Feedback to the European Commission’s consultation on “Food labelling - revision of rules on information provided to consumers”

Supplementary document for question 5

Back-of-pack nutrition labelling (BoPNL) does not effectively inform consumers, promote healthier diets or tackle diet-related diseases.

Evidence is clear that consumers find BoPNL confusing. They do not perceive or understand BoPNL well, and they are unable to use this type of labelling effectively to help them make healthier food purchasing and consumption decisions.1 This is particularly true for consumers who are members of lower socioeconomic groups and, therefore, raises questions on BoPNL and health inequalities.2

Interpretive front-of-pack nutrition labelling (FoPNL) is an evidence-based intervention to inform consumers and help them make healthier food purchasing and consumption decisions, whilst encouraging manufacturers to reformulate food products.

The World Health Organization (‘WHO’) has called on States to implement FoPNL.3 Not only is FoPNL better perceived and better used than BoPNL,4 it also leads to healthier shopping baskets. FoPNL has a statistically significant effect in steering consumers’ choices towards healthier products, whilst encouraging product reformulation.5

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Interpretive FoPNL has consistently been shown to be more effective in improving health-related understanding, reducing processing time and improving purchasing intentions. Simpler schemes are generally better understood.\(^6\)

The EU should introduce a mandatory, EU-wide interpretive FoPNL scheme.

EU law, as it stands, precludes Member States from adopting mandatory FoPNL at national level. Article 38 of Regulation No 1169/2011 on the provision of food information to consumers prohibits Member States from making FoPNL mandatory, while Article 35(1) only permits voluntary non-interpretive FoPNL which repeats information already given in BoPNL. Moreover, Regulation No 1924/2006 on nutrition and health claims prohibits interpretive FoPNL which can guide consumers towards healthier products.\(^7\)

FoPNL should be mandatory for food products. Firstly, this would establish a level playing field promoting the free movement of food products within the EU and, therefore, contribute to the promotion of the functioning of the internal market. Secondly, it would also ensure a high level of consumer protection and public health in conformity with the EU’s obligations under Articles 9, 12, 114, 168 and 169 of the Treaty on the Functioning of the European Union as well as mandated by Articles 35 and 38 of the EU Charter of Fundamental Rights.\(^8\) Any exceptions should only be permitted where there are clear evidence-based justifications.

The nutrient profiling model underlying EU-wide FoPNL

It is a prerequisite that the development of interpretive FoPNL is based on an evidence-based nutrient profiling model. The model should encourage consumption of fruit, vegetables and wholegrains and other health-promoting food categories and ingredients; and discourage the consumption of fat (especially trans and saturated fatty acids), sugar (especially free sugar) and salt. Smaller portion sizes, energy density, level of processing and artificiality of ingredients may also be reflected in the model. The model should facilitate meaningful comparisons in order to encourage healthier substitutions both within and between categories.

The presentation of EU-wide FoPNL

The evidence base supports the introduction of a mandatory, EU-wide interpretive FoPNL scheme. Research has shown that colour coded and graded indicators are effective in meeting public health objectives of increasing salience, improving understanding and improving purchasing intention as well as actual purchasing decisions. Endorsement logos are not as effective as consumers tend to over-estimate the healthiness of products and there is insufficient research on the effectiveness of this type of FoPNL.

Relative to other schemes in use in the EU, Nutri-Score presents a number of advantages which favour its adoption across the EU. Firstly, Nutri-Score has been evaluated in several large-scale studies evaluating perception and comprehension. It has been shown to improve understanding and leads to better basket outcomes, particularly with consumers from more vulnerable populations. Secondly, Nutri-Score is widely supported by a broad range of stakeholders, including many public health organisations and consumers themselves. Thirdly,

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\(^7\) N Gokani, “Front-of-pack nutrition labelling: a tussle between EU food law and national measures” (2022) European Law Review (forthcoming). Requests for pre-prints are welcome: please email nikhil.gokani@essex.ac.uk.

the scheme has been adopted by many Member States, which would facilitate its extension across the EU.

**In the absence of a mandatory EU-wide, interpretive FoPNL scheme, the EU should not prohibit mandatory national schemes.**

The controversies surrounding the adoption of Regulation 1169/2011 and Regulation 1924/2006 have shown that reaching consensus across Member States is likely to be extremely difficult. There is a real risk that, in the absence of sufficient political will, the EU may fail to adopt a single EU-wide mandatory FoPNL scheme. It is therefore important that the Impact Assessment anticipates these difficulties and contains an additional FoPNL option exploring the implications of partial harmonisation whereby EU law would permit Member States to introduce effective mandatory national schemes, as noted in the Presidency Conclusions on front-of-pack nutrition labelling, nutrient profiles and origin labelling of 15 December 2020.9

**Nutrient profiling should also be adopted to regulate the use of health and nutrition claims more effectively, as mandated by Regulation No 1924/2006.**

Health and nutrition claims are used as marketing tools and can encourage consumers to purchase certain unhealthy products.10 Evidence shows that do lead to an increase in consumption and overall energy intake and can mislead consumers, particularly by masking the overall nutrition profile of food products.11 Under Article 4 of Regulation No 1924/2006, the Commission should have adopted an EU-wide nutrient profiling model to restrict the use of food claims on unhealthy products by 19 January 2009. The Commission should finally fulfil this obligation as a priority to ensure that businesses operate within a level playing field and consumers are finally protected from the most misleading forms of commercial food information.

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Alcohol consumption is a significant public health concern

Alcohol consumption is associated not only with non-communicable diseases but also injuries and infectious disease. There is a direct relationship between higher levels of alcohol consumption and developing some cancers, liver diseases and cardiovascular diseases; and the level and pattern of drinking has a relationship with ischaemic heart and cerebrovascular diseases.\(^1\) Alcohol is a psychoactive substance which has dependence-producing properties, and the excessive consumption of alcohol ranks among the top risk factors for disease, disability and mortality.\(^2\) It is a causal factor in more than 200 disease and injury conditions.\(^3\)

Current ingredient and nutrition labelling fails to inform consumers

Alcohol commonly contains a variety of ingredients, such as wheat, barley, corn, rye, grapes, hops, histamine, sulphites and brewer’s yeast. One gram of alcohol contains seven calories and, together with sugar, heavy intake can significantly contribute to overweight and obesity.\(^4\)

There is increasing evidence that there is a deficit in consumer knowledge and understanding of the nutritional content and ingredients of alcoholic beverages as well as the consequences of alcohol consumption.\(^5\) Across the EU, consumers are interested in alcohol labelling.\(^6\)

In its 2006 Alcohol Strategy, the EU specifically aimed to ‘provide information to consumers so that they can make informed choices’ and to inform consumers about ‘the impact of harmful and hazardous alcohol consumption on health’.\(^7\) This is in line with the long held view in the EU that well-informed consumers are empowered to make healthy purchasing and

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\(^7\) Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions an EU strategy to support Member States in reducing alcohol related harm (COM/2006/0625 final), paras 5.3 & 5.4.
consumption decisions. As the Commission itself plainly acknowledges in its Report regarding the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages in 2017, there are no objective reasons for the exemptions.

Ingredient and nutrition labelling would promote high level of consumer and public health protection and promote the functioning of the internal market

It is extremely concerning indeed that alcoholic beverages containing more than 1.2% by volume of alcohol are exempt from the requirement to display a nutrition declaration and ingredients list. Once again, nothing justifies such an exemption on such harmful commodities.

Even when a nutrition declaration is provided on a voluntary basis, it can be limited to an energy-only declaration. This is insufficient. Effectively implemented nutrition and ingredients labelling would inform consumer about the content of alcoholic beverages and contribute to empowering consumers to make healthier alcohol purchasing and consumption decisions. This is particularly important bearing in mind the evidence referred to above regarding, firstly, the deficit of consumer information on alcoholic beverages and the appetite for such information, and secondly, the relationship between alcohol consumption and a wide range of diseases.

Moreover, several Members State have proposed or introduced measures acting on the derogation for ingredients labelling in Regulation (EU) No 1169/2011 on the provision of food information to consumers, as well as measures on nutrition labelling. Bearing in mind that alcoholic beverages are traded extensively within the EU and beyond, there is a compelling rationale for the adoption of an EU-wide harmonised approach to the regulation of nutrition and ingredients labelling of alcoholic beverages to reduce market fragmentation.

On-label information is far more useful to consumers

It is well-established that, to be able to effectively inform consumers, information should be easily available, salient and well-perceived by consumers. On-label information is more readily accessible for consumers, particularly within in-store environments. Bearing in mind that consumers do not always search for nutrition and ingredient labelling, on-label information is more likely to be seen and read, which is particularly true for members of lower socioeconomic groups. There is no credible evidence which supports a claim that consumers are likely to, and will be able to, make use of off-label information. Moreover, there is no reason to treat alcoholic beverages more leniently than other foods through the exemption on nutrition and ingredient labelling. Indeed, Regulation No 1924/2006 on health and nutrition claims

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8 M Friant-Perrot and A Garde, 'From BSE to Obesity – EFSA’s Growing Role in the EU’s Nutrition Policy’ in A Alemanno and S Gabbi, New Perspectives in EU Food Law – Ten Years of European Food Safety Authority (Ashgate, 2013).
9 Report from the Commission to the European Parliament and the Council regarding the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages COM(2017) 58 final, 12.
recognises that alcohol is not like other food and prohibits alcoholic beverages from displaying
health and nutrition claims.

**The EU should also introduce other effective labelling, including front-of-pack labelling,
to help empower consumers**

The envisaged measures of back-of-pack nutrition labelling and ingredients labelling are just
two forms of labelling to help inform consumers. To empower consumers to make healthier
decisions, the EU should also develop proposals for mandatory front-of-pack labelling,
mandatory serving size recommendations and per portion nutrition information, guidance on
moderate levels of drinking and warnings on the health effects of consuming alcohol. The
Commission’s intention in *Europe’s Beating Cancer Plan* to make proposals on health
warnings on alcohol labels by the end 2023 are welcome. Not only does the WHO European
Action Plan to Reduce the Harmful Use of Alcohol 2012–2020 call for ‘labelling similar to that
used for foodstuffs, including alcohol and calorie content’ but also health warning. Moreover,
empowerment by information can only be successful if voluntary forms of information and
marketing are also regulated.

The World Health Organization has called for alcohol labelling requirements which display
essential information for health protection including relating to alcohol content, other
ingredients, caloric value and health warnings. The EU’s response to alcohol related harms
has been substandard and it is high time that it rectified this through the adoption of evidence-
based measures intended to limit the appeal, acceptability and affordability of alcoholic
beverages. It is only then that it can claim that it has complied with the obligation it derives
from the EU Treaties and the EU Charter of Fundamental Rights and Freedoms to ensure a
high level of public health protection in the development and implementation of all its policies,
including its internal market and consumer protection policies.

**March 2022**

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13 J Martin-Moreno et al, ‘Enhanced labelling on alcoholic drinks: reviewing the evidence to guide alcohol policy’ (2013) 23(6)
14 Communication From The Commission To The European Parliament And The Council - Europe’s Beating Cancer Plan
16 World Health Organization, “Global alcohol action plan 2022-2030 to strengthen implementation of the Global Strategy to
Reduce the Harmful Use of Alcohol” (second draft, 4th October 2021).
17 O Bartlett and A Garde, ‘On the Rocks: A Few Sobering Thoughts on the Growing EU Alcohol Problem’ in T Hervey et al (eds),