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Improving Food Choices Through Nutrition Labelling: Towards a Common 'Nutri-Score' Scheme Across the EU

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Executive Summary

> The European Union is committed to the global fight against obesity and overweight, in which nutrition labelling plays an important role.

> Under Regulation 1169/2011, the EU currently operates with traditional tabular and numerical labelling.

> The 'Nutri-Score' is a new type of simplified, front-of-pack and colour-coded nutrition labelling already adopted by some member states as a recommendation to their food operators. It represents a useful supplement to the current system: it is easier to understand for consumers and leads to improved dietary choices.

> The adoption of the Nutri-Score across the EU would bring a triple benefit: better information to consumers, better health outcomes and a less fragmented European market for foodstuffs.

> As per Article 35 of Regulation 1169/2011, the European Commission is under an obligation to submit an overdue report on the matter, which could result in a proposal to modify the relevant EU provisions and introduce an EU-wide Nutri-Score labelling scheme.

Overweight, obesity and diet-related diseases, such as cardiovascular diseases or diabetes, are one of the great public health challenges faced by governments and form a major cause of premature mortality in Europe. Between 2010 and 2016, overweight and obesity rates on the continent have increased from 55.9% of the population to 58.7% and from 20.8% to 23.3% respectively (WHO 2018). This trend can be explained by fundamental changes in peoples' lifestyles such as the deterioration of the quality of diets and the decrease in physical activity.

Unhealthy dietary behaviour and its consequences are a complex and multifactorial phenomenon. Genetic factors can predispose some individuals to become obese while a host of psychological factors also explain why it is difficult for people to make adequate food choices in line with their long-term personal health interests. At the same time, individual factors alone cannot account for the overall change in our diets. Specialists talk of an 'obesogenic environment' to describe the socio-economic factors that have triggered and continue to foster the current diet situation.

Governments worldwide have used a variety of tools to counter this trend: educational measures, regulation of products composition (e.g. limits on transfats), fiscal measures (e.g. sugar tax), advertising and marketing restrictions (to protect children especially) etc. This policy brief focuses on nutrition labelling, a tool widely used in the context of food policy. Recent years have seen major improvements in the designing of such labels in various countries. In particular, France has introduced a new kind of front-of-pack labelling called 'Nutri-Score', offering encouraging preliminary results in terms of improved food choices. Belgium and Spain have also adopted the scheme while Germany and the Netherlands are set to follow. It is therefore the right moment for the EU to take stock and move towards a compulsory Nutri-Score type of labelling for all foodstuffs sold in the EU market.

To develop this argument, this policy brief will first introduce the scientific evidence backing the use of Nutri-Score, then present the current EU legal framework for nutrition labelling, to conclude by discussing the necessity for a change at the EU level and the challenges ahead.

Nutrition labelling and mandated disclosure as policy tools

Nutrition labelling is appealing to policy-makers for at least three main reasons. First, it fits well with the idea that, in a market relationship, consumers should be provided with adequate information in order to make choices that are

best aligned with their preferences. Second, it is thought that this information will allow consumers to make healthier food choices, which will ultimately lead to better health outcomes. Third, it is an intervention that does not constrain food operators too excessively.

The relevance of nutrition labels for public policy is however conditioned on their empirically proven usefulness: their actual take-up by consumers and their capacity to subsequently guide them into the desired form of behaviour, that is, nudge their dietary choices towards healthier food.

Studies from behavioural sciences provide ample evidence in this regard, showing that traditional, tabular and numerical, back-of-pack provision of nutritional information does not have any significant impact on people's dietary choices and is unlikely to lead to any meaningful result from a public policy perspective (Bauer/Reisch 2019, Becher et al. 2019). More generally, numerous studies have also shown that mandated disclosure of information suffers from serious shortcomings: it is often ignored, misunderstood and not acted upon (Ben-Shahar/Schneider 2014). Disclosures rely too often on an imagined version of the rational and diligent consumer that is far from reality.

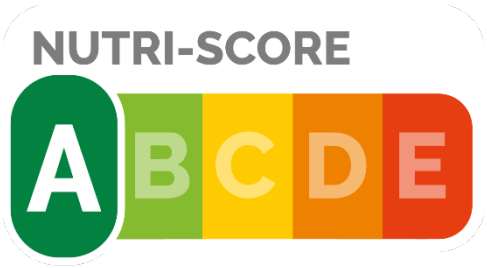
This bleak picture puts into question the very rationales for the use of disclosures and has led some to challenge their usefulness (ibid.). Others offer a more nuanced interpretation, calling for an improvement of mandated disclosure without discarding it entirely as a policy tool (Sibony 2015). In any case, there are good reasons to believe that labels and information disclosure will continue to be used, as they are relatively cheap and less intrusive compared to other policy options. It may therefore be worth trying to improve the influence of nutrition labels on consumer choices by making them more visible and easier to understand. In this vein, the Nutri-Score is particularly relevant.

The Nutri-Score and the science behind it

The Nutri-Score, originally conceived in France, is a front-of-pack and colour-coded label. It associates each product with a colour, from green to red, and a letter, from A to E, which summarise its nutritional value (see Figure 1). The label is placed on the front of the package so as to capture consumers' attention.

In order to classify a product along this five-grade scale, a score is calculated on the basis of its nutrient content per 100 g taking into account both positive and negative elements. Positive elements include the presence of fruit, vegetables and nuts, fibres and proteines, whilst negative elements include the content of energy, sugar, saturated fatty acids and salt (for more details, see Julia/Hercberg 2017). The nutrient profiling system underpinning the Nutri-Score was positively tested, ensuring that the ensuing classification of foods was in line with French dietary recommendations, that it would be capable of reflecting the overall nutritional quality of a diet and would lead to the desired health outcomes (ibid.). Similarly encouraging results were found in Germany (Szabo de Edelenyi et al. 2019).

Figure 1: Nutri-Score label



Source: Open Food Facts (2020)

Crucially, it must be stressed that the Nutri-Score is intended to influence the overall diet of people and to facilitate comparison between products across categories, i.e. helping consumers choose between two oils, two cheeses etc. The purpose is not, as it has sometimes been argued, to convince them to solely buy and consume products labelled A or B.

From a behavioural perspective, the Nutri-Score is pertinent on multiple counts. It first addresses many of the problems affecting the effectiveness of labels and disclosure of information in general: it is salient (bright colours and front-of-pack), simple to understand (no specific scientific literacy required) and quick to process. In particular, it was found that the perception and understanding of this label was superior to other types of nutrition labelling, leading to the purchase of healthier products and potentially reductions of health inequalities (Julia/Hercberg 2017; see also Becher 2019, 1344).

The Nutri-Score can also help consumers by reminding them of the importance of taking nutrition facts into consideration when buying food (Bauer/ Reisch 2019, 19). Its colours may have an influence on consumer choices since green is more generally associated with 'approval' and red with 'prohibition' (Wilson 2016, 59; Bauer/Reisch 2019, 17).

Though further research may be needed, it is clear that the Nutri-Score is more effective than the more factual provision of 'raw' nutrition information such as the one currently in place in the EU.

The EU legal framework for nutrition labelling

The EU is increasingly active in the field of lifestyle-related health risks. The EU health programme 2014-2020 had as an objective "to promote health, prevent diseases, and foster supportive environments for healthy lifestyles […] by addressing in particular the key lifestyle related risk factors with a focus on the Union added value" (Art. 3(1), Regulation 282/2014).

This role comes in spite of a limited competence for the Union to protect and improve human health, a field in which, under the Treaty on the Functioning of the European Union (TFEU), it can only "carry out actions to support, coordinate or supplement the actions of the member states" (Art. 6 TFEU). While the EU has been granted some powers in certain areas of public health, there remains no direct legislative competence for harmonising the laws and regulations of member states in the field of lifestyles (Art. 168(5) TFEU).

Yet, the Union enjoys broad powers in relation to the internal market, an area of shared competence. Article 114 TFEU allows in particular for the harmonisation of national provisions "which have as their object the establishment and functioning of the internal market". Tobacco products, alcohol and foodstuffs are tradable products, which means that public health measures enacted by member states can constitute obstacles to free movement. The EU can therefore enact harmonisation measures and set its own level of public health protection. It is hence not surprising that most EU rules related to lifestyle health risks – such as tobacco smoking – are contained in instruments adopted under Article 114 TFEU.

This indirect competence raises a certain number of legal problems (see Delhomme 2019) but is perfectly adequate when it comes to labelling. Indeed, it is clear that "national rules laying down the requirements to be met by products, in particular those relating to their designation, composition or packaging, are in themselves liable, in the absence of harmonisation at Community level, to constitute obstacles to the free movement of goods" (Case C-491/01, *British American Tobacco*, para. 64). The EU can therefore enact measures on labelling.

The Commission's White Paper "A Strategy on Nutrition, Overweight, and Obesity-related Health Issues" (European Commission 2007) demonstrates that providing information to consumers has become a policy cornerstone in this field: "[n]utrition labelling is one way that information can be passed on to consumers and used to support healthy decision-making in relation to the purchasing of food and drink" (ibid., 5). Issues considered in this White Paper include the regulation of front-of-pack labelling (e.g., simplified labelling or signposting).

Yet, for the moment, EU Regulation 1169/2011 on the provision of food information to consumers, which is one of the two main instruments governing nutrition labelling at the EU level, only provides for a traditional mandatory nutrition declaration, not applicable to alcohol (Art. 16), which includes the energy value and amounts of fat, saturates, carbohydrates, sugars, protein and salt (Art. 30). These must be expressed per 100 g or 100 ml and may also be expressed per portion or consumption unit (Art. 32 and 33). It is typically the kind of nutrition information that appears insufficient in the light of the existing evidence.

The regulation allows member states, however, to experiment with other forms of expression "using graphical forms or symbols in addition to words or numbers", provided that they notify the Commission and comply with a certain number of conditions. These additional forms of expression must for instance be based "on sound and scientifically valid consumer research" and "aim to facilitate consumer understanding of the contribution or importance of the food to the energy and nutrient content of a diet". Most importantly, these can only be voluntary schemes and cannot create obstacles to the free movement of goods, meaning that member states must not impose any nutrition label on food business operators (Art. 35).

Finally, pursuant to the same provision, "the Commission shall submit a report to the European Parliament and the Council on the use of additional forms of expression and presentation, on their effect on the internal market and on the advisability of further harmonisation of those forms of expression and presentation" by the end of 2017, which may be accompanied "with proposals to modify the relevant Union provisions" (Art. 35).

This current EU approach to nutrition labelling policy is highly unsatisfactory and calls for an urgent change. Not only does Regulation 1169/2011 provide for a type of labelling whose effectiveness is doubtful, to say the least, but it also prohibits member states from imposing the use of better, more effective labels.

The challenges ahead for an EU 'Nutri-Score'

Regrettably, the Commission has not yet submitted the report provided for in Article 35 of Regulation 1169/2011. To date, it has also not taken any clear stance on the issue of front-of-pack labelling, as demonstrated by its answer to a recent parliamentary question (Question for written answer E-002795-19), where it has refused to express its views on the Nutri-Score and on a potential EU-wide initiative. In 2014, it even filed an infringement procedure against the United Kingdom, on the ground that its 'traffic light' nutrition labelling scheme (sharing some features with the Nutri-Score) might create a negative inference on

products labelled with the colour red, thereby suggesting that the product is inferior.

In the meantime, pressure to act is mounting. Belgium and Spain have followed France in formally adopting the Nutri-Score as a recommendation to food operators, while Germany and the Netherlands are planning to do so as well. Civil society has also stepped in with the launch of a 'Pro Nutriscore' European Citizen's Initiative in May 2019 (ECI(2019)000008) that has already gathered nearly 100.000 signatures.

EU action would bring about several benefits. First, it would ensure that the entire EU population has access to quality nutritional labelling, which will hopefully lead to improved food choices and, in turn, to better food quality as supply will adapt. Second, it would limit the fragmentation that is already occurring at the EU and member state levels, as member states and companies are experimenting with new and different schemes. This is detrimental to consumers' ability to use these labels, as having a single set of labels is proven to be instrumental in allowing consumers to understand nutritional information and make relevant comparisons (Becher 2019, 1348). This also leads to further fragmentation of the EU single market, which is prejudicial to both food operators and consumers.

The Commission should propose a new 'front-of-pack' nutrition labelling scheme drawing on the existing national initiatives around the Nutri-Score. This would come in addition to the 'back-of-pack' information already present on EU products, as the idea is not to prevent consumers to have access to more thorough information. The final design would need to be evidence-based and suitable across the EU. Such an initiative would undoubtedly be met with forceful opposition from the agri-food lobby, although some companies like Nestlé have already expressed their willingness to use the Nutri-Score´ (Nestlé 2019), but the resistance could also come from member states.

In 2016 already, the delegations of Italy, Cyprus, Greece, Portugal, Romania, Slovenia and Spain have warned the Council of the European Union that "'traffic light' labelling would be in contraposition with European quality policies because, on the one hand, [some] goods are recognised as 'quality products' at European level and, on the other hand, getting a 'red label', they could be identified as 'bad products' and consequently refused by the consumers" (Council of the European Union 2016). While some member states have probably argued against the traffic-light and Nutri-Score labels out of pure economic considerations, this type of labelling could arguably have detrimental consequences for some traditional products that form the core of regional food cultures and, while being calorie-intense, are made of natural ingredients and present other benefits.

The Nutri-Score system also has its blind spots. The presence of additives or other synthetic ingredients, as opposed to natural ingredients, for instance, is not taken into account. Yet, any simplified message necessarily leaves out some information. Consumers could also misunderstand the Nutri-Score and believe that olive oil, or other high-fat foods with healthy qualities, are 'bad' while the message is rather that these products should be consumed in reasonable quantities. The label's adoption would therefore need to be accompanied by an appropriate public campaign explaining to consumers how to make the best use of it, stressing that the Nutri-Score does not encompass all there is to know about food.

More generally, cultural diversity is not only a hurdle that needs to be overcome at the political level. Variations in local patterns of consumption could render the establishment of a common nutrient profiling system difficult, as the classification resulting from it needs to be suitable for different food markets. Choices and compromises would surely need to be made in this regard. Moreover, it cannot be excluded that cultural differences in consumer behaviour lead to different outcomes for the Nutri-Score, or any similar label, rendering difficult the adoption of a common scheme at the EU level. Further research is thus certainly needed on the Nutri-Score, even if evidence is at this stage overwhelmingly positive.

Last, improving policies that focus on consumers' individual responsibility should by no means divert political attention away from other necessary policy initiatives, for instance in the upstream regulation of food ingredients or the limitation of aggressive marketing and advertising methods. There is no silver bullet, but an EU-wide Nutri-Score would be a step in the right direction.

Further Reading

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