



Integration into the INCO Regulation of specific rules on the labelling of non-prepacked foods sold on a self-service basis — i.e. sold in bulk on a self-service basis — and on the labelling of certain reusable containers

1. Definition of bulk sale of foods in France / Scope of our contribution: the self-service sale of bulk foods

Thanks to the lobbying activities carried out by the Réseau Vrac association in 2019, bulk sales were officially introduced on 10 February 2020 into the French Consumer Code, in a new chapter entitled “Encouraged commercial practices”, and into the French Rural Code. The positive impact of the bulk sale of non-prepacked foods on the reduction of packaging waste and food waste is thereby recognised.

This recognition is reinforced by Article 23 of the Climate and Resilience Law No 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to its effects, which also seeks to accelerate the development of bulk sales, in particular by setting quantified growth targets for bulk sections by 2030 in retail outlets of more than 400 m², and by establishing a commitment by public authorities to support trials aimed at removing barriers for certain products.

Similarly, in July 2021, the French National Food Council (CNA) issued Opinion No 88 — *Food packaging sobriety; Development of bulk sales* — which aims to “revolutionise mindsets and practices in order to bring about the expected scaling-up in the development of bulk sales”. The CNA made six recommendations addressed to professionals and public authorities to enable the development of bulk sales. One of the CNA’s recommendations aims to clarify the rules on consumer information for products sold in bulk on a self-service basis.

An environmental and health impact assessment on bulk sales published by ADEME in November 2021 also recommends clarifying these rules.

Accordingly, since 2020, a new Article L. 120-1 of the French Consumer Code has provided that:

“Bulk sale means the sale to consumers of products presented without packaging, in a quantity chosen by the consumer, in reusable or refillable containers. Bulk sale is offered on a self-service basis or through assisted service.

It may be concluded under a distance selling contract.”

Our contribution concerns exclusively the self-service sale of all bulk foods, that is to say non-prepacked foods, excluding fruit and vegetables, insofar as the INCO Regulation already contains rules on the labelling of non-prepacked foods sold through assisted service, and specific legislation already governs the labelling of fruit and vegetables.

2. The market for self-service bulk sales in France

See the PowerPoint presentation attached to the contribution. We remain at your disposal to present and comment on this material, if required.

3. The absence of provisions in the INCO Regulation on the provision of food information to consumers for foods sold in bulk — non-prepacked foods — on a self-service basis

Pursuant to Article 44(1) of Regulation (EU) No 1169/2011 on the provision of food information to consumers:

“Where foods are offered for sale to the final consumer or to mass caterers without prepackaging, or where foods are packed on the sales premises at the consumer’s request or prepacked for direct sale:

- (a) the provision of the particulars specified in point (c) of Article 9(1) is mandatory [i.e. allergens];
- (b) the provision of other particulars referred to in Articles 9 and 10 is not mandatory unless Member States adopt national measures requiring the provision of some or all of those particulars or elements of those particulars.”

A document was published by the European Commission on 8 June 2018: the Communication on questions and answers on the application of Regulation (EU) No 1169/2011 on the provision of food information to consumers. This document provides some clarification on the rules concerning the provision of food information to consumers in the case of the sale of non-prepacked foods.

Articles R.112-10 et seq. of the French Consumer Code clearly provide that “the name of any food presented without prepackaging at the place of sale to the final consumer, and, where applicable, the other mandatory particulars which must accompany it, shall be indicated on the food itself or in proximity thereto, in such a way that there is no uncertainty as to the food to which they relate”.

The only particulars which retailers are therefore required to display on a mandatory basis on bulk sales equipment are the following:

- the name of the food;
- allergens;
- the physical condition of the product, such as defrosted, frozen, canned, freeze-dried, dried, candied, etc.;
- origin for organic products, pursuant to the specific legislation applicable to those products.

The other particulars are not mandatory for non-prepacked foods, pursuant to Article 44 of the INCO Regulation. However, this rule is not adapted to self-service bulk sales.

Indeed, the absence of such information in the context of the self-service bulk sale of foods results in a failure to provide consumers with adequate food information. Article 44 of the INCO Regulation is appropriate in the context of the sale of non-prepacked foods through assisted service, insofar as the retailer serves the consumer and provides information where necessary, in particular on the “use by’ date” or the method of preparation of the products. By contrast, Article 44 of the INCO Regulation is not adapted to the self-service bulk sale of non-prepacked foods: the consumer serves themselves in a reusable container, from bulk sales equipment such as a silo, hopper, scoop bin, canister, bag-in-box, fountain, etc., and is not assisted by the retailer during the act of purchase.

The INCO Regulation should provide that, for the self-service bulk sale of non-prepacked foods, the following particulars must be displayed on the labelling of bulk sales equipment:

- the name of the food;
- allergens, including risks of cross-contamination at the point of sale;
- the list of ingredients;
- origin;
- the physical condition of the product;
- the secondary shelf life, whether applicable to the store or to the consumer;
- nutrition declaration;
- lot number;
- conditions of preparation and storage, where applicable.

4. The absence of provisions in the INCO Regulation requiring the labelling of consumers' reusable bulk containers for certain products

Specific European or French legislation provides for an obligation to affix a label to consumers' reusable bulk containers. This is the case for olive oil in France and for alcoholic beverages. It is also the case in France for cosmetic products and detergent products.

The INCO Regulation should provide for an obligation to affix a label to consumers' reusable bulk containers for the following products:

- liquid food products, such as oils, vinegars, etc.;
- perishable products to be kept refrigerated, such as sauces, mayonnaises, mustards, ketchup, yoghurts and jams.

The particulars which should, as a minimum, be mandatory on the label affixed to the reusable bulk container for these products, in addition to the particulars which should appear on the labelling of the bulk sales equipment, are the following:

- the name of the food;
- physical condition;
- list of ingredients;
- secondary shelf life, whether applicable to the store or to the consumer;
- storage and preparation conditions, where applicable;
- lot number.

5. The absence of provisions in the INCO Regulation on the labelling of foods packed in returnable reusable containers

National and European legislation encourages food business operators to pack their products in reusable containers instead of single-use packaging.

In France, for example, companies preparing online orders — drive-through or click-and-collect — choose to pack foods in returnable reusable containers.

The INCO Regulation should lay down specific labelling rules for returnable reusable containers, in order to facilitate their reuse.

The following particulars should be mandatory on the label of the returnable reusable container:

- the name of the food;
- physical condition;
- list of ingredients;
- lot number;
- date of minimum durability or “use by” date”;
- storage and preparation conditions, where applicable.

These particulars would also be provided to the consumer on the website at the time of the online purchase.

The other particulars should be capable of being provided to the consumer by any other means, including on the website at the time of the consumer's online purchase and by means of a QR code on the label of the container or in the delivery note provided to the consumer with their order.

6. Conclusions

For the past five years, the Réseau Vrac association has already recommended to its members, on a voluntary basis, the labelling rules detailed in points 3 and 4.

We remain at your disposal to discuss this contribution, the issues it raises and the market for bulk sales in France and in Europe more generally.

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