



MAC ADVICE

Labelling of Vegetarian and Vegan Fish Imitations

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1. Background

Plant-based products are gaining more and more popularity amongst consumers¹. These days, vegetarian burgers, plant-based sausages, vegan dairy, etc. are part of everyday life. Supermarkets made these products part of their product range and fast-food chains often offer plant-based products as an alternative to the original products.

This development is also seen in the seafood side of the food sector². Plant-based seafood imitations gain market share. This in itself is an understandable market development since increasing numbers of consumers adopt 'flexitarian' meals³.

However, the labelling of these seafood imitations needs to be clearer and ensure that consumers are not potentially misled. Therefore, the Market Advisory Council (MAC) recommends that the European Commission executes certain exercises in order to analyse if there is a need to elaborate the Food Information to Consumers (FIC) Regulation regarding rules on the labelling of plant-based imitation products.

¹ Good Food Institute. (2020). Webinar Plant-based Food Retail Market overview

² Marwaha, N., Beveridge, M. C. M., Phillips, M. J., Boso, D., Chan, C. Y., Kabir, K. A., ... Wiebe, K. (2020). *Alternative seafood: Assessing food, nutrition and livelihood futures of plant-based and cell-based seafood*. Penang, Malaysia: WorldFish. Program Report: 2020-42

³ DSM, 2021: <https://www.dsm.com/corporate/solutions/nutrition-health/plant-based-alternative-protein-products.html>

2. Legal framework for labelling

The present chapter describes the labelling criteria which have been incorporated in EU legislation for all foodstuffs and, in particular, for fish and fishery products. It also explains the lack of rules when plant-based (fish) imitations are concerned.

2.1. EU legislation on labelling of fish and fishery products

There are multiple regulations that provide legislation on labelling of fish and fishery products. Among these are the Common Organisation of the Market (CMO)⁴, the Food Information to Consumers (FIC)⁵ and the Fisheries Control Regulation (CR)⁶. The following mandatory information has to be put specifically on the consumer label of unprocessed fish and fishery products:

- Scientific name & commercial designation (CMO 35.1.a);
- Production method (CMO 35.1.b);
- Catch/ production area & catch method (CMO 35.1.c);
- Whether the product has been defrosted (CMO 35.1.d), unless freezing has a function in the production process (CMO 35.1.d.b)/ it is frozen for health safety purposes (CMO 35.1.d.c)/ or the product has to be defrosted for further processing (CMO 35.1.d.d.);
- Date of minimum durability (CMO 35.1.e);

⁴ Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products

⁵ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers

⁶ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy. Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy

- Date of (first) freezing (FIC 10.1)

2.2. EU legislation on labelling of all foodstuffs

The FIC Regulation is applicable to all foodstuffs. The focus of this regulation is to provide consumers with clear information, thereby preventing misleading of consumers. The following mandatory information must be included on the consumer label of all foodstuffs:

- Name of the food (FIC 9.1.a);
- List of ingredients (FIC 9.1.b);
- Ingredient or processing aids causing allergies/ intolerances (FIC 9.1.c);
- Quantity of ingredients (FIC 9.1.d);
- Net weight (FIC 9.1.e);
- Date of minimum durability (FIC 9.1.f);
- Special storage conditions (FIC 9.1.g);
- Name/ address of business operator (FIC 9.1.h);
- Indication of origin (FIC 9.1.i);
- Instruction for use if absence causes confusion (FIC 9.1.j);
- Nutrition declaration (FIC 9.1.l), unless products consist of a single ingredient (FIC 16.3);
- The name of the food shall be accompanied by (FIC 17.5):
 - The physical condition;
 - Designation 'defrosted', unless freezing is a technological necessity for production processes/ defrosting has no negative impact on the safety or quality of the food
 - Designation 'with added proteins' if proteins are added;
 - Designation 'with added water' if more than 5% water is added;

- Designation ‘formed fish’ if a whole piece of fish consists of different pieces combined together.

2.3. Lack of legislation on labelling of plant-based imitation seafood

Currently, all foodstuffs must be labelled in accordance with the FIC Regulation. However, no specific additional rules exist as to the labelling of plant-based products that imitate other food products. This lack of clarity as to the labelling of plant-based imitation products would need to be addressed, if confirmed by further consumer and/or market research. As an example, showcasing this need, in 2018, a citizens’ initiative requested mandatory food labelling of non-vegetarian/vegetarian/vegan products⁷.

There is clearly a growing demand from consumers for plant-based products. Therefore, the MAC urges the Commission to bring some clarity as regards the labelling of plant-based imitation products. In addition, the MAC takes the opportunity to urge the Commission to respond to its obligation under Article 36(3)(b) of the FIC Regulation to adopt implementing acts on (voluntary) food information related to the suitability of a food for vegetarians or vegans without further delay.

Some Member States, such as Germany and France, have already taken action and adopted national provisions⁸. These initiatives give producers some guidance as to how imitation products should be labelled in France and Germany in order to prevent misleading consumers. However,

⁷ European Commission. Commission Decision (EU) 2018/1701 on the proposed citizens’ initiative entitled ‘Mandatory food labelling Non-Vegetarian/Vegetarian/Vegan’, Official Journal of the European Union § (2018)

⁸ In the case of Germany, guidelines , “Leitsätze für vegane und vegetarische Lebensmittel mit Ähnlichkeit zu Lebensmitteln tierischen Ursprungs were developed by the German Ministry for Food and Agriculture in 2018, which are available online: <https://www.bmel.de/SharedDocs/Downloads/DE/Ernaehrung/Lebensmittel-Kennzeichnung/LeitsaetzevegetarischeveganeLebensmittel.html>.

In France, a law was adopted provide general orientation on the designation of animal products for food containing plant proteins, which is expected to be complemented by a decree. LOI no 2020-699 du 10 juin 2020 relative à la transparence de l’information sur les produits agricoles et alimentaires, article 5.

this also results in a lack of harmonisation and potential proliferation of national (diverging) actions.

2.4. Discrepancy between labelling of unprocessed fishery products and other foodstuffs

As described above, unprocessed fishery products must abide by specific rules regarding labelling. At present, unprocessed fishery products are the only food category that must include e.g., scientific and commercial designations (common trade names) on the package⁹.

One could argue that the use of (part of) the commercial designation of the species (common trade name) of seafood products for a product that does not contain fish would be a misleading practice comparable to the plant-based dairy issue of which the European Court of Justice decided in 2017 that the use of dairy denominations was protected by EU law and would not be lawfully correct when plant-based products were concerned¹⁰.

With the above in mind, the MAC would like to suggest that the Commission adopts rules or guidance documents as to the labelling of plant-based imitation products as well as delegated acts pursuant to Article 36(3)(b) of the FIC Regulation related to the suitability of a food for vegetarians or vegans.

2.5. Examples of unclear labelling practices

Unclear labelling practices could be misleading to consumers due to the brand name, the use of (part) of commercial designation of the species, the size of the lettering of the designations, the similarity of the pictures used in the package to actual seafood products, among other factors.

⁹ The list of scientific and commercial designations is available on DG MARE's website: https://ec.europa.eu/fisheries/cfp/market/consumer-information/names_en

¹⁰ The full text of the judgment and the corresponding press release are available online: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-06/cp170063en.pdf>

Considering the hastened context of grocery shopping for most consumers, it is important to ensure that consumers cannot be misled when purchasing plant-based food products, while also considering the overall packaging of the product. Amongst the MAC’s membership, the environmental NGOs, the EU catching sector and Spanish retail sector for fish and frozen products even believe that the placing and displaying in the retailer’s space could also potentially play a role. On the other hand, the European retailers and wholesalers and the EU fish processors point out that the reference to the placing and displaying in the retailer’s space is outside the scope of the advice. It could also be argued that it interferes with the businesses’ freedom to conduct business. The display of products in stores is an important tool for retailers, both in terms of relationships with suppliers and to meet consumers’ wishes and demands (i.e., by giving more visibility to sustainable products).



Figure 1: Package of plant-based product labelled as “plant-based tuna”. The brand name suggests that this product is caught. The word “TUNA” is in larger lettering, to better catch the consumer’s attention. The package must be read fully to be understood that the product is “100% fish free”. The picture on the package is similar to a picture of actual canned tuna.



Figure 2: Package of plant-based product labelled as “sensational vuna” and with the reference “tastes like tuna”.

The example in Figure 2 illustrates the use of a designation, “vuna”, purposely similar to part of a commercial designation, “tuna”. Under the Fishery and Aquaculture Products Commercial Designations adopted by Ireland, there are several designations with the word “tuna”.



Figure 3 & 4: Packages of plant-based product labelled as “atún vegetal” (vegetable tuna) and “atún vegano” (vegan tuna), respectively.

The examples in Figure 3 & 4 illustrate the use of part of a commercial designation, “atún”. Under the list of commercial designations and for fishery and aquaculture products allowed in Spain, there are several designations with the word “atún”.

3. Conclusion and recommendations

As mentioned above, the issue lies on the fact that there are no clear EU labelling rules for plant-based imitation products and it could increase the risk of fraud and be misleading to the final consumer. Therefore, the MAC would like for the European Commission to present their point-of-view on the annotation of plant-based imitation products.

The labelling on these products should clarify that the product is not an animal-based product. Additionally, harmonised approach at EU-level on this issue will prevent a lack of level-playing-field between different Member States.

In order to ensure clear labelling and avoid misleading information to consumers concerning plant-based seafood imitations, the MAC recommends the European Commission to:

- a) Undertake a study to determine the level of consumer understanding regarding plant-based imitation of seafood;
- b) Undertake a study to analyse the economic potential of plant-based imitation of seafood in the EU market and its impact on the operators of the seafood supply chain;
- c) Assess the need to potentially amend the legislative framework, in order to take into account the specificities of this new plant-based imitation seafood sector;
- d) Consider the relevance of developing and disseminating guidance documents for plant-based imitations of seafood, similar to the ones developed by Germany and France.

Annex

The MAC's membership discussed different ways that adequate labelling of plant-based imitation seafood products could take place. These are available below, in no specific order¹¹:

Solution A¹²

Producers of plant-based imitation seafood products would not be allowed to use (part of) of the seafood commercial designation on the package, unless the fish name is accompanied by the word "imitation", in a similar structure to the labelling of defrosted unprocessed fisheries products (Article 35(1)(d) of the CMO Regulation).

- E.g.: "(Part of) Commercial Designation" + "Imitation"

Solution B¹³

Producers of plant-based imitation seafood products would not be allowed to use (part of) the seafood commercial designation on package, but the use of the unprotected designation "fish" would be allowed. In line with the German guidelines, in order to provide a more detailed description of vegan and vegetarian products, when there is sufficient sensory similarity, plant-based producers would be allowed to use designations for cut pieces of fish and molluscs (e.g., "fillet", "nugget") and designations for categories of fish products (e.g., "smoked fish product", "fried fish product"). The vegan or vegetarian character should be clearly indicated in a clearly visible and legible place by stating "vegan" or "vegetarian" or another clear indication.

- E.g.: "Vegan/Vegetarian/Plant-based/Etc" + "Fish".

¹¹ These are included merely for information purposes and are not necessarily endorsed by all members.

¹² Labelling solution mentioned by Visfederatie.

¹³ Labelling solution mentioned by Bundesverband der deutschen Fischindustrie und des Fischgrosshandels e.V.

Solution C¹⁴

Producers of plant-based imitation seafood products would not be allowed to use (part of) the seafood commercial designation on the package, but the use of the unprotected designation “fish” would be allowed. This should be accompanied by the word “imitation”, in a similar structure to the labelling of defrosted unprocessed fisheries products (Article 35(1)(d) of the CMO Regulation), meaning that the “imitation” reference should be retained in the same letter type and size as the “fish” designation.

- E.g.: “Fish” + “Imitation”

Solution D¹⁵

Producers of plant-based imitation seafood products would not be allowed to use (part of) the seafood commercial designation on the package, unless that imitating product is clearly labelled on the front of the pack as “plant-based”, “vegan”, “vegetarian” or another clear indication, and, thus, conveying that it is actually a plant-based product and making sure that no consumer is misled. For this rule, a similar structure to the labelling of defrosted unprocessed fisheries products (Article 35(1)(d) of the CMO Regulation) could be used.

- E.g.: “Vegan/Vegetarian/Plant-based/Etc” + “(Part of) Commercial Designation”

Solution E¹⁶

Producers of plant-based imitation seafood products would not be allowed to use (part) of the seafood commercial designation or make references to any seafood products, including the use of the unprotected designation “fish”.

¹⁴ Labelling solution mentioned by CONXEMAR.

¹⁵ Labelling solution mentioned by EuroCommerce.

¹⁶ Solution mentioned by ADEPALE, APROMAR, COPA COGECA, EAPO, FEDEPESCA, OPESCAYA, OPP72, and OPPC3.