



## Minutes of the

### Joint meeting on front-of-pack nutrition labelling between Working Group of the Standing Committee on Plants, Animals, Food and Feed - Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC) & Advisory Group on the Food chain, Animal and Plant Health

22 October 2018, 11.15-17:00

Brussels, Conference Centre A. Borschette

## 1. Introduction

The meeting of 22 October 2018 is the third joint meeting on front-of-pack (FOP) nutrition labelling. The meeting was chaired by the DG SANTE Head of Unit for Food information and composition, food waste.

The joint meetings are organised by the Commission in the context of Article 35 of Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC). This article requires the Commission to facilitate and organise the exchange of information between Member States, itself and stakeholders on matters relating to the use of additional forms of expression or presentation of the nutrition declaration. The same article requires the Commission to adopt a report on the use of additional forms of expression and presentation of the nutrition declaration, their effect on the internal market, and the advisability of further harmonisation in this field.

The first and second joint meetings on FOP nutrition labelling took place on 23 April and 22 June 2018.

## 2. Topics discussed

### a. Introduction and state of play by the Chair

The **Chair** thanked Member States and stakeholders for all the information provided which is useful both for the JRC literature review and for the Commission report. The Chair explained that the preparation of the Commission report is ongoing and that the report will look into consumer understanding and impact of schemes, including on purchasing behaviour, reformulation and internal market; it will also address the positions of Member States and stakeholders and the question of possible EU harmonisation.

The Chair further presented ongoing developments at international level, such as the work of Codex (guidelines on the use of FOP labelling) and of WHO (e.g. WHO Europe report<sup>1</sup>).

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<sup>1</sup> <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/publications/2018/what-is-the-evidence-on-the-policy-specifications,-development-processes-and-effectiveness-of-existing-front-of-pack-food-labelling-policies-in-the-who-european-region-2018>

The Chair also informed the group about ongoing developments at EU level, including the notification from Belgium regarding the Nutri-Score scheme and some recent press announcements from retailers. In that context, she referred to the explanation provided at the last meeting about the legal status of FOP schemes and the related consequences for such schemes' implementation by food business operators.

With reference to the minutes of the joint meeting of 22 June 2018, **FR** read a declaration regarding their interpretation of the legal status of Nutri-Score. The Chair explained that Nutri-Score's legal status<sup>2</sup> has been clarified by the Commission in its reply to the French notification and further mentioned that DG SANTE is ready to clarify any ad hoc questions from Member States or food business operators regarding the notification procedure.

## **b. Stakeholders' views on the use of FOP schemes and ongoing developments**

### **• Contribution from European farmers and agri-cooperatives**

**Copa-Cogeca** presented its views on FOP labelling in general and on three FOP schemes in particular. Copa-Cogeca further highlighted that dietary recommendations should be reflected in FOP schemes and that FOP schemes should be science-based, meaningful for all consumers and promote a positive approach, which does not discriminate between agricultural products and other products not featuring as part of dietary recommendations.

### **• Contribution from European consumers' associations**

**BEUC** referred to consumer research showing that consumers find FOP labels helpful and support colour-coded labels. BEUC presented its views on on-going developments regarding FOP schemes based on portion sizes and further highlighted that some criteria, including objective understanding, should be adequately assessed before launching real-life roll-out trials.

The Dutch Consumer organisation **Consumentenbond** presented the results of a consumer research of October 2018<sup>3</sup> regarding breakfast cereals showing that consumers were more likely to choose the healthier product when Nutri-Score or the UK Traffic Light was on the packaging and that a majority of respondents supported FOP labels on breakfast cereals.

#### Questions & Answers:

**Freshfel** highlighted that clarification would be needed on how FOP schemes would rate fruit and vegetables. **FDE** noted a higher interest in and increased uptake of FOP schemes and called not to inhibit schemes being put on the market while at the same time to try to find convergence between the different schemes.

## **c. Criteria for the development of FOP schemes**

All contributions regarding the criteria of Article 35 of the FIC Regulation received ahead of the third joint meeting were circulated to participants in agreement with the contributors.

The **Chair** explained that the requirements of Article 35 should be met before FOP schemes can be implemented (ex-ante criteria). Legally speaking, these criteria apply only to additional forms of expression and presentation (repeating information provided in the nutrition declaration), and not to schemes falling under Article 36 of the FIC Regulation (voluntary information) and/or under the

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<sup>2</sup> The NutriScore scheme can be considered in its entirety as voluntary information under Article 36 of the FIC Regulation and, at the same time, the scheme fulfils the legal definition of a nutrition claim when the scheme attributes a positive message (green colour).

<sup>3</sup> <https://www.consumentenbond.nl/binaries/content/assets/cbhippowebsite/nieuws/rapport-voedselkeuzelogos-op-ontbijtgranen-01-11-2018.pdf>

Claims Regulation, for which only general criteria apply. However, since several criteria are similar (e.g. based on scientific evidence, not misleading), the Article 35 criteria are taken as a basis for a detailed discussion on the development of FOP schemes in general.

For each criterion, **DG SANTE** presented a broad outline of the views of stakeholders and Member States (amongst others, based on discussions in the Member States' Working Group meeting of 8 October 2018) to kick-start the discussion.

The **Chair** explained that the first criterion requires that consumer research is carried out which is scientifically valid (a simple consumer survey would not be sufficient) and that the scheme is not misleading. **EPHA** stressed that when developing a new scheme, consumer research studies should not only compare with a no label situation but also with existing labels. **FR** also underlined the need for comparative studies as well as for independent science. **EUFIC** stated that studies should look at objective, and not subjective, consumer understanding. **JRC** agreed about the need to test objective understanding and stressed, regarding the point whether comparative studies would be needed, that in any case the scientific character of the studies is of outmost importance.

As regards the non-misleading character, the Chair asked the views from participants on how this provision could be checked. **EHN** called for a holistic approach on FOP nutrition information and coherence with the approach for nutrition claims and nutrient profiling. Following a question from EHN, **DG SANTE** further clarified the meaning of 'evaluative' (interpretative) schemes. As regards the point on 'coherence with conditions for using a corresponding nutrition claim', **FDE** suggested to add reference to the relevant Codex provision that claims shall not arouse fear in the consumer. Regarding the basis for determining colour-coding (per 100 g vs. per portion), **BE** stressed that in both cases coherence with the conditions for using a corresponding nutrition claim should be ensured. **EFAD** agreed with BE's position and stressed that portion sizes should be based on food-based dietary guidelines and cannot be used as a basis for colour-coding. **PFP (CEFS)** highlighted that factual information about the energy content should be given in FOP schemes.

Regarding the second criterion (consultation with broad range of stakeholders), **FDE** questioned the need to involve authorities and consumer organisations in each MS for private schemes to be used in several countries and had similar questions in relation to the fourth criterion on 'evidence of understanding by the average consumer'. **BE** considered that companies should consult as a minimum the national competent authority as well as the relevant consumer organisation.

The **Chair** explained that the competent authority is indeed responsible to verify the compliance of a scheme used in its market, including in the case of schemes that are used in several countries. The Chair further referred to Article 35(3) of the FIC Regulation which provides that, to facilitate the monitoring of the use of schemes, Member States may require food business operators (FBO) to notify the competent authority of the use of a scheme and to provide the relevant justifications regarding the fulfilment of the requirements laid down in Article 35(1). **BE** highlighted that, while Member States may, but are not obliged to, ask for justifications, it might be wise from the side of the FBO to evaluate if the scheme meets the legal requirements and to consult the competent authorities. **BE** further mentioned that if a scheme would be considered misleading by the authorities, the authorities might act when the label in question is placed on the market.

**FDE** asked how to deal concretely with the roll-out of a scheme in 28 Member States. The **Chair** stressed the difference between, on the one hand, the adoption/development of a scheme and, on the other hand, the circulation in the EU market of products with a label developed by/in one Member State. If a Member State (MS) would like to recommend a label endorsed by another MS, then it shall follow the relevant requirements and procedures for schemes to be recommended by public authorities. However, it might happen that products with a label adopted/developed by a certain MS and produced in that MS enter another MS' market. In that case, the principle of free movement of goods applies and a MS cannot refuse the entry of goods on its territory legally marketed in other MS, unless it invokes Article 36 of the TFEU (overriding public interest reasons). Similarly, if a FBO decides to develop a scheme, he should, amongst others, carry out a consultation process (stakeholders/authorities) in the Member State where the development starts. Once a

scheme is developed and used in one Member State, the principle of free movement of goods also applies.

Following questions from **SI** and **FI**, the Chair suggested that Member States could agree about a common approach as regards the modalities for consultation.

As regards the third criterion, the **Chair** explained that a scheme should facilitate understanding of the importance of the food in the diet. In this context, the Chair asked the participants' views regarding the role of dietary recommendations. **Copa-Cogeca** highlighted that dietary recommendations should be reflected in the scheme and that schemes should allow comparison between food categories.

**Dr Julia** agreed with the need for consistency with dietary guidelines but highlighted that a FOP scheme is rather complementary and cannot replace dietary guidelines since both have different objectives. As regards the issue of comparison, she further explained that portion sizes tend to flatten out differences between food groups. **HR** stressed that the third criterion is about understanding the contribution of a food in the diet and did not see the need to focus in this context on dietary recommendations.

As regards the fourth criterion (evidence of understanding by the average consumer), **FDE** highlighted that, as a minimum, studies should look into understanding of the nutritional content. **FR** stressed the need to demonstrate understanding by consumers with low socio-economic status. **HR** was of the opinion that testing the impact on purchasing behaviour would go beyond the legal requirement to test evidence of understanding. As regards comparative studies, **BE** highlighted potential bias of such studies due to familiarity with some of the labels tested. **CZ** stressed that research should also look into the issue of understanding of labels on traditional products (PDO). The **Chair** asked the participants' views regarding the geographical scope of the scientific research and a potential case-by-case decision for schemes developed by food business operators. **FDE** replied that some sort of 'mutual recognition' should be possible to facilitate the uptake of labels in the EU. Following a comment from **FDE** about the link between understanding and consultation, **DG SANTE** clarified that the fourth criterion is about scientific evidence of understanding and on whether a valid study in one Member State could also be used to show understanding in another MS.

Regarding the fifth criterion ('based on harmonised Reference Intakes (RI) or in their absence on scientific advice on intakes') and **EFAD's** suggestion that the RI for total sugars used by FOP schemes should differentiate between free sugars and intrinsic sugars, **DG SANTE** explained that the RI currently set in the FIC Regulation refers to total sugars. **FDE** commented that FOP schemes falling under Article 35 of the FIC Regulation (repeating energy value, fat, saturates, sugars, salt) should always be based on the RI set out in Annex XIII of the FIC Regulation.

Participants had no comments regarding the summary of views outlined on the slides regarding the sixth criterion (objective and non-discriminatory).

Finally, as regards the criterion that schemes shall not create obstacles to the free movement of goods, **FI** asked about the steps to be taken if a competent authority wishes to block the entry into their market of products from another Member State carrying a label that would be considered misleading. The Chair referred to Article 36 TFEU that a Member State can invoke (overriding public interest reasons) to refuse the entry of goods on their territory. **FDE** mentioned that a scheme, although voluntary, could be *de facto* mandatory for companies due to market dynamics in the food supply chain. **FDE** further referred in this context to the WTO global trade rules and asked to try to find convergence with third country partners on the topic of FOP nutrition labelling.

The Chair closed the agenda point by mentioning that the discussion on the criteria could continue at a later stage.

#### **d. FOP schemes: Insights into consumers' understanding, purchasing behaviour and other effects**

- **FOP schemes, a behavioural perspective on the demand side and the supply side**

JRC first highlighted results of some experimental studies looking into the effect of labels on food perception and food selection, as well as results of modelling studies used to estimate effects of different FOP labels on nutrient intakes and diet-related health outcomes. Examples of data on food product reformulation allegedly related to FOP labelling were also presented, while reminding the audience of shortcomings observed in the studies reviewed. The second part of the presentation focused on empirical studies evaluating the impact of FOP labels on consumers' purchasing decisions in real situations. JRC focused on the pros and cons of empirical studies, highlighted the shortcomings of existing studies and provided ideas for future research based on empirical data, looking into the effect of labels on consumer behaviour and on reformulation.

- **Comparative international study on front-of-pack labelling systems: preliminary results from the FOP-ICE study conducted by a scientific consortium from Paris 13 University (France) and Curtin University (Australia)**

Since few studies have compared the ability of different FOP labels to facilitate consumer understanding of the nutritional quality of food across sociocultural contexts, **Dr. Julia** explained that the objective of the international study was to assess consumers' ability to understand five existing FOP labels in 12 different countries. Results (published in October 2018) show that in all 12 countries and for all three food categories tested, the Nutri-Score performed best, followed by the traffic light scheme, Health Star Rating, Warning symbol and Reference Intakes label.

- **Results of a retailer's survey in real purchase conditions with consumers on Nutri-Score and Nutri-Mark FOP nutrition labels**

Retailer **E. Leclerc** explained the results of a study that analysed the purchasing behaviour of 300.000 consumers who used the supermarket e-commerce site for almost 1.4 million purchasing occasions. Consumers were divided into three groups – those exposed to Nutri-Score, to Nutri-Mark (based on Health Star Rating system) and to no logo at all. Based on the statistically significant results regarding the healthiness of the shopping basket for the group of consumers with access to Nutri-Score nutritional information, the retailer decided to apply the Nutri-Score scheme on its products.

#### Questions & Answers:

Following a question, the **Chair** explained that the JRC's literature review will look into all relevant studies, including the international study presented at the meeting, and that the JRC report will be published together with the Commission's report. **FR** pointed to several Nutri-Score related studies in real conditions and the fact that retailers are introducing the label without impact on turnover. As regards the international study, **FDE (ENL)** asked how the results of the international study relate to Article 35 criteria and commented on the Nutri-Score ranking of the selected food products, the 100 gr basis of Nutri-Score and the conflict of interest disclosure.

#### **2.5. Closing remarks and next steps**

The Chair concluded the meeting by referring first to the role for the Commission, laid down in Article 35(4) of the FIC Regulation, to facilitate the exchange of information between Member States, itself and stakeholders on FOP labelling. She further referred to the multi-faceted mandate of this joint group, such as clarifying the legal framework/criteria, bringing in relevant research in view of assessing the current and shaping future policies, collecting information in view of the Commission's report and preparing the EU's contribution at international level.

The Chair further called everyone to take its responsibility and to ensure compliance with the legislation. She further highlighted the importance of research based on real-life data. With regard to future policies, she stressed the importance to look at nutritional labelling issues in a holistic manner.

The Chair informed the participants that the internal process for finalising the report is ongoing and that the report should be published beginning 2019. She further explained that the Commission continues to follow developments at Codex and WHO level and announced that the next joint meeting would take place in 2019 with a view to update the group after publication of the report.

### 3. List of participants

EU Member States (25): AT, BE, CZ, DE, DK, EE, ES, FI, FR, GR, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SI, SE, SK, UK.

EFTA Countries (1): NO

#### Members of the Advisory Group on the Food Chain and Animal and Plant Health

<b>AIPCE-CEP</b> <b>European Fish Processors &amp; Traders Association</b>
<b>BEUC</b> <b>Bureau européen des unions de consommateurs</b>
<b>CLITRAVI</b> <b>Centre de liaison des industries transformatrices de viandes de l'UE</b>
<b>COGECA</b> <b>European agri-cooperatives</b>
<b>COPA</b> <b>European farmers</b>
<b>EFPPA</b> <b>European Fat Processors &amp; Renderers Association</b>
<b>EHPM</b> <b>European Federation of Associations of Health Product Manufacturers</b>
<b>EUROCOMMERCE</b> <b>European Representation of Retail, Wholesale and International Trade</b>
<b>EUROCOOP</b>
<b>FOODDRINK EUROPE (FDE)</b>
<b>FOODSERVICE EUROPE</b>
<b>FRESHFEL</b> <b>Freshfel Europe - the forum for the European fresh fruits and vegetables chain</b>
<b>PFP</b> <b>Primary Food Processors</b>
<b>SLOW FOOD</b>

**SNE**  
**Specialised Nutrition Europe**

**UEAPME**  
**European Association of Craft, Small and Medium-Sized Enterprises**

**Permanent Observers in the Advisory Group**

**EDA**  
**European Dairy Association**

**FACEnetwork**  
**Farmhouse and Artisan Cheese and dairy producers' European network**

**Members of the EU Platform for Action on Diet, Physical Activity and Health**

**CPME**  
**Standing Committee of European Doctors**

**EFAD**  
**European Federation of the Associations of Dietitians**

**EPHA**  
**European Public Health Alliance**

**EUFIC**  
**European Food Information Council**

**EuroHealthNet**

**European Heart Network (EHN)**

**Ad hoc expert**

**Choices International Foundation**