



## **MESSAGE IN A BOTTLE:**

IS IT LAST ORDERS FOR EU ALCOHOL  
LABELLING EXEMPTIONS?

# Message in a bottle: is it last orders for EU alcohol labelling exemptions?



**Grant Strachan**  
ASSOCIATE  
COMMERCIAL  
SERVICES DIVISION

In March 2017, the European Commission (the “Commission”) published a report evaluating the merits of mandatory nutritional and ingredient labelling for alcoholic beverages (the “Report”). The Report concluded that there are no objective grounds justifying the absence of such labelling for alcoholic drinks. In response, the drinks industry was invited to submit a proposal for a self-regulatory framework governing alcohol labelling. Whilst we await the Commission’s assessment of the industry’s proposal, there is an emerging consensus that the Commission is leaning towards regulatory intervention that will impose mandatory nutritional and ingredients labelling for alcoholic beverages. This paper will consider the current status following publication of the Report and will assess the potential impact of regulatory intervention in this area.

## Setting the scene

The Food Information to Consumers Regulation (as amended) (“FIC”) provides detailed requirements to ensure clear, comprehensible and legible labelling of food information to consumers. FIC came into force in 2012 and heralded a paradigm shift in the regulatory approach to food labelling. Following implementation of FIC, food business operators (“FBOs”) were obligated to comply with mandatory labelling guidelines and could no longer defer to voluntary requirements. As the title suggests, FIC is focussed on food labelling and its scope does not extend to alcoholic beverages. More specifically, Article 16(4) of FIC exempts alcoholic beverages containing more than 1.2% by volume of alcohol from the mandatory list of information and nutrition declaration.

However, FIC was also tasked the Commission with the obligation to monitor this carve out and to report whether and to what extent alcoholic beverages

should nevertheless be included within the scope of mandatory labelling. The Commission discharged this reporting obligation with the publication of the Report, in which it concluded that the provision of nutrition information and ingredients listings could help consumers to make informed choices about what and how much to drink.

## Current status and next steps

Following publication of the Report, the European Alcoholic Beverages Sector (“EABS”) representing the wine, beer, spirits and cider sector was invited to respond to the Commission by detailing a proposed regulatory approach that addresses ‘consumers’ expectations’ on alcohol labelling. In March 2018, EABS submitted a self-regulatory proposal that also contained separate annexes highlighting the specific concerns and standpoints of each sector representative (the “Proposal”). The crux of the Proposal advocated a flexible approach that would permit the nutritional information and ingredients lists to be provided either on product labels or online, depending on the discretion of the individual business operator.

The Commission is currently assessing the Proposal and if it considers it insufficient or unsatisfactory, it will launch an impact assessment on possible regulatory and non-regulatory intervention.



## The industry perspective

EABS advocates a creative solution towards enhancing current labelling on beverage products through the use of technology. The Proposal states that “new technologies can help consumers to consult detailed, tailored and up-to-date information that meets the needs in the best possible way.” Using new technology such as web-links; QR codes; bar codes or through other methods using Smart technology can facilitate a high degree of adaptability for FBOs and reduce the burden on SME’s.

### Why a ‘one size fits all’ approach will not fit

FIC requires that nutrition information is given per value of 100ml of the product and may additionally be provided per portion size.

- Using new technology such as web-links; QR codes; bar codes or through other methods using Smart technology can facilitate a high degree of adaptability for FBOs and reduce the burden on SME’s.

A key issue voiced by the stakeholders within EABS relates to the practicality of effectively delivering mandatory labelling information such as nutrition information and list of ingredients to consumers. Stakeholders within the spirits industry have questioned whether a rigid adherence to the labelling modalities set out in FIC can be usefully applied to the drinks sector. There is a real concern that imposing a uniform requirement to supply nutrition information per 100ml for spirits is simply impractical, given that the standard measure serving is 30ml. Even allowing for discretion of the most generous and free pouring of bar tenders, it is a far reach to identify practical instances where spirits are served in 100ml measures. The spirits sector emphasises this concern and advocated that it would be more useful to provide the information to consumers based on portion size.

EABS advocates a creative solution towards enhancing current labelling on beverage products through the use of technology.

There are two compelling and practical reasons for this distinction: (i) firstly, imposing a harmonised labelling obligation by reference to 100ml reference values would present a consumer health risk and would directly conflict with the efforts made by the spirit drinks industry to educate consumers on moderate drinking; and (ii) secondly, reference to calories per 100ml would also be misleading from a nutritional perspective. For instance, according to information provided by spiritsEUROPE, a drink of spirits could show up as some 240 calories per 100 ml, while a beer would only have about 40 calories. However, a glass of spirits in a bar would provide 67 calories to energy intake, while a standard 250ml glass of beer would add slightly more than 100 calories. Given that such a reference would grossly over-represent that calories present in a standard serving, there is a serious question to be asked whether strict adherence to the 100ml reference would serve any real value for spirits.

### Cost burden on SME’s

Accurate nutrition information can be provided independently by FBOs through product specific analysis or alternatively, FBOs can use generally established and accepted data. The challenge of applying mandatory nutritional information for alcohol products is that the product composition can change through aging processes such as distillation and fermentation. For these reasons, a preferable and practical model would be to apply average values based on typical product characteristics. For instance, the wine and spirits sector have already provided such a toolkit in their annexes to the Proposal, using average values of typical and characteristic wines, such as 100 ml of brut, sparkling wine provides 70 kcal.



The alcoholic beverage sector has undergone a ‘craft’ revolution in recent years with the burgeoning growth of small and medium sized producers occupying a growing market share. Supporting product innovation is vital to the continued growth and success of this sector. However, there is a concern that heightened regulatory intervention such as the imposition of enhanced mandatory labelling obligations would stymie this growth by imposing a significant compliance burden on producers.

### Use of technology

The drinks sector has acknowledged the increased consumer demand for enhanced product information. However, the devil is very much in the detail as to the modality of presentation, namely the ‘what’ and ‘how’ information should be presented to consumers. The Proposal details a clear rationale for a flexible self-regulatory approach that would enable drinks producers to provide a greater breadth of product data to consumers through the medium of Smart technology, such as apps and QR codes to deliver enhanced consumer information. It is useful here to recall the provisions of recital 51 of FIC which narrates that food information rules should be able to adapt to, amongst others, a rapidly changing technological environment.

### Comment

At the outset, it must be emphasised that the perspectives of the representative trade associations comprising EABS are not universally aligned. For instance, the Brewers of Europe has been highly vocal in advocating a common position that mandates nutrition and ingredients listings per 100ml. This differs to the position advocated by the spirits industry that underlines the practical and consumer health imperative on ensuring a per-serving approach. Indeed, taking into consideration these differences, EABS should be applauded for taking a collaborative approach that presented common ground in the body of the Proposal whilst the contrasting positions of the representative sectors were helpfully detailed as separate annexes to the Proposal.

Moreover, there is a real concern that imposing a uniform requirement to supply nutrition information per 100ml would directly conflict with the efforts made by the drinks industry to educate consumers on moderate drinking.

The self-regulatory Proposal aims to provide a practical and meaningful solution to deliver enhanced consumer information on nutrition and ingredient labelling. It remains imperative that any future regulatory intervention in this area serves to acknowledge the practical impact for both producers and consumers. In particular, the imposition of mandatory labelling obligations should recognise the modalities of serving sizes. Responding to consumer demands by delivering enhanced information on product labelling is embraced by the drinks industry. However, the devil is very much in the detail; the amount and type of information, and the manner in which information is provided are key issues here. For example, reference to calories per 100ml has no real value for spirits and such a reference would grossly over-represent that calories present in a standard serving. Moreover, there is a real concern that imposing a uniform requirement to supply nutrition information per 100ml would directly conflict with the efforts made by the drinks industry to educate consumers on moderate drinking. Each 100ml measure of a spirit drink equates to approximately 3-4 measures i.e. the maximum recommended daily intake for men in many countries and twice the recommendation for women. This is surely a strong public health rationale that would justify spirit producers to apply a per portion approach as opposed to a generic 100ml serving size.



Join the conversation at  
our Brodies' blog site  
[brodies.com/blog](https://brodies.com/blog)

There is a growing consensus to embrace technological innovation by enabling a degree of adaptability and flexibility towards labelling rules. As noted by spiritsEUROPE, internet usage has risen from 8% in 1998 to 81% of the EU 28 population in 2016.

Also, it is estimated that 80% of people use their smartphones to research purchases they are about to make in a store. Consumer behaviour demonstrates the ubiquity and utility of digital information. Whilst consumers are demanding more extensive product information there is also an opportunity for regulators to embrace this consumer demand by enabling producers to utilise innovative technologies that can deliver practical and meaningful information to consumers.

## Conclusion

The drinks industry has emphasised its commitment to ensuring that consumers are provided with meaningful product information to facilitate more informed choices. In delivering this objective, there is a delicate balance to strike between introducing a regulatory burden that on the one hand imposes a consistent obligation upon all producers to provide intelligible and practical information whilst also

- It is estimated that 80% of people use their smartphones to research purchases they are about to make in a store.

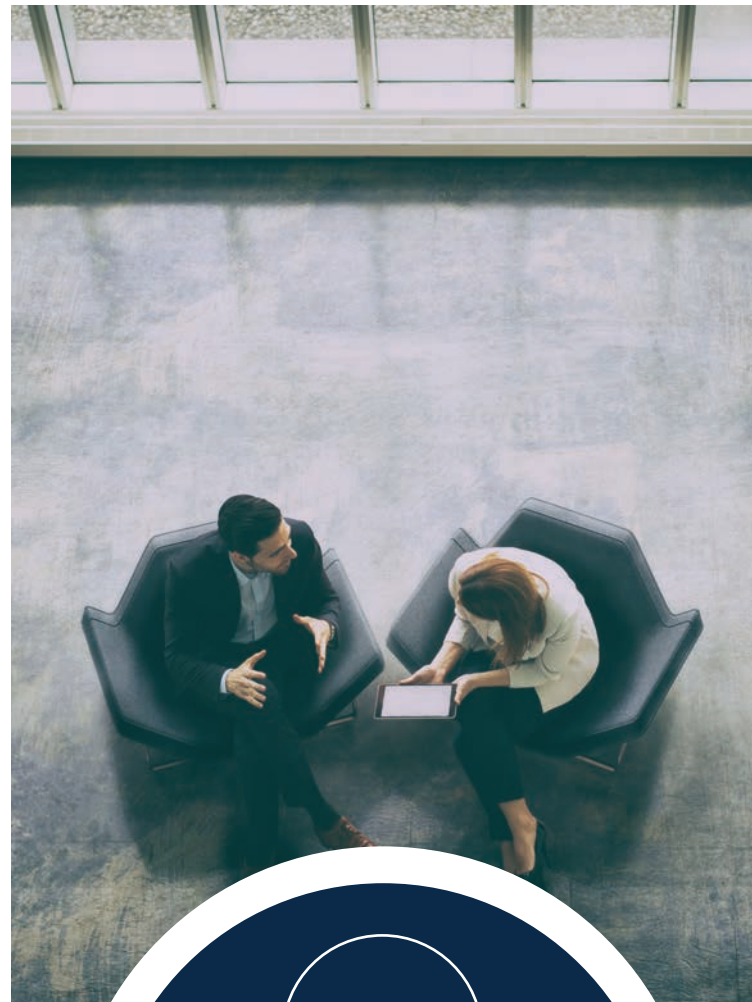
ensuring that labelling requirements are sufficiently flexible to distinguish between product strengths and formulations. The demarcation between spirits and beer and cider products is a striking example of this challenge. It remains to be seen how the Commission will interpret this distinction.

EABS has advocated a creative and flexible approach to nutrition and ingredient labelling for alcoholic beverages that embraces the utility of novel and Smart technology. As a final thought, it is recalled that the Commission declared in its 2010 mission statement for 'A Digital Agenda for Europe' that "consumers expect, rightly, that they can access content online at least as effectively as in the offline world". In light of the increasing ubiquity and accessibility of online content, it is suggested that the Proposal provides the Commission with a creative and practical option that overcomes the limitations of on-label information and addresses consumer demand by facilitating enhanced product labelling information through more meaningful off-label channels.

## Key contact



**Grant Strachan**  
ASSOCIATE  
+44 (0)131 656 3785  
grant.strachan@brodies.com



Join the conversation at  
our Brodies' blog site

[brodies.com/blog](https://brodies.com/blog)



---

**BRODIES**<sup>LLP</sup>



brodies.com