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## Self-Regulation of the Labelling of the List of Ingredients of Alcoholic Beverages: A Long-Term Solution?

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## SELF-REGULATION OF THE LABELLING OF THE LIST OF INGREDIENTS OF ALCOHOLIC BEVERAGES: A LONG-TERM SOLUTION?

Luis González Vaqué

« Although I am a typical loner in daily life, my consciousness of belonging to the invisible community of those who strive for truth, beauty, and justice has preserved me from feeling isolated ».

**Albert Einstein**

### I. INTRODUCTION

The proposal to make it compulsory to include a list of ingredients in the labelling of wine and other alcoholic beverages has been debated and rejected many times<sup>1</sup>. It was discussed at length during the legal process leading to the adoption of Directive 79/112/EEC on the labelling, presentation and advertising of foodstuffs<sup>2</sup>, when the ultimately successful arguments presented by opponents of the measure ranged from the view that wine is a *living organism* whose composition is constantly mutating, to the opinion that such information is irrelevant to consumers. Alcoholic beverages thus remained exempt, despite article 6.3 of the Directive prescribing that «in the case of beverages containing more than 1.2 % by volume of alcohol, the council, acting on a proposal from the commission, shall, before the expiry of a period of four years following notification of this directive , determine the rules for labelling ingredients and, possibly, indicating the alcoholic strength». In fact, no such measure was adopted (although the sixth recital of the Directive specified that «... the prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer»). And whilst it is true that the European

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<sup>1</sup> See "Wine labelling: future perspectives", *European Food and Feed Law Review*, Vol. 3, No. 1, 2008, 25-29; K. Kypri, "Ingredient and nutrition information labelling of alcoholic beverages: do consumers want it?", *MJA*, Vol. 187, No. 11/12, 2007, p. 699 (available at the following Internet page, last accessed on 21 March 2017: [https://www.mja.com.au/system/files/issues/187\\_11\\_031207/kyp10914\\_fm.pdf](https://www.mja.com.au/system/files/issues/187_11_031207/kyp10914_fm.pdf)); J. M. Martin-Moreno, *et al.*, "Enhanced labelling on alcoholic drinks: reviewing the evidence to guide alcohol policy", *European Journal of Public Health*, Vol. 23, No. 6 , 2013, 1082–1087 (available at the following Internet page, last accessed on 21 March 2017: <https://academic.oup.com/eurpub/article/23/6/1082/438396/Enhanced-labelling-on-alcoholic-drinks-reviewing>); and E. Reinboth, *et al.*, "The laws of responsible wine labelling", *Bulletin (Law Society of South Australia)*, Vol. 39 No. 1, 2017, 16-17.

<sup>2</sup> Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ L 33, 8.2.1979, p. 1).

Commission (EC) presented a series of proposals in 1982<sup>3</sup> and 1992<sup>4</sup> in compliance with article 6.3, the Council failed to reach agreement on any of them. Then in February 1997 the EC presented a fresh proposal<sup>5</sup> to replace article 6.3 of Directive 79/112/EEC with the following wording:

«The rules for labelling the ingredients of beverages containing more than 1,2 % alcohol by volume shall be adopted within *a period of three years starting on 1 July 1998*<sup>6</sup>

(a) in the case of

- wines [...], including sparkling wines [...], liqueur wines and semi-sparkling wines [...] offered for sale to the consumer,
- partially fermented grape must [...],
- spirituous beverages [...],
- aromatized wines [...]

within the framework of the specific Community provisions applicable to them;

b) in the case of other products, in accordance with the procedure laid down in Article 17.

The rules adopted in accordance with these procedures shall enter into force simultaneously for the beverages covered by points (a) and (b) of this paragraph.

For all these products the list of ingredients shall be preceded by the words "prepared with..."<sup>7</sup>.

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<sup>3</sup> Proposal for a Council Directive amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer [document COM(82)626 final, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51982PC0626&qid=1490198193514&from=ES>].

<sup>4</sup> Proposal for a Council Directive amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [document COM(91)536 final]. One of the Proposal's chief objectives was to reconsider the labelling of alcoholic beverages [first section ("Introduction") of the Explanatory Memorandum], as well as to «make it compulsory to indicate the content of certain ingredients or constituents [beverages containing more than 1.2 % alcohol by volume...]» (*ibidem*). To this purpose article 1.4 of the proposed replacing article 6.2(c) with the following provision: «the rules for labelling the ingredients of drinks containing more than 1.2% alcohol by volume shall be determined [...] in the case of: wines, including sparkling wines, liqueur wines and semi-sparkling wines offered for sale to the consumer; -partially fermented grape must; -spirituous beverages; -aromatized wines by the specific Community provisions applicable to them...».

<sup>5</sup> Article 1 of the Proposal for a European Parliament and Council Directive amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [document COM(97) 20 final].

<sup>6</sup> Emphasis added by the author.

<sup>7</sup> This proposal was eventually included in the agenda of a Council working group in December 2002. Most Member States present agreed that the labelling of the ingredients of alcoholic

Directive 79/112/EEC was later repealed by Directive 2000/13/EC on the labelling, presentation and advertising of foodstuffs<sup>8</sup>. This new Directive was presented as a codification of the existing legislation,<sup>9</sup> and in any case continued to exempt the requirement to list ingredients<sup>10</sup> when it came to alcoholic beverages.

In 2003 Directive 2000/13/EC was part-modified<sup>11</sup> to include requirements specific to certain ingredients or other substances which, if used to produce food and present in the finished product, risk causing allergies or intolerances among consumers.<sup>12</sup> Hence since it came into force, consumers have been prone to find, for example, convoluted chemical products (allergens) mentioned on wine labelling, without any mention of other ingredients<sup>13</sup>.

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beverages should adhere more closely to the revised general rules on labelling, but this did not lead to an ad hoc amendment to the existing Community legislation being adopted.

<sup>8</sup> Directive of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ L 109, 6.5.2000, p. 29).

<sup>9</sup> Although it did contain some new elements (see C. Vidreras, "La fiscalización del consumo del tabaco, las bebidas alcohólicas y el azúcar: elementos comunes y diferenciales", *BoDiAlCo*, No. 16, 2015, 25-26).

<sup>10</sup> Article 6.3 of the Directive provided that «In the case of beverages containing more than 1,2 % by volume of alcohol, the Council, acting on a proposal from the Commission, shall, before 22 December 1982, determine the rules for labelling ingredients».

<sup>11</sup> Directive 2003/89/EC of the European Parliament and of the Council of 10 November 2003 amending Directive 2000/13/EC as regards indication of the ingredients present in foodstuffs (OJ L 308, 25.11.2003, p. 15.)

<sup>12</sup> On this issue see M. Boden *et al.*, "Review of statutory and voluntary labelling of food allergens", *The Proceedings of the Nutrition Society; Cambridge*, Vol. 64, No. 4, 2005, 475-480; I. Carreño, "The New European Community Rules on the Labelling of Allergen Ingredients in Foodstuffs", *Food and Drug Law Journal*, Vol. 60, 2005, 375-391; S. L. Taylor *et al.*, "Ingredient and labeling issues associated with allergenic foods", *Allergy*, Vol. 56, S. 67, 2001, 64-69; and B.M.J. Van Der Meulen, "Allergens in Law - European Legislation assessed against the Preferences of Food Allergic Consumers", *European Food and Feed Law Review*, No. 2, 2011, 74-87 (article available at the following Internet page, last accessed on 21 March 2017: [https://www.researchgate.net/publication/254832430\\_Allergens\\_in\\_law\\_-\\_European\\_legislation\\_assessed\\_against\\_the\\_preferences\\_of\\_food\\_allergic\\_consumers](https://www.researchgate.net/publication/254832430_Allergens_in_law_-_European_legislation_assessed_against_the_preferences_of_food_allergic_consumers)).

<sup>13</sup> See C. Vidreras, C., *op. cit.*, 26-27.

Directive 2000/13/EC was itself repealed by Regulation (EU) No 1169/2011 on the provision of food information to consumers<sup>14</sup>. It is worth recalling that the Commission's initial Proposal<sup>15</sup> acknowledged that

- a *legal limbo* existed in regard to the ingredients of alcoholic beverages [second section ("Consultation of interested parties and impact assessment") of the Explanatory Memorandum]; and
- the industry felt that labelling requirements were excessive and «... the cost of changes [was] a concern to industry» (*ibidem*).

Regulation (EU) No 1169/2011 retains the mandatory listing of ingredients<sup>16</sup> and introduces a new nutrition declaration<sup>17</sup> (energy, fat, saturates, carbohydrates with specific reference to sugars and salt) which is also compulsory and has been applicable since 16 December 2016<sup>18</sup>. It also *continues* to exempt the listing of ingredients of alcoholic beverages from its mandatory requirements, although food business operators can provide such information to consumers on a voluntary basis (and, further to article 36, such information must satisfy the requirements of all the provisions governing the obligatory listing of ingredients).

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<sup>14</sup> 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). On this Community law see "La nueva regulación del etiquetado de los alimentos en la UE: ¿estamos preparados para el día 'D', el 13 de diciembre de 2014?", *Revista Aranzadi de Unión Europea*, No. 4, 2011, 37-55 (article available at the following Internet page, last accessed on 23 March 2017: [http://works.bepress.com/luis\\_gonzalez\\_vaque/34/](http://works.bepress.com/luis_gonzalez_vaque/34/)).

<sup>15</sup> Proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers {SEC(2008) 92} {SEC(2008) 93} {SEC(2008) 94} {SEC(2008) 95} [document COM(2008) 40 final]. On this Proposal see J. A: Swindells, "¿Etiquetado o información alimentaria?: Más de lo mismo..", *Gaceta del InDeAl*, Vol. 10, No. 4, 2008, 22-31.

<sup>16</sup> Article 19 of Regulation No 1169/2011 lists the foodstuffs which do *not* need to carry a list of ingredients, such as fresh fruit and vegetables, including potatoes, which have not been peeled, cut or similarly treated, carbonated water, the description of which indicates that it has been carbonated, and fermentation vinegars that are derived exclusively from a single basic product, provided that no other ingredient has been added.

<sup>17</sup> *Brevitatis causae*, we shall only touch briefly on this topic here.

<sup>18</sup> See recitals 10, 34, 35, 36, 37, 38, 39 y 40 and articles 49 ("Amendments to Regulation (EC) No 1924/2006"), 54.2 ("Transitional measures"), Annex I ("Specific Definitions"), Annex V ("Foods which Are Exempted from the Requirement of the Mandatory Nutrition Declaration") and Annex XV ("Expression and Presentation of Nutrition Declaration") of Regulation No 1169/2011. See also E. Fernández Marilgera, "¿Por qué se impone un ininteligible etiquetado nutricional sin formar ni informar a consumidores...?", *BoDiAl/Co*, No. 7, 2014, 13-22; and MAYORAL, A., "¿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, 13 pp.

Furthermore, article 41 of the Regulation allows Member States to keep their own national rules governing the listing of ingredients of alcoholic beverages whilst waiting for harmonised EU rules to be adopted. This, in my opinion, is an unjustifiable and dubious measure which could hinder the functioning of the internal market.

Article 16.4 of the text finally adopted in 2011 provides that «without prejudice to other Union provisions requiring a list of ingredients or a mandatory nutrition declaration, the particulars referred to in points (b) and (l) of Article 9(1)<sup>19</sup> shall not be mandatory for beverages containing more than 1,2 % by volume of alcohol<sup>20</sup>». It should be noted that at the second paragraph of said article, the Community legislator tasked the Commission with preparing a *report* to look at whether alcoholic beverages should be covered in the future - particularly regarding the obligation to provide information about their energy value - and reasons for any exemptions, bearing in mind the need for *consistency* with other relevant EU policies.

With just a little delay (*sic*), the Commission submitted a report to the Council and the European Parliament (EP) on 13 March 2017, “regarding the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages” [document COM(2017) 58 final, hereinafter the *EC report on the labelling of alcoholic beverages*].

The present article examines both the arguments the Commission puts forward in that report and its “suggested” solution to the issue of the mandatory labelling of the list of ingredients of alcoholic beverages. The report also covers the issue of the nutrition declaration for such drinks, but I have chosen to leave that important topic for another day in order to better identify and weigh up the arguments for and against including the list of ingredients on the labelling of wine, liquors etc with sufficient rigour.<sup>21</sup>

Firstly, however, I shall turn to the Commission’s consultation with Member State experts prior to drafting the final version of the *EC report on the labelling of alcoholic beverages*. In late 2013, during the first preparatory stage of the report, the Commission’s Regulation No. 1169/2011 working group met experts attached to the relevant national authorities to discuss the issues addressed in the report. At the meeting, many of the experts *felt it to be unjustified and inconsistent that on soft drink labels, ingredients mixed with alcohol did not*

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<sup>19</sup> That is, the list of ingredients and nutritional information.

<sup>20</sup> Although article 41 of Regulation No 1169/2011 provides that « Member States may, pending the adoption of the Union provisions referred to in Article 16(4), maintain national measures as regards the listing of ingredients in the case of beverages containing more than 1,2 % by volume of alcohol».

<sup>21</sup> Indeed, the arguments in support of a nutritional declaration appearing on the labelling of alcoholic beverages are quite different from (and may even contradict) those presented in this article. (See C. VIDRERAS, *op. cit.*, 26-27).

*have to be declared, whilst the ingredients of soft drinks not containing alcohol did.*<sup>22</sup>

## II. COMMUNITY AND NATIONAL LEGISLATION ON THE LABELLING OF ALCOHOLIC BEVERAGES

Having discussed above the nature and "history" of the key regulations governing the labelling of alcoholic beverages, I shall now try to provide a broader overview of the issue by looking at other EU provisions which address the issue (these provisions are also mentioned at paragraph 3.2 of the *EC report on the labelling of alcoholic beverages*).

Regulation (EU) No 1308/2013<sup>23</sup> is relevant in this context because it contains a comprehensive list of the technical standards covering all oenological practices, manufacturing methods and ways of presenting and labelling wines. It also describes the substances most likely to be used in the production process, together with the conditions for their use, via a positive list of oenological practices and treatments. In accordance with EU legislation on liqueurs,<sup>24</sup> where the labelling of a spirit drink displays the raw material used to manufacture the ethyl alcohol of agricultural origin, each agricultural alcohol used should be listed in descending order of the quantity used: «this legislation also regulates the labelling of the maturation period, the term 'blend', and the geographical indications»<sup>25</sup>. Elsewhere, the Regulation states that aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails<sup>26</sup> should

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<sup>22</sup> See paragraph 7.3 of the *EC report on the labelling of alcoholic beverages*, according to which it was felt that, *a priori* and without prejudging any justified exemption, «all alcoholic beverages [...] *should be treated equally for the labelling particulars under consideration*» (Italics added.).

<sup>23</sup> Regulation (EU) of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671). See J. BLOCKX and J. VANDENBERGHE, "Rebalancing commercial relations along the food supply chain: the agricultural exemption from EU competition law after Regulation 1308/2013", *European Competition Journal*, Vol. 10, No. 2, 2014, 387-401.

<sup>24</sup> Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16). On the different areas that fall within the scope of this Regulation, see M. A. Medina González, M. A., "Protection of geographical indications against translation, generic use, evocation, and other potential enemies", *Journal of Intellectual Property Law & Practice*, Vol. 7 No. 1, 2012, 20-22; y R. Sciaudone, "An accessible guide to EU law and practice of geographical indications", *Journal of Intellectual Property Law & Practice*, Vol. 10, No. 5, 2015, 388-389.

<sup>25</sup> See also paragraph 3.2 of the *EC report on the labelling of alcoholic beverages*.

<sup>26</sup> Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).



comply with the provisions concerning processing and composition, as well as specific labelling requirements regarding the designation for sale and the nature of the alcohol, i.e. the raw material used to produce it<sup>27</sup>.

In regard to Member States' legislation, it is worth noting that, according to paragraph 4.1 of the *EC report on the labelling of alcoholic beverages*, some States (Austria, Croatia, Czech Republic, Finland, Germany, Greece, Hungary, Ireland, Luxembourg, Portugal, Lithuania and Romania) have kept or adopted national measures that impose additional labelling requirements concerning the ingredients or certain ingredients of alcoholic beverages, or certain alcoholic beverages.

The Community legislator and the European Parliament and Council in particular have also expressed an interest in the issue. In its Resolution on Alcohol Strategy [2015/2543(RSP)] adopted on 29 April 2015, the EP noted that

- «... the competent authorities in the Member States are best prepared to work out individually tailored policies to prevent people from abusing alcohol» (recital B);
- «... not all alcohol consumption has the same consequences, as it very much depends on the pattern of consumption, including what is consumed and how; whereas drinking patterns and trends vary greatly among regions of the European Union, with significant subregional patterns of consumption and health effects linked to harmful use of alcohol across the EU» (recital G);
- «... social, cultural, geographical and economic variations in the EU countries make it necessary to distinguish among different consumption patterns and trends» (*ibidem*);
- «... alcohol-related harm tends to be linked to a variety of factors, such as socio-economic level, cultural background and drinking patterns and parental and peer influence, as well as the extent and level of implementation and enforcement of appropriate policies in this area » (recital K);
- «... advertising and marketing impact on alcohol consumption levels, particularly among young people; [and] the implementation of Directive 2010/13/EU on audiovisual media services is essential for the effective protection of the physical, mental and moral development of children and minors» (recital M);
- «... there is a correlation between starting drinking at an early age and the likelihood of adult alcohol-related problems; [and] the most effective tools to prevent excessive alcohol consumption by young people are education, information and prevention campaigns» (*ibidem*);

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<sup>27</sup> See also paragraph 3.2 of the *EC report on the labelling of alcoholic beverages*.

- «... Regulation (EU) No 1169/2011 of 25 October 2011 on the provision of food information to consumers *excluded beverages with an alcoholic content over 1,2 % of volume from two of its provisions, namely the ingredients list*<sup>28</sup> and the nutritional labelling requirements » (recital U);
- «... given the nature of alcohol-related risks, *comprehensive information regarding alcoholic beverages is nevertheless necessary*<sup>29</sup> (*ibidem*);
- «... under Regulation (EU) No 1169/2011 the Commission was required to produce by December 2014 a report evaluating whether alcoholic beverages should in future be covered by the requirement to provide information on energy value, and the reasons justifying possible exemptions, *as well as a legislative proposal, if appropriate, that would determine the rules for a list of ingredients or a mandatory nutrition declaration for those products*<sup>30</sup>» (recital V); etc...

The Resolution urged « the Commission to produce immediately the report required in Regulation (EU) No 1169/2011 by December 2014, evaluating whether alcoholic beverages should in future be covered by the requirement to provide information on ingredients and nutritional content while considering in particular the impact on SME and artisanal production»<sup>31</sup>.

The Commission received a series of written questions on the labelling of alcoholic beverages from members of the European Parliament, such as the question on “Alcohol strategy” submitted on 30 January 2015 by Alberto Cirio, Glenis Willmott, Marcus Pretzell, José Inácio Faria, Younous Omarjee and Piernicola Pedicini, on behalf of the Committee on the Environment, Public Health and Food Safety [O-000008/2015]:

« The harmful use of alcohol is still the third-biggest cause of preventable death and disease in Europe, and is a risk factor for more than 60 chronic diseases, including cancer, heart disease and liver disease. Alcohol misuse is also linked to obesity, which is a major public health concern and the fourth-biggest cause of preventable illness in Europe. In addition, alcohol misuse and addiction are linked to other social problems, including workplace absenteeism, family breakdown and violence. Europe has the highest rate of alcohol consumption in the world.

Given the above, and the fact that the Commission's previous EU strategy to support Member States in reducing alcohol-related harm ended in 2012, the Commission is asked to answer the following:

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<sup>28</sup> Italics added.

<sup>29</sup> *Idem*.

<sup>30</sup> Italics added.

<sup>31</sup> Point 6 of the European Parliament Resolution of 29 April 2015 on Alcohol Strategy.

1. Will it be coming forward with proposals for a new alcohol strategy? Can it explain whether any other actions are being taken in addition to this plan?
2. Will the new document differentiate appropriately between behaviours and attitudes towards alcohol consumption, and between alcoholic products?
3. *Can it explain why a new, separate report has not yet been published on the application of the requirements to provide ingredients lists and nutrition information for alcoholic beverages, bearing in mind that Regulation 1169/2011 on the provision of food information to consumers stipulated that such a report was to be produced by December 2014? Does the Commission still intend to produce this report?*<sup>32</sup>
4. In the light of the experience of the European Alcohol and Health Forum, does the Commission envisage any kind of initiative to encourage the coordination and involvement of stakeholders?»

In 2015 the Council, for its part, *invited* the Commission to consider, as part of the report it was required to adopt further to the aforementioned article 16.4 of Regulation No. 1169/2011, «*the possibility of introduction of mandatory labelling of ingredients...*»<sup>33</sup>, [see point 19 of the Council conclusions of 7 December 2015, “An EU strategy on the reduction of alcohol related harm” (doc. prec.: 14391/1/15 REV 1<sup>34</sup>)].

### III. INTERNATIONAL LEGISLATION

The first international standard worthy of mention here is without a doubt the *Codex Alimentarius* for the labelling of Prepackaged Foods<sup>35</sup>, in whose relevant provision alcoholic beverages are *not* exempted from the obligatory list of ingredients. In various third countries, such as the USA, Brazil, Canada, China, India, Mexico, New Zealand, Russia, and Switzerland, «it is mandatory to provide the list of ingredients for certain alcoholic beverages »<sup>36</sup>.

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<sup>32</sup> Italics added.

<sup>33</sup> *Idem*.

<sup>34</sup> Available at <http://data.consilium.europa.eu/doc/document/ST-15050-2015-INIT/en/pdf>

<sup>35</sup> General Standard for the labelling of Prepackaged Foods, CODEX STAN 1-1985, last amended in 2010, and which can be viewed at <https://app.box.com/s/gondvl3m99v4josqtyv8715c68pe335q>

<sup>36</sup> See paragraph 4.2 of the *EC report on the labelling of alcoholic beverages*.

It is therefore worth highlighting that the World Health Organisation (WHO)'s European plan of action to reduce the harmful use of alcohol 2012–2020<sup>37</sup>. The plan referred to *ingredients which are important from a health perspective, including calorific content and ought to be labelled, and, in general, noted that alcoholic beverages should be labelled in the same way as other foods to ensure consumers have full access to information about product content and composition, so as to protect their health and interests.*

#### IV. INFORMATION AS A KEY ELEMENT OF CONSUMER PROTECTION

Producers' interests have undoubtedly been responsible for the inexplicable delays (since 1978...) and rejection of the various proposals listed in the introduction to this article. There have been very few surveys of what consumers think about the privilege which is bestowed upon alcoholic beverages by exempting them from the requirement to be included in the list of ingredients<sup>38</sup>. The *EC report on the labelling of alcoholic beverages* cites a 2014 study,<sup>39</sup> which adds little of interest to the discussion at hand<sup>40</sup>. Another study,<sup>41</sup> from the same year and sponsored by a brewers' association, concluded that consumers have limited knowledge of the ingredients of alcoholic beverages (which perhaps remains the case...). This second study aimed to provide a representative overview of the issue by consulting the opinion of 5,400 persons in six Member States. Its findings revealed that «consumers have a knowledge deficit of the carbohydrate, calorie and fat content of the different types of alcoholic beverages studied (beer, wine and spirits) *and of the different ingredients that can be used in their production*<sup>42</sup>»<sup>43</sup>.

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<sup>37</sup> European action plan to reduce the harmful use of alcohol 2012–2020, available at: [http://www.euro.who.int/\\_data/assets/pdf\\_file/0008/178163/E96726.pdf?ua=1](http://www.euro.who.int/_data/assets/pdf_file/0008/178163/E96726.pdf?ua=1)

<sup>38</sup> With some honourable exceptions, consumer associations do not seem to have attached much importance to such an obvious legal vacuum either (See E. Fernández Marilgera, *op. cit.*, 17-18).

<sup>39</sup> The "TNS European Behaviour Studies Consortium, Study on the impact of food information on consumers' decision making" can be viewed at the following Intranet page: [https://ec.europa.eu/food/sites/food/files/safety/docs/labelling\\_legislation\\_study\\_food-info-vs-cons-decision\\_2014.pdf](https://ec.europa.eu/food/sites/food/files/safety/docs/labelling_legislation_study_food-info-vs-cons-decision_2014.pdf)

<sup>40</sup> «... consumer behaviour vis-à-vis information on alcoholic beverages was investigated [and] after having been informed about the energy content of alcoholic drinks like beer, wine and spirits, 2031 respondents from 8 Member States were asked about the ideal information to be provided on alcoholic drinks in the future; almost half (49%) of the participants wanted information on the energy value of alcoholic beverages, and 16% declared their intention to reduce their alcohol consumption on the basis of this information » (fifth section of the *EC report on the labelling of alcoholic beverages*).

<sup>41</sup> CIS\Consumer insights - knowledge of ingredient and nutrition information off-label information and its use -Report GfK - Belgium (2014).

<sup>42</sup> Italics added.

<sup>43</sup> See the fifth section of the *EC report on the labelling of alcoholic beverages*.

The Commission has been criticised by legal doctrine for its sluggishness and apparent lack of interest in finding out what citizens really think about the issue<sup>44</sup>. It does at least acknowledge that « ... some of these positions have evolved »<sup>45</sup>, noting that:

- Consumer representatives argue that the *inconsistency* between the labelling of alcoholic beverages and other foods is unacceptable, and that the list of ingredients should be mandatory for all alcoholic beverages in order to help consumers make informed decisions about what to drink and in what quantity<sup>46</sup>;
- a European beer consumer organisation «also called for the mandatory list of ingredients of alcoholic beverages»<sup>47</sup><sup>48</sup>;
- Public health associations support the mandatory labelling of ingredients (and the nutrition declaration) as part of a comprehensive strategy to inform and educate consumers about alcohol. As a group of non-governmental and public health organizations involved in the reduction and prevention of alcohol-related harm put it, «in Europe, consumers have the right to know the ingredients contained in the alcoholic beverages they drink»<sup>49</sup><sup>50</sup>; and
- an association of European brewing companies agrees that consumers have a right to know what they are consuming [the same brewers are behind a voluntary Europe-wide initiative called the *European Beer Pledge*<sup>51</sup>, whose members have promised, amongst other actions, to adopt joint and quantifiable measures to improve consumer information and provide nutrition information about different beers].

These, then, are among the few examples included in the *EC report on the labelling of alcoholic beverages*.

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<sup>44</sup> See for example C. Vidreras, *op. cit.*, 27-28.

<sup>45</sup> See the sixth section of the *EC report on the labelling of alcoholic beverages*.

<sup>46</sup> Informed food choices for healthier consumers – European Consumer Organisation's (BEUC) position on nutrition (2015).

<sup>47</sup> European Beer Consumers Union Manifesto 2009-2014.

<sup>48</sup> See the sixth section of the *EC report on the labelling of alcoholic beverages*.

<sup>49</sup> Eurocare Reflections On Alcohol Labelling (2014), available at the following Internet page: <https://app.box.com/s/tpz21k5oushybk7vud7l1dstgdijj4i9>

<sup>50</sup> See the sixth section of the *EC report on the labelling of alcoholic beverages*.

<sup>51</sup> Second year report - November 2014 European Beer Pledge - A package of responsibility initiatives from Europe's Brewers, available at the following Internet page: <http://www.brewersofeurope.org/uploads/mycms-files/documents/publications/2014/european-beer-pledge-2014-web.pdf>

Having got thus far, we shall turn next to the question of whether the now traditional outright opposition to the mandatory list of ingredients on the labelling of alcoholic beverages, which – incredibly - dates back to the 1960s, has finally begun to *weaken*.

## V. ARE THE ECONOMIC PRESSURE GROUPS CHANGING OPINION?

According to the Commission, the industry's position on the issue has shifted significantly: « (...) in the past food business operators were opposed to any additional labelling requirement, today *the majority of sectors*<sup>52</sup> acknowledge *that consumers have the right to know about the content of their drinks*<sup>53</sup> and a number of concerted or independent voluntary initiatives are being developed and implemented by the actors of the different sectors to provide consumers with additional information»<sup>54</sup>.

What remains unclear is whether there is any degree of consensus on the way the information in question should be disseminated and whether it should be mandatory or voluntary. Thus, for example

- the companies signed up to the aforementioned *European Beer Pledge* believe operators should be *allowed to choose whether they provide the information on labels or via other platforms*, such as websites or quick response (QR) code-driven applications<sup>55</sup>, in which case there should be a clear link to the information on the beer's labelling (some of the firms already voluntarily include information about the ingredients — either on the label or in other ways (?)...);
- «the spirit sector is of the opinion that consumers would benefit from clearer and more meaningful information on what is in their drink and should receive *consistent information*<sup>56</sup> about responsible consumption of spirits to enable them to make healthier lifestyle choices»<sup>57</sup> (these businesses also favour providing such information in ways other than an indication on the label<sup>58</sup>); and

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<sup>52</sup> Italics added.

<sup>53</sup> *Idem*.

<sup>54</sup> See the sixth section of the *EC report on the labelling of alcoholic beverages*.

<sup>55</sup> A quick response code is a 2D bar code of a kind used to provide easy access to information, via, for example, a smartphone.

<sup>56</sup> Italics added.

<sup>57</sup> See the sixth section of the *EC report on the labelling of alcoholic beverages*.

<sup>58</sup> According to M. G. Enrosa their real purpose is often to conceal information about ingredients (See “¿Tan difícil es obligar a los productores de bebidas alcohólicas a que informen a consumidores sobre sus ingredientes?”, *BoDiAlCo*, No. 24, 2017, 8-9).

- for their part, «the wine sector considers that a balanced diet is a key element for a healthy lifestyle and that consumers should carefully choose what they drink and what they eat»<sup>59</sup>, although they too insist on providing the information via alternative means<sup>60</sup>.

As far as the actual chances of *effectively* providing consumers with the information they require goes, the foregoing initiatives do little to invite optimism, and it is no surprise the Commission states in conclusion that<sup>61</sup>

- 1) These voluntary initiatives are very recent, and so it is still too early to evaluate their impact.
- 2) Nonetheless, it is to be hoped that they will encourage consumers to take an interest in having the list of ingredients and nutritional declaration provided on a more systematic basis.

## VI. CONCLUSIONS?

As noted, unlike with other foods, the *indication of the list of ingredients* for alcoholic beverages is not mandatory under the current legislation, and so «European consumers have therefore reduced access to the nutrition declaration and to the list of ingredients with the exception of ingredients which may have an allergenic effect»<sup>62</sup>.

It should not be forgotten that in the past, the economic sectors affected expressed opposition to a mandatory labelling regime for wines, spirits, etc. The Commission believes these sectors now tend more to recognise that consumers are entitled to know what they are drinking and so «on that basis, an increasing number of voluntary initiatives have emerged providing consumers with information on the ingredients, the energy value or the full nutrition declaration of alcoholic beverages and *addressing consumers' expectations for more information on the drinks they consume*»<sup>63</sup><sup>64</sup>.

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<sup>59</sup> See section 6 of the *EC report on the labelling of alcoholic beverages*.

<sup>60</sup> For M. G. Enrosa, there is no justification for providing information in such unusual ways (See *op. cit.*, 9-10).

<sup>61</sup> See section 6 of the *EC report on the labelling of alcoholic beverages*, which ends by stating that: «producers of alcoholic beverages are generally of the view that any new requirements regarding labelling should apply equally to all types of alcoholic beverages».

<sup>62</sup> See section 8 ("Conclusions") of the *EC report on the labelling of alcoholic beverages*.

<sup>63</sup> M. G. Enrosa has questioned the accuracy of both this statement and one in section 8 of the *EC report on the labelling of alcoholic beverages*, which affirms that «according to information from the sector, it should now increasingly be found on the labels themselves» (See *op. cit.*, 10-11).

<sup>64</sup> See also section 8 ("Conclusiones") of the *EC report on the labelling of alcoholic beverages*.

Faced with a lack of legal provision in this area, some Member States have *de facto* adopted national standards requiring an indication – albeit often a partial one – of the ingredients of certain alcoholic beverages. However, «such national initiatives contribute to an increased risk of market fragmentation»<sup>65</sup>.

After reiterating that the list of ingredients (and nutrition declaration) are key items of information in helping consumers make more informed decisions of the kind that lead to healthier lifestyles, the Commission admits that «... in the case of alcoholic beverages, it cannot be assumed that consumers are necessarily aware of the generally various ingredients used in the production process...»<sup>66</sup>. And for that reason, «on the basis of the information reviewed, [it] *has not identified objective grounds that would justify the absence of information on ingredients and nutrition information on alcoholic beverages or a differentiated treatment for some alcoholic beverages*»<sup>67</sup> ...»<sup>68</sup>.

The following conclusion is far more ambiguous and open to question:

«This report shows that the sector is increasingly prepared to provide responses to consumers' expectations to know what they are drinking. This is demonstrated by the expansion of concerted or independent voluntary initiatives developed and implemented by the sector to provide consumers with information on the list of ingredients, the energy value and/or the full nutrition declaration on or off label»<sup>69</sup>

The above statement does not, in my opinion, represent a logical outcome to the *EC report on the labelling of alcoholic beverages*. Instead, as the Commission itself notes, it is based on the recent progress of the initiatives launched by different economic sectors, and allows the Commission to make the following suggestions/proposals:

- «... as a first step, current voluntary initiatives should be allowed to develop further so as to provide list of ingredients and nutrition declaration» (see the section 8);
- «therefore, [the Commission] invites the industry to respond to consumers' expectations and present within a year of adoption of this report a self-regulatory proposal that would cover the entire sector of alcoholic beverages».

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<sup>65</sup> *Ibidem*.

<sup>66</sup> *Ibidem*.

<sup>67</sup> Italics added.

<sup>68</sup> See also section 8 of the *EC report on the labelling of alcoholic beverages*.

<sup>69</sup> *Ibidem*.



- «The Commission will assess the industry's proposal».

In the event the Commission considers the industry's self-regulatory proposal to be unsatisfactory it will carry out an impact assessment to examine the other options available. In keeping with the principles behind the « Better Regulation guidelines »<sup>70</sup>, such an assessment would carefully examine both regulatory and non-regulatory options, especially regarding the provision of information about the energy value of alcoholic beverages. In addition, it should carefully consider the effects of these different options on (1) the internal market, (2) the economic sectors concerned, and (3) *the needs of consumers and the actual use of this information*, as well as on international trade.

The Commission's pithy "conclusions" are disappointing for many different reasons. Firstly, because the *invitation* to industry to propose a self-regulating system for the whole of the alcoholic beverages sector holds dubious legal weight (indeed, it was included in a Communication of the Commission, which as legal doctrine has pointed out<sup>71</sup>, is only binding upon the Commission itself...). And secondly, because of the absence of any clear definition of which "industry" will be empowered to "self-regulate"<sup>72</sup>, and self-regulation's lack of success so far when it comes to effectiveness and legal certainty<sup>73</sup>. Finally, there is the improbably short timescale of just one year for settling an issue which is as controversial and contentious now as it has been since the 1960s.

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<sup>70</sup> See [http://ec.europa.eu/smart-regulation/guidelines/toc\\_guide\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm)

<sup>71</sup> See for example "¿Se han cumplido los objetivos propuestos en la Comunicación de la Comisión relativa al Plan de Acción sobre Consumo y Producción Sostenibles y una Política Industrial Sostenible", *BoDiAlCo*, No. 17, 2016, 17-18.

<sup>72</sup> See C. Vidreras, *op. cit.*, p. 27.

<sup>73</sup> See for example S. Eckert and A. Héritier, "New Modes of Governance in the Shadow of Hierarchy: Self-regulation by Industry in Europe", *Journal of Public Policy*, Vol. 28, No. 1, 2008, 113-138; P. Eijlander, "Possibilities and Constraints in the Use of Self-Regulation and Co-Regulation in Legislative Policy: Experiences in the Netherlands - Lessons to Be Learned for the EU?", *European Journal of Comparative Law*, Vol. 9, No. 1, 2005, 28-36; and L. J. Senden, "Soft Law, Self-regulation and Co-regulation in European Law: Where do they Meet?", *Electronic Journal of Comparative Law*, Vol. 9, No. 1, 2005, 1-27.