



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

¹ S. Campos et al, "Nutrition Labels on Pre-Packaged Foods: A Systematic Review" (2011) 14(8) Public Health Nutr. 1496; J. Barreiro-Hurlé, "Does Nutrition Information on Food Products Lead to Healthier Food Choices?" (2010) 35 Food Policy 221; K. Grunert et al, "Use and Understanding of Nutrition Information on Food Labels in Six European Countries" (2010) 18 J. Public Health 261; K. Grunert and J. Wills, "A Review of European Research on Consumer Response to Nutrition Information on Food Labels" (2007) 15 J. Public Health 385; A. Drichoutis, "Consumers' Use of Nutritional Labels: A Review of Research Studies and Issues" (2006) 9 Acad. Mark. Sci. Rev. 1; G. Cowburn and L. Stockley, "Consumer Understanding and Use of Nutrition Labelling: A Systematic Review" (2005) 8(1) Public Health Nutr. 21.

² N. Gokani, "Regulation for Health Inequalities and Non-Communicable Diseases: In Want of (Effective) Behavioural Insights" (2018) 24(6) Eur. Law J. 490.

³ WHO Europe, "European Food and Nutrition Action Plan 2015–2020" (WHO Europe, 2014), [32]; WHO, 'Tackling NCDs: 'Best Buys' and Other Recommended Interventions for the Prevention and Control of Noncommunicable Diseases' (WHO, 2017), 11.

⁴ J. Song et al, "Impact of Color-Coded and Warning Nutrition Labelling Schemes: A Systematic Review and Network Meta-Analysis" (2021) 18(10) PLoS Med. e1003765; S. Storcksdieck genannt Bonsmann et al, "Front-of-Pack Nutrition Labelling Schemes: A Comprehensive Review" (Joint Research Centre, 2020); H. Croker, "Front of Pack Nutritional Labelling Schemes: A Systematic Review and Meta-Analysis of Recent Evidence Relating to Objectively Measured Consumption and Purchasing" (2020) J Hum. Nutr. Diet 518; R. Feteira-Santos et al, "Effectiveness of Interpretive Front-of-Pack Nutritional Labelling Schemes on the Promotion of Healthier Food Choices: A Systematic Review" (2020) 18(1) Int. J. Evid. Based. Healthc. 24; M. Cecchini and L. Warin, "Impact of Food Labelling Systems on Food Choices and Eating Behaviours: A Systematic Review and Meta-Analysis of Randomized Studies" (2016) 17(3) Obes. Rev. 201; Institute of Medicine Committee on Examination of Front-of-Package Nutrition Rating Systems and Symbols, 'Front-of-Package Nutrition Rating Systems and Symbols: Phase I Report' (National Academies Press, 2010).

⁵ I. Ikonen, "Consumer Effects of Front-of-Package Nutrition Labeling: An Interdisciplinary Meta-Analysis" (2019) J. Acad. Mark. Sci. 1.



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,

⁶ R. Feteira-Santos et al, "Effectiveness of Interpretive Front-of-Pack Nutritional Labelling Schemes on the Promotion of Healthier Food Choices: A Systematic Review" (2020) 18(1) Int. J. Evid. Based. Healthc. 24; Z. Talati, "The Impact of Interpretive and Reductive Front-of-Pack Labels on Food Choice and Willingness to Pay" (2017) 14(1) Int J Behav Nutr Phys Act 171.

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.

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, *Foundations of EU Food Law and Policy: Ten Years of the European Food Safety Authority* (Routledge, 2014).

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.

March 2022

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⁹ N Gokani, "Front-of-pack nutrition labelling: a tussle between EU food law and national measures" (2022) *European Law Review* (forthcoming). Such forms of harmonisation have already been adopted in relation to tobacco through Article 24 of Directive 2014/40/EU concerning the manufacture, presentation and sale of tobacco and related products. See: O Bartlett and A Garde, 'On the Rocks: A Few Sobering Thoughts on the Growing EU Alcohol Problem' in T Hervey et al. (eds), *Elgar Handbook on European Health Law* (Elgar, 2017).

¹⁰ M Pothoulaki and G Chrysoschoidis, 'Health Claims: Consumers' Matters' (2009) 1 *Journal of Functional Foods* 222, 225 & 227; Food Standards Agency, 'Review and Analysis of Current Literature on Consumer Understanding of Nutrition and Health Claims Made on Food' (Food Standards Agency, 2007); J Wills et al, '70th Anniversary Conference on 'From Plough Through Practice to Policy' Symposium 2: Nutrition and Health Claims: Help or Hindrance' *European Consumers and Health Claims: Attitudes, Understanding and Purchasing Behaviour* (2012) 71 *Proceedings of the Nutrition Society* 229; S Storcksdieck genant Bonsmann et al 'Do Consumers Prefer Foods with Nutrition and Health Claims? Results of a Purchase Simulation' (2010) 16 *Journal of Marketing Communications* 47; Z Talati et al, 'Consumers' Responses to Health Claims in the Context of Other On-Pack Nutrition Information: A Systematic Review' (2017) 75(4) *Nutrition Review* 260.

¹¹ For reviews on understanding, see: K Grunert et al, 'Determinants of Consumer Understanding of Health Claims' (2011) 56(2) *Appetite* 269; K Grunert et al, 'Nutrition Knowledge, and Use and Understanding of Nutrition Information on Food Labels Among Consumers in the UK' (2010) 55(2) *Appetite* 177; G Nocella and O Kennedy, 'Food Health Claims – What Consumers Understand' (2012) 37 *Food Policy* 571.

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Feedback to the European Commission's consultation on "Food labelling - revision of rules on information provided to consumers"

Supplementary document for question 9

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

¹ C Parry et al, 'Alcohol consumption and non-communicable diseases: epidemiology and policy implications' (2011) 106(1) *Addiction* 1718.

² S Lim et al, 'A Comparative Risk Assessment of Burden of Disease and Injury Attributable to 67 Risk Factors and Risk Factor Clusters in 21 Regions, 1990–2010: A Systematic Analysis for the Global Burden of Disease Study 2010' (2012) 380 *Lancet* 2224.

³ WHO, 'Statistical Classification of Diseases and Related Health Problems' (10th revision, WHO, 1992).

⁴ S Wannamethee and A Shaper, 'Alcohol, body weight, and weight gain in middle-aged men' (2003) 77 *American Journal of Clinical Nutrition* 1312; SG Wannamethee et al, 'Alcohol intake and 8-year weight gain in women: a prospective study' (2004) 12 *Obesity Research* 1386.

⁵ K Grunert et al, 'Consumer Wants and Use of Ingredient and Nutrition Information for Alcoholic Drinks: Cross-Cultural Study in Six EU Countries' (2018) 63 *Food Quality and Preference* 107.

⁶ GfK Belgium, 'Consumer Insights - Knowledge of Ingredient and Nutrition Information Off-Label Information and Its Use – Report' (GfK Belgium, 2014); A Annunziata et al, 'Do Consumers Want More Nutritional and Health Information on Wine Labels? Insights from the EU and USA' (2016) 8(7) *Nutrients* 416; K Vallance et al, "We Have a Right to Know": Exploring Consumer Opinions on Content, Design and Acceptability of Enhanced Alcohol Labels' (2018) 53(1) *Alcohol and Alcoholism* 20.

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.⁸ 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.⁹

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.¹⁰ 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.¹¹ 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.¹² 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

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.

¹⁰ A Annunziata et al, 'Nutritional Information and Health Warnings on Wine Labels: Exploring Consumer Interest and Preferences' (2016) 106 *Appetite* 58; M Bui et al, 'What Am I Drinking? The Effects of Serving Facts Information on Alcohol Beverage Containers' (2008) 42(1) *Journal of Consumer Affairs* 81; O Maynard et al, 'Know your limits: Labelling Interventions to Reduce Alcohol Consumption' (*Alcohol Research UK*, 2018); C Wright et al, 'Beer and Wine Consumers' Perceptions of the Nutritional Value of Alcoholic and Nonalcoholic Beverages' (2008) 73(1) *Journal of Food Science* H8; C Wright et al, 'Beer Consumers' Perceptions of the Health Aspects of Alcoholic Beverages' (2008) 73(1) *Journal of Food Science* H12; Kate Vallance et al, '"We Have a Right to Know": Exploring Consumer Opinions on Content, Design and Acceptability of Enhanced Alcohol Labels' (2018) 53(1) *Alcohol and Alcoholism* 20; E Himmelsbach et al, 'Study on the impact of food information on consumers' decision making' (TNS European Behaviour Studies Consortium, 2014).

¹¹ K Grunert and J Wills, 'A review of European research on consumer response to nutrition information on food labels' (2007) 15 *Journal of Public Health* 385; J Barreiro-Hurlé, 'Does nutrition information on food products lead to healthier food choices?' (2010) 35 *Food Policy* 221.

¹² N Gokani, 'Regulation for Health Inequalities and Non-Communicable Diseases: In Want of (Effective) Behavioural Insights' (2018) 24(6) *European Law Journal* 490.

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.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷

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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) European Journal of Public Health 1082.

¹⁴ Communication From The Commission To The European Parliament And The Council - Europe's Beating Cancer Plan COM(2021) 44 final.

¹⁵ WHO Euro, 'European Action Plan to Reduce the Harmful Use of Alcohol 2012–2020' (WHO, 2012), 27.

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), Research Handbook on EU Health Law and Policy (Edward Elgar, 2017), ch 15.