The Minister for Medical Care,

Having regard to:

* Articles 36 and 38 of 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);
* Articles 8 and 23 of 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 2006 L 404);
* article 11; first and third paragraphs of the Commodities Act Decree on Food Information;

Hereby decrees as follows:

**Article 1**

In this Regulation, the following terms and definitions shall apply:

 *Nutri-Score:* EU trade mark registered with the European Union Intellectual Property Office by Santé publique France (l’agence nationale de santé publique);
terms of Use: the rules for using Nutri-Score, published on **P.M**, entitled “Conditions for using the”Nutri-Score“logo, version 10 July 2020”.

**Article 2**

The “Nutri-Score” logo and its conditions of use shall be designated as a food choice logo.

**Article 3**

This Arrangement shall enter into force with effect from **P.M.**

**Article 4**

The present Decision shall be cited as: Commodity law regulation designation food choice logo.

This regulation and the explanatory notes shall be published in the Government Gazette.

The Minister for Medical Care,

T. van Ark

**EXPLANATORY NOTES**

**1. General**

 *Reason*

The National Prevention Agreement[[1]](#footnote-1) was adopted on 23 November 2018. This includes agreements made by the government and more than 70 parties to introduce measures to combat overweight, smoking and problem drinking. Signatories include umbrella organisations of care, patients’ organisations, companies, municipalities and educational institutions. The National Prevention Agreement includes a number of measures in the field of healthy nutrition. Healthy diet is important for everyone, not just for overweight people. In order to facilitate consumers’ awareness of healthier choices, it was agreed in the National Prevention Agreement that the Government of the Netherlands would introduce a new, widely worn food choice logo in 2020.

The requirement was that the choice of the logo should be based on sound and independent consumer research. It was also considered of great importance that the logo to be chosen would be consistent with the way in which people make their choices: consumer comprehension had to be leading. In making the choice, account should also be taken of the Five Disk and, finally, European developments in food choice logos should be taken into account.

*Process*

As of November 2018, the work started to give effect to the above-mentioned agreement in the National Prevention Agreement.

In elaborating the conditions for the food choice logo to be chosen, various parties have been consulted. The Consumers’ Association, the Cooperative Health Funds (Hartstichting, Nierstichting, Diabetesfonds), the Centraal Bureau Levensmiddelenhandel (CBL), the Federation of Dutch Food Industry (FNLI), Koninklijke Horeca Nederland (KHN), Vereniging Nederlandse Cateraars (Veneca), the Nutrition Centre, the RIVM and the Ministry of Agriculture are involved in the decision-making process.

Independent consumer research[[2]](#footnote-2) compared three food choice logos currently used in European countries. The extent to which these logos help consumers to make a healthier choice has been examined. The consumer survey shows that with Nutri-Score, consumers can best be guided to healthier choices. In the shop shelves similar products can be compared easily and quickly: at a glance, consumers can see which product is the healthier choice. This makes it easier to make a healthier choice.

However, the consumer survey also shows that some of the respondents are no longer able to make the healthier choice in case of non-corresponding information from the Five Disk and the logo. RIVM and the Nutrition Centre have carried out a study on Nutri-Score,&LT[[3]](#footnote-3); in which it was concluded that for a number of products in various categories the nutritional advice from Nutri-Score and the Disk of Five do not correspond exactly.

On the basis of the results of the investigations and in coordination with the aforementioned parties, the Secretary of State for Health, Welfare and Sport has chosen to designate Nutri-Score as a food choice logo.&LT[[4]](#footnote-4); However, the underlying calculation of Nutri-Score needs to be adapted in such a way that the logo can cause as little confusion as possible among Dutch consumers as to what the healthier choice is.

In early 2020, the State Secretary informed the French government about the choice of Nutri-Score. The Netherlands participates in the international consultation, in which agreements are made on the implementation and organisation. An independent scientific committee examines the calculations behind the Nutri-Score and has the task of ensuring that Nutri-Score’s nutritional criteria are aligned with the nutritional guidelines of the participating countries.

*Indication Nutri-Score*

*Nutri-Score* is a voluntary food choice logo that helps consumers make healthier choices when purchasing within a product group. The *Nutri-Score* is established by assigning points for the amounts of protein, fibre, fruit, vegetables, legumes and nuts contained in a foodstuff. Points are deducted from this score for the energy content (kilocalories), the quantities of sugars, saturated fat and salt. Based on the total score, a product gets an A, B, C, D or E. A dark green A represents the healthier composition. Products with a less healthy composition are given a dark orange E. If food businesses apply *Nutri-Score*, they must comply with the conditions of use and place the logo on the front of their food. This helps consumers see at a glance which product is the healthier choice.

This scheme designates *Nutri-Score* as a food choice logo. The terms of use shall be published on a website accessible to entrepreneurs and the general public. The terms of use state that when using the Nutri-Score logo, the requirements of the graphic charter must be observed. The graphic charter imposes requirements on the dimensions of the logo, the use of colour and the placement of the logo on packaging and communication carriers.

As the logo is not mandatory, food businesses can consider using *Nutri-Score* as a food choice logo. If a food business chooses to do so, it must comply with the requirements laid down in the conditions of use. Nutri-Score is an EU trade mark registered by the proprietor Santé publique France (l’agence nationale de santé publique) with the European Union Intellectual Property Office (EUIPO). When applying the Nutri-Score logo, not only should the conditions of use of the mark be observed by the trade mark proprietor, but also take into account the general trade mark protection rules to be respected in the areas of trade mark law, fair trade law and criminal law.

*National legal framework*

Article 1 of the Food Commodities Act Decree defines a food choice logo as a logo that makes it easier for consumers to choose foods that are healthier compared to similar foods in a product category. Under Article 11 of the Food Commodities Act Decree on Foodstuffs, a food choice logo may be used in the marketing of a food, provided that the conditions laid down in that Article are met. In 2021, an amendment to the Commodities Act Decree on Food Information is foreseen, which no longer requires industry to apply for the approval of a food choice logo. At the time of the letter of this explanatory note, the wamendment of the Commodities Act Decree on Foodstuffs Information has not yet been published in the Official Gazette. The mutual recognition principle entails that an EU Member State shall not ban the sale of goods that have been legally brought onto the market in another EU Member State in its own territory on the grounds that the goods do not meet its own national regulations. However, it is important that goods from another European Member State provide at least an equivalent level of protection. This mutual recognition clause is contained in Article 13d of the Commodities Act. The marketing of goods originating in other European Member States is not prohibited on the basis of requirements laid down in this regime.

**2. Impact on regulatory burdens**

The Regulatory Pressure Review Board (ATR) did not select the file for a formal opinion as it has no impact on the regulatory burden of citizens and businesses.

**3. Regular Consultation Commodities Act**

This draft order was submitted to the participants in the Regular Commodities Act Consultation Group [ROW][[5]](#footnote-5). **P.M.**

**4. Enforceability and feasibility**

The design of this scheme has been assessed by the NVWA in terms of enforceability, enforceability and fraud-proofing. **P.M.**

**5. Notification**

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 2006 L 404) (hereinafter: claim Regulation) has established general principles for all claims relating to foodstuffs. The food choice logo *Nutri-Score* 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 allows only the nutrition claims listed in the Annex to this Regulation. These nutrition claims shall always relate only to the amount of energy of a food or to the amount of one substance or nutrient. The food choice logo *Nutri-Score* is not suitable for this purpose to be added to this annex: when calculating the *Nutri-Score*, the entire composition of a food is taken into account. 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.

In order to protect proper consumer information, Article 36 of 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[[6]](#footnote-6) voluntary food information should meet a number of requirements. In this context too, the Commission has been informed of the text of this scheme.

The draft scheme was notified to the European Commission on... to satisfy **P.M.** Following the notification **P.M.**

1. Annex to Chamber Documents II, 2018/19, 32793, No. 339. [↑](#footnote-ref-1)
2. Motivaction,”*Effectivity of figurative marks of three food choice logos*", October 30, 2019, Referable via <https://www.rijksoverheid.nl/>. [↑](#footnote-ref-2)
3. National Institute for Public Health and the Environment (RIVM) and the Nutrition Centre, ”*Desk Study Food Choice Logos under the spotlight*", November 28, 2019. Reviewable via <https://www.rijksoverheid.nl/>. [↑](#footnote-ref-3)
4. Parliamentary Documents II 2019/20, 32793, No 459. [↑](#footnote-ref-4)
5. The ROW is composed of representatives from businesses (industry and trade), consumers, ministries (particularly the Ministry for Public Health, Welfare and Sport, and the Ministry for Agriculture, Nature and Food Quality) and the Netherlands Food and Consumer Product Safety Authority [NVWA]. [↑](#footnote-ref-5)
6. Full Title 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). [↑](#footnote-ref-6)