Draft COMMISSION NOTICE

Questions and answers on the implementation of new EU wine labelling provisions following the amendment of Regulation (EU) No 1308/2013 and Delegated Regulation (EU) 2019/33

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This document provides technical replies to questions that the Commission services have received, and have been discussed with experts from Member States, in relation to the application of the rules on labelling of wines introduced by Regulation (EU) 2021/2117[1] amending Regulation (EU) No 1308/2013[2] (hereinafter also referred to as 'amended CMO Regulation').

This document is intended to assist national authorities and businesses/ in the application of this EU legislation. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

[1] Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union (OJ L 435, 6.12.2021, p. 262). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2021.435.01.0262.01.ENG

[2] Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

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GENERAL QUESTIONS

1) What is the relationship between Regulation (EU) No 1308/2013 and Regulation (EU) No 1169/2011[3] concerning the labelling of the list of ingredients and the nutrition declaration?

Article 118 of the CMO Regulation on the applicability of horizontal rules stipulates that Regulation (EU) No 1169/2011 (hereinafter referred to as 'FIC Regulation') applies to labelling and presentation in the wine sector, unless otherwise provided for in the CMO Regulation. This means that, if no specific rule is provided for in the sectoral wine regulation, the general labelling and presentation rules, as set out in the FIC Regulation, apply. Likewise, the FIC Regulation contains the same rule in Article 1, which provides that FIC Regulation applies without prejudice to labelling requirements provided for in specific Union provisions applicable to particular foods.

Therefore, as regards the nutrition declaration, Articles 30 to 35 of the FIC Regulation apply, except for the specific rule defined in the amended CMO Regulation allowing to limit the nutrition declaration on the package or the label to the energy value and the provision of the full nutrition declaration by electronic means.

As regards the list of ingredients, the FIC rules also apply, in particular the relevant provisions in Articles 18, 20, 21(1) and 22 and Annexes VI to VIII, except for the specific rules laid down in the amended CMO Regulation allowing to present the list by electronic means, and in Commission Delegated Regulation (EU) 2019/33[4], in particular Article 40 (presentation on label), Article 41(labelling of allergenic substances), Article 48a (indication of wine ingredients and the term to be used) and Annex I (terms for allergenic substances).

2) How should the new compulsory information be presented on the label?

As compulsory particulars laid down in Article 119 of the amended CMO Regulation, the nutrition declaration and the list of ingredients have to be presented in accordance with Article 40(1) of Delegated Regulation (EU) 2019/33, i.e., in the same field of vision of the container as other compulsory particulars.

Where all compulsory information is presented on the package or the attached label, the compulsory particulars to appear in the same field of vision are, thus, the following: i) the designation of the category of grapevine product (including if relevant the term 'de-alcoholised'/'partially de-alcoholised') with the exception provided for in Article 119(2) of the

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[3] 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 Text with EEA relevance (OJ L 304, 22.11.2011, p. 18–63).
https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32011R1169

[4] Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation.
https://eur-lex.europa.eu/eli/reg_del/2019/33/oj

CMO Regulation for certain wines with a protected denomination of origin or protected geographical indication; ii) the reference to a protected designations of origin (PGI) or a protected geographical designation (PDO) and its name for wines with a PGI/PDO; iii) the actual alcoholic strength by volume; iv) the indication of provenance; v) the name of the bottler or, for certain product categories (4, 5, 6, 7), the name of the producer or vendor, as relevant; vi) the net content; vii) the sugar content in case of sparkling wine categories (4, 5, 6, 7); viii) the nutrition declaration; ix) the list of ingredients; x) the minimum date of durability for grapevine products which have undergone a de-alcoholisation treatment.

Where the nutrition declaration and/or the list of ingredients are provided by electronic means, the link (QR code or similar) to the nutrition declaration and/or list of ingredients must be presented on the label in the same field of vision as the other compulsory particulars.

Where the full nutrition declaration is provided by electronic means, the energy value to be displayed on the package or on the label must be presented in the same field of vision as the other compulsory particulars.

Where the full list of ingredients is provided by electronic means, the substances causing allergies or intolerances must be presented on the package or on the label, but not necessarily in the same field of vision as other compulsory information (the derogation of Article 40(2) of Delegated Regulation (EU) 2019/33 applies).

The derogation for certain compulsory particulars to appear outside the same field of vision laid down in Article 40(2) of Delegated Regulation (EU) 2019/33 applies also to the indication of the importer, the lot number and the date of minimum durability (in case of de-alcoholised wines).

3) ***At the date of application of the new labelling provisions, which wines in which stage of marketing have to show nutrition declaration and list of ingredients? E.g., wine in tank/keg/ barrels or only bottled wine?***

As a general rule, these new compulsory particulars shall apply to wines placed on the market from the date of application of the new obligation, as defined in Regulation (EU) 2021/2117, i.e., 8 December 2023. However, wines produced before that date may continue to be placed on the market following the labelling requirements applicable before 8 December 2023, until stocks are exhausted.

In accordance with the FIC Regulation, Article 2, 'mandatory food information' means the particulars that are required to be provided to the final consumer; this applies irrespective of the container where the food is marketed. The same rule applies for wine. The responsibility of the operators in the supply chain regarding the new compulsory particulars in labelling and presentation is clarified by Article 8 of the FIC and in particular paragraph 7.

4) ***When can a wine be considered as 'produced'?***

According to the EU legislation, production of wine encompasses not only alcoholic fermentation but also potentially the implementation of some oenological practices. Article 80 of the CMO Regulation refers to the oenological practices to be used 'in the production and conservation of the products listed in Part II of Annex VII', and further details that oenological practices are only used for ensuring proper vinification, proper preservation or proper

refinement of the product. Commission Delegated Regulation (EU) 2019/934[5] makes the same link to production and conservation in Article 1 (scope) and Article 3 (authorised oenological practices).

In this context, a grapevine product is considered 'produced' when it achieves the characteristics and requirements as set out in Part II of Annex VII of the CMO Regulation for the wine category concerned, including through the implementation, when relevant, of authorised oenological practices based on the rules laid down in Article 80 and Annex VIII of that Regulation.

As an example, "Wine" (category 1) means the product obtained exclusively from the total or partial alcoholic fermentation of fresh grapes, whether or not crushed, or of grape must. In addition, wine must have achieved the required alcoholic strength and acidity content, as set out in point (1) of Part II of Annex VII of the CMO Regulation.

In the case of a "sparkling wine" (category 4), when produced through second alcoholic fermentation, it can only be considered as 'produced' after the second fermentation has taken place, and the product has achieved its alcoholic strength and excess pressure conditions as set out in Part II of Annex VII of the CMO Regulation. The simple vinification of the base wines or the preparation of the cuvée before 8 December 2023 would not justify an exemption from nutritional labelling.

Following production, according to Article 80 of the CMO Regulation, other oenological practices can be implemented, for the purposes of ensuring proper preservation or proper refinement of a grapevine product.

5) How would the labelling rules be verified, in particular concerning the 'produced'?

The enforcement of wine labelling rules rests within the competence of the Member States' authorities.

All domestic or imported wines placed on the EU market after 8 December 2023 must, in principle, meet the new labelling requirements. However, wine produced before 8 December 2023 (for "produced" see Question 4) may continue to be placed on the market in line with the labelling requirements applicable before that date until stocks are exhausted. As regards imported wines, it is clear that wines imported before this date are considered as produced before and therefore eligible to this exemption.

LIST OF INGREDIENTS

6) What form should the List of ingredients have?

[5] Commission Delegated Regulation (EU) 2019/934 of 12 March 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards wine-growing areas where the alcoholic strength may be increased, authorised oenological practices and restrictions applicable to the production and conservation of grapevine products, the minimum percentage of alcohol for by-products and their disposal, and publication of OIV files.
https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32019R0934

The general rules of the FIC Regulation apply to the form of presenting the list of ingredients, as there are no specific rules defined for wine. These rules are defined in Articles 18 to 22 of the FIC (see reply to Question 1). Concerning the form of the list:

- The list of ingredients shall be preceded by a heading that contains the word 'ingredients'.
- The list shall display the ingredients in descending order of weight, as recorded at the time of their use in the manufacture of the food. The ingredients constituting less than 2 % of the finished product may be listed in a different order after the other ingredients.
- Ingredients must be presented by their specific name, with the exceptions provided for in the FIC Regulation and in Delegated Regulation (EU) 2019/33 (e.g., 'grapes' referring to the raw material).

7) How to name the additives and processing aids used in wine production? Should the additives be presented together with their technological function?

In accordance with Part C of Annex VII of the FIC, the designation of additives in the list of ingredients must be done by the name of their functional category, followed by their specific name or, if appropriate, the E Number. The provisions on wine labelling do not establish any further presentation rules in this respect.

Table 2 of Part A of Annex I of Delegated Regulation (EU) 2019/934 identifies the full list of additives and of processing aids that can be used in wine production, groups them into the relevant functional categories (Acidity regulators, Preservatives/Antioxidants, Stabilizing agents, etc.), and provides the terms to be used to name the functional categories and the substances to be listed in the list of ingredients, which are to be presented by using the names specified (column 1) or, alternatively, the E numbers of the additives (column 2).

8) Are only allergenic additives and processing aids to be indicated in the list of ingredients?

Food additives are considered an ingredient in line with the general definition of 'ingredient', as provided in the FIC Regulation (Article 2(2)(f)), and therefore all additives used in wine production are an integral part of the list of ingredients. In accordance with Article 20(b) of the FIC Regulation, food additives and enzymes used as processing aids are not required to be included in the list of ingredients. However, Article 9(1)(c) of the same Regulation provides for the mandatory indication of any ingredient or processing aid causing allergies or intolerances used in the manufacture of the product and still present in the finished product, even in an altered form.

All additives and processing aids allowed in wine production in the EU are set out in Table 2 of Part A of Annex I of Delegated Regulation (EU) 2019/934.

In summary, the list of ingredients must contain all additives and the processing aids causing allergies or intolerances used in the manufacture of the product and still present in the finished product.

9) How to deal with allergenic substances in the label?

All substances causing allergies or intolerances present in the finished product, even in an altered from, must be indicated on the label. There are two possibilities for their presentation on the label:

a) Where the list of ingredients is presented on the label, all substances causing allergies or intolerances shall be indicated as ingredients within the list of ingredients, emphasized through a typeset (e.g., font, style, or background colour) that clearly distinguishes them from the rest of the ingredients of the list, in accordance with Article 21(1)., of the FIC Regulation.

b) Where the list of ingredients is presented by electronic means, all substances causing allergies or intolerances shall be however indicated on the package or the label attached thereto. Their presentation must be preceded by the word "contains", followed by the name of the corresponding substance(s) or product(s) displayed in line with Article 41, Article 48a(4) and Annex I of Delegated Regulation (EU) 2019/33. In such case, the full list of ingredients presented by electronic means should follow the same rules as described in paragraph a).

10) If a list of ingredients with allergenic substances is given on the label, can the allergen information be repeated in the form 'contains...' or by using a pictogram?

The information on substances causing allergies or intolerances should not be repeated. The FIC Regulation requires explicitly that information on substances causing allergies or intolerances shall be indicated in the list of ingredients. In the absence of a list of ingredients, the indication of such substances shall comprise the word "contains' followed by the name of the substance or product.

The use of a pictogram, as an optional piece of information accompanying the compulsory particulars under reference, remains possible in accordance with Article 41(2) of Delegated Regulation (EU) 2019/33.

11) What are the rules for indicating the substances causing allergies or intolerances in the label?

Article 41 of Delegated Regulation (EU) 2019/33 provides for the terms that shall be used for labelling certain substances or products causing allergies or intolerances, as referred to in Article 21 of the FIC Regulation, concerning sulphites/sulfites, eggs and egg-based products and milk and milk-based products. These terms are listed in Part A of Annex I to the same Regulation.

Those terms should continue to be used also in the list of ingredients for consistency reasons and considering that consumers are familiar with them.

Article 48a(4) of Delegated Regulation (EU) 2019/33 refers to the substances causing allergies or intolerances, other than those listed in the Article 41, as certain known allergenic substances are not covered by Article 41. In these very limited cases, the substances causing allergies or intolerances must be listed in accordance with their specific name, as set out in column 1 of Table 2 of Part A of Annex I of Delegated Regulation (EU) 2019/934 (e.g., 'wheat protein').

12) Should the substances used for enrichment be indicated in the list of ingredients?

Yes, the substances used for enrichment are considered as ingredients within the meaning of Article 2(2)(f) of the FIC Regulation insofar as they are added during the manufacture and present in the final product, even if in an altered form, and therefore should be indicated in the list of ingredients.

13) How to mention sugar for enrichment in the list of ingredients?

Authorised enrichment processes and substances are described in Part I of Annex VIII of the CMO Regulation. In accordance with the rules defined for the list of ingredients for grapevine products in Article 48a(2) of Regulation (EU) 2019/33, concentrated grape must and rectified concentrated grape must can be each replaced by the term 'concentrated grape must' or they can be grouped together and appear in the list of ingredients as 'concentrated grape must' only. Sucrose, the other substance allowed for enrichment, must be listed separately. Part B of Annex VII of the FIC Regulation allows for 'all types of sucrose' to be designated by the name 'sugar', though that designation is not compulsory.

14) Do yeasts have to be listed as ingredients?

Yeasts used for wine production do not have to be listed as ingredients. In accordance with Table 2 of Part A of Annex I of Delegated Regulation (EU) 2019/934, they are used as processing aids. In line with Article 20(b)(ii) of the FIC Regulation, additives used as processing aids are not required to be included in the list of ingredients. Other components or parts of the yeasts used with different functions in wine production, are also considered processing aids and therefore fall under the same exemption. The only yeast compound that must be mentioned in the list of ingredients is yeast mannoprotein since this is used as an additive as set out in Table 2 of Part A of Annex I of Delegated Regulation (EU) 2019/934.

15) If all possible alternatives in the group of acidity regulators and stabilising agents are indicated in the labelling, is there a specific order in which they shall be indicated?

No. The only rules on the order of displaying the ingredients are those described in Article 18(1) of the FIC Regulation. In addition, all ingredients constituting less than 2% of the finished product do not need to follow a specific order pursuant to point 6 of Part A of Annex VII of the FIC Regulation.

16) Should the terms 'bottled in a protective atmosphere' or 'may be bottled in a protective atmosphere' be followed by an indication of the packaging gas used or, alternatively, should the possible packaging gas alternatives be listed?

Article 48a(6) of Delegated Regulation (EU) 2019/33 clearly states, '*the indication of additives falling under the category 'packaging gases' in the list of ingredients* ***may be replaced*** *by the specific particular 'Bottled in a protective atmosphere' or 'Bottling may happen in a protective atmosphere'*. If one of these specific particulars is used, the specific gases used do not have to be separately listed neither in the list of ingredients, nor in addition to the specific particular. The reference to packaging gases displayed with the above specific particulars must be presented, when used, in the same field of vision as the list of ingredients.

Where the packaging gases are indicated in the list of ingredients (i.e., if the specific particular is not used), they should be presented following the same rules as any other additives (i.e., functional category, followed by the name or, if appropriate, E number).

17) If possible packaging gas alternatives are indicated, is there a specific order in which the packaging gases must be indicated?

Delegated Regulation (EU) 2019/33 does not allow listing of alternative packaging gases. The specific packaging gas used should be presented in the list of ingredients with its specific name or it should be replaced by one of the specific particulars *'Bottled in a protective atmosphere' or 'Bottling may happen in a protective atmosphere'*.

18) How should the main ingredient of a wine be indicated on the label? According to the definition, wine is made from whole or crushed grapes or grape must. Grape must is a natural intermediate product made directly from grapes. In which situations, therefore, must should be indicated as an ingredient and in which situations grapes should be indicated as an ingredient?

As it follows from Article 48a(1) of Delegated Regulation (EU) 2019/33, the indication of the 'the main ingredient' can be done by listing exactly whether grapes, crushed grapes and/or grape must have been used, or by replacing them all by the single term 'grapes'. The provision offers a possible simplification to operators, that they can apply on a voluntary basis.

NUTRITION DECLARATION

19) What is the form to present the nutrition declaration? Should it be a Table, or are there other possible forms?

The presentation of the nutrition declaration is regulated in Article 34 of the FIC Regulation.

If space permits, the nutrition declaration must be presented in tabular format with the numbers aligned. Where space does not permit the tabular presentation, a linear format may be used. When the nutrition declaration is provided by electronic means (i.e., off-label), the nutrition declaration should be presented always in tabular format with the numbers aligned, as space limitations would normally not apply.

The order of presentation of the different elements of the nutrition declaration is defined in Annex XV of the FIC Regulation. For the compulsory elements, this order would be: Energy, Fat (of which saturates,…); Carbohydrate (of which sugars,…); Protein, Salt. Or, in tabular format:

energy
fat
of which
— saturates,
carbohydrate
of which
— sugars
protein
salt

There are also specific rules for the order of other elements that may be added to the nutrition declaration (e.g., polyols) but those are not compulsory.

Where the content of the nutrition declaration on the package or the label is limited to the energy value, i.e., in cases where the full nutrition declaration is provided by electronic means, the new paragraph (4) of Article 119 of the amended CMO Regulation explicitly allows to express the energy value by using the symbol "E" followed by the value.

20) Regulation 1169/2011 foresees - besides the energy value - the declaration of the amounts of fat, saturates, carbohydrate, sugars, protein, and salt. If there is no content in wine (e.g., for fat or saturated fat. Has the content to be shown by '0' or is there simply no need to show fat on the label?

Article 34(5) of the FIC Regulation provides for that in the cases where the energy value or the amount of nutrient(s) in a product is negligible, the information on those elements may be replaced by a statement such as 'Contains negligible amounts of …' indicated in close proximity to the nutrition declaration.

Otherwise, all the compulsory elements must be indicated in the order stipulated in Article 34 of the FIC Regulation, including when their content accounts for zero values.

21) Is any other component, besides fat, saturates, carbohydrate, sugars, protein, and salt necessary in the nutrition declaration?

In accordance with Article 30(1) of the FIC Regulation, the mandatory nutrition declaration must include the energy value and the amounts of fat, saturates, carbohydrate, sugars, protein, and salt. In line with Article 30(2) of the same Regulation, the mandatory content may be supplemented with an indication of the amounts of one or more of the following, where relevant: mono-unsaturates; polyunsaturates; polyols; starch; fibre; any of the vitamins or minerals listed in point 1 of Part A of Annex XIII, and present in significant amounts as defined in point 2 of Part A of Annex XIII of the same Regulation.

22) How are the values of the different nutrition elements fixed? Is an analysis for every wine and every harvest necessary or can values also be calculated (e.g., for calories via the alcohol content and the residual sugar)?

As regards labelling of the values of the nutrition declaration, the relevant articles of the FIC Regulation apply.

In particular, in accordance with Article 31 (calculation), the values in the nutrition declaration are average values, based on: a) the manufacturer's analysis of the food; b) the known or actual average values of the ingredients used; or c) generally established and accepted data.

The energy value must be calculated using the conversion factors provided for in Annex XIV of the FIC Regulation and indicated in kilojoules (kJ) and kilocalories (kcal), indicating the kilojoules in the first place and kilocalories in the second place, as provided for in Annex XV of that Regulation.

Energy values and nutrition values must be indicated per 100 g or per 100 ml (Article 32(2) of FIC Regulation).

23) Due to the nature of wine production, individual batches may differ from one another. What is the tolerance limit for the difference between the information on the label and the actual energy and nutrient content of the wine?

The tolerances for the nutrition declaration of wine are the same as defined in the FIC Regulation, which indicates that the energy value and the amount of nutrients should be labelled as the 'average value' that is defined as the value that best represents the amount of the nutrient, which a given food contains, and reflects allowances for natural variability of

foodstuffs, seasonal variability, patterns of consumption and other factors, which may cause the actual value to vary (see point 13 of Annex I of the FIC Regulation).

The Commission services issued a Guidance document[6] for Member States' competent authorities with regard to the setting of tolerances for nutrient values declared on a label. The Commission services also issued a summary table[7] which gives an overview of the different tolerance values included in the guidance document.

The Guidance document states that food business operators should act in good faith to ensure a high degree of accuracy of the nutrition declaration. In particular, declared values should approximate to the average values across multiple batches and should not be established at either extreme of a defined tolerance range.

For the indication of the alcohol content, however, the rules on tolerance in Article 44 of Delegated Regulation (EU) 2019/33 apply.

24) What are the tolerances between the values shown on the label and the real content in the wine, in the case where the shown values might change during the years the wine ages?

In accordance with Article 31(3) of the FIC Regulation, the energy value and the amounts of nutrients referred to in Article 30(1) to (5) shall be those of the food as sold, considering also the tolerances referred to in the previous question.

25) What size should the characters have?

The general rules on presentation of compulsory particulars of grapevine products referred to in Article 119 of the CMO Regulation are defined in Article 40 of Delegated Regulation (EU) 2019/33. In accordance with Article 40(3), the size of the characters of such compulsory particulars, including the characters used to present the nutrition declaration and the list of ingredients, must be equal to or greater than 1,2 mm, regardless of the character format used.

ELECTRONIC LABELLING

26) Will a specific system/software for providing information by electronic means be compulsory? Can the full nutritional information provided by electronic means indicated on the packaging be done by the less common 2d codes?

The amended CMO Regulation does not specify which electronic means should be used for providing off-label the nutrition declaration and the list of ingredients, nor any specific electronic types of access to such information. The only condition set out in the amended CMO Regulation concerning the functioning of the electronic means is that the system to be used shall not collect or track user data. The Commission does not have a corresponding empowerment to define any further rules on e-labelling or specific electronic means to be used.

The provision of information can in principle be made by any electronic means, electronic labelling or e-labelling means ready accessible by the public through a barcode of any kind

6 https://food.ec.europa.eu/system/files/2016-10/labelling_nutrition-vitamins_minerals-guidance_tolerances_1212_en.pdf

7 https://food.ec.europa.eu/system/files/2016-10/labelling_nutrition-vitamins_minerals-guidance_tolerances_summary_table_012013_en.pdf

(QR, 2D other than QR, 1D, a chip) that provides a link to online information, which can be retrieved by using universal access tools (i.e., a smartphone).

In principle, the display of the link to the electronic information on the package or on the label should be in line with the requirements listed in Article 13(1) of the FIC Regulation for the presentation of mandatory particulars, namely marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible; not in any way be hidden, obscured, detracted from or interrupted by any other written or pictorial matter or any other intervening material.

Moreover, it should provide easy, direct, and universal access to the information, in a way that is comparable to the presence of the particulars on the package or the attached label. Providing highly specialised or uncommon means of access to information would not seem to fulfil the aims of e-labelling and would appear inappropriate as a supporting tool for the provision of information to consumers.

27) Can the full nutrition declaration and the list of ingredients available by electronic means be done by a QR code on the wine label, linking to an electronic label containing the full declaration and list of ingredients?

The amended CMO Regulation provides that both the nutrition declaration and the list of ingredients may be provided 'by electronic means identified on the package or on a label attached thereto'. QR codes are indeed one possible method to give consumers access, on the label or on the package, to the electronic information referred to above.

28) Can a QR code be added as an additional "sticker", besides the original bottle label, or has it to be part of the producers' original label?

The Commission notice on questions and answers on the application of Regulation (EU) No 1169/2011[8], section 2.2, provides that "*labels must not be easily removable so as to jeopardise the availability or the accessibility of the mandatory food information to the consumer*".

In addition, the provision by electronic means of the detailed information relevant to the list of ingredients and the nutritional declaration does not exempt the relevant information from the obligation to be presented in accordance with the EU legislation, irrespective of whether the QR code would be a sticker or not. In particular, it must be ensured that, in line with Article 40(1) of Delegated Regulation (EU) 2019/33, the information relevant to the list of ingredients and the nutrition declaration, which are compulsory particulars (Article 119 of the amended CMO Regulation), appears in the same field of vision as the other compulsory particulars and is simultaneously legible without having to turn the container, is presented in indelible characters and clearly distinguishable from surrounding text or graphics.

29) Are there any design specifications regarding the nutrition declaration and electronic portrayal of it, or if it is open to design customization?

The rules for presenting the nutrition declaration are those defined in Article 34 of the FIC Regulation, as also described in the section above, in particular in Question 19 (see also section

[8] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2018:196:FULL&from=EN

3 of the Commission notice on questions and answers on the application of Regulation (EU) No 1169/2011[8]). Those rules apply to the nutrition declaration, be it presented on the physical label or by electronic means.

30) Is it possible to link, via a QR Code or similar, the "electronic label" presenting the full nutrition declaration and list of ingredients to the homepage of the producer as a part of its website?

No. Article 119(5) of the amended CMO Regulation, provides that the information on the full nutritional declaration and list of ingredients shall not be displayed with other information intended for sales or marketing purposes, and that no user data shall be collected or tracked. In the view of the Commission services, the presentation of this compulsory information as part of the producers' website does not seem to comply with the conditions set out in Article 119(5), as the website of a wine producer is typically expected to contain commercial information relevant for marketing and/or sales. In addition, websites normally track information on the users.

The electronic means/platform on which the information is placed should provide guarantees comparable to the ones in place when the information is displayed on the package or the attached label in terms of readability, stability, reliability, durability, and accuracy of the information during the whole life of the product. Guaranteeing these features seems questionable if the information would be placed in a producer's website that could be easily modified at any time, even when the product is already on the market.

31) Can manufacturers specify additional QR codes on labels other than codes that are 'electronic means' on which marketing information is displayed?

The provision of additional voluntary information on the label, such as an additional QR code, is regulated by Article 118 of the CMO Regulation, according to which labelling of grapevine products may not be supplemented by any additional particulars unless such particulars satisfy the requirements of the FIC Regulation.

Article 36(2) of the FIC Regulation stipulates that food information provided on a voluntary basis shall not mislead the consumer, as referred to in Article 7 of that Regulation; shall not be ambiguous or confusing for the consumer; and shall, where appropriate, be based on the relevant scientific data. Article 37 of the FIC Regulation lays down that such information shall not be displayed to the detriment of the space available for mandatory food information.

Any use of additional QR codes should not be misleading or creating confusion to consumers and should not detract any space from the one available for compulsory particulars, which would include the codes providing access to compulsory information by electronic means.

32) Is it possible to make one single QR code, which will perform the role of EAN code and will also be the bearer of mandatory data, such as the list of ingredients and nutrition values?

The main consideration concerning the presentation of information should not be whether it is compulsory or not, but to whom that information is addressed and what is the objective of different pieces of information.

In the case of the compulsory labelling information that can be provided by using electronic means (list of ingredients and nutrition declaration), the target public are the consumers, who should be able to obtain immediate access to information which is accurate and not misleading

to them. The EAN information is not aimed at the consumers, but to facilitate operators (manufacturers, sellers, suppliers) to identify the merchandise and facilitate and monitor marketing operations.

The use of one single QR code is not excluded if it ensures, when scanning it, a clear dissociation of the information aimed at the consumers and commercial operators respectively. In other words, it should prevent the exposure of consumers to the information that is irrelevant to them when scanning the single code.

33) Would a website address printed on the label where the consumer can find the relevant information meet this requirement?

A simple website address printed on label cannot be considered to fulfil the labelling obligations concerning the provision of compulsory particulars by electronic means. By definition, the relevant information must be directly accessible through a machine-readable code that provides direct access to the relevant information. A universal access machine, such as a smartphone, must be able to read/scan the code on the label and direct the user immediately to the relevant information.

34) Is it possible that the labels of different wines from the same producer will contain additional information, by electronic means, on the same website, or should each type of wine have a separate website link?

Compulsory information (list of ingredients, nutrition declaration) of different wines provided by electronic means may be presented on the same site, but the link of each particular label should unambiguously lead to display specific information for one or several batches of one single reference wine product, in a clearly differentiated way and providing a simple access for consumers to the right information, avoiding any possibility of misleading them, in exactly the same manner as an individual paper label does to identify one specific food product.

35) Regarding "data collection," we would like to know whether the consent of the data subject could make the data collection legitimate.

The amended CMO Regulation states that the information on the full nutritional declaration and list of ingredients shall not be displayed with other information intended for sales or marketing purposes, and that no user data shall be collected or tracked. There are no exceptions to this rule, and therefore it does not allow to request the consent of the user on whether their data can be tracked or not. In addition, the access to compulsory information by consumers/users should be direct and without any intermediate steps, such as filling any forms or queries, or passing through intermediate sites. The Commission services expect that the code, once read/scanned, takes the user immediately and directly to the compulsory labelling information.

36) What is the interpretation of the European Commission about the concept of "for marketing purposes? To what extent can the inclusion of a claim in the electronic label (e.g., about sustainability, the origin of the product, or certification, etc.) be considered optional information to be legitimately included in the label? And when can this claim be considered "marketing" instead?

Article 119(5)(b) of the amended CMO Regulation refers to ‘information intended for sales or marketing purposes’. This should be interpreted as presenting the compulsory information in a

neutral environment which ensures that the attention of the reader is not engaged towards fostering the purchase of the product, be it directly (e.g. through website links, promotion, indication of sales points, etc.) or indirectly (e.g. through designs adding visual or sonic appeal, phrases or statements that may appeal the consumer, commercial language or other commercial strategies that aim at influencing the purchasing behaviour and decision of consumers).

The provision of other additional voluntary information on the label (e-labels included) is regulated by Article 118 of the CMO Regulation, according to which labelling of grapevine products may not be supplemented by any additional particulars unless they satisfy the requirements of the FIC Regulation. Notably, Article 36(2) of the FIC Regulation stipulates that food information provided on a voluntary basis shall not mislead the consumer, as referred to in Article 7 of that Regulation; shall not be ambiguous or confusing for the consumer; and shall, where appropriate, be based on the relevant scientific data. In addition, Article 37 of the FIC Regulation provides that such information shall not be displayed to the detriment of the space available for mandatory food information.

37) Would the inclusion on the label of a link to a winery's e-commerce website considered a marketing purpose?

The inclusion of an e-commerce website or a winery website is undoubtedly considered as 'marketing purpose'.

38) How should the information provided by electronic means be identified on the label so as to inform about the content of the electronic means? Can the QR code be identified with a symbol (e.g., the letter 'i' intended for "information for consumers') or should it explicitly refer with wording to the mandatory information the QR code leads to, this creating an additional burden to operators, in particular if the obligation to translate the text applies? Must there be a sentence on the QR code e.g., "see nutritional information and ingredients here"?

Article 13(1) of the FIC Regulation provides that 'mandatory food information shall be marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible. It shall not in any way be hidden, obscured, detracted from, or interrupted by any other written or pictorial matter or any other intervening material.'

The presentation of a QR code not referring clearly for the consumers to the compulsory information but using more general terms or symbols (like an 'i') cannot be considered to fulfil the requirements of this provision. If there is no clear reference on the label as to the content of the information provided by electronic means, consumers can hardly interpret and understand the nature of the information (compulsory or not) contained in the link. This can be considered as mandatory information being hidden, non-conspicuous and non-easily visible.

Concerning the language regime, the Commission does not see a risk of compromising the single market as the QR code can be identified on the label with a text in the same language as the other compulsory particulars. On the contrary, the advantage of electronic labelling is that the information provided by electronic means can be accommodated and adapted to languages easily understood by the consumers of the Member States where a food is marketed (principle reflected in Article 15 of the FIC Regulation), whereas the information presented on-label will continue to follow same rules defined as *lex specialis* in Article 121 of the CMO Regulation.

Where the information provided by electronic means is the list of ingredients a heading, as referred to in Article 18(1) of the FIC Regulation, must be used, in the same way as the current practice used for the paper labels for other food (i.e. containing the word 'ingredients').

39) How it is foreseen which entity should be responsible of verifying that user data is not collected or tracked, or that the information is not presented together with other information with commercial or marketing purposes?

The provisions contained in Article 119(4) and (5) of the amended CMO Regulation setting up the requirements applicable in cases where the nutrition declaration and the list of ingredients are provided by electronic means refer to two compulsory labelling particulars for grapevine products, as defined in Article 119(1) of the CMO Regulation.

Article 90(a) of the amended CMO Regulation refers to the checks and penalties related to marketing rules. Paragraph 1 of that Article provides for the responsibilities of Member States concerning the placing on the market of products referred to in Article 119(1) of the CMO regulation, which are not labelled in conformity with the Regulation. Paragraph 3 of the same Article refers to the checks to be carried out by Member States to verify whether certain products, including wine, conform to the marketing rules laid down in the CMO Regulation.

Therefore, the control of the fulfillment of the provisions mentioned above should be carried out by the same Member States' authorities that are responsible for the control of labelling and presentation of grapevine products.

40) Does the consumer have the right to access the QR code landing page for an extended period? Will the Commission make a recommendation regarding how long the QR code should be available after the sale of the wine?

The compulsory information provided by electronic means (e.g., a QR code) should remain accessible in a way equivalent to the one of the information provided on a physical label , i.e., it should be available at least along the time period that specific category of wine product is expected to remain suitable for consumption in normal condition of storage, to ensure consumers' access to the mandatory information at any moment along the expected lifetime of the product. In this respect, the presence and accuracy of the information is the responsibility of the business operator responsible for the food information, in accordance with Article 8(2) of the FIC. In addition, food business operators are responsible for any changes they make to food information accompanying a food pursuant to Article 8(4) of the FIC.