Alcoholic Beverages Labelling: Analysis of the Joint-self Regulatory Proposal of the Industry on Nutrition Labelling and Ingredients’ Declaration

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I. BACKGROUND AND LEGAL FRAMEWORK

1. European framework

On 12 March 2018, the European trade associations representing the alcoholic beverages industry submitted the “Self-Regulatory proposal from the European alcoholic beverages sectors on the provision of nutrition information and ingredients listing”1 to the European Commission, presenting it to the European Commissioner for Health and Food Safety.

The provision of food information to consumers is governed, at EU level, by Regulation (EU) 1169/2011.2 Article 9.1 of the Regulation provides for a list of mandatory particulars that have to be indicated on food products labels.3 According to

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3 Regulation (EU) 1169/2011, Art 9 – List of mandatory particulars: “1. In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:

(a) the name of the food;
(b) the list of ingredients;
(c) any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;
(d) the quantity of certain ingredients or categories of ingredients;
(e) the net quantity of the food;
(f) the date of minimum durability or the ‘use by’ date;
(g) any special storage conditions and/or conditions of use;
(h) the name or business name and address of the food business operator referred to in Article 8(1);
(i) the country of origin or place of provenance where provided for in Article 26;
(j) instructions for use where it would be difficult to make appropriate use of the food in the absence of such instructions;
(k) with respect to beverages containing more than 1,2 % by volume of alcohol, the actual alcoholic strength by volume;
(l) a nutrition declaration.”

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Article 16.4 of the Regulation, however, alcoholic beverages containing more than 1.2% by volume of alcohol, are exempted from the mandatory indication of two of them: the list of ingredients and the nutrition declaration (although food business operators can provide such information on a voluntary basis).

The specific exemptions regime for alcoholic beverages does not originate from the Regulation.

As to the list of ingredients, the compulsory indication of the ingredients list on the labels of wine and other alcoholic beverages has been discussed many times during the legal process leading to the adoption of the previous European legislation on food labelling. Notwithstanding that the specific EU requirements for labelling ingredients which may cause allergies or intolerances have covered also alcoholic beverages, no rule has ever been introduced for the labelling of ingredients in general on alcoholic beverages.

According to the original Commission Proposal for the Regulation on food information to consumers, alcoholic beverages including “alcopops” were covered by the requirement to label mandatorily a list of ingredients and a nutrition declaration, except beer, wine and spirits. However, the final version of Regulation (EU) 1169/2011 extended such exemption to all alcoholic beverages containing more than 1.2% by volume of alcohol.

Conflicting interests at stake were indeed particularly sensitive. On one hand, the impact on industry of the extensions of such mandatory information would have been burdensome, particularly for SMEs and artisanal producers; on the other hand, the European lawmakers had to consider the costs for public health systems stemming from the excessive consumption of alcoholic beverages and consumers associations’ pressure towards more transparency on the labels, seen as a means by which to inform and educate consumers about alcohol and in order to help them make informed choices about what and how much to drink.

As a compromise, in the inter-institutional negotiations of the Regulation, the European Parliament requested the Commission to prepare a report addressing whether

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4 Since 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 15–18; and provided by today’s Art 21, para. 1, second subparagraph, of Regulation (EU) 1169/2011: “In the absence of a list of ingredients, the indication of the particulars referred to in point (c) of Article 9(1) shall comprise the word ‘contains’ followed by the name of the substance or product as listed in Annex II”.
6 Alcoholic mixed beverages, like the mix of a soft drink with a spirit.
7 Art 16(4).
8 As it has been observed: “producers’ interests have undoubtedly been responsible for the inexplicable delays (since 1978…) and rejection of the various proposals” (of inclusion of alcohol beverages under the scope of provisions requiring the mandatory labelling of ingredients list and nutritional information), L Gonzales Vaqué, “Self-Regulation of the labelling of the list of ingredients of alcoholic beverages: a long-term solution?” (2017) 12(5) European Food and Feed Law Review 413–421.
alcoholic beverages should in the future be covered by the requirement to provide nutritional information, and the reasons justifying possible further exemption.  

As a result, on 12 March 2017, the European Commission adopted the Report to the European Parliament and the Council regarding the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages, based on data collected by the Commission through Member States and stakeholders consultations. In its report, the Commission “invites the industry to respond to consumers’ expectations and present within a year of adoption of this report a self-regulatory proposal [on ingredients and nutritional information] that would cover the entire sector of alcoholic beverages”. This final outcome was, on one hand, a clear reminder of the compactness of the positions of the alcoholic beverages sector towards this information; on the other hand, while the EU Commission decision has been criticised as a signal of political weakness, we do not completely share this thinking and we would go further in such analysis.

In a moment of objective political difficulty, the EU Commission most probably simply decided to shift the burden to act to the industry, together with the blame from other stakeholders in case of inaction, because realistically they knew that they would be deeply blamed in any case by the parties involved (ie the wine or spirits sector if they went too much further with labelling obligations; consumers if they did not). The alcoholic beverages sector, even if compact when it comes to lobby, is very fragmented in terms of products’ characteristics (beer, cider, spirits, wines, aromatised wines, sparkling wines), type of companies represented and specific needs related to geographical latitudes.

The analysis that follows describes how the trade associations of the European alcoholic beverages sectors came forward with this self-regulatory proposal.

2. National and international framework

Looking at the international scenario on alcohol beverages labelling, the Codex Alimentarius Standard on the labelling of prepacked foods does not exempt alcoholic beverages from the provision of the mandatory list of ingredients.

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10 Art 16(4), second subparagraph, Regulation (EU) 1169/2011: “By 13 December 2014, the Commission shall produce a report concerning the application of Article 18 and Article 30(1) to the products referred to in this paragraph, and addressing whether alcoholic beverages should in future be covered, in particular, by the requirement to provide the information on the energy value, and the reasons justifying possible exemptions, taking into account the need to ensure coherence with other relevant Union policies. In this context, the Commission shall consider the need to propose a definition of ‘alcopops’.”


In the same way, in a number of third Countries such as USA, Brazil, Canada, China, India, Mexico, New Zealand, Russia, and Switzerland, it is mandatory to provide the list of ingredients for certain alcoholic beverages.13

The national legislation of several EU Member States also provides for some additional alcohol beverages labelling requirements. Some Member States (like Austria, Croatia, Czech Republic, Finland, Germany, Greece, Hungary, Ireland, Luxembourg, Portugal, Lithuania and Romania) maintained or adopted national measures imposing additional labelling requirements on ingredients or certain ingredients for alcoholic beverages.14

Regarding nutritional declarations, Austria requires the labelling of the amount of sugar for certain wine products. Moreover, Romania and Ireland have notified – within the Directive (EU) 2015/1535 notification procedure framework – draft legislation requiring nutrition labelling particulars for alcoholic beverages.15

Therefore, a comprehensive institutional intervention at European level is desirable due to the fact that such national provision contributes, clearly, to an increased risk of market fragmentation.16

II. A STEP FORWARD: THE SELF-REGULATORY PROPOSAL

1. The common part of the proposal

The document submitted to the European Commission consists of a joint proposal, providing the common guiding principles of the sector’s self-regulatory commitment, and of sector-specific annexes for beer, cider, spirits and wine that accompany the joint proposal and further address concretely the process and modalities for implementation of the joint commitment by each individual sector (submitted directly by the different sectors’ associations).

Even if the declared sector’s objective is to improve consumer knowledge about the different products and to empower them to make informed decisions about the products they choose to consume within a balanced lifestyle, the proposal underlines, on its very first page, the peculiar characteristics of the alcoholic beverages sector, by referring to Recital 40 of Regulation (EU) 1169/2011 that recognise “the specific nature of alcoholic beverages”. As stated by representatives of the European alcoholic beverage sectors, in fact, the self-regulatory proposal is guided by the “intention to respond to consumers’ expectations”, but “while preserving the competitiveness of our respective economic operators”.

The proposal, while abiding to the legal framework laid down in Regulation (EU) 1169/2011, also aims to “enrich the food information to consumers’ environment, by going beyond the current legislative framework”.

14 ibid.
16 COM(2017) 58 final, p 12; see also Gonzales Vaqué, supra, note 8, p 15.
The key elements of the joint proposal submitted by the European alcoholic beverages sector are declared as follows:

(1) the nutritional information and the list of ingredients of the products will be provided “in tailor-made and meaningful ways”;

(2) the nutrition information and the list of ingredients will be provided off-label and/or on label, where information provided off-label will be accessible from the label itself, either by a web-link, a QR code, a barcode or through other direct means using smart technologies;\(^\text{17}\)

(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 food information will decide how to display the information.

After those commendable premises, the proposal specifies in depth the nutrition information provision commitment and limits its potential scope of application, stating that “food business operators responsible for the food information declaration may limit the declaration to energy value only”.

Actually, this option is allowed by Article 30.4 of Regulation (EU) 1169/2011 for the cases in which food business operators decide to indicate on a voluntary basis a nutrition declaration on alcoholic beverages.

Even if limiting the information available to consumers, the effective mandatory provision of the energy value would be a step forward anyway. According to a European Commission-mandated study on the impact of food information to consumers’ decision making,\(^\text{18}\) after having been informed about the energy content (calories) of alcoholic drinks like beer, wine and spirits, a certain number of them declared their intention to reduce their alcohol consumption, declaring a lack of knowledge of the real content of alcoholic beverages. The objective would be better accomplished with the indication of also carbohydrate (and sugar) and fat content of the different types of alcoholic beverages, and of the different ingredients that can be used in their production, since the knowledge deficit is proven.\(^\text{19}\)

The proposal also specifies that the energy value will be provided in line with requirements set out in Regulation (EU) 1169/2011, which contemplates a nutrition declaration per 100 ml of product and a possible additional declaration “per portion”. Food business operators will thus be able to complement the information based on the

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\(^\text{17}\) Recital 51 of Regulation (EU) 1169/2011 states that “food information rules should be able to adapt to a rapidly changing social, economic and technological environment”, and the joint proposal states that the sector wants to “use this opportunity to explore and develop, in addition to product labels, at European Union, national and company level, new approaches for providing consumers with valuable information about the products they consume”.


100 ml volume with the energy value – or full nutrition declaration – of the drink on the basis of a portion (eg “a typical serving size, the serving equivalent of an alcohol unit possibly linked to drinking guidelines or when it is a single serve container”). The alcoholic beverages sector agrees that a declaration per 100 ml is not suitable for most alcoholic drinks, as it can be misleading about the effective calorie content (spirits and beer, for example, are generally not served in 100ml portions: the former come in smaller portions, the latter in larger ones).

In our opinion, this option is to be highly welcomed also from a consumer protection perspective; the knowledge of the real energy value of even a single portion of alcoholic drink is consistent with the objective of consumer awareness improvement and it could be enough to foster consumers’ sensitisation on health consequences and risks coming from alcohol abuse and to stimulate consumption pattern changes.

2. The specific sectors’ annexes

The brewers’ associations have been the most proactive on this theme so far. They have been committed to progressively implement ingredients listing and nutrition information of beers across the EU since 2015, following the provisions laid down by Regulation (EU) 1169/2011. They concretely provided guidance tools on regulatory requirements and a SME toolkit on calculation methods for nutritional values, and they state in the joint self-regulatory proposal that over 70% of beers currently label ingredients, with an estimated 40% also providing legally presented nutrition, or specifically energy, values predominantly on the label.20

For spirits, the spirits’ associations commit, in their sector specific annex,21 to providing nutrition and ingredient information by the end of 2022; they state that this would be sooner than if it were mandated by regulation. They suggest that providing nutrition and ingredient listing would be done either on or off-label, while it is expected that some companies, in particular SMEs, may opt instead for the off-label solution. They commit to provide energy information per portion (or single serve container) other than per 100ml (which represents more than three standard servings of spirits and might contradict responsible drinking messages). When using online platforms, members of the spirits’ associations reportedly intend to go beyond the requirements of Regulation (EU) 1169/2011 and commit to provide full nutrition information for all spirits and a list of ingredients, as well as the legal definition of every category, giving consumers details of the raw materials and the production process (in addition to responsible consumption and health information).

Spirits, in particular, are subject to strict rules on their production and composition, set out in Regulation (EC) 110/2008.22 How spirits are made and what they are made from is, therefore, legally defined and this information is actually readily available for careful

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consumers. Wines and aromatised wines are subject to a number of similar, dedicated regulations at EU level.

The wine and aromatised wine producers’ proposal\(^{23}\) is quite complex and reflects the different needs of members and the technical difficulties linked to the particularities of the wine-making process. In particular:

- they committed to provide on or off-label nutrition information, but with the possibility to:
  - limit the information to energy value;
  - add the declaration per portion;
  - use symbols;
  - base the data provided on generally established and accepted average values, given for certain specific wines.

The final option reflects the very changing nature of wine (and grapes of course, depending on weather conditions and years of production);

- they committed to provide information on ingredients, provided mainly that:
  - it is taken into consideration that wine only has a positive list of oenological practices (meaning the permitted physical and chemical processes and wine additives are strictly regulated);
  - wine processing aids and natural substances used to adjust grape composition should be excluded by the ingredients list.

This latter condition highlighted contrasts between Mediterranean countries (e.g., Italy) where these addition might be less common or restricted by national legislation or practices, and producers from other Member States, outlining again the diversity of the needs of this specific sector.

Cider and fruit wine association\(^{24}\) was the most cautious, basically recommending to members to provide information to consumers on ingredient and appropriate nutrients either on-label or online, using the formats prescribed in Regulation 1169/2011 and committing to review their existing labelling guidance to foster widespread voluntary disclosure of such information.

### III. Conclusions

The European Commission will now assess the alcoholic beverages sector’s self-regulatory proposal and “should the Commission consider the self-regulatory approach proposed by the industry as unsatisfactory, it would then launch an impact assessment to review further available options”\(^{25}\).

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Meanwhile, we cannot refrain from reflecting whether the self-regulatory proposal instrument requested by the Commission is the most effective way to pursue the intention of providing consumers with relevant and clear information about alcohol beverages and empowering them to make informed decisions on the products they choose to buy. Apart from the lack of success of self-regulation so far, when it comes to effectiveness and legal certainty, the issue could even be whether the European Commission initiative is in compliance with Article 16.4 of Regulation (EU) 1169/2011, which requested the Commission to prepare a report addressing whether alcoholic beverages should in the future be covered by the requirement to provide nutritional information, and the reasons justifying possible further exemption.

The Commission seems to have turned this responsibility on industries, instead of taking clear action. And as has already been argued, if the Commission shifted the burden (and potentially the blame) onto the industry, the latter has granted itself a high degree of flexibility to decide how much information consumers would see on-label.

As consumers often make purchasing decisions in a matter of seconds, BEUC considers it unrealistic to expect that they would take a few minutes to check online or off-label the calorie intake of the drinks they are buying, adding that more than 30% of EU consumers did not own a smartphone.

The Commission’s report states that objective grounds that would justify the absence of information on ingredients and nutritional information on alcoholic beverages, or a differentiated treatment for some alcoholic beverages, had not been identified. It also stated that the alcoholic beverages sector appeared “increasingly prepared to provide responses to consumer’s expectations to what they were buying and consuming”, given the expansion of concerted and voluntary initiatives developed and implemented by the sector itself. Notwithstanding those declarations, it did not officially act towards mandatory labelling, and turned the initiative on the industry.

Will the alcoholic beverages sector effectively fulfil the commitment? In a sector where consumers are evidently pushing for more and more transparency, this will be an interesting bench test for the entire sector. Self-regulation could provide flexibility in terms of real commitment but, on the other hand, could suffer unexpected backlashes in terms of popularity if the consumers deem that the efforts are not sufficient.


28 ibid.