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Nutritional labelling in France - Causes and implications of consumer confusion

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The main purpose of the nutritional information that appears on food labelling is to help consumers choose the healthiest products available to them. This information is also an important means by which food manufacturers communicate essential information about the nutritional value and composition of their products¹.

In principle, the nutritional labelling provisions of Regulation (EU) No 1169/2011 on the provision of food information to consumers² ought to harmonize nutritional information, and, from 14 December 2016 when it becomes fully operational, allow the free circulation of properly labelled food products in all member states. However, if Art. 35 of the Regulation is applied inappropriately,³ the whole of the single market in food products will be put at risk...

This article discusses the controversial and heavily debated initiatives aimed at introducing nutritional labelling in France – initiatives which have exploited the ambiguity of the aforementioned Art. 35 of the Regulation and have also perhaps misappropriated the provisions of Art. 34⁴.

Art. 35 of Regulation (EU) No 1169/2011

Art. 35.1 of the Regulation sets forth the following:

“Additional forms of expression and presentation

In addition to the forms of expression referred to in Article 32(2) and (4) and Article 33 and to the presentation referred to in Article 34(2), the energy value and the amount of nutrients referred to in Article 30(1) to (5) may be given by other forms of expression and/or presented using graphical forms or symbols in addition to words or numbers⁵ provided that the following requirements are met:

- (a) they are based on sound and scientifically valid consumer research and do not mislead the consumer as referred to in Article 7;
- (b) their development is the result of consultation with a wide range of stakeholder groups;
- (c) they aim to facilitate consumer understanding of the contribution or importance of the food to the energy and nutrient content of a diet;
- (d) they are supported by scientifically valid evidence of understanding of such forms of expression or presentation by the average consumer;

(e) in the case of other forms of expression, they are based either on the harmonised reference intakes set out in Annex XIII, or in their absence, on generally accepted scientific advice on intakes for energy or nutrients;

(f) they are objective and non-discriminatory; and

(g) their application does not create obstacles to the free movement of goods.”.

France: a cacophony of different proposals creates confusion in the ‘République’

General De Gaulle is said to have once asked “Comment voulez-vous gouverner un pays qui a deux cent quarante-six variétés de fromage?”.

Of course, there are not as many as 246 additional forms of expression and presentation of nutritional information either in current use or being proposed in France. But those that do exist are certainly as different as they are controversial...

Brevitatis causae, we cannot take a detailed look at all of them, so we will begin with the Health Bill⁶ presented some time ago by Mme. Marisol Touraine, Minister of Social Affairs, Health and Women’s Rights. This Bill contemplates simplified official labelling which can be used on a voluntary basis by manufacturers or distributors with their products⁷. Its fifth Article is based precisely on the aforementioned Art. 35 of Regulation No 1169/2011, and provides that

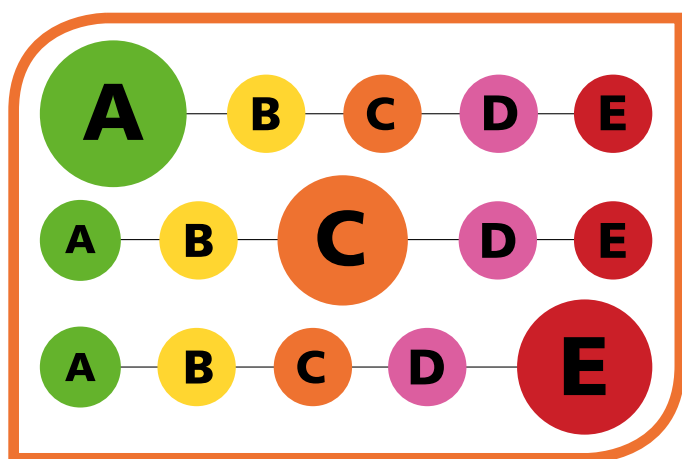
“To provide the consumer with information and help them make an informed choice, the nutritional statement can, without prejudice to the provisions of articles 9, 16 and 30 of Regulation (EU) No 1169/2011 [...], be accompanied by a presentation or expression via pictures or symbols in keeping with the meaning of article 35 of the Regulation”⁸.

We still do not know if and how this unsettling provision will be implemented, as in such an event it would have to be developed as a regulation.

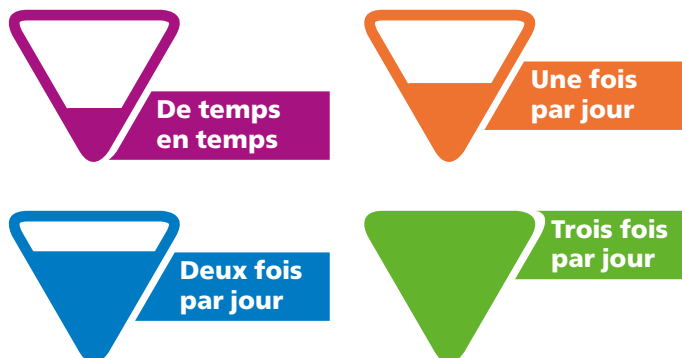
As legal experts have pointed out, the French market is currently riven by confusion and uncertainty. A number of systems of additional forms of expression and presentation of nutritional information have been proposed and even piloted. These systems have proved as heterogeneous as they are contradictory, but it is clear that they all represent a serious obstacle to accessing the food markets of other member states.

Thus since 2007, long before the Regulation seeking to harmonise nutritional information was adopted, the Association Nationale des Industries Agro-alimentaires (ANIA) has recommended its members to use monochrome labelling showing the percentage of recommended daily intakes per portion of food. The Association believes that such a design provides real, non-discriminatory, relevant and comprehensible consumer information⁹.

Since then, other methods of providing nutritional information have also appeared in France. For example, Professor Serge Hercberg advocates the use of the "5C" system proposed in his 2013 report to the Health Minister entitled "Propositions pour un nouvel élan de la politique de la Santé"¹⁰. The design¹¹ comes in the shape of a series of 'pills' in 5 colours ranging from green to red (green/yellow/orange/bright pink/red). These colours come in 5 different categories (from A to E). The size of the pills increases according to their nutritional value to show the extent to which they belong to one or other of the 5 categories¹².



Another colour-based design is "Aquellefréquence", first proposed by Carrefour in September 2014 and to which the "Fédération du Commerce et de la Distribution"¹³ (FCD) then lent its support in March 2015¹⁴. This design comes in the shape of an inverted triangle (pointing downwards) which is full to a greater or lesser degree, depending on the colour assigned to the product. Foods are divided into 4 categories, represented by 4 different colours (green, blue, orange, violet). These colours in turn represent different indicators of how frequently the food in question should be consumed (frequencies decreasing from green to violet). Such a system is considered by the promoters of "Aquellefréquence" to be easily comprehensible to consumers (?) and is probably based on the profiles developed by members of a scientific committee sponsored by Carrefour¹⁵.



source: www.aquellefrewuence.fr

Space prevents me from describing the arguments that have ensued between the supporters of the different systems with their apparently irreconcilable positions. But to give just one example, in May 2014 a group of scientific societies and consumer associations asked for the "5C" system to be made law, and thus become the official simplified labelling model used in France¹⁶. However this was opposed by the ANIA and the FCD.

The arguments against the "5C" system are based on the claim by businesses that using a red pill stigmatizes certain products and makes those who consume them blameworthy. In an FCD press release dated 14 March 2015, the big retailers (Carrefour, Casino, Auchan, Monoprix, etc.¹⁷) stated their support for the "Aquellefréquence" proposal, and announced that they would be performing tests on a number of the distributor's product ranges at their local stores.

In such a fraught environment, the most sensible opinions have come from the likes of the ANIA, who have stated their opposition to a simplified nutritional labelling scheme based on a colour code¹⁸ and a 'medicalised' approach to nutrition. They call instead for greater awareness of both the limitations of systems based on colour-coded nutritional profiles, and the impact of such mechanisms¹⁹.

The unity of the EU food market is threatened not only by a skewed interpretation of the aforementioned Art. 35 of Regulation No 1169/2011, but also from Art. 36, which in laying down the conditions for providing voluntary information about food products, also actually risks undermining the very goal of harmonisation embodied in the Regulation! As a recent report by the Fond Français pour l'Alimentation et la Santé (FFAS) concludes, "it can be inferred from this provision that every food business operator²⁰ can freely decide to provide voluntary information, including a system whereby nutritional information is represented using graphics²¹, as long as the three requirements stipulated by article 36 of the Regulation are respected^{[22][23]}.

This brings to mind the FFAS's warning about Art. 36 leading to a proliferation of systems of graphic representation, which would prove advantageous neither to consumers nor food business operators²⁴.

References

- [1] See Baltas, G., "Nutrition labelling: issues and policies", *European Journal of Marketing*, Vol. 35, No. 5/6, 2001, pp. 708-721; Barreiro-Hurlé, J. et al., "Does nutrition information on food products lead to healthier food choices?", *Food Policy*, Vol. 35, No. 3, 2010, pp. 221-229; Cheftel J. C., "Food and nutrition labelling in the European Union", *Food Chemistry*, Vol. 93, No. 3, 2005, pp. 531-550; Cowburn, G. and Stockley, L., "Consumer understanding and use of nutrition labelling: a systematic review", *Public Health Nutrition*, Vol. 8, No. 1, 2004, pp. 21-28 (available at http://journals.cambridge.org/download.php?file=%2FPHN%2FPHN8_01%2F51368980005000054a.pdf&code=8531888fbff89f513395fd739ff44a29); Edge, M. S. et al., "The impact of variations in a fact-based front-of-package nutrition labeling system on consumer comprehension", *Journal of the Academy of Nutrition and Dietetics*, Vol. 114, No. 6, 2014, pp. 843-854; Grunert, K. G. and Wills, J. M., "A review of European research on consumer response to nutrition information on food labels", *Journal of Public Health*, Vol. 15, No. 5, 2007, pp. 385-399; and Leek, S. et al., "Consumer Confusion and Front Of Pack (FOP) Nutritional Labels", *Birmingham Business School, University of*

- Birmingham, 2015, 28 pp. (see <http://rab.bham.ac.uk/pubs.asp?id=8aad21d7-2588-4c55-9996-17c24276f336>).
- [2] Regulation of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).
- [3] On this provision see Barclay, C., "Food Labelling Nutrition – Voluntary Schemes", Standard Note SN/SC/4019, Library of the House of Commons, 2012, pp. 6-8 (document available via the following link, last accessed on 29 May 2015: <http://researchbriefings.files.parliament.uk/documents/SN04019/SN04019.pdf>); and Hodgkins, C. et al., "Understanding how consumers categorise nutritional labels: A consumer derived typology for front-of-pack nutrition labelling", *Appetite*, Vol. 59, No. 3, 2012, pp. 810–811.
- [4] I will not be discussing here the United Kingdom's "Front of Pack Traffic Light Signpost Labelling", the legality of which appears to be under investigation by the European Commission and about which much has been written [see "Front of Pack Traffic Light Signpost Labelling - Technical Guidance" published by the Food Standards Agency, 2007, 16 pp., available via the following link, last accessed on 26 May 2014: <http://multimedia.food.gov.uk/multimedia/pdfs/frontofpack-guidance2.pdf>; among the theoretical articles on this system the following stand out: BALCOMBE, K., "Traffic lights and food choice: A choice experiment examining the relationship between nutritional food labels and price", *Food Policy*, Vol. 35, No. 3, 2010, pp. 211–220 (available via the following link, last accessed on 27 May 2014: <http://www.econstor.eu/bitstream/10419/50635/1/611460769.pdf>); and SACKS, G., "Impact of front-of-pack traffic-light nutrition labelling on consumer food purchases in the UK", *Health Promotion International*, Vol. 24, No. 4, 2009, pp. 344-352 (available at <http://heapro.oxfordjournals.org/content/24/4/344.full.pdf+html>)]. Neither shall I be dealing here with other systems of information such as the "Key hole" system used in Scandinavian countries, or the "Choices" logo used in the Netherlands and developed by scientists for the Choice International Foundation (<http://www.choicesprogramme.org/>), whose unique features make them each worthy of a case study of their own.
- [5] Emphasis added by the author.
- [6] See <http://www.gouvernement.fr/action/la-loi-de-sante> and <http://www.legifrance.gouv.fr/affichLoiPreparation.do?idDocument=JORFDOLE000029589477&type=contenu&id=2&typeLoi=proj&legislature=14>.
- [7] González Enrosa, M. draws attention to the contradiction implicit in an official system that can only be used voluntarily (see "Las disposiciones relativas a la información nutricional de la Ley 'Tou-raine': el proteccionismo francés de nuevo al ataque", *BoDiAlCo*, No. 14, 2015, pp. 7-8), although this author does not share his opinion.
- [8] Free translation.
- [9] See "Recommandations pratiques sur l'étiquetage nutritionnel", ANIA, 2009 version (available at <http://www.ania.net/sites/default/files/e697fjgss2p11mgo4cde6wma.pdf>).
- [10] See Propositions pour un nouvel élan de la politique nutritionnelle française de santé publique dans le cadre de la Stratégie Nationale de Santé, 1ère Partie: "Mesures concernant la Prévention nutritionnelle" (available at <http://www.ladocumentation-francaise.fr/var/storage/rapports-publics/144000068.pdf>).
- [11] Described as "simple colours" (see González Enrosa, M., op. cit., pp. 6-7).
- [12] For Mayoral, A. this system is an à la française version of the British traffic light system, with all its defects and inconveniences (see "¿Qué hará ahora la DG Sante con las disposiciones relativas a un nuevo régimen del etiquetado nutricional que no se aplicará hasta 2016?", Documento de trabajo CEEUDECO No. 2/2015, p. 5).
- [13] <http://www.fcd.fr/>.
- [14] See the press release "Les enseignes du commerce et de la distribution développent une information nutritionnelle volontaire, simple, lisible et commune", available at <http://www.fcd.fr/documentation/get-communique/id/205>.
- [15] For more information on this see Ducrot, P. et al., "Compréhension objective vis-à-vis de différents systèmes d'information nutritionnelle simplifiés sur la face avant des emballages des aliments: étude NutriNet-Santé", *Nutrition Clinique et Métabolisme*, Vol. 28 Sup. 1, 2014, pp. S186-P224; also Étude sur la formulation des fréquences accompagnant le logo 'Aquel-lefréquence', Étude du Credoc, 2015 (which can be accessed at <http://www.credoc.fr/publications/index.php>).
- [16] See Lettre ouverte au Premier Ministre des Sociétés savantes médicales, Associations de consommateurs et Associations de malades "Pour un étiquetage nutritionnel simple, intuitif et compréhensible par tous sur la face avant des emballages des aliments" of 13.5.2014 (http://www.sfsp.fr/petitions/file/Lettre_ouverte.pdf).
- [17] Apart from the Leclerc Centres, which announced their opposition to any colour-based scheme.
- [18] On the impact of colours on consumer perceptions of the healthiness of products see WDSowicz, G. et al., "The meaning of colours in nutrition labelling in the context of expert and consumer criteria of evaluating food product healthfulness", *Journal of Health Psychology*, Vol. 20, No. 6, 2015, pp. 907–920.
- [19] See the press release entitled "L'ANIA dénonce le simulacre de dialogue de la ministre de la sante" of 26.3.2015 (http://www.ania.net/sites/default/files/cp_lsp_lania_denonce_le_simulacre_de_dialogue_de_la_ministre_de_la_sante_260315.pdf which stresses the overriding importance of education in real behavioural change).
- [20] Emphasis added by the author.
- [21] Idem.
- [22] That the food information provided voluntarily does not mislead the consumer, is not ambiguous or confusing, and is based, as appropriate, on the relevant scientific data. (See Mayoral, A., op. cit., p. 6).
- [23] See "Les dispositifs graphiques d'information nutritionnelle", FFAS, 2015, available at http://alimentation-sante.org/wp-content/uploads/2015/01/Systemes_info_nutri_1501.pdf (author's translation).
- [24] See Mayoral, A., op. cit., p. 7.