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Listing ingredients on the labels of alcoholic beverages in the EU: A reality?[1]

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«Il ne faut jamais désespérer»

French proverb

I. Introduction

The obligation to list the ingredients on the labels of wine and other alcoholic beverages has been debated and rejected for some time. In the European Union, during the course of the legal process that concluded with the adoption of

[1] This manuscript is dedicated to the memory of Prof. Robert Xalabarder, a scientist, colleague and person with a rare human quality.

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Directive 79/112/EEC relating to the labelling, presentation and advertising of foodstuffs[3], the subject was widely discussed and culminated in a victory for those opposed to such obligation (the arguments against including a list of ingredients on the beverages in question were diverse, ranging from wine being a *living organism* with a constantly changing composition, to such information being irrelevant to the consumer)[4]. The exemption for alcoholic beverages was still applicable when Directive 2000/13/EC came into force, which also regulates the labelling, presentation and advertising of food products[5] and repealed the aforementioned Directive 79/112/EEC.

Regulation (EU) No 1169/2011 on the provision of food information to consumers[6] in turn repealed Directive 2000/13/EC; it is worth recalling that, in the Commission's initial Proposal[7] [document COM(2008) 40 final] it was recognised that: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*).

In principle, the new Regulation maintains the exception of the obligation to list the ingredients of alcoholic beverages. However, the Regulation establishes that food company operators may voluntarily provide this information to consumers (and, in accordance with Article 36 of Regulation (EU) No 1169/2011, such

[3] 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).

[4] See: "Self-Regulation of the Labelling of the List of Ingredients of Alcoholic Beverages: A Long-Term Solution?", *European Food and Feed Law Review*, No. 5, 2017, 431-424.

[5] 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).

[6] 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 Regulation 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 European Union*, No. 4, 2011, 37-55 (article available at the following Internet page, last accessed on 23 March 2018: http://works.bepress.com/luis_gonzalez_vaque/34/).

[7] 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 Swindells, J. A., "¿Etiquetado o información alimentaria?: Más de lo mismo...", *Gaceta del InDeAl*, Vol. 10, No. 4, 2008, 22-31.

information must comply with the provisions governing the mandatory list of ingredients). Furthermore, Article 16.4 of the aforementioned Regulation establishes 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)[8] shall not be mandatory for beverages containing more than 1.2 % by volume of alcohol[9]». However, in the second paragraph of said Article, the Community legislator imposed on the Commission the obligation to draw up a *report* assessing whether alcoholic beverages should be covered in the future, in particular by the requirement to provide information about their energy value, and to examine the reasons for justifying possible exemptions, taking into account the need to ensure *consistency* with other relevant Union policies.

Before continuing, it is obvious that, on an international level, we must refer in particular to the *Codex Alimentarius* standard concerning the labelling of packaged foods (general standard for labelling packaged foods, CODEX STAN 1-1985) which *does not* exempt alcoholic beverages from the provision of the mandatory list of ingredients. In many countries, such as the United States, Brazil, Canada, China, India, Mexico, New Zealand, Russia and Switzerland, *it is mandatory to provide a list of ingredients for certain alcoholic beverages*.

In this respect, it is also appropriate to emphasise that the agreement on the World Health Organization's (WHO) European action plan to reduce the harmful use of alcohol 2012–2020 makes reference to *important ingredients from a health perspective, including the energy content, which must be labelled and, in general, that the labelling of alcoholic beverages should be the same as that required for other foodstuffs, to ensure that consumers have access to complete information about the content and composition of the product in order to protect both their health and their interests*.

II. The report "regarding the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages"

With considerable delay, 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*]. This report was based on data gathered by the Commission from the Member States and through consultation with stakeholders. The following paragraphs of its "Conclusions" provide a summary of the results

[8] That is, the list of ingredients and nutritional information.

[9] 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».

of the data analysed by the Commission and what it has requested of the alcoholic beverages production *industry*:

> «The list of ingredients and the nutrition declaration are key information particulars that help consumers to make more informed and healthier choices. The exemptions from the list of ingredients and from the nutrition declaration for certain foods cover, mainly, single ingredient products, whose name suffice to inform the consumers about their content, like salt, fruits and vegetables. *However, 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 and of their nutritional value*[10].
>
> On the basis of the information reviewed, the Commission 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 beverage […].
>
> 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. It has to be particularly noted that a rising number of alcoholic beverages present on the EU market already bear the full nutrition declaration.
>
> Taking into account these recent developments, the Commission considers that as a first step, current voluntary initiatives should be allowed to develop further so as to provide list of ingredients and nutrition declaration. It therefore *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*[11].. The Commission will assess the industry's proposal.»

In the *Report on the labelling of alcoholic beverages* it was stated that, should the Commission consider the self-regulation proposal submitted by the industry to be unsatisfactory, it would carry out an impact assessment to study other options available: in accordance with the principles of the «Better legislation» initiative, this impact assessment would analyse regulatory and non-regulatory options, particularly in reference to the provision of information about the energy value of alcoholic beverages. Finally, this assessment should carefully study the effect that the different options would have on the internal market, the relevant economic sectors, the needs of consumers and the real use of the information in question, as well as the effects on international trade.

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[10] Emphasis added by the author.

[11] *Idem*.

In this article I will deal with the *content* of the economic operators' self-regulation proposal, which responds to the Commission's request, and will focus mainly on information about the ingredients of alcoholic beverages, only briefly touching on methods related to nutrition information; *brevitais causae*, I will not provide a critical analysis of said proposal (currently pending assessment by the Commission).

III. The self-regulatory proposal of the economic operators of the European alcoholic beverages sector

1. Two basic documents and three annexes

On 12 March 2018, representatives of the economic operators in the European alcoholic beverages sector submitted a self-regulation proposal to the Commission which was forwarded to Commissioner Andriukaitis and consists of:

• *Joint self-regulatory proposal from the European alcoholic beverages sectors on the provision of nutrition and ingredients listing (guiding principles)*

• *Spirits sector annex*

• *Detailed wine and aromatised wine products annex*

• *European brewers' commitment to listing ingredients and nutrition information*.pdf

• *European cider and fruit wine association annex*.

2. Joint self-regulatory proposal from the European alcoholic beverages sectors on the provision of nutrition and ingredients listing

This proposal includes the following commitments:

1. Alcoholic beverages are currently exempted from providing ingredients and nutrition information. The European alcoholic beverages sectors are committing to providing the nutrition information and the list of ingredients of their products in tailored and meaningful ways.

2. The nutrition information and the list of ingredients of our products will be provided to consumers off-label and/or on-label, where information provided off-label will be easily accessible from the label itself, either by a web-link, a QR code [the trademark for a type of matrix barcode (or two-dimensional barcode)], a bar code or through other direct means using smart technologies.

3. The sectors will use traditional and/ or innovative tools and may develop comprehensive modern information systems to provide useful information to consumers.

4. Food business operators responsible for the food information will decide how to display the information.

5. The information, while abiding to the legal framework laid down in EU or national legislations, will be provided in line with the principles set in this joint proposal and the sectors' annexes.

6. We will report on implementation in March 2021. Within the first two years, sectors will report on the progress of their commitments, in accordance with the information provided in the governance section and the sector annexes.

These *commitments* have been assumed by the following federations representing beer, cider, spirits and wine producers in the EU:

- *Association des Industries des Cidres et Vins de fruits de l'U.E.* (AICV)
- *The Brewers of Europe*
- *Comité Européen des Entreprises Vins* (CEEV)
- *Confédération européenne des vignerons indépendants* (CEVI)
- COPA COGECA
- *European Federation of Origin Wines* (EFOW), and
- spiritsEUROPE.

The self-regulation proposal was drawn up by a working party that met in 2017 and at the beginning of 2018. The aim of the working party was to devise an initial blueprint or “concept agreement”, which was then presented to the respective members of the federations. To formulate an adequate and acceptable proposal, during the development stage the participants invited three representatives from other federations in the retail and trade sectors to join the working party meetings as observers. Given the relative importance of non-Community alcoholic beverages sold in the EU market, and considering that third-country alcoholic beverage producers were not directly represented by the participants taking on this commitment, the third-country producers were informed about the debates and, where applicable, were consulted through the international organisations FIVS, *World Spirits Alliance* and *Worldwide Brewing Alliance*.

Due to the inherent pyramidal structure of European federations, each participant consulted its respective members on a draft of the ‘concept agreement’ in order to validate the ‘horizontal’ aspect of the future proposal. Each sector then independently developed and approved their specific annexes.

The document referred to in this section states that «all the participants are committing to the success of the initiative». In this context, each participating entity will be responsible for the dissemination, application and presentation of the accepted commitments (see the following sections in which we will discuss the specific content of each annex). If the Commission accepts the proposal, its *implementation* will not be an easy task: it will be necessary to manage information about each sector’s lines of action, support for SMEs, the dissemination of generally established and accepted data, and for each sector to have specific dissemination and communication platforms.

Other, equally important, *requirements*:

- with the support of the participating European federations, direct members will inform their own companies and local entities about the content of the proposal and will coordinate its application at national level (periodic internal reviews will be carried out by each organisation in the sector); and

- international third parties will also be informed and, as appropriate, guidelines will be provided to the organisations representing non-EU producers who export their products to the EU market.

Regarding *governance* of the self-regulation in question, it is envisaged that, for the follow-up of the implementation and presentation of commitment reports, participants will be able to designate representatives to participate in a "Steering Group". The Steering Group will collectively represent and act as interlocutor for the common elements of the voluntary commitment before the European Commission and other decision makers and stakeholders, although each participant will continue to be responsible for matters related to the application of that stipulated in their respective sector annex. More specifically, the Steering Group shall:

• meet twice a year to assess the progress made by each sector regarding the dissemination and implementation of the initiative;

• share best practices and iterative improvements made by each sector in the implementation of the voluntary commitment; and

• coordinate the relevant elements for the follow-up and evaluation of the initiative.

It is also foreseen that the participants will succeed each other as Steering Group chair and host, and that third parties and experts may be invited to participate in the debates.

3. Spirits sector annex

This annex complements the collective commitment presented by the alcoholic beverages sector on the provision of information to consumers. It refers to the essential background that explains the approval of the proposal, establishes commitments on how the sector will provide the required information and offers details about the sector's own view on nutrition, the list of ingredients and *off-label* information.

In terms of *visibility*, the spirits sector states that, through using *on-line platforms*, economic operators will go *beyond* the requirements stipulated in Regulation 1169/2011, providing consumers with important additional information on ingredients and production, responsible consumption and health. To achieve this, *a comprehensive modern ecosystem* will be created to allow consumers permanent access to all relevant information through smartphones, bar codes and QR codes. It is expected that considerable resources will be dedicated to developing effective *off-label* solutions for producers who see this mechanism as being the most useful, adapted and flexible way of informing consumers. If consumers choose to access the information through this harmonised system, or through the website of the company or brand, they will find *everything* they need to be able to make an informed purchase decision.

With regard to nutrition information, the annex I am analysing insists that the information must be complete and transparent, and the spirits sector thereby commits to providing complete nutrition information *on-line* for all its products, in accordance with Article 30.1.b of Regulation 1169/2011. If the information appears on the label, something which many of the *main producers* in the sector have committed to, it may be limited to energy, as is permitted under article 30.4 and complemented with further information *on-line*. This is an important step, since many categories of alcoholic beverages produced in the EU are simply a distillate of their primary ingredients and do not contain fats, saturated fatty acids, carbohydrates, sugars, proteins or salt, which would justify limiting the nutrition information for these beverages to their energy value. However, this is not the case for *complex* spirits, including liqueurs, which contain a minimum sugar requirement, or for other spirits that use flavourings and additives. Therefore, and

in the interests of transparency, sector members believe that a *complete* nutrition declaration for all categories of spirits would be the most useful for consumers.

As regards technical and regulatory aspects, especially those related to energy declarations, in the preparatory debates of the sector's position, it became clear that the situation and views of producers and trade associations would continue to evolve even after the presentation of the proposal. For example, several large producers have committed to providing information on the label in terms of calories, and efforts are being made to expand this initiative to cover a larger part of the market. When evaluating the best way of providing this information, we need to take certain considerations into account:

- information should be given primarily per serving size, for instance via visual emphasis, because that is most useful for consumers (providing calories per 100ml is misleading and requires further discussion);

- single language labels, i.e. which do not require translation, would be beneficial; and

- average values on the basis of generally established data should be permitted.

The spirits sector believes that this method will help to ensure that a significant and growing number of products contain caloric information on the label. In this respect, it is envisaged that, as from 1 November 2018, producers who choose to provide information on the label will ensure that new labels on spirits contain caloric information in accordance with the above considerations; for their part, the organisations involved would report on the progress made before 31 October 2019.

Regarding the *list of ingredients,* the spirits sector commits to:

- providing relevant information to consumers; and

- ensuring that consumers receive more information than that which would appear in the list of ingredients established by applicable legislation (that is, the sector would go beyond the requirements stipulated in Regulation 1169/2011).

This commitment shall provide for all spirits:

- information about existing ingredients;

- information about ingredients and the production process.

In relation to *off-label* information, the spirits sector recalls that applicable legislation explicitly recognises the role of technology-based information sources

(see recitals 51 and 58, and articles 2.2.a, 12.3 and 16.2 of the often-cited Regulation 1169/2011); given that digital technology is advancing rapidly, consumers are increasingly using mobile and digital information sources. Their behaviour demonstrates the ubiquity and usefulness of digital information:

• Internet usage has risen from 8% in 1998 to 81% of the EU 28 population in 2016. And a separate report estimated that in 2017 it was almost 86%. The number of Google searches has increased from 1.2 billion in 2007 to 9 billion in 201612 - consumers are finding out more about everything via search engines.

• More than 80% of people use their smartphones to research purchases they are about to make in a store. A separate survey found that over two thirds of consumers did so whilst in the shop (*The Truth about Online Consumers: 2017 Global Online Consumer Report*).

• Globally, there are now more mobile internet users than desktop internet users. And 90% of the time spent on mobiles is on apps.

According to the spirits sector, another advantage to offering *off-label* information is that more detailed information can be provided, in a more flexible way and adapted to the needs of individual consumers. For example, in addition to nutrition and ingredients, the information provided through an application:

• can be given in the consumer's native language, regardless of where in the EU he/she is based;

• can immediately state the calorie level per serving/size of serving and per 100ml;

• can contextualise such information, by including recommendations on "low-risk alcohol consumption" relevant to the country of purchase and can deliver a message reagrding the responsible consumption of alcoholic beverages; and

• can include additional messages such as "do not drink and drive", "do not drink during pregnancy" and "do not drink if under 18".

The spirits sector is certain that the *off-label* information option will appeal to consumers and provide them with much more information to meet their personal needs in a way that could never be achieved with a 'label'.

4. Detailed wine and aromatised wine products annex

The wine and aromatised wine products sectors have committed to providing consumers with information about the ingredients used in their production processes. When informing consumers about the ingredients in wine, both under the horizontal legal framework [Regulation 1169/2011] and under the EU's vertical regulations for wine and aromatised wine products, they must provide

relevant information about the characteristics of these products. Unlike other food and beverages produced in the European Union, a positive list of oenological practices (meaning the permitted physical and chemical processes and wine additives) is applied to wine, that operators can only use, under strict limits, to produce a certain wine. Furthermore, a wine can only be produced the requirements established by the highly limited and strictly regulated permitted practices are met. Considering the strict legal framework governing the activities of the wine sector in the EU, operators producing wine and aromatised wine products propose to develop an *ad hoc* solution to provide consumers with information about the ingredients of such products.

This solution must be based on the following applicable principles when defining the list of ingredients for wine and aromatised wine products:

• Wine processing aids should be excluded from the list of ingredients:

Regulation 1169/2011 contains general definitions of processing aids and food additives. Article 20 of this Community legislation stipulates that certain food additives and enzymes used as processing aids will not be required to be included in the list of ingredients. However, when these concepts are applied to wine production, further guidance and legal certainty is needed to harmonise the interpretation of the concept of processing aid [in this context, the International Organisation of Vine and Wine (OIV) represents the sole reliable reference, although it has yet to finalise the classification of all wine oenological substances [that is, differentiating additives used as processing aids and additives used during the production process (Resolution OIV-OENO 567A-2016 and Draft Resolutions OENO-TECHNO 14-567B Et5 and OENO-TECHNO 14-567C Et5). Consequently, only additives that are not considered processing aids in the wine-making process, as defined in the OIV recommendations and in other work in progress, shall be included in the list of ingredients according to Article 20 of Regulation 1169/2011.

• Natural substances used to adjust grape composition should be excluded from the list of ingredients.

• A common and simplified terminology should be used.

• Substitutable or additional additives:

Considering the seasonality of the wine-making process and the fact that operators may bottle and store the wine throughout the year and/or use *last-minute additives* before bottling, operators may decide to inform consumers about the ingredients of the wine on the basis of the substances they are likely to use or use most frequently for the production of a given product, based on their *historical* wine-making process. Some countries already allow this flexibility for foodstuffs under certain conditions, whilst ensuring accurate information for consumers (see article B.01.11 of the *Canadian Food and Drug Regulations*).

5. European brewers' commitment

This document occupies just a couple of pages, one of which consists of a graphic showing the road map for compliance with the above-mentioned commitments; I therefore consider it useful to include below a link to the website on which it can be found:

https://ec.europa.eu/food/sites/food/files/safety/docs/fs_labelling-nutrition_legis_alcohol-self-regulatory-proposal_brewers_en.pdf

6. AICV annex on the voluntary listing of ingredients and nutritional information regarding cider and fruit wine production

To fulfil the joint proposal's commitment to providing information about energy content and a list of ingredients, the AICV will support its member associations and cider, perry and fruit wine producers, and implement the following actions:

1) The AICV will encourage members to provide information to consumers on ingredient and appropriate nutrients either on-label or on-line using the formats prescribed in Regulation 1169/2011. It is important [essential?] to include a link or reference on the label to such on-line information.

2) The AICV is currently reviewing its labelling guidelines. These guidelines will provide technical information about appropriate methods for calculating the energy value of products and will offer examples of formats in which to present the information to consumers. These guidelines will be sent to members in July 2018.

3) The guidelines will provide a consumer-friendly explanation of the processes involved in the making of cider and fruit wines – from the tree to the distribution centre.

4) Information about the production processes for cider and fruit wines will be published on the AICV website and on the website of each company.

5) AICV will undertake the monitoring and evaluation of the industry commitment. This will be conducted on an annual basis on the anniversary of the presentation of the voluntary commitment to the Commission.

6. AICV will put in place a procedure/pathway that will aid consumers and other stakeholders to obtain more information about food ingredient information or to address any concerns they may have.

IV. Comments

As already mentioned, it is not my intention to *criticise* the self-regulation proposal of the economic operators in the European alcoholic beverages sectors given that the evaluation of the same is the responsibility of the Commission.

However, it seems appropriate to include some comments at the end of my article: such as, for example, I believe that the fact that companies in the sector can choose whether to include the information in question on the label or to publish it on a website could cause some confusion for consumers who find similar products “with” or “without” written information. It is also true that the use of more advanced technological means seems reasonable, but we must ask ourselves how the elderly and those who cannot afford to acquire a smartphone would access the information. Is it not difficult to imagine the customers of a supermarket having to do their shopping armed with a device capable of reading QR codes? Is the idea to inform the average consumer in a practical way or to rely on the stuff of science fiction to do so? If they really wish to inform customers, what (insurmountable) obstacle is there that would *impede* the provision of relevant information on the label of every bottle or container?

Furthermore, I understand that if the information is provided *off-label*, such as on a website, for example, with the intention of providing information *beyond* that which is required, this information shall not include covert advertising regarding the production process, the qualities of the beverage, the supposedly traditional methods used, etcetera.

In fact, the annex that concerns me most is that of the important wine and aromatised wine sectors (section 4 of the third part of this article): I believe that this contradicts, or at least devalues, the commitments I have outlined in section 2, also in the third part.

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