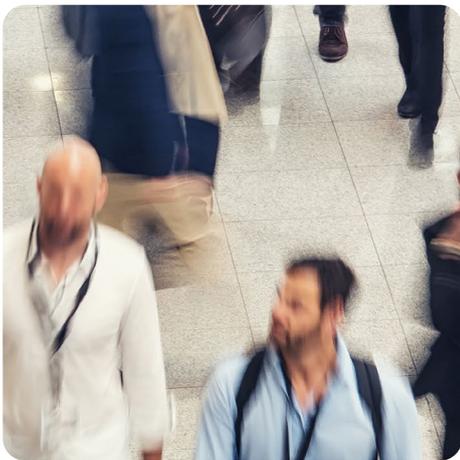


NUTRISCORE FACTS



REPORT

REPORT ON **NUTRI-SCORE** SYSTEM
ANALYSIS OF LEGAL AND PRACTICAL
ARGUMENTS

REPORT

REPORT ON **NUTRI-SCORE** SYSTEM ANALYSIS OF LEGAL AND PRACTICAL ARGUMENTS

Warsaw, 2022

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TABLE OF CONTENTS

| | |
|--|----|
| NUTRI-SCORE - GENERAL INFORMATION | 2 |
| THE NUTRI-SCORE SYSTEM ASSUMPTIONS AND OBJECTIVES..... | 2 |
| CALCULATIONS AND RULES FOR LABEL DECLARATIONS..... | 3 |
| GENERAL PRINCIPLES OF NUTRI-SCORE APPLICATION..... | 6 |
| COOPERATION BETWEEN THE AUTHORITIES OF COUNTRIES THAT HAVE ADOPTED THE NUTRI-SCORE | 7 |
| NUTRI-SCORE - UNDER WHICH FOOD LAWS DOES IT FALL? | 9 |
| USE OF NUTRI-SCORE IN POLAND - REGULATORY COMPLIANCE ASSESSMENT | 14 |
| NUTRI-SCORE - A REVIEW OF THE LEGAL AND PRACTICAL ARGUMENTS FOR NUTRI-SCORE USING | 17 |
| EC INITIATIVES FOR FRONT-OF-PACK CONTENT ON FOOD PACKAGING | 20 |
| COULD N-S BECOME A MANDATORY DESIGNATION IN THE EU? | 28 |



NUTRI-SCORE - GENERAL INFORMATION

THE NUTRI-SCORE SYSTEM ASSUMPTIONS AND OBJECTIVES

1. Nutri-Score (hereinafter "Nutri-Score" or "System") is a color-coded graphical and letter designation (from letter A to E, in colors ranging from dark green to dark orange¹) on the front of food packages, which provides information on the overall nutritional value of the product.
2. Nutri-Score was implemented in France in 2017. It is based on the work of an expert team led by Professor Serge Hercberg and the French Agency for Food, Environmental and Occupational Health and Safety (ANSES) and the High Council for Public Health (HCSP). The System is supervised by the French Agency for Public Health (Santé Publique France, hereinafter "Santé"²), a subordinate body of the French Ministry of Health. The two basic documents for the application of the System are as follows:
 - a. Usage Regulation³ (hereinafter "UR", original in French, also available in English),
 - b. NUTRI-SCORE FREQUENTLY ASKED QUESTIONS⁴.

¹ This is the color nomenclature in the System's base documents, although in the color palette "dark orange" is actually a red color - Luminous red.

² The health service in France is separate and not integrated into the national service (an unusual arrangement). However, it is subordinated to the provisions contained in the general statutes of the public service. Source: Characteristics of the public service in France, Magdalena Michalak, 2017, Maria Skłodowska-Curie University.

³ CONDITIONS OF USE OF THE « NUTRI-SCORE » LOGO Version dated 8 of September 2021 and approved by Santé Publique France

⁴ UPDATED 21/07/2021

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3. The Nutri-Score is intended to make it easier for consumers to understand nutrition information about foods and so support them in making more informed choices.⁵ It aims to complement nutrition labelling mandatory under Regulation 1169/2011⁶. In particular, Nutri-Score is intended to help consumers choose the healthier option within the same or similar product groups that they choose for a meal (e.g. breakfast category).
 4. Since 2017, other countries have also decided to join or officially endorse the System in their markets: Belgium (2018), Switzerland (2019), Germany (2020), Luxembourg (2020) and the Netherlands (2021)⁷.
 5. The System relies on preferential treatment for nutrients that are widely recognized as beneficial to health and on information about the content of ingredients whose intake should be limited.

CALCULATIONS AND RULES FOR LABEL DECLARATIONS

6. The Nutri-Score designation is calculated on the basis of the so-called Rayner's score, which takes into account the content per 100 g or 100 ml of energy and selected ingredients, including:
 - a. nutrients (sugars, saturated fatty acids, fiber, protein, sodium) declared by nutrition labelling, as well as
 - b. selected product ingredients - declared on labels in the list of ingredients (e.g. fruits, vegetables, nuts, legumes, oils: rapeseed, walnut and olive oil).
7. As the most desirable in the diet, the System promotes products that can be labelled with the letter A and dark green color. The least beneficial, based on the assumptions of the System, are products with the letter E and a dark orange color.
8. Nutri-Score assigns points to the product:
 - a. 0-10 points - for energy value and ingredients that should be limited in the diet, i.e.: saturated fatty acids, sugars and salt.
 - b. 0-5 points - for beneficial ingredients whose consumption should be promoted: fiber, protein, fruit, vegetables, legumes, nuts, rapeseed, walnut and olive oils.

⁵ <https://www.santepubliquefrance.fr/en/nutri-score>

⁶ 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, 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 2011 L 304, p. 18, as amended), hereinafter "Regulation 1169/2011".

⁷ <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2021&num=530>



To determine the value of a designation - that is, the letter from A to E - for a given product, the sum of the points earned by the ingredients to be restricted should be subtracted from the sum of the points earned by the promoted ingredients.

9. Based on the score (from -15 to +40 points), the product is classified in one of five value classes: from A to E. The lower the score, **the higher the nutritional value of the product**.
10. The model for enumeration of the label is uniform for most foods (the so-called classical enumeration model). Exceptions are cheese, vegetable and animal fats, and beverages (products that differ in nature and level of consumption from others). For these categories, the way the designation is calculated is slightly different. Thus, in the classical calculation model, the protein content is taken into account or not - depending on the sum of points for the negative components. For cheeses the protein content is always taken into account, irrespective of the total score for the negative components. For fats, on the other hand, the ratio of saturated fatty acids to total fat content is taken into account.⁸
11. The basic rules for assigning points for negative (Table 1.) and positive (Table 2.) components are presented below. The tables are taken from UR.

Table 1. Scoring for negative components.

| Points | Energy density (kJ/100 g) | Sugars (g/100 g) | Saturated fatty acids (g/100 g) | Sodium (mg/100 g) ¹ |
|--------|---------------------------|------------------|---------------------------------|--------------------------------|
| 0 | ≤ 335 | ≤ 4,5 | ≤ 1 | ≤ 90 |
| 1 | > 335 | > 4,5 | > 1 | > 90 |
| 2 | > 670 | > 9 | > 2 | > 180 |
| 3 | > 1005 | > 13,5 | > 3 | > 270 |
| 4 | >1340 | > 18 | > 4 | > 360 |
| 5 | > 1675 | > 22,5 | > 5 | > 450 |
| 6 | > 2010 | > 27 | > 6 | > 540 |
| 7 | > 2345 | > 31 | > 7 | > 630 |
| 8 | > 2680 | > 36 | > 8 | > 720 |
| 9 | > 3015 | > 40 | > 9 | > 810 |
| 10 | > 3350 | > 45 | > 10 | > 900 |

¹ the sodium content corresponds to the salt content listed in the mandatory declaration divided by 2,5.

⁸ Usage Regulation - p. 22.

Table 2. Scoring for positive components

| Points | Fruits, vegetables, pulses, nuts and rapeseed, walnut and olive oils (%) | Fibre (g/100g) | Protein (g/100 g) |
|--------|--|----------------|-------------------|
| 0 | ≤ 40 | ≤ 0,9 | ≤ 1,6 |
| 1 | > 40 | > 0,9 | > 1,6 |
| 2 | > 60 | > 1,9 | > 3,2 |
| 3 | - | > 2,8 | > 4,8 |
| 4 | - | > 3,7 | > 6,4 |
| 5 | > 80 | > 4,7 | > 8,0 |

12. For beverages (including fruit juices) the first 3 columns of Table 1 containing the negative ingredients are NOT APPLICABLE, the following values should be taken instead (the other columns of Table 1 and 2 apply):

| Points | Energy density (kJ/100 g or 100 ml) | Sugars (g/100 g or 100 ml) | Fruits, vegetables, pulses, nuts and rapeseed, walnut and olive oils (%) |
|--------|-------------------------------------|----------------------------|--|
| 0 | ≤ 0 | ≤ 0 | ≤ 40 |
| 1 | ≤ 30 | ≤ 1,5 | |
| 2 | ≤ 60 | ≤ 3 | > 40 |
| 3 | ≤ 90 | ≤ 4,5 | |
| 4 | ≤ 120 | ≤ 6 | > 60 |
| 5 | ≤ 150 | ≤ 7,5 | |
| 6 | ≤ 180 | ≤ 9 | |
| 7 | ≤ 210 | ≤ 10,5 | |
| 8 | ≤ 240 | ≤ 12 | |
| 9 | ≤ 270 | ≤ 13,5 | |
| 10 | > 270 | > 13,5 | > 80 |

13. The relationship between the number of points and the corresponding letter given in the Nutri-Score food and beverage designation is shown in Table 3. below.

Table 3. Relationship between the number of points and the indication of the letter in the Nutri-Score logo.

| Points | | Logo |
|-------------|-----------|---|
| Solid foods | Beverages | |
| Min to - 1 | Waters |  |
| 0 - 2 | Min - 1 |  |
| 3 - 10 | 2 - 5 |  |
| 11 - 18 | 6 - 9 |  |
| 19 - max | 10 - max |  |

GENERAL PRINCIPLES OF NUTRI-SCORE APPLICATION

14. Nutri-Score cannot be used for:

- unpackaged food,
- alcoholic beverages exceeding 1.2% alcohol,
- nutritional supplements,
- foods regulated under Regulation 609/2013 (foods for specific groups of consumers).

15. The use of Nutri-Score requires the inclusion of a nutrition declaration (as required by Regulation 1169/2011). Therefore, foods that are exempt from nutrition labelling (as indicated in Annex V of the aforementioned Regulation) and do not voluntarily provide a nutritional value cannot be labelled with Nutri-Score either. The products indicated in Annex V include: unprocessed products that contain a single ingredient or a single category of ingredients; and processed products where the only processing they have undergone is ripening and that contain a single ingredient or a single category of ingredients.

- Food Business Operators (hereinafter "FBOs") interested in using the Nutri-Score must register by providing company information and the types and brands of products on which they plan to use the logo.
- The registration process⁹ varies depending on the markets in which the FBO plans to distribute Nutri-Score-labeled products:
 - a separate registration procedure applies for distribution on the French market only,
 - for markets in other countries, there is the so-called international procedure.

Differences may be due to more stringent requirements in the French market (e.g. in terms of controls and rules on off-label use for promotional purposes).

⁹ Registration under the link: https://www.demarches-simplifiees.fr/commencer/nutri-score_enregistrement_france or https://www.demarches-simplifiees.fr/commencer/ns_international_registration_procedure



18. The registration procedure ends with the receipt of an electronic confirmation from Sante together with the files allowing the use of the logo.
19. Use of the Nutri-Score logo does not require payment of a fee, but must comply with the principles indicated in the UR base document (pt. 2), which FBOs declare during registration.
20. The Nutri-Score logo is an EU trademark registered by Sante with the European Union Intellectual Property Office (EUIPO). When using the Nutri-Score logo, you must not only comply with the trademark terms of use set by the trademark owner, but also consider the general rules of trademark protection that must be followed under the law.

COOPERATION BETWEEN THE AUTHORITIES OF COUNTRIES THAT HAVE ADOPTED THE NUTRI-SCORE

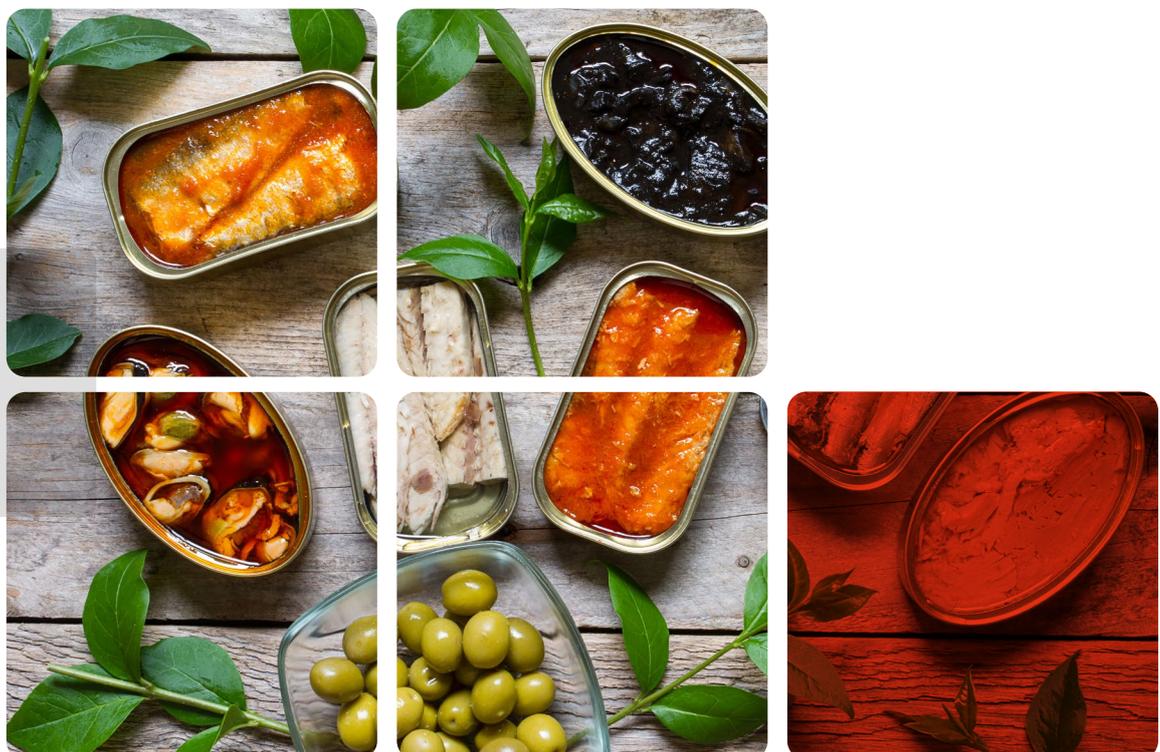
21. Most of the countries that have decided to recommend Nutri-Score have notified the EC of their national legislation in this regard (no notification of Spain and Switzerland - member of the EEA). The authorities of these countries, responsible for the implementation of Nutri-Score, have undertaken cooperation (within two committees: steering committee and scientific committee) in order to facilitate the implementation of Nutri-Score by FBOs, to reach smaller entrepreneurs and establish relationships with consumers. Thus, the countries France, Belgium, Germany, Switzerland, Spain, the Netherlands and Luxembourg were defined as "officially involved in Nutri-Score" (abbreviation: COEN). (abbreviation: COEN). Spain has supported the System, although it has not yet adopted national legislation on its application (dissenting voices abound in the country).

According to the COEN Agreement¹⁰, these countries have completed their legislative procedures in accordance with national and relevant EU legislation:

- a. "The participating countries from the EU and the European **region have regulated the legal authorization for Nutri-Score in their respective national laws, in line with applicable EU regulations. These legal provisions are notified to the European Commission when relevant.**
- b. For the purpose of this general agreement, "COEN" means: the countries which have officially entered into a notification procedure with the European Commission or for countries outside the EU, which have enacted the relevant regulation in accordance with their national law.

¹⁰ International commitment of participating countries of Nutri-Score - General agreement & governance structure - January 202 (hereinafter "Agreement").

22. A scientific committee of up to two independent scientists from a COEN country met in January 2021 to develop the Nutri-Score and align it with current dietary recommendations as well as consumer behavior in COEN countries.
23. Scientific Committee members are expected to support the implementation of the Nutri-Score in the areas of: nutrition, public health, food composition, nutritional value and nutrition labelling, nutritional profiles and epidemiological studies. Their role is to evaluate modifications to the algorithm used to calculate the NS from a scientific perspective, as well as to answer questions from consumers, producers and associations.
24. The aforementioned committee **MUST NOT**, among others, develop new dietary recommendations, modify the main assumptions of the algorithm (e.g., the algorithm must not include nutrients **that are not part of the core nutrition declaration, such as vitamins or minerals**; calculations must refer to 100 g/100 ml, not servings, and should remain the same for all product categories, except for specific categories such as beverages).
25. **The premise of the international coordination of the implementation of the Nutri-Score is to guarantee the equal rights of the COEN countries to make decisions** that are to be binding on the trademark owner. The rights to the mark are to be transferred from Sante to its successor. It is assumed that this will be an international non-profit association established under Belgian law (or an entity operating on another legal basis, such as the European Economic Interest Grouping).
26. Thus, through their representatives, COEN countries are expected to influence modifications of the Nutri-Score application rules, assuming they are accepted by the Scientific Committee.
27. Among other things, the COEN countries under the Agreement committed to respect the Nutri-Score principles and cooperate in its implementation, but also to:
 - a. Prepare Nutri-Score conditions of use documents and "Questions and Answers" guide in COEN country languages (and to update them in case of changes).
 - b. Collaborate in the creation of an international registration platform for FBOs.
 - c. Create an information office, necessary for the implementation of the system in individual countries (acting as a contact point for entrepreneurs).
 - d. Collect inquiries from stakeholders.
 - e. Organize actions related to the implementation of Nutri-Score.
 - f. Monitor the use of the Nutri-Score logo.



NUTRI-SCORE - UNDER WHICH FOOD LAWS DOES IT FALL?

28. The legal basis for the use of the Nutri-Score logo in food labelling and advertising is the subject of much debate, as there is currently no clear position on the matter. There is no doubt that the Nutri-Score constitutes information about food. At the same time, qualifying this information in the right category is crucial to indicate which legal requirements should be implemented in order for the Nutri-Score to be used.

29. As defined in Article 2(2)(a) of Regulation 1169/2011, "food information" means information concerning a food and made available to the final consumer by means of a label, other accompanying material, or any other means including modern technology tools or verbal communication."

30. Among the range of information provided on food labels, mandatory information can be distinguished, defined as follows in Article 2(2)(c): "mandatory food information" means the particulars that are required to be provided to the final consumer by Union provisions"; e.g. name of the food, list of ingredients, net content.

31. Food information that is not required to be provided by EU legislation is voluntary information. Such communications to consumers must comply with the requirements of Article 36 of Regulation 1169/2011, i.e.

- a. shall not mislead the consumer, as referred to in Article 7;
- b. must not be ambiguous or confusing to the consumer; and
- c) must be based, where appropriate, on relevant scientific data.

32. The purpose of Article 7 referred to above is to ensure that **any food information is accurate, clear and easy to understand for the consumer, and that it is not misleading**, in particular:

01



as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production

02



by attributing to a food an effect or property which it does not possess

03



by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasizing the presence or absence of certain ingredients and/or nutrients

04



by suggesting, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient, while in reality a component naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient



33. The above mentioned requirements of Article 36(2) of Regulation 1169/2011 regulate in a general way the provision of voluntary food information to consumers.

34. For selected voluntary claims, additional specific requirements must be met. For example, for **content that indicates or suggests specific characteristics of the product in terms of its nutritional qualities or health benefits. These are regulated in detail in Regulation 1924/2006¹¹.**

35. The aforementioned Regulation defines "claim" as "any message or representation, which is not mandatory under Community or national legislation, including pictorial, graphic or symbolic representation, in any form, which states, suggests or implies that a food has particular characteristics".

36. At the same time, any such claim "that states, suggests or implies that a food has a **particular (beneficial) nutritional property** due to:

- a. energy (caloric value), which it
 - (i) provides,
 - (ii) provides in reduced or increased amounts, or
 - (iii) does not provide, or
- b. nutrients or other substances,
 - (i) that it contains,
 - (ii) that it contains in reduced or increased amounts, or
 - (iii) which it does not contain;

constitutes a so-called "nutrition claim".

37. The voluntary Nutri-Score designation - as presented by Sante¹² - indicates the nutritional value of the product.

38. As indicated in the technical and scientific paper on Nutri-Score¹³, the purpose of its use is to improve understanding of the mandatory nutrition declaration of foods that must be presented on labels under the provisions of Regulation 1169/2011, and to distinguish thereby between "healthier" and "less healthy" products (nutritionally "better" from "worse")¹⁴

¹¹ Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ EU. L. 2006 No. 404, p. 9 as amended), hereinafter "Regulation 1924/2006".

¹² W Usage Regulation – p. 6, Identification of the Logo

¹³ NUTRI-SCORE FREQUENTLY ASKED QUESTIONS

¹⁴ „The Nutri-Score is a graphic scale that divides the nutritional score into 5 classes (expressed by a color and a letter), the purpose being to help the consumer better see, interpret and understand the nutritional value. The point is not to separate 'good' foods from 'bad' foods, but rather to use the 5 classes to distinguish foods that are healthier from those that are less healthy.”

39. Assuming that the consumer interprets the logo according to the Nutri-Score assumption, i.e., understands that products marked with the letter A or B are those that have beneficial nutritional value (due to a certain amount of nutrients), then the logo with such markings may constitute a nutrition claim.

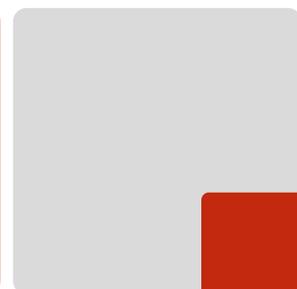
40. **As a consequence of the above legal qualification, the Nutri-Score logo with the letters A and B should meet the requirements of Regulation 1924/2006.** This interpretation is also not free from doubts arising from the fact that the logo as such does not directly refer to (but is only calculated based on) specific nutrients and the criteria for its calculation are based not only on the level of nutrients but also on the ingredients of the product (such as fruit, vegetables, nuts).
41. Recall that a nutrition claim may take the form of graphics and symbols, not only those that clearly indicate specific nutritional properties, but also those that suggest such properties. One might expect that marking a product in the principal field of view (on the front of the package) with a green letter A or B (in contrast to the dark orange warning color at the other end of the scale) would influence the consumer's perception of the product as superior - which is, after all, the intent and purpose of the Nutri-Score system.
42. As per Article 1, Regulation 1924/2006, it harmonizes "the provisions laid down by law, regulation or administrative action in Member States which relate to nutrition and health claims in order to ensure the effective functioning of the internal market whilst providing a high level of consumer protection". Furthermore, it "shall apply to nutrition and health claims made in commercial communications, whether in the labelling, presentation or advertising of foods to be delivered as such to the final consumer".

43. According to Article 3 of Regulation 1924/2006, "Nutrition and health claims may be used in the labelling, presentation and advertising of foods placed on the market in the Community only if they comply with the provisions of this Regulation."

In addition, "nutrition and health claims shall not:

- a. be false, ambiguous or misleading;
- b. give rise to doubt about the safety and/or the nutritional adequacy of other foods;
- c. encourage or condone excess consumption of a food (...)"

44. In turn, according to Article 8(1) of Regulation 1924/2006, **"Nutrition claims shall only be permitted if they are listed in the Annex and are in conformity with the conditions set out in this Regulation."** This Annex identifies the nutrition claims permitted for use in the EU, together with the conditions for their use on the basis of which it is also permissible to use different claim contents while maintaining the same meaning for the consumer. The use of nutrition claims outside the annex is contrary to Regulation 1924/2006.
45. Furthermore, according to Article 5(2) of the aforementioned regulation, "The use of nutrition and health claims shall only be permitted if the average consumer can be expected to understand the beneficial effects as expressed in the claim."





46. This interpretation of the legal basis for the use of the Nutri-Score system is confirmed by the EC in its Report¹⁵ published in May 2020 on the use of additional forms of expression and presentation of the nutrition declaration:

"1.2. Other front-of-pack nutrition labelling schemes

Some front-of-pack nutrition labelling schemes developed by Member States or food business operators do not fall under the scope of Article 35 of the Food Information Regulation as they do not repeat the nutrition declaration, but **present the overall nutritional value of the food (e.g. by means of a symbol or letter)**. Under Article 36 of the Food Information Regulation, such systems are considered "information provided on a voluntary basis", the information must not mislead the consumer, be ambiguous or confuse the consumer, and be based, where appropriate, on relevant scientific data. **At the same time, when such a system attributes an overall positive message (e.g. through the color green), it also meets the legal definition of a "nutrition claim" as it provides information on the beneficial nutritional value of a food**, as defined in Regulation (EC) No 1924/2006 on nutrition and health claims made on foods⁷ (the Claims Regulation). According to the Claims Regulation, claims should be based on science, must not be misleading and are only permitted if the average consumer can be expected to understand the beneficial effects described in the claim.

Front-of-pack nutrition labelling systems falling under the scope of the Regulation on claims may only be used in the territory of a Member State if the systems have been adopted by that Member State in accordance with Article 23 of the Regulation on claims, which lays down the procedure for their notification to the Commission."

47. Also, the German court in Hamburg¹⁶ in 2019 recognized the A and B designation of the Nutri-Score System as a nutrition claim, which is not included in the Annex to Regulation 1924/2006 (so it cannot be used, subject to Article 23).
48. Notification of the national act for the application of Nutri-Score has been done by most EU countries that have joined the application of Nutri-Score and recommend it as voluntary in their territory¹⁷. France was the first to notify a national act - based on Article 35 of Regulation 1169/2011 (in 2016, i.e., several years before the emergence of the EC report in which the EC considered Nutri-Score as a declaration). Other EU countries have notified national legislation under Regulation 1924/2006 (Articles 8 and 23) and Regulation 1169/2011 (Articles 36 and 38).

¹⁵ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the use of additional forms of expression and presentation of the nutrition declaration

¹⁶ German District Court of Hamburg, case file 411 HK O 9/19

¹⁷ As of October 15, 2021.

49. The Netherlands in its August 2021 notification confirmed the classification of Nutri-Score as a nutrition claim indicating that: "The Nutri-Score food choice logo shall be considered as a nutrition claim as referred to in Article 2(2)(4) of this Regulation. Article 8(1) of the Claims Regulation authorizes only the nutrition claims listed in the Annex to this Regulation. **These nutrition claims shall always refer exclusively to the energy amount of the food or the amount of a single substance or nutrient. The Nutri-Score food choice logo is not suitable for this purpose to be added to this Annex: the calculation of the Nutri-Score takes into account the whole composition of the food. Article 23 of the Claims Regulation requires a Member State to notify the use of claims in its territory if such claims do not comply with the Claims Regulation.**"
50. The notifications submitted by Belgium, the Netherlands, Germany and Luxembourg in the Nutri-Score case show that they have provided a justification for joining this System with regard to their national market and consumer needs. This is necessary in order to establish whether a voluntary indication has a raison d'être in the relevant market and whether it will be comprehensible and useful for the purposes intended by its presence on labels.
51. Proper consumer understanding of the Nutri-Score food information message should be a prerequisite for its proper use.
52. The results of the Nutri-Score comprehension survey for the Polish market cited on [nutriscore.co.uk](https://www.nutriscore.co.uk) refer to a group of "135 dairy products users aged 18-65 who were explained how to read the Nutri-Score". It would be very useful for a proper Nutri-Score evaluation to have consumer research results indicating whether the same good understanding of the system takes place when the consumer is confronted with a product available in the store, labelled with no additional explanation.



USE OF NUTRI-SCORE IN POLAND - REGULATORY COMPLIANCE ASSESSMENT

53. When considering Nutri-Score as voluntary information, the first and foremost thing to do is to ensure that it is understandable and not confusing for consumers in the market where it is used in food labelling and presentation. For this condition to be met, consumers should have easy access to complete information on the rules for calculating the Nutri-Score designation (for different food categories), in language they understand.

54. When considering Nutri-Score in the context of a nutrition claim, it is important to note that its use in an EU country does not comply with the provisions of Regulation 1924/2006, unless the country has adopted the relevant legislation by notifying the European Commission (EC) of its intention to do so. This is due to the fact that the use of nutrition claims other than those indicated in the above-mentioned regulation violates its provisions.

55. However, Article 23 of Regulation 1924/2006 provides the basis for the adoption of additional national acts on claims, setting out the following principles:

"Article 23

Notification procedure

1. If a Member State considers it necessary to adopt new legislation, it shall notify the Commission and the other Member States of the envisaged measures and give the reasons justifying them.
2. The Commission shall consult the Standing Committee on the Food Chain and Animal Health instituted by Article 58(1) of Regulation (EC) No 178/2002 (hereinafter referred to as the Committee) if it considers such consultation to be useful or if a Member State so requests, and shall give an opinion on the envisaged measures.
3. The Member State concerned **may take the envisaged measures six months after the notification referred to in paragraph 1, provided that the Commission's opinion is not negative.**

If the Commission's opinion is negative, it shall determine, in accordance with the procedure referred to in Article 24(2) and before the expiry of the period referred to in the first subparagraph of this paragraph, whether the envisaged measures may be implemented. The Commission may require certain amendments to be made to the envisaged measure."

56. The EC task in this procedure is to assess whether the adoption of certain measures by a given state is not contrary to the regulations and is justified. If the EC opinion is not negative, the member state may adopt the measures provided for within 6 months from the date of their notification to the EC.

57. Poland has not yet officially joined the Nutri-Score system and has not notified any legal act in this respect to the EC. This means that it has not fulfilled the requirement of Article 23 of Regulation 1924/2006, which means that the use of Nutri-Score on products marketed exclusively for Polish consumers violates the provisions of this legal act (in particular Article 8(1)).

58. In the absence of a national legal act in Poland defining the rules for the application of the Nutri-Score system, the fulfilment of the requirements of Regulation 1169/2011 regarding the provision of information in an understandable and non-discursive way is also questionable. Consumers who are confronted with the Nutri-Score marking on products available in stores are not able to read full information about what it means, how it is calculated, and how it should be interpreted.

59. A basic range of information on the Nutri-Score system is presented online at: <http://nutriscore.pl/>. However, it should be noted that this portal lacks information (as of December 7, 2021), e.g. on the detailed calculation and derogations for certain product categories (which are defined in the



so-called user manual, available in French and English). Moreover, analyzing the information presented there, one may have an impression of inconsistency with the basic documents constituting the basis for the application of the system in France, e.g. with regard to the description of the graphics (the "dark orange" color was defined as "red").

60. Regardless of the lack of a national legal basis defining the rules of application, it should be noted that the requirement of comprehensibility of the Nutri-Score indication resulting from Article 7 of Regulation 1169/2011 may not be met also due to the fact that the consumer, through the letter marking, receives only information that the product is nutritionally more or less beneficial (than others standing on the shelf), but does not know what is the basis and criterion (what stands behind this assessment). Such concerns were shared in November 2021 by the Italian Competition and Market Authority (AGCM) when it announced the opening of 5 investigations into the use of the Nutri-Score system by companies: GS Spa, Carrefour Italia Spa, Pescanova Italia Srl and Valsoia SpA, Regime Dukan Sas and Diet Lab Sas, Weetabix Ltd. and a German confectionery company. The Authority also launched an investigation against the owner of an app that rates food products based on the Nutri-Score label. The investigations were prompted by a concern that the Nutri-Score designation could be misunderstood by consumers as an absolute health rating for a product due to a lack of additional warnings on the label or an explanation of how to read it correctly.
61. Although the Nutri-Score system is based on the information contained in the nutrition table and the list of ingredients, the way in which they are scored (scoring rules and consequently the letter designation) is not presented. Furthermore, not all the information considered for the Nutri-Score calculation is always present on the label (e.g. % fruit, vegetables or nuts).
62. When comparing the generic Nutri-Score designation to permitted nutrition claims, it is easy to see that nutrition claims typically indicate a specific nutritional attribute, such as high fiber or low fat, that distinguishes the product from other.
63. Furthermore, national acts governing the use of Nutri-Score specify not only the detailed rules for the calculation and use of the Nutri-Score designation, but also its monitoring by the national competent authority. For example, the Belgian act stipulates that: "Food business operators who undertake to use the logotype defined in this specification shall inform the Federal Public Health, Food Chain Safety and Environment Service and provide it, in a format defined by this service, with all the information necessary for monitoring. Useful documents are available under a special tab on the website www.health.belgium.be of the Federal Public Health, Food Chain Safety and Environment Service. The use of the logo is monitored by the Federal Public Health, Food Chain Safety and Environment Service."
64. From the content of the UR, it appears that in France Sante fully controls and supervises the use of Nutri-Score, and has the possibility to verify not only the correctness of the calculation itself, but also the marketing communication to meet the rules set by the authority. Similar rules are defined for the application of Nutri-Score in the Belgian market.
- 65. The use of Nutri-Score on products in Poland, where there are no such rules and no authority responsible for its use, is in practice not subject to any control, which may be open to abuse. Official food control authorities in Poland, lacking baseline documentation in Polish, may not be in a position to assess whether the Nutri-Score marking complies with the principles set out by Sante and does not infringe food law requirements regarding food information.**

CONCLUSIONS ON THE APPLICATION OF NUTRI-SCORE IN POLAND

- If the EC maintains its position concerning the qualification of the Nutri-Score logo (point 46), then the use of the Nutri-Score logo requires meeting the requirements of Regulation 1169/2011 as well as Regulation 1924/2006, so in order to legally use the Nutri-Score logo it is necessary for the Polish authorities to adopt a national legal act regulating the rules of using the Nutri-Score logo.
- An act prepared under Article 23 of Regulation 1924/2006 shall be notified to the EC.
- The need to create a national legal basis for the application of the Nutri-Score system also arises from the need to establish rules for its use which are understandable to Polish consumers and the possibility of its monitoring and control. Moreover, the basis for such a legal act should be an assessment of the needs and behavior of Polish consumers in the current market reality.
- **The use of the Nutri-Score designation in the absence of an appropriate national legal basis may be considered to violate the requirements of:**
 - Regulation 1924/2006 (Article 8 - use of non-compliant nutrition claims) and
 - Regulation 1169/2011 (Articles 7 and 36 - possibility of confusing consumers, lack of reliable information e.g. in case of limited availability of source documentation in Polish).





NUTRI-SCORE - A REVIEW OF THE LEGAL AND PRACTICAL ARGUMENTS FOR NUTRI-SCORE USING

66. The problem of obesity (especially among children) and the scale of diet-related diseases is worrying and solutions need to be found to support consumers in making informed nutritional choices, including with regard to information provided on food labels.
67. Although the Nutri-Score system is based on mandatory - by law - information, it has a number of features and assumptions that may raise questions about its validity and effectiveness.
68. The Nutri-Score designation is a general nutritional assessment of a product and takes into account selected components that should be increased or decreased. In contrast, it does not take into account a number of other aspects related to the composition, nature, and properties of the food that may have a significant impact on whether a food is considered to have nutritional value, such as:
 - a. degree of processing, and therefore the more or less natural character,
 - b. food additive content,
 - c. portion of the product customarily consumed by consumers.
69. A general evaluation in the form of a logo does not let the consumer know which ingredients were decisive in awarding a particular label. In other words, the consumer sees that the product is, for example, "better" (or maybe even "healthier"?), but does not know what characteristic of the product causes this.
70. At the same time, choosing products with a "positive" label (letter A or B) and avoiding products with a "negative" label - or even avoiding products without any label, e.g., unprocessed - can help to diversify the diet, which is, after all, the basic hallmark of a healthy diet.

71. One of the assumptions of the Nutri-Score system is to reformulate foods to increase their nutritional value. Such actions, in principle, can be beneficial for consumers. However, it is worth noting that such a possibility exists mainly in relation to highly and medium-processed food. There is therefore a real risk that such foods will appear more favorable in the eyes of consumers than unprocessed products whose composition cannot be modified in this way (e.g. products naturally rich in fat, such as cheese, oil or butter, fish-based products). For this reason, it seems reasonable to study consumer behavior to see how Nutri-Score promotes better choices within a category (e.g., healthier breakfast cereals).



72. Avoiding highly processed foods is part of dietary recommendations in many countries around the world. For example, Belgium, in its 2017 updated recommendations, adopted an approach that includes avoiding these foods as one of three core principles that are pillars of a healthy lifestyle:

“The revised food-based dietary guideline for Flanders was launched in 2017. The “food triangle” approach was based on an extensive literature review and consultation, which indicated that the guide should:

- encourage people to eat proportionally more foods derived from plants than foods derived from animals,
- encourage people **to avoid ultra-processed foods as much as possible**,
- communicate the importance of moderating consumption and avoiding food waste.

These starting-points resulted in 10 principles of healthy living with regard to which foods should be consumed and some tips for sustaining behavioural change”¹⁸.

73. Food additives assessed by EFSA as safe for health can be used in accordance with EU legislation where there is a technological need. However, there is no doubt that it is worth limiting their use and thus contributing to a more natural character of food. This was confirmed by the crisis situation regarding titanium dioxide (E 171) which, despite many years of use in the EU, has proven to be a potential health risk for consumers¹⁹.

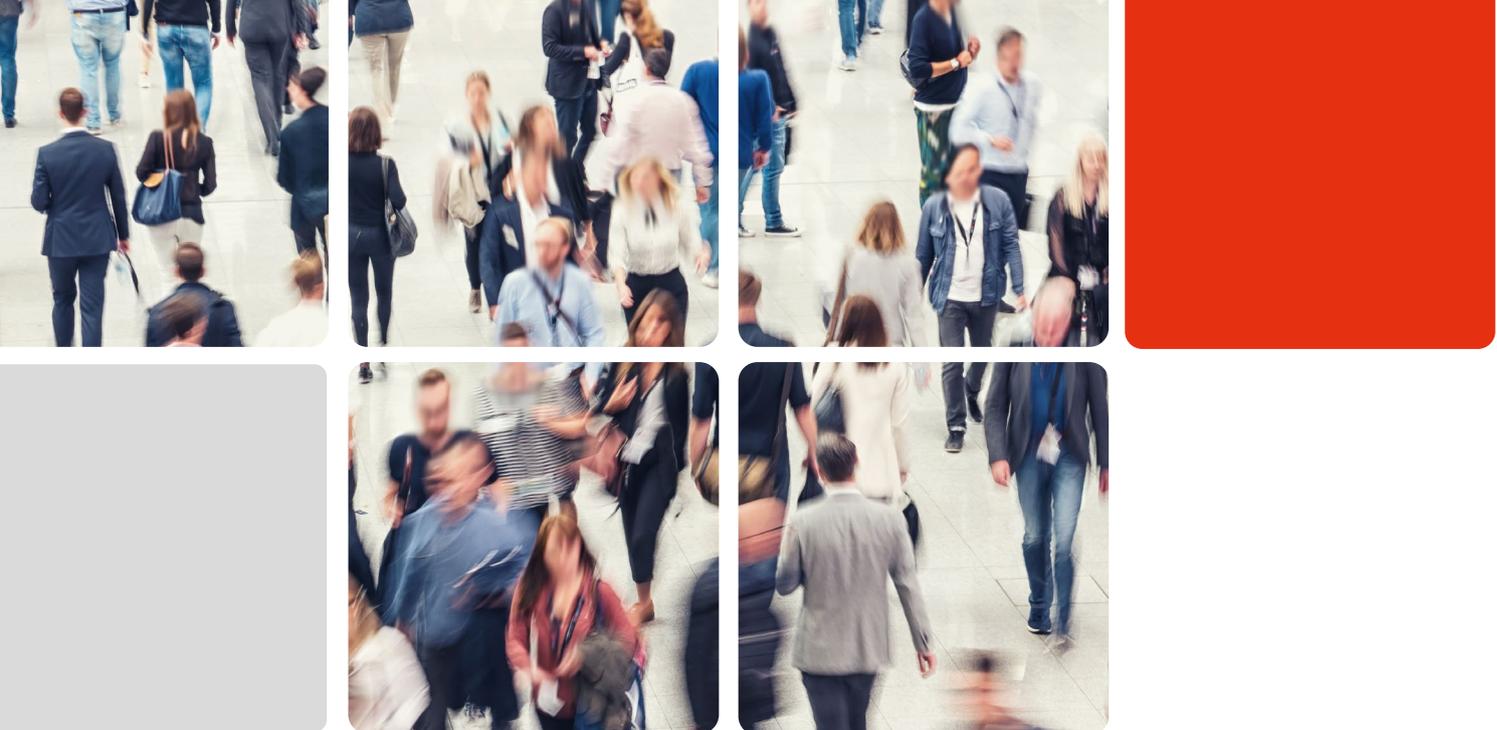
74. This problem can affect products whose composition is regulated by trade quality regulations (e.g. fruit juices and nectars, jams, preserves), which guarantees, among others, their uniform and high quality. An example is fruit juice, which must not contain added sugar and must be produced in accordance with the national regulation²⁰ implementing the EU directive²¹ (the requirements specify in particular the permitted production methods, raw material specifications, permitted additives, characteristics of the final product). Such juice can be given a worse Nutri-Score label than a drink without added juice, the composition of which can be modified as desired (e.g. by replacing some of the sugar with sweeteners). Also, the way the drink is produced is not limited by restrictive regulations and it may contain a greater number of food additives. As a result, a better rating for such a beverage compared to a juice may motivate consumers to buy and consume beverages more frequently at the expense of juices, which are a natural source of vitamins, minerals and other nutrients (e.g. antioxidants).

¹⁸ Better food and nutrition in Europe: a progress report monitoring policy implementation in the WHO European Region 2018.

¹⁹ <https://www.igifc.pl/bezpieczenstwo-zywnosci-zakaz-stosowania-e-171-przyjety-przez-panstwa-czlonkowskie/>

²¹ Ordinance of the Minister of Agriculture and Rural Development of 30 September 2003 on detailed requirements for the commercial quality of fruit juices and nectars (i.e. Journal of Laws of 2014, item 494, as amended).

²² Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption (OJ EU. L. of 2002 No. 10, p. 58 as amended).



75. Similarly, the Nutri-Score designation may have a negative impact on a number of specific, high quality products protected under EU legislation on agricultural product and foodstuff quality schemes²². As the preamble to Regulation 1151/2012 makes clear, such products should be promoted and protected because they are the cultural heritage of the EU and are desired by consumers because of their quality and unique character:

„(1) **The quality and diversity of the Union’s agricultural, fisheries and aquaculture production is one of its important strengths, giving a competitive advantage to the Union’s producers and making a major contribution to its living cultural and gastronomic heritage.** This is due to the skills and determination of Union farmers and producers who have kept traditions alive while taking into account the developments of new production methods and material.

(2) Citizens and consumers in the Union **increasingly demand quality as well as traditional products.** They are also concerned to maintain the diversity of the agricultural production in the Union. **This generates a demand for agricultural products or foodstuffs with identifiable specific characteristics, in particular those linked to their geographical origin.**

(...) quality schemes are able to contribute to and complement rural development policy as well as market and income support policies of the common agricultural policy (CAP). (...)

Agricultural product quality policy should therefore provide producers with the right tools to better identify and promote those of their products that have specific characteristics while protecting those producers against unfair practices.”

According to a coalition of states opposing the Nutri-Score:

All traditional food products based on 100% natural raw materials, such as **feta cheese (Greece), Camembert cheese (France), Kalamata olives (Greece), Parmesan cheese (Italy), Jamón de Serrano (Spain), olive oil (Greece, Spain, Italy), honey, traditional cold cuts and meat products, goose and duck liver products, etc.**, are losing out. This is because products of this type are rated as «unhealthy».”

76. Applying the Nutri-Score designation to the above products may defeat the purpose of the regulations, which are intended to protect and support them, negatively impacting their perception by consumers.

²² REGULATION (EU) No 1151/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 November 2012 on agricultural product and foodstuff quality schemes, hereinafter “Regulation 1151/2012”.

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77. It should be noted that the promotion of unprocessed and low-processed food, especially local (and from local raw materials) as part of a balanced diet is important additionally from the point of view of the carbon footprint that such food generates in comparison with medium- and highly-processed food. Products with a simpler composition, manufactured in a simpler way, require less technical and technological involvement, so in this respect they are more environmentally friendly. As the EC points out in the Farm to Fork strategy (hereinafter the "F2F Strategy")²³, reducing the carbon footprint of products (including foodstuffs) is a necessity in order to ensure a more sustainable economy and environmental protection.
78. Although the use of generic labels on the front to simplify the assessment of a food's nutritional value is intended to benefit consumers and facilitate their choices, it may cause consumers to look less closely at the objective information usually contained on the back of the label, i.e., the nutritional value and list of ingredients.
79. It is also important to consider the diversity of diets customarily consumed in different EU countries. Recommending higher consumption of A- and B-labelled products may have different consequences for consumers in different countries.
80. It should also be emphasized that the use of systems on front-of-pack labeling should, by definition, be supported by scientific evidence that such systems are understandable and effective in achieving the objectives they serve. However, as the EC Report states:
- "To directly measure whether front-of-pack nutrition labeling systems actually improve consumers' diets and health, it would be necessary to observe their daily dietary choices over an extended period of time and to evaluate the health effects of front-of-pack nutrition labeling systems in a randomized trial with a control group over a period of years. Given the difficulty of organizing such studies and proving causation, there is not enough empirical evidence to draw conclusions about the impact of front-of-pack label use on how healthy a diet is and on health per se (Cecchini and Warin, 2016, Hersey et al., 2013, Crocket et al., 2018)."

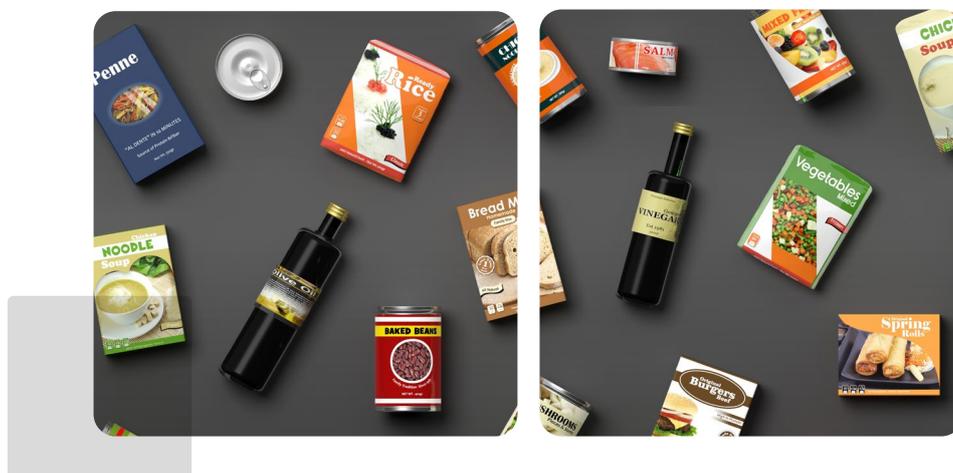
EC INITIATIVES FOR FRONT-OF-PACK CONTENT ON FOOD PACKAGING

81. The EC is undertaking a number of actions as part of its Farm to Fork strategy that aim, among others, to promote a more sustainable food system and improve consumers' eating habits in support of their health and prevention of diet-related diseases. These actions **consist of adopting new legislative solutions, including in the area of food information.**
82. The idea of nutrition labelling on the front of packages is not new. The EC proposed the adoption of mandatory front-of-pack nutrition labelling for foodstuffs as part of its work on draft Regulation 1169/2011 in 2008. However, in the course of works on the project (including as a result of

²³ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A farm-to-fork strategy

lobbying by the food industry) such requirement was abandoned, leaving only the possibility of repeating in the main field of view of the package the information on energy value, or on the following components together: energy value, amount of fat, saturated fatty acids, sugars, and salt. Furthermore, due to the fact that additional ways of nutrition labelling already existed in different EU countries, the EC included the possibility to develop and adopt such schemes under Article 35 of Regulation 1169/2011 (subject to a number of requirements).

83. In May 2020, the EC published a Report on the Use of Additional Forms of Nutrition Expression and Presentation, which covers not only the systems adopted under the aforementioned Article 35, but also other generic labels such as Keyhole. The report is based on literature data acquired through the work of the Joint Research Centre (JRC), as well as EC consultations with authorities in member states and stakeholders.
84. Among the conclusions of the Report, a key one reads as follows:
"Taking into account this policy priority, the above elements, and the fact that front-of-pack nutrition labelling schemes **can help consumers to make informed nutritional choices, it seems an appropriate step to introduce harmonized mandatory front-of-pack nutrition labelling at EU level.**"
85. As part of the F2F Strategy, the EC emphasizes that:
- "Current food consumption patterns are not sustainable from either a health or environmental perspective (...) Shifting to a more plant-based diet with less red and processed meat and more fruits and vegetables will reduce not only the risk of life-threatening diseases but also the environmental impact of the food system."
 - "Providing **clear information** that helps consumers choose a healthy and balanced diet will benefit their health and quality of life and reduce health-related costs. In order to empower consumers to make informed, healthy and balanced dietary choices, **the Commission will propose harmonized mandatory front-of-pack nutrition labelling** and will consider proposing to extend the obligation to indicate the origin or source of certain products, taking full account of the impact on the single market."
 - "It will also look for opportunities to facilitate the transition to healthier diets **and encourage product reformulation, including through nutritional profiling**, to reduce the promotion (with nutrition or health claims) of foods high in fat, sugar and salt."
86. As part of the F2F Strategy, the EC asked "companies and organizations in the food sector to commit to specific actions on health and sustainability, focusing in particular on: **reformulating food products in line with healthy and sustainable diet guidelines**; reducing their environmental footprint and energy consumption through greater energy efficiency (...)"²⁴



²⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0381>



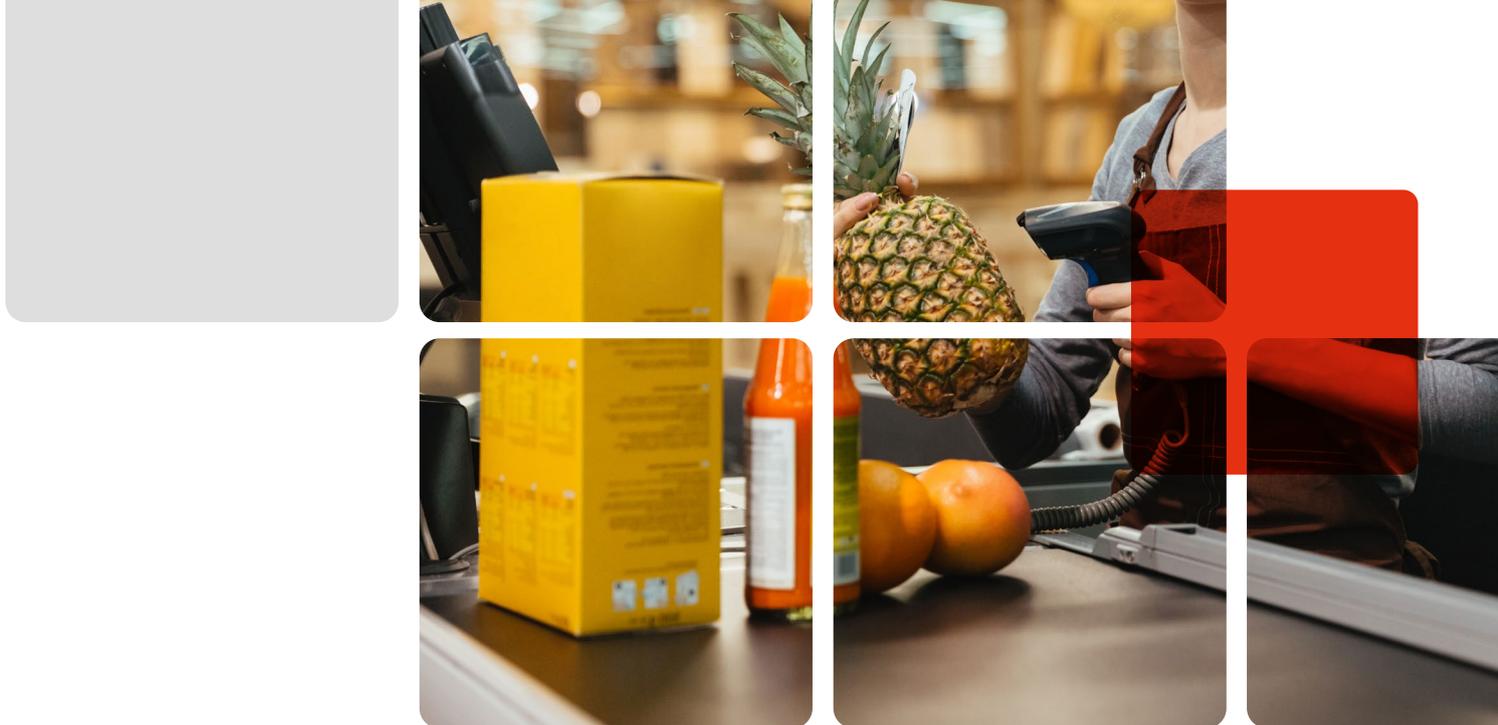
87. As can be seen from the above, the introduction of mandatory front-of-pack nutrition labelling is becoming a reality. At this point it is not yet clear what type of labelling will be chosen and which categories of food will be covered. However, it may turn out that the establishment of a uniform mandatory label throughout the EU will limit the possibility to use existing voluntary labels adopted in member states, such as Nutri-Score. On the other hand, there is also a theoretical possibility that the EC will propose adoption of one of the solutions already existing on the market, such as Nutri-Score.
88. At the same time, the EC has worked with EFSA (European Food Safety Authority) to develop nutrient profiles, both for front-of-pack value labelling (labels such as Nutri-Score are based de facto on nutrient profiles) and the use of nutrition and health claims, in line with Regulation 1924/2006.
89. The role of EFSA (NDA Panel) in this case is to provide a scientific opinion in the following range:
- Which nutrients are important for the health of European consumers (including energy, fiber).
 - What food categories are important in the diet of Europeans (for the general population and specific consumer groups).
 - What criteria to consider when selecting components for profiling purposes.
90. The results of EFSA's work are intended to guide the EC on which nutrients and product groups the front-of-pack labelling system should be "targeted". In contrast, it is not EFSA's role to develop a specific profiling model, nor to advise on the models currently used (e.g. the model on which Nutri-Score is based). EFSA's opinion will be the basis for the development of nutrient profiles. In November 2021 a draft opinion was published²⁵, which was sent for public consultation (possible until 9.01.2022). The final opinion is expected to be adopted by March 2022.

²⁵ <https://www.efsa.europa.eu/en/news/science-behind-nutrient-profiling-have-your-say>.

91. The key findings of EFSA's draft opinion on nutrient profiles are as follows:
- Given the high prevalence of overweight and obesity in Europe, **reducing energy intake** has public health implications for European populations.
 - Intakes of saturated fat, sodium, and added/free sugars exceed dietary recommendations** in most European populations, and excessive intakes are associated with adverse health effects.
 - Dietary fiber and potassium intake is insufficient** in most European adult populations, and inadequate intake is associated with adverse health outcomes.
 - Intakes of iron, calcium, vitamin D, folic acid and iodine are inadequate in specific subpopulations** and are usually addressed in national policies and/or individual advice.
 - It is also possible that ingredients for which there is no scientific certainty about their health benefits should be included in profiling; this may include, for example, the need to include "**some omega-3** fatty acids in nutrient profiling models to encourage consumption of oily fish according to their dietary recommendations, even though there is insufficient data on intake of these fatty acids to determine whether or not they are consumed in inappropriate amounts."
 - Food groups that play an important role in European diets are: starchy foods (mainly cereals and potatoes), fruits and vegetables, legumes, milk and dairy products, meat and meat products, fish and shellfish, nuts and seeds, and soft drinks.
 - National guidelines (reviewed for this opinion) encourage the consumption of whole grains, fruits and vegetables, nuts and seeds, milk and low-fat dairy products, fish, and water. However, if within these product groups there are some that are high in saturated fats, sugars and/or sodium, these too should be avoided. In general, EU countries promote regular consumption of legumes in place of meat (especially red meat and processed meat) and vegetable oils rich in monounsaturated and polyunsaturated fats instead of those rich in saturated fats.
92. Particularly relevant among the above conclusions, seems the one that omega-3 fatty acids should be included in food profiling, because they are important for consumers. In this context, the potential need to change the assumptions of the Nutri-Score system, which does not include this ingredient in its algorithm, is confirmed.
93. Following the publication of the F2F Strategy, the EC also released the so-called Preliminary Regulatory Impact Assessment²⁶ (planned for adoption, referred to above). With regard to front-of-pack nutrition labelling, the EC envisaged choosing one of the following options 1-4 in 2020:

| Nutrient-specific labels - examples | | Summary labels - examples | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|-------------------------|-----------------------------|------------------------------|--------------|------|---------|------|-------|------|------|-----|----|-----|-----|-----|---|--------|-----|-----|-----|-----|---------|----------------|---------------|-------------------|--------------|-----|----|-----|-----|-----|--|--------------------|
| Numerical (Option 1) | Colour-coded (Option 2) | Endorsment logos (Option 3) | Graded indicators (Option 4) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>Each 170g serve contains</p> <table border="1"> <tr> <th>Energy</th> <th>Sugars</th> <th>Fat</th> <th>Saturates</th> <th>Salt</th> </tr> <tr> <td>352kcal</td> <td>4.6g</td> <td>12.2g</td> <td>4.4g</td> <td>1.5g</td> </tr> <tr> <td>16%</td> <td>5%</td> <td>17%</td> <td>22%</td> <td>24%</td> </tr> </table> <p>of an adult's Reference intake</p> | Energy | Sugars | Fat | Saturates | Salt | 352kcal | 4.6g | 12.2g | 4.4g | 1.5g | 16% | 5% | 17% | 22% | 24% | <p>Each 170g serve contains</p> <table border="1"> <tr> <th>ENERGY</th> <th>LOW</th> <th>MED</th> <th>MED</th> <th>MED</th> </tr> <tr> <td>352kcal</td> <td>Sugars 4.6g</td> <td>Fats 12.2g</td> <td>Saturates 4.4g</td> <td>Salt 1.5g</td> </tr> <tr> <td>16%</td> <td>5%</td> <td>17%</td> <td>22%</td> <td>24%</td> </tr> </table> <p>of an adult's reference intake Typical values per 100g: Energy 191kcal</p> | ENERGY | LOW | MED | MED | MED | 352kcal | Sugars 4.6g | Fats 12.2g | Saturates 4.4g | Salt 1.5g | 16% | 5% | 17% | 22% | 24% | | <p>NUTRI-SCORE</p> |
| Energy | Sugars | Fat | Saturates | Salt | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 352kcal | 4.6g | 12.2g | 4.4g | 1.5g | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 16% | 5% | 17% | 22% | 24% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| ENERGY | LOW | MED | MED | MED | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 352kcal | Sugars 4.6g | Fats 12.2g | Saturates 4.4g | Salt 1.5g | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 16% | 5% | 17% | 22% | 24% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

²⁶ INCEPTION IMPACT ASSESSMENT; Ref. Ares(2020)7905364 - 23/12/2020



94. Thus, the various options have the following assumptions:
- a. Option 1 (Nutrient-specific labels - numerical) - objective information on the content of selected ingredients with indication of % RWS (option based on current possibility of repetition of ingredients according to Regulation 1169/2011)
 - b. Option 2 (Nutrient-specific labels - color-coded) - is based on Option 1, enriched with colors indicating low, medium and high content of ingredients
 - c. Option 3 (Summary labels - endorsement logos) - so-called positive logos awarded in case of products fulfilling certain requirements (recognized as nutritionally beneficial)
 - d. Option 4 (Summary labels - graded indicators) - an overall assessment of the nutritional value of the product presented in the form of labelling, applicable to all foods.
95. The assessment of these options and a proposal to select one specific option should be presented by the EC in the next impact assessment. This will compare the potential impact of the different options on the functioning of the market in order to decide which one best addresses the needs of the stakeholders and achieves the main objective of the legislative initiative. It will be based in particular on existing literature and reports, an updated JRC report (Front-of-pack nutrition labelling schemes: a comprehensive review) and the results of a public consultation. Based on the conclusions of the new impact assessment, the EC should propose specified legal solutions. This step is planned for Q4 2022.
96. The public consultation²⁷ on updating food information legislation (including front-of-pack labelling) closed in February 2021. 472 comments were submitted (most from Belgium, Italy, France, Spain and Sweden).
97. From reviewing the comments it can be concluded that the voices are very divided, some opting for Nutri-Score, others against (Italy - has its own proposal), Norway supports its own system (Keyhole) and is strongly against the mandatory nature of such markings. Selected comments are presented below:
- a. Ministry of Health & Ministry of Agriculture/ Netherlands
 The Netherlands Office supports the EC in establishing a front-of-pack labelling system, but notes the need for data to be available and transparent for the correct use of the logo:
 “Finally, availability and transparency of data is important for proper use of a nutrient logo. The Netherlands proposes to include this in the impact assessment.”

²⁷ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12749-Food-labelling-revision-of-rules-on-information-provided-to-consumers_en

b. BONPAIN/Belgium

Draws attention to the risk of simplifying front-of-pack labels, which can be harmful to traditional products:

“Oversimplifications of front-of-pack nutrition labelling and nutrient profiles must be avoided and should not be to the disadvantage of certain (traditional) products, e.g. in the pastry sector, which risk to be branded as unhealthy and thrown in the same category as really toxic/low-quality products with which they have little in common other than nutritional statistics.”

c. David Sokol/Belgium:

“Stop infantilizing the population with scores A, B, C... or colors, but strengthen the budgets of concrete actions and awareness among the youngest, teachers, the public precarious, etc. to (re)connect us to the importance and the immense impact that our food on our body, on the living generally”

d. Italian Society of Food Science and Nutrition/Italy:

“Multiple evidence show that the consumer welcomes this system leading to change their choices, increasing the purchase of green labelled food and decreasing the purchase of red marked food. Nonetheless, this behavior is not necessarily positive in terms of consumer’s diet, since it could paradoxically expose the consumer to a higher risk. (...) The vast literature on the effect of food labels clearly shows that the consumer associates the green color to a “healthy”, “natural”, or “light” meaning, due to the positive feeling linked to this color (go); this association influences opinions on health, regardless the nutritional information indicated on the label. (...) The product is perceived as healthier, leading to an increase of the consumed portion. Nutri-score (...) drives the consumer to increase the consumption of green-coded foods. Based on this, the consumer’s behavior in front of a margherita pizza (green for Nutri-score) can be hypothesized. (...) The green color refers to 100 gr of product and not to the portion really consumed (in case of pizza, at least 350 gr). The same may happen in the presence of other green-coded food, such as pasta, rice, bread, or no-calorie sweetened beverages: healthier and lighter, leading to increase the amount consumed.”

e. KUPS:

“We oppose the introduction of FOPNL labelling and the definition of nutritional profiles without in-depth analysis, expert assessment and a holistic approach to all elements of life affecting NCDs, including obesity. In our opinion, the introduction of additional front-of-pack nutrition labeling (FOPNL) with colors (traffic lights e.g. Nutriscore) will serve primarily to compete among products and manufacturers, while it will not carry real and beneficial elements to educate consumers and improve their diet and nutrition. No amount of further and additional labeling on the package will be a substitute for sound consumer education regarding a holistic approach to nutrition and lifestyle and their understanding of the benefits of consuming high quality and nutritious, low-processed, natural or high natural ingredient products. Moreover, rating systems based mainly on selected ingredients, e.g. sugar, fat, salt, will result in the devaluation of natural, low-processed, single-ingredient products that are often promoted under EU schemes for local, regional or GI products.”





98. On 20 October 2021, the European Parliament (EP) resolution "on a farm-to-fork strategy for a fair, healthy and environmentally friendly food system" was published²⁸. The EP emphasizes the need to improve the consumption patterns of European consumers, including **"tackling the overconsumption of meat and ultra-processed products**, as well as products high in sugar, salt and fats, which will also benefit the environment and animal welfare and increase the resilience of the economy. Furthermore, it stresses that "science-based EU recommendations with clear goals for a sustainable, healthy and more balanced diet, **taking into account the cultural and regional diversity of European foods and diets as well as consumer needs**, would help and motivate consumers and inform Member States in seeking to incorporate sustainability elements into national dietary recommendations".
99. Of relevance to the Report is paragraph 94 of the Resolution, in which the EP stresses that nutrition labelling should be understandable to consumers and provide **transparent, comparable and harmonized information about products**. At the same time, it explicitly calls on the EC to include specifications for products with unchanged composition (single-ingredient and with protected designations): The EP "recognizes that international public health bodies such as the World Health Organization have identified front-of-pack nutrition labelling as a key tool to help consumers make more informed, balanced and healthier food choices; stresses that a front-of-pack nutrition labelling system that is consistent with and complements nutritional guidelines should help consumers make healthier choices through understandable information about the foods they eat; calls on the Commission to ensure that mandatory, harmonized EU front-of-pack nutrition labelling **is developed on the basis of robust, independent scientific evidence and is shown to be comprehensible to consumers**, with open access for all market actors, including small and medium-sized enterprises, taking into account the additional burden on food business operators and trade unions; furthermore emphasizes, that, **in order to facilitate product comparison, labelling should include an interpretative element ensuring transparent, comparable and harmonized product information and be based on uniform reference quantities**; calls on the Commission to take due account of the specificities of single-ingredient products and products covered by European quality schemes (PDOs, PGIs, geographical indications, etc.), in particular the constancy of their composition, while stressing that any possible exemptions should be based on scientific arguments."

²⁸ https://www.europarl.europa.eu/doceo/document/TA-9-2021-0425_PL.html.

Notwithstanding these calls from the EP, the Commission announces that it will proceed according to the timetable previously adopted.

100. It is also worth mentioning the content of parliamentary questions that have recently been addressed to the EC in the context of Nutri-Score. Of particular relevance is the parliamentary question²⁹ of May 2021, which refers to the opinion of the European Parliament Committee on Fisheries (EPC) on the F2F strategy, in which the EPC, among others, calls on Member States to halt national actions that could hinder the EC's harmonization of front-of-pack nutrition labelling. It can be inferred that this is a call not to develop/implement national systems (e.g. Nutri-Score) when the EC is supposed to develop a uniform proposal. In the above-mentioned question, the author asks the EC, therefore, what is its view on Spain joining the Nutri-Score system and whether the EC is aware of the criticism against this system for products with EU protected designations. In its reply³⁰, the EC indicates that **there are no obstacles to the application of additional systems at present, as long as they are in compliance with the regulations, and confirms that it is aware of the industry's concerns and, if necessary, will adopt specific conditions for selected products:**

"In accordance with the current rules of Regulation (EU) No 1169/2011 of the European Parliament and the Council, Member States may recommend, or food business operators may use, front-of-pack nutrition labelling schemes, provided they comply with the legal requirements.

(...) As one of the actions helping to achieve these objectives (i.e., strategy F2F), the Commission has announced that it will prepare by the end of 2022 a proposal for harmonized mandatory front-of-pack nutrition labelling at EU level to empower consumers to make informed and health conscious food choices. **The strategy does not recommend any specific type of front-of-pack nutrition labelling scheme and, at this stage, no choice has been made. This choice will be based on the results of an impact assessment, consultation of Member States and stakeholders, and scientific advice.**

The Commission is aware of concerns expressed by some stakeholders related to front-of-pack nutrition labelling schemes and products designated by geographical indications, which will be duly taken into account during the preparation of the Commission proposal. As announced in its inception impact assessment, the Commission **will explore the possibility to apply specific conditions to certain categories of food.**"

101. The EC, both through its answers to parliamentary questions and during discussions with representatives of member states, has stressed that it has not yet decided to adopt Nutri-Score (or any other system) as the preferred solution.



²⁹ Question for written answer E-002610/2021 to the Commission Rule 138 Francisco José Millán Mon (PPE), Juan Ignacio Zoido Álvarez (PPE), Gabriel Mato (PPE).

³⁰ https://www.europarl.europa.eu/doceo/document/E-9-2021-002610-ASW_EN.html.



COULD NUTRI-SCORE BECOME A MANDATORY DESIGNATION IN THE EU?

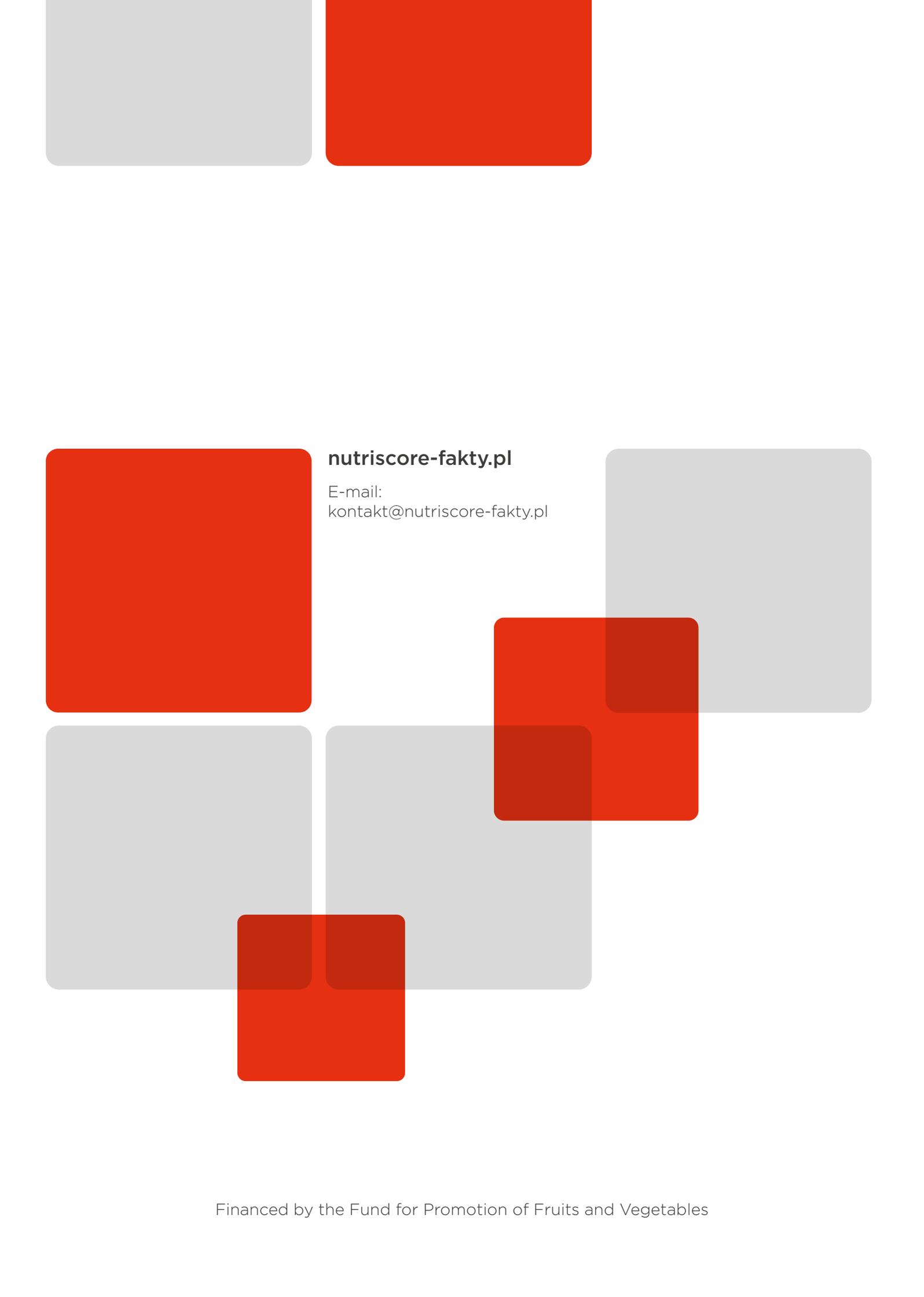
102. By analyzing the information presented, it can be concluded that the choice of the Nutri-Score system as mandatory for use on the food front-of-pack in the EU may be influenced by:
- Positive evaluation of color-based systems that are easy for consumers to interpret;
 - "Blazing the trail" by the Nutri-Score system - high degree of advancement of works (from the organizational side, but also from the scientific side - established committees) and increasingly faster spreading in the EU (the EC will probably soon ask - for the purpose of impact assessment - which systems are used in each country, which may translate into the final decision);
 - The French Presidency of the Council of the EU (the Presidency leads the Council's work on EU legislation and ensures the continuity of the EU agenda, the order of legislative procedures and the cooperation of the Member States), which falls in January-June 2022, a period that should be crucial for progress on the preparation of legislative proposals on the front-of-pack (the basis for these proposals will be the impact assessment that we are currently waiting for);
 - A positive opinion from the WHO's International Agency for Research on Cancer (IARC), based on scientific data that can inform decisions on this issue;

It should be stressed that WHO Europe did not endorse Nutri-Score (or any other system), but only indicated that front-of-pack labelling could be a useful tool for consumers, and that further research in this area is worthwhile.³¹

- The main controversy against Nutri-Score concerns products with protected designations and foods whose composition cannot be modified. This problem can be solved by excluding certain product categories from the application of Nutri-Score and by narrowing the application of the system to, for example, only medium and highly processed foods;
 - Pressure on manufacturers to improve the composition of products, which - at least in the assumption - is supposed to be mobilized by the Nutri-Score (although there are doubts whether these would be beneficial changes) and to undertake work on nutrient profiles.
103. Notwithstanding the above, the selection of the EC should be based on scientific data while taking into account the interests of all stakeholders.

104. Controversy over the Nutri-Score is plentiful. There is also a large group of opponents. It should also be borne in mind that the EC proposal will be processed in the European Parliament and the Council, and this process may have a significant impact on the final version of the regulations (as was the case with Regulation 1169/2011).

³¹ <https://www.who.int/news/item/27-09-2021-state-of-play-of-who-guidance-on-front-of-the-pack-labelling>.



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