

COMMENTS ON NOTIFICATION 2023/0601/FR “DECREE LAYING DOWN A COMPLEMENTARY FORM OF PRESENTATION OF THE NUTRITIONAL DECLARATION RECOMMENDED BY THE STATE”

The Associação Nacional dos Industriais de Lacticínios (ANIL) welcomes the opportunity of the TRIS procedure on this Decree notified by France to the European Commission, which aims at preventing the appearance of technical barriers to trade.

Nutri-Score and its new algorithm is still not adapted to dairy products such as cheeses, milk and liquid dairy products.

The system should be aligned with dietary guidelines to reflect the nutritional quality of dairy products and be useful to consumers.

- ANIL is fully engaged on nutrition and health topics with policy makers, industry groups and other stakeholders to help make a positive impact on the overall public health.
- ANIL support the consumer right to be fully informed on nutritional properties of foods which is one of the legal requirements of the Food Information to Consumer Regulation (EU) No 1169/2011. Voluntary labelling schemes, used in addition to the mandatory nutrition declaration, can be a useful tool for consumers who are looking for additional nutritional information on food labels, if it helps consumers make healthier choices and follow dietary guidelines.

Countries that use nutri-score, have launched a transnational governance that led to an update of the algorithm of Nutri-score with 2 reports published in July 2022 and April 2023. The updated algorithm will be implemented starting from January 2024.

Despite the efforts to rework the initial algorithm, the Nutri-Score fails to align with European Food Based Dietary Guidelines, especially for liquid dairy products and cheeses. ANIL also reminds its core principles for any Front of Pack Nutrition Labelling (FOPNL) to be used in Europe:

1. Voluntary and harmonised system across the EU to guarantee the proper functioning of the single market and let food business operators decide whether they wish to use the logo on their products.
2. The resulting scores need to be in line with the dietary guidelines of the Member States. The scheme must take into account the total nutritional content of the food, including beneficial nutrients to reflect the overall nutrient richness of foods and must be aligned with dietary recommendations, including specific considerations for basic food categories such as dairy, considering for instance the dairy calcium content.
3. The system should be helpful for the consumers to improve the nutritional quality of their food basket, i.e., to allow consumers to identify best nutritional options within

sub-categories of dairy products. Whenever needed, the algorithms should be adapted for categories or subcategories rather than rely on purely systematic approaches. Only then, consumers might be able to choose within a product category in terms of the frequency/quantity required to achieve a balanced diet.

4. The system should be based on sound scientific evidence, validated before implementation, and regularly monitored to embed real life conditions. It should be supported by EU-wide education programmes to enable consumer understanding and show a significant beneficial impact on consumers' health. Once adopted, regular reviews should be undertaken to ensure that the scheme is supporting consumers in making well-informed and healthier food choices in line with the FBDGs.

Regrettably, Nutri-Score does not comply with any of these principles for dairy products, including cheese, milk and other liquid dairy products:

1. The aim of a simplified nutrition labelling scheme such as Nutri-Score is to help consumers making healthier food choices using an information about the nutritional quality of foods. Nutri-Score has two goals:
 - Enabling consumers to evaluate the contribution of a food product to a healthy balanced diet with regards to its nutritional composition.
 - Giving more visibility in differences in nutritional compositions from one product to another considering the nutrients of particular interest.

Unfortunately, for the cheese category, none of these goals is currently met for the following reasons:

- Nutri Score does not help consumers to choose the “best” products within the category, as almost all cheeses are still in D category. From a consumer perspective the Nutri-Score for cheese may have a negative impact as it could prevent people from eating cheese, potentially leading to calcium deficiencies and further public health consequences. Dairy foods, including cheese, are the leading contributors to calcium intake in the EU populations.
- For cheeses, Nutri-Score is inconsistent with the dietary recommendations. Cheeses, thanks to their natural nutrient richness (calcium, high quality milk proteins and many other nutrients), are included in the national dietary recommendations across the EU, either as part of the wider dairy food category or specifically as cheeses in some countries.
- The inadequacy of the Nutri-Score for the cheese category, despite having a specific adaptation, has been recognised by the Nutri-Score governance and the improvement of the differentiation of the products was one of the goals of the scientific committee.
- Unfortunately, even after the update, more than 80% of the cheeses remain in the D category of Nutri-Score. Only few hard cheeses (Emmental) obtain an improvement with the algorithm update. The current ranking of the cheese category remains mostly

independent from its protein or calcium content. It is solely correlated to the salt content.

- The absence of validation of the new algorithm: ANIL believes the closed-door process without inputs from health authorities, scientific community or stakeholders (consumer associations, health NGOs, food business operators) resulted in inconsistencies in the Nutri-Score Scientific Committee conclusions. Moreover, the final algorithm has not been validated or submitted to a peer review, and thus it is not compliant with WHO EURO “Manual to develop and implement front-of-pack nutrition labelling” recommendations anymore.

The dairy sector deeply regrets that the proposed update of the algorithm does not allow to truly translate the nutritional benefits of these products. The scheme should be align it with national dietary recommendations.

2. Nutri-Score needs to consider all milks and liquid dairy products as part of the dairy category.
 - Milk and milk-based mixed drinks have so far been correctly grouped as foods in the Nutri-Score calculation. This recognised the natural nutrient density of milk with its high-quality protein and many minerals and vitamins. Many nutrition guidelines distinguish milk from thirst quenchers. Due to its unique nutrient spectrum and high nutritional content, milk belongs to the food category "animal foods" and not to beverages.
 - As of 2024, the new Nutri-Score changes classification of all liquid dairy products from dairy / foods to the beverages category. This change of classification has a significant negative impact on the nutritional rating and image of the liquid dairy products, e.g., skimmed and semi-skimmed milk grade A changes to grade B and whole milk from B to C. As milk is a key element of the diet, especially for children, this downgrading is nutritionally unjustified.
 - Milk is not primarily intended to hydrate but rather to nourish by providing great nutritional richness. As acknowledged in the scientific committee beverages report itself (chapter 3.5, p21), liquid dairy products are recommended for daily consumption in the Food Based Dietary Guidelines [FBDGs] of all seven “Countries officially engaged in Nutri-Score” (COENs). None of the COENs consider liquid dairy products under FBDGs’ beverage category (chapter 3.1 to 3.4, starting p. 19). E.g., in France, milk is the number one contributor of calcium in children under 17. Today 43.2% of 4–10-year-olds and 76.5% of 11–17-year-olds do not meet their calcium needs. The situation is particularly worrying among young girls, who from the age of 11 are more than 75% no longer meeting their calcium needs.
 - Drinking yoghurts sudden new categorisation as beverages cannot be justified either. After an in-depth analysis of the articles quoted in the scientific committee

beverages report, we believe they do not provide sufficient arguments to support the inclusion of drinkable dairy products in the beverages category. The scientific committee itself states that separating drinkable dairies from solid ones relies on “limited evidence” (p. 38). With this new classification, most drinkable yogurts score E and flavoured milks D, although they belong to the dairy category included in the FBDG. It should be also noted that there are many other liquid foods, for example soups, which remain in their category.

- Using different ratings for yoghurts in bottle and yoghurts in pots will confuse consumers as they are similar foods, placed side by side in fridges at point of purchase. As highlighted in WHO “Guiding principles and framework manual for front-of-pack labelling for promoting healthy diets” first principle, labels like Nutri-Score must be aligned with other public health policies, especially with FBDGs, to provide consumers with consistent messaging.
- The stated objective of the Nutri-Score, according to the mandate of the scientific committee, is: “[Nutri-Score] permits consumers to easily compare nutritional value of food products within the same food group, or between similar food groups (e.g., consumed with same purpose or during the same meal), and hence make healthier choices at the point of purchase”. To meet this objective, drinkable yoghurts and yoghurts in pots should not be rated with different, non-comparable algorithms, as it will likely result in consumers confusion when choosing between similar foods. On top of being part of the same food group, and of being placed side by side on supermarkets fridges’ shelves, they have similar nutritional composition as they are made using the same ingredients (mainly milk) and processes (e.g., fermentation, stirring).
- We also see a major flaw in the reasoning for liquids: the Nutri-Score is intended to compare products within a given product category and not across product categories, as also communicated by the Scientific Committee and the COENs. However, the fact that only water can achieve score A implies comparison across categories, and thus conflicts with this basic principle of the Nutri-Score. This contradiction inevitably leads to consumer confusion about the interpretation of the scores.

General comment on reformulation:

It is important to remember that many dairy products are subject to strict regulations (e.g., milk, defined cheeses, products with quality logos) and thus cannot be reformulated.

In addition, milk naturally contains a natural sugar (lactose), excluded from the recommendations for reducing sugar consumption (e.g., WHO, ANSES).

However, the Nutri-Score algorithm absolutely does not take this reality into account and therefore penalizes drinkable dairy products versus other beverages that usually only bring free sugar/ added sugars.

To conclude, ANIL would like to highlight that any future front-of-pack nutrition labelling scheme discussed or implemented within the EU should be in line with dietary recommendations, ensure improved information to consumers about the overall nutritional quality of foods, consider the nutritional contribution and health benefits and be based on sound scientific evidence.

ANIL regrets to see that the work carried out to update the Nutri-Score algorithm failed again to align the system with the food based dietary guidelines.

Porto - January 2024