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The EU and Thailand conclude negotiations on their *Partnership and Cooperation Agreement*: A further step towards a Preferential Trade Agreement?

On 2 September 2022, the EU and Thailand finalised the text of the EU-Thailand Partnership and Cooperation Agreement (hereinafter, EU-Thailand PCA). After many years of being put on hold, the negotiations had resumed in 2021 and the revised text of the PCA was agreed. The Agreement is expected to be signed by both Parties on the side-lines of the upcoming EU-ASEAN Summit in December 2022 in Brussels.

According to the EU's *Proposal for a Council Decision on the signing, on behalf of the European Union, and provisional application of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Kingdom of Thailand, of the other part*, the EU-Thailand PCA aims at, *inter alia*, "securing the conditions for and promoting the increase and development of trade and investment between the Parties to their mutual advantage". The article provides an overview of the EU-Thailand PCA, looking at its scope, potential impact on the parties' bilateral trade, along with its potential to contribute to the resumption of the negotiations of the EU-Thailand Free Trade Agreement (hereinafter, FTA).

The long story of the EU-Thailand PCA

With shared values and common principles geared to a rules-based international order, the EU and the Association of Southeast Asian Nations (hereinafter, ASEAN) have been *Dialogue Partners* since 1977, before their status was elevated to '*Strategic Partnership*' in 2020. Trade and investment are key dimensions of the EU-ASEAN relationship, which is realised through enhanced cooperation on the basis of PCAs with ASEAN Member States, as well as the negotiation of preferential trade agreements. PCAs cover a wide range of policy areas, including human rights, environment, energy, and trade cooperation, thereby creating a strengthened overall framework for bilateral relations. To date, the EU has concluded PCAs with Indonesia, Malaysia, the Philippines, Singapore, and Viet Nam.

The EU has a strategic interest in strengthening its relationship with Thailand for many reasons. For instance, Thailand is supportive of multilateralism and a rules-based international order. Thailand is also an important ASEAN Member State that can play a significant role in implementing the recently concluded [EU-ASEAN Strategic Partnership](#). The negotiations for the EU-Thailand PCA started in March 2013, but discussions were put on hold in 2014 due to the political situation in Thailand. In 2019, the European Council gave the *'green light'* to broaden the EU's engagement with Thailand and to resume the negotiations of the PCA. The discussions on the Agreement finally resumed on 13 July 2021 and were concluded on 11 June 2022 during the 7th round of negotiations.

Thailand is also an important market for the EU, and *vice versa*. According to the European Commission, in 2020, total bilateral trade in goods between the EU and Thailand amounted to EUR 29 billion, while total trade in services amounted to EUR 8 billion. The EU is Thailand's fourth largest trading partner after China, Japan, and the US, accounting for 7.5% of the country's total trade, while Thailand is the EU's 26th largest trading partner worldwide. In 2020, Thailand's exports to the EU had an overall value of EUR 17.9 billion, and Thailand's most important categories of exports to the EU in 2020 were machinery, electronics, transport equipment, miscellaneous manufactured articles, and food products. The EU exported goods with a total value of EUR 11.4 billion in 2020 to Thailand, with key exports having been machinery and transport equipment, chemicals and related products, and manufactured goods.

The EU-Thailand PCA

The EU-Thailand PCA is a bilateral agreement between the EU and Thailand on enhanced cooperation in various important areas, based on shared values and mutual benefits. As stated in the Proposal for a Council Decision on the signing of the PCA, the objective of the PCA is *"to strengthen the cooperation across a wide spectrum of policy fields including human rights, non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, trade, migration, the environment, energy, climate change, transport, science and technology, employment and social affairs, education and agriculture"*. The press release from the European External Action Service (EEAS) notes that the PCA would *"enhance the political dialogue on issues of global concern"* and would *"give more scope for mutually-beneficial cooperation in a wide number of policy areas"*.

Compared to the PCAs concluded by the EU with other ASEAN Member States, the EU-Thailand PCA provides more comprehensive commitments on trade-related cooperation, notably containing articles on digital trade and sustainable food systems, which are relatively new issues that were not included in the PCAs concluded between the EU and Indonesia, Malaysia, the Philippines, Singapore, and Viet Nam, respectively. The EU-Thailand PCA marks an important step towards strengthening the EU's role in Southeast Asia and paves the way for enhancing political, regional, and global cooperation.

The PCA is divided into eight *'Titles'*. In relevant part, Title II deals with *'Bilateral, Regional, and International Cooperation'*; Title III with *'Cooperation on Trade and Investment Issues'*, which provides rules on, *inter alia*, digital trade, sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT); Title IV with *'Cooperation in the Area of Freedom, Security, and Justice'*; and Title V with *'Cooperation in Other Sections'*, which provides articles on, *inter alia*, human rights, environment, climate change, and energy. To monitor the development of the Parties' bilateral relationship, Article 52 of the PCA establishes a Joint Committee, which will be composed of representatives from both Parties. The Joint Committee will be responsible for, *inter alia*, ensuring the proper functioning and implementation of the PCA. The PCA also provides for the possibility of suspending the application of the PCA in case of a violation of essential elements of the Agreement (*i.e.*, democratic principles, human rights, fundamental freedoms, and the principle of rule of law).

The trade-related provisions of the EU-Thailand PCA

While focusing on cooperation, the EU-Thailand PCA contains a number of important commitments on trade-related issues. The PCA comprehensively covers the importance of transparency and exchange of information including the commitment to enhance trade by sharing experiences and examining possibilities to “*simplify import, export and other customs procedures, increase the transparency of trade regulations and develop customs cooperation*”, as provided under Article 13 of the PCA on ‘*Customs Cooperation and Trade Facilitation*’. Through the PCA, Thailand hopes to diversify its trade, given its heavy reliance on exports to the US and China. Article 9 of the PCA states that the EU and Thailand are to “*engage in a dialogue on bilateral and multilateral trade and trade-related issues with a view to strengthening bilateral trade relations and advancing the multilateral trade system, in a manner that is supportive of the objective of sustainable development*”.

As food products (e.g., preparations of vegetables, fruits or nuts, rice, and meat preparations) are among Thailand’s main exports to the EU, establishing greater cooperation on SPS issues is poised to improve transparency and address existing trade irritants and trade barriers. In accordance with Article 10 of the PCA, the EU and Thailand commit “*to cooperate on food safety and SPS through discussions and exchange of information on their respective SPS measures, capacity-building cooperation, and dialogue on SPS issues*”. In addition, machinery, electronics, and transport equipment are key export sectors for both parties and cooperation in the area of TBT measures, notably by promoting the use of international standards and accreditation, as well as exchanging information on standards, conformity assessment procedures, and technical regulations, is provided under Article 12 of the PCA.

Given its increasing relevance, the EU-Thailand PCA also covers cooperation in digital trade. Under Article 19 of the PCA, the parties commit to actively participate in relevant international *fora* on digital trade development and to exchange information on digital trade issues, such as the treatment of direct marketing communications, consumer protection, and the recognition and facilitation of interoperable electronic trust and authentication services.

Important commitments on sustainable development

Sustainable development is another important issue reflected throughout the different sections of the PCA. In the Preamble and in Article 1, both parties “*confirm their commitment to promoting sustainable development in all its dimensions, to cooperating in addressing challenges of climate change and globalisation, and to contributing to the 2030 Agenda for Sustainable Development*”. In terms of sustainability, the relevant provisions are Articles 38 on ‘*Climate Change*’, Article 39 on ‘*Energy*’, and Article 43 on ‘*Environment and Natural Resources*’. Essentially, these provisions encourage the role of cooperation in achieving different policy objectives. For instance, with respect to climate change, the parties commit to foster cooperation to enhance their joint capacity and ability to address climate change challenges, based on and responsive to national needs. With respect to energy, the parties commit to developing renewable energy and technology for clean energy.

The EU-Thailand PCA also includes a commitment on cooperation towards Sustainable Food Systems, as laid out in Article 11 of the PCA. The EU’s definition of sustainable food system refers to the Food and Agriculture Organization of the United Nations’ definition, namely “*a food system that delivers food security and nutrition for all in such a way that the economic, social, and environmental bases to generate food security and nutrition for future generations are not compromised*”. In this context, the EU and Thailand commit to “*cooperate in promoting the global transition towards sustainable food systems through dialogue and capacity-building activities*”.

Towards EU-Thailand trade negotiations?

As the EU-Thailand PCA establishes cooperation in essential areas for both parties, including on trade and digital trade, the next step would be for the EU and Thailand to expand their

respective commitments on trade through an EU-Thailand FTA. The EU-Thailand FTA could build on the trade-related aspects of the EU-Thailand PCA. Although there is no immediate link between a PCA and the FTA process, the EU-Thailand PCA can be seen as an important vehicle to strengthen dialogue in the domain of trade and investment. EU business sectors are favourable to the resumption of EU-Thailand FTA negotiations, as it would further contribute to a level playing field for European businesses, industries, and investors in the region and promote market access. Thailand's businesses should likewise see the FTA as the opportunity to remain competitive in the EU market vis-à-vis their direct competitors, especially those from other ASEAN Member States that already enjoy preferential access to the EU market.

If the EU and Thailand were to conclude a trade agreement, it would become the EU's third preferential trade agreement with an ASEAN Member State, following the Agreements so far concluded with Singapore and Viet Nam. The relaunch of EU-Thailand FTA negotiations could unlock important trade benefits for businesses on both sides. Currently, there are positive signals and on-going discussions towards the resumption of the FTA negotiations, which should be monitored and assisted by the business sector and civil society at large.

The EU's new mandatory labelling requirements for wine and aromatised wine products: Trade barriers or necessary tools for consumer information?

From 8 December 2023, all wines and aromatised wine products (*i.e.*, fortified wine or mistelle, the latter a drink produced by adding alcohol to grape juice that have been flavoured with herbs, spices, fruit, or other natural flavourings) must provide nutritional information and the list of ingredients. These new rules will follow the entry into application of [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](#). The new labelling rules will apply to all wine and aromatised wine products marketed in the EU, whether produced in the EU Member States or imported.

Food information for alcoholic beverages in the EU

The imposition of labelling requirements on alcoholic beverages has been a contentious issue in the EU. As a result of intense debates, currently, [Regulation \(EU\) No 1169/2011 on the provision of food information to consumers](#), (hereinafter, FIR), in Article 16(4) thereof, exempts alcoholic beverages containing more than 1.2% alcohol by volume from displaying the otherwise mandatory list of ingredients (with the exception of ingredients that may have an allergenic effect) and the nutrition declaration, which is mandatory for all foods, with few exceptions. However, in the inter-institutional negotiations prior to the adoption of the FIR, the European Parliament had requested that the European Commission (hereinafter, Commission) prepare a report addressing whether alcoholic beverages should, in the future, be covered, in particular, by the requirement to provide nutritional information, and the reasons justifying possible exemptions. On 13 March 2017, the Commission published that [report](#) on the mandatory labelling of the list of ingredients and the nutrition declaration of alcoholic beverages. Key issues in the report included: 1) Whether there should be a list of ingredients for alcoholic beverages; 2) Whether a nutritional declaration for alcoholic beverages should be provided; and 3) Whether such information could be provided on off-label information sources, such as on the Internet.

While the Commission's report concluded that objective grounds had not been identified that would justify the absence of information on ingredients and nutritional information on alcoholic beverages, or a differentiated treatment for some alcoholic beverages, it did not insist on mandatory labelling. The Commission noted that the alcoholic beverages sector appeared

increasingly prepared to provide responses to consumers' expectations to know what they were buying and consuming. This was attributed to the expansion of concerted or individual voluntary initiatives. Therefore, the Commission granted producers of alcoholic beverages one year to deliver a self-regulatory proposal that would cover the entire sector of alcoholic beverages. Consequently, on 12 March 2018, the European alcoholic beverages sectors submitted a *Joint Proposal* to the Commission, which, *inter alia*, foresees that the nutritional information and the list of ingredients in the products would be provided and the nutritional information and the list of ingredients would be made available to consumers off-label and/or on-label, whereas off-label information would be easily accessible from the label itself (see *Trade Perspectives, Issue No. 18 of 8 October 2021*). In September 2018, a spokesperson for the Commission stated that the *Joint Proposal* from the European alcoholic beverages sectors on the provision of nutritional information and the list of ingredients would lead to “*some legal issues*” and did “*not satisfy the need to fully inform EU consumers*” (see *Trade Perspectives, Issue No. 14 of 16 July 2021*).

With respect to the wine sector, in October 2021, the so-called *U-Label online platform* was launched following a collaboration between the *Comité Européen des Entreprises Vins* (CEEV), the association representing the European wine companies in the industry and trade of all wine categories, and *spiritsEUROPE*. The platform uses QR code technology to allow consumers to access information in any of the EU's official languages. On the *U-Label* website, basic product characteristics (*i.e.*, name, image, product category, alcohol by volume (ABV), net quantity) is provided together with additional information, such as the nutrition declaration per portion (see *Trade Perspectives, Issue No. 18 of 8 October 2021*).

The new rules on nutrition and ingredients labelling required from 2023

Regulation (EU) 2021/2117 implements the EU's [new Common Agricultural Policy \(CAP\)](#), taking into account certain objectives of the *European Green Deal* and the EU's *Farm to Fork Strategy*. The Regulation provides for new rules for the wine sector relating to a vine planting authorisation scheme, hybrid vine varieties, de-alcoholised wines and partially de-alcoholised wine products, and nutrition and ingredients labelling.

With respect to wine, Article 1 point 32 of *Regulation (EU) 2021/2117* amends [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](#), notably Article 119 thereof on ‘*Compulsory particulars*’ and, with respect to aromatised wine products, Article 3 point 5 of *Regulation (EU) 2021/2117* amends [Regulation \(EU\) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation and labelling of aromatised wine products and repealing Council Regulation \(EEC\) No 1601/91](#), both amendments requiring the labelling of wine and aromatised wine products marketed in the EU to provide a nutrition declaration and the list of ingredients. According to the FIR, the list of ingredients must include “*any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form*”, and a nutrition declaration relates to information stating the energy value solely or together with one or more nutrients, such as fat, carbohydrate, salt, and fibre.

Producers will have the option of limiting, on the package or on a label attached to the bottle, the contents of the nutrition declaration to the energy value, which may be expressed by using the symbol “E” for energy. The full nutrition declaration must then be “*provided by electronic means identified on the package or on a label attached thereto*”. Similarly, producers may provide the list of ingredients by electronic means, though ingredients that cause allergies or intolerances must appear directly on the package or on a label attached thereto with the word “*contains*” followed by the name of the substance or product as listed in Annex II to the FIR, which lists the substances or products causing allergies or intolerances. According to Article 1 point 32 and Article 3 point 5 of *Regulation (EU) 2021/2117*, producers opting for electronic

means must avoid any collection or tracking of user data and must not display information aimed at sales or marketing purposes together with the nutrition declaration or the list of ingredients. The Commission is empowered to lay down additional rules through delegated acts to supplement *Regulation (EU) 2021/2117* by further specifying the rules for the indication and designation of ingredients.

Impact of the new wine labelling rules on the industry and international trade

Article 5 of *Regulation (EU) 2021/2117* provides that wine and aromatised wine products, which were produced and labelled before 8 December 2023, may continue to be placed on the EU market until stocks are exhausted.

The *Comité Européen des Entreprises Vins (CEEV)* notes that the new labelling rules are a result of the sector proactively requesting the EU institutions to adopt “*new mandatory labelling rules to respond to consumers expectations and increase transparency while harmonising an adapted communication on wines and aromatised wine products*”. However, the new mandatory rules appear to be an indication that the voluntary commitment by the industry were deemed insufficient by the EU legislator. While the EU wine sector appears to be prepared to implement the new labelling rules, the new labelling rules will also have an impact on third country wine exports to the EU. According to EU statistics, in 2021 in terms of import value, the top five exporters of wine to the EU were: Chile (EUR 330.8 million), the US (EUR 326.4 million), South Africa (EUR 230.8 million), Australia (EUR 202.9 million), and New Zealand (EUR 112.7 million). Exporters of wine into the EU would have to modify their labelling to comply with the new rules for the EU market

Labelling requirements on food products can invoke obligations under international trade rules. Among the World Trade Organization (WTO) Members, measures imposing labelling requirements on food products have been subject to contention given that such measures may fall within the definition of a ‘*technical regulation*’ of the (WTO Agreement on Technical Barriers to Trade (hereinafter, TBT Agreement) and could create unnecessary obstacles to international trade. With respect to nutrition labelling, the *Codex Alimentarius Commission*, the central food standardising body established by the United Nations’ Food and Agriculture Organization (hereinafter, FAO) and the World Health Organization (hereinafter, WHO), states in its *Codex Guidelines on Nutrition Labelling* that “*the nutrition declaration should be mandatory except where national circumstances would not support such declaration*”.

Regarding labelling for alcoholic beverages in more general, the *Codex General Standard for the Labelling of Prepackaged Foods* does not specify whether it applies to alcoholic beverages. In fact, there is currently an ongoing discussion on whether further action should be taken by *Codex Alimentarius* to clarify or to initiate work on a new *Codex* standard regarding the labelling of alcoholic beverages. In December 2019, the *Codex Alimentarius Commission* requested comments from all *Codex* Contact Points (*i.e.*, FAO and WHO Members), and from the Contact Points of international organizations having observer status with *Codex*, on whether “*alcoholic beverages fall under the Codex definition of food as it is stated in Procedural Manual and the Codex Standard on Labelling of Prepackaged Food*”. Responses showed that there was a clear split of opinion on the question of whether “*alcohol labelling requires specific guidance or standards in Codex*”. According to the *report* of the *Codex Alimentarius Commission* meeting held in November 2021, work on a discussion paper is currently ongoing.

Sufficient time to adjust?

Operators have until 8 December 2023 to adjust to the new labelling requirements, while wine and aromatised wine products that were produced and labelled before 8 December 2023 may continue to be placed on the EU market until stocks are exhausted. Businesses and EU trading partners should closely follow the related developments and engage in all relevant *fora*.

The Italian Competition Authority rules against the use of the *Nutri-Score* front-of-pack nutritional label without accompanying warning messages

On 1 August 2022, the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato*, hereinafter, AGCM) published [three resolutions](#) against the companies *Carrefour Italia*, *Pescanova*, and *Weetabix* according to which the *Nutri-Score* nutrition labelling must be discontinued in Italy, if it is not substantiated and accompanied with certain warning messages, because it is likely to deceive consumers. While the AGCM did not establish in its resolutions that the use of *Nutri-Score* infringes certain provisions of Italy's Consumer Code, in light of the accusations, the respective companies made certain commitments that the AGCM considers "*capable of removing the possible profiles of incorrectness of the commercial practice contested*". As the *Nutri-Score* nutrition labelling has been gaining ground in the EU and as the European Commission (hereinafter, Commission) is working on a harmonised approach, the AGCM's resolutions could be an important factor in the debate.

The investigations against companies using Nutri-Score in Italy

In 2021, the AGCM had initiated five investigation procedures, calling into question the commercial practices of a number of companies on the Italian market concerning the use of the *Nutri-Score* label. The investigations included the Italian companies *Carrefour Italia* and *Pescanova*, and the UK company *Weetabix*. According to the AGCM, the *Nutri-Score* labelling scheme divides food products into five categories on the basis of a score calculated using a complex algorithm that subtracts from the total value of the "*bad*" elements (*i.e.*, energy, saturated fatty acids, simple sugars, sodium) that of the "*good*" elements (*i.e.*, percentage of fruit, vegetables, legumes and oilseeds, fibres, proteins). Foods are then assigned a score between A (green) and E (red), with very low scores (when good elements of the food predominate) assigned to category A and those with the highest scores assigned to category E.

In a [press release](#) of 22 November 2021, announcing the investigations, the AGCM stated that "*the consumer could be led to believe that products with a positive scoring according to NutriScore (...) possess health properties and therefore may trust the labelling system (...) to make food choices*". The AGCM noted that it is "*concerned that the NutriScore label, (...) in the absence of adequate warnings, are erroneously perceived as absolute truths that a specific product is good for health, without taking into account the needs as a whole of an individual (diet and lifestyle), the quantities of foods and frequency with which they are included in a varied and balanced diet*" and that "*It follows that the consumer may be led to believe that products with a positive rating according to the NutriScore label (...) are good for health and, therefore, unjustifiably enhance the results for health that they may obtain from their choices*".

The procedure at the AGCM regarding Carrefour Italia

According to the AGCM's resolution on *Carrefour Italia*, the investigation procedure was initiated to verify whether there was a "*violation of Articles 20, 21 letter b), and 22 of the Consumer Code [i.e., Legislative Decree no. 206 of 6 September 2005], which is contrary to professional diligence and likely to mislead the average consumer with regard to the nature and functioning of the parameters on which the evaluation expressed with the NutriScore label is based, to the advantages deriving from the consumption of the products on which it is present, as well as the health results related to this type of labelling*". Article 20, 21(b) and 22 of the Consumer Code concern the prohibition of unfair commercial practices, misleading actions related to the main characteristics of the product, and misleading omissions.

In order to gather elements for the assessment of the case under investigation, the AGCM heard the President of the *National Committee for Food Safety* within Italy's Ministry of Health and representatives of *Centromarca*, an association representing brands in the consumer goods sector and large-scale distribution, which are referenced in the resolutions. According to the President of the *National Committee for Food Safety*, "*the NutriScore method has many*

*limitations since it does not take into account the subjective conditions of each individual” and that **no food can be qualified as healthy or unhealthy in itself**. According to Italy’s Ministry of Economic Development, the *Nutri-Score* would be the result of a mathematical algorithm that neglects some nutritionally relevant parameters like micronutrients, macronutrients, and the absence of hydrogenated fats. *Centromarca* underlined the need to link front-of-pack labelling “with a food education policy” and that such labelling was “inadequate to inform consumers” without highlighting “the role of the quantities consumed and lifestyles”.*

Italy’s Ministry of Economic Development (MISE) argued that the *Nutri-Score* label leads “the consumer to believe that, regardless of their dietary needs, the green product is preferable to others of the same product category” and that “**the consumer is encouraged to consume it (without limits) on the assumption that the green colour distinguishes a food that certainly does not harm health**”. In addition, Italy’s Ministry of Economic Development stated that “the consumer could therefore be pushed to buy mainly products with the “green light” without evaluating the balance of the diet” and that the summary representation is also **simplistic since, being based on the reference to 100 gr/100 ml of product**, it does not take into account the fact that the diet is made up of portions and frequencies of consumption: some foods are consumed in extremely low quantities (such as olive oil), others in medium portions (such as cheese or meat), while others in larger portions (water, fruits and vegetables).

According to Italy’s Ministry of Economic Development, the *Nutri-Score* system is characterised by an “**arbitrary classification of positive foods (fruits, vegetables, fibre and proteins) and negative foods (salt, sugars and saturated fats)** since, for example, the score weighs the amount of protein **without distinguishing the source (vegetable or animal)**, which has an impact from the point of view of the impact on health. **Saturated fats are not distinguished into monounsaturated and polyunsaturated**”. The Ministry concludes that “the described bias in the judgment does not incentivise the consumer to make an adequate assessment to follow a diet useful to satisfy the daily intake of nutrients”.

The commitments by Carrefour Italia and the AGCM’s resolutions

During the proceedings, *Carrefour Italia* made a number of commitments aimed at adjusting its use of the *Nutri-Score* labelling scheme. *Carrefour Italia*’s commitments are divided into a series of information initiatives that make use of several tools, such as posters, shelf tags, websites, and QR codes. The tools include a communication in which the functioning of the *Nutri-Score* system, its limits, and methodological aspects are explained. The communication notes, for instance, that “*The NutriScore system expresses an evaluation of the food on the basis of the nutritional profile*”. Importantly, the communication also contains a number of warnings, alerting consumers that the system “was developed on the basis of an algorithm and scientific evaluations not universally recognised and shared”, that it “does not take into account the needs and the individual nutritional profile”, and that the score “does not represent an absolute judgment of the healthiness of a food but is related to the nutritional composition of the same referred to 100 g of product and not to a portion of consumption. All foods on the market must be taken into account as part of a normal varied and balanced diet”.

Carrefour Italia also undertook not to use the *Nutri-Score* label on products with a protected designation of origin (PDO), a protected geographical indication (PGI), traditional specialities guaranteed (TSG) and traditional agri-food products, and on the products of the Italian gastronomic tradition (cold cuts, cheeses, olive oil) regardless of the place of production. The AGCM stated in its resolution that the intended communication informs the consumer of the true characteristics of the *Nutri-Score* label and of the relative value of the nutrition claim derived from it.

In its resolution, the AGCM held that the commitments made by *Carrefour Italia* were suitable to eliminate the possible profiles of impropriety of the commercial practice under investigation. The AGCM ordered the obligatory nature of the aforementioned commitments towards *Carrefour Italia* and closed the proceedings without establishing an infringement. Pursuant to Article 27(12) of Italy’s Consumer Code, in case of non-compliance with this resolution, the

AGCM would apply an administrative pecuniary sanction ranging from 10,000 to 5,000,000 EUR. In cases of repeated non-compliance, the AGCM may order the suspension of business activity for a period not exceeding thirty days. The same applies to the respective resolutions and commitments regarding *Pescanova* and *Weetabix*.

The EU context on the introduction of harmonised front-of-pack nutrition labelling

As part of the EU's *Farm to Fork Strategy for a fair, healthy and environmentally friendly food system*, launched on 20 May 2020, the Commission is in the process of reviewing the EU's rules on food information provided to consumers. Adopted under the *European Green Deal*, a package of proposals for the EU to become the first climate neutral continent by 2050, the *Farm to Fork Strategy* aims at facilitating "*the shift to healthy and sustainable diets*". The revision of the EU rules on food information is, *inter alia*, intended to help consumers make healthier food choices by introducing standardised mandatory front-of-pack nutrition labelling. The Commission is expected to propose a mandatory front-of-pack nutrition labelling scheme for the EU and four options are currently being discussed. For example, different to the French *Nutri-Score* scheme, the Italian *NutriInform Battery* uses batteries to display the percentage of energy, fats, saturated fats, sugars and salt contained in a portion of product (self-defined by manufacturers and not based on 100g/ml) in relation to the reference daily intake. The charged part of the battery represents the percentage of energy or nutrients contained in a single portion, allowing it to be visually quantified. The publication of the draft Regulation on harmonised mandatory front-of-pack nutrition labels is foreseen for the fourth quarter of 2022.

Reactions to the AGCM's resolutions

In view of the AGCM's decision, *Carrefour Italia* stated that it would "*not apply the Nutriscore label on own-label products commissioned by Carrefour Italia to its suppliers and marketed in Italy or abroad, on DOP or IGP products, on products of the Italian gastronomic tradition (cured meats, cheeses, olive oil), regardless of the place of production (Italy or abroad) and on products under the Terre d'Italia brand*". The President of Italy's farmers' association *Confagricoltura* reportedly stated that "*The resolution of the AGCM is a step forward for the protection of the consumer's right to have access to clear, complete and transparent information to correctly orient their nutritional choices in order to protect health. In the absence of this intervention, the NutriScore could have spread on the Italian food market, despite the absolute opposition (...) supported by our government, all political forces, the scientific community, farmers and consumer associations. NutriScore must therefore be set aside, in favour of the Italian NutriInform Battery, which is based on a very different principle*".

Impact of the resolutions in Italy and outlook in the EU

Following the AGCM's resolutions, companies that intend to commercialise their products in Italy with the *Nutri-Score* label on the front-of-pack, will be required to provide additional information to consumers, including warnings that the *Nutri-Score* is not universally recognised by the scientific community and that it does not take into account the needs and nutritional profile of the individual. As the Commission works towards a harmonised front-of-pack nutrition labelling scheme at the EU level, it should be ensured that such scheme be science- and evidence-based, not lead to unjustified *de jure* or *de facto* discrimination among foodstuffs, and not mislead the average consumer as to a food product's nutritional value and impact on health, while being overall consistent with common dietary guidelines. Additionally, food labelling must be simple and easy to understand, but not too simplified to provide no meaningful information.

Recently adopted EU legislation

Trade Law

- [Council Implementing Regulation \(EU\) 2022/1529 of 14 September 2022 implementing Regulation \(EU\) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine](#)
- [Council Decision \(CFSP\) 2022/1530 of 14 September 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine](#)

Food Law

- [Commission Implementing Regulation \(EU\) 2022/1614 of 15 September 2022 determining the existing deep-sea fishing areas and establishing a list of areas where vulnerable marine ecosystems are known to occur or are likely to occur](#)
- [Commission Implementing Regulation \(EU\) 2022/1525 of 13 September 2022 concerning the authorisation of L-lysine monohydrochloride and L-lysine sulphate produced by fermentation with *Corynebacterium glutamicum* CGMCC 14498 as feed additives for all animal species \(¹ \)](#)
- [Commission Delegated Regulation \(EU\) 2022/1519 of 5 May 2022 amending Regulation \(EU\) 2019/1009 of the European Parliament and of the Council as regards the requirements applicable to EU fertilising products containing inhibiting compounds and the post processing of digestate \(¹ \)](#)

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