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Director-General
European Commission
DG SANTE – Directorate
General for Health and
Food Safety
Rue de la Loi 200

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Brussels, 22 October 2018

Subject: Front-of-Pack Nutritional Labelling Schemes

Dear Ms. Bucher,

We would firstly like to congratulate you on your new role as Director-General of DG SANTE. We look forward to meeting with you and to a fruitful cooperation in the time ahead.

We are writing to express our deep concern with on-going developments regarding simplified nutrition labelling schemes based on portion sizes, as we believe they are neither compliant with EU food labelling law¹ nor helpful for consumers to make healthier food choices.

BEUC has long supported the introduction of a mandatory European front-of-pack nutrition labelling scheme based on colour-coding. Whereas such labelling was not made mandatory by the Food Information Regulation, the EU legislation allows Member States to introduce their own schemes². Your services are currently working on a report that will list the various schemes used on the EU market (and beyond) and assess the need for EU-level harmonisation.

In the meantime, however, we observe the development of schemes, designed either by industry operators or certain national authorities, which fail to fulfil the legal requirements as set out in the Food Information Regulation.

The Evolved Nutrition Label (ENL), proposed by five multinational food and beverage companies, is one example³. It seeks to adapt the UK traffic light front-of-pack nutritional label: the colour code for 'smaller portions' would depend on more lenient criteria than for bigger ones. The companies behind this scheme have recently pledged to begin testing it across Europe, including in countries where Member State authorities have already officially recommended another scheme. The Italian 'batteries' scheme is another example. The scheme is based on the 'Reference Intakes' label, to which a battery symbol is added to illustrate the levels of energy and nutrients.

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¹ See requirements for additional forms of expression of the nutrition declaration as laid out in Article 35 of the Food Information to Consumers Regulation (1169/2011).

² Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers.

³ Nestlé, Unilever, Mondelez, Coca Cola and PepsiCo.

Both schemes, in our view, contravene the Food Information Regulation for the following grounds:

- **Simplified nutrition labelling schemes shall not mislead consumers**

We strongly support colour-coding if based on uniform criteria to help consumers decipher nutritional information more easily. However, colour-coding based on portion sizes, as proposed by the ENL companies, will mislead consumers.

Consumer understanding of a nutritional labelling scheme should enable simple and efficient comparison both *between* and *within* product categories. Consumers will not be able to easily compare different products if the colours of the scheme may vary when used for bigger or smaller portions. Moreover, portion sizes which are currently assigned by the companies themselves are often unrealistically small.

As modelling undertaken by the companies themselves shows, the main effect of the ENL is that, for portions under 50g, the number of 'reds' for fat, sugar and/or salt tends to fall significantly when compared to the original UK traffic light scheme⁴. But contrary to the companies' claims, there is no consistent evidence that the ENL encourages consumers to eat smaller portions, rather the opposite⁵.

Concerning the scheme proposed by the Italian authorities, it combines the complexity of the 'Reference Intakes' percentages with the confusing nature of a portion-based scheme. Moreover, the battery symbols send a signal that goes against logical sense. Indeed, consumers may wrongly assume that the 'Reference Intakes' for fat, sugar and salt are *recommended* intakes they should meet.

- **Simplified nutrition labelling schemes shall be based on robust consumer research showing objective consumer understanding**

The ENL companies are yet to present convincing evidence that average consumers understand their scheme. Consumer research underpinning the ENL appears to be largely declarative and fails to demonstrate whether the scheme effectively helps consumer assess the nutritional value of food products or not⁶.

The ENL companies have announced their intention to test their scheme across Europe from the end of 2018 until the end of 2020 to gather consumer insights. Yet it took only ten weeks for the French government-led trial of NutriScore to generate a solid evidence base⁷. We are concerned that the ENL scheme, which has not demonstrated robust evidence of effectiveness but has strong potential to mislead consumers, could be permitted to be used for two years in the EU before providing results.

The evidence base behind the Italian scheme is even weaker. Consumers were merely asked if the scheme could influence their purchasing decisions, but no proper research was conducted to confirm these declarations.

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⁴ <https://evolvednutritionlabel.eu/enl-taskforce-circle-2-meeting-7-september-2017-brussels-belgium/>

⁵ Egnell M, Kesse-Guyot E, Galan P, Touvier M, Rayner M, Jewell J, Breda J, Hercberg S, Julia C, *Impact of Front-of-Pack Nutrition Labels on Portion Size Selection: An Experimental Study in a French Cohort*. *Nutrients* 2018, 10, 1268.

⁶ <https://evolvednutritionlabel.eu/outcome-of-the-consumer-research/>

⁷ 'Évaluation Expérimentation Logos Nutritionnels : Rapport Pour le FFAS', O.Allais, P. Albuquerque, C. Bonnet, P. Dubois, March 2017.

- **Simplified nutrition labelling schemes shall be developed in consultation with a wide range of stakeholders**

The Italian scheme clearly fails to meet this requirement. Italian consumer organisations were consulted only very late in the process, even after the (finalised) scheme had been presented to EU-level stakeholders.

We would also question whether the ENL scheme could be considered to have fulfilled this stipulation. The ENL had been in private development by the companies for over a year and a half before it was presented to consumer and public health groups. Unfortunately, by that stage, the most contentious aspect, portion-sized criteria, had become a fixed component of the scheme for the ENL companies. It was therefore clear that the possibility for consumer groups to have any significant input into the development of the ENL would have been limited.

We believe that any consultation of stakeholders should be conducted in an open and transparent manner throughout the process.

Against this background, we wish to inform you that our member organisations will be contacting their national authorities to urge them not to allow the testing of the ENL scheme on their market. Our Italian member has also shared comments on the Italian scheme with the Italian authorities.

For our part, we call on the European Commission to promote the correct application of EU law. This means that simplified nutrition labelling schemes that do not fulfil the criteria laid down in the food labelling legislation shall not be allowed onto the market, even under the guise of a testing phase.

We thank you in advance for considering our comments. We remain at your disposal for any questions you may have.

Yours sincerely,

Monique Goyens
Director General