces. Therefore, it is clear, that fishery products, which may **not** give this impression, are exempted from this provision.

Fish fingers, fish portions in square or round shapes and “other than filet- or loin-shaped fishery products” are exempted from this provision.

Formed fishery products though, for example produced by using pressure such as in portion filets or formed loin-portions, are included in this provision.

Example:

“Alaska pollock portion-filet made of formed fish, cut from blocks...”

## 5 List of ingredients (Articles 18 to 22 and Annex VII)

### 5.1 List of ingredients (Articles 18 to 22)

Articles 18 to 22 in connection with Annex VII provide detailed information about how to make a list of ingredients as well as the derogations (Articles 19 and 20).

### 5.2 Annex VII, Parts A and B

#### 5.2.1 Added water and volatile ingredients (Annex VII Part A point 1)

##### 5.2.1.1 Regulation text

“1. Added water and volatile products shall be listed in order of their weight in the finished product. The amount of water added as an ingredient in a food shall be calculated by deducting from the total amount of the finished product the total amount of the other ingredients used. This amount shall not be required to be taken into consideration if it does not exceed 5 % by weight of the finished product. This derogation does not apply to meat, meat preparations, unprocessed fishery products and unprocessed bivalve molluscs.”

##### 5.2.1.2 Interpretation

Regardless of the necessary addition to the name of the fishery product regarding added water (see point 4.2.4) a provision for the labelling of added water in the list of ingredients is hereby arranged. The derogation, that added water which does not exceed the amount of 5 % does not lead to the indication of the ingredient “water, drinking water” in the list of ingredients, does not apply for unprocessed fishery products and unprocessed bivalve molluscs.

Any water, which was added to unprocessed (due to the specification in Regulation [EC] No 853/2004) fishery products and bivalve molluscs, must be labelled. Water, which was used for glazing a product is not regarded as an ingredient and is therefore exempted from this rule.

#### 5.2.2 Ingredient category “Fish” (Annex VII Part B point 5)

##### 5.2.2.1 Regulation text

“5. All species of fish where the fish constitutes an ingredient of another food and provided that the name and presentation of such food does not refer to a specific species of fish.

Name: ‘Fish’.”

### 5.2.2.2 Interpretation

Fish, which belongs to the food category “all species of fish” and constitutes as an ingredient of another food, can be named with the name of the food category (“fish”) instead of the specific designation irrespective of Article 21.

## 5.3 Omissions from the list of ingredients (Article 20 point e)

### 5.3.1 Regulation text

“Without prejudice to Article 21 (Labelling of certain substances or products causing allergies or intolerances), the following constituents of a food shall not be required to be included in the list of ingredients:

e) Water:

- i) where the water is used during the manufacturing process solely for the reconstitution of an ingredient used in concentrated or dehydrated form; or
- ii) in the case of a liquid medium which is not normally consumed.”

### 5.3.2 Interpretation

For frozen and glazed fishery products the glazing (water glazing) is regarded as liquid medium (for details regarding glazing see point 8) and does not need to be mentioned in the list of ingredients.

## 6 Allergens (Article 9, Article 21 and Annex II)

### 6.1 Regulation text Article 9

“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;”

### 6.2 Regulation text Article 21 paragraph 1

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

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

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

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.

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.”

### 6.3 Annex II

Annex II contains the following important listings which are vital for the fish industry and the fish wholesale branches:

“2. Crustaceans and products thereof;

4. Fish and products thereof, except fish gelatine used as carrier for vitamin or carotenoid preparations;

a) fish gelatine used as carrier for vitamin or carotenoid preparations;

b) fish gelatine or Isinglass used as fining agent in beer and wine;

14. Molluscs and products thereof.”

### 6.4 Interpretation

The allergen labelling will be carried out in the list of ingredients only. 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 BVFi recommends to emphasize this information also in cases where the allergen substance can be clearly identified in the name of the fishery product (Article 21 paragraph 1 final subparagraph).

Example:

Ingredients: **Herring**, ...  
 HERRING, ...  
Herring, ...

Following the designation “Herring”, the term “fish” shall *not* be indicated, as it is generally understandable, that herring is a fish.

If the consumer cannot clearly identify the allergen (fish, crustaceans and molluscs) from the name of the food and that it is a substance listed in Annex II, a mandatory indication of the allergen must be made following the name of the food.

Example:

Ingredients: Nase (Fisch) [Common nase (**fish**)]  
 Lederjacke (Fisch) [Leather jacket (**fish**)]  
 Schöne Arche (Weichtier) [Noah’s Ark shell (**mollusc**)]  
 Meerengel (Fisch) [Angel shark (**fish**)]  
 Meerohr (Weichtier) [Abalone (**mollusc**)]  
 Schafskopf (Fisch) [Sheepshead seabream (**fish**)]

This special provision regarding allergen labelling within the list of ingredients is not compulsory in respect of food law, but the labelling of “traces” (e.g. caused by cross-contamination), if necessary for reasons of product liability, is to be differentiated by the information outside of the list of ingredients in the form of “may contain traces of... ”.

## 7 Quantitative indication of ingredients (Article 22 and Annex VIII)

### 7.1 Regulation text Article 22

“(1) The indication of the quantity of an ingredient or category of ingredients used in the manufacture or preparation of a food shall be required where the ingredient or category of ingredients concerned:

- a) appears in the name of the food or is usually associated with that name by the consumer;
- b) is emphasised on the labelling in words, pictures or graphics; or
- c) is essential to characterize a food and to distinguish it from products with which it might be confused because of its name or appearance.

(2) Technical rules for applying paragraph 1, including specific cases where the quantitative indication shall not be required in respect of certain ingredients, are laid down in Annex VIII.”

### 7.2 Annex VIII

The quantitative indication of ingredients shall not be required, if, for example, the drained net weight of which is indicated in accordance with point 5 of Annex IX, must be indicated.

### 7.3 Interpretation

If a fishery product is labelled with the information “added water” in the name of the food, the quantitative indication of the ingredient “fish”, e.g. in the list of ingredients, is obligatory. The quantitative labelling of added water is non-obligatory, because added water is not a decisive ingredient regarding the value. For a quantitative labelling of the fish portion in connection with the indication of the net quantity, the “water content” can be easily calculated.

Example:

Name of the food: Frozen Pangasius filet with water

Ingredients: Pangasius filet (X %), water, acidity regulator E 320 [as well as, if necessary, further ingredients], in respect of the drained net weight without glazing

The addition “in respect of the drained net weight without glazing” is made due to technical reasons at the end of the list of ingredients and allows the consumer to see, how much water was added to the fishery product and which reference figure it is based on, provided that an information about the total net quantity was given.

## 8 Net quantity (Article 23 and Annex IX point 5)

### 8.1 Regulation text Article 23

“(1) The net quantity of a food shall be expressed using litres, centilitres, millilitres, kilograms or grams, as appropriate:

- a) in units of volume in the case of liquid products;
- b) in units of mass in the case of other products.

- (2) In order to ensure a better understanding by the consumer of the food information on the labelling, the Commission may establish for certain specified foods, by means of delegated acts, in accordance with Article 51, a manner for the expression of the net quantity other than the one laid down in paragraph 1 of this Article.
- (3) Technical rules for applying paragraph 1, including specific cases where the indication of the net quantity shall not be required, are laid down in Annex IX.”

## 8.2 Regulation text Annex IX point 5

“5. Where a solid food is presented in a liquid medium, the drained net weight of the food shall also be indicated. Where the food has been glazed, the declared net weight of the food shall be exclusive of the glaze.

For the purposes of this point, ‘liquid medium’ shall mean the following products, possibly in mixtures and also where frozen or quick-frozen, provided that the liquid is merely an adjunct to the essential elements of that preparation and is thus not a decisive factor for the purchase: water, aqueous solutions of salts, brine, aqueous solutions of food acids, vinegar, aqueous solutions of sugars, aqueous solutions of other sweetening substances, fruit or vegetable juices in the case of fruit or vegetables.”

## 8.3 Interpretation

According to Article 9 paragraph 1 point e, the net weight must be indicated. Net weight is the weight of the filling in a prepackage without packaging weight (tare). The net weight is the weight of the total filling in the prepackaging. In the case of liquid mediums and frozen mediums (“glazing”), the consumer is mainly interested in the weight of the solid food (“weighed-in quantity”). Therefore, Annex IX of the FIR specifies a double quantity indication, which is also contained in the EC-Directive of prepacked products (76/211/EEC): In addition to the indication of the net weight of the finished pack, the information about the drained weight must be indicated (“the net quantity of the food”).

The numerical value and the quantity unit must be indicated (for example g, ml, l, kg). The words quantity, total net quantity, net quantity or (for solid foods) net weight **may, or may not** be put in front of the numerical value. The font size for the numerical value is not based on the FIR but must be made according to the provisions of the EC-Directive of prepackaged products and § 20 of the Regulation for prepackaged products (FPV) respectively.

Next to the indication of the net weight of the prepackaging, the indication of the drained weight (“drained weight of the food” in Annex IX point 5) is obligatory, in cases where a solid food is presented in a liquid medium. This obligation also applies for glazed fishery products, as the glazing is legally regarded as a frozen medium only (see second paragraph point 5 Annex IX). The provision, that the frozen medium (glazing) must be added to the weight of the (solid) food, makes clear, that this is not required for liquid mediums.

For fish glazing and similar products the following information must be indicated:

Total net quantity: “weighed-in quantity” plus liquid medium/glazing  
 Drained weight: “weighed-in quantity” without glazing/liquid medium

The words “total net quantity” and “drained weight” can, but are not obliged to be used. Accordant terms such as “net weight” and “weighed-in quantity” are also acceptable. The order of both indications is not stipulated.

The accepted labeling variations can be made according to the following examples:

Example:

Frozen, glazed Shrimp or Fish filet

Total net quantity (or “quantity”): Quantity of shrimp or fish filet without glazing

Drained net weight (or “weighed-in quantity”): Quantity of shrimp or fish filet without glazing

**Shrimp, frozen, glazed**

Drained net weight: 800 g

Total net quantity with glazing: 1.000 g

**Pangasius filet, frozen, glazed**

Total net quantity: 1.000 g

Weighed-in fish quantity: 800 g

Marinades in liquid mediums (e. g. rollmops, pickled herring, products in brine)

Net weight: Quantity of the fish and the liquid medium

Drained net weight: Quantity of the drained fish

Canned fish (in water)

Net weight: Quantity of the fish and the liquid medium

Drained net weight: Quantity of the drained fish

Canned fish (fish in sauces, dips, creams or oil)

Net weight: Quantity of the fish and the liquid medium

The information about the quantity of fish in percent of weight may be necessary, due to the QUID-provisions (weight percent of the fish referred to in the name of the food or highlighted in other ways fish in the list of ingredients or its specification in connection with the name of the food).

Generally, the voluntary indication of the weight (“weighed-in fish quantity”) based on Article 36 FIR, should be furthermore possible.

Additional remark: In a statement dated 31. January 2013 without any formal legal status, the EU-Commission has the following position regarding point 2.12.2: “*The Regulation provides that ‘where the food has been glazed, the declared net weight of the food shall be exclusive of the glaze’. This means that in such cases the net weight of the food will be identical to the drained net weight. Do both ‘net weight’ and ‘drained net weight’ need to be indicated on the label?*”

*Where a solid food is presented in a liquid medium, the drained net weight must be indicated in addition to the net weight/quantity. For the purposes of this point, frozen or deep-frozen water is considered as a liquid medium which will entail the obligation to include in the label information about the net weight as well as about the drained weight. In addition, the Regulation FIC specifies that where a frozen food or quick-frozen food has been glazed, the net weight should not include the glaze itself (net weight without the glaze).*

*As a consequence, the declared net weight of the glazed food is identical to its drained net weight. Taking this into account as well as the need to avoid misleading the consumer, the following net indications would be possible:*

- *Double indication:*
  - *Net weight: X g and*
  - *Drained weight: X g;*
- *Comparative indication:*
  - *Net weight=drained weight = X g;*

- *Single indication:*
  - *Drained weight X g*
  - *Net weight (without glaze) X g*”.

#### **8.4 Method to determine the net weight respectively the drained net weight for frozen, glazed fishery products**

The Directorate General for Health & Consumers (DG SANCO) informs that, based on Regulation (EC) No 882/2004, a proposal for an EC Decision on the harmonization of the method for determination of the drained weight of frozen, glazed fishery products according to the WELMEC-guide will be presented to the EU-Member States at the Standing Committee for biological safety in December 2014. Once a vote is held in January/February 2015, official publication can be expected for March/April 2015. This method has to be accepted by the official control authorities in all EU-Member States.

### **9 Minimum durability date, ‘use by’ date and date of freezing (Article 10, Article 24 and Annex X)**

#### **9.1 Regulation text Article 10 point 1**

“(1) In addition to the particulars listed in Article 9(1), additional mandatory particulars for specific types or categories of foods are laid down in Annex III.”

#### **9.2 Regulation text Article 24**

“(1) In the case of 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, the date of minimum durability shall be replaced by the ‘use by’ date. After the ‘use by’ date a food shall be deemed to be unsafe in accordance with Article 14 paragraphs 2 to 5 of Regulation (EC) No 178/2002.

(2) The appropriate date shall be expressed in accordance with Annex X.

(3) In order to ensure a uniform application of the manner of indicating the date of minimum durability referred to in point 1 paragraph (c) of Annex X, the Commission may adopt implementing acts setting out rules in this regard. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48 paragraph 2.”

#### **9.3 Regulation text Annex III point 6.1**

“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.”

#### **9.4 Annex X**

Annex X specifies the particulars for the indication of the date of minimum durability, the ‘use by’ date and the date of freezing.

Union provisions leave no margin regarding these labelling requirements for distributors who place products on the market. Next to the format for the indication of the date, the Union provisions also lay down the wording prefixed to the date.

Due to further details (especially where the date must be found in the labelling) we point to the detailed provisions in Annex X.

## 9.5 Interpretation

As a matter of form we point out, that Regulation (EU) No 1379/2013, Article 35 point e) specifies the provision to indicate “the date of minimum durability, where appropriate” for fishery products within the scope of the Regulation. As this Regulation does not specify any further provisions regarding the manner of displaying the date of minimum durability, the provisions of Article 24 of the FIR apply in this respect without restrictions.

With regard to the new requirement to indicate the date of freezing, the following can be ascertained: With the wording “in cases where the **product** has been frozen more than once”, the legislator refers directly to the **product**.

This reference is however not in line with the specific provisions of Regulation (EU) No 16/2012 for fisheries and aquaculture products, which will at the moment not be amended to solve the discrimination of fisheries and aquaculture products versus animal products.

Therefore, the date of freezing, respectively the date of first freezing, is labelled correctly, if, for example, on a label for a fish filet, which was cut from a frozen headed and gutted fish, the date where the headed and gutted fish was frozen for the first time.

While the amendment of Annex X regarding the wording informing about the date of freezing allowed a certain flexibility, the EU-Commission’s Q & A catalogue dated 21. February 2014 grants no flexibility with regard to the modification of the phrase “frozen on” into “quick frozen on”: “There is no flexibility regarding the terms that can be used, and the date has to be preceded by ‘freezing date’.”

## 10 Responsibilities (Article 8)

### 10.1 Regulation text

- “(1) The food business operator responsible for the food information shall be the operator under whose name or business name the food is marketed or, if that operator is not established in the Union, the importer into the Union market.
- (2) The food business operator responsible for the food information shall ensure the presence and accuracy of the food information in accordance with the applicable food information law and requirements of relevant national provisions.
- (3) [...]
- (4) [...]
- (5) [...]
- (6) [...]
- (7) In the following cases, food business operators, within the businesses under their control, shall ensure that the mandatory particulars required under Articles 9 and 10 shall appear on the prepackaging or on a label attached thereto, or on the commercial documents referring to the foods where it can be guaranteed that such documents either accompany the food to which they refer or were sent before or at the same time as delivery:
- a) where prepacked food is intended for the final consumer but marketed at a stage prior to sale to the final consumer and where sale to a mass caterer is not involved at that stage;

b) where prepacked food is intended for supply to mass caterers for preparation, processing, splitting or cutting up.

Notwithstanding the first subparagraph, food business operators shall ensure that the particulars referred to in points (a), (f), (g) and (h) of Article 9 paragraph (1) also appear on the external packaging in which the prepacked foods are presented for marketing.

(8) Food business operators that supply to other food business operators food not intended for the final consumer or to mass caterers shall ensure that those other food business operators are provided with sufficient information to enable them, where appropriate, to meet their obligations under paragraph 2.”

## 10.2 Interpretation

According to Article 1 of the FIR a formalised responsibility is specified: The party responsible mentioned with postal address is to be held responsible opposites the authorities for the correctness and completeness of the food information and is therefore the addressee of regulatory measures by the authorities. It is still unclear, whether an exclusive monetary fine or criminally liable responsibility for the correctness and completeness of the information comes along with this information. But there are good reasons to consider a company, which “in fact is the company actuating the labelling” but which is not mentioned on the label, is in any case at least partly responsible for monetary fines or criminal responsibilities.

In this connection we would like to point out the following information regarding the availability of the parties responsible:

The Culinary Food Manufacturers Association in Germany informs as of 10. April 2014, that up to now in the food regulatory literature the view was maintained, that the manufacturer information must be as precise as possible providing the postal reachability. Providing the company name, zip code and city was regarded as sufficient information. The information of street names or post office boxes was omitted in the current practice, without any difficulties.

Recently, some postal items which were sent by the foodstuff control authorities to the information on the packaging, without street name and house number, were returned to the sender marked undeliverable.

An enquiry with the Deutsche Post dated 8. April 2014 issued by the Culinary Food Manufacturers Association in Germany was answered as follows:

“Basically, the postal delivery workers of the Deutsche Post can only deliver post items to correct and deliverable addresses. Up to now, post items showing incomplete specifications were also delivered. This happened due to the fact that the delivery person had local knowledge and was particularly experienced. A delivery of such postal items is permitted only if the recipient can be identified clearly. Even if the Deutsche Post makes a delivery attempt to an incomplete or incorrect address, a delivery cannot be guaranteed.”

The BVFi recommends to check the present manufacturer information given and to add a street name and house number, respectively post office box to it, if this has not yet been included in the manufacturer information.

## 11 Country of origin

Article 26 regulates the requirements for the indication of a country of origin or place of provenance for certain fishery products. The provisions in this Article do not apply for the labelling

requirements for guaranteed traditional specialities as well as protected geographical indications. So in the future, the place of provenance for eel in a Hamburgian Eel soup or lobster in a Heligoland Lobster soup does not have to be indicated.

The EU-Commission is bound to issue a report to the European Parliament and the Council until latest 13. December 2014 about the mandatory origin provision of the country of origin or the

place of provenance for foodstuffs which are, amongst other things, unprocessed foods, single-ingredient products, and ingredients that represent more than 50 % of a food.

The Association will keep track of the EU-Commissions work affecting this topic in order to avoid interference with the provisions of Regulation (EU) No 1379/2013 regarding the “origin provisions” (production method and catch area).

## **12 Nutrition declaration**

[To be completed.]

## **13 Voluntary food information (Articles 36 and 37)**

[To be completed.]

\* \* \*